MINNESOTA STATE LAW LIBRARY

A11-644

NO. A11-1471

State of Minnesota
In Court of Appeals

Betty Anda, Roger Anda,
Kathleen Martin and James Martin,

Appellants,

v.

City of Brainerd, Minnesota,

Respondent.

RESPONDENT'S BRIEF

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STATEMENT OF THE ISSUE

Whether the State of Minnesota is an "owner" of property under the plain language of Minn. Stat. § 429.031.

The District Court found in favor of the City on cross-motions for summary judgment. In an Order dated July 22, 2011, the District Court determined that, under the plain language of the statute, Central Lakes College (an instrumentality of the State) is the "owner" of more than thirty-five percent of the affected real property frontage of the project area and, as a result, Central Lakes College's petition for the public improvements is valid.

Most apposite authority: Minn. Stat. § 429.031

STATEMENT OF THE CASE

As noted in the City's brief in the related appeal, No. A11-644, ("Related Appeal") the parties to this appeal are involved in two separate cases originating in Crow Wing County District Court. Both cases were decided in the City's favor. In this case, No. A11-1471, Appellants seek to reverse the City's determination under Minn. Stat. § 429.031, subd. 1(f) that a petition for public improvements, submitted by Central Lakes College as the undisputed owner of more than thirty-five percent of the affected real property frontage of that area, is valid. Appellants asserted that an instrumentality of the state was not an "owner" under the statute. The District Court applied a plain meaning analysis to the statute and found, in its July 22, 2011 Order that Central Lake College was, in fact, the owner of more than thirty-five percent of the affected real property and that authorization of the special assessment by a vote of the majority of the City Council members was lawful. Judgment on that order was entered August 16, 2011 and Appellants filed an appeal the following day, August 17, 2011.

On that same date, Appellants sought to consolidate this appeal with the appeal of the District Court's determination under Minn. Stat. Chapter 117. In the Related Appeal, Appellants did not contest that the property taken by eminent domain is "necessary" to the project or that the public improvements (roads and associated facilities) are a "lawful purpose." Rather, Appellants sought to overturn the District Court's March 17, 2011 Order arguing that the City did not have proper authority to commence eminent domain proceedings in this instance at all. By order dated September 8, 2011, this Court granted the motion to consolidate, but maintained separate briefing in the two cases.

STATEMENT OF THE FACTS

The relevant facts in this appeal are set forth in full in the City's brief in the Related Appeal, pp. 4-12. Items cited as part of the Respondent's appendix herein are contained in Respondent's Brief and Appendix in the Related Appeal dated September 12, 2011, and are not duplicated herein.

STANDARD OF REVIEW

As in their brief in the Related Appeal, Appellants again fail to address the standard of review applicable to these cases. This case involves application of a statute to undisputed facts. This Court owes no deference to the District Court in such circumstances. Frost-Benco Elec. Ass'n v. Minn. Pub. Utils. Comm'n, 358 N.W.2d 639, 642 (Minn. 1984).

ARGUMENT

As noted in the City's brief in the Related Appeal, Appellants make no argument about the Project's parameters or details or the City's general authority to make special assessments for public improvements. And despite a lengthy citation requiring strict observation of procedure (see Appellants' Brief, p. 14) and a surfeit of irrelevant material, Appellants also do not appear to challenge the hearing and approval process followed in this particular instance.[1] Further, Appellants do not dispute that Central Lakes

[1] In addition to the inclusion of irrelevant material regarding the history of the Project area and other matters, Appellants appear to be contending that the Project does not confer a sufficient benefit on their properties to account for the special assessment. If Appellants intend such a challenge, it is inappropriate in this forum. The special assessment has not yet been levied and Appellants will have an opportunity to raise objection to the benefit conferred at the appropriate time. Minn. Stat. § 429.081.

College owns more than thirty-five percent of real property frontage abutting the Project area. The only issue left to debate is whether Central Lakes College, as the undisputed owner of that property, can be a petitioner under Minn. Stat. § 429.031. Appellants submitted an appeal pursuant to Minn. Stat. § 429.036, claiming that Central Lakes College's Petition is invalid because it cannot be an "owner" under the statute, and the City, therefore, cannot lawfully utilize Minn. Stat. § 429.031 to assess its property without an extraordinary majority vote of the City Council.

Appellants' argument fails and it was properly dismissed as a matter of law by the District Court.

I. Central Lakes College is the "owner" of over thirty-five percent of the real property abutting the Project.

This case turns on the meaning of a word contained in Minn. Stat. § 429.031, subd. 1(f): "...when the improvement has been petitioned for by the *owners* of not less than 35 percent in frontage of the real property abutting on the streets named in the petition as the location of the improvement" (emphasis added). Appellants contend that the meaning is unclear,[2] but as argued in the City's brief in the related appeal, the term "owner" seems to require very little if any elucidation in the context of this statute. A court's goal in statutory interpretation is to ascertain and effectuate legislative intent.

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[2] Appellants submit that "[t]he word 'owner' is meaningless unless we know what it is that the owner must own." See Appellants' Brief, p. 18. But the statutory language itself resolves that pretended ambiguity: "owners of not less than 35 percent in frontage of the real property abutting on the streets named in the petition as the location of the improvement." The language leaves no doubt regarding what the owner must own to be included in the statute's sweep; and, Central Lakes College owns more than thirty-five percent of the frontage.

Minn. Stat. § 645.16. Minnesota courts presume that plain and unambiguous statutory language manifests that intent. See Lenz v. Coon Creek Watershed Dist., 153 N.W.2d 209, 216 (Minn. 1967). "The principal method of determining the legislature's intent is to rely on the plain meaning of the statute." State v. Thompson, 754 N.W.2d 352, 355 (Minn. 2008). If statutory language is plain and unambiguous, the court must apply its plain meaning. Phelps v. Commonwealth Land Title Ins. Co., 537 N.W.2d 271, 274 (Minn.1995). See also Hyatt v. Anoka Police Dep't, 691 N.W.2d 824, 827 (Minn. 2005) (holding that plain meaning governs in all but rare cases where it "utterly confounds a clear legislative purpose").

In adopting a statute, the state legislature is presumed to have intended the "common and approved usage" of words and phrases unless it separately defines them. Minn. Stat. § 645.08(1). The statute at issue contains a separate definitions section (Minn. Stat. § 429.011), but "owner" is not defined. Dictionary definitions match up with common understanding of the term: an "owner" is "one who has the right to possess, use, and convey something."[3] "Ownership" means "the collection of rights allowing one to use and enjoy property, including the right to convey it to others."[4] The term "owner" has a clear meaning that is ready-to-apply. It requires no additional construction or analysis and, given that, Minnesota law permits none.

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[3] See Black's Law Dictionary (7th ed. 1999), 1130.
[4] Id., 1131. See also Webster's New World College Dictionary (4th ed. 2004), 1030 (defining "ownership" as "legal right of possession; lawful title").

Because it is undisputed that Central Lakes College is the record owner of 39.98% of the real property frontage abutting on College Drive in the Project area (see R. 63), Central Lakes College's Petition meets the statutory criteria of Minn. Stat. § 429.031, subd. 1(f). No additional analysis is needed or allowed. This Court should uphold the District Court's rejection of Appellants' challenge to the Project.

II. Appellants ignore the statute's plain meaning, relying instead on antiquated attorney general opinions.

As they have throughout this litigation and the related case, Appellants once again bypass consideration of the statute's actual language in favor of other resources in a misguided effort to gin up an argument. But this Court, reviewing the City's actions under plain and unambiguous statutory language, need not look beyond the face of that statute. The Supreme Court underscored the importance of plain statutory language in Krummenacher v. City of Minnetonka, 783 N.W.2d 721, 726 (Minn. 2010). In that case, the court reviewed the consistent standards under which local governments had been considering variance applications since this Court's decision in Rowell v. Bd. of Adjustment of Moorhead, 446 N.W.2d 917 (Minn. Ct. App. 1989). Minn. Stat. § 462.357, subd. 6, states that "undue hardship" means that "the property in question cannot be put to reasonable use if used under conditions allowed by the official controls." But under Rowell, local governments could and routinely did find an "undue hardship" and grant a variance when a property owner sought to use property in a reasonable manner that a particular ordinance requirement would otherwise prohibit. Id. at 922. Despite that more than twenty years of consistent practice and application of the law across the state, the

supreme court recited familiar principles of statutory analysis, held that Rowell "essentially rewrote the statute" in an impermissible manner and abrogated that decision on the way to reversing the lower courts. Krummenacher, 783 N.W.2d at 728. Plain language dictated that outcome, notwithstanding that it up-ended a widely-accepted and frequently utilized legal standard. Id.

Appellants present a far less compelling argument for adherence to existing precedent than the city in Krummenacher did. Appellants suggest, as they have in previous submissions, that the District Court failed "to honor eighty years of consistent interpretation of Chapter 429." See Appellants' Brief, p. 18. But where Krummenacher involved a long-established Court of Appeals decision that had been relied upon countless times by local governments state-wide, the "eighty years of consistent interpretation" to which Appellants refer in this matter is comprised entirely of three attorney general opinions, all written prior to a significant amendment to the statute at issue. A. 9-18. Appellants offer nothing else to support their argument[5] and provide no basis by which this Court could conclude that anything other than the plain meaning of the statute at issue should prevail.

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[5] Appellants do eventually get around to discussing the plain meaning of the statute, but they simply leap to the conclusion that "owner" cannot mean what it plainly appears to mean. See Appellants' Brief, p. 28. Appellants make the self-serving but unsupported supposition that "owners" must mean the "owners of property countable in the assessment project." Id.

At the outset, it should be noted (as the District Court did[6]) that opinions of the attorney general are not binding on the courts. Though Appellants claim otherwise in this litigation (as they also did in the related case), such opinions do not "rule" on or "hold" anything. Appellants seem to suggest that attorney general opinions are owed deference on matters of statutory construction. See Appellants' Brief, p. 23. Of course, they are not. They are purely advisory and courts can and do disregard them when circumstances warrant. See, e.g., Star Tribune Co. v. Univ. of Minn. Bd. of Regents, 683 N.W.2d 274, 289 (Minn. 2004) (finding attorney general opinion "less than persuasive"); Billigmeier v. Hennepin County, 428 N.W.2d 79, 82 (Minn. 1988) (noting that letter rulings were "not particularly helpful" and "troubling" due to cursory and incomplete analysis). In City of Granite Falls v. Soo Line R. Co., 742 N.W.2d 690, 699 (Minn. Ct. App. 2008), this Court rejected reliance on older attorney general opinions because of changed circumstances in the law at issue.

Even if this Court considers them, the cited attorney general's opinions are readily distinguishable from the instant case. The most recent of the attorney general opinions, Op.Att'y.Gen. 408-c (Oct. 28, 1954), references and relies upon both of the others cited by Appellants. The opinion addressed two questions: (1) whether property owned by the

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[6] Appellants state that the District Court "recognized" the attorney general opinions in this case, implying that the District Court gave some credence to them, and suggests that the relevant statute's intent and purpose auger in Appellants' favor. See Appellants' Brief, pp. 8-9. In fact, what the District Court recognized, and correctly so, was the fact that the statute's plain language resolved the question presented by this matter and that, in such a case, examination of subsidiary issues like the legislature's presumed intent and supposed purpose is unauthorized and unnecessary.

state (MnDOT, in that case) and committed to public use could be subject to a special assessment absent statutory authority; and (2) whether such property could be included when calculating whether thirty-five percent of affected owners consented to the assessment. Id. The attorney general's opinion answered both questions in the negative, without any discussion or whether the legislation in question had a plain and unambiguous meaning. But even overlooking this patent defect in the opinion's analysis[7], it is plainly distinguishable.

As to the first issue, the opinion contemplates state-owned property that is *devoted to public use*. In the instant case, the property is owned by a state instrumentality, but it is not open to the public at large. While neither the opinion nor any of the previous ones it relies upon offer extensive analysis of the issue, the force of logic behind barring assessments against property devoted to public use (e.g. a public road) does not translate directly, if at all, to barring assessments against property utilized only by a select few, regardless of its ownership. See Minn. Stat. § 136F.60, subd. 1 (entities under MnSCU are authorized to own and acquire property "necessary for the development of a state college or university"). Further, the attorney general opinion itself includes a caveat that even such public property could be subject to a special assessment if authorized by statute. A.17 ("property of the State devoted to public use may not be subjected to special assessment for an improvement *unless expressly made so by legislative enactment*") (citations omitted) (emphasis added).

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[7] Neither of the two previous opinions of the attorney general on which the most recent of the three relied contains any discussion of the critical first step in any useful statutory

At the time the opinion was written in 1954, Minn. Stat. § 435.19 dealt only with authorizing special assessments against school district or county property. It did not address state-owned property. However, in 1957 (and after the attorney generals opinions on which Appellants rely were issued), the statute was amended significantly and Minn. Stat. § 435.19, subd. 2, authorizing assessments against state-owned property, was enacted. While the special assessments contemplated are subject to contingencies (i.e. the state instrumentality having funds available to pay them and consenting to the valuation of benefit of the improvement), it is nonetheless express statutory authority for a special assessment.[8] See Op.Att'y.Gen. 408-c (Oct. 28, 1954); City of Granite Falls, 742 N.W.2d at 699 (Minn. Ct. App. 2008) (rejected reliance on older attorney general opinions because of changed circumstances in the law).

As for the second issue in the 1954 attorney general opinion (finding that the city in that case could not count MnDOT among the consenting owners for purposes of reaching thirty-five percent), it too fails to hold up to scrutiny when the 1957 amendments to Minn. Stat. § 435.19 are considered. In 1954, the attorney general concluded that MnDOT was not an "owner of property to be taxed or assessed" because it could not be subject to a tax or an assessment and so it could not be counted as part of

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analysis, i.e. determining whether the statute has a plain meaning, either.

[8] Appellants engage in rank speculation about the objectives a "panel of legal and financial experts" may have had in relation to attorney general opinions, drawing the conclusion that statutory changes must have been intended to alter the plain and unambiguous meaning of the term "owner.". See Appellants' Brief, p. 10. Appellants' baseless suppositions do not alter the bedrock principle of statutory interpretation: where a plain meaning can be ascertained from the face of the statute, it governs. See Krummenacher, 783 N.W.2d at 728.

the requisite thirty-five percent. However, after the new statutory language was enacted in 1957, property owned by a state instrumentality (Central Lakes College, in this case) may be subject to special assessment. See Minn. Stat. § 435.19, subd. 2. Central Lakes College is an "owner of property to be taxed or assessed" for purposes of Minn. Stat. § 429.031, subd. 1(f) if it consents to the assessment under Minn. Stat. § 435.19.

Due to distinguishing factors in this matter, and statutory changes since the opinion was issued in 1954, the attorney general's opinion—even if this Court decides to rely on it—does not foreclose inclusion of a state instrumentality like Central Lakes College among the requisite thirty-five percent of "owners" under the statutory scheme.

III. Central Lakes College has agreed to pay its proportional share of the special assessment.

Central Lakes College committed early to paying a proportional share of special assessments for the College Drive reconstruction and has consistently supported the City's efforts toward the planning and engineering of the project. Central Lakes College communicated with the City about safety issues in connection with nascent plans for College Drive's reconstruction since at least October 2006.[9] By letter dated October 19, 2006, Central Lakes College expressed concerns about accidents and safe pedestrian crossings for its students. R. 70. Additional correspondence addressed the issue in March 2007, September 2009, and October 2010. R. 71-73.

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[9] Central Lakes College's commitment to pay a proportional share of special assessments is consistent with its past practices. Central Lakes College paid special assessments totaling $47,781.00 following completion of the 1986 construction project for College Drive. R. 44-47.

The City selected design parameters from a number of alternatives at its meeting on December 2, 2009. R. 4-6. Just weeks later, December 17, 2009, in response to a direct inquiry from the City, Central Lakes College specifically stated that it "intends to pay the special assessments for the College Drive Project."[10] R. 18. Preliminary work on the Project progressed. On September 15, 2010, the City Engineer submitted to the Mayor and City Council a feasibility report discussing the necessity for the Project and outlining estimated costs. R. 36-37. On October 18, 2010, Central Lakes College's Vice President of Administrative Services sent a memo to the City in which it reiterated the commitment to paying special assessments. R. 20-22. On November 15, 2010, with this commitment in place, Central Lakes College filed its Petition urging the City to move forward with the Project. R. 16.

Consistent with this pledge to pay, Central Lakes College formalized its intention to pay the assessments by agreement with the City. R. 83-90. The agreement notes that the November 15, 2010 Petition by Central Lakes College stands as its commitment to pay special assessments: "[t]he Petition represents the College's agreement to pay an assessment in the Assessment Amount (defined below) with respect to the property

[10] Appellants attempt to downplay Central Lakes College's financial commitment to the Project by pointing out that it suggested offsetting the amount it was to pay against what it would receive for acquisition of easement area needed for the Project. Appellants' Brief, p. 5. Of course, whether Central Lakes College's payment of the special assessment comes in the form of cash or as an offset against what it would be owed is of no consequence. It is still a special assessment. In fact, the previous agreement to pay special assessments and the acquisition of easement area were formalized as part of the same document. R.83-111.

described...."[11] R. 84. The agreement also acknowledges that the Project is a special benefit to Central Lakes College, sets forth the specific amounts to be paid for special assessments, and provides for the City's acquisition of a portion of Central Lakes College's real estate needed for the project. R. 84-86. Central Lakes College waives its right to hearings before the City and to contest the amount of the assessment. R. 88, ¶ 13. Central Lakes College also states that the assessment amount has been accounted for in its budget and represents less than five percent of its appropriation for repair and restoration, as required for an acceptable assessment under Minn. Stat. § 135A.131. R. 84. The agreement is signed by all necessary parties and is designated as binding on them. R. 87, ¶ 10; R. 89-90. Central Lakes College is bound by its agreement.[12]

Appellants make flatly contradictory contentions about how the outcome of this case will affect the relationship between the State (and its instrumentalities) and local governments, and neither bears any resemblance to how that relationship actually functions. On one hand, Appellants submit that the City in this case has "imposed its determination upon the State" in relation to the special assessments. See Appellants' Brief, p. 17. In reality, Central Lakes College (as an instrumentality of the State)

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[11] Appellants ignore this statement and the Petition to which it refers, claiming that "no such agreement existed." Appellants' Brief, p. 7.

[12] Appellants seem to be raising some form of constitutional challenge, asserting that "true assessments are an exercise of the constitutional taxation power, subject to uniformity considerations." Appellants' Brief, p. 31. Whatever the nature of this assertion, all owners of property will be paying assessments that correspond to the benefit received from the Project and once levied the Appellants are free to challenge. Minn. Stat. § 429.081. Moreover, no constitutional challenge (if that is what the assertion is) has been raised in this case.

petitioned for the improvements and freely entered an agreement to pay them. If Central Lakes College thought that the City had somehow strong-armed it into petitioning for and agreeing to pay special assessments, it could make that challenge without Appellants' help. On the other hand, Appellants say that the State (and any of its instrumentalities) could control the outcome of local decision-making for reasons irrelevant to local interests, suggesting that local governments are but sheep minding their shepherd. See Appellants' Brief, p. 28. In reality, local governments retain control over whether special assessments are undertaken once a petition is submitted, regardless by whom that petition is submitted, i.e. local governments *may* order special assessments based on a lawful petition, they are not *required* to do so. See Minn. Stat. § 429.031, subd. 1(f).

Central Lakes College has made itself subject to special assessments in this matter and thus is an "owner" (regardless of any extra-statutory requirements Appellants try to engraft on that term) of more than thirty-five percent of the real property frontage subject to assessment for the Project.[13] The City's action in determining that the petition was valid under Minn. Stat. § 429.035 and ordering that the Project could proceed was lawful.

The District Court's decision should be affirmed.

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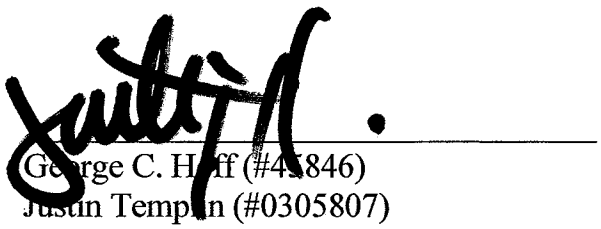
[13] Appellants seem to suggest that the Central Lakes College property is not in the special assessment area. See Appellants' Brief, p. 5 ("...the City would treat the Community College lands *as if it were* in the special assessment area..."). Appellants also argue that the City is engaged in some impermissible shift of costs from the general public to a select few landowners. Id., p. 13. Neither contention is accurate. There is no dispute that 39.98% of the property abutting the Project area, some 4,868 feet, is Central Lakes College's property. Central Lakes College is in the Project area and petitioned for the special assessments to help underwrite the improvements, and has agreed to pay them in accordance with Minn. Stat. § 435.19, subd. 2.

CONCLUSION

This matter involves two separate District Court cases related to the City's efforts to improve and expand a segment of College Drive. In the first case, the District Court properly found that the City met the requirements necessary to use eminent domain for the project under Minn. Stat. § 117. Appellants argued that the use of eminent domain was not "authorized by law" based on a misinterpretation of the straight-forward statutory requirements and an unsupportable reading of clear Minnesota case law, but the only issues subject to review by the courts in an eminent domain case are whether the project has a public purpose and the proposed taking is necessary to it. In this case, Appellants challenge whether the State of Minnesota is an "owner" of property under the plain language of Minn. Stat. § 429.031 and so can be counted toward the thirty-five percent requirement for a petition for special assessments. The meaning of the statute is plain and unambiguous, such that the case can be resolved without further analysis. But even if the Court considers additional materials, Appellants rely solely on advisory attorney general opinions that do not support their claim and predate changes to the statute at issue. Moreover, the state instrumentality has entered a binding agreement with the City to pay a proportional share of the assessments for which it petitioned. The District Court decisions in both of these matters should be affirmed.

Dated: October 12, 2011



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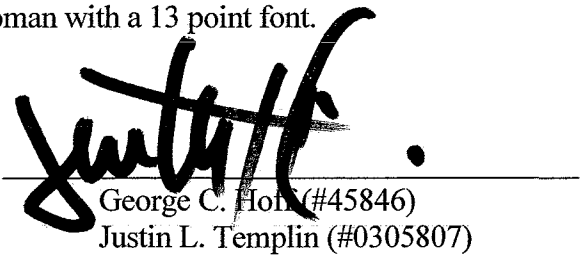
CERTIFICATE OF COMPLIANCE
PURSUANT TO MINN. R. CIV. APP. P. 132.01, Subd. 3(a)

This brief complies with the type-volume limitation of Minn. R. Civ. App. P. 132.01, Subd. 3(a) because this brief contains 4,192 words, excluding the parts of the brief exempted by Minn. R. Civ. App. P. 132.01, Subd. 3. This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2003 in Times New Roman with a 13 point font.

Dated: 10.12.11



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