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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1469**

Clearwater County Board,
Respondent,

vs.

Terrance Bowman,
Appellant.

**Filed May 21, 2012
Affirmed
Johnson, Chief Judge**

Clearwater County District Court
File No. 15-CV-10-91

Richard C. Mollin, Clearwater County Attorney, Bagley, Minnesota (for respondent)

Gregory D. Larson, Park Rapids, Minnesota (for appellant)

Considered and decided by Hudson, Presiding Judge; Johnson, Chief Judge; and
Randall, Judge.*

*Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

JOHNSON, Chief Judge

Terrance Bowman erected a gate across a former logging trail and refused to remove it despite the requests of Clearwater County. The county commenced this action to dedicate the trail as a public road and to enjoin Bowman from blocking the road. The district court determined that the trail is a public road with a width of 18 feet and issued the injunction. We affirm.

FACTS

Mallard Grade is an unpaved trail in Clearwater County that runs from state highway 200, in a north and northeasterly direction, for approximately ten miles. Originally a railroad was used to transport logs along the same route, but the rails were removed in 1913, after which time the route was used as a trail for motor vehicles. The district court found that the trail provides the only means of access to numerous parcels of private property and to hundreds of acres of public property, and that the trail is “regularly used for logging, hunting and recreation by the public and for forestry management by the County.”

Mallard Grade crosses a portion of an 81-acre parcel of land owned by Bowman that is less than a mile north of the trail’s intersection with state highway 200. Bowman purchased his property in 1996. In the summer of 2009, Bowman erected a gate across the trail at the point where it enters his property from the south. Clearwater County demanded that Bowman remove the gate, both informally and formally, but he refused.

In February 2010, the county commenced this action to dedicate Mallard Grade as a public road and to enjoin Bowman from blocking the road or otherwise interfering with the public's use of the road. The county based its action on both the common-law doctrine of dedication and on Minnesota's dedication statute, which provides:

When any road or portion of a road has been used and kept in repair and worked for at least six years continuously as a public highway by a road authority, it shall be deemed dedicated to the public to the width of the actual use and be and remain, until lawfully vacated, a public highway whether it has ever been established as a public highway or not.

Minn. Stat. § 160.05, subd. 1 (2010).

The case was tried to the district court on one day in January 2011. The issues in dispute included the two issues now being raised on appeal: first, whether Mallard Grade was used or worked for six continuous years and, second, if so, the width of the road.

The county called seven witnesses. Jeanine Brand, a former Clearwater County Attorney, testified about her requests that Bowman remove the gate he had installed and Bowman's refusal to do so.

Bruce Cox, the county's Land Commissioner, testified that the vegetation growth on either side of Mallard Grade demonstrates that the county had historically maintained the trail to a width of 18 feet. He testified that Mallard Grade originally was used for logging but that, more recently, the county had provided "very little maintenance" to the trail, which the county did not deem to be a high priority.

Milo Fultz, a retired forester and road worker for the county's Land Department, testified that he maintained Mallard Grade annually for eight to ten years during the

1980s and 1990s. Fultz testified that he installed culverts, trimmed vegetation, filled holes, bladed the trail, and spread gravel over the trail. Fultz estimated that the trail was 16 to 18 feet wide during the period, wide enough for two logging trucks to pass each other.

Nicholas Severson, also a former forester for the county's Land Department, testified that he bladed Mallard Grade every year between 1990 and 2004 and that the trail then was approximately 18 feet wide.

Gary Anderson, an Itasca Township Supervisor, testified that he used Mallard Grade for logging operations, beginning in the late 1970s and continuing until Bowman erected the gate. Anderson also testified that the trail was between 16 to 18 feet wide in the 1970s.

Virgil Norquist, whose family has owned property near highway 200 since the mid-1930s, and who hunted along Mallard Grade beginning in the mid-1940s, testified that the trail was approximately 18 feet wide in the 1970s and 1980s.

John Miller, a nearby landowner, testified that he began using the trail before 1945 to access hunting grounds. Miller also testified that the trail was best maintained when logging operations were active in the 1980s.

Bowman testified on his own behalf. He testified that the county had not maintained Mallard Grade since he purchased his property in 1996. He also testified that, according to his own measurements, the trail presently is only seven and one-half feet wide. Bowman did not call any other witnesses.

In February 2011, the district court issued its findings of fact, conclusions of law, and order for judgment. The district court found that Mallard Grade has been used by the public as a public road since at least the 1940s. The district court also found that the county had maintained the trail across Bowman’s land for eight to ten consecutive years. The district court further found that Mallard Grade has a width of nine feet on each side of its center line, for a total width of eighteen feet. The district court concluded that the trail is a public road pursuant to section 160.05, subdivision 1, and the common-law doctrine of dedication. The district court enjoined Bowman from blocking or otherwise interfering with the road. Bowman appeals.

D E C I S I O N

I. Continuous Use and Maintenance

Bowman argues that the district court erred by finding that Mallard Grade is a public road. Specifically, Bowman challenges the district court’s finding that the road was “kept in repair and worked for at least six years continuously as a public highway,” as required by section 160.05, subdivision 1, which is quoted above in full.¹

In a case brought pursuant to section 160.05, subdivision 1, “[t]he maintenance must be of a quality and character appropriate to an already existing public road.” *Shinneman v. Arago Twp.*, 288 N.W.2d 239, 242 (Minn. 1980). But the county is “not

¹Bowman does not challenge the district court’s conclusion that the trail is a public road pursuant to the common-law dedication doctrine. The absence of such an argument raises a question as to whether Bowman may obtain any relief on appeal without challenging the second legal basis of the district court’s order and judgment. But the county has not asserted such a responsive argument, and it is unclear whether the scope of relief is the same for each legal basis. Accordingly, we will consider only Bowman’s argument that the district court erred when granting relief under the statute.

required to show that it worked every part of the road during the six years or even that it worked some part of the road every year during the six years.” *Ravenna Twp. v. Grunseth*, 314 N.W.2d 214, 217 (Minn. 1981). “The question of public dedication is one of fact, and the trial court’s determination on the matter will not be reversed unless it is clearly erroneous.” *Id.* In addition, “[d]ue regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.” *Henly v. Chisago Cnty.*, 370 N.W.2d 920, 923 (Minn. App. 1985).

In *Ravenna Township*, the supreme court reversed a district court’s statutory dedication of a road because the township had not maintained the disputed road to a sufficient extent. 314 N.W.2d at 217-18. The supreme court concluded that the township’s maintenance fell below the statutory standard because the county never installed ditches or culverts and graded and graveled the trail only twice in more than 40 years. *Id.* at 216, 218. In contrast, the supreme court upheld a district court’s statutory dedication of a public road in *Leeper v. Hampton Hills, Inc.*, 290 Minn. 143, 187 N.W.2d 765 (1971). The supreme court concluded that a township’s maintenance satisfied the statutory standard in that case because the township maintained the road for at least eight years by installing culverts, grading and graveling the trail, and plowing snow during the winter. *Id.* at 147, 187 N.W.2d at 768.

In this case, the district court found that the county maintained Mallard Grade for eight to ten consecutive years, “starting in the 1980s,” by “grading, brushing and filling pot holes.” This finding is supported by the testimony of Fultz and Severson, who testified that they regularly maintained Mallard Grade from the 1980s until 2004 in their

capacities as foresters for the county's Land Department. Fultz and Severson testified that they filled potholes, cleared encroaching brush, bladed the trail, and spread gravel. The nature and extent of the maintenance work described by Fultz and Severson more closely resembles the maintenance work described in *Leeper* than the maintenance work described in *Ravenna Township*. Compare *Leeper*, 290 Minn. at 147, 187 N.W.2d at 768 with *Ravenna Twp.*, 314 N.W.2d at 216-18. Thus, the evidence is sufficient to prove that Mallard Grade was "kept in repair and worked for at least six years continuously as a public highway." See Minn. Stat. § 160.05, subd. 1.

Bowman contends that the district court erred because of his testimony that he never saw any maintenance of Mallard Grade between 1996, when he purchased his property, and 2009, when he erected the gate. Bowman's argument fails for at least two reasons. First, his argument does not overcome the district court's determination that Mallard Grade became a public road before Bowman purchased his property in 1996. The district court found that the county maintained the trail for eight to ten consecutive years, "starting in the 1980s." Because the dedication statute requires only six years of continuous public maintenance, Minn. Stat. § 160.05, subd. 1, the trail had become a road by not later than 1996. Thereafter, the road is, "until lawfully vacated, a public highway." *Id.* The record gives no indication that the county ever vacated the road. See Minn. Stat. § 163.11 (2010). Second, to the extent that Bowman's testimony conflicts with the testimony of the county's witnesses, we must defer to the fact-finder's determinations of credibility. See *Henly*, 370 N.W.2d at 923.

Thus, the district court did not err in its determination that the county established a statutory dedication of Mallard Grade as a public road.

II. Width of Road

Bowman also argues that the district court erred by finding that the public road is 18 feet wide.

A statutorily-dedicated road is established “to the width of the actual use.” Minn. Stat. § 160.05, subd. 1. The county need not “show that it worked every part of the road during the six years or even that it worked some part of the road every year during the six years.” *Ravenna Twp.*, 314 N.W.2d at 217. The width of a road “is not limited to that portion of the road actually traveled; it may include the shoulders and ditches that are needed and have actually been used to support and maintain the traveled portion.” *Barfnecht v. Town Bd. of Hollywood Twp.*, 304 Minn. 505, 509, 232 N.W.2d 420, 423 (1975). The boundary of a public highway is a question of fact to be determined by the fact-finder. *See id.* at 509, 232 N.W.2d at 423.

The district court awarded the county a public roadway by providing a legal description of the roadway in an exhibit to the order. The exhibit describes a line and states that the public road has “a width of 9 feet on each side of” the line, thus establishing that the public road has a width of 18 feet. This determination is supported by the testimony of Cox, Fultz, Severson, Norquist, and Anderson, all of whom testified that Mallard Grade historically had been used by loggers and hunters to a width of approximately 18 feet. Although Bowman contends that the road should have a width of only seven and one-half feet, he did not contradict the county’s witnesses, who testified

about the width of the trail before 1996. In any event, we must defer to the district court's resolution of disputed factual issues so long as its findings are supported by the evidence, which they are. *See Henly*, 370 N.W.2d at 923.

Thus, the district court did not err in its determination that the dedicated public roadway is 18 feet wide.

Affirmed.