

NO. A06-2107

State of Minnesota
In Court of Appeals

In the Matter of the Petition of:

Michael C. Rollins

for the Establishment of a Cartway

**REPLY BRIEF AND SUPPLEMENTAL APPENDIX OF
APPELLANT MICHAEL C. ROLLINS**

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STATEMENT OF LEGAL ISSUES

I.

DID THE TRIAL COURT ERR IN AFFIRMING THE COUNTY BOARD'S DECISION BECAUSE THE COUNTY BOARD APPLIED ERRONEOUS THEORIES OF LAW AND THE CARTWAY STATUTE IS MANDATORY WHEN PETITIONER MEETS THE STATUTORY REQUIREMENTS?

Despite the clear language of Minn. Stat. §164.08 subd.2, which states that the granting of a cartway is mandatory when the petitioner meets all of the criteria for the establishment of a cartway; the trial court affirmed the County Board's decision to deny the Appellant's Petition even though such decision, that the Appellant did not meet the requirements of the statute, was based on erroneous theories of law.

II.

DID THE TRIAL COURT ERR IN AFFIRMING THE COUNTY BOARD'S DECISION BECAUSE THE APPELLANT DOES NOT HAVE ALTERNATIVE ACCESS AS ARGUED BY RESPONDENT CASS COUNTY AND RESPONDENTS KRUEGERS?

Despite the uncontroverted evidence, that Appellant's only means of motorized access to his property is the route proposed in his cartway petition, the trial court held that Appellant seeks to gain alternative access to his property from the east side of the Island, and Respondent Cass County and Respondents Kruegers incorrectly argue that Appellant has other points of access.

III.

IS THE PREVIOUS LITIGATION BETWEEN THE APPELLANT AND RESPONDENTS KRUEGERS REGARDING THE TRAIL OVER

WHICH THE CARTWAY IS SOUGHT RELEVANT TO THESE
CARTWAY PROCEEDINGS AS SAID RESPONDENTS
INCORRECTLY ASSERT?

As a matter of law, the County Board has original jurisdiction over cartway petitions; thus, Respondents Kruegers incorrectly argue that the facts and proceedings in the previous litigation between the Appellant and said Respondents is relevant to and should be referenced in this case.

IV.

WAS THE APPELLANT'S MOTION FOR SANCTIONS BASED ON
THE RESPONDENTS KRUEGERS' FILINGS AND
REPRESENTATIONS TO THE COUNTY BOARD AND NOT ON SAID
RESPONDENTS' FILINGS WITH THE TRIAL COURT AS SAID
RESPONDENTS INCORRECTLY ASSERT?

The Appellant's Motion for Sanctions was properly made and based upon Respondents Kruegers' two separate filings with the trial court; thus, said Respondents incorrectly argue that the Appellant's Motion for Sanctions was based on Respondents' filings and representations to the County Board.

STATEMENT OF THE CASE

Appellant Michael Rollins submits this Reply Brief in response to the following issues raised in Respondents' Brief: Whether the trial court erroneously applied the standard of review applicable to zoning cases despite the fact that the cartway statute is mandatory where its conditions are met and whether the trial court erred in upholding a County board decision based on an erroneous theories of law; whether the trial court erred in affirming a County board decision when the appellant does not have alternative motorized access; whether previous litigation between the parties is relevant to the cartway proceedings; and whether the Appellant properly brought his Motion for Sanctions against Respondents Kruegers based on said Respondents two filings with the trial court.

This Reply Brief is submitted because the County Board relied on inapposite authorities in its Brief and also seeks to apply the wrong standard of review, and because Respondents Kruegers have misstated the basis for Appellant's motion for sanctions.

ARGUMENT

- I. The Trial Court Erred In Affirming the County Board's Decision Because The County Board Applied An Erroneous Theory Of Law And The Cartway Statute Is Mandatory When The Petitioner Meets The Requirements Of The Statute.

Respondent Cass County claims the trial court was correct in holding that the Appellant did not meet the requirements of the cartway statute. The County cites several

cases relating to zoning in support of its argument; however, this is not a zoning case, and the County's cited authorities are inapposite.

The distinction between the zoning cases upon which the County relies and cartway cases such as this, is that the cartway statute, Minn. Stat. §164.08 subd.2, provides that the establishment of a cartway is *mandatory* when the petitioner meets the criteria of the statute. The only discretion the board has under the mandatory provision of the cartway statute, if the petitioner meets the requirements, is to alter the location of the proposed road (See *State ex rel. Rose v. Town of Greenwood*, 220 Minn. 508, 514, 20 N.W.2d 345, 348 (1945) and *Watson et al v. Board of Sup'rs of Town of South Side*, 185 Minn. 111, 239 N.W. 913 (1931)). Zoning matters, in contrast, usually involve a quasi-judicial function which are discretionary in nature and are not governed by the same mandatory statutory requirement of the cartway statute. Accordingly, the standard of review in a zoning matter is inapplicable to this cartway proceeding.

Moreover, in denying the mandatory establishment of the cartway, the County Board relied on erroneous theories of law. The legal opinion provided to the County Board (See Appellant's Brief Appendix 103-107), and relied upon by it, was clearly erroneous. According to *Petition of Brazil*, 148 Minn. 164, 181 N.W. 329 (1921), which involved the discretionary provision of a statute authorizing the relocation of a highway, "If the board proceeds on an erroneous

theory of the law the district court on the appeal which the statute gives will reverse its order. *This general rule applies to various administrative bodies exercising legislative discretion.*” *Id.* at 165, 181 N.W. 329, 330 (emphasis added, citations omitted). In this case, the district court erroneously refused to reverse the decision of the County Board despite the Board’s application of erroneous theories of law as described in Appellant’s main Brief on pages 10-14. As a matter of law, the Appellant’s proposed cartway is a public road and not a private road, and such cartway would, in fact, connect to the waters of Leech Lake, which, as described in Appellant’s main Brief on pages 6-7 and 11, are considered to be a public highway.

II. The Trial Court Erred In Affirming the County Board’s Decision Because The Appellant Does Not Have Alternative Motorized Access as Argued by Respondent Cass County and Respondents Kruegers.

Respondent Cass County and Respondents Kruegers claim the trial court correctly held that the Appellant did not meet the requirements of the cartway statute because the Appellant has alternative points of access, consisting of the west shore of the island and the dedicated trail on the east side of the island. The Respondents conveniently neglect to mention in their arguments that these “other” points of access are obstructed and do not provide essential *motorized* access to the Appellants property.

At the hearing on the Appellant's petition for the cartway, it was uncontroverted that these "other" points of access were obstructed and essentially unusable except for foot traffic. It was even acknowledged by all involved, and supported by the uncontroverted affidavit of Terry L. Freeman, that in order to construct motorized access from the dedicated trail on the east side of the island over the bluff, a variance would be needed, and the cost of such construction would be prohibitive at \$100,000.00 (See Appellant's Brief Appendix 69, 70). Additionally, it was uncontroverted that the bluff was even steeper, and that wind and waves in times of bad weather created serious safety issues, on the west side of the island (See Appellant's Brief Appendix 18, 23, 32, 41, 48-49, 51, 54, 57).

More importantly, as a matter of law the Appellant is not obligated to exhaust all other options and legal remedies for a cartway to be established. In the recent unpublished opinion, *In the Matter of Lorraine Daniels for the Establishment of a Cartway*, A06-571, unpublished, 2007 W.L. 48763 (Minn. Ct. App. 2007), the court found that "the plain language of the [cartway] statute does not evince a legislative intent to exhaust other legal remedies." (App. 1). The court concluded that it was irrelevant whether the petitioner could bring a separate case to assert an implied easement.

The cartway statute does not require the petitioner to exhaust other legal remedies before petitioning for a cartway. The statute, enacted as a means to

provide motorized access to landowners to their property, does not require the Appellant to first seek access over other property owners' land, nor does it require the Appellant to seek a variance and construct access suitable for motorized vehicles over obstructions such as the bluffs on the west and east side of the island. Hence, the Appellant's only means of motorized access is over the proposed cartway located on the previously constructed trail (See Appellant's Brief Appendix 18, 24).

III. Respondents Kruegers Incorrectly Assert That The Previous Litigation Between The Appellant And Said Respondents Regarding The Trail Over Which The Cartway Is Sought Is Relevant To These Cartway Proceedings.

The County Board has original jurisdiction over cartway petitions; therefore, Respondents Kruegers' reliance on the previous litigation between the Appellant and said Respondents is misplaced. The only relevance of this litigation is the determination that the Appellant does not have a legal easement to use the existing trail over which the cartway is now sought. This decision left the Appellant with no legal motorized access to his property, which is the basis for, and in fact reinforces, his petition for the cartway.

Further, the previous litigation is irrelevant because according to *In the Matter of Lorraine Daniels for the Establishment of a Cartway, supra*, the "plain language of the cartway statute does not include a requirement that a petitioner

exhaust other legal remedies.” *Id.* Therefore, other legal remedies and actions are not and should not be considered in determining whether to establish a cartway.

Daniels also confirms the Appellant’s attorney’s good faith position that, among other things, the cartway would provide access to and benefit the public, as opposed to private access that would only benefit the Appellant as claimed by Respondents Kruegers’ counsel. *Id.* (citing *Powell v. Town Bd. of Sinnott Twp.*, 175 Minn. 395, 398, 221 N.W. 527, 528 (Minn. 1928)).

IV. Respondents Kruegers Incorrectly Assert That The Appellant’s Motion For Sanctions Was Based On The Respondents Kruegers’ Filings and Representations To The County Board And Not On Said Respondents’ Filings With The Trial Court.

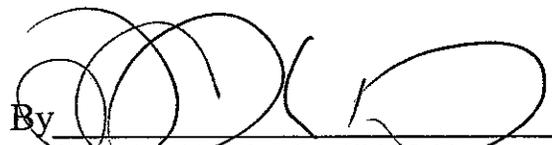
Although Respondents Kruegers do not now dispute that they made two filings with the district court, they incorrectly claim the reason the Appellant brought his Motion for Sanctions was because of Respondents Kruegers’ filings and representations to the County Board. Although Respondents Kruegers were warned about the representations and filings they made to the County Board, the Appellant’s Motion for Sanctions was properly made and based upon said Respondents’ two filings with the trial court. This issue was addressed previously on pages 17-20 of Appellant’s main Brief. Also, in connection with the Appellant’s main Brief, the Appellant pointed out the specific filings made by said Respondents on March 31, 2006 and July 21, 2006. (See Appellant’s Brief Appendix 120-122 and 130-139).

CONCLUSION

Respondents have not articulated any basis for concluding that the District Court was correct in affirming the County Board's decision, which was based on clearly erroneous theories of law. The cartway sought by the Appellant does connect to a public road; the Appellant does not have alternative motorized access; and the proposed cartway is a public benefit, not private. The previous litigation between the Appellant and Respondents Kruegers is irrelevant as other legal remedies and actions are not and should not be considered in determining whether to establish a cartway. Finally, the Appellant properly brought his Motion for Sanctions against Respondents Kruegers, contrary to said Respondents' statements that such Motion was inappropriately based upon filings and statements made by said Respondents to the County Board.

Dated: January 12th, 2007

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).