STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0684

Alan H. Larson,
Appellant,

vs.

Lakeport Township-Robert Rickard/Owen Swenson
Petition for Cartway,
Respondent.

Filed April 28, 2009
Affirmed
Collins, Judge[*]

Hubbard County District Court
File No. 29-C0-06-000638

Alan B. Fish, 102 Second Avenue Northwest, Roseau, MN 56751 (for appellant)

Kristi A. Hastings, Pemberton, Sorlie, Rufer & Kershner, 110 North Mill Street, Fergus Falls, MN 56538 (for respondent Lakeport Township)

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Considered and decided by Shumaker, Presiding Judge; Stoneburner, Judge; and Collins, Judge.

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

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

COLLINS, Judge

Appellant challenges the amount of damages awarded by the jury as just compensation for the establishment of a cartway across his property, arguing that respondent-township failed to establish the property's before-and-after values. Appellant also raises various procedural irregularities as grounds for voiding the township's initial decision to establish the cartway. We affirm.

FACTS

On April 25, 2005, respondent-landowners Robert Rickard and Owen Swenson petitioned respondent Lakeport Township to establish a cartway for access to their property across appellant Alan Larson's property. At the public hearing that followed, Larson objected and proposed alternative access routes. The township investigated the feasibility of Larson's alternatives, but found that they affected nine other landowners and would be in close proximity to an environmentally sensitive cranberry bog. After holding additional hearings, several of which were continued at Larson's request, the township established the cartway as originally proposed. Larson was not in attendance at the final hearing on June 2, 2006, when he was awarded $1,547 as just compensation for the taking, plus $200 "to amend the title abstract or for any increase in the title opinion as a result of this action."

Larson appealed the township's decision to the district court, disputing the amount of the award as well as the cartway's necessity and public purpose. The district court granted summary judgment to the township with respect to the necessity-and-public-

purpose challenge, and held a jury trial on the issue of just compensation due to Larson for the taking.

At trial, the township's appraiser opined that the cartway would reduce the value of Larson's property by $1,547. The appraiser had personally visited the site to observe how it would be affected by the cartway and, after concluding that Larson's property was being put to its highest and best use as undeveloped agricultural land, he researched sales of comparable properties within the distance of 30 miles. Based on recent sales of six properties of similar size, the appraiser established $2,536 as a median per-acre value for undeveloped agricultural land in the area. He then formed his opinion of damages by multiplying this value by the fraction of an acre that he determined to be affected by the cartway. In his capacity as the landowner, Larson also testified regarding his opinion of the effect of the cartway on the value of his property. The jury awarded Larson the sum of $1,747 as just compensation for the land taken for the cartway and severance damages to the remaining property. This appeal followed.

D E C I S I O N

I.

Larson first contends that the evidence was insufficient to support the jury's determination of just compensation for the land taken and severance damages totaling $1,747, because the township failed to present to the jury any "competent evidence as to the valuation" of his property. Specifically, Larson argues that the township's appraiser's testimony was incompetent because his methodology did not compare and find the difference between the fair market value of Larson's property immediately before and

after the taking for the cartway. On appeal, we will not set aside a jury verdict on damages unless it is "manifestly and palpably contrary to the evidence viewed as a whole" when viewed in the light most favorable to the verdict. *Raze v. Mueller*, 587 N.W.2d 645, 648 (Minn. 1999) (quotation omitted).

Before establishing a new cartway, a town board must assess the amount of damages that it will cause affected landowners. Minn. Stat. § 164.07, subd. 5 (2008); *see also* Minn. Stat. §§ 160.02, subd. 28 (defining "town road" to include cartways), 164.01 (incorporating definition into chapter 164) (2008). A landowner who is dissatisfied with the amount awarded may appeal the town board's award to the district court. *Id.*, subd. 7 (2008). On such appeal, the landowner's damages are decided de novo by a jury. Minn. Stat. § 117.175, subd. 1 (2008); *see also* Minn. Stat. § 164.07, subd. 8 (2008) (stating that appeal from town board's decision is tried in the same manner as an eminent-domain appeal under chapter 117).

As Larson correctly observes, a landowner's damages for a partial taking are generally measured by estimating "the difference in market value immediately before the taking and the market value of the remaining tract after the taking[.]" *City of Chisago City v. Holt*, 360 N.W.2d 390, 392 (Minn. App. 1985). But, because a landowner seeking "just compensation" in an eminent-domain case "occupies the position of plaintiff," he has the burden of proving the amount of his damages like any other civil plaintiff. *Minneapolis-St. Paul Sanitary Dist. v. Fitzpatrick*, 201 Minn. 442, 460, 277 N.W. 394,

403 (1937); *see also* Minn. Stat. § 117.175, subd. 1 ("The owners shall go forward with the evidence and have the burden of proof as in any other civil action[.]").[1]

Here, both Larson and the township presented evidence as to the amount of damages. The jury was then instructed to determine the sum of money to which Larson is entitled as just compensation for the taking of his land for the cartway and any resulting severance damages to the remaining property. In doing so, the jury was entitled to accept either the township's appraiser's or Larson's testimony about the property's value. And it was just as free to disregard them. Indeed, the supreme court has specifically stated that

> in determining the value of land taken for highway purposes juries are *not limited to the knowledge which they acquire from the evidence adduced at the trial*. They may rely in part upon the evidence of their own senses and upon their general knowledge and experience. The opinions of experts called to testify are merely advisory and the jury is not bound by the amounts stated by such experts.

State by Lord v. Pearson, 260 Minn. 477, 486, 110 N.W.2d 206, 213 (1961) (emphasis added). Thus, while the jury was free to consider the respective parties' evidence on

[1] Beyond directing the town board to deduct the value of any benefits the road will confer on the landowner, the statutes do not specify a particular measure of damages that the town board must apply to calculate its award. *See* Minn. Stat. § 164.07, subd. 5. As the award is intended to be "just compensation" for taking the landowner's property, however, it is reasonable to expect that the town board will assess the damages by applying the same measure of damages used in any other eminent-domain proceeding. *Cf. id.*, subd. 8. Whether or not the town board applied the correct measure when initially assessing Larson's damages is now irrelevant, however, because Larson is appealing from the judgment incorporating the jury verdict, and the jury assessed damages de novo. Minn. Stat. §§ 117.175, subd. 1; 164.07, subd. 8.

valuation, it was bound by neither.[2] The jury apparently accepted the township's appraiser's theory of valuation. The evidence in the record, coupled with the jury's own general knowledge and experience, is sufficient to support its award of just compensation.

II.

Larson also challenges the district court's grant of summary judgment to respondents, arguing that there are genuine factual disputes regarding various alleged procedural irregularities. A district court must grant summary judgment if "there is no genuine issue as to any material fact and . . . either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. On appeal from summary judgment, we must determine: (1) whether there are any genuine issues of material fact; and (2) whether the district court erred in applying the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). In doing so, we must view the evidence in the light most favorable to the

[2] Larson also asserts that the appraiser failed to consider that the affected property was lakefront property. But the jury heard evidence to the contrary—specifically, that Larson's lakefront property is recorded and taxed as a separate adjoining parcel. That these parcels are physically contiguous is certainly relevant to whether they should be valued together for takings purposes, but it is not, as Larson suggests, necessarily dispositive. *Compare City of Minneapolis v. Yale*, 269 N.W.2d 754, 756, 758 (Minn. 1978) (holding that noncontiguous parcels may be sufficiently connected to be valued together), *with County of Blue Earth v. St. Paul & Sioux City R. Co.*, 28 Minn. 503, 508, 11 N.W. 73, 75 (1881) (affirming separate valuation of contiguous parcels based on evidence that they were platted as discrete lots). Thus, the jury was entitled to find that Larson's lakefront property constituted a separate parcel that was unaffected by the cartway. *County of Blue Earth*, 28 Minn. at 508, 11 N.W. at 75 (holding that whether using city lots was the "best method" of determining whether contiguous lots should be valued together was for the jury to decide); *cf. Victor Co. v. State by Head*, 290 Minn. 40, 45, 186 N.W.2d 168, 172 (1971) (stating that whether to treat physically distinct tracts as a single unitary tract is generally a question for the jury).

party against whom summary judgment was granted. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

Township's initial order

Rickard and Swenson filed their petition on April 25, 2005, and the township issued its order on June 14, 2005, 50 days later. Larson argues that this 20-day delay renders the Township's order "void and unenforceable." Larson also argues that because the town board, rather than Rickard and Swenson, served Larson with the order, the service was void. Essentially, Larson argues that these deviations from the "clear mandate" of section 164.07 are jurisdictional defects.[3]

After a petition to establish a road is filed with a town board,

> [t]he town board within 30 days thereafter shall make an order describing as nearly as practicable the road proposed to be established, altered, or vacated and the several tracts of land through which it passes, and fixing a time and place when and where it will meet and act upon the petition.

Minn. Stat. § 164.07, subd. 2(a) (2008). Section 164.07 also states that "[t]he petitioners shall cause personal service of the order and a copy of the petition to be made upon each occupant of the land at least ten days before the meeting and cause ten days' posted notice thereof to be given." *Id.* However, as the supreme court stated:

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[3] It is not clear whether Larson is referring to subject-matter jurisdiction, personal jurisdiction, or nonjurisdictional limits on the town board's authority to decide the petition. *Cf. Moore v. Moore*, 734 N.W.2d 285, 288 n.1 (Minn. App. 2007) (noting that "courts and parties often use concepts and language associated with 'jurisdiction' imprecisely to refer to, among other things, nonjurisdictional claims-processing rules or nonjurisdictional limits on a court's authority to address a question"), *review denied* (Minn. Sept. 18, 2007). Because the outcome would be the same however we analyze Larson's arguments, we will not attempt further clarification.

> Proceedings in the matter of laying out public highways have always been treated liberally by this court, and the statutes on the subject construed broadly, and with a purpose to facilitate the action of public authorities. To apply strict rules of jurisdiction would result in rendering invalid nearly all such proceedings, and be subversive of the best interests of the public. . . . As to [a landowner who appeared at the hearing] and his land the road is valid regardless of proof of posting or serving of notice. . . . The logic of which is that the proceedings are valid as to all persons properly served, and to those also, upon whom notice is not served, who appear and take part therein.

Freeman v. Twp. of Pine City, 205 Minn. 309, 315, 286 N.W. 299, 302 (1939) (quotations omitted).

Here, the only practical effect of the delay before issuance of the township's order was to delay the date for which the first hearing on the petition was set. Larson received the order and a copy of the petition—regardless of who served him—and actively participated in the cartway hearings. Such immaterial irregularities do not void the subsequent proceedings. *See generally*, Minn. R. Civ. P. 61 (directing courts to "disregard any error or defect in the proceeding which does not affect the substantial rights of the parties").

Township's order establishing the cartway and awarding damages

Within seven days after filing an order awarding damages to a landowner affected by the establishment of a cartway, "the town clerk shall notify, in writing, each known owner and occupant of each tract of the filing of the award of damages." Minn. Stat. § 164.07, subd. 6 (2008). The filing of an award of damages also triggers a 40-day appeal period for an affected landowner to challenge the amount of the award or the

public purpose or necessity of establishing the cartway. *Id.*, subd. 7. To delay the start of construction, however, the landowner must appeal within ten days of filing. *Id.* Filing within the statutory appeal period is jurisdictional. *Mueller v. Supervisors of Cortland*, 117 Minn. 290, 292-93, 135 N.W. 996, 996-97 (1912).

Here, the township's order was filed on June 28, 2006, and a township attorney notified Larson's attorney eight days later on July 5, 2006. Larson therefore had until August 7, 2006 to file an appeal,[4] which he did. Larson asserts that the untimely notice by someone other than the town clerk was a jurisdictional defect. It escapes us how Larson could have possibly been disadvantaged by being notified by a township attorney rather than by the town clerk. And it is likewise unclear how he was prejudiced by the day-late notification, which was well within the statutory appeal period. Any procedural irregularities were therefore inconsequential.

Larson also objects to the township's failure to notify another affected landowner. But Larson has no standing to make such claims on behalf of the other landowner, who has not objected to the cartway's establishment and is not a party to this litigation; even if the other landowner's interests were harmed by the alleged lack of notification, it has no bearing on Larson's case. *See Schiff v. Griffin*, 639 N.W.2d 56, 59 (Minn. App. 2002)

[4] The district court incorrectly found that July 8, 2006 was the deadline for Larson "to appeal the public purpose or necessity of the cartway." The statute requires a landowner to appeal within ten days only if he intends "to delay the opening, construction, alteration, change, or other improvement in or to the road . . . ." Minn. Stat. § 164.07, subd. 7. But the error is harmless because the district court agreed to hear Larson's public-purpose-or-necessity appeal without regard to its timeliness.

(noting that standing considers whether the complaining party has a sufficiently personal stake in a disputed issue, not the proposed issue itself).

Availability of alternatives

Larson challenges the necessity of routing the cartway through his property. A town board's decision to establish a cartway is quasi-legislative in nature. *Horton v. Twp. of Helen*, 624 N.W.2d 591, 594 (Minn. App. 2001), *review denied* (Minn. June 19, 2001). A court will not reverse a town board's decision on appeal unless: (1) the evidence is clearly against the board's decision; (2) the board applied an erroneous theory of law; or (3) the town board acted arbitrarily and capriciously, contrary to the public's best interest. *Id.* at 595. Thus, although the district court could try de novo the issue of damages, Minn. Stat. § 117.175, subd. 1, its review of the public-purpose-or-necessity aspect of the Township's decision "must necessarily be narrow," *Horton*, 624 N.W.2d at 595 (quotation omitted).

Here, the township held several public hearings on the cartway and considered various alternatives to the cartway's route, including alternatives proposed by Larson. It rejected those alternatives for various reasons, including because they affected many more landowners and posed environmental concerns. Consequently, the district court was required to affirm the township's decision even though it may have reached a different conclusion as to the wisdom of the decision.

Notice of final hearing

Finally, Larson asserts he was not notified of the fact that the township rescheduled the final public hearing on damages. But the township's attorney stated in an

affidavit that she mailed a letter notifying Larson of the changed date ten days before the rescheduled hearing was to occur. But even if, as Larson claims, he did not receive the letter, the township also posted public notices specifying the new hearing date. Consequently, there is no issue of material fact as to whether Larson was notified of the change.

Affirmed.