STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0573

St. Paul Park Refining Co. LLC,
Respondent,

vs.

Brian Domeier,
Appellant.

Filed February 3, 2020
Affirmed in part, reversed in part, and remanded
Cleary, Chief Judge

Washington County District Court
File No. 82-CV-17-5229

Matthew J. Schaap, Robert B. Bauer, Dougherty, Molenda, Solfest, Hills & Bauer P.A., Apple Valley, Minnesota (for respondent)

Dean M. Zimmerli, Gislason & Hunter LLP, New Ulm, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Cleary, Chief Judge; and Smith, Tracy M., Judge.

S Y L L A B U S

A party seeking adverse possession of more than one half of a separately assessed tax parcel is required to have paid taxes on the disputed property for five consecutive years as a prerequisite to an adverse-possession claim under Minn. Stat. § 541.02 (2018).

O P I N I O N

CLEARY, Chief Judge

On appeal from the district court's grant of partial summary judgment, appellant argues that the district court erred in dismissing his adverse-possession counterclaim. He contends that the district court erred by determining that the disputed land was subject to the tax-payment requirement of Minn. Stat. § 541.02. We affirm in part, reverse in part, and remand for further proceedings.

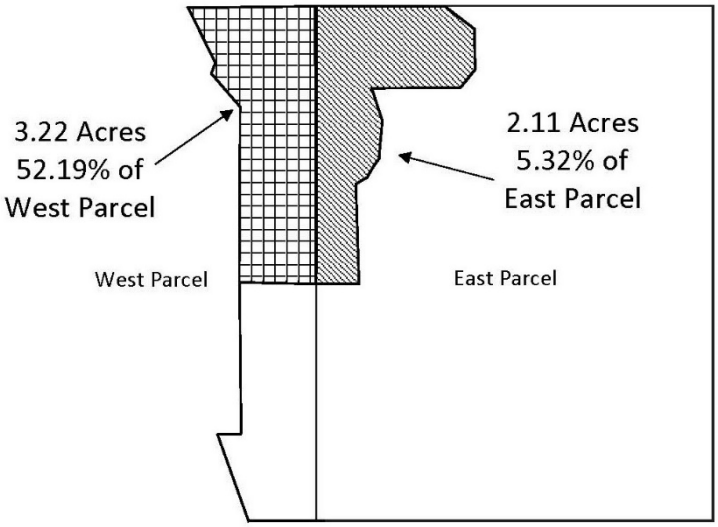
FACTS

Respondent St. Paul Park Refining Co. LLC (the Refinery) owns approximately 168 acres of land in St. Paul Park. The portion relevant to this appeal consists of two separately assessed tax parcels identified as Washington County Parcel ID Nos. 36.028.22.34.0039 (west parcel) and 36.028.22.43.0001 (east parcel). The Refinery acquired fee title to these parcels from its predecessor in interest in 2010. The two parcels at issue comprise approximately 46 acres.

The east and west parcels are undeveloped and are largely wooded. Appellant Brian Domeier moved into a neighborhood north of, but not adjacent to, the two parcels in 1998 and began to use portions of the two parcels. Domeier's activities on the land included gardening, planting trees, erecting a fence, and placing deer stands around the property.

In 2003, Domeier purchased land immediately north of the east and west parcels. Domeier built a house there, where he continues to reside. He has continued his activities on the two parcels. Domeier has never paid property taxes on either parcel.

In 2016, the Refinery discovered Domeier's presence on the east and west parcels. The Refinery filed suit against Domeier in November 2017, alleging trespass and ejectment, seeking a declaration that the Refinery is the fee owner of the disputed property, and seeking injunctive relief. Domeier counterclaimed, alleging adverse possession, trespass, and ejectment. The following map[1] depicts the portions of the parcels that Domeier claims, amounting to 52.19% of the west parcel and 5.32% of the east parcel:



The Refinery moved for partial summary judgment on Domeier's adverse-possession claim. The district court granted summary judgment in favor of the Refinery, concluding that Domeier was required to pay taxes for five consecutive years in order to prevail on his adverse-possession claim under Minn. Stat. § 541.02. This appeal follows.

[1] The referenced map is not drawn to scale.

ISSUES

I. Does Domeier's adverse-possession claim fail as a matter of law because he has not paid taxes on the east and west parcels under Minn. Stat. § 541.02?

II. Is Domeier bound by statements in his counterclaim, and are the statements fatal to his adverse-possession claim?

ANALYSIS

I. Under the tax-payment requirement of Minn. Stat. § 541.02, Domeier's adverse-possession claim fails as a matter of law as to the west parcel, but not the east parcel.

Domeier argues that the tax-payment requirement of section 541.02 does not apply to his adverse-possession claim because he is not claiming "all or substantially all" of the separately assessed tax parcels.

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. *Harmon v. Comm'r of Revenue*, 894 N.W.2d 155, 159 (Minn. 2017). We view the evidence in the light most favorable to the party against whom the district court granted summary judgment and resolve all doubts and factual inferences against the moving party. *Compart v. Wolfstellar*, 906 N.W.2d 598, 602 (Minn. App. 2018), *review denied* (Minn. Apr. 17, 2018). Summary judgment is appropriate if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits" show that either party is entitled to judgment as a matter of law. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

Individuals claiming adverse possession must show, by clear and convincing evidence, that their possession was actual, open, continuous, exclusive, and hostile for 15

years. *Ehle v. Prosser*, 197 N.W.2d 458, 462 (Minn. 1972). In addition, there is a statutory requirement that, in certain instances, the adverse claimant must pay property taxes on the disputed parcel for "five consecutive years" as a prerequisite to an adverse-possession claim. Minn. Stat. § 541.02. Section 541.02 provides:

> No action for the recovery of real estate or the possession thereof shall be maintained unless it appears that the plaintiff, the plaintiff's ancestor, predecessor, or grantor was seized or possessed of the premises in question within 15 years before the beginning of the action.
>
> Such limitations shall not be a bar to an action for the recovery of real estate assessed as tracts or parcels separate from other real estate, unless it appears that the party claiming title by adverse possession or the party's ancestor, predecessor, or grantor, or all of them together, shall have paid taxes on the real estate in question at least five consecutive years of the time during which the party claims these lands to have been occupied adversely.
>
> The provisions of the preceding paragraph shall not apply to actions relating to the boundary line of lands, which boundary lines are established by adverse possession, or to actions concerning lands included between the government or platted line and the line established by such adverse possession, or to lands not assessed for taxation.

The district court concluded that the east and west parcels are separately assessed for tax purposes, and because this is not a boundary dispute, the exception to the tax-payment requirement does not apply. Because Domeier has not paid taxes on either parcel, the district court granted summary judgment in favor of the Refinery. A district court's interpretation of a statute is reviewed de novo. *Brookfield Trade Ctr., Inc. v. County of Ramsey*, 609 N.W.2d 868, 874 (Minn. 2000).

Claims related to boundary lines and claims to lands not assessed for taxation as separate tracts are exempt from the tax-payment requirement. *Ehle*, 197 N.W.2d at 462. Domeier does not contend that this is a boundary-line dispute but argues instead that the tax-payment requirement only applies when an adverse possessor claims "all or substantially" all of a separately assessed parcel, and because he does not claim "all or substantially all" of either parcel, the tax-payment requirement does not apply here.

Minnesota caselaw has generated some confusion on the question of whether the tax-payment requirement applies when a disseizor seeks less than all of a separately assessed tax parcel. In *Skala v. Lindbeck*, a disseizor claimed 4.7 acres of a 6.2-acre parcel. 214 N.W. 271, 271 (Minn. 1927). The supreme court held that the fact that the disseizor had not paid taxes on the 4.7 acres did not defeat his adverse-possession claim because the 4.7 acres was not separately assessed for tax purposes. *Id*. at 272.

In *Bryant v. Gustafson*, the disseizors claimed a portion of a roadway contiguous to their land. 40 N.W.2d 427, 430-31 (Minn. 1950). The supreme court in *Bryant* held that the disseizors' adverse-possession claim failed, in part, because the disseizors had not paid taxes on the roadway for five consecutive years as a prerequisite to their adverse-possession claim. *Id.* at 433-34.

In *Ehle*, decided in 1972, the supreme court held that the tax-payment requirement only applies to adverse-possession claims when the disputed parcel is in itself separately assessed for tax purposes. 197 N.W.2d at 460-62. *Ehle* was a boundary dispute involving a 37-foot strip along one edge of a separately assessed parcel. *Id.* at 460-61. The 37-foot

strip was not separately assessed, and the court stated that a claim to land not assessed as a separate tract was "clearly exempt" from the tax-payment requirement. *Id.* at 461-62.

Subsequently, in *Grubb v. State*, on which Domeier relies, this court attempted to clarify whether the tax-payment requirement can apply when the disputed tract is only a portion of a separately assessed parcel. 433 N.W.2d 915, 920 (Minn. App. 1988), *review denied* (Minn. Feb. 22, 1989). In *Grubb*, the disseizor claimed 13 acres of his neighbor's 16-acre parcel. *Id*. at 919. The disseizor argued that, because he did not claim all 16 acres of the separately assessed tract, the 13 acres he was claiming were not separately assessed and were therefore exempt from the tax-payment requirement. *Id.* The district court in *Grubb* adopted this argument, citing *Ehle*. *Id.* This court reversed, concluding that "the legislature intended the tax-payment requirement to apply to actions where the disseizor claims all or substantially all of an assessed tract or parcel" because "if such were not the legislative intent, a disseizor could always avoid the tax-payment requirement . . . by claiming anything less than all of the assessed tract or parcel." *Id.* at 920. This court relied on *Bryant* to support its conclusion that the tax-payment requirement applies even when the land in dispute is only a portion of a separately assessed parcel. *Id.* at 921. This court went on to hold that the disseizor was required to meet the tax-payment requirement because the disputed property made up approximately 80% of the separately assessed parcel. *Id.* at 920-21.

More recently, in *Compart*, this court concluded that the disseizors were not required to pay taxes as a prerequisite to their adverse-possession claim because the

disseizors were only claiming 20% of a separately assessed parcel and this did not constitute "all or substantially all" of the separately assessed parcel. 906 N.W.2d at 609.

In *Grubb*, as later clarified in *Compart*, this court inferred that the property at issue in *Bryant* constituted approximately 50% of a separately assessed parcel. *See Grubb*, 433 N.W.2d at 921 ("[T]he entire roadway [in *Bryant*] was separately assessed for taxes, and the adverse claim to a portion of that roadway was defeated because the disseizor had not paid such taxes . . . ."); *see also Compart*, 906 N.W.2d at 610 (concluding that disseizor in *Bryant* claimed approximately 50% of separately assessed roadway based on the plat map included in the opinion).

Here, the east and west parcels are separately assessed tracts for tax purposes. Neither party disputes this. Rather, Domeier's argument is that, because he is not claiming "all or substantially all" of either parcel, the tax-payment requirement does not apply under the above caselaw. The legislative intent underlying section 541.02 is to apply the tax-payment requirement to "actions where the disseizor claims all or substantially all of an assessed tract or parcel." *Grubb*, 433 N.W.2d at 920. While *Grubb* uses the language "all or substantially all," we do not read *Grubb* to mean that a disseizor must claim the overwhelming majority of a separately assessed tax parcel in order to trigger the tax-payment requirement. *See Ganje v. Schuler*, 659 N.W.2d 261, 270 (Minn. App. 2003) (noting that "*Grubb* did not conclude that an adverse possessor must occupy nearly the entire disputed tract to trigger the tax-payment requirement of [section] 541.02"). Rather, *Grubb* supports our conclusion that a party cannot evade the tax-payment requirement by seeking less than the entirety of a separately assessed parcel. Domeier claims

approximately 52.19% of the west parcel. *Bryant*, and our court's subsequent interpretations of *Bryant* in *Grubb* and *Compart*, support our holding that a claim to 52% of a separately assessed parcel is sufficient to trigger the tax-payment requirement of section 541.02. Because it is undisputed that Domeier did not pay real estate taxes, we affirm the district court's grant of summary judgment as to the west parcel.

Domeier claims 5.32% of the east parcel. Under our caselaw, this percentage is not sufficient to trigger the tax-payment requirement of section 541.02. *See Compart*, 906 N.W.2d at 609 (concluding that claiming 20% of separately assessed tax parcel did not trigger the tax-payment requirement); *see also Ganje*, 659 N.W.2d at 270 (concluding that disseizors were not required to pay taxes when they claimed only 9% of the separately assessed parcel). We therefore reverse the district court's grant of summary judgment as to the east parcel, and remand for further proceedings.

II. Domeier's statements in his counterclaim pleadings are not fatal to his adverse-possession claim to the east parcel.

The Refinery contends that Domeier's counterclaim contains fatal admissions, because he initially claimed the entirety of the east and west parcels. The Refinery argues that Domeier impermissibly amended his claim several times to avoid the tax-payment requirement.

A pleading setting forth a claim for relief shall contain a short and plain statement of the claim. Minn. R. Civ. P. 8.01. Minnesota is a notice-pleading state. *Kelly v. Ellefson*, 712 N.W.2d 759, 767 (Minn. 2006). Under notice-pleading rules, the complaint should put a defendant on notice of the claims against him. *Mumm v. Mornson*, 708 N.W.2d 475,

481 (Minn. 2006). A party may set forth two or more statements of a claim or defense alternatively, either in one count or in separate counts. Minn. R. Civ. P. 8.05(b). A party may set forth as many separate claims as the party has, regardless of consistency. *Id.* Further, if a party pleads alternative claims, "the pleading is not made insufficient by the insufficiency of one or more of the alternative statements." *Id.*

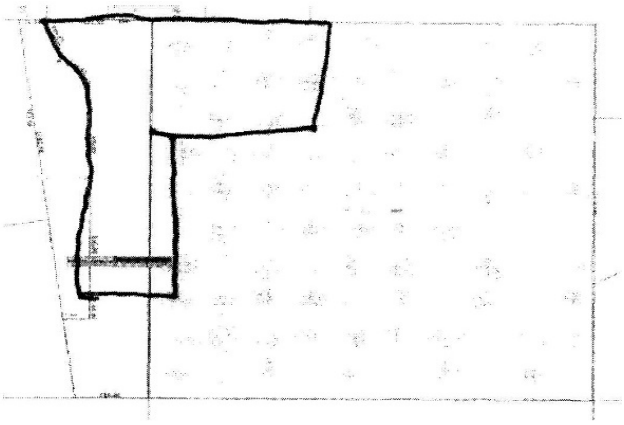
The Refinery contends that Domeier's counterclaim is inconsistent with his strategy as litigation proceeded, and that his counterclaim is an admission, which he is bound by. But shortly after the notice-pleading system was enacted in Minnesota, the supreme court held that pleadings are admissible against a party as admissions only when the party proceeded inconsistently thereafter. *Wilson Storage & Transfer Co. v. Geurkink*, 64 N.W.2d 9, 14 (Minn. 1954); *accord Kelly*, 712 N.W.2d 767-68 (reiterating the rule in *Wilson Storage*).

In Domeier's counterclaim, he refers to land that has been abandoned by the Refinery as "two parcels that total approximately 46 acres." He refers to the two parcels collectively as "the Abandoned Land" when describing his use of the two parcels. In stating his claim for adverse possession, Domeier states that he has been in actual, open, exclusive, continuous, and hostile possession of "a substantial portion of the Abandoned Land," since 1998. He states that he "is entitled to an order confirming his ownership of that portion of the Abandoned Land." In his prayer for relief, Domeier states that he seeks judgment declaring that he "owns all or portions of the Abandoned Land."

Pleadings are to be construed liberally. *Hutton v. Bosiger*, 366 N.W.2d 358, 360 (Minn. App. 1985), *review denied* (Minn. June 27, 1985). Here, while Domeier's

counterclaim contains general statements referring to the east and west parcels as a whole, this is more properly characterized as alternative pleadings that he is entitled to either all or portions of the east and west parcels. This is permissible under the rules of civil procedure.

At Domeier's deposition, prior to summary judgment, he testified that he claimed only "a small percentage" of the east parcel and "not all of [the west parcel], but the majority of it." Domeier clarified that while his counterclaim indicated that he was claiming "all or portions" of the parcels, he was only claiming "portions." He was asked to sketch the portions of each parcel that he claimed, and he drew the following sketch:



He indicated that this sketch was "very rough," stating that, "without seeing a picture, [he was] roughly drawing a line on a map right here." The Refinery argues that Domeier's deposition testimony and sketch were impermissible amendments of his claim. But the purpose of discovery is to particularize the existing issues in a case. *Couillard v. Charles T. Miller Hosp., Inc.*, 92 N.W.2d 96, 99 n.1 (Minn. 1958). Rather than amending his claim at his deposition, Domeier was particularizing the existing issues.

After the Refinery moved for partial summary judgment, Domeier submitted a map in response, showing the specific portions of the parcels that he was claiming. The map was intended to show that Domeier claimed a majority of the west parcel and a small portion of the east parcel.

At the summary judgment hearing, the district court instructed Domeier to have a survey taken of the parcels so that the district court could determine the applicability of the tax-payment requirement. Domeier submitted an exhibit depicting the exact portions of the parcels that he claimed, specifying that he claimed 52.19% of the west parcel and 5.32% of the east parcel.

Domeier did not proceed inconsistently with his counterclaim. He initially sought "all or portions" of the east and west parcels. His deposition testimony and sketch are consistent with his primary claim to only a small portion of the east parcel and a majority of the west parcel. The map Domeier submitted in response to the Refinery's summary-judgment motion and the survey map he submitted at the district court's request are also consistent. For purposes of the Refinery's summary-judgment motion, we conclude that, while Domeier's statements in his counterclaim pleadings may subject him to cross-examination at trial, they are not so definite as to constitute an admission that he claimed by adverse possession all or substantially all of the east and west parcels.

D E C I S I O N

Because Domeier seeks 52% of the west parcel, he was required to have paid taxes on the land under Minn. Stat. § 541.02 to pursue an adverse-possession claim, and we affirm the district court's grant of summary judgment as to this parcel. Because claiming

5.32% of a separately assessed parcel is not sufficient to trigger the tax-payment requirement, we reverse the district court's grant of summary judgment as to the east parcel and remand for further proceedings.

Affirmed in part, reversed in part, and remanded.