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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1021**

Mower County, a Municipal corporation, petitioner,
Respondent,

vs.

Paul J. Heimer, et al.,
Appellants.

**Filed June 16, 2009
Affirmed
Schellhas, Judge**

Mower County District Court
File No. CV-06-220

Patrick W. Flanagan, Flanagan Law Office, 7984 University Avenue Northeast, Fridley,
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(for appellants)

Considered and decided by Ross, Presiding Judge; Schellhas, Judge; and Willis,
Judge.*

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellants challenge the district court's grant of a quick-take condemnation of
appellants' land for the construction of the Shooting Star bike trail system, arguing that

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

the Minnesota Department of Natural Resources (the DNR) circumvented the statutory restrictions on its use of eminent domain by implementing eminent-domain proceedings through respondent Mower County. Because we conclude that the DNR did not circumvent the statutory restrictions on its use of eminent domain and the district court did not err, we affirm.

FACTS

Respondent Mower County is located in southeastern Minnesota and includes the City of Adams and the Village of Taopi. Mower County is involved in a cooperative effort with the Minnesota Department of Transportation (MnDOT), Prairie Visions (an association of the towns of Leroy, Taopi, Adams, and Rose Creek that will acquire property necessary for the trail segment), and the DNR to develop the “Shooting Star” bicycle and walking trail. In 2005 MnDOT prepared a construction plan for the trail and determined that the trail would run on or near an abandoned rail line, some of which is owned by appellants Paul J. Heimer and other landowners.

Mower County was awarded a \$416,000 federal grant to acquire land for the trail and to construct the trail. MnDOT required that Mower County obtain title and possession by June 1, 2006, in order to proceed with the trail. From August through December 2005, Mower County negotiated with landowners along the trail route to acquire land. In January 2006 Mower County held a meeting with landowners. The minutes of the meeting reflect that the relationship of the DNR to the project was discussed and that someone at the meeting commented that “[Mower] County builds [the]

trail and turns completed project over to DNR.”¹ Mower County’s negotiations to acquire appellants’ land were unsuccessful and its Board of Commissioners held a public meeting on February 7, 2006, at which the board adopted a resolution instituting eminent-domain proceedings against appellants under Minnesota Statutes Chapter 117.

Mower County served appellants with notice of the eminent-domain proceedings by mail in February 2006. In March appellants filed an objection and a request for an injunction. In May the district court heard arguments on the initial transfer of title. At the hearing, appellants argued that the DNR was effectively instituting the eminent-domain proceedings through Mower County and that this was not permitted under the statute governing the DNR. Appellants asserted that because the DNR, along with Mower County and Prairie Visions, was part of a “joint effort” to take the land, “the DNR is indeed involved directly” in the proceedings. Mower County Engineer Michal J. Hanson testified at the hearing that the trail was a Mower County project and that although Mower County hoped that the DNR would maintain the trail after it was completed, it was possible that the DNR may never be involved in the project.

The district court determined that the elements for eminent domain were satisfied, determined that “any possible limitations the DNR may have in condemning property are irrelevant to the present case since it is [Mower County] that is seeking to acquire the property, not the DNR,” and granted immediate possession and title of the disputed land to Mower County, subject to the requirements of compensation to appellants under Minn.

¹ The meeting minutes do not indicate whether the comment was made by a representative of Mower County or a landowner.

Stat. § 117.042. Appellants challenged the district court’s order in the quick-take proceedings, arguing both that the DNR circumvented its own statutory restrictions by instituting eminent-domain proceedings against appellants and that the trail did not serve a public purpose and necessity, as required under statute. *Mower County v. Heimer*, No. A06-1345, 2007 WL 2034374 (Minn. App. July 17, 2007). We allowed briefing on both issues, but because “[a]ppellants ha[d] not shown a compelling reason for discretionary review,” we declined to hear the first issue—the issue now before us—ruling that appellants could obtain review of the first issue in a proper appeal from the final judgment. *Mower County v. Heimer*, No. A06-1345 (Minn. App. Oct. 17, 2006) (order op.). We heard appellants’ second issue and the district court’s finding of public purpose and necessity was affirmed. *Mower County*, 2007 WL 2034375, at *2-3.

In April 2008 the parties entered into a stipulation that allowed the district court to make the final award to landowners but preserved the DNR issue for appeal. Final judgment was entered on April 21, 2008. This appeal follows.

D E C I S I O N

The DNR is governed by Minn. Stat. § 85.015, subs. 1(a), 17 (2008). Section 85.015, subdivision 1(a), provides that “[t]he commissioner of natural resources may acquire lands by gift or purchase, in fee or easement, for the trail and facilities related to the trail.” Section 85.015, subdivision 17, addresses the Shooting Star trail and does not include language authorizing the DNR to use eminent domain to acquire land for that trail, although other subdivisions within section 85.015 specifically authorize the DNR to

use eminent domain for other parts of the trail system. Minn. Stat. § 85.015, subs. 13(c), 14(c).

Appellants argue that the DNR circumvented lack of authorization for the use of eminent domain under Minn. Stat. § 85.01, subd. 17, by implementing eminent-domain proceedings through Mower County. They argue that the DNR effectively implemented the eminent-domain proceedings because the DNR was a party to a joint-powers agreement with Mower County through which the land “will be turned over to the DNR once the power of eminent domain is exercised by Mower County.” We disagree.

The scope of our review is narrow because appellate courts give deference to the determinations of the condemning authority, which are regarded as legislative actions, and give deference to the findings of the district court based on a clearly erroneous standard. *Lundell v. Coop. Power Ass’n*, 707 N.W.2d 376, 380-81 (Minn. 2006).

We conclude that this case is controlled by *City of Granite Falls v. Soo Line R.R.*, 742 N.W.2d 690 (Minn. App. 2007), *review granted* (Minn. Mar. 18, 2008) *and appeal stayed* (Minn. Oct. 10, 2008). There, the City of Granite Falls was acquiring property “to establish ‘an all-seasons, multi-purpose and non-motorized recreational trail for public use.’” *Id.* at 693. The city does not intend to “establish the trail itself; instead, the city intends to convey the subject property to the [DNR], to build and maintain the trail.” *Id.* The landowners argued that “the city lacks the authority, express or implied, to acquire property for the benefit of the DNR.” *Id.* at 698. This court “agree[d] that the statute does not provide the DNR with the power to condemn this portion of the Minnesota River Trail.” *Id.* But we noted that

the statute does not prohibit the DNR from acquiring land from another public entity to be used for a lawful public purpose. Had the legislature intended to prohibit the DNR from acquiring lands from others to develop the recreation trails, it could have done so in the legislation—but it did not. Consequently, we discern no legislative intent to prohibit the DNR from doing so.

Id. at 698-99. Because the holding in *City of Granite Falls* applies to this case, we conclude that whether Mower County may turn the acquired land over to the DNR is irrelevant.

We have already determined that Mower County acquired the property for a valid public purpose. *Mower County*, 2007 WL 2034375, at *2. Based on our reasoning in *City of Granite Falls*, Mower County was free to acquire the property through eminent-domain proceedings and then give control of the property to the DNR or convey the property to the DNR. Like the applicable statute in *City of Granite Falls*, the applicable statute in this case contemplates the DNR's participation in the Shooting Star trail system. See Minn. Stat. § 85.015, subd. 17.

Appellant argues that *City of Granite Falls* is not applicable because here, unlike in *City of Granite Falls*, the DNR is involved in a joint-powers resolution with Mower County and therefore is involved more directly with the eminent-domain process than the DNR was in *City of Granite Falls*. Appellants' argument is unpersuasive. In *City of Granite Falls*, the city and the DNR admitted during discovery that although there were no formal discussions regarding the transfer of the property to the DNR, the DNR was developing a master plan for the land. *Id.* at 694. Similarly, here, the cooperative agreement between Mower County and the DNR describes the responsibilities of each

party and requires that the DNR provide funding for trail development, review and approve plans and construction of the trail, and become responsible for maintenance of the trail. The agreement further provides, in relevant part, that the DNR “shall . . . [a]cquire the fee title to the land from Prairie Visions and all of its associated towns, when additional funding becomes available. Until such time, the [DNR] acquires fee title, the [DNR] shall develop the trail on this property upon the conveyance of the necessary easements from said towns.” We conclude that the cooperative agreement does not require the DNR to act outside of its statutory limits and does not unlawfully place the DNR in the “driver’s seat” of the eminent-domain proceedings.

And we disagree with appellants’ argument that the condemned land is subject to the cooperative agreement. The cooperative agreement was executed in 1996 and provides that before the DNR will acquire title to the land, it will first be acquired by Prairie Visions. At oral argument, respondent informed us that Mower County has not yet transferred the condemned land to Prairie Visions or to the DNR. Thus, at this time, the land at issue is not governed by the cooperative agreement. Because the DNR’s responsibilities under the cooperative agreement do not require the DNR to take any land by eminent domain or to be involved in Mower County’s eminent-domain proceedings, we conclude that this case is not distinguishable from *City of Granite Falls* in any way relevant to this appeal.

We hold that the district court did not err in determining that the DNR’s involvement with the subject land is irrelevant to the eminent-domain proceedings because Mower County was the condemning authority, not the DNR. Because the

district court properly determined that Mower County's taking of the subject property for the benefit of the DNR to develop a recreational trail was necessary to effectuate a valid public use, the taking of the land was proper.

Affirmed.