

No. A11-1116

STATE OF MINNESOTA
IN COURT OF APPEALS

Northern States Power Company, et al.,

Appellants,

vs.

Roger A. Aleckson, et al.,

Respondents.

BRIEF OF RESPONDENTS HANSON AND STICH

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STATEMENT OF THE ISSUES

- I. Did the district court err in finding that public service corporations, when using the power of eminent domain to condemn land for large high voltage electric transmission line projects, are subject to Minnesota Statute § 117.187 when landowners exercise their right under Minnesota Statute § 216E.12, subd. 4 to convert the taking of an easement to a total taking of their entire contiguous land in fee?

- II. Did the district court err in finding that public service corporations, when using the power of eminent domain to condemn land for large high voltage electric transmission projects, are not exempt from paying landowners reasonable relocation costs under Minnesota Statute § 117.52 when landowners exercise their right under Minn. Stat. § 216E.12, subd. 4, to convert the taking of an easement to a total taking of their entire contiguous land in fee?

STANDARD OF REVIEW

The Minnesota Court of Appeals reviews issues of statutory construction de novo. City of East Bethel v. Anoka County Housing and Redevelopment Authority, 798 N.W.2d 375, 380 (Minn. Ct. App. 2011).

STATEMENT OF FACTS

Respondents in this case are homeowners with young families. John and Jeannie Stich have four children, all under the age of nine. See Affidavit of Jeannie Stich, District Court Record, Ex.53. Brett and Nancy Hanson have two children, one in middle school, another in high school. See Affidavit of Nancy Hanson, District Court Record, Ex.52. When it became clear that a high voltage electrical transmission line (hereinafter, “HVTL”) would be placed on their homestead, Respondents did not wish to place themselves and their children in the path of 150-to-170 foot tall, 345-kilovolt double-circuit transmission lines. So, they reluctantly exercised their right under Minn. Stat. § 216E.12, subd. 4,

(commonly known as, the “Buy the Farm” statute) to force Appellants to automatically convert the permanent easement taking into a taking of their entire property in fee.

ARGUMENT

I. THE DISTRICT COURT DID NOT ERR IN FINDING RESPONDENTS ARE ENTITLED TO MINIMUM COMPENSATION UNDER MINNESOTA STATUTE § 117.187, BECAUSE THE MINNESOTA LEGISLATURE REMOVED PUBLIC SERVICE CORPORATIONS’ EXEMPTIONS WITHOUT LIMITING THEIR APPLICATION TO “BUY THE FARM” ELECTIONS.

This is a straightforward case about applying unambiguous statutes that exist for precisely the situation at hand. These statutes were enacted to provide Respondents with “minimum compensation.” Appellants argue against the statutes’ plain meaning and ask this Court to ignore the legislature’s enactments.

Minnesota Statute § 216E.12, subd.2 (2010) specifically references Minnesota Chapter 117, by stating that once an election is made, the proceedings then fall under all of the provisions of Minnesota Chapter 117.

In eminent domain proceedings by a utility for the acquisition of real property proposed for construction of a route or a site, the proceedings shall be conducted in the manner prescribed in chapter 117, except as otherwise specifically provided in this section.

(emphasis added)

Minnesota Statute § 117.012, subd.1 (2011) pre-empts all other laws when it comes to the use of eminent domain for projects in the state. The statute reads, in relevant part:

all condemning authorities...must exercise the power of eminent domain in accordance with the provisions of this chapter, including all procedures, definitions, remedies, and limitations. Additional procedures, remedies, or limitations that do not deny or diminish the substantive and procedural rights and protections of owners under this chapter may be provided by other law, ordinance, or charter.

(emphasis added)

In other words, “all” means “all,” and includes public service corporations such as Appellants. All condemning authorities must abide by the provisions of the chapter, and because the chapter’s provisions include minimum compensation benefits and relocation benefits, public service corporations must comply with the provisions as well. There are very few, limited exceptions to this rule. See Minnesota Statute § 117.012, subd.3 (2011). Minimum compensation and relocation benefits are not part of the exceptions.

The object of interpretation and construction of laws is to “ascertain and effectuate the intention of the legislature.” Minnesota Statute § 645.16 (2010). Every law must be construed, if possible, “to give effect to all its provisions.” Id. To determine the meaning of a statute, the court looks to the plain meaning of the language in the statute itself. Occhino v. Grover, 640 N.W.2d 357 (Minn. Ct. App. 2002). The plain meaning rule assumes the ordinary use of words, accepted norms of grammar and punctuation, and draws from the full-act context of the statutory provision. American Tower, L.P. v. City of Grant, 636 N.W.2d 309, 312 (Minn. 2001) (words and phrases carry plain and ordinary meaning); Glen Paul

Court Neighborhood Ass'n v. Paster, 437 N.W.2d 52, 56 (Minn. 1989) (sections of the statute must be read together to give words their plain meaning).

When interpreting a statute, the court must presume that the legislature meant to give an effect to the law it passed. In 2010, the legislature intended to remove public service corporations' exemptions under Minn. Stat. § 117.189 (2011) with full knowledge that Minn. Stat. § 216E.12, subd. 4 remained a valid Minnesota law. Statutes are presumed to have been passed, "with deliberation and with full knowledge of all existing ones on the same subject." See Qualle v. Beltrami County, 420 N.W.2d 256 (Minn. Ct. App. 1988); See also, County of Hennepin v. County of Houston, 39 N.W.2d 858, 860 (Minn. 1949).

The courts may be guided by the presumption that the legislature does not intend a result that is "absurd," "impossible of execution," or is "unreasonable." See Minnesota Statute § 645.17, subd. 1 (2011); See also Guderian v. Olmsted County, 595 N.W.2d 540, 542 (Minn. Ct. App. 1999). Furthermore, the statute must be examined as a whole. See Amaral v. Saint Cloud Hosp., 586 N.W.2d 141, 144 (Minn. Ct. App. 1998), ("every law shall be construed, if possible, to give effect to all its provisions") citing, Minn. Stat. § 645.16 (1996).

In 2006, the Minnesota Legislature made several changes to its eminent domain chapter, adding the right to minimum compensation. See Minn. Stat. § 117.187 (2006). However, at the same time, the Minnesota Legislature specifically exempted public service corporations such as electrical

utilities from having to pay minimum compensation, provide relocation benefits, and provide other benefits to landowners. See Minn. Stat. § 117.189 (2006).

In 2010, after a series of hearings on the matter,¹ the Minnesota Legislature repealed exemptions for the construction on expansion of high voltage transmission lines (hereinafter, “HVTL”) with capacity of 100 kV or more.

See Minn. Stat. § 117.189 (2010), which states, in relevant part:

Sections 117.031; 117.036; 117.055, subdivision 2, paragraph (b); 117.186; 117.187; 117.188; and 117.52, subdivisions 1a and 4, do not apply to the use of eminent domain authority by public service corporations for any purpose other than construction or expansion of: (1) a high-voltage transmission line of 100 kilovolts or more, or ancillary substations; (emphasis added)

Minn. Stat. § 117.187 provides for minimum compensation in condemnation proceeding. The statute reads:

When an owner must relocate, the amount of damages payable, at a minimum, must be sufficient for an owner to purchase a comparable property in the community and not less than the condemning authority's payment or deposit under section 117.042, to the extent that the damages will not be duplicated in the compensation otherwise awarded to the owner of the property. For the purposes of this section, "owner" is defined as the person or entity that holds fee title to the property. (emphasis added)

¹ The Energy Policy committee and Civil Justice committees heard testimony from CapX2020 executive director, Ms. Priti Patel, and Mr. Rick Evans, representative of Xcel Energy, opposing the removal of exemptions on the basis that public service corporations have additional burdens and costs due to the buy the farm statute. See Rajkowski Aff., Ex.59, ¶4-5; Committee Hearing meeting minutes from February 15, 2010 and March 3, 2010 are available online at: <http://www.house.leg.state.mn.us/comm/minutes1.asp?comm=86109&id=2323> <http://www.house.leg.state.mn.us/comm/minutes1.asp?comm=86128&id=2448>

The effect of the amendments to Minn. Stat. § 117.189 (2010) is that public service corporations are now required to pay minimum compensation damages to those Landowners who “must relocate.” The legislature was fully aware of Minn. Stat. § 216E.12, subd.4 (hereinafter, “Buy the Farm” statute) when the exemptions were removed.

The utilities and interested landowners had the opportunity to weigh in on the effect of the removal of such exemptions when the bill was in committee.² The intent of the legislature was to put public service committees “on par”³ with all other condemning authorities in the state when they take private land for public use.

It is important to note that the Buy the Farm statute only applies when utilities are constructing HVTLs of 200 kV or more, and only applies to a few categories of landowners. This election is not available to everyone; it is only available in specific factual circumstances. The Buy the Farm statute identified specific owners who wished to make the difficult decision of electing to have the utility take some or all of their land.

The Buy the Farm statute states, in relevant part:

² See Civil Justice Policy Committee Hearing, March 3, 2010; (Rick Evans, Xcel Energy, testifying against the removal of such exemptions because public service corporations are subject to Buy the Farm), available online at:

<http://www.house.leg.state.mn.us/comm/minutes1.asp?comm=86128&id=2448>

³ See Civil Justice Policy Committee Hearing, March 3, 2010; (Committee Chairperson Mullery clarifies that the effect of the removal of exemptions for public service corporations would put them in the same category as local units of government.)

Upon the owner's election made under this subdivision, the easement interest over and adjacent to the lands designated by the owner to be acquired in fee, sought in the condemnation petition for a right-of-way for a high-voltage transmission line with a capacity of 200 kilovolts or more shall automatically be converted into a fee taking. Minn. Stat. § 216E.12, subd. 4 (2010).

(emphasis added)

Minn. Stat. § 216E.12, subd.4 states, in relevant part, “The owner...shall have only one such option and may not expand or otherwise modify an election without the consent of the utility.” In this case, Respondents sent notices to Appellants that they were making a Buy the Farm election, requiring the utilities to automatically convert the easement taking to a total taking in fee.

Once the Buy the Farm election was made, Appellants were required to obtain all of Respondents’ property. Nevertheless, Appellants claim that these homeowners are not entitled to minimum compensation, because they do not need to relocate. Respondents will no longer hold fee title to their properties; thus, once the Buy the Farm election is made, the matter proceeds through the condemnation process under Chapter 117.

Appellants’ argument that Respondents are not forced to relocate because they are choosing to move lacks merit. Appellants urge this court to ignore the law. The legislature deliberated and balanced the needs of public service corporations with the concerns of private landowners when it enacted the Buy the Farm statute. The Minnesota Supreme Court upheld the constitutionality of the Buy the Farm statute in Cooperative Power Ass’n v. Aasand, 288 N.W.2d 697, 699-700 (1980) and found, “opponents of the utilities...question whether the

rural community's sacrifice to the commonweal serves a greater social good.” Furthermore, the Aasand court found that the enactment of Minn. Stat. § 216E.12, subd. 4 (2011)⁴, “reflects a creative legislative response to a conflict between rural landowners and utilities concerning HVTL right-of-ways.” Cooperative Power Ass’n v. Aasand, 288 N.W.2d 697, 699-700 (Minn. 1980). The creative response was to allow Landowners to compel the sale of their property if they did not want to live with a HVTL.

Respondents are not willing sellers as Appellants seem to imply. Respondents never wanted power lines and steel poles on their properties. Appellants compare Respondents with sellers in a private arm's length transaction, who should not be able to claim minimum compensation, because it would be some kind of windfall for them. This analogy is simply wrong, because a private transaction is not at issue in this matter. Again, Respondents are not willing sellers. They did not want to move from their homes. Their property was taken by operation of law. Respondents were not marketing their homes to would-be potential buyers. Appellants condemned a portion of Respondents' properties for a HVTL. Respondents are simply exercising their rights under Minn. Stat. § 216E.12, subd. 4.

Appellants also claim they only need a 150-foot easement and it would be unfair to require them to take more land than they need for the project. Appellants again ignore the legislature's “creative response” when it enacted

⁴ Formerly codified as Minn. Stat. § 116C.63, subd.4.

Minn. Stat. § 216E.12, subd.4. It is the landowners' legal right to require the utility to purchase some or even all of their property, and these same landowners have a right to claim minimum compensation, just as any other landowner who is facing condemnation of their property. There is an automatic fee taking of the designated land, whether the landowner designates 40 acres of farmland or 1 acre with a homestead.

If one interprets the Buy the Farm statute to convert only the easement into an automatic fee taking, and not the entire designated property, such an interpretation would be in error. The utility would be acquiring the project easement regardless of Respondents' election. Furthermore, the language of Appellant's easement is so broad that it is equivalent to a fee taking. In fact, Appellants' "temporary easement" is so broad, that it encompasses all of Respondents' land. See A. App. 54.

Despite the fact that Respondents will no longer hold a fee interest in their lands, Appellants still claim they are not forced to relocate. One must ask, in light of Aasand, when would any landowner be in a position where they "must relocate"? Would it be if a HVTL goes up 10 feet from their home? 50 feet? 20 feet? Or if their homes were destroyed by the placement of a HVTL? Of course, utilities may easily avoid destroying homes when they design a route for their power lines. Appellants should not be able to circumvent paying minimum compensation in this manner.

The Minnesota Supreme Court clearly recognized landowners' concerns over HVTL in Aasand, where the court found that opponents to the utilities

resisted further encroachments upon the rural landscape because, “they feared...the effects upon the environment and public health...”, Aasand, at 700. It simply does not matter where the line or pole is on one’s property. Once the election is made, the utility must acquire the designated land.

The Aasand Court stated, “the [Buy the Farm] statute eases the difficulties of relocation by shifting the transaction cost of locating a willing purchaser for the burdened property from landowner to utility.” Id. at 700. Such costs should not be borne by individual homeowners who are forced to personally sacrifice much for the benefit of the general public, when public service corporations may easily spread the cost of such infrastructure among all those benefitting from electrical service.⁵

II. THE DISTRICT COURT DID NOT ERR IN FINDING THAT RESPONDENTS ARE ENTITLED TO RELOCATION BENEFITS UNDER THE MINNESOTA UNIFORM RELOCATION ACT (“MURA”), MINNESOTA STATUTE § 117.52, BECAUSE ONCE RESPONDENTS MADE AN ELECTION UNDER “BUY THE FARM”, APPELLANTS OWNED THE PROPERTY IN FEE AND RESPONDENTS BECAME “DISPLACED PERSONS”.

The analysis and reasoning that applies to the issue of minimum compensation as set forth above, applies equally to the issue of relocation assistance

⁵ Minn. Stat. § 216B.16, subd.7 (2011) provides public service corporations with the ability to petition for rate increases and seek transmission cost recovery riders for “automatic annual adjustment of charges for the Minnesota jurisdictional costs of (i) new transmission facilities that have been separately filed and reviewed and approved by the commission under section 216B.243 or are certified as a priority project or deemed to be a priority transmission project under section 216B.2425; and (ii) charges incurred by a utility that accrue from other transmission owners' regionally planned transmission projects that have been determined by the Midwest Independent System Operator to benefit the utility, as provided for under a federally approved tariff.”

under Minn. Stat. § 117.52 (2010). Minnesota Uniform Relocation Act (hereinafter, “MURA”), expressly incorporates the federal Relocation Act. The federal Act defines “displaced person” as a “person who moves from real property...as a direct result of a written notice of intent to acquire or the acquisition of such real property in whole or in part for a program or project undertaken by a Federal agency...”, See 42 U.S.C.A. § 4601(6)(A)(i)(I). Appellants are wrong when they claim that Respondents are moving by choice and that their “choice” precludes them from relocation benefits, because they are not “displaced persons.” Appellants chose to install a 345 kV HVTL on Respondents’ properties.

Again, Appellants ask this court to ignore the repeal of certain exemptions at one time enjoyed by public service corporations. Appellants want the court to shift the financial burden onto landowners who exercise their rights under Buy the Farm by stating that such homeowners are not “displaced persons” under MURA. MURA does not require any particular kind of taking in order to trigger benefits.

Minn. Stat. § 117.52 states, in relevant part,

In all acquisitions undertaken by any acquiring authority... which, due to the lack of federal financial participation, relocation assistance, services, payments and benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970... are not available, the acquiring authority, as a cost of acquisition, shall provide all relocation assistance, services, payments and benefits required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(emphasis added)

The legislature did not preclude Buy the Farm acquisitions from falling under the mandate of this statute. Appellants’ position that Respondents are not

entitled to relocation benefits produces an absurd result. Once the election under Buy the Farm is made, the matter must proceed through the condemnation process. Landowners will no longer own their land. It does not matter that they choose to make this election. The fact is, they have a legal right to do so.

If a landowner elects to have all his or her land taken, then that landowner will become a “displaced person” because title to the property will pass out of that person’s hands as a direct result of the utilities’ HVTL project. Appellant’s position, it appears, is that the utility would have to basically destroy Respondents’ homes in order to show a direct causal connection. Of course, utilities will seldom intentionally route lines over homes and other structures.

Appellants cite Highway Pavers, Inc. v. U.S. Dep’t of Interior, 650 F. Supp. 559, (S.D.Fla. 1986), as applicable in this case to show that Respondents are not entitled to relocation benefits because they do not meet the two-part causation test required to trigger such benefits. Highway Pavers is not binding on this court and does nothing to assist the court in its analysis because it is a Florida case that addresses a commercial/business relocation by a tenant who was evicted after the owner foreclosed due to non-payment of the lease. The court found that the foreclosure was the “direct” reason the business had to relocate, not direct government action.

In the case at hand, Appellants cannot blame Respondents for breaking the chain of “direct” causation, because they exercised their right to convert an easement to a total taking under Buy the Farm. Appellants are the ones that took

the initial easement by condemnation. Appellants' 345 kV, HVTL project is the direct causal reason Respondents made that election. Respondents did not want to move and never planned to move. Appellants' placement of a HVTL on Respondents' properties provides the direct "casual connection" under MURA. It is for the project's sake that Respondents are moving their families away from their homes.

Appellants claim that the Buy the Farm statute, "merely provides a private benefit" to affected Landowners. See App. Brief, p.21, n.10. The Aasand court held that the Buy the Farm statute provided a creative way to balance the needs of utilities with that of affected landowners; this is not a "private benefit". The Aasand court then recognized that the whole point of the statute is that landowners affected by HVTL should not have to endure a disproportionate sacrifice to the greater social good.

Appellants cite Alexander v. Dep't of Hous. and Urban Dev., 441 U.S. 39, 62 (1979) to claim that in order to trigger the right to relocation benefits, the acquisition "must be 'for,' or intended to further, a federal program or project." This argument is misplaced, because Minn. Stat. § 117.52 (2010) specifically addresses projects wherein no federal funding or financing is available. MURA fills the gap to provide relocation benefits for displaced persons affected by such projects. Thus, Alexander does not apply to the case at bar.

If public service companies are not required to pay relocation costs when a Buy the Farm election is made, a chilling effect on Buy the Farm elections will

occur. Landowners may not even consider the election if they will not be compensated for reasonable relocation expenses or provided minimum compensation in order to purchase a comparable property in the community. The result would be contrary to legislative intent, which was to place public service corporations in the same position as other condemning authorities in Minnesota.

CONCLUSION

This is a straightforward case about applying unambiguous statutes that exist for precisely the situation at hand. These statutes were enacted to provide Respondents with “minimum compensation.” Appellants argue against the statutes’ plain meaning and ask this Court to ignore the legislature’s enactments.

Minn. Stat. § 216E.12, subd.2 specifically references Minnesota Chapter 117, by stating that once an election is made, the proceedings then fall under all of the provisions of Minnesota Chapter 117. The Buy the Farm statute clearly falls within the requirements of Chapter 117. Thus, the district court was correct in finding that Respondents are entitled to receive minimum compensation as defined in Minn. Stat. § 117.187 (2010).

Because Minn. Stat. § 216E.12, subd. 4 (2011) automatically converts the taking of an easement to a fee taking, Appellants become owners in fee. Thus, Respondents must relocate and become displaced persons under MURA. Therefore, the district court did not err in finding that Respondents are entitled to relocation benefits under Minn. Stat. § 117.52 (2010).

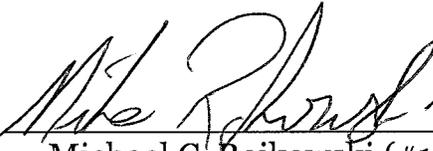
As a matter of public policy, the financial burden of construction and expansion of HVTL projects should be borne by the condemning authority, because it can spread the cost among all members of the public who will benefit from enhanced electrical service. Such costs should not be borne on the backs of individual landowners. This was the intent of the legislature in removing public service corporations' exemptions under Minn. Stat. § 117.189 (2010).

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STATE OF MINNESOTA
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CERTIFICATE OF WORD COUNT COMPLIANCE

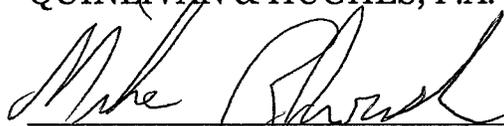
I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3 for a brief produced with a proportional font. The length of this brief is 3,776 words. This brief was prepared using Microsoft Word 2010.

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