STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0542

Debra L. Cich, et al., petitioners,
Appellants,

vs.

Bay Lake Township,
Respondent,

L & M Holdings Co., LLP, et al.,
Respondents.

Filed November 13, 2018
Affirmed
Reilly, Judge

Crow Wing County District Court
File No. 18-CV-15-5222

Sean O'Keefe Skrypek, Kueppers, Kronschnabel & Skrypek, P.A., St. Paul, Minnesota (for appellants)

Scott Andrew Witty, Hanft Fride, P.A., Duluth, Minnesota (for respondent Bay Lake Township)

Thomas C. Pearson, Daniel M. Hawley, Gammello-Pearson, PLLC, Baxter, Minnesota (for respondent L & M Holdings Co., LLP, and Laine Bryce Family Irrevocable Trust)

Considered and decided by Jesson, Presiding Judge; Reilly, Judge; and Florey, Judge.

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

REILLY, Judge

Appellant-landowners challenge the district court's grant of summary judgment in favor of respondent township board's establishment of a cartway under Minn. Stat. § 164.08 (2016), pursuant to a petition for cartway filed by respondent adjacent property owners. Because the district court did not err by granting judgment in favor of the township board's cartway decision, we affirm.

FACTS

The present appeal stems from the establishment of a cartway over land owned by Debra and Curtis Cich, based on a petition presented to Bay Lake Township by adjacent landowners, L&M Holdings Co., LLP (L&M), and the Laine Bryce Family Irrevocable Trust (the Trust). In March 2015, L&M and the Trust presented a cartway petition to the township under Minn. Stat. § 164.08, asserting that their tracts of land lacked established access to a public road. L&M and the Trust requested the establishment of a cartway over appellants' property to connect their tracts of land to a public road. The petition proposed locating the cartway on an existing private roadway on appellants' property. Although L&M and the Trust had been using this roadway for years, they lacked deeded access. When the Trust attempted to sell the land, the title company performing the title search for the buyer raised a title objection that the property had no deeded access. The Trust's attorney attempted to obtain a voluntary easement from appellants, who declined to grant one.

Two months later, the township board received a revised cartway petition and a request for a hearing. The revised petition identified L&M as the petitioner and owner of two tracts of land containing at least five acres of land with no established access to a public road. The Trust petitioned for an easement over appellants' property, and consented to an easement that would run over its property to the benefit of L&M's property. The Trust attached its consent to the petition. The board held public meetings on the petition, visited the properties, conducted road inspections, and considered the route proposed in the petition and the alternate route suggested by appellants. The alternate route had a steep hill and a narrow road with swamp land on both sides. The board reasoned that the proposed route in the petition was preferable because it was "less disruptive and damaging" and was "a well-established roadway that has been in existence and use for many years." The alternate route, by comparison, was steep and narrow, had swamp land on both sides, and would require a survey to ensure that it could accommodate an access road of the appropriate width. For these reasons, the board selected the route requested in the petition.

In August 2015, the township board issued a resolution determining eligibility and conditionally granting the cartway petition. The resolution identified L&M and the Trust as petitioners and determined that the petition was "complete and proper." The board found that the land owned by L&M and the Trust was landlocked and lacked established access to a public road. Because appellants' property is registered as Torrens property, the board found that "traditional avenues to establish legal access by adverse use are legally unavailable." Accordingly, the board determined that L&M and the Trust were "eligible to receive a cartway" under Minn. Stat. § 164.08, subd. 2. The resolution found that the

route requested by the petition was "the best route given the terrain" and was "the less disruptive and damaging to the neighbors and is in the public's best interest." The township board found that the proposed route followed an existing roadway that had been in use for "perhaps decades," provided vehicular access to a number of additional properties south and west of the petitioners' property, and would benefit "at least nine" property owners. The board noted that appellants did not object to the proposed route as being "overly disruptive," but instead preferred an alternate route. In December 2015, the board formally granted the cartway petition and issued a resolution and order establishing a cartway and awarding damages to appellants for the cartway's establishment.

Appellants filed a notice of appeal to the district court, seeking relief from the township board's decision. Bay Lake sought partial summary judgment and requested a determination that the cartway was properly established. Appellants filed a cross-motion for summary judgment, seeking a determination that the cartway was not properly established. The district court agreed with the township and issued an order granting partial summary judgment in Bay Lake's favor regarding the validity of the cartway's establishment. The district court determined that "no genuine issue of material fact exists indicating that the [t]ownship abused its discretion in determining that L&M and the Trust satisfied the statutory conditions for a cartway." The district court held that the board's decision was "not contrary to public policy, was not arbitrary or capricious, unreasonable or based on an erroneous theory of law." Based upon its review, the district court determined that the cartway was properly established and affirmed the board's decision.

The district court later entered final judgment after granting judgment as a matter of law on appellants' damages award appeal. This appeal follows.

D E C I S I O N

I. Standard of Review

On appeal from a grant of summary judgment, this court reviews the record to determine "whether there are any genuine issues of material fact, and whether the district court erred in applying the law." *Horton v. Twp. of Helen*, 624 N.W.2d 591, 593 (Minn. App. 2001), *review denied* (Minn. June 19, 2001). No genuine issue of material fact exists "[w]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997) (quotation omitted). We "view the evidence in the light most favorable to the party against whom summary judgment was granted" and "review de novo whether a genuine issue of material fact exists." *J & W Asphalt, Inc. v. Belle Plaine Twp*., 883 N.W.2d 827, 831 (Minn. App. 2016) (quotation omitted). We also review issues of statutory interpretation de novo. *Christianson v. Henke*, 831 N.W.2d 532, 535 (Minn. 2013).

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 the law was applied, or (3) the town board acted arbitrarily and capriciously, contrary to the public's best interest." *Horton*, 624 N.W.2d at 595. Determination of these issues requires the interpretation of the cartway statute, which we review de novo. *Kennedy v. Pepin Twp.*, 784 N.W.2d 378, 381 (Minn. 2010). Minnesota Statute Section 164.08, subdivision 2(a) provides that:

> 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. A town board shall establish a cartway upon a petition of an owner of a tract of land that, as of January 1, 1998, was on record as a separate parcel, contained at least two but less than five acres, and has no access thereto except over a navigable waterway or over the lands of others. 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.

The scope of our review "must necessarily be narrow" and we will affirm the township board's decision even if we may have reached a different conclusion. *Horton*, 624 N.W.2d at 595 (quotations omitted).

II. The Cartway Petition Is Sufficient

Appellants argue that the revised cartway petition is insufficient because it does not properly identify the Trust as a petitioner. The record does not support this argument. The Trust operates as both a cartway petitioner because it requires a cartway through appellants' land, and as a cartway respondent because a portion of the cartway passes over the Trust's land before reaching L&M's property. Therefore, the revised petition identified L&M as a petitioner and noted that the Trust signed a consent, which was attached to the revised petition. At the township board hearing, the petitioners' attorney informed the board that the "petitioners included the Bryce [Trust] property." And throughout the proceedings, the board treated the Trust as a petitioner in the action. The resolution issued by the board

indicated that the cartway was "consented to" by the Trust and "for purposes of this resolution the [Trust] shall be referenced to as 'petitioner.'"

Appellants rely on *Shinneman v. Arago Twp.*, in which a landowner sought to enjoin two townships from using and maintaining a road crossing his property. 288 N.W.2d 239, 239 (Minn. 1980). The landowner presented a petition under Minn. Stat. § 164.07, subd. 1 (1978), which authorizes a town board to alter, vacate, or establish a new road when the petition is "signed by eight voters of a specified class." *Id.* at 244. Although the petition initially included the required signatures, three of the eight signatories withdrew their names before the town board acted on the petition. *Id.* In light of the withdrawal of these three names, the Minnesota Supreme Court ruled that the town lacked authority to act upon the landowner's petition. *Id.* Appellants urge the court to adopt the reasoning articulated in *Shinneman* and determine that the cartway petition is invalid with respect to the Trust.

We are instead persuaded by caselaw recognizing that proceedings regarding public roadways "have always been treated liberally by this court, and the statutes on the subject construed broadly, and with a purpose to facilitate the action of public authorities." *Anderson v. Sup'rs of Town*, 99 N.W. 420, 421 (Minn. 1904). Further, "[t]he laying out of a public road by town supervisors or county commissioners is not to be tested by the strict rules pertaining to court proceedings." *Freeman v. Twp. of Pine City*, 286 N.W. 299, 302 (Minn. 1939) (citing *State ex rel. Simpson v. Rapp*, 38 N.W. 926, 928 (Minn. 1888)). Here, appellants were present throughout the proceedings and provided testimony and evidence at the board hearings. Appellants, themselves, styled L&M and the Trust as petitioners and treated them as such throughout the proceedings. We agree with the district court that

appellants were not prejudiced by the Trust's status during the process and are not entitled to relief on the ground that the petition is procedurally defective.

Appellants also argue that the Trust does not meet the minimum acreage requirements. We disagree. Section 164.08 provides that a cartway shall be established if the landlocked tract of land contains at least five acres of land or was on record as of January 1, 1998, as a separate parcel containing at least two but less than five acres of land. Minn. Stat. § 164.08, subd. 2(a). Owners of tracts of land which aggregate five acres may join in a petition under Section 164.08. *See Watson v. Bd. of Sup'rs of Town*, 239 N.W. 913, 913 (1931) ("We apprehend that owners of tracts which aggregate five acres might join in a petition."). Here, L&M owns two contiguous tracts of land: a northern portion of 8 acres and a southern portion of 1.7 acres. The board found that the property to be served by the cartway satisfied the acreage requirement "existing on January 1, 1998, as separate parcels of record and cumulatively containing at least two acres." The district court discerned no error in the board's factual finding and agreed that the land, as aggregated, "cumulatively contain[ed] at least two acres" and satisfied the statutory requirements. We agree, and conclude that the board did not err by aggregating the tracts of land and determining that the acreage requirements of section 164.08 were satisfied.

III. The Township Board's Decision Is Supported by the Evidence and Is Neither Arbitrary Nor Capricious

Appellants argue that the township erred in granting the petition to establish a cartway because the statutory criteria were not met. This argument in unavailing. The statute provides that a cartway shall be established if a landlocked tract of land on record

as of January 1, 1998 containing at least two but less than five acres lacks access except by navigable waterway or over the lands of others. Minn. Stat. § 164.08, subd. 2(a). The board found that the land owned by L&M and the Trust was landlocked and lacked established access to a public road, and respondents were therefore "eligible to receive a cartway." The record supports these findings. Because L&M and the Trust did not have legal access to public land except over the land of another, and because the remaining statutory requirements were satisfied, the board had a "mandatory duty" to establish a cartway. *State ex rel. Rose v. Town of Greenwood*, 20 N.W.2d 345, 348 (1945).

Appellants argue that L&M and the Trust already have an easement over neighboring property owned by the Schweizer family. The cartway statute "was not intended to apply where the petitioner has a perpetual easement running with the land to his heirs and assigns." *Roemer v. Board of Sup'rs*, 167 N.W.2d 497, 500 (Minn. 1969). Thus, "the statute does not contemplate establishing an alternative right-of-way where an owner already has means of ingress and egress" to a public highway. *Id*. at 499. Appellants argue that L&M has a warranty deed from the previous landowners conveying a right of ingress and egress over the Schweizer property and onto a public road. But the Schweizer family is not a party to this deed. Moreover, the warranty deed conveys no interest in the Schweizer property to L&M or to the Trust and instead refers to an easement that may or may not exist. Such permissive use does not constitute "access" under the cartway statute. *Kroyer v. Bd. of Sup'rs*, 277 N.W. 234, 235 (Minn. 1938). Even assuming L&M and the Trust have permission to cross the Schweizer property, there is nothing in the record establishing that they have a legally-enforceable easement. The warranty deed between

L&M and the previous property owner does not constitute "access" for purposes of the cartway statute in the absence of a legal, perpetual easement. *Roemer*, 167 N.W.2d at 500.

Appellants also challenge the necessity of placing the cartway across their land instead of establishing an alternative route. A town board may select an alternative route if it "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). "[T]he selection of a route is a decision allocated by statute to the [town board] to make in its discretion," and it is not within a reviewing court's power to substitute its judgment for that of the town board in selecting a route. *Kennedy*, 784 N.W.2d at 384. Here, the board held several public hearings on the cartway petition. The board considered the route proposed in the petition, as well as the alternate route proposed by appellants. The board members also inspected the properties, including both routes, and determined that appellants' proposed route was more disruptive and damaging than the route proposed by L&M and the Trust. The board found that appellants' proposed route

> has very steep terrain, is harder to access, is no shorter, has never been used as a roadway shared by other adjoining landowners, would be located closer to the lake shore on substantially smaller parcels, would require cutting more trees, and expensive fill that would impact natural drainage and threaten erosion runoff contaminating waterways more than the [route requested by L&M and the Trust].

The township board followed the requirements set forth in section 164.08 and acted within its discretion in selecting the route proposed in the petition. After taking testimony, visiting the land, and considering the "competing interests" of the parties, the board determined that the petitioners were entitled to a cartway. The board considered both the

cartway route requested in the petition as well as the alternative route suggested by appellants, and determined that the requested route was preferable for several well-articulated reasons. The board's resolution was not against the evidence, based on an erroneous theory of law, or arbitrary, capricious, or against the public's best interest. Given the broad deference afforded to a board in determining whether—and where—to establish a cartway, we determine that appellants are not entitled to relief and we affirm the district court's grant of partial summary judgment in favor of the township.

Affirmed.