STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1863

Enbridge Energy, Limited Partnership, et al., petitioners,
Respondents,

vs.

Donovan D. Dyrdal, et al.,
Appellants,

Choice Financial Group-Grand Forks, et al.,
Respondents Below.

Filed July 28, 2009
Affirmed
Connolly, Judge

Pennington County District Court
File No. 57-CV-08-834

Paul B. Kilgore, Fryberger, Buchanan, Smith & Frederick, P.A., 700 Lonsdale Building, 302 West Superior Street, Duluth, MN 55802 (for respondents)

Jon Erik Kingstad, Lake Elmo Bank Building, Suite 260, 600 Inwood Avenue North, Oakdale, MN 55128 (for appellants)

Considered and decided by Johnson, Presiding Judge; Kalitowski, Judge; and Connolly, Judge.

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

CONNOLLY, Judge

Appellants challenge the district court's finding that the taking of appellants' land was for a public necessity. Because the district court's finding was not clearly erroneous, we affirm.

FACTS

Respondent Enbridge Energy, Limited Partnership (Enbridge), is a Delaware limited partnership, and respondent Enbridge Pipelines (Southern Lights), L.L.C. (Enbridge Pipelines), is a Delaware limited liability company. Enbridge owns and operates a pipeline system that transports crude petroleum and related products and derivatives across Minnesota and other states. In April 2007, Enbridge applied to the Minnesota Public Utilities Commission (MPUC) for a certificate of need and a pipeline routing permit. The applications were filed so that Enbridge could receive authorization to install an approximately 108-mile underground pipeline. The certificate was sought to determine the need for the pipeline in light of state energy needs. *See* Minn. Stat. § 216B.243 (2008). The routing permit was sought for the purpose of establishing the pipeline's precise location. *See* Minn. Stat. § 216G.02 (2008).

MPUC directed the certificate application to the Minnesota Department of Commerce's Office of Energy Security. The department conducted six public information meetings before concluding that the certificate should be issued. MPUC also directed the certificate and the application to an administrative-law judge (ALJ) so that a contested-case hearing could be conducted under Minn. Stat. §§ 14.001-14.70 (2008).

The ALJ conducted six public hearings prior to holding the contested-case hearing on January 22, 2008. On March 24, the ALJ issued his findings of fact, conclusions, and recommendations (the recommendation), in which he recommended that MPUC grant both the certificate and routing permit applications.[1] In an order dated June 19, MPUC accepted, adopted, and clarified the ALJ's recommendation, granted Enbridge's certificate application, and issued the certificate. In a separate order dated June 19, MPUC granted Enbridge's application for a routing permit and issued the routing permit. The routing permit designated that a portion of the pipeline would be installed over, across, or beneath land owned by appellants Donovan and Anna M. Dyrdal.

On June 26, pursuant to Minn. Stat. § 117.48 (2008), respondents initiated the present action in district court in order to acquire a right-of-way easement across a portion of appellants' property to permit the pipeline's installation. Respondents also, pursuant to Minn. Stat. § 117.042 (2008), moved the district court for an order granting quick-take title and possession of a pipeline easement. On August 29, the district court issued its order and memorandum, which (1) awarded respondents a pipeline easement over a portion of appellants' property, (2) ordered the court administrator to accept and

[1] The ALJ recommendation concluded, among other things, that: (1) denying the certificate would constrain the petroleum supply to Minnesota and result in higher petroleum prices within the state, (2) the pipeline's route was reasonable and the best alternative, (3) the pipeline had been planned so as to minimize impacts to human settlements, natural environment, wildlife habitat, water, recreational lands, lands of historical, archeological, or cultural significance, and agricultural, commercial, industrial, forestry, recreational, and mining operations, (4) there is no indication the pipeline will fail to comply with applicable state and federal rules and regulations, and (5) no party has demonstrated by a preponderance of the evidence that there existed a more reasonable and prudent alternative to the pipeline proposed by Enbridge.

deposit respondents' statutory condemnation payment, and (3) appointed and instructed three commissioners to ascertain appellants' damages. This appeal follows.

D E C I S I O N

"[T]here are two levels of deference paid to condemnation decisions: the district court gives deference to the legislative determination of public purpose and necessity of the condemning authority and the appellate courts give deference to the findings of the district court, using the clearly erroneous standard." *Lundell v. Coop. Power Ass'n*, 707 N.W.2d 376, 381 (Minn. 2006). "[T]he standard for overturning a [condemning authority's] decision on public purpose grounds is very strict." *City of Minneapolis v. Wurtele*, 291 N.W.2d 386, 390 (Minn. 1980). As a consequence, "[j]udicial deference to a legislative determination that land being condemned is for a public use is . . . required until it is shown to involve an impossibility." *City of Duluth v. State*, 390 N.W.2d 757, 762 (Minn. 1986) (quotation omitted). Generally speaking, "once a public purpose is found to a condemnation action, the only question left for the court is that of adequate and just compensation." *Id.* at 764.

I. The district court's finding of a public necessity was not clearly erroneous.

Before an applicant may exercise the power of eminent domain, it must establish that the proposed taking is for a public purpose. *See generally* Minn. Stat. § 117.48. In this case, the district court found that the taking was for a public purpose. In doing so, it specifically stated that it was deferring to the findings and expertise of the ALJ and MPUC. Appellants challenge this finding.

The review cited by the district court in this case stretched over 11 months and involved numerous public hearings. The transcripts from these hearing fill 10 volumes, and the evidence received by the ALJ resulted in an ALJ recommendation consisting of 177 specific findings of fact and 59 paragraphs of conclusions. MPUC's order granting the certificate contains an independent analysis with its own findings, conclusions, and modifications to the ALJ recommendation. MPUC's routing permit also engages in a detailed analysis that is reflected in the comprehensive conditions contained within the routing permit. Finally, even appellants agree that the pipeline serves a valuable public purpose. In a letter submitted to the ALJ, appellant Donovan Dyrdal stated,

> It is very important to the citizens and security of the United States to accommodate the production and transportation of fuel and make it available for public use. As a farmer and resident of northern Minnesota, I am in complete agreement with having fuel available for agricultural, transportation, home heating needs, and other industrial uses, at a reasonable cost.

Given the thoroughness of the findings, the district court did not clearly err in finding a public necessity for the pipeline. While appellants may desire the district court to complete an entirely independent determination of whether the taking is for a public necessity, this is not the framework our legislature has chosen to adopt. Under the current statutory scheme, it is the regulatory authority that, with its specialized expertise, bears the primary responsibility for determining whether a public necessity exists. *See* Minn. Stat. § 216B.243; Minn. Stat. § 216G.02.

II. Respondents are associations as the term is used in Minn. Stat. § 117.48.

Minn. Stat. § 117.48 applies to "[a]ny corporation or association qualified to do business in the state of Minnesota engaged in or preparing to engage in the business of transporting crude petroleum[.]" Appellants argue that this section does not apply to respondents because they are, respectively, a limited partnership and a limited liability company rather than a corporation or an association. We disagree.

"Association" is left undefined by chapter 117; however, given the context in which association is used in chapter 117, it would be absurd for us to conclude that the legislature intended to exclude certain types of business entities from the powers granted by Minn. Stat. § 117.48. *See* Minn. Stat. § 645.17 (2008) (stating that courts presume that the legislature does not intend results that are "absurd, impossible of execution, or unreasonable"). In full, Minn. Stat. § 117.48 provides:

> The business of transporting crude petroleum, oil, their related products and derivatives including liquefied hydrocarbons, or natural gas by pipeline as a common carrier, is declared to be in the public interest and necessary to the public welfare, and the taking of private property therefor is declared to be for a public use and purpose. Any corporation or association qualified to do business in the state of Minnesota engaged in or preparing to engage in the business of transporting crude petroleum, oil, their related products and derivatives including liquefied hydrocarbons, or natural gas by pipeline as a common carrier, is authorized to acquire, for the purpose of such business, easements or rights-of-way, over, through, under or across any lands, not owned by the state or devoted to a public purpose for the construction, erection, laying, maintaining, operating, altering, repairing, renewing and removing in whole or in part, a pipeline for the transportation of crude petroleum, oil, their related products and derivatives including liquefied hydrocarbons, or natural gas. To such end it shall have and enjoy the power of eminent

> domain to be exercised in accordance with this chapter, and acts amendatory thereof, all of which provisions shall govern insofar as they may be applicable hereto. Nothing herein shall be construed as authorizing the taking of any property owned by the state, or any municipal subdivision thereof, or the acquisition of any rights in public waters except after permit, lease, license or authorization issued pursuant to law.

This section addresses businesses that are in the business of transporting crude petroleum. There is no indication from the text of the statute that the legislature intended to differentiate or exclude businesses that transport crude petroleum based on how they are organized or incorporated. To draw distinctions based on what type of form a business adopts would unnecessarily exclude businesses that would otherwise be eligible to take property in furtherance of a public necessity or use.

III. Appellants' remaining arguments are without merit.

For the first time on appeal, appellants argue that (1) respondents are not common carriers, (2) Minn. Stat. § 216B.243 is preempted by the dormant commerce clause, and (3) Minn. Stat. § 117.48 is unconstitutional special legislation. Because these issues were not raised below, we decline to address them on appeal. *Thiele v. Stitch*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that "[a] reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it").

Appellants also argue that, since Minn. Stat. § 117.48 applies to associations "qualified to do business in the state of Minnesota," the legislature "impliedly excluded interstate pipeline common carriers or contract carriers from its delegation of power to exercise eminent domain." We disagree. Minnesota courts may not engage in statutory

construction unless the words of a statute are ambiguous. *Phelps v. Commonwealth Land Title Ins. Co.*, 537 N.W.2d 271, 274 (Minn. 1995) ("Where the intention of the legislature is clearly manifested by plain and unambiguous language . . . no construction is necessary or permitted."). Minn. Stat. § 117.48 contains no ambiguity. It applies to associations that are "qualified to do business in the state of Minnesota." Respondents are clearly qualified to do business in Minnesota. That they are engaged in interstate commerce is irrelevant to our analysis of Minn. Stat. § 117.48 in this case.

Finally, appellants argue that the requirement for a certificate is preempted by the Hazardous Liquid Pipeline Safety Act (HLPSA). *See* 49 U.S.C. § 60104(c) ("A state authority may not adopt or continue in force *safety standards* for interstate pipeline facilities or interstate pipeline transportation." (emphasis added)). It is true state laws regulating pipeline safety will be preempted. *Kinley Corp. v. Iowa Utils. Bd.*, 999 F.2d 354, 358 (8th Cir. 1993). But Minn. Stat. § 216B.243 does not purport to regulate pipeline safety or even contain the word "safety." Furthermore, Minn. Stat. § 216G.02, subd. 3(a) prohibits the MPUC from setting standards for pipelines: "The rules apply only to the route of pipelines and *may not set safety standards* for the construction of pipelines." (Emphasis added.) As a result, appellants' argument that the requirement for a certificate is preempted by federal law regulating pipeline safety is without merit.

Any remaining issues raised by appellants are outside the scope of this appeal. *See City of Duluth v. Stephenson*, 481 N.W.2d 577, 578 (Minn. App. 1992) ("Because [appellant] does not challenge the public necessity for the condemnation, the order

granting the quick-take condemnation petition is not a final order from which an appeal may be taken."), *review denied* (Minn. May 15, 1992).

Affirmed.