

State Of Minnesota
In Court Of Appeals

No. A09-495

Dennis Larson,

Appellant,

vs.

State of Minnesota and County of Douglas,

Respondents.

APPELLANT'S REPLY BRIEF

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LEGAL ARGUMENT

1. M.S.A. §117.225

Respondents analyze this case in the context of an original taking and rely upon the law relating to same. This case is not about the State's power of condemnation; it is about a landowner's statutory right to petition the court to discharge an easement where the landowner claims the land is no longer "being used for the purpose for which it was acquired." The difficulty in analyzing this case arises from the lack of any authority addressing or applying M.S.A. §117.225. Nonetheless, the court is granted the authority to discharge the easement "upon such terms as are just and equitable."

In granting Summary Judgment to Respondents, the lower court applied common law principals to the statute relied upon by Appellant. The cause of action to discharge the easement in the case at bar grants the court discretion where the easement "is not being used for the purpose for which it was acquired." M.S.A. §117.225. The district court (and Respondents) required Appellant to establish common law elements of abandonment or estoppel - neither of which was required by the statute. ("For reasons indicated in the court's discussion of 'nonuse' element of abandonment, Plaintiff's §117.225 argument fails." Addendum @ 26). If the legislature intends that a statute codify common-law elements, it will so indicate its intention. *See Webb Business Promotions, Inc. v. American Electronics & Entertainment Corp.*, 617 N.W.2d 67 (Minn. 2000).

"Where the intention of the legislature is clearly manifested by plain unambiguous language . . . no construction is necessary or permitted." *Phelps v. Commonwealth Land*

Title Ins. Co., 537 N.W.2d 271, 274 (Minn. 1995). “Statutory construction is unwarranted when a statute is not reasonably susceptible of more than one interpretation.” *Abrahamson v. Abrahamson*, 613 N.W.2d 418, 421 -422 (Minn. App. 2000). “Furthermore, it has long been the rule that ‘[w]here failure of expression rather than ambiguity of expression . . . is the vice of the enactment, courts are not free to substitute amendment for construction and thereby supply the omissions of the legislature.’” *State v. Lucas*, 589 N.W.2d 91, 94 (Minn. 1999)(citing *State v. Moseng*, 254 Minn. 263, 269, 95 N.W.2d 6, 11-12 (1959)).

If a statute is ambiguous, the court can look to legislative history to determine the intent, or can look to similar statutes. See *In re Welfare of Children of N.F.*, 749 N.W.2d 802 (Minn. 2008). In looking to other statutes to interpret legislative meaning, it is necessary to look to statutes with “common purposes and subject matter.” *State v. Lucas*, 589 N.W.2d 91, 94 (Minn. 1999). “Where a statute speaks with clarity in limiting its application to specifically enumerated subjects its application may not be extended to other subjects by a process of construction since construction lies only in the domain of ambiguity.” *Griswold v. Ramsey County*, 242 Minn. 529, 534, 65 N.W.2d 647, 651 (1954). Respondents attempt to rely upon language in M.S.A. §161.43 to interpret and limit the scope of M.S.A. §117.225. However, §117.225 is not ambiguous, thus should not be so construed by this court. Additionally, if any ambiguity exists, incorporating §161.43, a statute with an entirely different purpose, can not rectify it.

The commissioner of transportation only has the authority delegated to it by statute. See *Petition of Burnquist*, 220 Minn. 48, 19 N.W.2d 394 (1945). The trial court,

on the other hand, obtains its power and authority from the Minnesota Constitution. *See* Minn. Const. Art. 1, § 8, Art. 6, § 1. The purpose of M.S.A. §161.43 is to establish the process by which the commissioner of transportation may dispose of all or a portion of an easement. M.S.A. §161.43 “vests discretion in the Commissioner of Transportation regarding the decision to sell the easement.” *Mortenson v. State*, 446 N.W.2d 674, 678 (Minn. App. 1989). It gives the State the right on its own impetus to release all or some of an easement it determines is no longer necessary. The right conferred upon the fee owner under the same statute is limited to “the right to receive an offer for the sale of an easement at an appraised value.” *Id.* In contrast, M.S.A. §117.225 creates a cause of action for landowners. It does not contain any language limiting the constitutional powers of the trial court to grant equitable relief. Respondents’ assertion that M.S.A. §117.225 must be construed by reference to M.S.A. §161.43, and its meaning derived from a comparison of same, is inconsistent with the rule of statutory construction.

Under M.S.A. §117.225, a fee owner has the right to petition the court for discharge of an easement, and the court can grant any equitable relief it deems just and appropriate. Such relief would include releasing portions, or retaining easements over portions, of the affected property. There is no statutory basis for attempting to limit the court’s authority to a release of “all or nothing.” Thus, if Appellant can establish that the easement is not being used for the purpose for which it was acquired, it can obtain equitable relief from the court.

Respondents maintain the easement is still being used for “highway purposes,” thus the relief sought under §117.225 is not available. There is a very clear portion of the

disputed easement that is not being used for highway purposes. It is used as a recreation area and has been so maintained since the mid-1900's. Taking land for a specific purpose then using that land for an alternative purposes is not authorized by statute. Rather, an authority desiring to take land for a specific purpose - even to take the land that has already been acquired through condemnation by another political subdivision - must follow specific procedures. For example, in *State by Head v. Christopher*, 284 Minn. 233, 170 N.W.2d 95 (1969), the State sought to obtain land for a highway. Although the land was already devoted to public use as a park, it was still necessary to condemn the land for the specific purpose of highway use. *See also, Buck v. City of Winona*, 271 Minn. 145, 135 N.W.2d 190 (1965); *Wolfson v. City of St. Paul*, 535 N.W.2d 384, 387 (Minn. App. 1995) (“When a governmental unit condemns land for a limited public purpose, the land reverts back to the fee owner if the property is no longer used for the public purpose.”)

Similarly, where a political subdivision is acquiring property for a public purpose, and another political subdivision seeks to use some of the property for its own public purpose, the two parties must work together pursuant to M.S.A. §117.016 on a joint acquisition, as opposed to having one party simply carve out a section after the condemnation action has been concluded. If already-condemned land could simply be used for any purpose, regardless of the original intent in taking, the statutes requiring political subdivisions to work together, or authorizing the subsequent taking of public land, would not be necessary. *See State by Lord v. North Star Concrete Co., Parcel Channel Change No. 26*, 265 Minn. 483, 486-487, 122 N.W.2d 118, 121 - 122 (1963)

("[I]t seems obvious that the commissioner is not authorized to take a greater estate than is needed, nor permitted to take less than what in fact will be used consistent with the purposes for which the land is taken.").

There is an exception to the rule that public land must be used for the purpose for which it was acquired. Pursuant to M.S.A. §161.431, the commissioner of transportation may lease trunk highway land if not needed for trunk highway purpose. Such seems to be the situation at bar. However, the statute requires the state to offer the lease to the fee owner prior to offering it to the county:

The commissioner may lease to the fee owner for a fair rental rate and upon terms and conditions that the commissioner deems proper, an easement in real estate acquired for trunk highway purposes and not then needed for trunk highway purposes. If the fee owner refuses to lease or if after diligent search the fee owner cannot be found, the commissioner may lease the easement to an agency or to a political subdivision of the state on terms and conditions agreed upon, or the commissioner may lease the easement to the highest responsible bidder upon three weeks' published notice of the lease offering in a newspaper or other periodical of general circulation in the county where the easement is located.

M.S.A. §161.431. In the case at bar, there is no evidence that the State ever offered the leased land to Appellant prior to entering into leases with the County. M.S.A. §161.434 also authorizes the State to enter into agreements for the limited use of a highway right-of-way. However, even this use is limited to "highway purposes" and can not include "the erection of permanent buildings, except buildings or structures erected for the purpose of providing information to travelers through commercial and public service advertising pursuant to agreements as provided in sections 160.272 to 160.276." The use put to the land by the County far exceeds the use authorized by M.S.A. §161.434.

The land at issue is not a designated state park, a state recreation area, or state wayside. *See* M.S.A. §85.013 and M.S.A. §85.011 (designating state parks, recreation areas and waysides). Despite Respondents' assertions to the contrary, the land at issue was acquired for state highway purposes but is now being used as a recreation area without any state or municipal party ever having gone through the necessary process of acquiring the land *for a park*. The state does not have unfettered authority to use easements for whatever purpose and in whatever manner it desires. It must comply with statutory law as well as the Constitution of Minnesota.

In the case at bar, the disputed land was originally taken and specifically intended to be used for highway purposes. The use of portions of that land quickly changed and has remained consistent to date - not for highway purposes but instead for a recreational beach. Although the State has the authority to enter into management agreements with local municipalities to maintain parks, that authority does not create a right in either the State or the local authority to *establish* a park or recreational area on land that is designed and taken for highway purposes. *See ex.* M.S.A. § 471.67 (“The commissioner of natural resources and any city, however organized, by its governing body or duly authorized park board or park commission, may make an agreement under such terms and conditions as they deem advisable for the management, maintenance and improvement by such municipality of any lands lying wholly within its boundaries *which were acquired by the state for park purposes* by gift, purchase or condemnation not inconsistent with the terms and conditions or restrictions under which such lands were acquired.”) If the state or the county desired to use the taken land for such alternative purpose, they should have

followed the appropriate laws. Although portions of the easement are still being used for the “purpose for which it was acquired,” additional portions clearly are not being so used. The court, having the ability to discharge the easement *on such terms as are just and equitable*, has the discretionary authority to grant equity. That equitable power includes the ability to discharge a portion of the easement, or to discharge the easement with some remaining easement (i.e., leaving intact the bike trail). The court, in failing to recognize this equitable power, abused its discretion in concluding that Appellant’s Complaint failed to state a claim upon which relief could be granted; and committed reversible error in interpreting and applying M.S.A. §117.225.

2. Res Judicata/ Collateral Estoppel

As an alternative basis for affirming summary judgment, the State argues that Appellant’s 2005 quiet title action established that the property is subject to the State’s easement and therefore his present claims are barred by collateral estoppel and res judicata. “The burden is upon the litigant who invokes a prior judgment as a bar or estoppel to plead and prove it.” *Gustafson v. Gustafson*, 178 Minn. 1, 4, 226 N.W. 412, 413 (1929). “Where real property is the subject of a legal action, a party seeking to invoke collateral estoppel has a heavy burden.” *Barth v. Stenwick*, 761 N.W.2d 502, 509 (Minn. App. 2009).

Res judicata and collateral estoppel are similar, in that under either doctrine, a “right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction . . . cannot be disputed in a subsequent suit between the same parties or their privies . . .” *Kaiser v. Northern States Power Co.*, 353 N.W.2d 899, 902

(Minn. 1984) (*cites omitted*). Collateral estoppel is different from res judicata in that it “precludes relitigation of issues that are both identical to those issues already litigated by the parties in a prior action and necessary and essential to the resulting judgment.” *Matter of Trusts Created by Hormel*, 504 N.W.2d 505, 509 (Minn. App. 1993). To be barred by collateral estoppel, the issue before the court must be identical to one in the prior proceeding. *Care Ins., Inc.-Roseville v. County of Ramsey*, 612 N.W.2d 443, 448 (Minn. 2000). “The record in the former case will be examined to determine just what issues were litigated and decided.” *Gustafson*, 178 Minn. at 4, 226 N.W. at 413.

Res judicata “applies more generally to a set of circumstances giving rise to entire claims or lawsuits.” *Hauschildt v. Beckingham*, 686 N.W.2d 829, 837 (Minn. 2004). “There are three components of res judicata: (1) a final judgment on the merits; (2) a second suit involving the same cause of action; and (3) identical parties or parties in privity.” *Myers Through Myers v. Price*, 463 N.W.2d 773, 776 (Minn. App. 1990). “Two causes of action are the same when they involve the same set of factual circumstances or when the same evidence will sustain both actions.” *Id.* at 777. “Once there is an adjudication of a dispute between parties, res judicata prevents either party from relitigating claims arising from the original circumstances, even under new legal theories.” *Hauschildt*, 686 N.W.2d at 837.

The issue of the non-use of the State’s easement was not before the court in the quiet title action. The only issue before that court was the right of ownership in the subject land, including Appellant’s fee simple ownership. Appellant’s Complaint in the quiet title action alleged that he and his tenant in common were the fee simple owners of

the land, subject to the State's easement. Appellant continues to admit that his ownership is subject to the easement rights of the State and that the State initially obtained a valid easement for highway purposes. At some time subsequent to obtaining that easement, the State used portions of the land for other than highway purposes, thus giving rise to the current cause of action. The ongoing scope of the easement in light of the rights conferred upon Appellant pursuant to M.S.A. §117.225 was never before the Court in the quiet title action.

Though Appellant may have had the right to contest the State's ongoing easement in the underlying quiet title action, such contest was not necessary to the quiet title action, and could be maintained at a later date. In *Neill v. Hake*, 254 Minn. 110, 93 N.W.2d 821 (1958), an action was brought to determine boundary lines, where a prior court had already issued an order addressing the title to the land. The appellate court concluded that the failure to address a property line dispute in the previous action did not prevent the court from addressing it in the subsequent action. *See also, Rouse v. Boye*, 161 Minn. 431, 201 N.W. 919 (1925) (Prior action to determine adverse claims on property did not bar action to determine boundaries since prior action determined only title).

The issue now at bar was not litigated in the prior quiet title action. In order for Appellant to seek the remedy available under M.S.A. §117.225, it is necessary that an easement actually exist. Absent the existence of an easement, a fee owner would have no basis for bringing a claim to *discharge* the easement. Thus, although a finding that an easement exists may be necessary to bring an action under §117.225, in bringing a quiet title action to determine ownership, it is not conversely *necessary* to question the ongoing

use of that easement. Respondents' request for affirmation of summary judgment under the doctrines of collateral estoppel and res judicata must be denied.

Respectfully submitted,

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