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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1289**

Valley Oil Property Holdings, LLC,
Appellant,

vs.

State of Minnesota Department of Transportation,
Respondent.

**Filed February 10, 2014
Affirmed
Worke, Judge**

Scott County District Court
File No. 70-CV-12-8870

Rachel R. Lorentz, Phillip R. Krass, Malkerson Gunn Martin LLP, Minneapolis, Minnesota (for appellant)

Lori Swanson, Attorney General, Jeffery Scott Thompson, Assistant Attorney General, Stephen Daniel Melchionne, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Worke, Judge; and Larkin, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant argues that the district court erred by granting summary judgment to respondent in appellant's inverse-condemnation action to compel respondent to compensate appellant for the taking of their road-access rights. We affirm.

FACTS

Appellant Valley Oil Property Holdings, LLC¹ is the owner of property (the property) located at 7369 State Trunk Highway 13 (the highway) in Savage. Before it closed in February 2012, Valley Oil operated a truck stop and rented three bays to an auto-service business. Valley Oil alleged that through three progressive actions from 1967 to 2011, respondent State of Minnesota Department of Transportation (MnDOT) completely cut off the property's access to the highway, constituting an unjust taking without compensation.

The property originally abutted the highway, which runs east-west, and had direct highway access in easterly and westerly directions. In 1967, MnDOT closed Valley Oil's direct access to the highway, constructed a frontage road between the highway and the property, and transferred ownership of the frontage road to the city of Savage. These actions were taken by MnDOT without compensating Valley Oil either for the resulting loss of its abutment to the highway or for reduction in its highway access. In the reconstruction project, MnDOT also created various access points to the highway from city streets, including at Pennsylvania Avenue, which abuts the west side of the property, and at Louisiana Avenue, which is located about 600 feet to the east of the property.

In 1984, MnDOT again reduced access to the highway from the frontage road near the property by closing Pennsylvania Avenue and extending the frontage road to the west. Valley Oil's remaining access points to the highway were from Louisiana Avenue to the

¹ "Valley Oil" includes all current and prior owners of the property.

east and from Rhode Island Avenue to the west; Rhode Island Avenue is located about 600 feet west of the property.

Following MnDOT's 1984 reconstruction project, Valley Oil filed an inverse-condemnation action to compel MnDOT "to pay damages for the closure of Pennsylvania Avenue at its intersection with Highway 13, and the resulting change in Valley Oil's access to Highway 13." The district court denied MnDOT's motion for summary judgment, noting that Valley Oil had been abutting owners to the highway, that Valley Oil alleged that it "received no compensation" when its abutment to the highway was taken in the 1967 construction project, and that the second step of closing access to the highway was compensable under the facts alleged because the "final step of the taking has been accomplished by the closing of access via the Pennsylvania Avenue intersection." Thereafter, the parties stipulated that a taking had occurred, and the district court appointed commissioners to determine the amount of damages sustained by Valley Oil from the taking and from the "change of access to the main travel lanes of [the highway]." The commissioners appraised the subject property and found \$50,000 as the value of "the damages sustained" by Valley Oil. The commissioner's report states that the damages award was "only for the closure of Pennsylvania Avenue at its intersection with [highway]; and . . . we have not considered or allowed damages for any other items such as grade changes or water ponding."

In 2011, MnDOT began a new construction project that closed access to the highway from both Rhode Island and Louisiana Avenues. Valley Oil alleged that its fuel sales dropped "dramatic[ally]" and it closed its business in February 2012. Valley Oil

initiated a second inverse-condemnation proceeding, alleging that closure of the streets on either side of the subject property “resulted in the total taking of Valley Oil’s access to [the highway].”

On cross-motions for summary judgment, the district court ruled in favor of MnDOT, and this appeal followed.

D E C I S I O N

Summary judgment is proper when the record shows “that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law.” Minn. R. Civ. P. 56.03. This court reviews the district court’s grant of summary judgment de novo to determine whether there are genuine issues of material fact and whether the district court erred in applying the law. *Mattson Ridge, LLC v. Clear Rock Title, LLP*, 824 N.W.2d 622, 627 (Minn. 2012). “We view the evidence in the light most favorable to the party against whom summary judgment was granted.” *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002).

Minn. Const. art. 1, § 13 provides that “[p]rivate property shall not be taken, destroyed or damaged for public use without just compensation therefor, first paid or secured.” Likewise, Minn. Stat. § 160.08, subd. 4 (2012), provides that “[p]roperty rights, including rights of access, air, view, and light, may be acquired [by state] road authorities with respect to both private and public property by purchase, gift, or condemnation.” “Property owners who believe the state has taken their property in the constitutional sense may petition the court for a writ of mandamus to compel the state to

initiate condemnation proceedings.” *Dale Props., LLC v. State*, 638 N.W.2d 763, 765 (Minn. 2002).

Valley Oil argues that the district court erred by concluding that the \$50,000 in compensation Valley Oil received as damages in its successful inverse-condemnation action following the 1984 reconstruction project was for the total loss of access to the highway. “Property owners have a right of ‘reasonably convenient and suitable access’ to a public street or highway that abuts their property.” *Grossman Invs. v. State by Humphrey*, 571 N.W.2d 47, 50 (Minn. App. 1997) (quoting *Hendrickson v. State*, 267 Minn. 436, 446, 127 N.W.2d 165, 173 (1964)), *review denied* (Minn. Jan. 28, 1998). But “not every denial of immediate or convenient access will support a claim for damages.” *Id.* at 51. “An abutting property owner suffers compensable damage for loss of access only when the owner is left without reasonably convenient and suitable access to the main thoroughfare in at least one direction.” *Id.* at 50 (quotation omitted). “The imposition of even substantial inconvenience has not been considered tantamount to a denial of reasonable access.” *Id.* On given facts, the determination of whether a change in access constitutes a compensable taking is a question of law. *Id.*

We agree with the district court’s reasoning in granting summary judgment to MnDOT. Minnesota caselaw considers a governmental taking of road access as a singular or binary event, culminating when reasonably convenient and suitable road access is denied to a property owner. *Hendrickson*, 267 Minn. at 446, 127 N.W.2d at 173. In *Johnson Bros. Grocery, Inc. v. State, Dep’t. of Highways*, the supreme court recognized that a governmental taking may occur in partial “steps,” but recovery is

premised upon loss of access that meets the test of a compensable taking. 304 Minn. 75, 78, 229 N.W.2d 504, 505 (1975). Other cases recognize that partial losses of access that fail to constitute a taking are not compensable. *See, e.g., State by Mondale v. Gannons, Inc.*, 275 Minn. 14, 23, 145 N.W.2d 321, 329 (1966) (stating that “[t]he law is well settled . . . that the dividing of a roadway by median strips or dividers cannot be made the subject of compensation in condemnation” when the property owner retains access in one direction).

Here, Valley Oil’s interest in access to the highway as an abutting landowner was extinguished in 1967 by means of MnDOT’s construction of a frontage road to the south of the highway and transfer of ownership of that road to the city of Savage. Following the 1984 reduction in access, Valley Oil was compensated for its loss as an abutting landowner to the highway. Thus, at the time of the current condemnation action, Valley Oil had no legal ground for challenging the loss of access to the highway because it was not an abutting landowner. *See Grossman*, 571 N.W.2d at 50.

While Valley Oil argues that it was not fully compensated for the taking of its highway access, Valley Oil stipulated that a taking occurred as a result of the 1984 project that included loss of access. Before submitting the matter to the commissioners to determine compensation, the district court “decide[d], as a threshold matter, whether a taking of property . . . occurred in the constitutional sense[,]” and concluded that a taking had occurred. *Id.* While individual uncompensated acts can together constitute a taking, once a taking has occurred that extinguishes an abutment, the injured landowner has no further right to compensation for the loss of “reasonably convenient and suitable access.”

Id. As noted by the district court in denying summary judgment following the 1984 project, the closing of Pennsylvania Avenue would entitle Valley Oil “to compensation . . . since the second and final step of the taking has been accomplished by the closing of access via the Pennsylvania Avenue intersection.” Having once been compensated for the governmental taking, which included loss of highway access, Valley Oil cannot now be compensated further for reductions in its access.

Affirmed.