

The Appellate Advocate:

A Recap of Recent Decisions by NJ's Appellate Courts



Forever Greatful Art Studios, LLC v. City of Orange Township No. A-3671-23

Lots of people (maybe even this blogger) think tattoos and piercings are cool. But you know what's even cooler? Litigation arising from the administrative denial of a health license for a tattoo parlor. And that's what is at the heart of this appeal.

The underlying case pitted Forever Greatful Art Studios, LLC, and its owner James Ray against Orange Township, after Ray's attempt to open a tattoo and piercing parlor was ultimately blocked. Although city officials initially approved Ray's zoning application in May 2023, issuing various permits for plumbing, signage, and occupancy, the city later refused to grant the essential health license needed to open for business.

Ray, who had signed a lease contingent on zoning approval and invested significant funds into preparing the location, argued that the city's decision was both unfair and unlawful. He contended that tattoo and piercing services should fall under Orange's definition of a "personal service establishment," which includes businesses like barbershops, massage facilities, and garment repair shops. This contention was critical to Ray's right to operate his business, because the location's permitted use was for a "personal service establishment" and the city council had rejected a proposed ordinance amendment that would have more expressly authorized tattoo parlors within the relevant zoning district.

But both the trial court and appellate panel disagreed, emphasizing key differences between tattoo parlors and the businesses explicitly listed in the governing ordinance. Noting that tattooing involves needles, potential health risks, and medical waste, the judges concluded that the nature of the services made them distinct from other permitted businesses.

The appellate opinion leans heavily on precedent, which grants municipalities broad discretion in zoning matters unless their actions are "arbitrary, capricious, or unreasonable." The panel cited Ray's own acknowledgment that the ordinance did not specifically mention tattoo studios and that no similar businesses existed in the area.

Ray also sought to invoke the legal doctrine of equitable estoppel, arguing that the city should be barred from changing course after granting initial approvals. However, the court determined that compelling circumstances necessary to apply estoppel against a public entity were not present. The panel noted that Ray had failed to address his concerns before the city council when it debated—but ultimately rejected—the proposed ordinance that would have formally permitted tattoo parlors.

While affirming the lower court's ruling, the appellate panel noted that Ray is still free to pursue a use variance from the city's zoning board if he wishes to continue his efforts.

About Thomas Cotton

Thomas Cotton is a litigation partner at Schenck Price, representing clients in trial and appellate courts throughout the United States. In addition to his practice, he authors *The Appellate Advocate*, a semi-weekly blog offering thoughtful yet accessible commentary on recent appellate rulings.



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