

**IN THE COURT OF APPEALS OF IOWA**

No. 9-150 / 08-0571  
Filed May 29, 2009

**MICHAEL BURDS and THE DUBUQUE  
ASSOCIATION OF PROFESSIONAL  
FIREFIGHTERS, LOCAL 353,**  
Plaintiffs-Appellees/Cross-Appellants,

**vs.**

**THE CITY OF DUBUQUE, an IOWA MUNICIPAL  
CORPORATION, MICHAEL VAN MILLIGEN  
and E. DANIEL BROWN,**  
Defendants-Appellants/Cross-Appellees.

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Appeal from the Iowa District Court for Dubuque County, Lawrence H.  
Fautsch, Judge.

The City of Dubuque appeals, and the plaintiffs cross-appeal, from the  
district court's ruling on their motions for summary judgment. **AFFIRMED.**

Barry A. Lindahl, Dubuque, for appellants.

Michael J. Meloy of Koos & Meloy, Bettendorf, for appellees.

Heard by Mahan, P.J., and Eisenhauer and Mansfield, JJ.

**EISENHAUER, J.**

This is an appeal and cross-appeal from summary judgment in an action for mandamus, declaratory relief, and injunctive relief brought by Michael Burds and the Dubuque Association of Professional Firefighters. The plaintiffs challenged the City of Dubuque's procedure in filling certain vacancies in the fire department. On appeal, the City of Dubuque contends the court erred in determining a March 17, 2006 promotional list of fire lieutenant candidates was a certified list in effect for two years. The plaintiffs cross-appeal, contending the court erred in ruling the city could disregard a promotional list of fire captain candidates. We affirm.

***I. Background Facts and Proceedings.*** On July 8, 2005, the Dubuque Civil Service Commission certified to the Dubuque City Council lists of individuals who passed the written civil service exam for the positions of captain and lieutenant on the Dubuque Fire Department. Iowa Code section 400.11 (2005) requires the commission to certify a list of the ten persons who qualify with the highest score on the exam. In the event of a tie for the tenth position, the list is to include all the people whose scores put them in tenth place. Iowa Code § 400.11. Section 400.11 states those on a certified list hold preference for promotion for two years following the date of certification.

The certified list for the captain position contained the ten names. The certified list for lieutenant contained fourteen names. Because there had been a tie for the tenth position, the list included the names of the twelve people who achieved the highest scores. In addition, two names were erroneously placed on

the list. On March 17, 2006, the commission sent another certified list for the lieutenant position, which only included the twelve individuals who should have been named in the July 8, 2005 list. The March 17, 2006 list was otherwise identical to the July 8, 2005 list.

On March 15, 2007, the Dubuque City Council created two new positions of captain and one position of lieutenant, effective July 1, 2007. The city did not fill the positions by July 7, 2007, the expiration date of the July 8, 2005 certified lists. Accordingly, a new civil service test was administered in September 2007, and new certified lists were created on October 11, 2007.

Michael Burds had been a fire equipment operator for the Dubuque Fire Department for thirty years. The results of his civil service exam placed him at the highest rank on the July 8, 2005 certified list for the lieutenant position. Burds did not take the civil service exam in September 2007 and therefore was not on the October 11, 2007 certified list for lieutenant.

On October 24, 2007, Burds and the Dubuque Association of Professional Firefighters piled a petition for writ of mandamus, declaratory judgment, and injunctive relief. They asked the court to direct the city to use the lists in existence on July 1, 2007, to fill the captain and lieutenant positions. Following a hearing, the district court determined the list for lieutenant provided to the Dubuque City Council on March 17, 2006, was the certified list and therefore was still in effect during the time the position was to be filled in July 2007. Accordingly, the court granted the plaintiffs' petition for temporary injunction to

prevent the city from filling the lieutenant position from the October 11, 2007 certified list.

Both the city and the plaintiffs filed motions for summary judgment. A hearing was held in February 2008, and on March 7, 2008, the court issued its ruling. The court reiterated its finding that the March 17, 2006 list for the lieutenant position was a certified list effective until March 16, 2008. It ordered the lieutenant position be filled from the candidates on that list. The court found there was no problem with the certified list for captain, which expired on July 7, 2007. The court held the city had no duty to fill those positions prior to its expiration, and accordingly granted the city's motion for summary judgment concerning the captains.

The city filed a motion to amend and the plaintiffs filed a motion to enlarge and amend. On April 2, 2008, the court granted the defendant's motion to modify the ruling language. The amended ruling held the appointment of two captains from the October 11, 2007 certified list was valid. The plaintiffs' motion was denied.

***II. Scope and Standard of Review.*** We review a summary judgment ruling for the correction of errors at law. *Kelly v. Iowa Mut. Ins. Co.*, 620 N.W.2d 637, 641 (Iowa 2001).

In reviewing the grant of summary judgment . . . the question is whether the moving party demonstrated the absence of any genuine issue of material fact and showed entitlement to judgment on the merits as a matter of law. An issue of fact is 'material' only when the dispute is over facts that might affect the outcome of the suit, given the applicable governing law. The requirement of a 'genuine' issue of fact means that the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Our

task on appeal is to determine only whether a genuine issue of material fact exists and whether the law was correctly applied. We examine the record in a light most favorable to the party opposing the motion for summary judgment to determine if movant met his or her burden.

*Bill Grunder's Sons Constr. v. Ganzer*, 686 N.W.2d 193, 196 (Iowa 2004).

### **III. Analysis.**

**A. Lieutenant Position.** We first address the city's claim the district court erred in holding the March 17, 2006 list for the lieutenant position was a certified list effective for two years as outlined in section 400.11. They argue the list was simply a correction of an error in the July 8, 2005 lieutenant list, and therefore its two-year effective period should have expired on July 7, 2007.

In granting the plaintiffs' motion for summary judgment on this issue, the district court held:

A certified list under Iowa Code sections 400.9 and 400.11 implies a proper certification (underlined for emphasis). The July 8, 2005 certification was not a proper certification as to the position of fire lieutenant. Regardless of the intent of the commissioners as shown by their affidavits, their actions in submitting the corrected certified list for the fire lieutenant position on March 17, 2006, resulted in a proper certification in that it was pursuant to the requirements of Iowa Code section 400.11. It is identical to the July 8, 2005 certification with the exception that the list of names on the March 17, 2006 list is correct. The affidavits do not change the language of the document. The 24-month period as to the position of fire lieutenant will therefore not expire until March 17, 2008. The City of Dubuque had a duty to fill the new position of lieutenant from this list within 30 days of July 1, 2007, and failed to do so.

We find no error. The list provided by the commission on July 8, 2005, did not comport with chapter 400. Accordingly, it was invalid. The list provided on March 17, 2006, corrected the error, and therefore was a proper certification. Because section 400.11 provides those on a certified list hold preference for

promotion for two years following the date of certification, the list was in effect during the thirty-day period beginning July 1, 2007, in which the city had to fill the lieutenant position. Under law, it was required to fill the position with someone named on the March 17, 2006 list.

**B. Captain List.** On cross-appeal, the plaintiffs contend the court erred in holding the city was not required to use the July 8, 2005 certified list for captain to appoint two captains to its fire department. The city filed a motion to dismiss this cross-appeal on the basis the plaintiffs failed to file their notice of cross-appeal—which was served on the city on May 1, 2008—with the district court. Assuming the matter is properly before us, we reach the merits.

Dubuque created two captain positions effective July 1, 2007. The certified fire captain list then in existence expired July 7, 2007. The positions were not filled by July 7, 2007, so new examinations and a new list was certified to the city council on October 11, 2007. The new positions were filled from this list.

The trial court held:

The question then is whether the city had a duty to appoint two fire captains by July 7, 2007. Iowa Code section 400.11 requires an appointment within 30 days of the opening of a position. On the other hand, there can only be an appointment when there is a certified list. In this instance, there was no certified list for the position of captain after July 7, 2007. Plaintiffs argue that Defendants have an obligation to fill the newly created captain's positions between July 1, 2007, and July 7, 2007. It appears unreasonable, however to require the city to appoint the captains by July 7, 2007, merely because it could have. The legislature deemed thirty days to be a reasonable time to complete the selection process and it would be contrary to the legislative intent to limit the selection process to one week. The Civil Service

Commission was therefore required to create a new certified list pursuant to Iowa Code section 400.11 and did so.

We find no error in this reasoning.

We affirm the district court's ruling on the motions for summary judgment.

**AFFIRMED.**