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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1563
A09-1564**

In the Matter of the Petition of
Mark Hanlon for the Establishment of a Cartway
Pursuant to Minn. Stat. § 164.08(2).

**Filed June 29, 2010
Reversed
Lansing, Judge**

Lake County District Court
File No. 38-CV-07-771

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Considered and decided by Lansing, Presiding Judge; Peterson, Judge; and Stauber, Judge.

UNPUBLISHED OPINION

LANSING, Judge

The district court granted summary judgment vacating a cartway established by the Silver Creek Town Board over Timothy and Jacqueline Weber's property. Silver Creek and Mark Hanlon, the cartway petitioner, appeal the summary judgment and the remand instructions to establish the cartway over adjacent public land owned by Lake County. Because Silver Creek did not act arbitrarily, capriciously, or contrary to the public interest in selecting the route for the cartway, we reverse.

FACTS

Mark Hanlon owns 120 acres of land-locked property. Historically, Hanlon has obtained access to his property over tax-forfeit land owned by Lake County, with the county's permission. Following failed discussions with both Lake County and adjacent landowners to obtain a permanent easement, Hanlon filed a cartway petition, under Minn. Stat. § 164.08 (2008), with the Silver Creek Town Board. The petition requested that a cartway be established over land owned by respondents Timothy and Jacqueline Weber.

Silver Creek held a hearing on the petition, continued over four separate meetings. In between the meetings Silver Creek obtained surveys and conducted site visits to evaluate several alternative routes. The Webers and other local residents urged Silver Creek to establish the cartway over the tax-forfeit land owned by Lake County, the route that Hanlon had been using for access. Lake County argued that a cartway would interfere with timber management on the tax-forfeit land. More than one year after the petition was submitted, Silver Creek voted to grant the petition and passed a resolution

establishing the cartway over the Webers' land. Silver Creek made findings that the route over the Webers' land would pose the least disruption and damage to affected landowners and was in the public interest.

The Webers appealed to district court. With their notice of appeal, the Webers submitted a "check for a bond in the sum of \$250.00 pursuant to Minn. Stat. § 164.07, subd. 7." A cover letter from the Webers' counsel further stated: "I am copying counsel for the other parties to this matter and . . . if they object to the bond amount, I will schedule a hearing . . . [to] approve a different amount. . . ."

Silver Creek moved to dismiss the appeal, asserting that the \$250 check did not meet the bond requirement of the statute and that the district court thus lacked jurisdiction over the appeal. The district court denied the motion, determining that defects in the Webers' bond did not deprive the court of jurisdiction, and that Silver Creek had waived any objection to the bond by failing to respond to the cover letter from the Webers' counsel. The district court subsequently granted the Webers' motion for summary judgment, concluding that Silver Creek erred by establishing the cartway over private land when a route over public land was available. Silver Creek and Hanlon filed appeals, which we have consolidated for consideration.

DECISION

I

We first address Silver Creek's assertion that the district court lacked jurisdiction over the Webers' appeal. The existence of jurisdiction is an issue of law, which we review de novo. *Horton v. Twp. of Helen*, 624 N.W.2d 591, 594 (Minn. App. 2001),

review denied (Minn. June 19, 2001). In this case, the appellate jurisdiction of the district court is governed by Minn. Stat. § 164.07 (2008), the interpretation of which is also subject to de novo review. *Brookfield Trade Ctr., Inc. v. County of Ramsey*, 584 N.W.2d 390, 393 (Minn. 1998). Our goal when interpreting statutory provisions is to “ascertain and effectuate the intention of the legislature.” Minn. Stat. § 645.16 (2008). If the language of the statute is clear and free from ambiguity, we apply its plain meaning. *Hans Hagen Homes, Inc. v. City of Minnetrista*, 728 N.W.2d 536, 539 (Minn. 2007); *see also* Minn. Stat. 645.16 (requiring plain-meaning interpretation of unambiguous statutes).

When a statute confers appellate jurisdiction on the district court, failure to comply with statutory requirements for perfecting an appeal prevents the district court from acquiring jurisdiction. *See, e.g., Woodhall v. State*, 738 N.W.2d 357, 362 (Minn. 2007) (stating that “[w]e have repeatedly held that failure to comply with the statute governing appeals from eminent domain proceedings is a jurisdictional defect”); *Schwede v. Town of Burnstown*, 35 Minn. 468, 469, 29 N.W. 72, 72 (1886) (explaining that “[t]he appeal, being purely statutory, must be taken as the statute directs”). Minn. Stat. § 164.07, subd. 7, provides that a property owner may appeal a cartway decision “by filing a notice of appeal with the court administrator of the district court of the county where the lands lie.” The plain import of this language is that an appeal is perfected upon timely filing of a notice of appeal. Because there is no dispute that the Webers timely filed their notice of appeal, we conclude that the district court properly exercised jurisdiction over the appeal.

Silver Creek asserts that the district court lacked jurisdiction because the Webers failed to satisfy a statutory requirement for a bond. *See* Minn. Stat. § 164.07, subd. 7 (providing that “notice of appeal shall be accompanied by a bond of not less than \$250”). In support of this argument, Silver Creek relies on cases holding, in related contexts, that the failure to file a required appeal bond is a jurisdictional defect. *See Schwede*, 35 Minn. at 469-70, 29 N.W. at 72 (affirming dismissal of appeal challenging layout of highway, based on appellant’s failure to comply with statutory requirement for bond); *State ex rel. Supervisors of Town of Otto v. Austin*, 35 Minn. 51, 51-52, 26 N.W. 906, 906-07 (1886) (holding appeal from order establishing road ineffectual because of defective bond); *State ex rel. County of Houston v. Fitch*, 30 Minn. 532, 532-33, 16 N.W. 411, 411-12 (1883) (same).

The relevant statutes in each of these cases, however, encompassed language expressly conditioning the effectuation of an appeal on the filing of a bond. *See Schwede*, 35 Minn. at 469, 29 N.W. at 72 (interpreting statute providing that appeal could be taken “by filing . . . a bond . . . and by service of a prescribed notice”) (emphasis added and quotation marks omitted); *Fitch*, 30 Minn. at 533, 16 N.W. at 412 (interpreting statute providing for issuance of summons “upon filing of the application for appeal, and a bond . . .”) (emphasis added and quotation marks omitted); *see also Austin*, 35 Minn. at 51, 26 N.W. at 907 (relying on *Fitch* without reciting language of statute). When interpreting statutory language more closely aligned with the language of Minn. Stat. § 164.07, however, the supreme court has held that a statutory bond requirement is not jurisdictional. *See In re Petition to Enlarge, Etc., County Ditch No. 27*, 232 Minn. 329,

334, 45 N.W.2d 555, 558-59 (1951) (interpreting Minn. Stat. § 106.631, subd. 2(b) (1949), which provided that, “[t]o render the appeal effectual, the appellant shall file . . . a notice of appeal” and subsequently stated that “[t]he notice of appeal shall be accompanied by an appeal bond”).

Importantly, our conclusion that appellate jurisdiction attached upon filing of the notice of appeal under Minn. Stat. § 164.07 neither excuses parties from satisfying the bond requirement nor limits the district court’s authority to dismiss appeals when the bond requirement is not met. We merely hold that the failure to file a bond does not, from the beginning, deprive the district court of its appellate jurisdiction under the statute.

II

We next address the cartway decision on its merits. “A town board that grants or refuses a cartway petition acts in a legislative capacity and will be reversed on appeal only when (1) the evidence is clearly against the decision, (2) an erroneous theory of the law was applied, or (3) the town board acted arbitrarily or capriciously, contrary to the public’s best interest.” *Horton*, 624 N.W.2d at 595 (citing *Lieser v. Town of St. Martin*, 255 Minn. 153, 159, 96 N.W.2d 1, 5-6 (1959)). The scope of review “must necessarily be narrow,” and “[g]enerally, this court will affirm even though we may have reached a different conclusion.” *Id.*

“A town board shall establish a cartway upon a petition of an owner of a tract of land . . . [who] has no access thereto except over a navigable waterway or over the lands of others.” Minn. Stat. § 164.08, subd. 2(a). “The town board may select an alternative

route other than that petitioned for if the alternative is deemed by the town board to be less disruptive and damaging to the affected landowners and in the public's best interest."

Id.

The district court determined that Silver Creek acted arbitrarily and contrary to public policy by establishing a cartway over private property when an alternate route over public property was available. We are unable to find support for this holding in either the caselaw or the record. It is undisputed that Hanlon met the statutory requirements for mandatory establishment of a cartway. Silver Creek carefully considered four different routes, including the routes over the tax-forfeit land and over the Webers' land. Silver Creek determined that the route over the Webers' land was the shortest of the routes considered; crossed over previously disturbed land and "therefore [would be] less disruptive and damaging to affected landowners;" would affect a limited number of landowners; and "topographically" would provide the best access. Silver Creek expressly found that use of the other considered routes, including the route over the tax-forfeit land, would be "more disruptive and damaging to the affected landowners and not in the public's best interest." With respect to the route over the tax-forfeit land, Silver Creek found that establishing a cartway over that route would interfere with Lake County's timber management efforts, and that the route was the longest of all considered routes.

The district court determined that Silver Creek acted contrary to the public interest by rejecting the route over the tax-forfeit land, holding that, "as a matter of public policy, public land and not private land should be used for the establishment of a cartway, when public land is available and not being used for a designated public purpose." In this

holding, the district court seems to have substituted its judgment not only for that of Silver Creek, but also for that of the legislature. Nothing in Minn. Stat. § 164.08 required Silver Creek to prefer public over private land in selecting the most appropriate route for the cartway. And the narrow standard of review applicable to the legislative act of establishing a cartway required the district court to refrain from substituting its own judgment for that of Silver Creek. Accordingly, we conclude that the district court erred by vacating the cartway established by Silver Creek.

Because we conclude that Silver Creek properly considered and rejected placing the cartway over the county-owned, tax-forfeit land, we need not reach Silver Creek's and Hanlon's argument that the route over county land was precluded because Silver Creek lacked authority to condemn public land.

Reversed.