

NO. A12-0934

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State of Minnesota  
*In Court of Appeals*

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Paul J. Phelps, Todd M. Phelps, Co-Trustees of  
The Boulder Shore Trust dated September 5, 2000,  
*Appellants,*

vs.

State of Minnesota, Trustee for Cass County, Minnesota,  
taxing district, and Cass County, Minnesota,  
*Respondents.*

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**FORMAL BRIEF AND APPENDIX OF RESPONDENTS**

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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).

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## LEGAL ISSUES

- I. Does the district court have inherent power to grant summary judgment on its own motion?

District Court held: The district court ruled in the affirmative

Authority: *Del Hayes & Sons, Inc. v. Mitchell*, 230 N.W.2d 588, 591-592 (Minn. 1975)

- II. Were Respondents entitled to summary judgment as a matter of law?

District Court held: The district court ruled in the affirmative.

Authority: *May v. First Nat. Bank of Grand Forks, North Dakota*, 427 N.W.2d 285, 288 (Minn. App. 1988)

## STATEMENT OF THE CASE

On October 31, 2011, Respondents were served with a Summons and Complaint in which Appellants asserted that the Boulder Shore Trust dated September 5, 2000, acquired by adverse possession certain property that tax-forfeited to Respondents in October 1956, and over which Trustee/Appellant Todd Phelps was granted an easement from Respondents in 2008. On November 4, 2011, Respondents filed and served their Answer.

On or about January 25, 2012, Respondents served Appellants with a Notice of Motion and Motion, with Memorandum of Law and Exhibits, pursuant to Minn. Prac. Gen. R. Prac. 9.01. The hearing on the Motion was set for March 14, 2012, and was based on the grounds that under the undisputed facts, the applicable statute of limitations and adverse possession law, there was no reasonable probability that they would prevail on their cause of action. Respondents also alerted Appellants to the provision in Minn. Prac. Gen. R. Prac. 9.01, which allowed them to withdraw their claims within 21 days so as to avoid further waste of scarce judicial resources and to avoid further costs. On February 15, 2012, after the expiration of time for Appellants to withdraw their lawsuit, Respondents filed the Motion and supporting documents with the court.

On or about March 5, 2012, Appellants file a detailed brief in opposition to Respondents' motion, together with numerous exhibits.

On March 14, 2012, the parties appeared for hearing on the motion and argued the issues to the district court. Specifically, the parties briefed and argued the issue of whether Appellants' cause of action was barred by the statute of limitations and whether, by virtue of the 2008 easement agreement in which Trustee/Appellant Todd Phelps acknowledged Respondents' ownership of the subject property, Appellants were prevented from asserting a claim of ownership via adverse possession.

By Order dated April 3, 2012, the district court *sua sponte* granted summary judgment in favor of Respondents on the two issues presented – that Appellants' claim was barred by the statute of limitations and by virtue of the 2008 acknowledgement that Respondents own the property in question.

### **STATEMENT OF FACTS**

Respondent adopts on appeal the Statement of Facts set forth in Defendants' Memorandum served with the Motion in the court below as copied in Appellants' Appendix. ("A-3.1 to A-4.19") Supporting documents were submitted in the court below and are incorporated by reference so as to avoid unnecessary reproduction.

## ARGUMENT

Appellants assert that the district court had no authority to dismiss their cause of action by granting summary judgment on its own motion. Appellants also argue that the district court improperly granted summary judgment. Appellants claims are without merit and the order of the district court should be upheld.

### I. THE DISTRICT COURT HAS INHERENT POWER TO GRANT SUMMARY JUDGMENT ON ITS OWN MOTION.

A district court's authority to enter summary judgment on its own motion derives from the "inherent power of the trial court to dispose summarily of litigation when there remains no genuine issue as to any material fact and judgment must be ordered for one of the parties as a matter of law." *Del Hayes & Sons, Inc. v. Mitchell*, 230 N.W.2d 588, 591-592 (Minn.1975). The court on appeal will uphold such a grant of summary judgment unless the complaining party "can show prejudice from lack of notice, from procedural irregularities," or from the lack of "a meaningful opportunity to oppose summary judgment." *Federal Land Bank of St. Paul v. Obermoller*, 429 N.W.2d 251, 255 (Minn. App. 1988) (*internal citations omitted*). Appellants failed to meet this burden and the district court should be upheld.

Appellants' sole claim of prejudice appears on Page 7 of their brief, where they state that because Respondents "only made a Rule 9 motion, Appellant only responded to that motion." The facts demonstrate, however, that Appellants fully briefed the issues on which the district court based the grant of summary judgment, namely: the statute of limitations and the impact of the 2008 admission of ownership by Trustee/Appellant Todd Phelps that Respondents own the property in question.

Appellants had more than adequate time to respond to the issues raised by Respondents' Motion and Memorandum, with over 45 days from the date of service until the hearing on the Motion. Minnesota Rule of Civil Procedure 56.03 requires only ten days' notice on a motion for summary judgment. Appellants also had to opportunity to present argument on the issues during the hearing on March 14, 2012.

Appellants have failed to meet their burden to show that they were prejudiced by the court's exercise of its inherent power to summarily dispose of litigation. This Court turns next, therefore, to whether the district court properly determined that Respondents are entitled to judgment as a matter of law.

## II. THE DISTRICT COURT PROPERLY CONCLUDED THAT RESPONDENTS ARE ENTITLED TO SUMMARY JUDGMENT AS A MATTER OF LAW.

The district court may grant summary judgment on its on motion only if “under the same circumstances, it would grant summary judgment on motion of a party.” *Del Hayes & Sons, Inc. v. Mitchell*, 230 N.W.2d at 591-92. The standard on review of a grant of summary judgment is whether, when viewed in the light most favorable to the losing party, there are any genuine issues of material fact and whether the trial court erred in its application of the law. *May v. First Nat. Bank of Grand Forks, North Dakota*, 427 N.W.2d 285, 288 (Minn. App.1988) (*internal citations omitted*).

The district court granted summary judgment in favor of Respondents on two grounds. The district court determined that Appellants’ adverse possession claimed is barred by the statute of limitations. The district court also determined that Appellants are estopped from asserting a claim of ownership over the subject property by virtue of a 2008 admission by Trustee/Appellant Todd Phelps that Respondents own the property. As to both of these grounds, there is no genuine issue of disputed fact.

Laws pertaining to title of tax-forfeit property are to be:

liberally construed in favor of the state, its officers, agents, and its successors in interest, to accomplish the following:

- (a) to promote the policy of unfettered marketability as expressed in section 284.28;

(b) to provide for uniform and reasonable notices to taxpayers and other interested parties with regard to:

- (1) mailing of billing notices;
- (2) notice of delinquency, judgment, and sale;
- (3) notice of expiration of the redemption period; and

(c) to eliminate other potential defects or ambiguities as fetter the marketability of title held by the state, or its successors in interest.

Minn. Stat. § 279.001.

A heavy burden and significant time constraints are placed on those who would challenge the government's title to tax-forfeit properties:

All provisions of law related to the title of the state or its successors in interest, shall be liberally construed in favor of the state, its officers, agents and its successors in interest. The burden of proving that the title of the state, or its successors in interest, is invalid shall rest upon the party asserting the invalidity.

Minn. Stat. § 284.28, Subd. 1(b). See also Minn. Stat. § 284.28, Subd. 1, *et. seq.*

Minnesota Statutes § 284.28, Subd. 2 (2009), provides that claims against land forfeited to the State for non-payment of taxes must be brought within one year of the filing of the Certificate of Forfeiture, except in circumstances discussed below. Appellants claimed that the Trust owned the subject property before it forfeited to Respondents. Such a claim must be brought within one year of the filing of the Certificate of Forfeiture, which occurred in October 1956. (R.A.1) There is no genuine dispute about the fact that Appellants filed their suit in October 2011,

approximately 55 year after the filing of the Certificate of Forfeiture. The district court properly applied the applicable statute of limitations and determined that, even in the light most favorable to Appellants, their claim is barred by the statute of limitations.

Appellants also seemed to claim that they continued to possess the subject property continuously “[s]ince on or about 1939”. (Complaint, Appellants’ Appendix III.9 at A-1.2) The district court also considered, therefore, Minn. Stat. § 284.28, Subd. 5 (2009), which provides:

In cases where the lands are and ever since the time of filing the auditor's certificate of forfeiture under section 281.23, subdivision 9, or filing of service of notice of expiration of redemption under section 281.21, have been in the actual, open, continuous, and exclusive possession of the owner, or the owner's successors in interest, claiming adversely to the state or its successors in interest, the period of limitations as to such owner, or the owner's successors in interest, shall be

- (i) *the time of the possession, or*
- (ii) *the period of limitations provided in subdivisions 2 and 3, whichever period is greater. (Emphasis added)*

In determining if this subdivision applied, the district court considered the evidence that in 2008 Trustee/Appellant Todd Phelps applied for, was granted and paid for an easement over the subject property. In these documents and transactions, Trustee/Appellant Todd Phelps acknowledged in writing that Respondents are the owners of the subject property, the very property that Appellants assert in their lawsuit was owned by the Trust from 1939 to the present. (R.A. 2-R.A.6)

There is no genuine issue of fact that Trustee/Appellant Todd Phelps acknowledged in writing in 2008 that Respondents own the subject property, and that in 2008 Trustee/Appellant Todd Phelps paid for and obtained an easement over the subject property from Respondents. Consequently, the district court concluded that as of 2008, Trustee/Appellant Todd Phelps acknowledged that Respondents own the subject property.

Under Minn. Stat. § 284.28, Subd. 5, Appellants would have had to file their claim for adverse possession during the time the Trust possessed the property, specifically before acknowledging that Respondents owned the subject. Any possessory interest by the Trust that may have been established prior to 2008 does not survive the 2008 written statement of Trustee/Appellant Todd Phelps that Respondents own the subject property.

In the 2008 easement request, Trustee/Appellant Todd Phelps wrote that the easement requested from Cass County would provide access from Northland Lane NW to parcels owned by Todd and Molly Phelps, Paul and Tracy Phelps, Boulder Shore Trust and another parcel owned by an aunt and uncle in Dunlevy Family Partnership. (R.A.2) The easement request was subsequently modified to include an easement over that portion of Northland Lane NW also owned by Respondents. (R.A. 5-9, 11) It is significant to note that in this 2008 easement request, Trustee/Appellant Todd Phelps made no

claim that the Trust owned the property over which an easement was requested from Cass County. On the contrary, Trustee/Appellant Todd Phelps demonstrated by the request that he knew Respondents – and not the Trust - owns the property over which the easement was requested. (R.A.2-R.A.11)

This was confirmed in the actual easement, recorded on March 26, 2008. (R.A.11) Pursuant to the easement (R.A.11), on March 26, 2008, Todd and Molly Phelps, “their heirs, legal representatives, and successors”, were granted an easement by Cass County over the subject property. (R.A.11)

The easement (R.A.11) specifically provides that Cass County is the Owner of the subject property and that Todd and Molly Phelps are granted an easement over Respondents’ property for the purpose of “Ingress and egress across the Owners premises; telephone, and electric power lines either by underground cable or conduit or otherwise.” The easement further provides that the easement shall “revert to the State of Minnesota in Trust for the taxing district in the event of non-use.” (R.A.11)

The easement (R.A.11) also provides that Respondents, as Owners of the subject property, may sell or lease the property subject to the easement. The easement and receipt (R.A.11 and R.A. 10) also demonstrate that Todd and Molly Phelps, as Grantees, shall and did pay to Cass County, as Owner

of the subject property, \$681.00 in consideration for the value of the land and timber within the area over which the easement was granted.

The easement (R.A.11) also provides that:

“The easement shall be non exclusive and open to public use as well as timber management and other purposes under such terms as the county board or the land commissioner of Cass County shall prescribe.” (*Emphasis added*)

The easement (R.A.11) further provides: “The primary purpose of the road is forest management.” The easement (R.A.11) also provides that Todd and Molly Phelps, as Grantees, may not encumber or assign their easement on the Forest Road “without the prior written consent of the Owner”, namely: Respondents.

There is no assertion throughout these documents, prepared and/or approved by Trustee/Appellant Todd Phelps (Real Estate Specialist), that the Trust has any possessory or ownership interest in the subject property. There is, however, a clear and unequivocal statement that Respondents own/possess the subject property and were granting an easement to Trustee/Appellant Todd Phelps and his wife.

By its very definition, “[a]n easement is an interest in land possessed by another which entitles the grantee of the interest to a limited use or enjoyment of that land.” *Minneapolis Athletic Club v. Cohler*, 177 N.W.2d 786, 789 (Minn. 1970). The grant of an easement specifically excludes the

idea that the grantee has or acquires actual possession of the property over which the easement is granted. “The right was merely one of accommodation (a right to pass over) as distinguished from those which are directly profitable. The grantee of such a right is not the owner or occupant of the estate over which the right of way is given.” *Sanborn v. City of Minneapolis*, 29 N.W. 126 (Minn. 1886).

Consequently, by virtue of the 2008 easement, Trustee/Appellant Todd Phelps expressly acknowledged that Respondents and not the Trust owned/possessed the subject property in 2008. Appellants did not file their claim of adverse possession within the time of their alleged possession of the property in question, having waited until October 2011, to assert their claim – three years and seven months after the written admission by Trustee/Appellant Todd Phelps that Respondents own the subject property.

It is relevant to note that Trustee/Appellant Todd Phelps did not seek the grant of easement from the Trust itself, but rather from Respondents. In 2008 Trustee/Appellant Todd Phelps stated in writing that the subject property is owned by Respondents. Had Appellants believed at in 2008 that the subject property was already owned by the Trust, then Appellant/Trustee Todd Phelps would have known this and directed his application for easement to the Trust and not to Respondents. Having stated in writing in 2008 that Respondents own the subject property, the

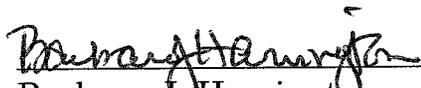
Trustee/Appellant cannot now assert that the property has been owned or possessed by the Trust from 1939 to the present day.

These undisputed facts demonstrate that even the Trustee did not believe in 2008 that the Trust owned the subject property. Given that there is no genuine dispute as to the fact of this acknowledgement of Respondent's ownership of the property, the district court properly concluded that Respondents are entitled to judgment as a matter of law because the statute of limitations had expired and Appellants were estopped from asserting a claim of ownership. The grant of summary judgment should, therefore, be upheld.

### CONCLUSION

The district court properly granted summary judgment on the grounds that Appellants' claim is barred by the statute of limitations and estoppel.

Dated: July 25, 2012

  
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