



Krone v. Roundup (decision)

#### MONTANA SUPREME COURT

FIRE HYDRANT NEGLIGENCE: No trial issue of claim of negligent maintenance of hydrant that spewed mud as evidence shows house could not have been saved by additional water . . . no need to reach public duty . . . Oldenburg affirmed (other grounds) (IOR I-3(c)).

A lightning fire occurred 7/27/13 at the house in Roundup in which Bryan Krone was residing. Roundup VFD immediately initiated suppression in the attic, using 1,500 gallons of water on the trucks. Krone alleges that when firefighters hooked to the hydrant for additional suppression, it spewed dark water that eventually became mud, and that the lack of water caused the house to burn and is evidence that the City breached its duty to maintain the hydrant in good & workable condition. Judge Oldenburg granted summary judgment for the City, determining that there were no special circumstances claimed by Krone that would constitute an exception to the public duty doctrine, and that this Court's precedent placed firefighting duties directly under the public duty doctrine. (MLW 2/13/16). Krone appeals.

It is unnecessary to reach the merits of Oldenburg's public duty determination, as the City has presented sufficient evidence that by the time the 1,500 gallons on the trucks was exhausted there was no possibility that the residence could have been saved: By the time the support truck carrying 1,000 gallons, arrived, "the attic of the home was mostly engulfed." A firefighter removed a ceiling fan, obtained line of sight into the attic, and saw that the attic was fully involved. Power remained active throughout the initial suppression efforts, forcing firefighters to fight from the exterior. The City, through affidavit, states that the attic area was fully involved and the ceilings were beginning to collapse prior to any attempt to introduce water from the hydrant. It also presented expert testimony that if 1,500 gallons did not reduce or extinguish the fire, the seat of the fire had grown to a point that even with additional water the home and its contents would have been a total loss by fire, smoke damage, and/or suppression efforts. Krone does not allege that the firefighters acted negligently in fighting the fire and presents no evidence other than eyewitness accounts of smoke issuing from the attic that supports his motion for summary judgment by establishing that the allegedly non-working hydrant was the cause of his damages or undercuts the City's affidavit evidence or expert testimony. Thus he did not raise a material fact issue requiring a trial even if he were able to demonstrate that the City owed him a duty.

Cotter for the full Court.

Krone v. Roundup, DA 16-128, 9/13/16.

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