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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-586**

Dwaine C. Ratfield, et al.,
Appellants,

Gregory C. Winans, et al.,
Plaintiffs,

vs.

South Harbor Township,
Respondent.

**Filed March 2, 2010
Affirmed
Johnson, Judge**

Mille Lacs County District Court
File No. 48-CV-06-1383

Chad D. Lemmons, Kelly & Lemmons, P.A., St. Paul, Minnesota (for appellants)

Kenneth H. Bayliss, Laura A. Moehrle, Quinlivan & Hughes, P.A., St. Cloud, Minnesota
(for respondent)

Considered and decided by Johnson, Presiding Judge; Stoneburner, Judge; and
Huspeni, Judge.*

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

UNPUBLISHED OPINION

JOHNSON, Judge

This case concerns a petition for the establishment of a cartway pursuant to section 164.08, subdivision 2, of the Minnesota Statutes. Joby Properties, a partnership, owns two parcels that are approximately 825 feet from the nearest public road. Joby petitioned South Harbor Township for a cartway to connect its parcels with the public road. The proposed cartway would cross two parcels owned by Dwaine C. Ratfield and Kathleen M. Ratfield, which are located approximately midway between Joby's parcels and the public road. The Ratfields opposed the cartway petition. The township granted the petition. On judicial review, the district court upheld the township's cartway order. We affirm.

FACTS

South Harbor Township is in Mille Lacs County at the southernmost part of Lake Mille Lacs. The properties at issue in this case are part of a peninsula approximately one mile long that protrudes in a westerly direction into Lake Mille Lacs. Joby owns the two parcels at the western end of the peninsula. The Ratfields own the seventh and eighth parcels from the western end of the peninsula. The first eight parcels compose Government Lot 5; the next ten parcels are part of Government Lot 3. The sole public road serving the peninsula terminates in the middle of the tenth parcel of Government Lot 3, which is the eighteenth parcel from the western end of the peninsula.

In April 2003, Joby petitioned the township for a cartway connecting its two parcels with the public road. Joby's original petition sought a cartway running to the

eastern edge of the seventeenth parcel, based on the assumption that such a cartway would meet the public road there. When it was determined that the public road terminates further away, in the middle of the eighteenth parcel, Joby filed an amended petition seeking a longer cartway to that point. The Ratfields opposed the establishment of a cartway on the ground that Joby already has access to the public road because of a series of easements across the Ratfields' two parcels and parcels owned by other persons in Government Lot 5.

After several public hearings, the town board found that, although Joby possesses certain easements, "the easements were, for the most part, not surveyable." The town board also found that Joby's easements across Government Lots 5 and 3 could not connect Joby's parcels to the public road because the public road terminates in the middle of the eighteenth parcel on the peninsula. In addition, the town board questioned whether Joby's easement across certain parcels was wide enough to satisfy the statutory requirements. The town board concluded that Joby "has no access to its land, except over the land of others" and that "to the extent there may be permissible access, it could be revoked" and "is less than two (2) rods in width." Accordingly, in April 2006, the town board issued a final cartway order that established a cartway benefitting Joby's property.

The Ratfields sought review of the town board's final cartway order by the Mille Lacs County District Court pursuant to Minn. Stat. § 164.07, subd. 7 (2004). The Ratfields moved for summary judgment, arguing that the town board lacked the authority to issue the final cartway order because Joby already possessed easements across Government Lot 5. In November 2006, the district court denied the Ratfields' motion

and, in the same order, ruled that the township is entitled to judgment in its favor. The district court reasoned that “[t]he easement language in the deeds submitted by [the Ratfields] is too vague to be surveyable and cannot serve as a basis to provide the necessary 33-foot wide access required by Minnesota Statute 164.08.” The district court further reasoned that even “if the easements could be located or defined by use, they do not connect the . . . Joby property with a public road.” The district court thus concluded that Joby’s easements “do[] not connect” Joby’s parcels “with a public road as required by Minnesota Statutes § 164.08.” In an order filed in July 2008, the district court awarded damages to the landowners whose parcels are burdened by the new cartway. The Ratfields appeal.

DECISION

The Ratfields argue that the township improperly granted Joby’s cartway petition and that the district court erred by affirming the township’s final cartway order.

The relevant statute provides, in part:

Upon petition presented to the town board by the owner of a tract of land containing at least five acres, who has no access thereto except over a navigable waterway or over the lands of others, or whose access thereto is less than two rods in width, the town board by resolution shall establish a cartway at least two rods wide connecting the petitioner’s land with a public road. . . . The town board may select an alternative route other than that petitioned for if the alternative is deemed by the town board to be less disruptive and damaging to the affected landowners and in the public’s best interest.

Minn. Stat. § 164.08, subd. 2(a) (2004). A town board acting on “a cartway petition acts in a legislative capacity and will be reversed on appeal only when (1) the evidence is

clearly against the decision, (2) an erroneous theory of law was applied, or (3) the town board acted arbitrarily and capriciously, contrary to the public's best interest." *Horton v. Township of Helen*, 624 N.W.2d 591, 595 (Minn. App. 2001) (citing *Lieser v. Town of St. Martin*, 255 Minn. 153, 158-59, 96 N.W.2d 1, 5-6 (1959)), *review denied* (Minn. June 19, 2001). Our review "is limited to a consideration of whether the [district] court has confined its review to the limited scope of such review and, aside from jurisdictional questions, whether the evidence reasonably supports the determination of the [district] court." *Lieser*, 255 Minn. at 163, 96 N.W.2d at 8. If "a petitioner satisfies all the criteria under the cartway statute, a town board must establish a cartway." *Horton*, 624 N.W.2d at 594.

The Ratfields contend that the final cartway order is not authorized by statute because Joby has valid easements across the other parcels composing Government Lot 5. More specifically, the Ratfields contend that even though the easement language is too vague to be surveyable, the location of the easement may be judicially determined based on extrinsic evidence. *See, e.g., Bergh & Misson Farms, Inc. v. Great Lakes Transmission Co.*, 565 N.W.2d 23, 26 (Minn. 1997) (discussing whether extrinsic evidence may be used to interpret easement language); *Ingelson v. Olson*, 199 Minn. 422, 427-28, 272 N.W. 270, 274 (1937) (analyzing caselaw concerning location of indefinitely described easement).

We need not consider whether the location of Joby's easements may be judicially determined because, for the reasons stated below, even if the Ratfields could establish that point of law, they could not defeat Joby's cartway petition. Both the town board and

the district court stated an alternative ground for granting Joby's cartway petition, and the Ratfields have not refuted the alternative ground. The town board found that the easements do not connect Joby's property to the public road because the easements pass through seventeen parcels while the public road terminates in the middle of the eighteenth parcel. The district court agreed, finding that even "if the easements could be located or defined by use, they do not connect the . . . Joby property with a public road." On appeal, the Ratfields do not address the gap between Joby's easements and the end of the public road. In fact, at oral argument, the Ratfields' counsel conceded that Joby's easements do *not* provide lawful, 33-foot-wide access for the entire distance between its property and the public road. But the Ratfields argue that, as a matter of law, it is unnecessary for them to establish that Joby's easements connect with the public road because the Ratfields may defeat the cartway petition merely by showing that Joby has an easement over their own parcels. In response, the township contends that "the existence of an easement across Government Lot 5 does not cure the deficiencies in the easements across Government Lot 3 and the lack of any easement across [the eighteenth parcel] to connect the easement to the public road as required in Minnesota Statute § 164.08."

The Ratfields' argument is inconsistent with the cartway statute, which provides a remedy to the owner of a parcel that does not have complete and continuous access to a public road. The statute focuses on the parcel that is to be benefited by a cartway, not the parcels that are to be burdened by a cartway. The statute requires an inquiry into whether there is "access" between a public road and the parcel to be benefited other than "over a navigable waterway or over the lands of others." Minn. Stat. § 164.08, subd. 2(a). If

there is no such access, the statute requires a town board to “establish a cartway at least two rods wide connecting the petitioner’s land with a public road.” *Id.*, see also *State ex rel. Rose v. Town of Greenwood*, 220 Minn. 508, 514-15, 20 N.W.2d 345, 348 (1945). There is nothing in the text of the statute suggesting that one landowner may defeat a cartway petition by showing that his or her parcel of land provides partial access between the inaccessible parcel and a public road.

The flaw in the Ratfields’ argument is demonstrated by the supreme court’s decision in *Kroyer v. Board of Supervisors of Spring Lake*, 202 Minn. 41, 277 N.W. 234 (1938). Kroyer owned a parcel of land without access to a public road. *Id.* at 41, 277 N.W. at 234. Kroyer apparently had the right to pass over a parcel owned by Deegan, but he could not lawfully pass over parcels owned by Blohm and Conroy so as to reach a public road. *Id.* at 42, 277 N.W. at 234-35. Because he lacked complete and continuous access to the public road, the supreme court held that Kroyer’s “right to the cartway awarded him is clear.” *Id.* at 43, 277 N.W. at 235. In this way, *Kroyer* can be distinguished from *Roemer v. Board of Supervisors of Elysian Twp.*, 283 Minn. 288, 167 N.W.2d 497 (1969), on which the Ratfields rely. In *Roemer*, the supreme court held that the cartway statute “was not intended to apply where the petitioner has a perpetual easement running with the land to his heirs and assigns.” 283 Minn. at 292, 167 N.W.2d at 500. But Roemer’s easement rights fully provided him with “ingress and egress to a public highway.” *Id.* at 291, 167 N.W.2d at 499. The supreme court held “the statute does not contemplate establishing an alternative right-of-way where an owner already has means of ingress and egress.” *Id.* On the other hand, if a landowner “has no access to his

land except over the land of others,” and if other requirements of the statute are satisfied, it is “the mandatory duty of the town board to establish” a cartway. *Town of Greenwood*, 220 Minn. at 514, 20 N.W.2d at 348. In this case, Joby will not lawfully be able to pass from its property to a public road unless a cartway is established.

In sum, the township’s final cartway order was not clearly against the evidence, based on an erroneous theory of law, or arbitrary, capricious or against the public’s best interest. Thus, the district court did not err by granting judgment to the township.

Affirmed.