STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1569

Raymond L. Reed,
Appellant,

vs.

Bartlett Township, Todd County, Minnesota, et al.,
Respondents.

Filed May 6, 2013
Affirmed
Kirk, Judge

Todd County District Court
File No. 77-CV-11-911

Thomas H. Sellnow, Sellnow Law Office, P.A., Long Prairie, Minnesota; and

Andrew M. Shaw, Shaw & Shaw, P.A., Deer River, Minnesota (for appellant)

Samuel S. Rufer, Pemberton, Sorlie, Rufer & Kershner, P.L.L.P., Detroit Lakes, Minnesota (for respondents)

Considered and decided by Kirk, Presiding Judge; Stoneburner, Judge; and Hudson, Judge.

U N P U B L I S H E D O P I N I O N

KIRK, Judge

Appellant-landowner challenges the district court's grant of summary judgment in favor of respondents-townships, arguing that the district court erroneously concluded that

(1) respondents' road was not established by prescriptive-use dedication, (2) respondents established the possession exception to the Marketable Title Act, and (3) appellant is not a purchaser in good faith of the disputed land. We affirm.

FACTS

In 1911, respondents Bartlett Township and Germania Township (the townships) received a duly filed petition for a new road on the town line. Following a public hearing, the townships signed a "Final Road Order of Town Board" and a "Supervisors' Road Order," establishing the proposed road. The two orders are nearly identical, and both provide a space to designate the width of the new road. The supervisors' road order designates the road as four rods wide.[1] But the final road order fails to designate a width. The final road order was recorded by a town clerk[2] and filed by the Todd County auditor on June 19, 1911.

Between 1962 and 1968, appellant Raymond L. Reed acquired an ownership interest in land adjacent to this road.[3] At the time, the road was clearly a public road, but no road right-of-way use to the full extent of four rods was apparent.

In 1987, after Germania Township passed a resolution to record all of its town roads, the Todd County Recorder filed the 1911 supervisors' road order. This order was obtained by the Bartlett Township Clerk from *Book 3 (1905-1923) of Bartlett Township Road Order*.

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[1] A rod is a unit of length equal to 16.5 feet. Four rods is 66 feet.

[2] The record does not establish whether the final order was recorded by the town clerk of Bartlett Township or Germania Township.

[3] In 1996, Reed conveyed a portion of his interest to other parties.

In 2011, a landowner asked the townships "to improve the [road] to make it more passable and safer for those who rely on it to access their properties." The townships held a public meeting on August 3, 2011. Reed attended with counsel and suggested that the townships "may not have the full [four-rod] right-of-way," and thus the road "should [only] be improved to its present location." Despite Reed's arguments, the townships concluded that they had "a full [four-rod] wide right-of-way easement" and adopted a joint resolution to cut and remove trees along a portion of the road within the alleged easement. After receiving notice of this determination, Reed appealed the townships' determination to the district court. Both parties moved for summary judgment. On July 12, 2012, the district court granted the townships' motion and denied Reed's motion for summary judgment. This appeal followed.

D E C I S I O N

Summary judgment shall be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. Mere averments set forth in the pleadings are insufficient to defeat a motion for summary judgment. Minn. R. Civ. P. 56.05. Rather, a party opposing summary judgment "must demonstrate that there are specific fact issues in existence which create a genuine issue for trial." *Sphere Drake Ins. Co. v. Tremco, Inc.*, 513 N.W.2d 473, 477 (Minn. App. 1994), *review denied* (Minn. Apr. 28, 1994).

On appeal from summary judgment, we review de novo whether there are any genuine issues of material fact and whether the district court erred in its application of the

law. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002). In doing so, we view the evidence in the light most favorable to the party against whom summary judgment was granted. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

I. Establishment.

Under Minnesota law, land may be established as a public road in multiple ways. First, upon receipt of a qualified petition, a town board may establish a new road. In 1911, the applicable statute required an order establishing a town road to be filed with and recorded by the town clerk, and filed with the county auditor. Minn. Rev. Laws § 1176 (1905).[4] Since 1973, the statute, now numbered section 164.07, has also required the order to be recorded with the county recorder or registrar of titles. Minn. Stat. § 164.07, subd. 11 (2012) (amended 1973); *Twp. of Sterling v. Griffin*, 309 Minn. 230, 233-34, 244 N.W.2d 129, 132 (1976). Second, a road may be established by statutory prescriptive-use dedication:

> 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 (2012). Third, a road may be established by common law dedication when a landowner intends (expressly or by implication) "to have his land appropriated and devoted to a public use," and the public accepts that use. *Twp. of Villard*

[4] The 1905 codification of Minnesota's statutes was known as the Revised Laws of Minnesota and "was the first codification of Minnesota's statutes since 1894 and the first official complete revision since 1866." *Molde v. CitiMortgage, Inc.*, 781 N.W.2d 36, 40 (Minn. App. 2010).

v. Hoting, 442 N.W.2d 826, 828 (Minn. App. 1989). A common law dedication is "instantly effective and irrevocable." *Id.*

Reed does not dispute that, in establishing the road, the townships complied with the requirements of Minn. Rev. Laws §§ 1171-85 (1905 & Supp. 1909). But he argues that because the townships did not record the order with the county recorder, as Minn. Stat. § 164.07 now requires, the road was in fact established by statutory prescriptive-use dedication and is thus subject to the provisions of Minn. Stat. § 160.05.[5] Therefore, Reed asserts, the road at issue is limited "to the width of the actual use." *See* Minn. Stat. § 160.05, subd. 1. But because the town boards complied with the applicable statute, they successfully established the road at issue and Minn. Stat. § 160.05 is not applicable.

II. Marketable Title Act.

The Marketable Title Act (MTA) provides:

> As against a claim of title based upon a source of title, which source has then been of record at least 40 years, no action affecting the possession or title of any real estate shall be commenced . . . to enforce any right, claim, interest, incumbrance, or lien founded upon any instrument, event or transaction which was executed or occurred more than 40 years prior to the commencement of such action, unless within 40 years after such execution or occurrence there has been recorded in the office of the county recorder in the county in which the real estate affected is situated, a notice . . . setting forth the name of the claimant, a description of the real estate affected and of the instrument, event or transaction on which such claim is founded, and stating whether the right, claim, interest, incumbrance, or lien is mature or immature.

[5] The parties do not raise the possibility of common law dedication.

Minn. Stat. § 541.023, subd. 1 (2012). Subject to certain exceptions, including possession, any potential claimant who has not filed the statutorily prescribed notice within 40 years of the creation of its interest "shall be conclusively presumed to have abandoned" any interest it might have had in the property. Minn. Stat. § 541.023, subds. 5, 6 (2012).

Pursuant to the MTA, "a township must comply with the requirement that it record properly its possessory interest in a public road within 40 years of the road's establishment or it will be presumed to have abandoned its right to the road." *Twp. of Villard*, 442 N.W.2d at 829. Here, it is undisputed that the townships did not comply with the recording procedures of the MTA. Thus, the "MTA's presumption of abandonment applies *unless* the 'possession' exception of the Act, subdivision 6, can be invoked." *Id.*

To invoke the possession exception, the townships must prove "use sufficient to put a prudent person on notice of the asserted interest in the land, giving due regard to" the fact that the interest at issue is a town road rather than a private easement. *Sampair v. Village of Birchwood*, 784 N.W.2d 65, 70 (Minn. 2010). In other words, the use must "put a prudent person on inquiry." *Id.* (quotation omitted); *see also Sterling*, 309 Minn. at 238, 244 N.W.2d at 134. "Actual possession of real property is notice to all the world of the title and rights of the person so in possession and also of all facts connected therewith which reasonable inquiry would have developed." *Claflin v. Commercial State Bank of Two Harbors*, 487 N.W.2d 242, 248 (Minn. App. 1992), *review denied* (Minn. Aug. 4, 1992). "[K]nowledge of the existence of the easement is a factor to be considered in determining possession." *Sterling*, 309 Minn. at 238, 244 N.W.2d at 134.

Reed concedes that the townships possess the less-than-four-rod-wide tract of land currently in use as a public road. But he argues that because "no documentation has been made of record establishing an interest in favor of [Bartlett Township]," the possession exception does not encompass the full width of the original easement. But Reed misconstrues the record. Although the townships' failure to record the order with the county recorder did not comply with the recording procedures of the MTA, documentation *was* made of record when the road was established in 1911. A copy of the supervisors' road order, which states the width of the road as four rods, is contained in *Book 3 (1905-1923) of Bartlett Township Road Order*; at a minimum, this document is available through the Bartlett Township Clerk.[6] Thus, Reed incorrectly asserts that Bartlett Township did not have documentation establishing the width of the road and "there is nothing an inquiry into the facts . . . would have revealed demonstrating a [two-rod] right of way in Bartlett Township."[7] Rather, a reasonable inquiry would have developed the fact that the townships established a road four rods in width.

Because the townships proved use sufficient to put a prudent person on notice, and a reasonable inquiry would have established the road's width, the townships are entitled to invoke the possession exception to the MTA and Reed is not entitled to relief on this ground.

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[6] At oral argument, Reed's counsel argued that it would have been futile for Reed to search the Bartlett Township records because, in general, town records are not organized. But because Reed failed to make *any* inquiry, the record contains no evidence to support this assertion. To the contrary, the record demonstrates that, in 1987, Germania Township successfully obtained the order from Bartlett Township.

[7] It is undisputed that half of the alleged four-rod road is in Germania Township and half in Bartlett Township, thus the width of two rods in one township.

III. Recording Act.

Under the Minnesota Recording Act,

> Every conveyance of real estate shall be recorded in the office of the county recorder of the county where such real estate is situated; and every such conveyance not so recorded shall be void as against any subsequent purchaser in good faith and for a valuable consideration of the same real estate, or any part thereof, whose conveyance is first duly recorded . . . .

Minn. Stat. § 507.34 (2012). One is not a purchaser in good faith, and thus is not entitled to the protection of the recording act, "if one had knowledge of facts which ought to have put one on an inquiry that would have led to knowledge of a conveyance." *Claflin*, 487 N.W.2d at 248.

It is undisputed that the townships did not record their asserted land interest with the office of the county recorder before Reed acquired and properly recorded his land interest. Thus, the townships' interest is void as against Reed if Reed is a purchaser in good faith. *See* Minn. Stat. § 507.34. But, as discussed in section II, *supra*, Reed had knowledge of the road's existence when he purchased his interest in the land, thereby putting him on inquiry notice. And the records of Bartlett Township reflected the road's width of four rods. Thus, the district court correctly concluded that Reed is not a purchaser in good faith and he is not entitled to relief on this ground.

Affirmed.