DA 20-0594

IN THE SUPREME COURT OF THE STATE OF MONTANA

2021 MT 267

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TOWN OF EKALAKA,

Plaintiff and Appellee,

v.

EKALAKA VOLUNTEER FIRE DEPARTMENT, INC.

Defendant and Appellant.

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APPEAL FROM: District Court of the Sixteenth Judicial District,
In and For the County of Carter, Cause No. DV 2018-1
Honorable Nickolas C. Murnion, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Courtney Lawellin, Attorney at Law, Livingston, Montana

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Submitted on Briefs: September 22, 2021
Decided: October 19, 2021

Filed:

Clerk

Chief Justice Mike McGrath delivered the Opinion of the Court.

¶1 Ekalaka Volunteer Fire Department, Inc., ("the Department") appeals an October 9, 2020 order from the Sixteenth Judicial District Court in Carter County denying its motion for summary judgment and granting summary judgment to the town of Ekalaka ("the Town"). We simplify the central issue on appeal as follows:

> *Did the District Court err when it found that Ekalaka's fire department is municipally owned as a matter of law?*

¶2 We affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

¶3 The fire department in Ekalaka predated the Town. Then, in 1915, the year after Ekalaka incorporated as a third-class municipality, the Town passed an ordinance to create a municipal fire department out of the "old fire department." The ordinance made the existing fire chief of the old department the first fire chief of the municipal department, and it authorized and directed the mayor and town clerk to purchase the fire equipment, building, and "all property of every name, nature, and kind" from the old department. Through 1940, the Town followed statutory procedures for municipal departments by nominating and appointing fire chiefs and taking other required steps.

¶4 After 1940, such formalities largely went by the wayside. The volunteer-run Department operated with a degree of independence and trust. It also contained interpersonal overlap with other parts of the Town's government. For example, Elston Loken, the fire chief from around 1983 to 2013, worked as the Town's public works director. And Stephen DeFord, the Ekalaka mayor from 2014 to 2018, during which time

the present controversy arose, had volunteered with the Department and was assistant fire chief before his election.

¶5 Loken and DeFord asserted that they have always recognized and understood the municipal character of the Department. This remains true, they say, despite some of the Department's independence in practice. That independence manifests in the Department's handling of its own decisions on things like personnel, as well as in the fact that the Department conducts its own fundraisers to supplement what the Town can budget for it, maintaining those funds in separate bank accounts.

¶6 In an affidavit, Loken referenced "considerably less community-minded" attitudes in new Department members as a catalyst for his retirement. Indeed, personal relationships aside, the Department did begin to pursue more extra-municipal work following Loken's departure. Mutual aid agreements with the rest of Carter County and other nearby communities had begun as early 1983, and the Department entered state contracts to fight wildland fires under Loken's leadership, too; he said they were good practice, teambuilding, and fundraising opportunities. But beginning around 2014, the contract money in the Department's separate coffers began to swell and outmatch that coming from Town and community funds. The Department now contends that the budget-strapped Town is trying to seize the assets of a private association.

¶7 The Department's current fire hall is approaching a century old and lacks bathrooms and other much-desired features. In 2016, the Town and the Department began seriously discussing how to construct a new fire hall. The Town considered incorporating the Department as a nonprofit entity that could more promptly facilitate the necessary steps.

The town attorney helped the Department draw up the paperwork to incorporate that entity, Ekalaka Volunteer Fire Department, Inc. However, personalities clashed, and progress halted. Plans for the hall were never finalized. After finding out that municipal workers compensation insurance coverage would be impossible if the Department went private, the Town decided not to pursue that option.

¶8 The Department contends that although the 1915 ordinance may have subsumed the "old fire department," the private volunteer fire company's identity somehow remained intact—either that or the Town's lenient oversight caused municipal ownership to evaporate in the intervening decades. The Department claims it was always a private fire company that existed as an unincorporated association until 2016, when it filed its incorporation paperwork following the town attorney's advice.

¶9 The Town went to the Carter County District Court and filed for a declaratory judgment that the Department was municipally owned. The Department responded with its theory of independence. Each party presented affidavits and voluminous documents to bolster its portrayal of the Department's status. The District Court granted summary judgment to the Town. The Department appeals.

## STANDARD OF REVIEW

¶10 We review summary judgment rulings de novo, taking up the district court's task anew and applying the same criteria. *Lucas v. Stevenson*, 2013 MT 15, ¶ 12, 368 Mont. 269, 294 P.3d 377. For summary judgment to be appropriate, there must be no genuine issues of material fact in dispute, and one party must be entitled to judgment as a matter of law. M. R. Civ. P. 56(c)(3). Declaratory judgments can turn on a district court's

conclusions of law and findings of fact; we review legal conclusions for correctness and findings of fact for whether they are clearly erroneous. *Karlson v. Rosich*, 2006 MT 290, ¶ 7, 334 Mont. 370, 147 P.3d 196.

**DISCUSSION**

¶11 We first address two arguments the parties raised about the scope of our analysis. The Department claims that this matter should not have been decided by summary judgment given the existence of material facts in dispute. And both parties raise a theory of estoppel that is best dispensed with up front.

¶12 The Department has argued, albeit tersely, that the District Court erred in granting summary judgment to the Town because material facts remained in dispute. The Department did not make this argument below, and in fact, it filed its own motion stating that the undisputed facts favored summary judgment for the Department. No contents of the affidavits and supporting documents that accompanied the parties' motions create material factual dispute. The Department contests minor aspects of the ways affiants for the Town portrayed things like the meetings about the new fire hall, but the Department does not cite any open questions of fact that are material to resolving the legal issue in this case. To the extent the Department disagrees about the materials provided, its main concern is the *legal* import of those documents and other evidence, not their factual existence or validity. *See Sprunk v. First Bank Sys.*, 252 Mont. 463, 466, 830 P.2d 103, 105 (1992) ("[M]ere disagreement about the interpretation of a fact or facts does not amount to genuine issues of material fact."). Summary judgment was and remains appropriate.

¶13 The Town asserts a theory of public policy estoppel to preventively cut off the Department's case. The Town points to two occasions when we have held that litigants could not challenge the existence of public corporations after they functioned for years with "the acquiescence of the public." *Henderson v. School Dist.*, 75 Mont. 154, 242 P. 979 (1926) (regarding school district annexation); *Hammermeister v. Northern Mont. Joint Refuse Disposal Dist.*, 278 Mont. 464, 925 P.2d 859 (1996) (regarding a refuse district). The Department, for its part, responds that estoppel should go the other way. The Department contends that years of allegedly independent operation should make *its* contention unassailable.

¶14 We note only that estoppel is not necessary to resolve this case. Each party's estoppel argument hinges first on validating its proposed version of the Department's status in the past. Therefore, we consider the legal requirements for municipal or independent fire departments and the evidence demonstrating which type of department formed and operated in Ekalaka. This analysis suffices to resolve the question presented for declaratory judgment.

¶15 Laws in effect in 1915 gave municipal town councils the power to establish fire departments and defined their components. Sections 3326, 3327, RCM (1907). The newly established town of Ekalaka did so through its 1915 ordinance purchasing everything from the "old fire department." The Department does not dispute these events.

¶16 What the Department does dispute is the Town's compliance with state law on fire departments ever since; it says that this noncompliance renders the attempted creation of a municipal department invalid. For example, state statutes govern things like the

appointment of fire chiefs and firefighters, a municipality's duties to enforce qualifications for firefighters, and firefighter discipline. *See* Title 7, chapter 33, part 41, MCA. The Town quit making official appointments many decades ago. And the Department points out numerous areas where it has long disregarded these statutory rules, such as by hiring firefighters without the physical exams required in § 7-33-4107(5), MCA.

¶17 The Department also highlights its contravention of later municipal ordinances. For example, the Town's 1958 fire department ordinance describes application procedures that the Department has violated by instead operating under its bylaws. And the meeting times and locations differ significantly—because the Town copied the ordinance from another town, Malta, and mistakenly left many town-specific details unchanged. That the Department invokes the difference between its conduct and obvious clerical errors speaks to the weakness of this evidence; violating the municipal ordinances is not by itself evidence the Department was not subject to them.

¶18 The Town acknowledges its technically improper department oversight, but it also cites ways in which its management of the department has conformed to what *only* municipalities can do. For example, the town provides workers compensation insurance through the Montana Municipal Interlocal Authority, which is exclusive to municipal departments. The Town has also maintained property and liability insurance on the Department's vehicles and equipment.

¶19 The Town could certainly face legal issues stemming from its longstanding practice of extensive delegation to the Department to operate under its own rules. What those issues cannot plausibly include, however, is the question of whether the municipal department

even exists. The Department cites no legal authority for its argument that statutory noncompliance somehow invalidates the original formation of a duly enacted municipal department.

¶20 One theory the Department posits is that even though the Town bought up the "old fire department" in 1915, the preexisting private fire company's identity survived, persisting underground while the Town exercised control but stepping into action when the Town eased off.[1] This theory requires that the Department legally operated as a volunteer fire company.

¶21 The law provides different rules for fire companies in incorporated and unincorporated areas. *Compare* Title 7, chapter 33, part 23, MCA, *with* Title 7, chapter 33, part 41, MCA. A fire company can work in rural areas outside of towns and cities as long as it regularly files with the county clerk a roster and certificates of its members.

[1] The Department misinterprets a savings clause in the municipal fire department laws to support the theory that it persisted as a private company even after the Town bought up the old department. Today's § 7-33-4110, MCA, a version of which existed in 1915, says that nothing in the chapter on municipal fire departments "shall be held or construed to affect any fire organization known as a volunteer fire company." The Department claims that when the Town acted under its statutory authority to create a municipal fire department, it was therefore unable to affect any preexisting fire company, even the very one it was acquiring. However, the clear effect of the savings clause is to provide that all the provisions about mayoral supervision, firefighter qualification, and the like do not apply to the private fire companies, which are covered by their own section. The savings clause prevents these certain state statutes from being applied to private fire companies. It does not prevent any activity municipalities take under them from affecting a private fire company in any way. Such a reading would not make sense. For example, imagine that a mayor and town council appoint a fire chief as permitted by § 7-33-4105, MCA. The decision could *affect* a private fire company if the chief were pulled from its ranks. Similarly, a town exercising its ability to contract with a fire company under § 7-33-4101(b)(ii), MCA, will certainly *affect* the fire company. Such effects are different than applying the managerial rules from the municipal section to organizations in the private company section, which is what the savings clause works to avoid.

Section 7-33-2311, MCA. Most fire companies also register as corporations. Significantly, within towns and cities, today's law allows rural fire districts to supplant municipal departments if annexed. Section 7-33-4115, MCA. Up until 1978, the law said that private fire companies could only operate in incorporated areas under authority granted by the municipality or else had to be authorized by a special law. Section 2076, RCM (1907); § 5143, RCM (1921); § 11-2003, RCM (1947).

¶22 The Department has an organizational hierarchy that resembles the one the law contemplates for private fire companies. *See* § 7-33-2312, MCA. But beyond that, the Department can point to little evidence that it followed these statutes to validly establish itself as a private fire company. The Department offers two things. First, it presents a 1970 version of the Department's constitution and bylaws. Pasted inside the front cover is a "facsimile of the original page 25" noting the members who adopted the preceding constitution in November 1915. Second, the Department presents three rosters of active firemen it says represent compliance with the county clerk filing requirement in § 5143, RCM (1921), today codified at § 7-33-2311, MCA. The earliest is a typewritten list with no date or other detail identifying a purpose. The next appears closer to what the Department claims it is; the roster is undated but purportedly from 1922, and it references § 5143, RCM (1921) and says the Department was organized in 1909. The last roster is from 1977 and on its face identifies no purpose.

¶23 Altogether, these documents hardly amount to proof that the Department established itself and maintained its status as a private fire company. Even assuming the rosters are exactly what the Department claims, evidence that someone at the Department thought they

needed to file with the county clerk three different times over 100 years hardly satisfies the legal requirements of maintaining a private fire company. The modern statute requires rosters every year, and the 1921 version required them every three months. Section 5143, RCM (1921). The constitution page from 1915 says nothing explicit about the type of department formed then, only that it continued with a structural hierarchy similar to private fire companies. And this comported with Ekalaka's 1915 ordinance on the municipal department, which referenced new members joining "in accordance with the rules and regulations of the old fire department." Finally, the Department makes a glaring contradiction: it asserts that this scant evidence of its intent to be a private company should bear more weight than its strict compliance with the laws on fire companies, while simultaneously arguing that the Town's far clearer intent to maintain a municipal department should weigh nothing against its far less abject statutory noncompliance.

¶24 Furthermore, county clerk filings only apply to maintaining fire companies in unincorporated areas. Title 7, chapter 33, part 23, MCA ("Fire Protection in Unincorporated Areas"). The Department has always operated within Ekalaka, and operating in a town or city required, for most of the relevant history, either the municipality's permission or a special law authorizing the company. Section 2076, RCM (1907); § 5143, RCM (1921); § 11-2003, RCM (1947). The Department has no evidence that the Town ever granted permission for it to operate as a private fire company. Nor does any special law confer the Department this authority. The Department points to a provision that at one time required towns to allow at least one fire company if requested, but this is not a "special law" as the Department claims. It is in fact *the same law* that created the

special law requirement: § 2076, RCM (1907). "Special laws" are particularized to specific people or entities rather than the general public. *See Special Law*, Black's Law Dictionary, 1057 (Bryan Garner, 11th ed. 2019). The provision the Department cites does not apply to the Department or to Ekalaka in particular and is instead the antithesis of a special law, applying to all incorporated places in Montana.

¶25 The Town's valid creation of a municipal fire department is clear and uncontested. Its oversight of the department has ranged from minimal to unlawful over the years, but this laxity does not somehow dissolve municipal ownership outright. The Department, by contrast, presents meager, imprecise evidence it took the steps necessary to create and maintain a private fire company under state law. We affirm, therefore, that Ekalaka contains only a municipal volunteer fire department formed under law.

¶26 The Department argues beyond legal formation, however. It also points to a series of documents purporting to demonstrate its acts and treatment as a private fire company over the years. In response, the Town presents various evidence exemplifying its municipal treatment of the Department. These materials regarding past labels, interactions, and perceptions cannot by themselves change the calculus above—only a municipal department exists under the law—but we will briefly address why the items the Department presents do not carry the legal import that it claims they do.

¶27 The first thing the Department presents is an agreement about the fire hall's construction. The 1932 document is a purported lease agreement between the Town, the Department, and the American Legion, which helped build the hall in exchange for shared use. The Department argues that this contract proves its identity independent from the

Town; they are explicitly named as separate parties in the agreement, and it is impossible for one entity to contract with itself. Section 28-2-102(1), MCA; *see also Commercial Credit Co. v. O'Brien*, 115 Mont. 199, 211, 146 P.2d 637, 642 (1943) (noting the need for "two separate independent minds"). This lease, the Department says, represents a deal whereby all the Town's historic support has simply been in exchange for services by the independent volunteer fire company.

¶28 The Department argues that the lease adjudicates the relationship between it and the Town, inferring that the separate parties in the document must be separate parties in fact. But this argument approaches contract law backwards. We assess the validity of a contract by first determining whether it reflects a legally enforceable agreement in substance and in fact. We do not start from a purported contract and then generate the reality to render it valid.[2] As the Town points out, the way the document names the parties separately simply places the contract's validity in question. The Town also notes that the lots described in the Department's document are not the same lots on which the hall sits, again threatening the purported contract's validity given its unclear terms. The most the lease document can do for the Department is illustrate that someone perceived the Department as a necessary

[2] The Department has argued on appeal that the District Court should have avoided evidence beyond this lease and the "loan" discussed below and gone straight to declaring that the Department's legal status was determined by them. The Department cites the parol evidence rule, a rule of contract interpretation that generally says courts may only consider extrinsic evidence regarding a written contract's terms if the contract's text is ambiguous. This rule does not apply here. The rule against extrinsic evidence applies to the *interpretation* of a valid contract. While the District Court "interpreted" these pieces of evidence when it considered whether they persuasively exemplified the Department's independence, it was not required to assume the purported contracts' validity and from there be prevented from considering anything else. The parol evidence rule does not apply to evidence about defects in the *formation* of a contract, such as whether the parties involved are actually independent entities capable of contracting.

group to participate in the Town's plans to build and share the hall with the American Legion.

¶29 The second thing the Department presents is a document memorializing a funds transfer from the Town that uses the word "loan" in its heading, although the document describes no security for the loan and no interest being charged. In 2005, the Town transferred $12,000 to the Department's account to help them match a grant for a new vehicle. The Department paid back these funds after later fundraisers. Like with the lease, the Department argues that this transaction adjudicates its legal separation from the Town. However, the Department again cites no legal basis for bootstrapping a private fire company into existence in order to validate one imprecise document.

¶30 The Department references § 7-6-612(4), MCA, which requires municipal treasurers to control public money and prohibits separate bank accounts without municipal permission. But affiants for the Town asserted that municipal permission was long understood and at some time verbalized, and the Town points out that § 7-6-613(4), MCA, permits municipalities to transfer funds for any purpose "authorized by statute." The 2005 "loan" document identifies a valid purpose, fire equipment, permitted by § 7-33-4202, MCA. The District Court thus correctly found that the 2005 exchange qualified as a legal intermunicipal transfer permitted by § 7-6-613(4), MCA, regardless of the inaccurate label those involved chose to use.

¶31 Next, the Department presents the fact that it has acquired vehicles that have been titled in the Department's name. However, because the question at issue is whether the Department exists under the umbrella of the Town's ownership, evidence of the

Department making purchases without micromanagement is not by itself evidence of the Department's independent legal status. Furthermore, the Town demonstrates that the Department acquired several of these vehicles through donations by people who intended only to help support a local government and would not or could not have made the donations to a private fire company.

¶32 Finally, the Department raises a series of instances where word choice appears to blur the municipal/independent boundary. For example, the Department once applied as "fire department" instead of "c. Municipal" in a grant application. In another, it called its applicant type "volunteer fire company," though in this same application the Department used the Town's employer identification number. The Department also points to various times that Town Council minutes have appeared to reflect a separation—phrases describing "obligations between" the Town and the Department and the responsibilities of "each entity." And the Department presents community mailings in which it has listed its thanks for donors, the Town, and the county. The Department wonders why, if it were a branch of the Town, it would thank itself.

¶33 At most, what much of this evidence proves is that Ekalaka's volunteer fire department acted with an amount of delegated independence over the decades that the Town does not contest, and perhaps that some individual volunteers misperceived or lacked the language to correctly describe its municipal ownership. It is not unusual for two parts of a Town's government to interact with each other in ways that require arms-length language, nor is it odd for a fire department to thank its town government for support. Additionally, every piece of evidence the Department presents must be weighed against

contrary evidence from the Town, including the perceptions and actions of former Department leaders; the Town's establishment of a relief association under state laws on municipalities; the impressions of third parties like the vehicle donors; mutual aid agreements that exist between *the Town* and Carter County, even if arranged or signed by the fire chief; and municipal fire department reports the Town has sent to the Montana State Auditor.

¶34 The documentary evidence from the parties overwhelmingly weighs toward declaratory judgment affirming the duly established municipal department. The evidence that the Department claims exemplifies its practical legal sovereignty is equivocal at best, and the Department cites no legal authority for the notion that individual beliefs or vocabulary can excise an agency from town government. As the District Court noted, the Town's extensive financial and managerial delegation to the Department may be ill-advised and may be worth reconsidering—this controversy is proof enough of the pitfalls. But a small municipality's somewhat casual oversight of its volunteer fire department does not give that department a license to declare itself divested.

**CONCLUSION**

¶35 We affirm the District Court's October 9, 2020 order granting summary judgment to the town of Ekalaka and denying the summary judgment motion of Ekalaka Volunteer Fire Department, Inc.

/S/ MIKE McGRATH

We Concur:

/S/ LAURIE McKINNON
/S/ JAMES JEREMIAH SHEA
/S/ INGRID GUSTAFSON
/S/ DIRK M. SANDEFUR