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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0985**

In the Matter of the Civil Penalty Issued to:
Patrick Takuanyi

**Filed March 6, 2017
Reversed
Ross, Judge**

Office of Administrative Hearings
File No. 66-6084-33400

Patrick Takuanyi, South St. Paul, Minnesota (pro se relator)

Tonnetta T. Dove, LeVander, Gillen & Miller, P.A., South St. Paul, Minnesota (for respondent)

Considered and decided by Jesson, Presiding Judge; Ross, Judge; and Schellhas, Judge.

UNPUBLISHED OPINION

ROSS, Judge

Patrick Takuanyi stored vehicles registered to his former auto-sales business outside his home after he lost his business licenses and auto dealership. The City of South St. Paul cited him for storing cars as part of an unregistered home business without a conditional-use permit. An administrative-law judge (ALJ) upheld the citation. Takuanyi appeals, arguing that he was not storing the cars for any home business. Because the city's ordinance

prohibits only the storage of property for a gainful home occupation and the city failed to prove that Takuanyi's auto storage was associated with any gainful occupation, we reverse.

FACTS

Patrick Takuanyi operated an automobile sales and repair business presumably from a commercially zoned lot until he lost his business and automobile-dealer licenses in March 2015. Takuanyi relocated his business equipment, supplies, and documents to a commercial storage unit, but he moved five cars to outside his home in South St. Paul. Someone complained about the cars to the city. A city code-enforcement officer visited in March 2016 and found that some of the cars were registered under Takuanyi's business name and had dealer or in-transit license plates. The city issued Takuanyi an administrative citation for storing cars in the furtherance of a home occupation without a conditional-use permit required to operate a home business.

Takuanyi and the city appeared at a contested administrative hearing in May 2016. A city planner testified that Takuanyi's home property is zoned "R-1," which is single-family residential, and that a conditional-use permit is required to run a home occupation in an R-1 zone. He explained that the city had not granted Takuanyi a conditional-use permit to run a home occupation. Takuanyi testified that, although the vehicles had been previously stored at his business property, he never sought a conditional-use permit for a home occupation after he lost his professional licenses because he conducted no business from his home.

The ALJ observed that the city failed to prove that Takuanyi engaged in any vehicle sales or business from his home. The city apparently convinced the ALJ, however, that by

moving the cars that he previously kept on his sales lot to his home, rather than moving them to some commercial storage facility, Takuanyi must be saving his company money. This theoretical savings, according to the city, made the car storage a “gainful” home-occupation activity. The ALJ ordered Takuanyi to pay a \$200 fine and a \$100 hearing fee.

Takuanyi appeals for our certiorari review.

D E C I S I O N

Takuanyi argues that the ALJ erred by holding that storing vehicles on his property constituted an unauthorized home occupation under the city’s ordinance. On certiorari review, we limit questions affecting the merits of a controversy to whether the challenged determination was arbitrary, oppressive, unreasonable, fraudulent, made under an erroneous theory of law, or without evidentiary support. *See Staeheli v. City of St. Paul*, 732 N.W.2d 298, 303 (Minn. App. 2007). We will not retry facts or make credibility determinations, and we will affirm “if the lower tribunal furnished any legal and substantial basis for the action taken.” *Id.* (quotation omitted).

Takuanyi challenges the ALJ’s legal basis for upholding the administrative violation. He argues that his conduct did not amount to operating a home occupation under the ordinance. The interpretation and application of an ordinance is a question of law that we review de novo. *Cannon v. Minneapolis Police Dep’t*, 783 N.W.2d 182, 192 (Minn. App. 2010). We apply the same rules to interpret city ordinances that we apply to interpret statutes. *Id.* at 192–93. We therefore first determine whether the language is subject to only one reasonable interpretation. *Id.* at 193. If it is, we will apply the unambiguous text. *Id.*

The city's ordinance prohibits South St. Paul residents from operating home occupations in areas zoned "R-1 single-family district" without a conditional-use permit. South St. Paul, Minn., Code of Ordinances § 118-121(b)(6) (2016). The city's ordinance defines a home occupation as "any gainful occupation or profession engaged in by the occupant only of a dwelling when carried on within a dwelling unit and not in any accessory building." South St. Paul, Minn., Code of Ordinances § 118-8(c) (2016). The ordinance does not define "gainful," but the meaning of that term controls the outcome here.

"Gainful" commonly means "profitable." *The American Heritage College Dictionary* 556 (3rd ed. 1993). The Oxford English Dictionary traces "gainful" back to the middle 1500s and a Middle French word associated with profit, advantage, and increase, and it concludes that the modern understanding similarly means "leading to pecuniary gain; lucrative, remunerative." See 6 *Oxford English Dictionary* 311, 314 (2d ed. 1991). So "gainful" had been understood to refer to economic revenue or pecuniary increase long before South St. Paul enacted its ordinances. We therefore apply this common meaning.

Applying the common meaning of "gainful" leads us to reverse because, without dispute, the city failed to prove that Takuanyi engaged in his car-storage activity to generate any revenue at all. The cars were not being stored to further a "home occupation."

We are wholly unconvinced otherwise by the city's argument that Takuanyi's home-storage activity was "gainful" in the sense that it saved him the cost of storing the cars at some commercial facility. The city did not establish as a matter of fact that Takuanyi would have incurred any cost by storing the cars elsewhere; for all the record shows, Takuanyi might possess some other property where he could have stored the cars without cost. More

important to our holding, as a matter of law and language, the city offers no support for the novel proposition that one participates in a “gainful” occupation through an activity that merely prevents cost rather than generates revenue. Does an Uber driver who lives in South St. Paul engage in an unauthorized “gainful” home occupation every time she parks in her driveway? Does a farmers’ market vendor violate the ordinance by keeping boxes of inventory in her garage? What about the business owner who lunches at home to save the business the expense of his eating out? These are activities that might incur a business cost if they are done away from home. But they are “gainful” occupational activities only under a strained accounting scheme that is not suggested by the ordinance. And pushing the city’s argument further from reason, unlike these hypothetical examples, Takuanyi was no longer even engaging in business activity *anywhere*. So assuming we were tempted to entertain the city’s notion that his avoiding storage costs made his home storage a “gainful” activity, any cost avoidance benefited Takuanyi personally, not his then-defunct business.

We do not suggest that a city cannot regulate or prohibit the storage of cars to prevent blight, avoid hazards, or further some other governmental interest. *See, e.g., State v. Vasko*, ___ N.W.2d ___, ___, 2017 WL 239945, at *1 (Minn. Jan. 18, 2017) (considering violation of city ordinance prohibiting blight conditions, including open storage of unregistered or inoperative motor vehicles); *City of Burnsville v. Brastad*, 354 N.W.2d 85, 86–87 (Minn. App. 1984) (affirming violation of city ordinance prohibiting outside storage of waste, debris, refuse, garbage, and construction material in residential area). But the city did not charge Takuanyi under an anti-nuisance or similar ordinance. We simply hold that Takuanyi’s storing cars at his home was not a “gainful” home-occupation activity under

the city's home-occupation ordinance. The ALJ's decision therefore rests on an erroneous theory of law.

Reversed.