

STATE OF MINNESOTA

IN SUPREME COURT

A19-1363

Court of Appeals

Gildea, C.J.

In the Matter of: The Year 2019
Salary of Freeborn County Sheriff.

Filed: March 10, 2021
Office of Appellate Courts

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S Y L L A B U S

Because no member of the Freeborn County Board of Commissioners articulated a
reason behind or basis for the salary the County Board set for the Freeborn County Sheriff,
the district court did not clearly err when it concluded that the salary determination was
arbitrary.

Reversed and remanded.

OPINION

GILDEA, Chief Justice.

The issue in this case is whether the district court clearly erred when it concluded that the Freeborn County Board of Commissioners acted arbitrarily when it set the 2019 salary of the Freeborn County Sheriff at \$97,020. In the salary appeal brought under Minn. Stat. § 387.20 (2020), the district court determined that the County Board acted in an arbitrary fashion because the testifying commissioners did not “articulate any reasoning behind the \$97,020 figure.” The court of appeals reversed. Because the testimony at trial supports the district court’s findings and conclusion, we hold that the district court did not clearly err. We therefore reverse the court of appeals and remand to that court for further proceedings.

FACTS

Appellant Kurt Freitag (“Sheriff”) is the sheriff for respondent Freeborn County. Because Freeborn County has a population of less than 75,000 people, the Sheriff’s salary is set annually by the Freeborn County Board of Commissioners (“County Board”). *See* Minn. Stat. § 387.20, subd. 2(a). In November 2018, the Sheriff presented his 2019 salary request at a County Board workshop. He requested a salary of \$113,952, which represented a 23 percent increase from his 2018 salary of \$92,403. The Sheriff spoke for about 15 minutes and presented written materials in support of his requested salary. His materials included a breakdown of average sheriff salaries in comparable counties. The County Board made no decision at that meeting.

But at a public meeting held in December 2018, the County Board set the Sheriff's 2019 salary at \$97,020. A motion was made that the Board set the salary at this number, and it was passed without discussion or explanation as to how the commissioner who offered the motion arrived at this amount.

Under Minnesota law, a sheriff may appeal a county board's salary determination to the district court. Minn. Stat. § 387.20, subd. 7. On appeal, the district court holds a "hearing de novo" and may consider new or additional evidence regarding the sheriff's salary determination. *Id.* The district court may set aside the salary and make its own salary determination "as is justified by the record" in two instances. *Id.* First, the district court may replace the salary set by the board if the district court concludes that the county board acted "in an arbitrary, capricious, oppressive or unreasonable manner." *Id.* Second, the district court may do so if the court finds that the county board acted "without sufficiently taking into account the extent of the responsibilities and duties of the office of the sheriff, the sheriff's experience, qualifications, and performance." *Id.*

Dissatisfied with the County Board's salary determination of \$97,020, the Sheriff appealed to the district court under Minn. Stat. § 387.20, subd. 7. He alleged that the County Board, in setting his salary, "acted in an arbitrary, capricious, oppressive or unreasonable manner or without sufficiently taking into account the extent of the responsibilities and duties of the office of the sheriff, the sheriff's experience, qualifications, and performance as required under Minn. Stat. § 387.20, subd. 7." The district court held a 2-day trial and considered documentary evidence and witness testimony from both the Sheriff and members of the County Board.

The Sheriff testified about his responsibilities and duties. He testified that he oversees over 90 employees, supervises and assesses the records of the sheriff's office, and manages (including hiring, firing, and disciplining) patrol staff, the security team, transport deputies, detectives, patrol sergeants, and jail staff. The Sheriff also testified that he approves trainings, manages vehicles, evaluates equipment, and sets the budget for the sheriff's office. And he explained changes he has made to the office since becoming sheriff. These changes include implementing a K-9 program and a drone program, increasing patrol, raising the per diem rate paid by the federal government on the County's Immigration and Customs Enforcement program, implementing a body camera policy, and managing the County Sheriff's Office Facebook page.

Several County Board commissioners also testified. In their testimony, they explained why they rejected the Sheriff's proposed salary of \$113,952. Commissioner James Nelson testified that he took into account constituent concerns and what other officials might think if the Board granted the 23 percent increase. He also testified that he considered that he was working within a budget. Similarly, Commissioner Christopher Shoff testified that he took into account constituent concerns regarding the size of the raise request in rejecting the Sheriff's request. Commissioner Shoff also testified that he considered the budget, the tax base, and what other officials would think if they granted the request.

Although the County Board commissioners were able to articulate why they rejected the Sheriff's proposed figure of \$113,952, they did not explain why they decided on a salary of \$97,020. Commissioner Nelson testified that he was given the proposed figure

of \$97,020 by Commissioner Glen Mathiason 10 to 15 minutes before the December meeting. Commissioner Nelson testified that he agreed to Commissioner Mathiason's figure because it was higher than his own figure, but he had no idea how Commissioner Mathiason came up with the figure or on what factors it was based. Commissioner Nelson also testified that, shortly before the meeting, he spoke with Commissioner Mike Lee to see if he would agree to Commissioner Mathiason's proposed figure. Commissioner Lee said that he agreed. Commissioner Shoff was not approached because he had not yet arrived at the meeting, and Commissioner Daniel Belshan was not approached because it was believed that he would oppose the figure. Commissioner Nelson testified that, between November 27 and December 11, there were no meetings of the County Board and no written communications exchanged between the Commissioners discussing the Sheriff's 2019 salary.

The district court found that the County Board acted both arbitrarily and without sufficiently taking into account the responsibilities and duties of the sheriff's office. In finding that the County Board acted in "an arbitrary fashion" in setting the Sheriff's salary, the court emphasized that the testifying County Board commissioners were unable to articulate any reasoning behind the \$97,020 figure and that there was no discussion at either the November workshop or the December meeting regarding that figure.¹

¹ Commissioner Shoff testified that there was some discussion at the November workshop around the fact that the Sheriff's requested salary of \$113,952 represented a 23 percent raise. But Commissioner Shoff stated that there was no discussion of the \$97,020 salary figure.

In finding that the County Board “did not sufficiently take into account the extent of the responsibilities and duties” of the office, as well as the Sheriff’s “experience, qualifications, and performance,” the district court found that “the commissioners who testified only have a summary knowledge, and lack a full understanding, of the responsibilities and duties of the office of the Sheriff of Freeborn County.” The court noted that the County Board based its rejection of the Sheriff’s proposed \$113,952 salary on constituent reactions, poor economic conditions of Freeborn County, and concern over the amount of the raise requested. The County argued that the commissioners’ consideration of these factors meant that the Board’s decision was not arbitrary. But the court declined to consider this argument because the cited factors are not among the factors set out in Minn. Stat. § 387.20, subd. 7.

Because the district court determined that the County Board’s decision was arbitrary, the court went on to set the Sheriff’s salary. The court set the salary at \$113,952, which was the amount the Sheriff initially requested from the County.² The court determined that \$113,952 was an appropriate salary based on testimony at trial, the briefs submitted by the parties, and written materials provided to the court that included data regarding sheriffs’ salaries from comparable counties, a cost of living adjustment, and comparable salaries in the marketplace.

The court of appeals reversed, concluding that the district court’s findings and conclusions were clearly erroneous. *In re Year 2019 Salary of Freeborn Cnty. Sheriff*,

² Before the district court, the Sheriff requested that his salary be set at \$120,000.

946 N.W.2d 613, 627 (Minn. App. 2020). First, the court of appeals determined that it was an error of law for the district court to decline to address the non-statutory factors identified by the County Board. *Id.* at 623. Second, the court of appeals determined that “[t]he board members’ inability to articulate an exact mathematical process used to calculate the dollar amount” of the Sheriff’s salary did not render the decision arbitrary. *Id.* Finally, the court of appeals determined that the district court clearly erred in finding that the County Board did not sufficiently take into account the responsibilities and duties of the Sheriff’s office and the Sheriff’s experience, qualifications, and performance. *Id.* at 624.

We granted the Sheriff’s petition for review.

ANALYSIS

The Sheriff argues that the district court did not clearly err in concluding that the County Board’s setting of his 2019 salary was arbitrary or that the County Board failed to sufficiently “take into account the extent of the responsibilities and duties of [the Sheriff’s] office, as well as [his] experience, qualifications, and performance.” The County disagrees on both issues and asks us to affirm.

A.

Before turning to the merits of the parties’ arguments, we begin with the standard of review. Under Minnesota Statutes section 387.20, subdivision 7, the role of the appellate court is not to review the County Board’s salary determination *de novo*. Rather, the appellate court is to review the district court’s findings under the clear error standard of review. *Amdahl v. Cnty. of Fillmore*, 258 N.W.2d 869, 874 (Minn. 1977).

This is so because the Legislature has explicitly provided for de novo review in the district court in an appeal of a county board's salary determination for a county sheriff. Minn. Stat. § 387.20, subd. 7. In *Amdahl*, we explained that this grant of de novo review “specifically empower[s] the district court to substitute its judgment for that of the county board upon a determination that the board has acted arbitrarily, capriciously, oppressively, or without sufficiently taking into account the extent of the responsibilities and duties of the office.” *Id.* at 873. Noting this legislative grant of power, we contrasted the varying standards of appellate review for salary appeals for certain elected officials. *Id.* at 874.

Because fixing the salary of an elected official is largely a legislative function, we explained that it would offend the separation of powers for a district court to review de novo a county board's salary determination for most elected officials. *Id.* at 873. But we held that it does not violate the separation of powers for district courts to review de novo the salary determinations for judicial and quasi-judicial officers. *Id.* Sheriffs are quasi-judicial officers. *Cahill v. Beltrami Cnty.*, 29 N.W.2d 444, 446 (Minn. 1947). And when reviewing a salary determination for quasi-judicial officers, such as county sheriffs, the district court is necessarily vested with “wide discretion.” *Id.*

Accordingly, “[w]here the district court is by statute required to grant a trial de novo,” as is true under Minn. Stat. § 387.20, subd. 7, we have applied on appellate review the clearly erroneous standard. *Amdahl*, 258 N.W.2d. at 874 (citation omitted) (internal quotation marks omitted). We do so because “the trial court is then acting as a court of first impression.” *Id.* When we review a district court's factual findings for clear error, we “examine the record to see ‘[i]f there is reasonable evidence’ in the record to support

the court's findings." *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013) (quoting *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999)).

In short, the district court may "substitute its judgment for that of the county board" when certain conditions are met. *Amdahl*, 258 N.W.2d at 873. But in reviewing the district court's decision, appellate courts may not substitute their own judgment for that of the district court. Instead, we review the district court's decision for clear error.

B.

With the applicable standard of review in mind, we now turn to the parties' arguments. The County Board argues that the court of appeals is not limited to reviewing the record strictly for support of the district court's findings, and the court of appeals here correctly reviewed the entire record to determine if the findings were manifestly contrary to the weight of the evidence. In addition, the County Board argues that the district court erred as a matter of law by declining to consider the non-statutory considerations cited by the commissioners: constituent complaints, budgetary concerns, and considerations of potential responses from other elected officials.³ Because the district court's findings specifically mention that the County Board relied on these non-statutory factors, the County Board argues that the record establishes that it had a rational basis for its decision.

³ The statute requires the County Board to take into account the extent of the responsibilities and duties of the Sheriff's office, as well as the Sheriff's experience, qualifications, and performance. Minn. Stat. § 387.20, subd. 7. The district court noted that the County Board appeared to base its salary decision on other, non-statutory factors, and because, according to the district court, the plain language of the statute does not require the County Board to consider those non-statutory factors in setting the salary, the court declined to address those arguments.

The Sheriff responds that the court of appeals misapplied the standard of review and improperly substituted its own judgment for that of the district court. According to the Sheriff, the court of appeals should have determined whether the record *could support* the district court’s findings—not whether the record *could support a holding contrary* to the district court’s findings. Therefore, the Sheriff argues that the court of appeals improperly reversed the district court’s findings and conclusions. We agree with the Sheriff that the court of appeals misapplied the standard of review.

When we review a district court’s decision for clear error, we merely “examine the record to see ‘[i]f there is reasonable evidence’ in the record to support the court’s findings.” *Rasmussen*, 832 N.W.2d at 797 (quoting *Fletcher*, 589 N.W.2d at 101). Because such reasonable evidence is present in the record, we cannot agree with the court of appeals that the district court clearly erred in finding that the County Board acted in an arbitrary fashion in setting the Sheriff’s salary.

A local governmental entity’s decision is arbitrary and capricious “if it reflects its will rather than its judgment, or when a decision is based on whim or is devoid of articulated reasons.” *Appeal of Krenik*, 903 N.W.2d 224, 231 (Minn. 2017) (citations omitted) (internal quotation marks omitted). Here, the district court based its arbitrariness finding on the fact that none of the testifying County Board commissioners articulated a reason for arriving at a salary of \$97,020. The court explained that:

There has been no information provided to this Court regarding how or why the County Board decided that a \$4,617 salary increase was fair and appropriate. Indeed, the three commissioners who testified indicated they felt it was ‘fair,’ yet no commissioner attempted to explain why the \$97,020 figure was chosen.

While the court of appeals is correct that the County Board need not “articulate an exact mathematical process used to calculate” the Sheriff’s salary, *In re Year 2019 Salary*, 946 N.W.2d at 623, the County Board certainly must articulate *some* reason for settling on a salary figure. *See Appeal of Krenik*, 903 N.W.2d at 231. And here, the record supports the district court’s finding that there was no explanation for why the County Board decided on a salary of \$97,020. In other words, the district court could have reasonably concluded that the County Board’s salary determination was “devoid of articulated reasons.” *Id.* (citation omitted) (internal quotation marks omitted).

In concluding otherwise, the court of appeals essentially substituted its own judgment for that of the district court. In its opinion, the court of appeals emphasized the County Board commissioners’ testimony regarding non-statutory factors—constituent complaints, budgetary concerns, and considerations of potential responses from other elected officials. *See In re Year 2019 Salary*, 946 N.W.2d at 622–23. The court of appeals then assumed that the County Board used these factors to arrive at the salary figure of \$97,020. *Id.*

But in this case, the testifying County Board commissioners tied their consideration of the non-statutory factors only to their *rejection* of the Sheriff’s requested salary of \$113,952—not to their *setting* of his salary at \$97,020. *See* Minn. Stat. § 387.20, subd. 7 (stating that the district court reviews whether the county board’s “*setting* [of] such salary . . . was arbitrary” (emphasis added)). None of the commissioners used those concerns to explain “the justness and reasonableness of the [\$97,020] salary itself.” *Cahill*,

29 N.W.2d at 448. They merely cited these concerns in explaining why they thought the proposed salary of \$113,952 was unreasonable.

The assumption of the court of appeals that these factors were used to *set* the salary of \$97,020 was not dictated by the record in this case; in fact, the record suggests that the County Board commissioners cited these factors only to *reject* the proposed salary of \$113,952. Because the commissioners did not rely on the non-statutory factors in setting the Sheriff's salary, the district court did not err in refusing to consider these factors when analyzing whether the Board's decision was arbitrary. And because of the deferential standard of review, the court of appeals should not have substituted the district court's findings with its own interpretation of the record.

In sum, there is reasonable support in the record for the district court's determination that the County Board's salary decision was arbitrary. Accordingly, we hold that the district court did not clearly err in setting aside the Board's salary decision.⁴

C.

The County Board also argued in the court of appeals that the district court erred in setting a new salary for the Sheriff under Minn. Stat. § 387.20, subd. 7. Because the court of appeals concluded that “the district court incorrectly determined that the county board

⁴ Because we uphold the district court's decision that the County Board's salary determination was arbitrary, we do not address the Sheriff's additional argument that the Board made its decision without taking into account the Sheriff's duties, responsibilities, experience and performance. The statute is written in the disjunctive so either ground is sufficient for the district court to have set aside the Board's salary determination. See Minn. Stat. § 387.20, subd. 7 (noting that district court is to set sheriff's salary if the county's decision is arbitrary *or* made without considering the sheriff's duties).

acted in an arbitrary manner and failed to consider the statutorily required factors,” the court of appeals did “not address the district court’s calculation of a new salary for Freitag.” *In re Year 2019 Salary*, 946 N.W.2d at 626 n.16. Neither party raised or addressed this issue in this court. Therefore, we remand to the court of appeals to consider whether the district court abused its discretion in setting the amount of a new salary for the Sheriff. *See Cahill*, 29 N.W.2d at 446, 448 (noting that the district court has “wide discretion” in setting the sheriff’s salary and that “the county board and the court shall base their decisions on public considerations relating to the justness and reasonableness of the salary itself”).

CONCLUSION

For the foregoing reasons, we reverse the decision of the court of appeals and remand to that court to address the remaining issues on appeal.

Reversed and remanded.