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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1363**

In the Matter of:

The Year 2019 Salary of Freeborn County Sheriff.

**Filed July 19, 2021
Affirmed
Jesson, Judge**

Freeborn County District Court
File No. 24-CV-18-2138

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Considered and decided by Smith, Tracy M., Presiding Judge; Connolly, Judge; and
Jesson, Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge

Following a dispute over his salary as Freeborn County Sheriff, respondent Kurt Freitag brought an appeal to district court under Minnesota Statutes section 387.20 subdivision 7 (2020). The district court held that the appellant Freeborn County Board of Commissioners acted in an arbitrary manner when deciding his salary. We reversed, concluding that the district court's findings and conclusions were clearly erroneous. The Minnesota Supreme Court disagreed, and remanded to this court to determine whether the

district court abused its discretion in calculating Freitag's salary based in part on comparing the salaries of neighboring counties. Because the district court based its decision on statutory and other valid factors for a salary appeal, setting Freitag's salary at \$113,952 was not an abuse of discretion. We affirm.

FACTS¹

Respondent Kurt Freitag (the sheriff or Freitag) became the Freeborn County Sheriff in January 2015. The Freeborn County Board of Commissioners (the board) is responsible for setting the county sheriff's salary on an annual basis. When Freitag first assumed the position of sheriff in 2015, the board set his salary at \$75,000, per Freitag's request based on his campaign promises. By 2018, the board had increased Freitag's salary to \$92,403.

In November 2018, Freitag presented his 2019 salary request of \$113,952, a 23% increase. Freitag arrived at this total by averaging two figures: the median salary of sheriffs in neighboring counties and the median salary of sheriffs in comparable positions across the state. The following month, the board passed a resolution setting Freitag's salary at \$97,020. Freitag appealed his 2019 salary to the district court under a statute allowing such appeals.

The district court concluded that the board's setting of Freitag's salary was arbitrary due to a lack of explanation from the board as to how it arrived at the \$97,020 figure. The district court determined that the board did not sufficiently consider "the extent of the

¹ We present only the facts relevant to the issue on appeal here. For a complete factual background of this matter, see our opinion in *In re Year 2019 Salary of Freeborn Cty. Sheriff*, 946 N.W.2d 613, 616-18 (Minn. App. 2020).

responsibilities and duties of [Freitag's] office, as well as [Freitag's] experience, qualifications, and performance as the [s]heriff of Freeborn County.” By primarily examining the salaries in surrounding and similar counties, the district court determined that an appropriate salary for the sheriff was \$113,952.² Freeborn County (the county) appealed to this court.

We reversed, concluding that the district court's findings and conclusions were clearly erroneous. *In re Year 2019 Salary*, 946 N.W.2d at 627. First, we determined that it was an error of law for the district court to decline to address the non-statutory factors identified by the board. *Id.* at 623. Second, we determined that the board's “inability to articulate an exact mathematical process used to calculate the dollar amount” of Freitag's salary did not render the decision arbitrary. *Id.* Finally, we concluded that the district court erred in finding that the board did not sufficiently take into account the responsibilities and duties of the sheriff's office, and Freitag's experience, qualifications, and performance. *Id.* at 626. Because of this conclusion, we did not consider all of the issues raised, including the district court's calculations of a new salary for Freitag. *Id.* at 626, n.16. Freitag appealed to the Minnesota Supreme Court.

The supreme court reversed and remanded, holding that this court misapplied the clear error standard of review and improperly substituted its own judgment for that of the district court, that there was reasonable support in the record for the determination that the board's salary decision was arbitrary, and that the district court did not clearly err in setting

² Freitag asked the district court for a salary increase to \$120,000.

aside the board’s salary decision. *In re Year 2019 Salary of Freeborn Cty. Sheriff*, 955 N.W.2d 917, 925 (Minn. 2021). The supreme court remanded to this court to determine whether the district court abused its discretion in determining Freitag’s salary. *Id.* at 925.

DECISION

The issue on remand is narrow—the supreme court asked us to “consider whether the district court abused its discretion in setting the amount of a new salary for the Sheriff.” *Id.*

Generally, determining the salary for county officers is considered a legislative or administrative act. *Amdahl v. County of Fillmore*, 258 N.W.2d 869, 873 (Minn. 1977). Accordingly, the constitution constrains permissible judicial review of county salary determinations to the question of whether the salary was set in “an arbitrary or unreasonable fashion.” *Id.* But, because a sheriff is a quasi-judicial officer, there is an exception to this general rule, which allows a district court to determine the salary de novo. *Id.*; see also Minn. Stat. § 387.20, subd. 7. Because the supreme court on appeal determined that the district court did not err in its finding that the county board violated section 387.20, subdivision 7, we review the district court’s salary determination under an abuse-of-discretion standard. *Cahill v. Beltrami Cty.*, 29 N.W.2d 444, 446 (Minn. 1947).

Under an abuse-of-discretion standard, we may overrule the district court when the court’s ruling is against the facts in the record or is based on an erroneous view of the law. *Riley v. State*, 792 N.W.2d 831, 833 (Minn. 2011). The county challenges the district

court's conclusions both as using facts not properly in the record for a salary determination and as an error of law for using the wrong standard. We address each issue in turn.

Looking first at whether there are any errors involving facts in the record, we review the district court's conclusions in light of the salary-determination statute. When setting the salary, the "court shall base [its] decision[] on public considerations relating to the justness and reasonableness of the salary itself." *In re Year 2019 Salary*, 955 N.W.2d at 917 (quotation omitted). In addition to the statutory factors under section 387.20, subdivision 7, other "valid factors" the district court may consider include sheriffs' salaries of neighboring counties, the population of those counties, and the counties' ability to raise revenue through tax levies. *Amdahl*, 258 N.W.2d at 876; *see also Busse v. Bd. of Cty. Comm'rs*, 241 N.W.2d 794, 796 (Minn. 1976).

Here, the district court considered the statutory criteria of the responsibilities and duties of the Freeborn County sheriff, as well as Freitag's job performance. This included his "significant improvements" to the sheriff's office and additional duties beyond those typical for his office, including implementing a drone program, increasing training, and reinstituting a K-9 program. Then, the district court shifted to the non-statutory valid factors including the comparable county data, such as the neighboring counties' populations, employees supervised, inmate intake, and sheriffs' salaries. Using this evidence, the district court averaged the median salaries of neighboring and statewide sheriffs. In doing so, the district court thoroughly explained the reasoning for its calculation, and the materials in the record provide a basis for the district court's decision

to set Freitag's salary at \$113,952. Therefore, the decision was not against the facts in the record.

To convince us otherwise, the county argues that the district court "exclusively" relied on the evidence of what other counties pay their sheriffs when determining Freitag's salary.³ This assertion does not reflect what is in the record. While the bulk of the district court's discussion involved the comparative salaries of neighboring counties' sheriffs, its analysis of Freitag's duties and responsibilities, in particular the additional work Freitag performed in his position, was how the district court determined that \$97,020 was not an appropriate salary. The county argues that by ignoring its justifications, like the decreasing tax base and constituent concerns, the district court also erred by looking at factors and evidence raised by Freitag.⁴ But, the supreme court held that "the district court did *not* err in refusing to consider these factors when analyzing whether the Board's decision was arbitrary." *In re Year 2019 Salary*, 955 N.W.2d at 925 (emphasis added).

Turning next to any error of law, the county argues that the district court improperly utilized a "fair and appropriate standard" that is not justified by the salary statute. Caselaw imposes the duty to set "the amount of the sheriff's salary in a *just and reasonable* sum."

³ The county asks that we apply a "conservative approach" in reviewing the district court's discretion in setting Freitag's salary in the interest of separation of powers. But we are reviewing not the county's decision, but the district court's decision setting the sheriff's salary on de novo review. And, the supreme court noted that because a sheriff is a quasi-judicial officer of the court, a "de novo consideration [of compensation does] not offend the constitutional mandate of separation of powers." *Amdahl*, 258 N.W.2d at 873.

⁴ The county also contends that the district court acted as a "rubber stamp" for Freitag when calculating his salary. But we note that Freitag asked for \$120,000, which is higher than the district court's determination of \$113,952.

Id. at 448 (emphasis added). The use of the words “fair” and “appropriate” throughout the district court’s order do not read as a new standard, but instead are simply adjectives to describe the sheriff’s appropriate salary. In short, the use of the “fair and appropriate” language is comparable to the “just and reasonable” language required by caselaw. Because the district court did not adopt a new standard when reviewing the sheriff’s salary, there was no error of law.

Therefore, because the district court’s determination was not against the facts in the record or based on an erroneous view of the law, the district court did not abuse its discretion when considering statutory and other valid factors when setting Freitag’s salary.

Affirmed.