IN THE COURT OF APPEALS OF IOWA

No. 3-384 / 12-2006
Filed August 7, 2013

APPANOOSE COUNTY, IOWA,
Plaintiff-Appellant,

vs.

SOUTH IOWA AREA DETENTION SERVICE AGENCY,
Defendant-Appellee.

Appeal from the Iowa District Court for Jefferson County, Myron L. Gookin, Judge.

A county appeals a summary judgment ruling upholding the validity of an agreement and an amendment to jointly exercise governmental powers. **AFFIRMED.**

Carlton G. Salmons of Gaudineer, Comito & George, L.L.P., West Des Moines, for appellant.

Sasha L. Monthei of Scheldrup Blades Schrock Smith Aranza, P.C., Cedar Rapids, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Bower, JJ.

VAITHESWARAN, J.

A county appeals a summary judgment ruling upholding the validity of an agreement and an amendment to jointly exercise governmental powers under Iowa Code chapter 28E (2011).

I. Background Facts and Proceedings

The facts are essentially undisputed. Those facts are as follows. Appanoose County joined nine other counties to form the South Iowa Area Detention Service Agency (SIADSA), an organization created to plan, finance, construct, and operate juvenile detention facilities and a juvenile detention program for the ten member counties. At the time of creation, each county contributed $25,000. Neither Appanoose County nor the remaining member counties made additional payments to SIADSA. On five or six occasions, SIADSA paid each county a distribution of $5,000. Those payments essentially offset the counties' initial capital contributions.

This litigation concerns provisions on the distribution of SIADSA's assets. The original 1991 agreement stated:

> 16. Distribution of Assets. Upon termination of this Agreement, all assets of the Agency shall be distributed to the members in accordance with a plan of distribution approved by the Board of Directors.

In 1999, SIADSA's board of directors, including its representative from Appanoose County, approved an amendment authorizing the relinquishment of SIADSA assets if a county withdrew prior to termination of the 28E agreement. The 1999 amendment was as follows:

> 16. Distribution of Assets. Upon termination of this Agreement, all assets of the Agency shall be distributed to the members in

> accordance with a plan of distribution approved by the Board of Directors. *If any member withdraws from the Agency prior to the termination of this Agreement*, *then that member relinquishes any and all ownership right*, *title and interest to any asset of this Agency*.

(Emphasis added.)

The original agreement was filed with the Iowa Secretary of State. The 1999 amendment was not publicly filed or recorded.

SIADSA began experiencing financial difficulties. In the wake of those difficulties, Appanoose County moved to withdraw from SIADSA and requested its share of the organization's assets. The motion died for lack of a second. Appanoose County proceeded to withdraw unilaterally.

Appanoose County petitioned the district court for a declaratory judgment finding (1) the 1999 amendment invalid, (2) the original agreement failed to make provision for a partial termination, and (3) SIADSA's failure to approve a plan of distribution prevented it from denying the county its share of the assets. Appanoose County also raised claims of conversion, unjust enrichment, and a Fifth Amendment taking.

The petition was considered by the district court on cross-motions for summary judgment. In a detailed ruling, the court denied Appanoose County's motion and granted SIADSA's motion for summary judgment, which resulted in the dismissal of the county's petition. Appanoose County appealed.

II. Analysis

Summary judgment is appropriate when there are no genuine issues of material fact, and the movant is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3). "Where the parties agree that all material facts are undisputed,

and the case presents solely legal issues, summary judgment is the appropriate remedy." *Kucera v. Baldazo*, 745 N.W.2d 481, 483 (Iowa 2008).

A. Failure to File and Record the 1999 Amendment

Appanoose County preliminarily asserts that the 1999 amendment "is wholly invalid and void for failure to file and record the amended agreement." The county points to Iowa Code section 28E.8 which, in 1999, stated: "Before entry into force, an agreement made pursuant to this chapter shall be filed with the secretary of state and recorded with the county recorder. In counties in which the office of county recorder is abolished, the agreement shall be recorded with the county auditor."

"[O]ur starting point in statutory interpretation is to determine if the language has a plain and clear meaning within the context of the circumstances presented by the dispute." *McGill v. Fish*, 790 N.W.2d 113, 118 (Iowa 2010). The circumstances of this dispute involve an original 28E agreement and an amendment to the agreement. In this context, the parties focus narrowly on the word "agreement" as used in section 28E.8. The county argues that the word is unambiguous and necessarily includes an amendment to an agreement. SIADSA counters that the word is ambiguous, requiring resort to rules of statutory construction.

We believe the proper focus should be on the complete sentence in which "agreement" appears. That sentence reads as follows: "*Before entry into force*, an agreement made pursuant to this chapter shall be filed with the secretary of state and recorded with the county recorder." Iowa Code § 28E.8 (emphasis added). When "agreement" is read in conjunction with the sentence's prefatory

language, "[b]efore entry into force," there can be no question that "agreement" refers to the original agreement.

We conclude the 1999 version of section 28E.8 only applied to the filing and recording of the original agreement. Because the provision was unambiguous, we find it unnecessary to consider the effect of a 2008 amendment to the statute specifically addressing this issue.[1] *See Midwest Automotive III*, *LLC v*. *Iowa Dep't of Transp*., 646 N.W.2d 417, 425 (Iowa 2002) (finding no ambiguity that would necessitate consideration of recent statutory amendments).[2]

B*. *Validity of Forfeiture Clause in the 1999 Amendment

Appanoose County raises several arguments in support of its contention that the portion of the 1999 amendment requiring relinquishment of its assets was invalid. As a preliminary matter, we reiterate that Appanoose County voted for the amendment when it was proposed. We question whether its affirmative vote forecloses its present challenge to the amendment.

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[1] The provision now states in pertinent part:

> 1. a. Before entry into force, an agreement made pursuant to this chapter shall be filed, in an electronic format, with the secretary of state in a manner specified by the secretary of state.
>
> b. *Any amendment*, modification, or notice of termination of an agreement *made pursuant to this chapter shall be filed*, *in an electronic format*, *with the secretary of state within thirty days of the effective date of the amendment*, modification, or termination, in a manner specified by the secretary of state.

Iowa Code § 28E.8 (2011) (emphasis added).

[2] If there were any doubt about whether the 1999 version of section 28E.8 applied to amendments, another provision resolves that doubt. *See Farmers Co-op v*. *DeCoster*, 528 N.W.2d 536, 538 (Iowa 1995) (examining other provisions in statute to resolve ambiguity). Section 28E.4, titled "Agreement with other agencies," authorizes "an agreement" between or among public or private agencies and states that "[a]ppropriate action . . . shall be necessary before *any such agreement may enter into force*." (Emphasis added). This sentence, like the contested sentence in section 28E.8, plainly refers to the original agreement.

Be that as it may, we discern no error in the district court's analysis of this issue on the merits. Our only additional point of clarification relates to the county's reliance on the statute pertaining to county home rule and its argument that the 1999 amendment is inconsistent with the procedures for conveyance of real property set forth in that statute. *See* Iowa Code § 331.361(2) (2011). Chapter 331 contains an express provision stating "[t]he power to act jointly with other political subdivisions or public or private agencies shall be exercised in accordance with chapter 28E . . . ." *Id.* § 331.304(1). Appanoose County does not argue that the 1999 amendment was ratified in contravention of chapter 28E. For this additional reason, we conclude the portion of the 1999 amendment relating to relinquishment or forfeiture of assets was valid.

C. Remaining Arguments

Appanoose County raises a number of other arguments, all of which the district court thoroughly addressed. No useful purpose would be served by revisiting the court's well-reasoned analysis.

We conclude the district court did not err in granting SIADSA's motion for summary judgment.

AFFIRMED.