IN THE COURT OF APPEALS OF IOWA

No. 1-951 / 11-1154
Filed February 15, 2012

CITY OF CRESTON,
A Municipal Corporation,
Plaintiff-Appellee,

vs.

JOHN EDWARD BARNEY,
Defendant-Appellant.

Appeal from the Iowa District Court for Union County, Martha L. Mertz, Judge.

Defendant appeals the district court decision granting summary judgment to plaintiff on its claim defendant should reimburse it for police training expenses based on the parties' agreement. **AFFIRMED**.

James L. Sayre of James L. Sayre, P.C., Clive, for appellant.

Catherine K. Levine, Des Moines, and Arnold O. Kenyon, III, of Kenyon & Nielson, P.C., Creston, for appellee.

Considered by Potterfield, P.J., Doyle, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

MILLER, S.J.

I. Background Facts & Proceedings

The parties to this case agreed to certain stipulated facts, which include the following. On October 16, 2007, the City Council for the City of Creston (City), Iowa, approved Resolution No. 53, Resolution to Approve a Recommendation from the Finance Committee to Adopt a Police Reimbursement Training Expense Policy. The resolution enacted a policy allowing the City to be reimbursed expenses incurred for police officer training should the officer leave employment within three years. It included a sliding scale for reimbursement. The resolution provided that the mayor and clerk were authorized to execute the proper documentation.

On April 6, 2009, John Barney was employed by the City as a police officer. A Reimbursement of Training Expenses Agreement (Agreement) was signed by Barney and the chief of police on that same date. It provided Barney would reimburse the City for the cost of his training if he left employment prior to the end of three years after he completed his training.[1] The City paid for Barney's training as a police officer. Barney was certified as a law enforcement officer on July 24, 2009.

On May 18, 2010, the City Council passed Resolution No. 162-10, Resolution to Approve Reimbursement of Training Expenses Agreements for

[1] The Agreement provided for the following sliding scale of reimbursement: (1) less than six months following the completion of training, one hundred percent reimbursement; (2) more than six months but less than one year following completion of training, seventy-five percent reimbursement; (3) more than one year but less than two years following completion of training, fifty percent reimbursement; and (4) more than two years but less than three years following completion of training, twenty-five percent reimbursement.

Police. The resolution noted that since the City had adopted Resolution No. 53 four police officers, including Barney, had been sent to the Iowa Law Enforcement Academy, and the City approved the Reimbursement of Training Expenses Agreements for these four officers. The resolution was made effective immediately.

On July 8, 2010, Barney resigned from his employment as a police officer, effective July 16, 2010.[2] The City filed a petition on October 1, 2010, alleging that under the Agreement signed by Barney, he was required to reimburse the City seventy-five percent of his training costs. The City asserted it spent $19,147.78 on Barney's training and seventy-five percent of this amount was $14,360.84. Barney responded by asserting that the Agreement was not a valid contract because it was not approved by the City Council, and had been signed by the chief of police, who did not have contractual authority.

Both the City and Barney filed motions for summary judgment. The district court granted summary judgment to the City, and denied Barney's motion. The court found the Agreement was voidable, and not void, because it involved a procedural error. The court noted that the City had passed a resolution approving the type of contract entered into by Barney, but the contract was signed by the chief of police, who did not have authority to sign the contract. The court determined that the later resolution, No. 162-10, ratified the Agreement. The court found, "[b]ecause ratification is equivalent to previous authorization,

[2] This was eight days short of one year following Barney's certification as a law enforcement officer. Because it was more than six months, but less than one year, following completion of training, the City requested reimbursement of seventy-five percent of his training expenses.

the ratification was effective as of the original date of the contract." The court concluded both Barney and the City were bound by the terms of the Agreement as of April 6, 2009.

The court entered judgment against Barney in the amount of $14,360.85. Barney appeals the decision of the district court.

II. Standard of Review

We review the district court's ruling on a motion for summary judgment for the correction of errors at law. *See* Iowa R. App. P. 6.907. Summary judgment is appropriate only when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Kistler v. City of Perry*, 719 N.W.2d 804, 805 (Iowa 2006). A court should view the record in the light most favorable to the non-moving party. *Frontier Leasing Corp. v. Links Eng'g, LLC*, 781 N.W.2d 772, 775 (Iowa 2010). In determining whether there is a genuine issue of material fact, the court affords the non-moving party every legitimate inference the record will bear. *Kern v. Palmer College of Chiropractic*, 757 N.W.2d 651, 657 (Iowa 2008).

III. Merits

A. Barney contends the district court erred by finding the Agreement was voidable, rather than void. Municipal corporations are creatures of the legislature, and have only such powers to contract as the legislature grants them. *Madrid Lumber Co. v. Boone County*, 255 Iowa 380, 383-84, 121 N.W.2d 523, 525 (1963). "A fundamental requirement for the enforcement of a municipal contract is that the municipality must have exercised its authority to enter into the

contract within the scope of the powers conferred by statute." *Miller v. Marshall County*, 641 N.W.2d 742, 750 (Iowa 2002). Contracts made in violation of a statute, or beyond the authority of the municipal corporation, are not merely voidable, but are void. *Decorah State Bank v. Wangness*, 452 N.W.2d 438, 439 (Iowa 1990).

The doctrine of ultra vires has been applied with greater strictness to municipal bodies then to private corporations. *Marco Dev. Corp. v. City of Cedar Falls*, 473 N.W.2d 41, 42 (Iowa 1991). "The rationale supporting this well-established principle is that those who contract with a municipality are charged with notice of the limits on the authority of the municipality." *Miller*, 641 N.W.2d at 751. If parties could enforce void contracts, this would allow municipalities to do indirectly what they are prohibited by statute from doing directly. *Id.*

On the other hand, a voidable contract arises where a power has been clearly vested with a municipality, but it has been irregularly or defectively exercised. 10A Eugene McQuillen, *The Law of Municipal Corporations* § 29:106, at 96 (3d ed. 2009) (hereinafter McQuillen); *see also Madrid Lumber Co.*, 255 Iowa at 386, 121 N.W.2d at 526 (distinguishing precedents that dealt with mere irregularities in otherwise valid contracts); *Cedar Rapids Water Co. v. City of Cedar Rapids*, 118 Iowa 234, 255, 91 N.W. 1081, 1089 (1902) ("A different rule sometimes obtains when the power to contract exists, but has been defectively or irregularly executed . . . .").

Barney claims the Agreement is void because it was entered into without the approval of the City Council. He points out that under Iowa Code section

364.3(1) (2009), "[a] city council shall exercise a power only by the passage of a motion, a resolution, an amendment, or an ordinance." *See City of Akron v. Akron Westfield Cmty. Sch. Dist.*, 659 N.W.2d 223, 225 (Iowa 2003) ("It is clear that any contract with a city entered without a formal motion, resolution, amendment or ordinance is void."). He also claims the Agreement violates a city ordinance, which provides:

> The Council shall make or authorize the making of all contracts, and no contract shall bind or be obligatory upon the City unless either made by ordinance or resolution adopted by the Council, or reduced to writing and approved by the Council, or expressly authorized by ordinance or resolution adopted by the Council.

In this case the City Council acted by resolution to specifically authorize the type of contract involved in this case. Resolution No. 53 set forth a policy authorizing the City to enter into Police Reimbursement Training Expense Agreements, such as the one signed by Barney. The resolution set forth the sliding scale used in the Agreement. The resolution only left out the details of the specific contract signed by Barney. We conclude that Agreement is not void due to a failure to follow section 364.3(1) or the city ordinance.

This case does not involve an instance where there was a lack of power to enter into a contract. The resolution created the power to enter into the contract. Instead, the power to enter into the contract was irregularly or defectively exercised because the contract was signed by the chief of police, who did not have the authority under the resolution to sign the contract. *See Hansen v. Town of Anthon*, 187 Iowa 51, 57-58, 173 N.W. 939, 941 (1919) (finding contract was not void where "[t]he irregularity asserted did not involve the want of power"). As

the district court noted, "The error occurred in implementation of the policy, not the adoption of the policy." In these circumstances, we affirm the district court's conclusion that the contract was voidable, and not void.

B. Barney asserts the contractual defect in the Agreement cannot be cured by ratification. There can be no recovery under a void contract. *Riley v. City of Hartley*, 565 N.W.2d 344, 348 (Iowa 1997). A municipal corporation cannot be bound by a void contract under either a theory of implied contract or estoppel. *Everds Bros. v. Gillespie*, 256 Iowa 317, 321, 126 N.W.2d 274, 277 (1964). Furthermore, a void contract cannot be cured through ratification. *Miller*, 641 N.W.2d at 751; *Riley*, 565 N.W.2d at 348.

A different rule applies to voidable contracts. The general rule is that voidable contracts may be cured by ratification:

> A municipal contract which is not void, but merely voidable, may be ratified, and the municipality, by its conduct, may be estopped to deny its validity. Voidable contracts which may be ratified, or as to which an estoppel may exist, include those defectively executed in some particular. Thus, where an officer having power to enter into a contract, if authorized by the proper municipal body, makes a contract without such authority, that body may ratify the contract.

10A McQuillen, § 29:107, at 101-02 (footnotes omitted); *see also Carlson v. City of Marshalltown*, 212 Iowa 373, 378, 236 N.W. 421, 423 (1931) (noting a municipality, acting through its council, "might ratify or estop itself the same as a private corporation or an individual under similar circumstances might have done"); *Athearn v. Indep. Dist. of Millersburg*, 33 Iowa 105, 109 (1871) (noting municipal corporations may ratify contracts made without their authority).

Where there has been a defective execution of the power only, this affords a basis for the application of the doctrine of equitable estoppel and/or ratification. 10A McQuillen, § 29:106, at 96; *see also Hansen*, 187 Iowa at 55, 173 N.W. at 940 (finding contract could be ratified where "[n]o actual want of power in the town to make such a contract is involved. Only the procedure is assailed"). We have already determined the contract was voidable, and not void, and therefore, conclude the contract could be cured by ratification. The problem in this case was not a want of power, but an irregular exercise of that power.

Barney makes the additional argument that even if the contract was not void, ratification by the City Council in Resolution No. 162-10 on May 18, 2010, was ineffective because it occurred more than one year after the contract was signed on April 6, 2009. He claims that in order for there to be an effective ratification, the City needed to have knowledge of the material facts of the contract in 2009 at the time the contract was entered into.

The elements of ratification are: (1) existence of a principal; (2) an act done by an agent; (3) the principal's full knowledge of material facts; and (4) express or implied intent by the principal to ratify the acts of the agent. *Ellwood v. Mid-States Commodities, Inc.*, 404 N.W.2d 174, 179 (Iowa 1987). A municipal body may not, through ratification, do more than it could have done by acting originally. *Mulhall v. Pfannkuch*, 206 Iowa 1139, 1143, 221 N.W. 833, 835 (1928). "[R]atification is equivalent to previous authorization and operates upon the act ratified in the same manner as though authority had been given originally." 10A McQuillen, § 29:110, at 131.

One of the elements of ratification is the principal's full knowledge of the material facts. *See Ellwood*, 404 N.W.2d at 179. "[I]n order to constitute a ratification, it is necessary that the officers ratifying be fully advised of all the facts connected with the act claimed to be ratified." 10A McQuillen, § 29:110, at 133. We have found no legal authority requiring the municipal officers to have full knowledge of the material facts at the time the contract is entered into.[3] In fact, as noted above, "ratification is equivalent to *previous* authorization." (Emphasis added.) This presupposes that ratification takes place after a previously unauthorized act. *See also Abodeely*, 221 N.W.2d at 503 ("[F]ailure to repudiate the unauthorized action within a reasonable time *after learning of the transaction* will be deemed a ratification or affirmance." (emphasis added)).

We affirm the district court's conclusion that the City properly ratified the April 6, 2009 Agreement. We note the City ratified the Agreement on May 18, 2010, prior to the time Barney resigned on July 8, 2010. We affirm the court's finding, "[t]he City Council's ratification of the previously voidable agreement created a valid contract, which is fully enforceable against both parties."

C. Finally, Barney asserts the contract at issue lacked mutuality. The district court did not address this argument. In order to preserve error, a party seeking to appeal an issue presented to, but not decided by, the district court, must call the district court's attention to the issue by filing a Iowa Rule of Civil Procedure 1.904 motion. *See Meier v. Senecaut*, 641 N.W.2d 532, 540 (Iowa

[3] Barney cites *Joseph L. Willmott & Co. v. Rosenman Bros.*, 258 N.W.2d 317, 324 (Iowa 1997), for his claim that the City needed to have knowledge of the material facts of the contract at the time the contract was entered into. This case, however, only sets forth the same four elements of ratification as found above. *See Joseph L. Willmott & Co.*, 258 N.W.2d at 324 (citing *Abodeely v. Cavras*, 221 N.W.2d 494, 502 (Iowa 1974)).

2002). Because the issue was not addressed by the court, and Barney did not file a rule 1.904 motion, we conclude this issue has not been preserved for our review.

We affirm the decision of the district court granting summary judgment to the City.

AFFIRMED.