STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2316

Duane C. Pagel, et al.,
Respondents,

vs.

Clyde Madden, et al.,
Appellants.

Filed August 31, 2010
Affirmed
Willis, Judge[*]

Lyon County District Court
File No. 42-CV-08-1085

Michael W. Cable, Quarnstrom & Doering, P.A., Marshall, Minnesota (for respondents)

Robert L. Gjorvad, Runchey, Louwagie & Wellman, P.L.L.P., Marshall, Minnesota (for appellants)

Considered and decided by Klaphake, Presiding Judge; Minge, Judge; and Willis, Judge.

[*]Retired judge of the Minnesota Court of Appeals, serving 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

WILLIS, Judge

In this dispute involving the repair of a dam located on the parties' adjacent properties, the district court, under theories of express and implied contract, granted respondents the right to go onto appellants' land to perform the repairs. Appellants argue that the district court lacked subject-matter jurisdiction over this dispute and that the evidence was insufficient for the district court to find that the respondents had enforceable rights as the result of either an express or an implied contract. Because we conclude that the district court had subject-matter jurisdiction and that the evidence was sufficient to find that an implied contract to maintain the dam arose from the circumstances surrounding respondents' prior sale of land to appellants, we affirm.

FACTS

In 1964, respondent Duane C. Pagel purchased farmland in Lyon County. The neighboring farm to the south was owned by Kenneth Madden. A few years later, Duane Pagel decided to construct a dam on a stream that flowed northward to his property through Kenneth Madden's farm. In 1977, Duane Pagel and Kenneth Madden jointly applied to the Minnesota Department of Natural Resources (DNR) for a permit to construct a dam to create a pond for livestock-watering and recreational purposes. The DNR approved the application and issued a permit, which was subsequently recorded.

The recorded DNR permit describes both parcels of farmland and is associated with each of them in the county records. Among other provisions, the permit states that "[m]aintenance of the dam and reservoir herein authorized in a safe and sound condition

shall be the responsibility of the permittee." Duane Pagel began construction of the dam in 1977 and finished it in 1978. Water retained by the dam forms a pond, most of which is located on Duane Pagel's land but the southernmost tip of which extends onto the Madden farm. Kenneth Madden died sometime after the construction of the dam, and appellant Clyde Madden subsequently acquired Kenneth Madden's farm.

At an auction sale in 1998, Duane Pagel and his wife, respondent Marian Pagel, sold to appellants Clyde and Derald Madden all of their farmland with the exception of approximately 20 acres. It appears from the record that the 20-acre parcel retained by Duane and Marian Pagel was conveyed to their individual respective revocable trusts, which are also respondents here. Duane Pagel, Marian Pagel, and their trusts are referred to together as "the Pagels." Clyde Madden and Derald Madden are the son and grandson, respectively, of Kenneth Madden, and are referred to together as "the Maddens."

The auction notice describes the property retained by the Pagels as an "approximately 20 acre pond/site," which includes most of the pond and the land immediately surrounding it. After the sale of the property, approximately half of the dam is located on the Pagels' property and half on the Maddens' property. As a result, both the Pagels and the Maddens are owners of the dam under Minn. R. 6115.0320, subp. 10 (2009), which defines an owner as "the owner or lessee of the property to which the dam is attached." The purchase agreement contains a perpetual easement over the Pagels' land to allow the Maddens access to the property they purchased from the Pagels but says nothing about dam maintenance.

In 2008, the DNR issued a report resulting from a safety inspection of the dam, stating:

> The corrugated metal conduit has rusted through, resulting in water flowing along the outside of the conduit and washing out portions of the embankment. The current extent of the leakage and loss of embankment material requires immediate attention to avoid dam failure. The dam embankment appears to be in good condition except at the location of the conduit. Minor scour at the downstream end of emergency spillway should also be repaired.
>
> As owners of the dam you are responsible to conduct needed repairs. Emergency actions can be completed without a permit to prevent dam failure or to limit damages should the dam fail. However, final construction for repair of the conduit will require a permit from the DNR and must be completed by a registered engineer with experience in dam construction. Alternatively, if this dam is no longer important to you, we recommend that the dam be breached or downsized so that it is no longer a public concern. If it is agreed to remove or downsize the dam, a permit from the DNR will be required.

To repair the metal conduit, it is necessary to enter onto the property that the Maddens bought from the Pagels in 1998.

The Pagels' parcel was surveyed in 2006. The survey showed a discrepancy between the conveyed easement and the actual location of the road that the Maddens use for access. The Pagels continued to allow the Maddens to use the road, but the parties' relationship broke down, and the Pagels eventually told the Maddens that they had to abide strictly by the terms of the easement unless the Pagels could enter onto the Maddens' property to repair the dam. The Maddens denied the Pagels' requests for access to make dam repairs.

The Pagels sued the Maddens in district court, seeking authorization "to repair the dam, as well as place permanent pipe, riprap and other structures on [the Maddens'] property." The matter proceeded to a bench trial.

Because the Pagels indicate that they are willing to pay for the repairs, the division of repair costs is not at issue. The evidence at trial showed that the repairs would consist of the placement of concrete pipe and the installation of a riprapped plunge pool. A hydrologist with the DNR testified that a landowner needs a permit to repair a dam and that no permit had yet been applied for.

Derald Madden testified that he would like to see the dam removed so that the Maddens can "utilize the property [they] own in a more productive manner and to eliminate the problems between the [parties]." He also testified that, alternatively, he would be agreeable to lowering the dam.

The district court concluded that the Maddens were "bound by the terms of the permit" and held that the Maddens' "knowledge of the existence of the permit and the corresponding obligations that it imposed on the described real estate in the permit provided [the Maddens] with knowledge of the contractual obligation to both maintain and allow the maintenance of the dam." The district court concluded that "the [Pagels] necessarily require an easement on the [Maddens' property] . . . to comply with the requirements of the permit."

The Maddens filed alternative motions for amended findings or a new trial. Both were denied by the district court. This appeal follows.

D E C I S I O N

I. The district court had subject-matter jurisdiction over the Pagels' request for access to the Maddens' land to perform the dam repairs.

The Maddens first challenge the district court's subject-matter jurisdiction, arguing that, because the Pagels have not yet submitted an application for a permit to make repairs to the dam, the Pagels have failed to exhaust their administrative remedies, and, because the DNR has not had an opportunity to act on a permit application, the district court lacked subject-matter jurisdiction to address what should be done with the dam. We disagree.

"Because subject matter jurisdiction goes to the authority of the [district] court to hear a particular class of actions, lack of subject matter jurisdiction may be raised at any time . . . ." *Cochrane v. Tudor Oaks Condo. Project*, 529 N.W.2d 429, 432 (Minn. App. 1995), *review denied* (Minn. May 31, 1995). The existence of subject-matter jurisdiction is reviewed de novo. *Johnson v. Murray*, 648 N.W.2d 664, 670 (Minn. 2002).

A party must generally "exhaust its administrative remedies before seeking judicial relief unless the remedies are inadequate or nonexistent." *Zaluckyj v. Rice Creek Watershed Dist.*, 639 N.W.2d 70, 74 (Minn. App. 2002), *review denied* (Minn. Apr. 16, 2002). The exhaustion requirement protects the autonomy of administrative agencies and promotes judicial efficiency. *Id.* at 75. "In addition, the record produced in the administrative process facilitates judicial review and may also reduce the need to resort to judicial review." *Id.*

We have doubts about whether the right to enter onto the Maddens' land truly raises an exhaustion-of-remedies issue. The legal determination of whether the Pagels may enter onto the Maddens' property is separate and distinct from whether the DNR will approve the Pagels' proposed repairs and give the Pagels a permit to perform the repairs. It is not disputed that the DNR has directed the Pagels to repair the dam or that they are required by law to obtain a permit before performing the repairs. *See* Minn. Stat. § 103G.301, subd. 1 (2008) (describing general permit application procedures); Minn. R. 6115.0350, subp. 1 (2009) (stating general application requirements to perform a repair). The repairs to the dam can be performed only by entering onto the Maddens' land. Any attempt by the Pagels to repair the dam without the Maddens' permission or a court order would be a trespass. *See Garvis v. Emp'rs Mut. Cas. Co.*, 497 N.W.2d 254, 259 (Minn. 1993) ("Trespass encompasses any unlawful interference with one's person, property or rights.").

The Minnesota Supreme Court has stated that "where nothing can be accomplished by resort to administrative remedies, the doctrine of exhaustion of administrative remedies does not apply." *Starkweather v. Blair*, 245 Minn. 371, 395, 71 N.W.2d 869, 884 (1955). Nothing would be accomplished by requiring the Pagels to apply for a permit to repair the dam before they know that they have a right to be on the Maddens' property. Thus, we conclude that any failure by the Pagels to pursue administrative remedies did not deprive the district court of subject-matter jurisdiction.

Alternatively, the dam permit and the administrative rules could be read as requiring the Pagels to obtain the Maddens' permission before beginning any repairs

because the repairs will indisputably require the Pagels to enter onto the Maddens' property, thus affecting the Maddens' property rights. Both as a named permittee and as an owner of the dam, Duane Pagel is bound to maintain the dam. *See* Minn. R. 6115.0380, subp. 1 (2009) (requiring owners to "operate and maintain the dam"). The dam permit requires the permittee to obtain the written consent of an affected party when activities authorized by the permit involve using the property rights of another. Similarly, under the administrative rules, when the "activities authorized by a permit involve the rights or interests of any other persons, . . . the permittee, before proceeding, shall acquire all necessary interests or permissions." Minn. R. 6115.0470 (2009). The Maddens refuse to allow the Pagels onto the Maddens' property to perform the repairs. Because of the impasse, the Pagels sought relief in district court. The rules also provide that "[n]othing in these parts shall be construed to deprive any owner of such recourse to the courts." Minn. R. 6115.0440 (2009).

Together, the language of the dam permit and the rules also leads to the conclusion that the Pagels may seek judicial relief before applying for a permit. The Maddens' argument that the district court lacked subject-matter jurisdiction is without merit.

II. The district court did not err by concluding that the evidence was sufficient to establish that the Maddens were contractually bound to allow the Pagels to maintain the dam and, to the extent necessary, to use the Maddens' land to perform the repairs.

The Pagels sought equitable relief, rather than proceeding under a particular legal theory. Focusing on the Maddens' actual knowledge of the dam and record notice of the dam permit's terms at the time of the 1998 sale, the district court concluded that an

implied contract "allow[ing] the [Pagels] to maintain the dam and, as part of that process, to utilize necessary parts of the [Maddens' property]" was formed when the Maddens purchased the Pagels' property.

An implied contract is a contract that is inferred from the circumstances, relationship, and conduct of the parties. *McIntosh Cnty. Bank v. Dorsey & Whitney, LLP*, 745 N.W.2d 538, 549 (Minn. 2008). The existence of an implied contract is a question of fact, and the district court's findings on the subject will not be set aside unless they are clearly erroneous. *AFSCME Councils 6, 14, 65 & 96, AFL-CIO v. Sundquist*, 338 N.W.2d 560, 567 (Minn. 1983); Minn. R. Civ. P. 52.01. The Maddens argue that the evidence was insufficient for the district court to conclude that the Pagels had any enforceable legal rights under an implied contract.

In considering the existence of an implied contract, courts examine the parties' words, conduct, circumstances, and relationship. *Roberge v. Cambridge Coop. Creamery*, 248 Minn. 184, 189, 79 N.W.2d 142, 146 (1956); *Gryc v. Lewis*, 410 N.W.2d 888, 891 (Minn. App. 1987). An implied contract still "requires a meeting of the minds the same as an express contract." *Roberge*, 248 Minn. at 188, 79 N.W.2d at 145-46. But because of the nature of an implied contract, "it is not expected that the elements of [an implied] contract will be as vividly portrayed by the evidence as where an express contract has been pleaded." *McIntosh Cnty. Bank*, 745 N.W.2d at 549 (quotation omitted).

The Maddens contend that "there is no 'meeting of the minds' between the parties as to whether or not the dam should be repaired or removed." But we agree with the

district court that here the proper focus is on the intent of the parties at the time of the 1998 sale, not on their current disagreement.

In 1998, the dam and pond existed, and the auction notice specifically exempted an "approximately 20 acre pond/site" from the sale. The dam permit was of record and was associated with the property that the Pagels' auction notice indicated was for sale. The permit obligated the permittees to "[m]aintain[] . . . the dam and [the pond] . . . in a safe and sound condition." Therefore, Duane Pagel, as a named permittee, is subject to this obligation. The Maddens, aware of these facts, purchased the property described in the auction notice without expressing any concerns about the continued maintenance of the dam. On this record, the district court found the existence of an implied contract allowing the Pagels "to maintain the dam" and, "as part of that process," to utilize the portion of the Maddens' property necessary to effect repairs.

In light of our standard of review and the fact that evidence of an implied contract is not expected to be as clear as that of an express contract, we conclude that the district court's findings are not clearly erroneous and, therefore, the district court did not err in granting the Pagels access to the Maddens' property for purposes of making repairs to the dam.

Because we affirm the district court's judgment on the implied-contract analysis, we do not address its express-contract analysis.

Affirmed.