

SUPREME COURT OF MONTANA

City of Helena v. Svee

377 Mont. 158 (2014) · No. DA 14-0022 · Decided November 25, 2014

SUMMARY

The Montana Supreme Court considered whether Helena City Code § 11-41-2, regulating roofing materials in a wildland-urban interface district, was an impermissible local building regulation rather than a valid zoning ordinance. The court affirmed the ordinance's invalidation because Montana's statewide building-code scheme occupied the field of building materials, and it reversed and remanded the denial of the homeowners' request for attorney fees under the Uniform Declaratory Judgments Act. The court affirmed dismissal of the constitutional claims because the case was resolved on nonconstitutional grounds.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Justice Jim Rice; Jim Rice; Patricia Cotter; Laurie McKinnon; James Jeremiah Shea; Beth Baker
JURISDICTION	Montana
DECIDED	November 25, 2014
DOCKET	DA 14-0022
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Direct appeal by the City of Helena from a summary judgment invalidating a city roofing-material ordinance, with a cross-appeal by the Svees concerning attorney fees and dismissal of constitutional claims.
STANDARD OF REVIEW	Summary judgment is reviewed de novo under M. R. Civ. P. 56. When material facts are undisputed, the court reviews the district court's application of law for correctness. The existence of legal authority to award attorney fees is reviewed for correctness; if authority exists, the fee decision is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential.
PARTIES	City of Helena v. Scott Svee, Megan Svee

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QUESTIONS PRESENTED

1. Whether Helena City Code § 11-41-2, which regulated roofing materials used in construction and repair, was an impermissible building regulation rather than a valid zoning ordinance.
2. Whether the Svees were entitled to attorney fees as supplemental relief under Montana's Uniform Declaratory Judgments Act, § 27-8-313, MCA.
3. Whether the District Court properly dismissed the Svees' constitutional claims without deciding them after resolving the case on statutory grounds.

HOLDINGS

1. The ordinance regulating roofing materials was a building regulation subject to Montana's statewide building-code scheme, not a zoning regulation within the City's delegated zoning authority. Because the ordinance conflicted with state law and intruded into an area affirmatively subjected to state regulation, it was invalid.
2. The Svees were entitled to attorney fees as necessary or proper supplemental relief under § 27-8-313, MCA. The parties were not similarly situated, the declaratory action was necessary to resolve the validity of the City's ordinance in light of multiple enforcement actions, and the action changed the status quo.
3. The District Court properly dismissed the Svees' constitutional claims without reaching their merits because the statutory ruling resolved the case and courts should avoid constitutional questions when possible.

KEY QUOTATIONS

“The Ordinance thus exceeds the zoning authority granted to municipalities by statute and trespasses into subject matter that had been made the exclusive domain of the Department of Labor and Industry by the Legislature.” (¶ 16)

“Because the equitable considerations merit an award of attorney fees and the Svees have satisfied the tangible parameters test, we conclude it was an abuse of discretion for the District Court to deny an award of attorney fees.” (¶ 27)

“This Court has repeatedly recognized that courts should avoid constitutional issues whenever possible.” (¶ 30)

FACTUAL BACKGROUND

The City of Helena created a wildland-urban interface zoning district and adopted an ordinance prohibiting exposed wooden roofing materials and imposing fire-resistance requirements on certain roof repairs. Scott and

Megan Svee, whose home was within the district, replaced damaged wooden shingles on part of their roof after receiving notice that their homeowners insurance would be canceled because of the roof's condition. The City issued a stop-work notice, pursued criminal charges, and filed a civil enforcement action alleging ordinance and building-code violations. The Svees challenged the ordinance's validity through a declaratory-judgment petition.

PROCEDURAL HISTORY

The City filed criminal complaints and then a civil enforcement action against the Svees after they replaced part of their roof with wooden shingles in a wildland-urban interface district. The Svees sought declaratory relief, and both parties moved for summary judgment after agreeing that no material facts were disputed. The District Court held that the challenged ordinance was an unauthorized building regulation, denied the Svees attorney fees, and dismissed their constitutional claims. The Montana Supreme Court affirmed the ordinance ruling and dismissal of the constitutional claims, but reversed and remanded on attorney fees.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for proceedings to determine the appropriate amount of attorney fees to be awarded to the Svees under the Uniform Declaratory Judgments Act.

CASES CITED

- Albert v. City of Billings, 2012 MT 159, 365 Mont. 454, 282 P.3d 704
- Kalispell Education Ass'n v. Board of Trustees, 2011 MT 154, 361 Mont. 115, 255 P.3d 199
- Lorang v. Fortis Insurance Co., 2008 MT 252, 345 Mont. 12, 192 P.3d 186
- Hughes v. Ahlgren, 2011 MT 189, 361 Mont. 319, 258 P.3d 439
- Virginia City v. Estate of Olsen, 2009 MT 3, 348 Mont. 279, 201 P.3d 115
- Western Tradition Partnership, Inc. v. Attorney General of Montana, 2012 MT 271, 367 Mont. 112, 291 P.3d 545
- Trustees of Indiana University v. Buxbaum, 2003 MT 97, 315 Mont. 210, 69 P.3d 663
- Jacobsen v. Allstate Insurance Co., 2009 MT 248, 351 Mont. 464, 215 P.3d 649
- Mountain West Farm Bureau Mutual Insurance Co. v. Brewer, 2003 MT 98, 315 Mont. 231, 69 P.3d 652
- United National Insurance Co. v. St. Paul Fire & Marine Insurance Co., 2009 MT 269, 352 Mont. 105, 214 P.3d 1260
- Mungas v. Great Falls Clinic, LLP, 2009 MT 426, 354 Mont. 50, 221 P.3d 1230
- Ahlgren v. Ahlgren
- New Hope Lutheran Ministry v. Faith Lutheran Church of Great Falls, Inc., 2014 MT 69, 374 Mont. 229, 328 P.3d 586
- Renville v. Farmers Insurance Exchange, 2004 MT 366, 324 Mont. 509, 105 P.3d 280

- Martin v. SAIF Corp., 2007 MT 234, 339 Mont. 167, 167 P.3d 916
- City of Missoula v. Armitage, 2014 MT 274, 376 Mont. 448, 335 P.3d 736
- Merlin Myers Revocable Trust v. Yellowstone County, 2002 MT 201, 311 Mont. 194, 53 P.3d 1268

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