



## City of Eveleth v. Town of Fayal

2001 | Cited 0 times | Court of Appeals of Minnesota | June 5, 2001

Reversed and remanded

Halbrooks, Judge

### UNPUBLISHED OPINION

The city of Eveleth challenged an ordinance adopted by the town of Fayal, which sought to regulate the portion of Eveleth's water-distribution system located within Fayal. The district court granted summary judgment in favor of Fayal, holding that Eveleth does not have standing to challenge the ordinance and, even if Eveleth does have standing, the ordinance is a legitimate exercise of Fayal's general police powers. Eveleth appeals, contending Fayal, as a municipality, is not authorized by Minnesota law to regulate another municipality's water-distribution system. It also contends that the ordinance constitutes a regulatory taking and that Fayal is preempted from regulating Eveleth's water lines. We find that Eveleth has standing to challenge the ordinance. Because the record is inadequate to permit a determination of whether the ordinance is a legitimate exercise of Fayal's general police powers, we reverse and remand.

### FACTS

Since the turn of the century, appellant Eveleth has been using St. Mary's Lake as a source of water. In the 1940s, Eveleth constructed two lines to distribute water from the lake to three of its properties: an airport, a beach, and a golf course. The lake and the three city-owned properties are located entirely within what are now the boundaries of the township of Fayal. In 1988 and 1989, Fayal constructed new water lines and gave two of the new lines to Eveleth in exchange for its agreement to maintain them and provide water to residents and fire hydrants.

In recent years, the relations between the city and the town have become strained. In the 1990s, Fayal disputed the rates that Eveleth charged to supply water to its hydrants. In 1996, the town cancelled all of its contracts to receive water from Eveleth's distribution system. In 1997, Fayal constructed additional water lines and arranged to purchase water at a lower rate from the city of Gilbert. At that point, Fayal provided water to 2/3 – 3/4 of the municipal water customers in the township; Eveleth supplied the remainder of customers. Fayal offered to buy Eveleth's lines, but negotiations broke down. Fayal subsequently shut off Eveleth's lines and successfully petitioned the district court to condemn them. Eveleth sought appellate review.



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On January 5, 1999, this court reversed the condemnation petition and held that Eveleth's water distribution, "even if held in a proprietary capacity, constitutes a public use by a public body." *Fayal v. Eveleth*, 587 N.W.2d 524, 528 (Minn. App. 1999). Because there is no express statutory right to condemn property that is either already publicly held or devoted to public use, we concluded that the condemnation was wrongful and reversed.

Meanwhile, Eveleth brought claims against Fayal for tortious interference with contract and inverse condemnation. To resolve Eveleth's claims, the parties entered into a settlement agreement that allowed Fayal to seek new customers for its water-distribution system and required Fayal to pay Eveleth \$50,000 plus interest. In return, Eveleth agreed to dismiss its suit and not bring any further inverse-condemnation claims.

Following settlement, Fayal adopted Ordinance 99-1, a new ordinance designed to regulate the use of water within its borders. The ordinance, among other things, does the following:

- (1) explicitly declares Eveleth to be a commercial water provider within the scope of the ordinance's regulations;
- (2) requires commercial water providers to pay an annual user fee to be set by the town utility commission and approved by the town board;
- (3) requires commercial water providers to seek approval from the town board before improving, replacing, or installing water lines and authorizes the town utility commission to set application and inspection fees;
- (4) requires all commercial water main lines to be at least six inches in diameter by 2004;
- (5) imposes a civil penalty of \$100 per day and punishment as a misdemeanor for violation of the ordinance; and
- (6) gives Fayal authority to terminate service by disconnecting the system of any commercial provider that fails to comply with the ordinance.

It is undisputed that Eveleth's water lines do not meet the ordinance's six-inch standard. Therefore, to comply with the ordinance, the city will need to replace its lines by 2004 or pay the daily penalty. Eveleth will also have to pay numerous user fees to the town. Although Fayal has not yet attempted to enforce any of the ordinance's terms, paragraph 11 of the ordinance states that

[a]ny commercial provider which continues to operate a water system \*á\*á\* in Fayal after adoption of this ordinance consents to the terms and conditions of this ordinance.



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Eveleth sought declaratory relief against Fayal, arguing that the ordinance is illegal and an attempt to circumvent this court's January 5, 1999 ruling. Both parties moved for summary judgment.

After a hearing, the district court granted summary judgment in favor of Fayal. The court held that Eveleth lacks standing, finding it is not an aggrieved party because Fayal has not enforced the ordinance. Even if Eveleth has standing, the district court held that, although Fayal cannot condemn Eveleth's water lines, the town has the power to regulate any water lines—publicly or privately owned—within its boundaries. Because Eveleth cannot show that the ordinance is not related to public health or safety, the district court held that the ordinance is a valid exercise of Fayal's police powers. This appeal follows.

### DECISION

#### I.

As a threshold issue, we must determine whether Eveleth has standing to challenge the ordinance. Fayal argues that because there has been no attempt to enforce the ordinance, Eveleth has not suffered an injury and, therefore, does not have standing. Eveleth admits that it has not had to pay any fees or penalties yet for its water lines but believes it may seek relief under the Uniform Declaratory Judgment Act. See Minn. Stat. § 555.01 (2000).

When there are no disputed facts, we review questions of standing de novo. *Eagle Creek Townhomes, LLP v. City of Shakopee*, 614 N.W.2d 246, 250 (Minn. App. 2000), review denied (Minn. Sept. 13, 2000). "A party has standing to invoke judicial review of a municipality's decision only if that party suffers a legally cognizable injury from the decision." *In re Dakota Telecommunications Group*, 590 N.W.2d 644, 647 (Minn. App. 1999) (citations omitted).

To exercise jurisdiction in declaratory-judgment actions, a court must find a "justiciable controversy." *Rice Lake Contracting Corp. v. Rust Environment & Infrastructure, Inc.*, 549 N.W.2d 96, 99 (Minn. App. 1996) (citations omitted), review denied (Minn. Aug. 30, 1996). The party seeking review must show that there is "(1) a genuine or present controversy; (2) presented by persons with truly adverse interests; and (3) capable of specific rather than advisory relief by a decree or judgment." *Rupp v. Mayasich*, 561 N.W.2d 555, 557 (Minn. App. 1997). A claimant in a declaratory action may meet the first element by showing

a bona fide legal interest which has been, or with respect to the ripening seeds of a controversy is about to be, affected in a prejudicial manner. *Rice Lake*, 549 N.W.2d at 99 (citation omitted).

Regardless of whether Fayal has assessed fees or fines, Eveleth must determine how the ordinance affects its water-distribution system to resolve whether it must replace its water mains or risk violating the ordinance. Declaratory judgments are especially



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appropriate when withholding judgment would present a claimant with an impossible choice between proceeding without a determination of her rights and accepting an unsatisfactory status quo. Rice Lake, 549 N.W.2d at 99.

Eveleth and Fayal have adverse interests. The parties have already engaged in litigation on this issue. Fayal's interest in regulating the distribution of water within its boundaries affects Eveleth's ability to distribute water to its customers. And, by the explicit language of the ordinance, Eveleth's continuing operation of its water system constitutes consent to the ordinance's terms and policies. Finally, this issue is capable of specific relief because a decision will resolve whether or not Eveleth must completely replace its water lines. Therefore, Eveleth has shown a justiciable controversy.

II.

Turning to the merits, we next address whether a municipality has the authority to regulate another municipality's water lines that fall within the first municipality's boundaries.

Municipalities are creatures of the state and, therefore, only possess powers that are conferred upon them by statute or that are implicitly necessary to carry out their statutory duties. Northern States Power Co. v. City of Oakdale, 588 N.W.2d 534, 538 (Minn. App. 1999). A municipal ordinance is presumed constitutional so long as it is substantially related to health, safety, morality, or the general welfare. Holt v. City of Sauk Rapids, 559 N.W.2d 444, 445 (Minn. App. 1997), review denied (Minn. Apr. 24, 1997). But

[a] municipal ordinance must be reasonable—that is, it must be fair, general, and impartial in operation. If an ordinance is arbitrary, oppressive or partial, it is invalid. Cascade Motor Hotel, Inc. v. City of Duluth, 348 N.W.2d 84, 85 (Minn. 1984) (citation omitted).

This court ruled that Eveleth's water-distribution system "constitutes a public use by a public body." Fayal v. Eveleth, 587 N.W.2d 524, 528 (Minn. App. 1999); see also City of Shakopee v. Minnesota Valley Elec. Coop., 303 N.W.2d 58, 60 (Minn. 1981) (supplying electricity, even if provided by quasi-public entity, constitutes a public use). A public body may not condemn public property absent specific authority. Eveleth, 587 N.W.2d at 528. Similarly, for Fayal to regulate another public entity's water lines that are being used in a public manner, there must be explicit authorization. See *id.* (finding that where the eminent-domain statute was "silent regarding authority to take public property," court would not read such authority into it); see also Zeman v. City of Minneapolis, 552 N.W.2d 548, 552 (Minn. 1996) (when a municipal regulation "goes too far," courts may construe it like a taking (citation omitted)).

Fayal argues that the law grants municipalities the power to regulate water-distribution systems. Under Minnesota law, a "town board may provide and by ordinance regulate the use of wells, cisterns, reservoirs, waterworks and other means of water supply." Minn. Stat. § 368.01, subd. 6



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(2000). Fayal also cites its authority to impose "just and equitable charges" on parties that connect to or use its waterworks in order "[t]o pay for the construction, reconstruction, repair, enlargement, improvement, or other obtainment and the maintenance, operation and use of the facilities." Minn. Stat. §444.075, subd. 3 (2000).

But neither statute is applicable here. Section 368.01 is silent regarding authority to regulate publicly held property. Cf. *Eveleth*, 587 N.W.2d at 528 (analyzing condemnation provision within same statute). Section 444.075 authorizes Fayal to charge fees if other municipalities, companies, or individuals connect with or use the town's waterworks. Minn. Stat. § 444.075, subs. 3, 5 (2000). Here, Eveleth is not seeking to use Fayal's waterworks. Rather, Eveleth seeks to continue using its own waterworks. Consequently, Minn. Stat. §444.075 does not give Fayal authority to charge Eveleth fees.

We next address whether Fayal may lawfully enact the ordinance under its general police powers. Fayal asserts that it enacted ordinance No. 99-1 in response to complaints from residents and the fire department about the quality, service, and cost of water provided in the township. With respect to Eveleth's lines, Fayal claims that some of its lines are too small, periodically fill with sand, and do not comply with minimum industry standards.

"Minnesota has long recognized the legitimate general powers of municipalities to exercise their police powers by regulating land use and development." *Wedemeyer v. Minneapolis*, 540 N.W.2d 539, 542 (Minn. App. 1995) (citations omitted). But we will declare a municipal ordinance invalid if there is affirmative proof that the restriction is clearly discriminatory or arbitrary and without any substantial relation to the public health, safety, or general welfare. *Id.* at 543.

We agree with the general proposition that Fayal ought to be able to respond to citizen complaints regarding water quality and to ensure that its fire hydrants have adequate water pressure. But there is no record in this matter to support Fayal's assertions.

While we recognize that Eveleth bears the burden of proving that the ordinance is invalid, the city cannot do so when the record is nonexistent. "Governmental bodies must take seriously their responsibility to develop and preserve a record that allows for meaningful review by appellate courts." *In re Livingood*, 594 N.W.2d 889, 895 (Minn. 1999). Here, the record fails to support Fayal's claim of health and safety issues. With the exception of what is stated in the ordinance itself, we do not find any record—such as the town board's minutes, transcript of deliberations, or letters from constituents—to permit meaningful review. Further, it appears that Fayal's fire hydrants have been supplied by other water sources for the last five years. If true, it is difficult to see the relevance of the allegations concerning inadequate pressure in the hydrants. Similarly, the assertion that Eveleth's lines do not comply with minimum industry standards is unsupported.

As a final note, the ordinance explicitly states that it was enacted, in part, to raise revenue to "pay for maintenance, improvements, depreciation, replacements, and extensions of water facilities in Fayal."



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But Fayal's general police power cannot be used to raise revenue. See *Country Joe, Inc. v. City of Eagan*, 560 N.W.2d 681, 686-87 (Minn. 1997) (holding that when a city's real motive is to generate revenue, rather than recouping the administrative costs of regulation, the fee is an illegal tax); see also *State v. Northern Raceway Corp.*, 381 N.W.2d 526, 528 (Minn. App. 1986) (a municipality has no inherent power of taxation), review denied (Minn. Apr. 24, 1986).

Because summary judgment was entered before the parties could present evidence, the record is not adequate for a determination of the appropriateness of the enactment of ordinance 99-1 based on Fayal's general police power. In order to meet its burden, Eveleth must have the opportunity to review evidence that Fayal considered when it enacted the ordinance. Therefore, we reverse and remand to the district court for such proceedings consistent with this opinion as deemed appropriate by the district court.

Reversed and remanded.

