

NO. A06-0215

State of Minnesota
In Supreme Court

City of Fifty Lakes,

Appellant,

vs.

John Wesley Hebert, Linda W. Hebert, John Wallace Hebert,
 Jennifer E. Arbuckle, Brian J. Arbuckle, William F. Schoenwetter,
 Lewis J. Schoenwetter, Claire Schoenwetter, and Helen F. Weber by
 Roger M. Weber, her attorney in fact,

Respondents.

BRIEF OF AMICUS CURIAE
MINNESOTA EMINENT DOMAIN INSTITUTE

Scott M. Lucas (#291997)
 OLSON & LUCAS
 One Corporate Center I, Suite 575
 7401 Metro Boulevard
 Edina, MN 55439
 (952) 224-3644

Attorneys for Respondents

Kirk Schnitker (#235611)
 Jon W. Morpew (#287301)
 SCHNITKER & ASSOCIATES, P.A.
 1330 – 81st Avenue Northeast
 Spring Lake Park, MN 55432
 (763) 252-0114

Attorneys for Amicus Curiae
the Minnesota Eminent Domain Institute

Susan L. Naughton (#259743)
 LEAGUE OF MINNESOTA CITIES
 145 University Avenue West
 St. Paul, MN 55103-2044
 (651) 281-1232

Attorneys for Amicus Curiae League of Minnesota Cities

Paul D. Reuvers (#217700)
 Pamela J.F. Whitmore (#232440)
 IVERSON REUVERS
 9321 Ensign Avenue South
 Bloomington, MN 55438
 (952) 548-7200

Attorneys for Appellant

Thomas H. Boyd (#200517)
 WINTHROP & WEINSTINE, P.A.
 Suite 3500
 225 South Sixth Street
 Minneapolis, MN 55402
 (612) 604-6400

Attorneys for Amicus Curiae
Builders' Association of Minnesota

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STATEMENT OF LEGAL ISSUES

- I. Minnesota Statute § 508.25 guarantees that Torrens property shall be free from all encumbrances and adverse claims. Minnesota Statute § 508.02 declares “[n]o title to registered land in derogation of that of the registered owner shall be acquired by prescription or by adverse possession.” Is the City of Fifty Lakes legal argument in conflict with the Minnesota Torrens statutes in its attempt to claim ownership of that portion of Respondents’ property that deviated from the platted road?

The Minnesota Court of Appeals held that Respondents have exclusive right to possession of their property where a gravel road deviated from the platted road, and therefore, could maintain an action for ejectment against the city.

INTRODUCTION

The Minnesota Eminent Domain Institute (hereinafter “MEDI”) is an organization comprised of Minnesota attorneys who practice primarily in the area of eminent domain. The purpose of MEDI is to promote legislation and to advance case law that will protect the rights of property owners throughout the state. MEDI is intended, in part, to serve as a counterbalance to the extensive lobbying and litigation efforts currently conducted by a wide variety of government-sponsored organizations, such as the League of Minnesota Cities.

MEDI’s interest in this appeal is primarily private in nature and is intended to promote the fair treatment of property owners who have had their property trespassed upon by a governmental entity.¹ However, MEDI believes there is a strong public interest in ensuring that all persons receive fair and equitable treatment if they own an interest in property which has been interfered with by a governmental entity.

MEDI respectfully submits this *amicus* brief in this case to address issues of particular importance to landowners, which include: the importance of preserving the statutorily defined rules for the acquisition of Torrens property and the proper interpretation of Minnesota Statute § 160.05. For the foregoing reasons, MEDI respectfully submits this brief as *amicus curiae* in support of Respondents.

¹ Pursuant to Minn. R. Civ. App. P. 129.03, MEDI certifies that this brief was not authored in whole or in part by counsel for either party to this appeal, and that no other person or entity made a monetary contribution to its preparation or submission.

STATEMENT OF THE CASE AND FACTS

The Minnesota Eminent Domain Institute concurs with Respondents' statement of the case and facts.

SUMMARY OF ARGUMENT

Respondents have suffered a continuing trespass to their registered Torrens property since 1971 as a result of the City of Fifty Lakes (hereinafter “City”) constructing a gravel road upon their properties that deviated from the platted roadway. Minnesota Statute § 508.02 guarantees that registered Torrens property is immune from any claims of title by prescription or adverse possession. Despite the clear and specific protection of the Torrens statute, the League of Minnesota Cities (hereinafter “League”) claims in its brief that the general provisions of the use and maintenance statute apply to Torrens property. Under this interpretation, it would abrogate the special protection granted to Torrens property by statute from prescription and adverse possession claims.

Based upon the unique facts and circumstances of this case, the Minnesota Court of Appeals correctly concluded that because an owner of registered property cannot be dispossessed of their property by mere continuous trespass or adverse possession, Respondents have a “present and exclusive right to possession” of the portion of their property encroached upon by the gravel road. *Hebert v. City of Fifty Lakes*, 2007 WL 582956, *5 (Minn. App. 2007). Therefore, Respondents were entitled to maintain an action for ejectment against the city.

The City and the League want this Court to believe this is an eminent domain case. However, that is merely a pretextual explanation for what the City is trying to do; which is trying to acquire Respondents’ property via adverse possession. The City does not want to have to incur the costs of moving its road and it does not want to have to acquire

Respondents' property via condemnation because it will have to pay current fair market value for that property. It wants this Court to believe it has the right to acquire Torrens property via adverse possession or in the alternative, that Respondents' claim periods against the City have tolled.

Once title to property is registered, it is impossible to acquire title to that property by adverse possession. The language of Minnesota Statute § 160.05 contains no legislative grant of authority for cities to acquire prescriptive or adverse possession rights to streets or roadways over registered Torrens property. Additionally, Minnesota Statute § 160.05 carves out an exception for its application to unplatted city streets and the street that is the subject of this litigation is a platted street.

ARGUMENT

I. THE PURPOSE OF MINNESOTA STATUTES CHAPTER 508 IS TO ESTABLISH AN INDEFEASIBLE TITLE FREE FROM ANY AND ALL RIGHTS OR CLAIMS NOT REGISTERED WITH THE REGISTRAR OF TITLES AND MINNESOTA STATUTE § 160.05 DOES NOT APPLY TO TORRENS PROPERTY.

A. Minnesota Torrens law establishes an indefeasible title free from any and all rights or claims not registered with the Registrar of Titles.

Torrens title registration commenced pursuant to Minnesota Statutes Chapter 508 is an *in rem* judicial proceeding. *Carino v. Insular Gov. of Philippine Islands*, 212 U.S. 449, 456 (1909). The action is in the nature of a quiet title action, and the effect of registration of title is to transfer the property from the recording act system to the Torrens system. *See* Minn. Stat. Chapter 507 (2006); Minn. Stat. Chapter 508 (2006). The entry of the final decree of registration binds the land and “forever quiets title to it.” *U.S. v. Ryan*, 124 F. Supp. 1, 8 (D. Minn. 1954). In the absence of fraud, the decree binds the “entire world.” *Id.* at 12. Thereafter, “every conveyance, lien, attachment, order, decree, or judgment, or other instrument or proceeding” must be “filed and registered with the registrar in the county” pursuant to the requirements of the statutes. Minn. Stat. §508.48 (2006).

This Court previously described the fundamental purpose and guarantee of registered Torrens property,

[t]he purpose of the Torrens law is to establish an indefeasible title free from any and all rights or claims not registered with the register of titles, with certain unimportant exceptions, to the end that anyone may deal with such property with the assurance that the only rights or claims of which he need take notice are those so registered.

Mill City Heating and Air Conditioning Co. v. Nelson, 351 N.W.2d 362, 364 (Minn. 1984). Otherwise stated, “it is expected that anyone dealing with registered land need look no further than the certificate of title for any transactions that might affect land.” *Id.* at 364-65. The Minnesota Appellate Courts have steadfastly protected the integrity of the Torrens Act in order to ensure that interests not reflected on the Certificate of Title do not burden registered property.

B. Once title is registered, it is immune from any claim of ownership by adverse possession.

An important and fundamental right inherent in Torrens property is that once registered, the property is immune from the claims made by any person, entity or city of adversely possessing the property. Although Minnesota Statute § 508.02 provides that registered land “shall be subject to the same burdens and incidents which attach by law to unregistered land[,]” it also specifically and categorically declares without limitation that “[n]o title to registered land in derogation of that of the registered owner shall be acquired by prescription or by adverse possession.” An application of Minnesota Statute § 160.05 that results in government ownership of land is nothing less than public acquisition of property via adverse possession. It is statutory adverse possession as opposed to acquisition based in common law. Pursuant to Minnesota Statute Chapter 508, Torrens registration is a complex proceeding, which ensures that after entry of decree of title registration, it is impossible to acquire title to the registered property by adverse possession.

In *Petition of McGinnis*, 536 N.W.2d 33, 37 (Minn. App. 1995), the Minnesota Court of Appeals held that Minnesota Statute § 508.02 “[a]nd the case law interpreting it explicitly prohibit adverse claims against the registered property.” Torrens immunity was also affirmed in *Konantz v. Stein*, 283 Minn. 33, 167 N.W.2d 1, 11 (1969), where this Court held that “[o]nce land is registered, a stranger to the title cannot acquire an interest in it based upon his continued possession or use.”

Additionally, in *Moore v. Hendrickson*, 165 N.W.2d 209 (1968), the plaintiff brought an action to enjoin the defendant from blocking the plaintiff’s access to a garage. Among other theories, the plaintiff argued he had acquired the access by a prescriptive easement 22 years prior to the registration of the relevant property. The trial court agreed and the Minnesota Supreme Court reversed. The plaintiff argued that the failure to object to the registration proceeding which cut off his rights was excusable neglect. The Minnesota Supreme Court refused to take an activist role in undermining the decree of registration:

If the statute were construed to grant that authority to the court, the finality of the decree, the fundamental basis, as well as the capstone of the Torrens system of perfecting land titles, would disappear, for just what a court may do to the Torrens judgment on application addressed to its equitable powers *will find a limit only in the ingenuity of counsel in searching for and devising methods of attack.*

Id. at 217 (emphasis added) *citing* *Murphy v. Borgen*, 182 N.W. 449, 450 (1921). Even the particularly harsh results in *Moore* did not give rise to the equitable claim that the plaintiff had acquired an easement by necessity.

We realize that such a disposition is harsh in this case, but it is a disposition which will have an impact far beyond this case. To hold that the

prescriptive easement is good against defendant despite the title registration would create the novel doctrine that a grantee has a lesser title than his grantor and would, in addition, largely destroy the conclusiveness of title which the Torrens Act seeks to attain.

Id. at 218.

In this case, Respondents' property is registered Torrens property. The City claims an interest in Respondents' property over a city road that deviated from the platted roadway within the plat of Respondents' city lots. In an attempt to get around the Torrens statute, the City and League argue that Minnesota Statute § 160.05, Subd. 1, confers the right of adverse possession of Respondents' property. However, the plain language of Minnesota Statute § 508.02 guarantees that registered Torrens property cannot be acquired in such a manner. In its decision, the Court of Appeals recognized this same conclusion when it held that "[b]ecause the owner of registered property cannot be dispossessed of that property by mere continuous trespass or adverse possession, appellants have a 'present exclusive right to possession' of the portion of their property encroached upon by the gravel road." *Hebert*, 2007 WL 582956, *5. As a result of this, no matter how much time passes, the City cannot acquire Respondents' property and is subject to ejectment.

C. The correct statutory interpretation is for all statutes to be given effect. However, in a case of conflict, the specific statute prevails over the general statute.

The legislature intends for all statutes to be read in a manner that will result in statutes working congruently with one another. Minn. Stat. § 645.26, Subd. 1 (2006).

While on their face Minnesota Statutes § 508.02 and § 160.05 seem irreconcilable,

adherence to the plain language in both statutes results in them being compatible.

Minnesota Statute § 160.05, Subd. 1 provides,

[w]hen any road or portion of a road has been used and kept in repair and worked for at least six years continuously as a public highway by a road authority, it shall be deemed dedicated to the public to the width of the actual use and be and remain, until lawfully vacated, a public highway whether it has ever been established as a public highway or not This subdivision shall apply to roads and streets except platted streets within cities.

As previously noted, Minnesota Statute § 508.02 specifies that no claim to Torrens property can be obtained through adverse possession. Both statutes can operate in conjunction with one another without resulting in conflict. If the use and maintenance statute could apply to Torrens property, as suggested by the League, it would directly conflict with the Torrens statute explicit guarantee of immunity from all claims of adverse possession. It is better to read the statutes in a way that does not result in conflict, which can be accomplished through ascertaining the plain meaning of both statutes.

Even assuming a conflict existed between Minnesota Statutes § 508.02 and § 160.05, the Torrens statute would prevail because it is a specific declaration of Minnesota law and legislative intent. Minn. Stat. § 645.26, Subd. 1 (2006). Minnesota Statute § 508.02 is more specific in that it provides an explicit pronouncement that registered Torrens property cannot be acquired by prescription or adverse possession. The use and maintenance statute is general in scope and does not provide any specific authority to cities over Torrens property. If there was an irreconcilable conflict between the two

statutes, the specific guarantee of Minnesota Statutes § 508.02 must be given deference over the general application of the use and maintenance statute.

II. EVEN IF MINNESOTA TORRENS LAW DID NOT CONFLICT WITH MINNESOTA STATUTE § 160.05, MINNESOTA STATUTE § 160.05 WOULD STILL NOT BE APPLICABLE BECAUSE IT DOES NOT APPLY TO “PLATTED STREETS WITHIN CITIES.”

A. The plain language of Minnesota Statute § 160.05 is clear; it does not apply to platted streets within cities.

Minnesota Statute § 160.05 also does not apply in this case because the plain language of the statute excludes platted streets within cities from application of the statute. Minnesota Statutes § 160.05, Subd. 1, explicitly provides that “[t]his subdivision shall apply to roads and streets *except platted streets within cities.*” (emphasis added). There is no ambiguity on the plain meaning of the exception. It is clear that if a case involves a platted street within a city, Minnesota Statute § 160.05 does not apply.

To favor the City and the League’s argument in this regard would be to: (1) give no meaning to the “except for platted streets within cities” exception; (2) protect cities to the detriment of certain property owners; and (3) diminish the significance of Torrens property.

B. If Minnesota Statute § 160.05 is applicable, it must not result in absurd or unreasonable applications.

As previously noted, the plain language of Minnesota Statute § 160.05, the statute does not apply to platted streets within cities. Despite this unambiguous language, the League asserts that deviations from platted roads are not considered platted streets, and, therefore, do not fall under the statute exception. If deviations of platted roads are not

platted roads, and, therefore, not subject to the use and maintenance exception, it would mean that there is an unwritten exception to the exception. Such an interpretation would lead to the exception swallowing the rule. It could result in cases where a city places a road completely out of the platted boundaries for the road and after six years of use and maintenance it acquires that land even though the statute would not allow the same thing to occur for roads built on the properly platted location. The first rule in ascertaining legislative intent is that the legislature does not intend for legislation to lead to absurd results. Minn. Stat. § 645.17(1). Minnesota Statute § 160.05 should be construed based upon its plain language and the City should be barred from acquiring Respondents' property based upon the clear and unambiguous exception in that statute.

III. THE MINNESOTA LEGISLATURE HAD A SPECIFIC PURPOSE BEHIND ESTABLISHING THE MINNESOTA TORRENS LAW AND IT IS NOT UNREASONABLE TO EXPECT UNIFORM APPLICATION OF THAT LAW.

A. The City should be held accountable for the errors it made in the placement of the gravel road.

Despite the unique circumstances in this case of a deviated platted road encroaching upon Torrens property, the City and the League argue that cities will incur substantial costs if this Court affirms the decision of the Court of Appeals. The League predicts that since 70,000 miles of local roads are gravel roads, cities will face significant expense in fixing deviations from platted roads. However, the League provides no facts to corroborate this assertion.

Despite the hyperbole of the City and the League, the reality is that presumably there very few roads within cities that deviate from their platted paths across Torrens

property. What the City and the League really want is this Court to sanction a city's ability to quietly acquire property despite the requirements of both the Torrens statute and the use and maintenance statute. This Court must follow the lead of the Court of Appeals and conclude the correct process for cities to acquire this type of property in these situations is through direct negotiation with the property owner or the statutorily prescribed process in Minnesota Statute Chapter 117.²

B. Cities must be held to a higher standard in the orderly acquisition of platted property.

The extensive statutory requirements for creating and regulating cities indicate that the legislature has imposed a higher standard of care upon all cities. There is an expansive list of statutes dictating specific rules on various areas that must be defined in the process of organizing a city such as finance, municipal boundary adjustments, general government and powers. *See* Minn. Stat. Chapter 426 (2006); Minn. Stat. Chapter 414 (2006); Minn. Stat. Chapters 416 – 418 (2006); Minn. Stat. Chapter 415 (2006).

Minnesota Statutes Chapter 505 deals with the orderly process of creating platted roadways. It provides the specific procedural steps required in establishing a platted road

² A condemnation action is a constitutional proceeding. The action is *In Rem* against the property rather than the individual. *See State by Peterson v. Werder*, 273 N.W. 714, 716 (Minn. 1937). Minnesota statutes codify the due process requirements a condemning authority must satisfy in order to acquire property. Among other things, all condemnations are to be conducted with independent judicial oversight to ensure minimum constitutional requirements are satisfied. *See* Minn. Stat. § 117.075; *In Re Rapp*, 621 N.W.2d 781, 786-87 (Minn. Ct. App. 2001). Section 117.011 provides that, with limited unrelated exceptions, “[a]ll bodies, public or private, who have the right of eminent domain, when exercising the right, shall do so in the manner prescribed by [Chapter 117].” Minn. Stat. § 117.011. In this case, the City has not complied with any of the conditions precedent in Chapter 117 and, as a matter of law, has not acquired the property by condemnation.

within a city. Chapter 117 provides for the orderly process of acquiring property by governmental entities.

The many rules regarding the structure and powers of a city indicates that there is an overall sense of order and organization in a city. While the legislature conferred great powers upon cities in this area, it also created a great responsibility that cities will acquire property and develop platted roads in a uniform, consistent and legally accurate manner. The process of creating platted roads is a statutorily defined process, and it is reasonable to expect that a city governed by specific statutes would apply the proper legal and boundary requirements for the creation of such roads and the correct way to acquire the property on which it would place platted roads. This expectation of responsibility is likely the reason for the platted streets exception in Minnesota Statute § 160.05.

C. A spurious public policy argument is not sufficient justification for the abrogation of Minnesota Torrens law.

Minnesota Statute § 508.02 clearly establishes that Torrens registration guarantees that registered title shall be free from all claims of adverse possession. Despite claims that it is good public policy to provide definite resolution and to protect the public's interest in established public roads, the purpose behind the Torrens law overrides that interest. If this Court were to conclude that Minnesota Statute § 160.05 applies to Torrens property and that the exception in the statute does not apply to deviated portions of platted roads, it would result in a deprivation of Respondent's fundamental Torrens property rights of freedom from all claims of adverse possession. If the legislature

wanted municipalities, such as the City, to have the power to abrogate the provisions of the Torrens statute, the legislature could have expressly granted it.

CONCLUSION

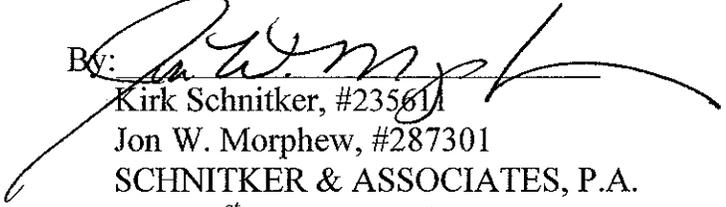
The Minnesota Court of Appeals properly concluded that owners of registered Torrens property cannot be dispossessed of their property by continuous trespass or adverse possession, and that Respondents have a “present and exclusive right to possession” of the portion of property encroached upon by the city road. Minnesota Torrens law provides a clear pronouncement that registration of Torrens property results in the creation of an indefeasible title free from all claims not registered with the registrar of titles and that Torrens property may not be acquired through adverse possession. The legislature had a specific intention for establishing Minnesota Torrens law. It is not unreasonable to expect cities to be subject to the same requirements of Torrens law as everyone else. Finally, if the legislature wanted governmental entities, such as cities, to have the power to abrogate the provisions of Minnesota Torrens law, the legislature could have expressly granted it.

Additionally, Minnesota Statute § 160.05, which gives road authorities ownership of property that they have used and maintained for six years does not apply in this case because the subject property is registered Torrens property. It also does not apply because a specific clear and unambiguous exception is included within that statute. That exception is for streets within cities that are platted, which is the case with the property in this case.

For the foregoing reasons, MEDI respectfully requests that this Court affirm the decision of the Court of Appeals.

Respectfully submitted, this 27th day of July, 2007.

**MINNESOTA EMINENT DOMAIN
INSTITUTE**

By: 

Kirk Schnitker, #23561

Jon W. Morpew, #287301

SCHNITKER & ASSOCIATES, P.A.

1330 81st Avenue Northeast

Spring Lake Park, MN 55432

(763) 252-0114

Attorneys for Amicus Curiae Minnesota
Eminent Domain Institute

**VICE-PRESIDENT AND SECRETARY OF,
AND ATTORNEYS FOR, MINNESOTA
EMINENT DOMAIN INSTITUTE**