

DA 23-0198

IN THE SUPREME COURT OF THE STATE OF MONTANA

2024 MT 121

GARDINER-PARK COUNTY WATER
AND SEWER DISTRICT,

Plaintiff, Counter-Defendant,
Appellee, and Cross-Appellant,

v.

DONALD KNIGHT, GINA M. KNIGHT,
LONDON KNIGHT, and JOHN DOES 1-10,

Defendants, Counter-Plaintiffs,
and Appellants.

DONALD KNIGHT and GINA M. KNIGHT,

Third-Party Plaintiffs,

v.

PARK COUNTY, a political subdivision of
the State of Montana, acting by and through its
County Commissioners, Bill Berg, Steve
Caldwell, and Clint Tinsley,

Third-Party Defendants.

GARDINER-PARK COUNTY WATER
AND SEWER DISTRICT,

Third-Party Plaintiff and Cross-Appellant,

v.

STANDISH EXCAVATION, LC,

Third-Party Defendant.

DONALD KNIGHT, GINA M. KNIGHT,
and LONDON KNIGHT,

Third-Party Plaintiffs and Appellants,

THOMAS E. STONE, DONALD L. CLARK,
VICTOR D. BEERS, and BRAD A. HARBACH,

Third-Party Defendants and Appellees.

APPEAL FROM: District Court of the Sixth Judicial District,
In and For the County of Park, Cause No. DV-17-36
Honorable Brenda R. Gilbert, Presiding Judge

COUNSEL OF RECORD:

For Appellants Donald Knight, Gina M. Knight, and Landon Knight:

Vuko J. Voyich , Kellie A. Voyich, Anderson & Voyich, P.L.L.C.,
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For Appellee and Cross-Appellant Gardiner-Park County Water and Sewer
District:

Thomas “Todd” Shea, Jr., Shea Law Firm, P.L.L.C., Gardner, Montana

For Third Party Defendants and Appellees Thomas E. Stone, Donald L. Clark,
Victor D. Beers, and Brad A. Harbach:

Elizabeth W. Lund, Berg Lilly, PC, Bozeman, Montana

Submitted on Briefs: February 21, 2024

Decided: June 4, 2024

Filed:



Justice Laurie McKinnon delivered the Opinion of the Court.

¶1 Donald, Gina, and Landon Knight (Knights) appeal from court orders granting a declaratory judgment in favor of the Gardiner Park County Water and Sewer District (District) and summary judgment in favor of the individual Board Members, entered in the Sixth Judicial District Court, Park County. We affirm.

¶2 The issues on appeal are restated as:

1. *Did the District Court err when it held the District's Board Members were not legally required to file oaths of office?*
2. *Did the District Court err in holding the individual Board Members were immune from personal liability for any actions taken related to the Knights?*
3. *Were the Knights due process rights violated when the District Court held a joint hearing on the District's Motion for Declaratory Judgment and the individual Board Members' Motion for Summary Judgment?*
4. *Should the District Court have addressed the District's request for attorney's fees and costs?*

FACTUAL AND PROCEDURAL BACKGROUND

¶3 The District was incorporated February 27, 2008, in accordance with § 7-13-2215, MCA. The District has a Board of Directors that is authorized to initiate and defend suits on behalf of the District pertaining to use of water, water rights, and sewer rights within the District's designated area. Donald and Gina Knight own property in Gardiner and have a son, Landon Knight. The Knights' home is located on a steep slope above the Yellowstone River in Gardiner, Montana. Since 1940, the District has had a prescriptive easement that traverses under the Knights' home, which was first built in 2014. On July 27, 2015, the Knights signed an easement agreement that encompassed the pre-existing sewer

line on the Knights' property. The easement prohibited the Knights from taking action that would interfere with the purpose of the sewer line and from building within the easement without the District's permission.

¶4 The District did not discover any encroachment on its easement until a survey was done in 2016, which identified that a portion of the Knights' house and porch was built within the easement and over the sewer line. The parties contest the extent of the District's knowledge and approval before this point, but that does not impact the issues being appealed. The District sent the Knights a notice that they were in violation of the easement, requested proposals to remedy the easement violation, and advised that if the violation was not remedied, the District would have to file suit. Shortly after this notice, Donald Knight informed an employee of the District that the retaining wall below the sewer line had collapsed, allegedly due to his son Landon leaving the hose running all night. The District's engineer inspected the collapsed wall and concluded it should be repaired to reinforce the sewer line, and that repairs will be substantially more expensive if the Knights' home remains in place. The Knights and the District were unable to reach any agreement about addressing the easement violations and repair of the retaining wall.

¶5 On March 13, 2017, the District filed a Complaint seeking a declaratory judgment that the Knights violated the District's easements, and caused damage to the retaining wall. It requested that all structures violating the easement be removed at the Knights' expense. The Knights answered and filed a counterclaim for damages. Knights alleged Board Members had not taken and filed an oath of office thus rendering any action they took

invalid, particularly filing the lawsuit. Knights further alleged that Board Members of the District acted wrongfully, asserting claims of malice, fraud, constructive fraud, oppression, and deceit. One year later, on May 15, 2018, the Knights filed a Third-Party Complaint against Park County alleging Park County's failure to provide a public storm water system caused the collapse of the retaining wall and consequently the Knights should be held harmless for the wall failure.

¶6 In February 2019, unrelated to the litigation, the Park County Clerk and Recorder's Office sent letters requesting the current Board Members sign and return enclosed oaths of office. All Board Members submitted their completed oaths of office to the Clerk and Recorder by August 2019. Although the District and its Board Members maintained their position that the Board Members have always been validly and legally acting as board members, the Board Members in May of 2022, voted to ratify the Board's relevant actions, including the meeting where the Board authorized the initial suit against the Knights. The District also acknowledged all conduct of the Board Members upon which the Knights' claims are based was within their scope and duties for the District. Additionally, those Board Members who were named individually as parties to the litigation recused themselves from the ratification vote.

¶7 On August 5, 2019, the District filed a motion seeking a judicial declaration that the District was a valid legal entity and the Knights' claims against the individual members for failing to file oaths were invalid. The Knights' response brief clarified that the District was a valid legal entity, but claimed the District's motion was premature because the individual

Board Members had not been added as parties. On January 21, 2020, the Knights filed a second Third-Party Complaint against individual Board Members Thomas E. Stone, Donald L. Clark, Victor D. Beers, and Brad A. Harbach, based on Knights' oath of office argument and prior allegations of wrongful conduct on the part of Board Members. Shortly after, the Knights filed an Amended Counterclaim against the District based on their oath of office argument alleging malice, fraud, constructive fraud, oppression, deceit, breach of contract, lack of standing, and negligence against the District. The Board Members filed their Answer on April 7, 2020, asking for the dismissal of the Complaint.

¶8 On June 29, 2022, Board Members filed a motion for summary judgment with respect to all claims against them. On the same day, the District filed a Renewed Motion for Declaratory Judgment. At the Knights' request, the District Court scheduled oral argument on the Board Members' summary judgment motion and the District's motion for declaratory judgment. The District filed a motion to present testimonial evidence in support of its request for declaratory judgment. The Knights objected to any presentation of evidence at a summary judgment hearing, arguing any evidence presented should occur after the Board Members' summary judgment motion was resolved. In response, the District Court issued another order holding the District's motion for an evidentiary hearing in abeyance and stating the hearing for December 23, 2022 "will be confined to hearing oral argument regarding the pending summary judgment motions."

¶9 When the hearing was held on December 23, 2022, the Court announced at the onset that it would begin with the District's request for declaratory judgment and then address

the Board Members' summary judgment motion. The District Court entered an Order on both the District's and Board Members' motions on January 27, 2023. The District Court held the Knights' argument that the Board Members's actions were invalid for failing to file oaths of office was without legal basis. Further, the District Court held that even if the oaths were legally required, the Board Members were de facto officers and their actions were subsequently ratified by the Board after oaths of office were filed. The District Court further concluded the Board Members were entitled to governmental immunity for their actions because the claims arose during the course and scope of their positions as public officers acting for the District. Board Members were dismissed from the lawsuit. The Knights retained their right to proceed against the District for alleged misconduct of Board Members. On March 23, 2023, the District Court further amended its Order to clarify what motions it had decided.

¶10 The District had requested attorney fees under Montana's Declaratory Judgment Act. The District Court did not address this request in its Orders.

¶11 The Knights filed a Motion for Certification of the January 27, 2023 Order and March 23, 2023 Amended Order. This Court allowed the appeals to proceed in an Order entered April 11, 2023.

STANDARD OF REVIEW

¶12 We review declaratory judgment rulings to determine whether the district court correctly interpreted the applicable law. *Newman v. Scottsdale Ins. Co.*, 2013 MT 125, ¶ 21, 370 Mont. 133, 301 P.3d 348.

¶13 This Court “review[s] an entry of summary judgment de novo.” *McClue v. Safeco Ins. Co.*, 2015 MT 222, ¶ 8, 380 Mont. 204, 354 P.3d 604 (citing *Albert v. City of Billings*, 2012 MT 159, ¶ 15, 365 Mont. 454, 282 P.3d 704). “Summary judgment is appropriate when the moving party demonstrates both the absence of a genuine issue of material fact and entitlement to judgment as a matter of law.” *Albert*, ¶ 15; M. R. Civ. P. 56(c)(3). De novo review requires this Court to determine whether a district court’s conclusions of law are correct and its findings of fact are not clearly erroneous. *Pilgeram v. GreenPoint Mortg. Funding, Inc.*, 2013 MT 354, ¶ 9, 373 Mont. 1, 313 P.3d 839; *McClue*, ¶ 8.

DISCUSSION

¶14 *Issue 1: Did the District Court err when it held the District’s Board Members were not legally required to file oaths of office?*

¶15 The Montana Constitution provides “[m]embers of the legislature and all executive, ministerial and judicial officers, shall take and subscribe the following oath or affirmation, before they enter upon the duties of their offices. . . .” Art. III, Sec. 3, Mont. Const. The Knights argue this constitutional provision requires the Board Members file oaths of office as the Board performs executive and legislative functions.

¶16 The parties do not dispute that Board Members are public officers. The relevant statute pertaining to public officers is § 2-16-101(1), MCA, which provides:

Classification of public officers. (1) The public officers of this *state* are classified as follows:

- (a) legislative;
- (b) executive;
- (c) judicial;
- (d) ministerial officers and officers of the courts.

(Emphasis added). Significantly, the statute classifies state public officers. Additionally, § 2-16-211, MCA, provides the same text as Art. III, Sec. 3 of the Montana Constitution: “Members of the legislature and all officers, executive, ministerial, or judicial, must, before they enter upon the duties of their respective offices, take and subscribe [to] . . . [an] oath.” The oath of office must be filed within the time prescribed by law. Section 2-16-212, MCA.

¶17 The Knights ignore the plain text of both the constitutional section and the statute when they argue the board’s legislative and executive functions require them to file an oath of office. The constitutional provision clearly refers to members of the *legislature*, the *judiciary*, and the *executive*. Section 2-16-101(1), MCA, in like fashion, refers to public officers *of the state*, referencing those officials who serve the state government, not local governmental officials. Hence, the oath requirement applies only to state public officers of the legislative and executive branches of state government and any argument about whether the District performs legislative or executive functions is misplaced. Finally, § 2-15-104, MCA, sets forth the structure of the executive branch and identifies the specific departments and entities which constitute the executive branch, of which there are sixteen. Local water and sewer districts are not included. The Knights do not contest the District Court’s finding that the Board Members are outside the definition of a judicial or ministerial officer.

¶18 The Knights argue the constitutional provision is self-executing without need for a specific statute. The Knights rely on two cases from over 100 years ago that interpreted the precursor to this provision in the 1889 Montana Constitution and held the provision

was self-executing and required of every public officer in the state. *State ex. rel. Scollard v. Board of Examiners for Nurses* (1916), 52 Mont. 91, 96, 156 P.124, 125; *State ex rel. Wallace v. Callow*, 78 Mont. 308, 318-19, 254 P. 187, 192. However, *Scollard* involved the board of examiners for nurses, a statewide regulatory body where the members “perform duties for the state, public in character,” not a local government board. *Scollard*, 52 Mont. at 96, 156 P. at 125. And in *Callow*, we held that because the Constitution does not require a filing of an oath of office, that requirement must be separately prescribed by the legislature. *Callow*, 78 Mont. at 313, 254 P. at 192. The legislature has not enacted a statute requiring oaths of office for the board members of water and sewer districts.

¶19 The legislature has prescribed over 40 statutes which require filing oaths of office for certain positions, but none that require water and sewer district board members to file oaths of office. Additionally, the Montana statutes governing water and sewer districts detail requirements for board members, including their qualifications, terms of office, compensation and conduct of business, but contain no reference to any oaths of office. See § 7-13-2233-77, MCA. Since the filing of an oath of office must be prescribed by the legislature and there is no statute requiring this, the filing of an oath of office is not required for local water and sewer district board members.

¶20 We conclude the plain language of the constitutional and statutory text resolves this issue and there is no need to consider whether the Board Members were de facto members, whether their previous actions were properly ratified by the District, or whether the issue is moot due to the Board Members filling oaths of office in 2019. Oaths of office were not

legally required for the Board Members and therefore the Board Members have been able to act on behalf of the District since their election.

¶21 *Issue 2: Did the District Court err in holding the individual Board Members were immune from personal liability for any actions taken related to the Knights?*

¶22 Section 2-9-305, MCA, provides for individual immunity from suit for government employees and public officers when their actions were taken within the course and scope of their employment. Section 2-9-305(5). MCA, states:

[i]n an action against a governmental entity, the employee whose conduct gave rise to the suit is immune from liability by reasons of the same subject matter if the governmental entity acknowledges or is bound by a judicial determination that the conduct upon which the claim is brought arises out of the course and scope of the employee's employment, unless the claim constitutes an exclusion provided in subsections (6)(b) through (6)(d).

Accordingly, if the governmental entity acknowledges the actions in question were within the course and scope of the employee's employment, the employee is immune from suit. *Crowell v. Sch. Dist. No. 7*, 247 Mont. 38, 54-55, 805 P.2d 522, 532 (1991); *Kiely Constr. L.L.C. v. City of Red Lodge*, 2002 MT 241, ¶ 89, 312 Mont. 52, 57 P.3d 836.

¶23 Section 2-9-305(6), MCA, provides several exceptions to the general rule that an employee or public officer is immune from suit when carrying out official duties. Applicable here, § 2-9-305(6)(a), MCA, provides that there is no immunity when a judicial determination has been made that "the conduct upon which the claim is based constitutes oppression, fraud, or malice or for any other reason does not arise out of the course and scope of the employee's employment." The other examples in subsection 6 include when

the conduct was a criminal offense, when the employee compromised or settled the claim without consent of the governmental entity, or the employee failed or refused to cooperate in the defense of the case. Section 2-9-305(6)(b)-(d), MCA.

¶24 The Knights allege Board Members should not be dismissed from this suit because the Knights contest Board Members were valid public officials at the time of the alleged misconduct. Knights have alleged oppression, fraud, constructive fraud, deceit, malice, and bad faith which, Knights argue, would place the Board Members' actions outside of the course and scope of their employment. However, the District Court determined that Board Members were acting within the course and scope of their positions as public officers at the time the actions giving rise to this case occurred. Secondly, the Knights focus on the § 2-9-305(6)(a), MCA, malice exception while failing to account for the clear language in § 2-9-305(5), MCA, which provides, in relevant part:

In an action against a governmental entity, the employee whose conduct gave rise to the suit is immune from liability by reasons of the same subject matter if the governmental entity acknowledges or is bound by a judicial determination that the conduct upon which the claim is brought arises out of the course and scope of the employee's employment, unless the claim constitutes an exclusion provided in subsections (6)(b) through (6)(d).

Thus, there is a complete bar to any action against the employee unless it falls into the exceptions listed in § 2-9-305(6)(b)-(d), MCA. Specifically omitted from § 2-9-305(5), MCA, is the "oppression, fraud, or malice" exception contained in § 2-9-305(6)(a).

¶25 We have previously affirmed a district court's refusal to add the principal of a school individually to a suit against the school because the school district had expressly acknowledged the principal's conduct was within the scope of his employment, concluding

§ 2-9-305, MCA, provided immunity to the employee. *Emanuel v. Great Falls Sch. Dist.*, 2009 MT 185, ¶ 20, 351 Mont. 56, 209 P.3d 244. The District Court also relied on *Estate of Ramirez v. City of Billings*, No. CV 17-52-BLG-DWM, 2019 U.S. Dist. LEXIS 14896, 29 (D. Mont. Jan. 30, 2019), which held only the exceptions contained in § 2-9-305(6)(b)-(d), MCA, are relevant when the requirements of § 2-9-305(5) have been met. The *Ramirez* court explained that the immunity did not mean the Plaintiffs could not recover for allegedly malicious conduct, rather Plaintiffs would have to recover from the governmental entity because § 2-9-305(5), MCA, still leaves the governmental entity financially responsible for any malicious or fraudulent conduct by the employee. *Ramirez*, 2019 U.S. Dist. LEXIS 14896, 29-31.

¶26 Here, the District expressly acknowledged the Board Members' conduct was within the course and scope of their employment. Section 2-9-305(5), MCA, applies, and the District Court was correct to dismiss the individual Board Members from the suit. The District Court allowed the Knights to pursue their claims of malice and fraud against the District before a jury.

¶27 *Issue 3: Were the Knights' due process rights violated when the District Court held a joint hearing on the District's Motion for Declaratory Judgment and the individual Board Members' Motion for Summary Judgment?*

¶28 The purpose of the Montana Declaratory Judgments Act is "to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and it is to be liberally construed and administered." Section 27-8-102, MCA. "The existence of another adequate remedy does not preclude a declaratory judgment that is

otherwise appropriate.” M. R. Civ. P. 57. Summary judgment should be granted if “there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” M. R. Civ. P. 56(c)(3).

¶29 The Knights do not present any statutes or cases supporting their assertion that their due process rights were violated when the District Court considered both the Board Members’ Summary Judgment Motion and the District’s Declaratory Judgment Motion at the same hearing. The Knights made no objection at the hearing to the District Court considering both motions. While the Knights did object to the declaratory motion in their answer before the hearing, most of their arguments revolved around their objection to testimony and affidavits during a summary judgment hearing. The District Court agreed and struck the District’s affidavits and did not allow any witness testimony at the hearing. Further, the Knights acknowledged the two motions substantially overlapped and dealt with the same issue of the oaths, so the Knights were fully informed and prepared to address that issue when the hearing happened. We conclude the District Court did not violate the Knights due process rights when it heard both motions at a single hearing when the Knights were fully aware of the issue and arguments the District intended to present and the court was mindful that testimony and evidence was not to be presented during argument on summary judgment.

¶30 *Issue 4: Did the District Court abuse its discretion when it did not address the District’s request for attorney’s fees and costs?*

¶31 Montana’s Declaratory Judgments Act provides “[i]n any proceeding under this chapter the court may make such award of costs as may seem equitable and just.” Section

27-8-311, MCA. Section 27-8-313, MCA, states “[f]urther relief based on a declaratory judgment or decree may be granted whenever necessary or proper.” The court can award attorney’s fees in a declaratory judgment if, in its discretion, it deems the award necessary and proper. *Trs. of Ind. Univ. v. Buxbaum*, 2003 MT 97, ¶ 46, 315 Mont. 210, 69 P.3d 663. The award of attorney’s fees under this provision is only appropriate if equitable considerations support the award. *Mungas v. Great Falls Clinic, LLP*, 2009 MT 426, ¶ 45, 354 Mont. 50, 221 P.3d 1230.

¶32 The District requested attorney’s fees and costs in its renewed Motion for Declaratory Judgment, but the District Court did not address attorney’s fees and costs in its Order. Accordingly, we remand this issue to the District Court to determine, pursuant to § 27-8-313, MCA, whether an award of attorney’s fees is “necessary or proper” and whether, pursuant to § 27-8-311, MCA, an award of costs is equitable and just.

CONCLUSION

¶33 There is no requirement that board members of a local water and sewer district take and file an oath of office as they are not public officers of the state, nor members of the legislature or executive. Where it has been judicially determined that an employee was acting within the course and scope of his or her employment, then they are immune from suit in an action against the governmental entity for the same subject matter, even when oppression, fraud, or malice has been alleged. Knights were not denied due process when the District Court entertained oral argument on a summary judgment motion and a declaratory judgment action at the same hearing, as Knights admitted the subject matter

overlapped and had notice of the District's claims. This matter is remanded for the District Court to consider an award of attorney fees, if any, under the Declaratory Judgments Act.

¶34 Affirmed; and remanded for a determination of fees, if any.

/S/ LAURIE McKINNON

We Concur:

/S/ INGRID GUSTAFSON

/S/ DIRK M. SANDEFUR

/S/ BETH BAKER

/S/ JIM RICE