

FILED

March 21, 2025
10:47:26 AM

CASE NUMBER: S-24-0234

IN THE SUPREME COURT, STATE OF WYOMING

THOMAS HAMANN,

Appellant
(Plaintiff),

v.

HEART MOUNTAIN IRRIGATION
DISTRICT, a Wyoming Public Irrigation
District,

Appellee
(Defendant).

S-24-0234

APPELLANT'S REPLY BRIEF

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I. The Liability of HMID in Inverse Condemnations for Actions Taken By Its Employees Within the Scope of Their Duties Is Not a New Issue on Appeal

Whether or not Heart Mountain Irrigation District is liable in inverse condemnation for the actions taken by its employees within the scope of their employment is not a new issue raised on appeal. Rather, from the outset, it has been Mr. Hamann’s theory of recovery under Wyo. Stat. § 1-26-516 against Appellee. *See* Compl. ¶ 43 (“The Defendant Irrigation District is liable for the conduct of Watts and Kenny as its employees who were acting as employees and agents on behalf of the Irrigation District.”); ¶ 4 (“At all times relevant, Randy Watts was the Manager operating and conducting business ... on behalf of Heart Mountain Irrigation District.”); ¶ 54 (“At all times relevant, Defendant Watts was employed by the Heart Mountain Irrigation District, and was acting within the course and scope of his employment as the Manager for the Irrigation District.”).

After Mr. Hamann filed suit against HMID alleging that it was liable in inverse condemnation for the damage caused by its manager and other employees, HMID itself made this issue the focal point of its catch-me-if-you-can defense theory. First, at deposition, Appellee asked each of HMID’s representatives the perplexing question of whether HMID employees are allowed to act outside the scope of their authority. *See, e.g.*, R. at 339. Having safely established that the answer is “no”, Appellee’s co-defendant argued to the district court that Mr. Watts “was not authorized ... to work outside of his scope of employment on the date of the alleged incident.”, Watts MSJ, R. at 439, while HMID argued that:

If Watts did not have the authority from the HMID Board to enter onto Plaintiff’s property to build the road he wanted, there was no “action” taken

by HMID which resulted in the possession of, or damage to Plaintiff's land. ... This unilateral decision by Watts, without authority from the HMID Board does not implicate HMID or impose liability on HMID.

R. at 280.

Besides the self-serving testimony of its own representatives, HMID also pointed to its scant board minutes and argued that “[o]ther than ... statements from Watts as to his authority to enter onto Plaintiff’s property, the record is devoid of any testimony, or other admissible evidence indicating Watts had permission to travel across Plaintiff’s property....” R. at 275¹; *see also* R. at 276 (HMID arguing that “[t]he HMID Board of Commissioners never took action to **authorize** Defendant Watts to enter onto Plaintiff’s property *for any purpose other than work on the water bowl.*”) (emphasis added); R. at 281 (HMID contradicting itself, arguing that “there is no evidence of an official act by HMID giving **authority** to Watts to enter onto Plaintiff’s property.”).

HMID also contended that the following were *material* facts in its Rule 56.1 Statement of Material Facts: “At no point in the Complaint does Plaintiff allege that Watts and Unruh were acting with **express authority** granted by HMID” and “[t]he minutes from HMID board meetings are devoid of any evidence that the HMID Board gave Defendant Watts **authority** to construct a road south of Lateral 79.” *See* R. at 423 ¶¶ 28–29 (emphasis added).

Mr. Hamann responded to HMID’s arguments for summary judgment and statement

¹ Nowhere in its motion did HMID explain why Watt’s testimony—that he received authority from “the entire board” to act as he did, *see* R. at 530–31—would be inadmissible, other than its repeated observations that Wyoming law requires public boards to act at public meetings.

of material facts by denying the asserted “facts” and noting that “Watts testified that he was acting under the **authority** and direction of HMID’s Board and **within the scope of his employment** with HMID.” R. at 502 (emphasis added) (Plaintiff’s Response to HMID’s Rule 56.1 Statement of Material Facts). Plaintiff further argued in a section of its response brief titled “Inverse Condemnation Claim” that:

[i]f HMID is somehow claiming that it is not subject to [inverse condemnation] **due to Defendant Watts not having authority** ... then HMID’s argument in this regard must fail as HMID has admitted ... that it had **authority** to be on the Plaintiffs property at the time ... [and] there is a genuine issue of material fact in controversy as to the extent of **authority** Defendant Watts had on Plaintiffs property that day.

R. at 508 (emphasis added). Plaintiff further stated that “[I]ikewise, the determination as to whether Watts was acting in **scope of his employment** during the time of this incident is a factual determination as Watts has affirmatively stated in his deposition testimony that he was acting within the **scope of his employment** at the time.” R. at 511 (emphasis added).

The district court ultimately agreed with HMID and dismissed Mr. Hamann’s claim after observing that “HMID is correct that inverse condemnation occurs through government action. Inverse condemnation lawsuits are limited to those persons with the power of condemnation ... No person **acting in an individual capacity** has the power of condemnation. In this case, the district has the power of condemnation through statutory authority[,]” (emphasis added) and concluding that “HMID has shown through deposition testimony that the district did not take any official action, or any action at all, that allowed Mr. Watts to go on Hammans’ [sic] land.” R. at 964.

On appeal, Plaintiff still argues that HMID’s employees were acting within the

scope of their duties—not in their individual capacities—and that this type of authority is enough to hold HMID liable under an inverse condemnation for the property damage HMID’s employees intentionally caused while either (1) merely working on the district’s infrastructure (the Riolo bowl) or (2) clearing the disputed south-side ‘roadway’ to access Lateral 79 and “check the drops”, or some combination of the two.²

II. HMID Is “A Person Possessing the Power of Eminent Domain”

On appeal, HMID renews the same lack-of-authority argument argued in depth below, this time tying it more closely to the words used in Wyo. Stat. § 1-26-516, which begins “[w]hen a person possessing the power of condemnation....” Specifically, HMID argues that “[t]here is nothing in the record to suggest that Watts or Unruh possessed the power of condemnation.” Br. of Appellee at 18. But Mr. Hamann dismissed his claims against Randy Watts on appeal, and Watt’s employee, Kenny Unruh, has never been a defendant in this matter. HMID is the only Defendant/Appellee in this matter, and HMID does not clearly contest that HMID is a “person possessing the power of eminent domain.” *See* Compl., R. at 10 ¶ 39 (Hamann pleading that HMID is “a person possessing power of condemnation”); Answer, ¶ 39 (HMID refusing to admit or deny Plaintiff’s allegation, using the same canned avoidance from throughout the Answer). And HMID does not apparently dispute the district court’s holding that “irrigation districts [like HMID] ... have the power to condemn property....” R. at 958; *see* Br. of Appellee at 1–33.

² Mr. Hamann believes that the resolution of the issue on appeal does not require the Court to accept as fact either one of these theories—both are in the scope of an irrigation district’s employees’ job duties. *See* Br. of Appellant at 16–17.

Wyoming’s Eminent Domain Act, Wyo. Stat. §§ 1-26-501–516, does not specifically define “a person” or “a person possessing the power of condemnation” but it does define condemnor, and a condemnor is a “person empowered to condemn[.]” Wyo. Stat. § 1-26-502(a)(iii). The law separately provides an additional definition for “[p]ublic entity” in Wyo. Stat. § 1-26-502(a)(v). Throughout the act, the terms “public entity” and “condemnor” are used such that “condemnor” covers a public entity. For example, Wyo. Stat. § 1-26-513 subsection (a) requires a deposit at the outset of a direct condemnation action by a “condemnor” but then provides an exception that rule, subsection (b), which provides that courts “may waive the requirement of a deposit for a public entity” even though the rule in subsection (a) stated only “condemnor”. This Court construes “all portions of an act ... in pari materia, and every word, clause and sentence of it must be considered so that no part will be inoperative or superfluous.” *Hamlin v. Transcon Lines*, 701 P.2d 1139, 1142 (Wyo. 1985). The exception in 1-26-513(b) for public entities would be totally needless if the definition of condemnor—a person empowered to condemn—was not intended by its authors, the Wyoming legislature, to include public entities, like HMID, which of course are “empowered to condemn.”³ A parsing of the Eminent Domain Act thus reveals that HMID is a “condemnor” and thus “a person possessing the power of condemnation”.⁴

³ Other provisions like Wyo. Stat. § 1-26-509 prescribe detailed pre-condemnation procedures for direct condemnation actions that apply to “condemnors,” again providing special provisions for condemnors who are public entities. *See id.* § 1-26-509(k).

⁴ Furthermore, if there were a “public entity” exception to inverse condemnation liability, on the theory that public entities are not “persons possessing the power of condemnation”

So we are back to square one and the question presented in this appeal: under what circumstances are public entities liable for the actions of their employees which constitute a taking or damaging within the meaning of art. 1 § 33 of the Wyoming Constitution and Wyo. Stat. § 1-26-516? Under the district court’s purported rule, the answer would be “almost never,” so long as the governing body (1) didn’t specifically request the taking or damaging and/or (2) failed to memorialize it such that the Plaintiff can’t prove the specifics of the express grant of authority and/or (3) counsel for the governing body was later able to point to some other legal-deficiency surrounding the alleged authority, like a failure to adhere to all statutory prerequisites for “agency action.” If there is any fundamental fairness, prudential, or constitutional reasoning behind such a rule, Appellee has not bothered explaining it in its briefing.

On the other hand, the federal courts have grappled with this question. Appellee faults Mr. Hamann for relying on this body of law, stating that “Hamann fails to cite any

it would be an exception that would read art. 1 Section 33 right out of the Wyo. Constitution because art. 1 Section 33 prescribes a remedy for takings and/or damagings. Rodney Lang, *Wyoming Eminent Domain Act: Comment on the Act and Rule 71.1 of the Wyoming Rules of Civil Procedure*, 18 Land & Water L. Rev. 739, 761 (1983). (“The statutory recognition of an action for inverse condemnation under section 1-26-516 does not constitute the unveiling of such a right in Wyoming, since section 33, article 1 of the Wyoming Constitution mandates that private property will not be taken or damaged for public or private use without just compensation....”) Furthermore, such an extraordinary exception, if it were to exist, has gone wholly unremarked upon by this Court and the numerous cases before it in which Plaintiffs have held or sought to have held public entities liable under § 1-26-516. *See, e.g., Sinclair v. City of Gillette*, 2012 WY 19, ¶ 18, 270 P.3d 644, 648 (Wyo. 2012) (this Court remarking that the Sinclairs could pursue an inverse claim against the City of Gillette—a public entity); *Smith v. Bd. of Cnty. Comm’rs of Park Cnty.*, 2013 WY 3, 291 P.3d 947 (Wyo. 2013) (reversing entry of summary judgment on inverse condemnation claim against Park County—a public entity).

legal authority to support his argument that the decisions in *Del-Rio Drilling and Darby Development* are applicable to Wyo. Stat. § 1-26-516.” Br. of Appellee at 21. But this Court has regularly looked at other states’ and federal courts’ jurisprudence surrounding the Bill of Rights to determine the meaning and scope of similar rights protected by the Wyoming Constitution. *See, e.g., Saldana v. State*, 846 P.2d 604 (1993) (comparing Fourth Amendment to Wyo. Const. art. 1, § 4); *Norgaard v. State*, 339 P.3d 267 (2014) (comparing Eighth Amendment to Wyo. Const. art. 1, § 14).

Here, a survey of that law reveals at least two things: (1) the U.S. Constitution’s guarantee of just compensation for takings is not defeated by a government agency’s crabbed legal defense that the government employee’s actions were not specifically and expressly requested by superiors whose requests were made with perfect statutory compliance, *see* Appellant’s Opening Br. at 10–17, and (2) Wyoming’s own “taking or damaging” provision was adopted by the framers of the Wyoming Constitution to increase, not decrease, the circumstances under which government is liable when the government takes or damages private property. *See id.* at 18–22. Together, these conclusions suggest that a public entity is liable under Wyo. Const. art. 1, § 33 and Wyo. Stat. § 1-26-516, when public employees take or damage property within the scope of their job duties.

CONCLUSION

The order on summary judgment should be vacated and the case remanded for further proceedings.

Respectfully submitted this 21st day of March, 2025.

s/ Austin Waisanen _____
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CERTIFICATE OF SERVICE

I hereby certify that on March 21, 2025, I electronically filed the foregoing document via the Wyoming Supreme Court C-Track Electronic Filing System.

I further certify that service of the foregoing will be accomplished upon the following participants in this case, who are registered users of the Wyoming Supreme Court C-Track Electronic Filing System, by the Wyoming Supreme Court C-Track Electronic Filing System at the participants' email address as recorded this date in the Wyoming Supreme Court C-Track Electronic Filing System:

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I further certify that the foregoing document is the exact copy of the written document filed with the Wyoming Supreme Court Clerk and has been scanned for viruses and is free of viruses. Additionally, I certify all required privacy redactions have been made, and with the exception of those redactions, every document submitted in digital form is an exact copy of the written document filed with the Wyoming Supreme Court Clerk.

DATED: March 21, 2025.

s/ Austin Waisanen

Austin Waisanen