STATE OF MINNESOTA
IN COURT OF APPEALS
A11-139

James M. Tracy, et al.,
Respondents,

vs.

Jeanette Macklin, et al.,
Appellants,

Roosevelt Township, et al.,
Defendants.

Filed September 12, 2011
Affirmed
Bjorkman, Judge

Crow Wing County District Court
File No. 18-CV-10-891

Lonny D. Thomas, Kimberly E. Brzezinski, Thomas Law, P.A., Crosslake, Minnesota (for respondents)

Thomas C. Pearson, Gammello, Qualley, Pearson & Mallak, PLLC, Baxter, Minnesota (for appellants)

Considered and decided by Larkin, Presiding Judge; Stauber, Judge; and Bjorkman, Judge.

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

BJORKMAN, Judge

Appellants challenge the district court's award of summary judgment to respondents in this vacation and quiet-title action. Appellants argue that the district court

erred in ordering vacation of the unvacated portion of a former roadway and erred in adjudicating respondents fee owners of the disputed parcel of land. We affirm.

FACTS

In 1950, John and Helvig Lind platted Lind's North Shore out of a portion of Government Lot 1, Section 4, Township 43, Range 28; a portion of the NW ¼ NW ¼, Section 3, Township 43, Range 28; and a portion of Government Lot 6, Section 3, Township 43, Range 28, all in Crow Wing County. The plat contains a dedication that established Camp Lake Road, the access road for all of the lots in the plat: "The 66 foot road along the rear of the lots together with an easement for road purposes along an existing road across Govt. Lot 1, Sec. 33, Twp. 44, Rge. 28, to a public road is hereby dedicated to the public." The Linds retained the unplatted portion of Government Lot 1.

In 2003, Roosevelt Township moved the portion of Camp Lake Road that abutted platted lots 6 through 12. The move shifted the road into property that had been the unplatted portion of Government Lot 1. The land underlying the original roadway was divided into six parcels (A through F) that abut and correspond to the seven platted lots (parcel F abuts lots 11 and 12).

In October 2008, the township vacated all of parcels A, B, C, E, and F, and a portion of parcel D. *See* Minn. Stat. § 164.07, subd. 1 (2010) (permitting a town board to vacate a road). The township did not vacate a portion of land between parcels C and D that contains culverts, and did not vacate a portion of parcel D. The township explained that it was not vacating "[c]ertain portions" of the road because it "determined they are

needed to support the new alignment of the Road, are needed to support drainage of the Road, or they are needed to maintain access from the Road to private property."

In March 2010, respondents James and Marlene Tracy, the owners of lot 9, which abuts parcel D, initiated this action under Minn. Stat. § 505.14 (2010), seeking vacation of the previously unvacated portion of parcel D and a determination that they are the fee owners of all of parcel D. The township was listed as a defendant in the action but, after considering the Tracys' claims, declined to actively oppose the vacation. However, appellants Jeanette Macklin, Patrick and Victoria Welty, and PAJAN Investments, LLC, all current or recent owners of property affected by the Camp Lake Road move,[1] opposed the vacation and the Tracys' ownership claim as to all of parcel D. They also asserted counterclaims asking the district court to determine that they are the (former or current) owners of parcel D. On competing motions for summary judgment and stipulated facts, the district court ordered vacation of the previously unvacated portion of parcel D and adjudicated the Tracys the fee owners of all of parcel D. This appeal follows.

D E C I S I O N

On appeal from summary judgment, we review de novo whether there are any genuine issues of material fact and whether the district court erred in its application of the law. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002). When the district court grants summary judgment based on the application of a statute to

[1] William Macklin owned the unplatted Government Lot 1 in 2003. Jeanette Macklin owned lot 10 and subsequently acquired the unplatted Government Lot 1 through a series of transactions between 2006 and 2009. She sold both properties and the vacated portion of parcel D to PAJAN in October 2009. And the Weltys own lots 11, 12, and 13 (and are the owners of PAJAN).

undisputed facts, the result is a legal conclusion subject to de novo review. *Weston v. McWilliams & Assocs., Inc.*, 716 N.W.2d 634, 638 (Minn. 2006).

I. The previously unvacated portion of parcel D is now useless as a public road.

Appellants first argue that the district court erred by ordering vacation of the previously unvacated portion of parcel D. A district court may vacate all or part of a platted street, and adjudge title to the underlying land, upon a showing that the street sought to be vacated is "useless for the purpose for which it was laid out." Minn. Stat. § 505.14. The petitioner bears the burden of proving uselessness, and failure to show uselessness is dispositive. *In re Verbick*, 607 N.W.2d 148, 150 (Minn. App. 2000). The term useless is not read in a restricted fashion but is given its well-accepted meaning of "not serving or not capable of serving any valuable purpose." *Church of Sts. Peter & Paul of Lake George v. Twp. of Lake George*, 252 Minn. 209, 213, 89 N.W.2d 708, 711 (1958) (quotations omitted). The recognized purpose of connecting streets within or between platted areas "is to provide a means of ingress to and egress from lots bordering thereon as well as to connect with other streets within such platted areas for the benefit of the owners or residents of such lots and for the general public." *Id.* at 213, 89 N.W.2d at 711.

Appellants assert that the township's October 2008 decision not to vacate all of parcel D establishes that the unvacated portion "still was useful and necessary . . . for drainage, support of the new alignment of the road, access to the road and for the support of utilities." We disagree. Appellants mischaracterize the township's findings by citing a list of uses for parcel D that the township identified more broadly as uses for multiple

areas of the former Camp Lake Road. With respect to parcel D, the township identified only one use, stating: "That area was not proposed for vacation in order to preserve access from Lot 9 to the realigned Road." Consistent with that finding, the stipulated record indicates that the township has not maintained the unvacated portion of parcel D since 2003 and did not actively oppose this vacation action, reiterating that "[t]he portion of right-of-way in front of [lot] 9 was not vacated in order to ensure the Tracys continue to have legal access to their property." Thus, the only "use" for the unvacated portion of parcel D is to provide the Tracys access to lot 9.

Access is not only a valid but a fundamental use for a public road. *See Twp. of Lake George*, 252 Minn. at 213, 89 N.W.2d at 711. But this "use" becomes irrelevant if the party for whom the road provides access actually owns the land on which the road is located. As discussed below, the district court properly determined that ownership of parcel D reverts to the Tracys upon vacation. Accordingly, we conclude that the district court did not err in determining that the unvacated portion of parcel D is now useless for its intended purpose.

II. The Tracys own all of parcel D.

Appellants also challenge the district court's determination that all of parcel D belongs to the Tracys. Ownership of land underlying a platted road depends on the platter's intent, as evidenced in the plat. *See Drake v. Chicago, R. I. & P. Ry.*, 136 Minn. 366, 367, 162 N.W. 453, 454 (1917); *In re Robbins*, 34 Minn. 99, 101-02, 24 N.W. 356, 357 (1885). "In construing a plat to determine the intent of the dedicator, the plat as a whole, inclusive of all lines and language found thereon, must be considered, and no part

thereof is to be ignored as superfluous or meaningless." *Bryant v. Gustafson*, 230 Minn. 1, 8, 40 N.W.2d 427, 432 (1950). Construction of a plat is subject to the same rules that govern construction of contracts. *See Cunningham v. Vill. of Willow River*, 68 Minn. 249, 250-52, 71 N.W. 532, 533 (1897).

Appellants argue that PAJAN is entitled to all of parcel D because the portion of Camp Lake Road at issue is the easement referenced in the dedication, rather than a dedicated road, and reverts to PAJAN as the Linds' successor to unplatted Government Lot 1. Appellants also argue, in the alternative, that PAJAN is entitled to half of parcel D under the general rule that "upon vacation of a street or alley, abutting landowners own to the middle of a street or alley." *See Edgewater Cottage Ass'n, Inc. v. Watson*, 387 N.W.2d 216, 218 (Minn. App. 1986) (citing *Robbins*, 34 Minn. at 102, 24 N.W. at 357). We address each argument in turn.

First, appellants assert that the two roadways described in the dedication (a "66 foot road along the rear of the lots" and "an existing road across Govt. Lot 1, Sec. 33, Twp. 44, Rge. 28") refer to two different sections of Camp Lake Road and that the second section, which is established by an easement, encompasses parcel D. We disagree. The plat plainly indicates that Lind's North Shore, inclusive of the 38 platted lots and the entire length of Camp Lake Road, is located entirely within Township 43. Because the second (easement) roadway runs "across" Township 44, it lies entirely outside the plat. Because parcel D is within the plat and not established by an easement, appellants' argument that all of parcel D should revert to PAJAN on that basis is unavailing.

Second, the half-ownership rule described in *Edgewater* is based on a presumption that "adjoining landowners furnished land for the roadway use." *Id.* That presumption is inapplicable here. While the Linds retained title to the unplatted land on the other side of the road, they chose to allocate 66 feet of their land to the plat for road purposes. In other words, as platters, they dedicated *all* of the land for the roadway. When a platter dedicates a road within a plat, the law presumes that the platter intends to part with title to the land underlying the road in favor of the landowner (or landowners) whose property abuts the road. *See Drake*, 136 Minn. at 367, 162 N.W. at 454 ("Every intendment favors ownership in the abutters rather than a reservation of title in the platter, and to constitute such a reservation there must be something equivalent to an express declaration."). Because the Linds dedicated Camp Lake Road as part of the plat and did not indicate that they intended to retain ownership of any of that platted road, title to the underlying land transferred to the owners of the abutting platted lots. Accordingly, we conclude that the district court did not err by concluding that the Tracys own parcel D.

Affirmed.