



Krone v. Roundup (decision)

DISTRICT COURT

PUBLIC DUTY: Claim of negligent maintenance of hydrant that spewed mud at house fire barred by public duty doctrine . . . Oldenburg.

A fire occurred 7/27/13 at the house in Roundup in which Bryan Krone was residing. He did not own it but it contained his belongings. Roundup VFD Asst. Chief Russell's affidavit establishes that the VFD responded timely, began suppression to the degree that was safe and within protocols, applied 1,500 gallons of water from 2 trucks, then attempted to use a hose attached to a hydrant which only spewed mud, the VFD was unable to extinguish the blaze, and the home and Krone's possessions were destroyed. Krone alleges that the City breached its duty to maintain the hydrant in good & workable condition. Both parties request summary judgment. Although there may be a legitimate dispute as to whether Krone's possessions could have been saved had the hydrant worked properly, the determinative issue is whether Roundup owed a duty to Krone.

There are no special circumstances claimed by Krone, argued to the Court, or that would constitute an exception to the public duty doctrine in the facts of this case. Clearly, *Kent* (Mont. 2015) places firefighting duties directly under the purview of the public duty doctrine.

Krone argued that *Kent* found public duty unconstitutional. That is not correct. Justice Cotter in her special concurrence stated that there had been no specific request to find it unconstitutional. She did opine that "it is difficult to sustain the public duty doctrine in light of [Art. II §18]." However, the Court left constitutionality for "another day." In examining the discussions in *Kent* and the many cases cited therein, it is this Court's opinion that some Justices are bothered by the breadth of circumstances in which the doctrine is now asserted and applied. Their frustration may be that opinions have strayed from the original protection given to basic public services such as fire & police, which the majority found fall specifically under the doctrine. However, until that "another day" arises and the Montana Supreme Court finds differently, the public duty doctrine is the law in Montana, and particularly under the facts of this case.

Krone urged the Court to examine the facts in light of other general principles that may bind Roundup. This was part of the analysis in *Kent* and was based in part on *Gatlin-Johnson*. Those rulings arise under a premises liability theory not applicable here. Krone has cited no additional theories or principles under which Roundup could be found liable. Summary judgment for Roundup.

Krone v. Roundup, Musselshell DV-15-12, 2/3/16.

Jack Stone, Lewistown, for Krone; Jared Dahle (Nelson & Dahle), Billings, for Roundup.