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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0123**

Andrew Crisman, et al.,
Respondents,

vs.

Hillman Township, Minnesota,
Appellant.

**Filed August 22, 2022
Reversed and remanded
Bratvold, Judge**

Kanabec County District Court
File No. 33-CV-20-4

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Jason J. Kuboushek, Susan M. Tindal, Iverson Reuvers, Bloomington, Minnesota (for
amicus curiae Minnesota Association of Townships)

Considered and decided by Bratvold, Presiding Judge; Bjorkman, Judge; and Kirk,
Judge.*

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

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Appellant-township challenges the district court's amended judgment for respondents-landowners requiring appellant to maintain the northern portion of a town road. Minn. Stat. § 365.10, subd. 11 (2020), gives township electors the authority to let the town board determine maintenance for an "abandoned" road, defined as a road for which no maintenance "has been conducted for 25 years or more." Because the district court found that the northern portion of this town road had not been maintained for more than 25 years, and the electors denied respondents' petition to maintain the northern portion of this road, we conclude the district court erred. Thus, we reverse and remand to the district court to enter judgment for appellant.

FACTS

The following summarizes the district court's factual findings following a bench trial and includes record evidence when relevant to the issues on appeal.

Appellant Hillman Township (the township) established Hornet Street in 1904 by town order; the road measures two rods wide and runs north one-half mile from County Road 3. Respondents Andrew and Renee Crisman use Hornet Street to access their cabin, which they bought in 2013. Hornet Street is a dead-end gravel road that also serves two properties neighboring the Crisman property. The neighboring properties are within the first quarter-mile of Hornet Street (southern portion), and the Crisman cabin is within the second quarter-mile of Hornet Street (northern portion).

In 2017, the Crismans moved to reside year-round at their property on Hornet Street. They noticed that snow plowing and other maintenance “was not being done as far” down Hornet Street as they believed. The township only maintained the southern portion of Hornet Street. The Crismans used a tractor to plow snow from Hornet Street so they could access their property.

At the 2017 annual township meeting, the Crismans petitioned under Minn. Stat. § 365.10, subd. 11, for maintenance to be performed on the northern portion of Hornet Street. A board member introduced the petition, according to Renee Crisman, as requiring a “new road that would need to be built through a wetland.” After some discussion about costs and that the township had not maintained the northern portion of Hornet Street “for more than 25 years,” the electors voted to deny the petition.

After the meeting, board members informally told the Crismans that they could improve Hornet Street themselves. Andrew Crisman later testified that he understood if the Crismans “made these improvements,” then the northern portion of Hornet Street “would receive maintenance.”

In 2019, the Crismans improved the northern portion of Hornet Street by adding gravel, grading, and creating a turnaround for easier access by the school bus. After these improvements were made, one of the Crismans’ neighbors added large fence posts between

his and the Crisman property. The neighbor also placed a four-foot post in the gravel road, which hampered the school bus from accessing the Crisman property.¹

In November 2019, the Crismans wrote to the town board, contending that enclosed affidavits showed the town had maintained the northern portion of Hornet Street within the last 25 years. At a subsequent meeting, the town board discussed the evidence presented by the Crismans and then designated the northern portion of Hornet Street as a minimum-maintenance road, which allowed the township to maintain Hornet Street “at a level required to serve the occasional or intermittent traffic.” Minn. Stat. § 160.095, subd. 4 (2020).

On January 3, 2020, the Crismans sued the township, “seeking declaratory judgment to clarify the rights of the Parties with respect to Hornet Street.” Specifically, the complaint sought an order stating that Hornet Street is not a minimum-maintenance road and that the township is required to maintain the northern portion of Hornet Street, including “clearing right of way obstructions.”

The district court held a bench trial in February 2021. The district court issued findings of fact, conclusions of law, and order (June order), denying relief and finding the Crismans failed to establish that the township had maintained the northern portion of Hornet Street within the last 25 years. The district court reasoned that the township lacked the authority to expend funds on Hornet Street “without the maintenance first being

¹ The neighbor testified that the fence posts were to mark his property line and disagreed that he placed one post in the gravel road. But the district court found this part of the neighbor’s testimony to be “not accurate.”

approved by the electors at the annual town meeting,” citing Minn. Stat. § 365.10, subd. 11.² The district court also noted that neither party addressed “whether or not Hillman Township’s regular and routine maintenance of half [of Hornet Street] obligates it to maintain the whole road when requested by the residents who live there, and the Court does not address that issue.”

The Crismans moved to amend one factual finding and asked the district court to consider “whether maintaining all but the last quarter mile of Hornet Street obligates [the township] to also maintain that last quarter mile.” The township opposed the motion to amend.

Following a hearing, the district court issued additional findings of fact, conclusions of law, and order (November order), amending its earlier decision and granting relief to the Crismans. The additional factual findings mainly related to the procedural history following the trial.³ The district court did not amend any factual findings from the June order that related to the maintenance of Hornet Street. The district court determined that the township has a duty to maintain “all of Hornet Street.” The district court also stated

² The Crismans also sought to estop the township from denying a duty to maintain Hornet Street based on the board-member comments following the 2017 annual township meeting. The district court, however, rejected the Crismans’ estoppel claim because “the comments made by a town supervisor in a casual sense after a town board meeting do not rise to the level of wrongful conduct on behalf of the Township.”

³ The Crismans moved to amend one finding from the June order, arguing that the district court erred by finding the fence post was removed from Hornet Street. The township agreed that the post had not been removed but argued the fact was irrelevant because it had no duty to maintain Hornet Street. The November order amended the challenged finding and directed the township to remove the post based on its duty to maintain all of Hornet Street.

that “it is unreasonable and absurd” to allow the township to maintain only the southern portion of Hornet Street, “leaving the Crismans stranded while what exists of Hornet Street erodes away.” The township asked to file a reconsideration motion, but the district court denied the request.

The district court directed entry of judgment for the Crismans, as stated in the November order, and vacated the judgment for the township, as stated in the June order.⁴

The township appeals.

DECISION

Minn. Stat. § 365.10, subd. 11 (the abandonment statute), states that township electors “may let the town board, by resolution, determine whether to open or maintain town roads or town cartways under the jurisdiction of the town board upon which no maintenance or construction has been conducted for 25 years or more.” The district court entered an amended judgment for the Crismans after concluding that a township is required to maintain all of a town road if the township maintains a portion of the same road. The township contends this conclusion lacks legal authority and contradicts the abandonment statute and existing caselaw. The Crismans contend the district court’s amended judgment is supported by the abandonment statute. We are therefore asked to interpret the abandonment statute.

⁴ After the appeal was filed and before oral argument, the Crismans moved to dismiss the appeal as moot, arguing that township electors voted by resolution to “end the litigation” and “maintain Hornet Street,” and there is, therefore, no case or controversy. This court denied the motion after determining the Crismans failed to meet their burden of showing the resolution rendered the appeal moot. *Crisman v. Hillman Twp*, No. A22-0123 (Minn. App. May 17, 2022) (order).

The purpose of statutory interpretation is to “ascertain and effectuate the intention of the legislature.” *Harkins v. Grant Park Ass’n*, 972 N.W.2d 381, 386 (Minn. 2022) (quoting Minn. Stat. § 645.16 (2020)). Statutory interpretation is a question of law that appellate courts review de novo. *In re Dakota County*, 866 N.W.2d 905, 909 (Minn. 2015). When interpreting a statute, the first step is to determine whether the statute’s language is ambiguous. *Id.* If the language of the statute is unambiguous, this court applies the statute’s plain meaning. *Id.*

Here, the district court determined, and the parties agree, the abandonment statute is unambiguous. We also determine this statute is unambiguous. Thus, our review first considers whether the plain meaning of the statute requires the township to maintain all of a town road if the township maintains a portion of that road.

A town board can maintain a town road “upon which no maintenance or construction has been conducted for 25 years or more” if township electors “let” the town board do so. Minn. Stat. § 365.10, subd. 11. Thus, subdivision 11 does not *require* maintenance of any road. Instead, it narrowly addresses when a town board *may* maintain an abandoned road, which it defines as one that has not been maintained or constructed “for 25 years or more.” *Id.*

In the June order, the district court interpreted the abandonment statute to mean the town board lacked authority to expend “funds on the maintenance of the northern [portion] of Hornet Street without the maintenance first being approved by the electors at the annual town meeting.” In the November order, the district court determined that “nowhere in Minn. Stat. § 365.10, subd. 11, does it state that an electorate may vote to discontinue

maintenance of only a portion of a road.” Because the abandonment statute does not address abandonment of a portion of a road, the district court reasoned the township could not “deny maintenance of the latter portion of Hornet Street while maintaining the first portion.” The district court’s reasoning turned, in part, on language in Minn. Stat. § 160.095, subd.1 (2020), the minimum-maintenance-road provision.

The township argues the district court erred because the plain language of the abandonment statute “precluded [the township] from performing any maintenance on the northern [portion] of Hornet Street as a matter of law” absent elector approval. The Crismans contend we should affirm the district court’s decision because “the Minnesota legislature, when enacting [the abandonment statute], chose not to allow an electorate the ability to abandon certain segments of roads.”

We conclude that the district court erred for three reasons. First, its decision conflicts with binding precedent. Second, our interpretation of the abandonment statute is not guided by an unrelated statute. Third, application of the statute’s plain meaning does not yield an absurd result. We address each reason in turn.

First, the district court did not follow or distinguish binding precedent. The district court stated that “there is little precedent interpreting Minn. Stat. § 365.10, subd. 11 regarding whether only a portion of a road may be abandoned under the 25-year rule.” But there is precedent. And we are bound by the decisions of the supreme court, *State v. Curtis*, 921 N.W.2d 342, 346 (Minn. 2018), and by the precedential opinions of our own court, *Jackson ex rel. Sorenson v. Options Residential, Inc.*, 896 N.W.2d 549, 553 (Minn. App. 2017).

In *Hagen v. Windemere Township*, this court interpreted and applied the abandonment statute to a portion of a road. 935 N.W.2d 895, 900-01 (Minn. App. 2019), *rev. denied* (Minn. Aug. 6, 2019). We considered the landowner’s appeal of a district court’s decision to deny a writ of mandamus to compel a township to maintain and repair a portion of road containing a bridge. *Id.* at 897. It was undisputed that although part of the road was repaired in the last 25 years, “the final 2,280 feet of road, including the bridge, was not repaired” in the preceding 25 years. *Id.* The landowner asked the township to repair the bridge, and town electors decided “not to spend money on the bridge.” *Id.* at 898.

We determined that the abandonment statute was unambiguous, and given that the road and bridge had not been maintained for more than 25 years, and the electors voted to prohibit the township from spending funds on the road or bridge, we affirmed the district court’s decision. *Id.* at 900. In short, we held that “in the absence of elector approval, the township lacks the authority to maintain the road,” and therefore the township “has no duty to maintain the road.” *Id.*

We discern no principled basis not to follow *Hagen* in this case. Like the township in *Hagen*, the township here lacked the authority to maintain the northern portion of Hornet Street because the district court found this portion of Hornet Street had been abandoned, and town electors had voted against spending funds on maintenance.

The Crismans argue that *Hagen* is distinguishable. The Crismans emphasize that in *Hagen*, the parties agreed the bridge portion of the road had not been maintained, whereas the Crismans disputed whether the township maintained the northern portion of Hornet Street. We are not persuaded. The Crismans ignore that the district court resolved the

disputed fact issue in the June order following the bench trial.⁵ The district court found the Crismans “failed to prove that Hillman Township maintained the northerly quarter mile of Hornet Street in the last 25 years.”⁶ In the same order, the district court found that the township “has historically and does regularly maintain the first quarter mile of Hornet Street.” Thus, the northern portion of Hornet Street was abandoned, just like the bridge portion of the town road in *Hagen*.

The Crismans also argue we should decline to follow *Hagen* because the Crisman home is accessed by the northern portion of Hornet Street, unlike the nonresidential property accessed by the bridge portion of the town road in *Hagen*. The presence of the Crisman home at the end of Hornet Street is obviously significant to these parties. But the presence of a residence is not an exception to the abandonment statute, and we will not add language to a statute to create an exception. *See State v. Hensel*, 901 N.W.2d 166, 178 (Minn. 2017) (“[I]t is impermissible to add words or phrases to an unambiguous statute.” (quotation omitted)). Our analysis of the abandonment statute turns on the unambiguous

⁵ The Crismans argue that because the district court vacated the judgment entered after the June order, the factual findings in the June order are also vacated. We disagree. The Crismans moved to “amend finding number 14” and to rule on “the purely legal issue of whether maintaining all but the last quarter mile of Hornet Street obligates Defendant to also maintain that last quarter mile,” and the district court granted that relief. The November order and the later order for judgment on the November order rely on the factual findings in the June order. There is no indication that the district court vacated the June order’s factual findings.

⁶ We do not consider the Crismans’ argument that the record shows the township maintained the northern portion of Hornet Street. The Crismans did not file a notice of related appeal (NORA) challenging the district court’s adverse determination. By failing to file a NORA, a respondent forfeits appellate review of issues decided adversely to it. *Arndt v. Am. Fam. Ins. Co.*, 394 N.W.2d 791, 793 (Minn. 1986).

language in the abandonment statute in light of our precedent in *Hagen*. Thus, we conclude that the township lacks authority to maintain an abandoned road unless allowed by the township electors. *See* Minn. Stat. § 365.20, subd. 11; *Hagen*, 935 N.W.2d at 900.

Second, the district court erred by interpreting the abandonment statute based on language in an unrelated statute. The district court concluded that the abandonment statute does not recognize abandonment of a portion of a road. In doing so, the district court relied on Minn. Stat. § 160.095, subd. 1, which provides a road authority may designate a “minimum-maintenance road” by resolution if it determines that the “road or road segment” is used “only occasionally or intermittently for passenger and commercial travel.” The district court noted that the abandonment statute does *not* refer to road segments and concluded this is “an intentional omission.”

We disagree. We acknowledge that the omission of limiting language in one part of a statute may not be ignored when that limiting language is used in another part of the *same* statute. *Gen. Mills, Inc. v. Comm’r of Revenue*, 931 N.W.2d 791, 800 (Minn. 2019). But section 160.095 is a *separate* statute from the abandonment statute and is unrelated. As the township argues, the abandonment statute “was enacted in 1981 while minimum maintenance road provisions of Minn. Stat. § 160.095 were enacted four years later in 1985.” The two statutes also serve separate purposes. The abandonment statute is part of a section that defines the powers of electors⁷ and specifically provides that electors, by

⁷ Section 365.10 addresses the powers of electors, who are township residents. Section 365.10 includes 18 subdivisions, most of which define explicit elector powers—from deciding the location of animal shelters to voting on money to repair and build roads.

resolution, “may let the town board” determine whether to maintain town roads that have been abandoned. Minn. Stat. § 365.10, subd. 11. In contrast, section 160.095 allows a road authority, here the township, to designate by resolution that a road or road segment is a minimum-maintenance road. Minn. Stat. § 160.095, subd 1. We conclude that section 160.095 does not guide our interpretation of “road” in the abandonment statute.

Third, the district court erred when it reasoned that allowing a township to abandon a portion of a road would lead to an absurd result. Generally, we consider whether an interpretation of a statute leads to an absurd result only when the language is ambiguous. *Greene v. Minn. Bureau of Mediation Servs.*, 948 N.W.2d 675, 681 (Minn. 2020). Because the district court determined the abandonment statute is unambiguous, it should have applied the plain meaning of the abandonment statute. *See id.* (applying the plain meaning after determining the statutory language was unambiguous).

Even if we were to consider the “result” of applying the unambiguous language of the abandonment statute, we would not find it absurd. When the Crismans petitioned for maintenance of the northern portion of Hornet Street, they relied on the abandonment statute, and the electors rejected their petition. Thus, the parties followed the process outlined in the abandonment statute, which does not dictate a result.⁸

⁸ We recognize that electors may have sound fiscal reasons for denying maintenance of an abandoned portion of a town road. As argued in an amicus brief submitted by the Minnesota Association of Townships (MAT), *Hagen* reflects the practical policy that “[t]ownship roads make up nearly forty percent of the road mileage in Minnesota, but carry only about two percent of the state’s traffic. Hundreds of townships have sections of roads which have been unused for decades.” MAT argues that maintenance on these unused roads “would require townships to expend tremendous funds on maintenance without public purpose.”

Moreover, the district court erred in its analysis by emphasizing the township had left “the Crismans stranded” and clearly erred by finding Hornet Street “is the only means of access to the [Crisman] home.” While the record establishes that Hornet Street is the only means of accessing the Crisman home *from County Road 3*, the record does not include evidence about access to the Crisman property *generally*. See *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013) (stating a finding of fact is clearly erroneous unless there is “reasonable evidence in the record to support the court’s findings”). Access to the Crisman property—apart from Hornet Street—was not raised in the Crismans’ complaint, nor was it an issue during the trial. To be clear, the Crismans did not petition for a cartway as a landlocked property under Minn. Stat. § 164.08, subd. 2 (2020). As the township argues, “[t]he Crismans’ alternative access to their property was not relevant to the district court’s review of the issues in this case.”

In closing, we note our sympathy to the Crismans’ argument that the township is displaying gamesmanship by favoring established residents over new residents. We are disturbed by the district court’s finding that “three times when [the Crismans] plowed [Hornet Street] open after they made improvements, someone called County law enforcement who told them they could not maintain a public road.” We understand, as did the district court, that “the Crismans, as homeowners and taxpayers, are frustrated that their efforts to be treated like their neighbors when it comes to the maintenance of the road leading to their home have been rebuffed by the [t]ownship.”

But appellate review of the legal issue raised by the township requires that we conclude the township lacks authority to maintain an abandoned road absent elector

approval, as provided in the abandonment statute and explained in *Hagen*. Further, the abandonment statute provides that a township has abandoned a road that has not been maintained for 25 years. Minn. Stat. § 365.10, subd. 11. Because the district court found that the Crismans failed to prove the township maintained the northern portion of Hornet Street in the last 25 years, and the district court found that the electors voted against the Crismans' petition to maintain the northern portion of Hornet Street, the district court erred by requiring the township to maintain the northern portion of Hornet Street.⁹

Reversed and remanded.

⁹ The township also challenges the district court's amended order directing the township to remove the post from Hornet Street, contending the post was not placed within the right-of-way. Because we conclude the township has no duty to maintain Hornet Street, we need not decide whether the district court clearly erred by determining the fencepost was within the right-of-way.