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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1922**

Robert L. Foster, et al.,
Respondents,

vs.

Fidelia Bergstrom, et al.,
Appellants,

City of Pine City by and through its City Council,
Defendant.

**Filed July 21, 2009
Reversed and remanded
Worke, Judge**

Pine County District Court
File No. 58-C4-91-000854

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Considered and decided by Minge, Presiding Judge; Worke, 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.

UNPUBLISHED OPINION

WORKE, Judge

In this land-ownership dispute, appellants argue that the district court erroneously awarded the disputed property to respondents following a rule 60.01 motion despite the district court's prior award of the property to appellants, which was affirmed by this court. We reverse and remand.

FACTS

Respondents Robert L. and Helen L. Foster (Fosters) own property north of property owned by appellants Fidelia Bergstrom¹ and her family (Bergstroms). The properties are separated by Third Avenue West. In 1991, the Fosters had their property surveyed in order to obtain a conditional use permit for a subdivision of their property. Approval of the permit was subject to access to the proposed subdivision by way of Third Avenue. The Fosters filed a complaint against the Bergstroms and defendant City of Pine City by and through its city council seeking a judgment that Third Avenue is a public street. The Bergstroms claimed title to the street in its entirety.

In 1993, the district court concluded that Third Avenue was not a public street and that the Bergstroms own the disputed roadway in its entirety. The district court ordered that: "The portion of property designated as the 'old road bed' and located in the area labeled swampland shall be owned by each of the parties to the middle of the 'old road bed' as determined by the plat submitted into evidence at the trial."

¹ Fidelia Bergstrom is deceased; appellants in this matter are six of her children and two of their spouses.

The Fosters appealed the district court's decision. *See Foster v. Bergstrom*, 515 N.W.2d 581 (Minn. App. 1994). This court concluded that the district court did not err in awarding ownership of the road to the Bergstroms. *Id.* at 587-88. We also concluded that the district court "properly granted ownership of the old roadbed west of the disputed property to each party, to the centerline of the road. The Bergstroms own the disputed extension of Third Avenue." *Id.* at 588. The matter was remanded to determine proper legal descriptions of both properties consistent with the opinion. *Id.*

On remand, the district court ordered the parties to obtain a survey. While the Bergstroms complied and hired a surveyor, the Fosters failed to cooperate. In April 1995, the district court issued an order that provided legal descriptions of the properties. It is not clear from the record what information the district court used to craft the legal descriptions. The legal descriptions that were crafted sua sponte by the district court proved to be problematic. In August 1995, the district court denied the Bergstroms' motion for a registered surveyor to prepare legal descriptions, and problems with the legal descriptions remained unresolved.

In 2005, the Fosters attempted to convey their property, but title problems arose as a result of the legal descriptions. In 2008, the parties moved the district court to correct clerical errors in the legal descriptions. The Fosters argued that the district court should adopt legal descriptions prepared by a surveyor in 1996. The Bergstroms moved to admit surveys dated June 6, 2008. The district court issued an order providing new legal descriptions, which the Bergstroms now challenge.

DECISION

The parties moved the district court to correct the legal descriptions under Minn. R. Civ. P. 60.01, which provides that a court may correct “[c]lerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission.” The Bergstroms argue that the district court’s order constituted more than a mere clerical correction and actually served to reverse the award of the disputed property by the district court and affirmed by this court. “Great caution must [] be exercised in granting relief for clerical error lest it become a shield behind which to conceal an attack upon the verdict itself.” *Bauer v. Kummer*, 244 Minn. 488, 492, 70 N.W.2d 273, 276 (1955). “Whether a motion calls . . . merely for relief from clerical error . . . or constitutes an attempt to impeach the verdict itself is primarily a question of fact.” *Id.*

The overarching issue here is the boundary dispute. In 1993, the district court concluded that: “The disputed roadway surface west of the platted street Third Avenue West is not a public street[,]” and that “[t]he Bergstroms own the disputed roadway surface known as the southwesterly extension of Third Avenue West in its entirety.” We affirmed the district court, holding that the “Bergstroms own the disputed extension of Third Avenue.” *Foster*, 515 N.W.2d at 588. This court’s decision is binding and, therefore, there is no dispute that the Bergstroms own the disputed roadway in its entirety. *See Tankar Gas, Inc. v. Lumbermen’s Mut. Cas. Co.*, 215 Minn. 265, 270-71, 9 N.W.2d 754, 758 (1943) (stating that the district court has no power to alter, amend, or modify a higher court’s mandate). On remand, the district court was required to provide legal descriptions consistent with the holding that the disputed roadway belongs to the

Bergstroms. *See Jallen v. Agre*, 265 Minn. 578, 579, 122 N.W.2d 207, 208 (1963) (stating that the district court has a duty on remand to execute the mandate of this court strictly according to its terms). However, the proceedings on remand resulted in unintelligible legal descriptions that were contrary to this court's directive. This result was due to the fault of both parties; the Fosters failed to comply with the district court's order to provide a survey, and the Bergstroms failed to follow up and attempt to remedy their perceived deficiencies in the legal descriptions.

Because there are a plethora of surveys submitted with differing start and end points, we are unable to determine what the district court used to fashion its legal descriptions. Further, the number of surveys has contributed to the confusion surrounding this matter, and without explanatory testimony, it is difficult to determine which survey accurately portrays the entirety of the Bergstroms' property. For this reason, we reverse and remand. On remand, the district court shall order the parties to submit a revised survey that adequately and accurately describes the properties in a manner consistent with this court's previous opinion. If differing surveys are submitted, the court may open the record to hear testimony in support of each survey in order to make a factual determination on the accuracy of the survey submitted.²

Reversed and remanded.

² By notice of review, the Fosters argue that the district court erroneously admitted the 2008 surveys offered by the Bergstroms. Because we are reversing and remanding, we will not address this issue.