

*State Of Minnesota*  
*In Supreme Court*

No. A09-495

Dennis Larson,

*Petitioner,*

vs.

State of Minnesota and County of Douglas,

*Respondents.*

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**APPELLANT'S REPLY BRIEF**

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## LEGAL ARGUMENT

### 1. Minn. Stat. § 117. 225 Construed Broadly

Respondents contend that this Court can not construe Minn. Stat. § 117. 225 broadly as requested by Larson. “It may well be that the legislature, in creating a substantive right by statute, may, as an element of that substantive right, circumscribe the adjudication of that right more strictly than in other cases, subject to constitutional requirements of due process.” *In re O'Rourke*, 300 Minn. 158, 175 n. 11, 220 N.W.2d 811, 821 n. 11 (1974). For example, the legislature established Chapter 72A to regulate insurance practices. Included within this chapter was Minn. Stat. § 72A.26, authorizing the District Court of Ramsey County to review actions taken under the law. The legislature did not give the court unlimited power but instead, specifically limited the Court’s powers as follows:

. . . the court shall have authority to issue appropriate orders and writs in connection therewith, including, if the court finds it is to the interest of the public, orders enjoining and restraining the continuance of any method of competition, act, or practice which it finds, notwithstanding the report of the commissioner, constitutes a violation of sections 72A.17 to 72A.32.

Minn. Stat. § 72A.26. The limitation to the court’s authority was clearly spelled out in this statute and was enforceable. *See ex. Schermer v. State Farm Fire and Cas. Co.*, 721 N.W.2d 307 (Minn. 2006.)

Although the legislature may set limits on the authority it grants by statute, the courts in Minnesota nonetheless have the ability to grant additional authority by implication. *See Application of Minnegasco*, 565 N.W.2d 706, 712 (Minn. 1997).

Implied authority can be established by reference to “the statutory language, our case law, and the need for a sensible and fair construction of the statutes.” *Id.*, 565 N.W.2d at 711 (“The language of section 216.27 contains no express grant of authority for the Commission to order revenue compensation for a utility when a superseded rate order is reversed on appeal; it simply says that the reasonableness of the rates are to be determined ‘on the merits.’ The question is whether such authority should be inferred from the statutory scheme. For the reasons below, we conclude that this inference should be drawn.”)

In *Miller-Lagro v. Northern States Power Co.*, 582 N.W.2d 550 (Minn. 1998) this court considered the extent to which NSP was authorized to remove trees from a street right-of-way. Although neither the relevant statute nor the relevant ordinance explicitly referenced the right to remove trees, statutory language granted NSP the “right and privilege of constructing, operating, repairing, and maintaining [an electric distribution system and transmission lines].” *Miller-Lagro*, 582 N.W.2d at 553. The court concluded that the broad powers granted by this statute included the right to remove trees. The court further rejected the property owner’s invitation to narrowly interpret the related ordinance that gave NSP the right to “trim trees.” If the court had interpreted the statute to exclude tree removal, it would have created a conflict with the broad authority under the statute. Thus, while neither statute nor ordinance referenced the right to remove trees, the court had no problem inferring this right.

The statute at bar gives the court the authority to discharge an easement on grounds that are just and equitable. Unlike the limited power conferred on the courts by Minn. Stat. § 72A.26, the language of Minn. Stat. § 117.225 does not place limitations on the court's ability to do equity. Similar to *Miller-Lagro v. NSP*, this court should construe broadly the powers granted to the district court and should reject the district court's narrow interpretation of the statute.

## **2. Recreation Area Versus Rest Area or Wayside Rest**

State contends that the subject easement has been established as a State "Rest Area," and pursuant to Minn. Stat. § 85A.05, subd 12, may be established and used as a swimming beach. State has presented no evidence that the easement area is a formal "Rest Area," as that term is used in 85A.05. In fact, the website referenced by the State in its brief, <http://www.dot.stat.mn.us/restareas/> does not list the Lake Le Homme Dieu easement area as a recognized "rest area" in Minnesota. The State's website specific to District 4 (including Douglas County) does not list the subject property as a state "rest area." See <http://www.dot.state.mn.us/restareas/contactus/contacts-d4.html>. The State's website does, however, indicate the intention of the State with regard to establishing and maintaining rest areas and wayside rests:

Over 20 million travelers stop at Minnesota Safety Rest Areas annually. Visitors enjoy a wide range of motorist services at the three classes of rest areas and at the one class of waysides that Mn/DOT maintains.

Rest Areas contribute to the safety of the traveling public by providing fatigued drivers the ability to stop and rest. They also reduce the need for stops along highway shoulders and provide an escape from driving under hazardous weather and road conditions. Though their primary value is

accident prevention, they also address many needs of commercial truck operators and help promote the state and state tourism.

*Waysides, on the other hand, primarily provide travelers with access to scenic overlooks, interpretive markers and other points of interest.*

See <http://www.dot.stat.mn.us/restareas/> [*emphasis added*]. Similarly, Minn. Stat. § 85.013 lists the “[d]esignated recreation reserves and waysides heretofore established and hereby confirmed as state recreation areas and state *waysides* together with the counties in which they are situated,” yet does not list the Douglas County “wayside rest.”

Even if the State can establish the subject property is a recognized “Rest Area” as opposed to a “wayside rest,” this still does not prove that using the area as a *recreational area* is allowed under 85A.05, which indicates:

Subd. 12. State rest area; purpose; resource and site qualifications; administration. (a) A state rest area shall be established to promote a safe, pleasurable, and informative travel experience along Minnesota highways by providing areas and facilities at reasonable intervals for information, emergencies, or the rest and comfort of travelers. . . .

(c) . . . State rest areas may be managed to provide parking, resting, restroom, picnicking, orientation, travel information, and other facilities for the convenience of the traveling public. Where located in conjunction with features of interest, state rest areas shall provide interpretive exhibits or other facilities if appropriate to promote understanding and enjoyment of the features.

Minn. Stat. § 86A.05, subd. 12. Despite the uses described under Minn. Stat. § 86A.05 for rest areas, in order to protect the recreation beach that has grown next to the rest area/wayside rest, the State and the County are now attempting to improperly treat the subject property as a recreational area.

Minnesota's recreation statute entitled "Confirmation of creation and establishment of state parks, state recreation areas, and waysides," provides:

The legislature of this state has provided for the creation and establishment of state parks, designated state recreation areas, and waysides for the purpose of conserving the scenery, natural and historic objects and wildlife and to provide for the enjoyment of the same in a manner that will leave them unimpaired for the enjoyment of future generations.

Minn. Stat. § 85.011. State's argument that it is authorized by various provisions under Minn. Chap. 86A to administer the subject wayside rest as a beach misstates the relevant portions of the statutes and relies upon a distortion of the facts. Although a wayside rest is considered a part of the State's "outdoor recreation system" under 86A.04, this does not create the right to unrestricted use of the rest area nor does it create in State the right to alter the classification of the rest area/ wayside rest.

The easement on the subject land, it is undisputed, was originally acquired for purposes of installing a state highway. State is correct that one of the purposes that this court has found consistent with a state highway is the installment of a wayside rest. But the wayside rest at issue here has become something other than a wayside rest. Through the acquiescence of the State, local citizens have turned the wayside rest into a recreational area. The county eventually saw this use as an opportunity and established a contractual relationship with the state to operate a recreational area next to the wayside rest. State now relies upon Minn. Stat. § 86A.08 for its claim that it has the right to use its wayside rest as a recreational area; however, the language of the statute relied upon by State is not applicable to the case at bar. This matter was sued out in 2008. In 2009, the

legislature amended Minn. Stat. § 86A.08. The previous language - the language that would be controlling in the instant action - was more restrictive and provided in relevant part:

**Subdivision 1. Secondary authorization; when permitted.** A unit of the outdoor recreation system may be authorized wholly or partially within the boundaries of another unit only when the authorization is consistent with the purposes and objectives of the respective units *and only in the instances permitted below: . . .*

*(b) The following units may be authorized wholly or partially within a state rest recreation area: historic site, scientific and natural area, wild, scenic, and recreational river, trail, rest area, and water access site. . . .*

*(g) The following units may be authorized wholly or partially within a state rest area: historic site, trail, wild, scenic, and recreational river, aquatic management area, and water access site.*

[italicized language removed with 2009 amendment.]

Notably, the prior version of 86A.08 did not authorize a “recreation area” within a rest area. A “recreation area” under Minn. Stat. § 86A.05, subd. 3. is developed to “provide a broad selection of outdoor recreation opportunities . . . which may be used by large numbers of people.” By contrast, a “rest area” is intended to “promote a safe, pleasurable, and informative travel experience . . . by providing areas and facilities . . . for information, emergencies, or the rest and comfort of travelers.” Minn. Stat. § 86A.05, subd. 12. While the former version of Minn. Stat. § 86A.08 did allow the State to establish a “water access site” in a rest area, in order to allow a water access site the state must first determine that “public access to the body of water is either nonexistent or inadequate.” Minn. Stat. § 86A.05, subd. 9. State now attempts to define its use of the highway easement as “permissible” and “authorized” under Minn. Stat. §§ 86A.05 and

86A.08. Yet there is no evidence that State has ever conducted the necessary analysis under Minn. Stat. § 86A.05 to allow use of the subject easement as a “water access site.” Further, the distinction in both Minn. Stat. §§ 86A.05 and 86A.08 between a “recreational area” and a “rest area,” and the purposes of each type of area, are inconsistent with State’s attempt to lump all activities into one permissible category. This case involves, quite simply, a rest area that took on a life of its own. It was not developed through a strategic plan by the State. It was developed through use by ordinary citizens. The issue now facing this court is whether or not the portion of the easement that has been taken over as a beach is “no longer being used for the intended purpose,” i.e. a rest area or wayside for highway purposes versus a recreational area for “outdoor recreational activities,” such that the land owner has a right to petition the court to remove the disputed portion of the easement. States efforts to turn the rest area into a recreational area authorized and developed under Minn. Chap. 86A should be rejected.

The States agrees [pages 23-24] that there *may* be an issue with regard to the current use of the subject easement as a beach, but then counters that because an undefined portion of the land is used for water run-off from the highway, the entire easement is being used for highway purposes. The district court did not reach this conclusion. The court limited the facts upon which it granted summary judgement to a finding that the subject area (the area exclusive of the actual highway and right of way) is being used as a rest area, and therefore is being used for highway purposes. The court granted summary judgment on this finding in part based upon the conclusion that it did

not have the authority to evaluate portions of the easement but instead could only evaluate the easement as “all or nothing.” Larson maintains that the court did have the authority under Minn. Stat. § 117.225 to discharge portions of the easement, thus should have evaluated the easement in terms of the various uses being put to it by the state and County. On this issue, the court should not have granted summary judgment.

### **3. Res Judicata and Collateral Estoppel Do Not Apply to This Action**

“This court may decline to hear an issue if it is not raised in either a petition for further review or a conditional petition for further review.” *Anderly v. City of Minneapolis* 552 N.W.2d 236, 240 (Minn. 1996). The district court did not address the State’s claim that the present action is barred by the application of res judicata or collateral estoppel. Even if the court had addressed this claim, it would have rejected it.

“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 improper use of the subject 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 Larson’s fee simple ownership. Larson’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. Larson 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 Larson pursuant to Minn. Stat. §117.225 was never before the Court in the quiet title action.

Though Larson 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 Larson to seek the remedy available under Minn. Stat. §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. State's request for affirmation of summary judgment under the alternative doctrines of collateral estoppel and res judicata must be denied.

**CONCLUSION**

Respondents' continued use of the easement in question for purposes other than highway use creates a material fact as to the right of Appellant to have the easement discharged. The district court's conclusion that "discharge of a portion of an easement is beyond the plain scope of § 117.225," and the grant of summary judgment, should be reversed.

Respectfully submitted,

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Dated May 28, 2010

  
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