

ANALYSIS

Defendants-Appellants first argue that Troy City Ordinance, Chapter 92, Section 9.77.1, governing the charge of minor in possession of alcohol, did not afford the district court jurisdiction to sentence them to probation. They claim that the ordinance specifically excludes this sanction and that imposing it without legislative authority would violate the Constitutional doctrine of separation powers.

The standard of review on appeal when considering matters of statutory construction is *de novo*. Cónagra Inc v Farmers State Bank, 237 Mich App 109, 120 (1999). The standard of review on appeal when considering constitutional violations is *de novo*. People v Howard, 233 Mich App 52, 54 (1999).

The ordinance at issue, Troy City Ordinance, Chapter 92, Section 9.77.1, provides as follows:

(1) A person less than 21 years of age shall not purchase or attempt to purchase alcoholic liquor, consume or attempt to consume alcoholic liquor, or possess or attempt to possess alcoholic liquor. A person less than 21 years of age who violates this subsection is guilty of a misdemeanor punishable by the following fines and sanctions:

(a) For a first violation, a fine of not more than \$100.00 and may be ordered to perform community service and to undergo substance abuse screening and assessment at his or her expense as described in subsection (2)

³ Transcript of December 30, 1999 hearing, pp. 13 & 14.

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- (2) The court may order the person found violating subsection (1) to undergo screening and assessment by a person or agency as designated by the substance abuse coordinating agency as defined and referred to in MCL 436.33b, et seq., MSA 18.1004(2), in order to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs.

The primary rule governing statutory interpretation is to first and foremost ascertain and give effect to the manifest intent of the legislature. People v Denio, 454 Mich 691, 697 (1997). To do so, the Court must first review the language of the statute itself. Kiesel InterCounty Drain Drainage Dist v Dep't of Natural Resources, 227 Mich App 327, 334 (1998).

The power to establish sentences rests soundly in the legislative branch of government. People v Hall, 396 Mich 650 (1976). In the ordinance at issue, Troy City Ordinance, Chapter 92, Section 9.77.1, the penalties are plainly enumerated and exclude jail and probation. Where a statute is clear and unambiguous, judicial construction is not permitted. Kiesel, supra. Therefore, the district court did not have the authority to sentence Defendants-Appellants to probation.⁴

⁴ The district court judge also noted the same stating: "I think opposing counsel is correct when he said that when Troy casts the ordinance they intended for it to work like the state statute. However, I think that they forgot or neglected or wasn't aware of the fact that the state law, in state law that there's this specific statute that gives courts authority to order other things, they just didn't do that here. And they need to go back and add that. And I think then they can effectively the purpose they intended when they casts this ordinance, but that has not been done." Transcript of December 30, 1999 hearing, p. 13

Nor is the Court persuaded that People v Gill, 77 Mich App 248 (1977), would apply here as argued by the People. In Gill, the Court of Appeals upheld the district court order placing the person on probation for violating a university law. The Court in Gill looked to MCL 771.1 as authorization for placing the defendant on probation because of the violation of a university ordinance, specifically authorized by state law and punishable under state law, i.e. MCL 771.1. This is unlike the instant matter, which involves the violation of a city ordinance passed by a local government.⁵

Defendants-Appellants additionally argue that the district court judge erred in permitting criminal contempt proceedings to enforce the terms of probation and take issue with the fact that the show cause petitions for criminal contempt were not precipitated by a sworn affidavit in violation of MCR 3.606(A). However, because the district court erred in ordering probation, these issues are moot.

Accordingly,

IT IS HEREBY ORDERED that the decision of the district court denying Defendants-Appellants respective motions to dismiss criminal contempt proceedings is reversed. This matter is remanded

⁵ The Court notes that Chapter 92, under which Defendants were charged, is in contrast to Chapter 98, which the Criminal Code for the City of Troy. Chapter 98 also has a section on disorderly conduct that does provide jail time in certain circumstances. Chapter 98 provides at Section 98.01.03 that the court may impose any sanction or remedial measure provided in state law for misdemeanor offense. Chapter 92 has no enabling language and only provides for fines or sanctions.

