STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1474

Great River Energy, et al., petitioners,
Appellants,

vs.

David D. Swedzinski, et al.,
Respondents,
Redwood Electric Cooperative, et al.,
Respondents Below.

Filed March 31, 2014
Affirmed
Stauber, Judge

Redwood County District Court
File No. 64CV12706

Steven J. Quam, John E. Drawz, Richard D. Snyder, Fredrikson & Byron, P.A., Minneapolis, Minnesota (for appellants)

Michael C. Rajkowski, Garin L. Strobl, Quinlivan & Hughes, P.A., St. Cloud, Minnesota (for respondents)

Considered and decided by Peterson, Presiding Judge; Hudson, Judge; and Stauber, Judge.

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

STAUBER, Judge

Under the buy-the-farm statute, landowners who own a parcel of land over which a public utility plans to condemn an easement can, under certain circumstances, require

the condemnor to take the entire parcel. In this eminent-domain dispute, appellant-condemnor argues that the district court erred by granting respondent-landowner's buy-the-farm election because it did not consider the law's reasonableness requirement. We affirm.

FACTS

Appellants are public utilities engaged in the business of generating and transmitting electric power throughout Minnesota, North Dakota, South Dakota, and Wisconsin. Under the name "CapX2020," appellants have undertaken to construct a 345 kilovolt high voltage transmission line from Brookings, S.D. to Hampton, MN. The Minnesota Public Utilities Commission (MPUC) issued appellants the required certificate of need and route permit for the power line, thereby authorizing appellants to exercise their eminent-domain powers to acquire the right-of-way for the project.

In August 2012, appellants initiated a condemnation action, seeking to acquire easements for the power-line project. In October 2012, respondents Dale and Janet Tauer notified appellants of their "buy-the-farm" election under Minn. Stat. § 216E.12, subd. 4 (2012), requiring appellants to acquire fee title to their 218.85 acres of land instead of taking only the 8.86 acre easement needed for the project

In March 2013, after the district court granted appellants' condemnation petition, appellants moved for partial summary judgment on respondents' buy-the-farm election. In response, respondents filed a motion seeking approval of their election. Appellants argued that they should not be required to condemn all of respondents' property because the required easement did not touch all of respondents' parcels, only some of them; and,

they argued that condemning all of respondents' property was not reasonable because the total amount of respondents' land was so much greater than the actual amount of land needed for the power line easement. The district court denied appellants' motion, and granted respondents' request for approval of their buy-the-farm election, concluding that, by law, appellants were required to condemn respondents' entire parcel, and that the law does not require consideration of the ratio between the size of the requested easement and a landowner's entire parcel. Appellants now seek review of the district court's conclusion that condemning all of respondents' land was reasonable.

D E C I S I O N

Minn. Stat. § 216E.12 (2012) defines the scope of a utility's eminent domain powers when constructing high-voltage transmission lines. Subdivision four of that section, known as the buy-the-farm provision, states that:

> When private real property that is agricultural or nonagricultural homestead, nonhomestead agricultural land, rental residential property, and both commercial and noncommercial seasonal residential recreational property . . . is proposed to be acquired for the construction of a site or route for a high-voltage transmission line . . . by eminent domain proceedings, the fee owner . . . shall have the option to require the utility to condemn a fee interest in any amount of continuous, commercially viable land which the owner . . . wholly owns . . . in undivided fee.

Minn. Stat. § 216E.12, subd. 4.

In 1980, public utilities challenged the constitutionality of the buy-the-farm provision, arguing that the provision placed an unreasonable burden on the exercise of eminent domain. *See Coop. Power Ass'n v. Aasand*, 288 N.W.2d 697, 700 (Minn. 1980).

The Minnesota Supreme Court concluded that, in order to "survive review, a requirement of reasonableness must be read into [the statute's] terms." *Id.* at 701. The supreme court went on to say that where a parcel is "commercially viable, respondents[-landowners] avoid one of the constitutional problems created by the act." *Id.* In response to this decision, the legislature modified the buy-the-farm statute to include the "commercially viable" language which it now contains. 1980 Minn. Laws. ch. 614, § 87, at 1485-86.

Appellants argue that the district court erred by failing to consider the reasonableness of respondents' buy-the-farm election as required by *Aasand*. "[S]tatutory construction is a question of law, which we review de novo." *Lee v. Lee*, 775 N.W.2d 631, 637 (Minn. 2009). "The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16 (2012).

The district court concluded that respondents' election was reasonable because the land at issue is commercially viable, it meets the definition of eligible land under the statute, and it is contiguous under the statute. But appellants argue that these criteria are all found within the statute, and according to caselaw, the reasonableness requirement is something in addition to the requirements already codified in the law itself.

Appellants point to *Aasand*, where the supreme court stated that "[a]s written . . . subd. 4 is subject to a construction that could produce bizarre and unjustifiable results; landowners could compel commercially unreasonable acquisitions which, in light of the purpose of the statute, would impose an undue burden on utilities." 288 N.W.2d at 701. That purpose, the supreme court determined, was to

> afford[] landowners not wishing to be adjacent to such right-of-ways the opportunity to obtain expeditiously the fair market value of their property and go elsewhere. The statute, in so doing, responds to the parties most affected by the operation of high voltage transmission lines; the statute eases the difficulties of relocation by shifting the transaction cost of locating a willing purchaser for the burdened property from landowner to utility.

Id. at 700. Because of the potential for "bizarre and unjustifiable results," the supreme court added a "requirement of reasonableness" to the statute's terms. *Id.* at 701. But the supreme court did not define "reasonableness;" rather, it stated that a landowner may avoid "*one* of the constitutional problems created by the act" by compelling acquisition of a "commercially viable" tract. *Id.* (emphasis added). Appellants argue, therefore, that commercial viability is merely one criterion among many that a district court must consider when evaluating the reasonableness of a buy-the-farm election.

But appellants have taken this sentence out of context. Here is what the supreme court actually said:

> Respondents in this action do not seek to convey an unmarketable fragment but the entirety of their 150-acre property. The marketability of the property may not be significantly diminished by the presence of the high voltage transmission line. Presumably, the farm will retain commercial value far in excess of the detriment imposed. By seeking to compel the acquisition of a parcel that is commercially viable, respondents avoid *one of* the constitutional problems created by the act. *Another* potential infirmity, however, is the divestiture provision providing that unless a utility rids itself completely of all land acquired under the statute within five years, such lands will be disposed of by means of a mortgage foreclosure sale . . . . The constitutionality of the divestiture provision is not before us at this time, and we accordingly do not pass on its constitutionality. We therefore hold . . . that condemnors,

> utilizing the power of eminent domain to take easements for the purpose of erecting high voltage transmission lines, must acquire fee interests in commercially viable parcels designated by fee owners and situated contiguously to such right-of-ways. In so holding, we alert the legislature to the problems engendered by the current enactment and urge appropriate limitations to the law as now written.

Aasand, 288 N.W.2d at 701 (emphasis added). A reasonable interpretation of this paragraph is that the supreme court's "one of" language alluded to the other problem, which was the divestiture provision, and was not referring to the existence of other reasonableness criteria. *See id.* The supreme court also specifically held that utilities "*must* acquire fee interests in commercially viable parcels" without further adding that this acquisition is nevertheless subject to a reasonableness review. *Id.* (emphasis added). Such an interpretation is consistent with the supreme court's pronouncement earlier in the opinion about potential "bizarre and unjustifiable results" arising out of landowners compelling "*commercially unreasonable* acquisitions." *Id.* (emphasis added). Therefore, *Aasand* was mainly concerned with commercial viability rather than the relative size of the easement and the landowner's parcel. Indeed, in *Aasand* the landowners sought to condemn 149.17 acres of land where the easement encompassed only 13 acres. *Id.* at 699.

Appellants also point to the supreme court's decision in *N. States Power Co. v. Williams*, 343 N.W.2d 627, 634 (Minn. 1984), in which the supreme court affirmed the denial of a landowner's request to elect the buy-the-farm option. In that case, there was no dispute that the land was "commercially viable." *Williams*, 343 N.W.2d at 633. But, the supreme court stated that

> to require [the utility] to accept the shifting of the transaction cost of locating a willing purchaser for the burdened property from landowner to utility when a total of 387.5 acres worth from $690,000 to $1,700,000 would have to be acquired as a result of the condemnation of an easement of 12.69 acres would not meet the test of reasonableness established in *Aasand*.

Id. (quotations and footnote omitted). Nevertheless, this statement is dictum. The dispute in *Williams* concerned whether the parcel was eligible for the buy-the-farm election because it was unclear whether the land, which was used to grow Christmas trees, was "agricultural" or whether it was ineligible timberland. *Id.* at 630-31. The supreme court concluded that the land met the definition of timberland, and therefore was not eligible for the buy-the-farm election. *Id.* at 633. The supreme court went on to say that, "[s]uch a holding is consistent with the concerns we expressed in . . . *Aasand*." *Id.* Dicta are not binding in later cases. *Dahlin v. Kroening*, 784 N.W.2d 406, 410 (Minn. App. 2010), *affirmed by* 796 N.W.2d 503 (Minn. 2011).

In addition, appellants have taken this statement out of context. After stating that condemning the entire parcel instead of just the easement "would not meet the test of reasonableness established in *Aasand*," the supreme court went on to state that, "[t]he exclusion of owners of real estate used exclusively for growing trees for timber, lumber, wood[,] and wood products clearly arose out of a fear that owners of *vast* timberland would abuse the remedy." *Williams*, 343 N.W.2d at 633 (emphasis added). The supreme court next discussed legislative history supporting this view. *Id.* at 633-34. Rather than protect vast woodland holdings, the supreme court concluded that "[i]t is equally clear that the statute was designed to protect farming as defined by the Corporate Farming

Act . . . to include agricultural products, livestock, milk or fruit or other horticultural products but not timber or forest products." *Id.* Therefore, the supreme court's advisory statement about the relative size of a landowner's parcel and the utility's easement in *Williams* may be read as a reference to the legislature's apparent concern about the buy-the-farm election being abused by owners of "vast" undeveloped forestland, and did not mean that the reasonableness requirement dictates a maximum ratio between the size of the parcel and the size of the proposed easement.

Appellants also argue that a statement made by a former Minnesota Supreme Court Justice during oral argument supports their view. But the statement, made during argument in *N. States Power Co. v. Aleckson*, 831 N.W.2d 303, 304-05 (Minn. 2013) involved a question not at issue here. And, clearly, a statement made at oral argument is not precedential.

But appellants argue that the justice's statement during *Aleckson* combined with the supreme court's statement in *Williams* indicates that the reasonableness requirement must add something to the statute in addition to the requirement regarding commercial viability. Moreover, they argue that limiting reasonableness to the consideration of only commercial viability is illogical because, by definition, reasonableness means "what is fair, proper, or moderate under the circumstances." But neither *Aleckson* nor *Williams* provides a definition of reasonableness. And in *Aasand*, the only aspect of reasonableness discussed by the supreme court was whether the acquired property would be commercially viable. Therefore, there appears to be no caselaw supporting appellants'

view that the reasonableness requirement imposes a duty on courts to evaluate the size or the purpose of a buy-the-farm election.

Nevertheless, appellants argue that the district court erred by failing to evaluate the reasonableness of respondents' buy-the-farm election based upon the relative size of the property and easement, and whether the election meets the purpose of the statute, which is to "afford[] landowners not wishing to be adjacent to [power lines] the opportunity to obtain expeditiously the fair market value of their property and go elsewhere," and to "ease[] the difficulties of relocation." *Aasand*, 288 N.W.2d at 700. Appellants urge that what is "reasonable necessarily includes an examination of whether [something] is excessive." Because appellants are only seeking an easement over 8.86 acres, they think it is unreasonable to compel them to acquire 218.85 acres worth between $2 million and $2.5 million. But *Aasand* affirmed a buy-the-farm election resulting in the condemnation of 149.17 acres where the proposed easement covered only 13 acres, 288 N.W.2d at 699, and appellant will recoup most of its outlay when it sells the excess land. Moreover, the statute itself states that an owner "shall have the option to require the utility to condemn a fee interest *in any amount of contiguous, commercially viable land*." Minn. Stat. § 216E.12, subd. 4 (emphasis added).

Appellants further argue that respondents' election does not meet the purpose of the statute because respondents do not live on the land and because they are merely "rid[ding] themselves of investment land they no longer wish to own." Appellants assert that the purpose of the statute, as stated in *Aasand* provides that it is intended to help landowners who are required to "relocate[]" or "go elsewhere," and because respondents

do not live on the land it is unreasonable to permit them to make a buy-the-farm election. *See Aasand*, 288 N.W.2d at 700. But the statute expressly permits owners of nonhomestead agricultural land to make a buy-the-farm election. *See* Minn. Stat. § 216E.12, subd. 4 (listing as eligible "real property that is an agricultural or nonagricultural homestead, or nonhomestead agricultural land").

Appellants also argue that because the land is investment property it is as though it is commercial property, which is excluded from the buy-the-farm option. But respondent Dale Tauer testified during a deposition that the land has personal significance beyond its commercial worth. He stated that his son, a fifth-generation farmer, was planning to farm the land, and that this was the only property they had on which he could raise hogs due to zoning rules. He also explained that, based on his experience, the power line would make the land very difficult for him to farm because it is impossible to do aerial spraying above power lines, and because obtaining permission to make repairs to drain tiles located below power lines takes too long. Tauer also stated that stray voltage is a danger to livestock and people. These statements echo the concerns the supreme court voiced in *Aasand*: "encroachments upon the rural landscape . . . [and] the effects upon the rural environment and public health." 288 N.W.2d at 700. Therefore, we affirm the district court's conclusion that respondents' buy-the-farm election was reasonable.

Affirmed.