IN THE COURT OF APPEALS OF IOWA

No. 3-911 / 13-0278
Filed November 20, 2013

JOEL MILLER, LINN COUNTY AUDITOR,
Plaintiff-Appellant,

vs.

BOARD OF SUPERVISORS OF LINN COUNTY,
LU BARRON, LINDA LANGSTON, BEN ROGERS,
BRENT OLESON, JAMES M. HOUSER,
Defendants-Appellees.

Appeal from the Iowa District Court for Linn County, Paul D. Miller, Judge.

Linn County Auditor Joel Miller appeals from the district court's ruling granting the defendants' counterclaim for declaratory judgment and dismissing his petitions for writs of mandamus and certiorari. **AFFIRMED.**

Peter C. Riley of Tom Riley Law Firm, P.L.C., Cedar Rapids, for appellant.

Robert A. Hruska, Assistant Linn County Attorney, Civil Division, Cedar Rapids, for appellees.

Heard by Doyle, P.J., and Tabor and Bower, JJ.

DOYLE, P.J.

Linn County Auditor Joel Miller appeals from the district court's ruling granting the defendants' counterclaim for declaratory judgment and dismissing his petitions for writs of mandamus and certiorari. He contends the court erred in several respects, including declaring a county's board of supervisors is the entity that has the authority to authorize and direct the conditions under which claims against the county are audited, not the county auditor. We affirm.

***I. Background Facts and Proceedings*.**

The relevant facts are generally undisputed. Plaintiff Joel Miller has served as the Linn County Auditor since 2007. Miller testified that the number of persons voting via absentee ballots has increased in recent years, and, as a result, the workload of his office in connection with its election duties has also increased. At the beginning of 2008, Miller's office employed three deputy auditors, including Sue Wold, who had served as a deputy auditor and the deputy commissioner of elections for a number of years.

On February 27, 2008, the Linn County Board of Supervisors (Board) held a formal session. At the session, Miller appeared and discussed with the Board his resolution seeking the Board's approval to add a fourth deputy-auditor position to the auditor's office and to authorize payroll for that position. Miller explained he was "asking the Board to approve an additional [d]eputy position for the purpose of managing personnel associated with the election process," and he told the Board he wanted to move the voter registration administrator, Tim Box, to the newly created deputy position for Box to "share management of the election services department." Although the Board questioned who would

perform Box's duties as the voter registration administrator, the Board approved the resolution to add a fourth deputy-auditor position.

At some point, Miller decided he wanted one of his deputies to conduct internal audits of his office. To that end, Miller revoked Wold's appointment as a deputy auditor and deputy commissioner of elections in December 2009, finding she "did not have the skill set to do internal auditing." On December 15, 2009, Miller sent out an email advising all elected county officials he had revoked Wold's appointment and was seeking a replacement for the deputy-auditor position who could perform duties as an "internal auditor," in addition to working on elections.

After receiving the email, the Board's chairperson, Linda Langston, had concerns about such a position. She met with Miller in mid-January 2010 to discuss the "internal auditor" position, and she told Miller that, while she was "not inherently opposed to the concept of an internal-auditor position," she thought there would be problems with placing such a position within the auditor's office. She noted that the political nature of the auditor position could create a situation where a deputy "internal auditor," serving at the pleasure of the auditor, might be less forthcoming with any potential wrongdoing by the person who appointed him or her. She also told Miller she had spoken informally with CPAs and other persons who perform external audits and learned the oversight of similar auditing positions was generally done by a board of directors. Thus, Langston believed such a position should report to a county's board of supervisors, not to the county's auditor, and therefore should not exist within the auditor's office. Miller asked her if the Board would allow him to try an internal auditing position

temporarily and see how it worked out, but Langston told him she "was not interested in that, but [she] would be happy to check with the other Board members."

A few days later, Miller appointed Karen Heiderscheit to fill the open deputy-auditor position, and Heiderscheit was sworn in on January 18, 2010. Heiderscheit had a four-year degree in accounting and had worked in the auditor's office in an accounts-payable position, which fell under a collective bargaining agreement. Miller did not tell Langston or ask the Board to approve Heiderscheit for the position.

Thereafter, Miller learned the Board was going to consider the issue of the number of deputies in his office, and the matter was discussed at the January 25 session of the Board. Langston reported to the Board she had previously met with Miller and had relayed her concerns regarding his intent to have his new deputy conduct internal auditing, and she advised the Board "that if Linn County had an internal auditor position, [it] would best be served with some separation from the office[s] that would have the greatest area of exposure, that being the [offices of the county's auditor and treasurer]." Miller appeared before the Board, disagreeing with Langston's position that an internal auditor should report to the Board. One supervisor noted it was her prior understanding that the fourth deputy-auditor position was created to groom Tim Box "for [Wold's] position for when she retired, and then the [auditor's office] would have [only three] deputies." Ultimately, the Board voted to reduce the number of deputy-auditor appointments from four to three.

Miller then appointed Heiderscheit as a temporary assistant in his office, and he subsequently submitted to the Board a bill for payment of Heiderscheit's services. At the Board's February 2 and 3 sessions, payment of Miller's bill was considered. Miller informed the Board he had obtained outside counsel who disagreed with the Board and the Linn County Attorney's position that there was no deputy vacancy for Heiderscheit to fill. After discussion, the Board denied Miller's request to pay the bill for Heiderscheit's services. The Board made no determination as to whether or not the compensation sought in the bill was reasonable.

Because the Board denied payment of Miller's bill for compensation to Heiderscheit, Heiderscheit's status as an employee under the collective bargaining agreement was in jeopardy. Miller decided to withdraw his application for payment to Heiderscheit as a temporary assistant. Later in the day on February 3, Miller sent an email to the Human Resources Director of the Linn County Human Resources Department, "for the record," requesting "the withdrawal of any and all paperwork submitted by [his] office to initiate a payroll change for [Heiderscheit]." He also requested "cancellation of the true vacancy form submitted for an Account Technician position in [his] office."

On February 16 and 17, 2010, Miller filed petitions for writs of mandamus and certiorari against the Board. Miller acknowledged the Board "has the power to establish the number of deputies for county officers, including the [c]ounty [a]uditor, under Iowa Code section 331.323(2)(g) (2009)." However, he asserted a board's approval authority over a county auditor's appointment and removal of deputies under sections 331.503(2) and .903(1) was limited and did not permit a

board to refuse approval of an auditor's deputy appointment unless the appointee was not qualified on statutory grounds. He also maintained the county auditor has authority under section 331.503(2) to "employ temporary assistants if a deputy auditor is not appointed and the requirements of office require the temporary employment of assistants," and the Board is required to pay the submitted bill of services for the temporary assistant. He argued the Board's reduction of deputies from four to three was "an unlawful attempt to interfere with [his] statutory powers [as county auditor] to appoint deputies." Miller asserted the Board's actions did not involve the exercise of discretion, and the court should therefore issue a writ of mandamus or certiorari requiring the appointment of Heiderscheit as a deputy auditor "and/or requiring the approval of the bill for services, and directing the Board to withdraw its action reducing the number of [deputies] from four to three."

The Board subsequently answered, denying Miller's claims. Additionally, the Board counterclaimed seeking a judgment from the court declaring it is the Board's right "to authorize and direct the conditions under which 'internal auditing' occurs with Linn County." The Board also requested the court declare "that the power to conduct internal auditing procedures is not a power conveyed to the auditor under the statutory authority of the Iowa Code."

A bench trial on Miller's consolidated petitions was held in May 2012. Thereafter, the court entered its ruling in favor of the Board and denying and dismissing Miller's petitions. The court first found Miller's complaint concerning the Board's refusal to pay Heiderscheit as a temporary employee was moot because Miller withdrew the request for payment. The court also concluded

Miller "failed to sustain his burden of proof that a writ of certiorari [was] an appropriate remedy under the facts of this case," and the Board's action in reducing the number of deputy auditors from four to three was within the Board's authority and was not wrong, arbitrary, or illegal. Additionally, the court declared a county auditor "does not have explicit authority or implicit authority to conduct audits of other county departments, absent a request by the [county's] board of supervisors to do so."

Miller now appeals, contending the district court erred in: (1) failing to properly address his claim the Board acted improperly in refusing to approve his appointment of a deputy; (2) holding the Board acted properly when it reduced the number of the county auditor's deputies; (3) ruling his argument the Board erred in failing to pay Heiderschelt was moot; and (4) ruling the auditor lacked authority to conduct audits of county departments absent authorization by the board of supervisors.

II. Scope and Standards of Review.

A party aggrieved by a ruling of a board of supervisors may petition a district court for a writ of certiorari when the party claims the board, while exercising judicial functions, exceeded proper jurisdiction or otherwise acted illegally. Iowa R. Civ. P. 1.1401; *see also City of Grimes v. Polk Cnty. Bd. of Supervisors*, 495 N.W.2d 751, 752 (Iowa 1993). Illegality exists "if a board has not acted in accordance with a statute; if its decision was not supported by substantial evidence; or if its actions were unreasonable, arbitrary, or capricious." *City of Grimes.* 495 N.W.2d at 752 (internal quotation marks and citation omitted). A writ of certiorari will not lie against the board if it was exercising a

legislative function. *See Stream v. Gordy*, 716 N.W.2d 187, 191 (Iowa 2006). We review the district court's ruling on a petition for certiorari for correction of errors at law. *See id*. at 190.

A writ of mandamus is "brought to obtain an order commanding an inferior tribunal, board, corporation, or person to do or not to do an act, the performance or omission of which the law enjoins as a duty resulting from an office, trust, or station." Iowa Code § 661.1. The district court's decision whether to issue a writ of mandamus involves the exercise of discretion, and, as an action in equity, the decision is typically reviewed de novo. *Koenigs v. Mitchell Cnty. Bd. of Supervisors*, 659 N.W.2d 589, 592 (Iowa 2003). But, when an appeal calls for us to interpret the scope and meaning of statutory provisions, our review is for correction of errors at law. *Mason v. Vision Iowa Bd.*, 700 N.W.2d 349, 353 (Iowa 2005).

We review decisions on declaratory judgment actions based on how the matter was tried in the district court. *Passehl Estate v. Passehl*, 712 N.W.2d 408, 414 (Iowa 2006). The parties agree that this case was filed and tried in equity; thus, our review is de novo. Iowa R. App. P. 6.907; *Owens v. Brownlie*, 610 N.W.2d 860, 865 (Iowa 2000). In a de novo review, we have the responsibility to examine the facts as well as the law and decide the issues anew. *SDG Macerich Props., L.P. v. Stanek, Inc.*, 648 N.W.2d 581, 584 (Iowa 2002). In doing so, we give weight to the district court's factual findings, but are not bound by them. *Id.*

III. Discussion.

A. Writs and Legality of Board's Actions.

On appeal, Miller asserts the district court did not properly address his petition for a writ of mandamus, asserting the Board acted improperly in failing to approve, or even consider, Heiderscheit's appointment as a deputy. He claims the court erred in "lump[ing] that issue with the Board's separate and subsequent reduction of the number of deputies from four to three." We disagree.

The problem with Miller's argument is that the two issues are intertwined and were essentially before the Board at the same time. Although Miller personally acted to appoint Heiderscheit as a deputy auditor before the Board's February 2 session, both issues were not before the Board until the February 2 session of the Board. There is no record that Miller made a request to the Board for approval of his appointment of Heiderscheit prior to the February 2 session. *See* Iowa Code § 331.903(1) (requiring the county auditor's deputy appointments be approved by the Board). Once the Board decided to reduce the number of deputy auditors, there was nothing for the Board to consider concerning Heiderscheit. In theory, Miller could have ousted one of the three existing deputies and then requested the Board consider Heiderscheit for that position, but that is not the case before us. Consequently, if the district court correctly determined the Board had the power to reduce the number of deputy positions, the Board had no duty to act on Miller's personal appointment of Heiderscheit without its approval, and a writ of mandamus was not a proper remedy.

Iowa Code section 331.323(2)(g) provides that a county's board of supervisors "may . . . [e]stablish the number of deputies, assistants, and clerks

for the offices of auditor, treasurer, recorder, sheriff, and county attorney." Clearly the legislature has vested this authority to a county's board of supervisors. *See* Iowa Code § 331.323(2)(g). Moreover, section 331.903(1) expressly limits a county auditor's authority to appoint deputies and assistants, requiring "approval of the board." That section goes on to expressly state the "number of deputies . . . shall be determined by the board . . . ." *Id*. § 331.903(1). Neither section 331.323 or .903 places restraints on a board's authority in establishing the number of deputies a county officer may have. Consequently, the district court applied the proper rules of law in reaching its conclusion the Board did not act illegally in reducing the number of deputy auditors. We therefore conclude the court did not err in finding Miller failed to sustain his burden that neither a writ of certiorari or of mandamus was an appropriate remedy under the facts of the case. Accordingly, we affirm the court's dismissal of Miller's petitions for writs of certiorari and mandamus.

B. Bill for Payment of Services.

Miller also contends the district court erred in finding whether the Board acted improperly in failing to pay his submitted bill for payment of Heiderscheit's services was moot. He asserts the Board has a mandatory duty to pay for Heiderscheit's services as his appointed temporary assistant, and even if the issue is moot, the issue is "public in nature" and should be addressed to guide public officials in the future.

An appeal is deemed moot if the issue becomes nonexistent or academic and, consequently, no longer involves a justiciable controversy. *In re M.T.*, 625 N.W.2d 702, 704 (Iowa 2001). We generally refrain from reviewing moot issues.

Polk County Sheriff v. Iowa Dist. Ct., 594 N.W.2d 421, 425 (Iowa 1999); *Shannon v. Hansen*, 469 N.W.2d 412, 414 (Iowa 1991). Nevertheless, there are exceptions. *See Rhiner v. State*, 703 N.W.2d 174, 176-77 (Iowa 2005) (articulating an exception to the mootness doctrine to be "where matters of public importance are presented and the problem is likely to reoccur . . . particularly when the challenged action is such that the matter would be often moot before it reaches appellate review").

Upon our review, we agree with the district court that the issue is moot, and we find no exception to the mootness doctrine should apply here. Miller does not deny that he withdrew his request for payment. There is no justiciable controversy here; once Miller withdrew the request for payment, the Board had no duty to pay his request. We find the district court did not err in finding the issue moot, and we therefore affirm on this issue.

C. Declaratory Judgment and Auditing Duties.

In a declaratory judgment, a court declares the parties' status, rights, duties, or other legal relationships. *Zimmer v. Vander Waal*, 780 N.W.2d 730, 732 (Iowa 2010); *see also* Iowa R. Civ. P. 1.1101 (setting out purpose, scope, and effect of declaratory judgment). Miller asserts the district court erred in declaring the county auditor lacked authority to conduct auditing functions of county departments absent authorization by the county's board of supervisors. We disagree.

Iowa Code section 331.301(2) provides that the "power of a county is vested in the board, and a duty of a county shall be performed by or under the

direction of the board except as otherwise provided by law." As early as 1914, the Iowa Supreme Court declared that the county's

> board of supervisors are the financial agents of the county, charged, under the statute, with general care and management of the county property, funds, and business. The county treasurer . . . is charged with the duty of receiving money payable to the county and disbursing the same on warrants drawn and signed by the county auditor, and not otherwise, and it is his duty to keep a true account of all receipts and disbursements and hold the same at all times ready for the inspection of the board of supervisors.
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> The county auditor is but a ministerial officer in the matter of issuing warrants on the county treasury. He acts under the direction of the board in this matter. Without the sanction of the board, he has no authority to issue a warrant upon the treasury for the payment of money for any purpose, and the only authority for the treasurer to pay money out of the treasury is upon the warrant so issued.

Harrison Cnty. v. Ogden, 145 N.W. 681, 687 (1914).

In 1968 "the home rule" amendment, whose purpose "was to give local government the power to pass legislation over its local affairs subject to the superior authority of the legislature," was approved by constitutional amendment. *See Mall Real Estate*, *L.L.C. v. City of Hamburg*, 818 N.W.2d 190, 195 (Iowa 2012); *see also* Iowa Const. art. III, § 38A. Under the home rule, "the legislature retains the unfettered power to prohibit a municipality from exercising police powers, even over matters traditionally thought to involve local affairs." *Mall Real Estate*, 818 N.W.2d. at 195 (internal quotation marks and citation omitted). Nevertheless, the amendment did not expressly grant to individual county officers more power than originally vested in the respective offices as provided by the Iowa Code. *See* Iowa Const. art. III, § 38A.

In 1990, the Iowa Attorney General was asked to provide an opinion "regarding the scope of a county auditor's authority to demand itemization or otherwise 'audit' claims against the county before filing them for presentation to the board of supervisors." 1990 Iowa Op. Att'y Gen. 64. Ultimately, an assistant attorney general, citing *Harrison County*, opined that the county auditor still acted as a ministerial officer, as declared by the court in 1914,

> when carrying out his or her duty to file claims against the county for presentation to the board of supervisors, the board is responsible for assessing the adequacy of proof supporting such claims, and the auditor may not refuse to file a claim for submission to the board of supervisors.

1990 Iowa Op. Att'y Gen. 64.

The legislature has made numerous amendments to the county auditor's duties over the years.[1] Nevertheless, despite the *Harrison County* holding and the 1990 opinion of the attorney general, the legislature did not act until after this case was decided by the district court to expressly grant county auditors the authority to audit county funds. *See* 2013 Iowa Acts ch. 135, § 58 (adding subsection 41A to section 331.502, which provides the county auditor "shall . . . [h]ave the authority to audit, at the auditor's discretion, the financial condition and transactions of all county funds and accounts for compliance with state and federal law"). Although the district court's judgment would not stand under the 2013 edition of the Iowa Code, the district court's decision was based

[1] *See*, *e.g.*, 1993 Iowa Acts ch. 148, § 1; 1994 Iowa Acts ch. 1173, §§ 21, 22; 1996 Iowa Acts ch. 1129, § 113; 1998 Iowa Acts ch. 1107, § 9; 2000 Iowa Acts ch. 1117, § 21; 2003 Iowa Acts ch. 35, § 42; 2003 Iowa Acts ch. 145, § 251; 2005 Iowa Acts ch. 128, § 2; 2005 Iowa Acts ch. 167, § 54; 2009 Iowa Acts ch. 57, § 88; 2012 Iowa Acts ch. 1019, § 124; 2012 Iowa Acts ch. 1113, § 18; 2012 Iowa Acts ch. 1120, § 127; 2013 Iowa Acts ch. 135, § 58.

upon existing law at that time. *See* Iowa Code § 331.502 (2009). Consequently, given the legislature's inaction until 2013, we must conclude the prior enactment of section 331.502, even considering the home rule, did not grant the authority to county auditors to conduct audits without approval of the county's board of supervisors. Therefore, upon our de novo review of this issue, we conclude the district court did not err in declaring that under the 2009 edition of the Iowa Code and existing case law, the county's board of supervisors was the entity that had the authority to authorize and direct the conditions under which claims against the county are audited, and not the county auditor. Accordingly, we affirm on this issue.

IV. Conclusion.

We find the district court applied the proper rules of law in reaching its conclusion the Board did not act illegally in reducing the number of deputy auditors, and we therefore conclude the court did not err in finding Miller failed to sustain his burden that either a writ of certiorari or of mandamus was an appropriate remedy under the facts of the case. Additionally, we agree with the court that the issue of whether the Board acted improperly in failing to pay Miller's submitted bill was moot because Miller withdrew his request for payment. Finally, we conclude the district court did not err in declaring that under the 2009 edition of the Iowa Code—the Code in effect at the time of the Board's actions—a county's board of supervisors was the entity that had the authority to authorize and direct the conditions under which claims against the county were audited, not the county auditor. Accordingly, we affirm the district court's ruling.

AFFIRMED.