This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1207

William O. Bradley,
Appellant,

vs.

Cody J. Haislet, et al.,
Respondents.

Filed July 6, 2021
Affirmed in part and remanded; motion denied
Frisch, Judge

Hennepin County District Court
File No. 27-CV-17-7336

John S. Jagiela, St. Paul, Minnesota (for appellant)

Sidney L. Brennan, Jr., Minnetonka, Minnesota (for respondents)

Considered and decided by Cochran, Presiding Judge; Ross, Judge; and Frisch, Judge.

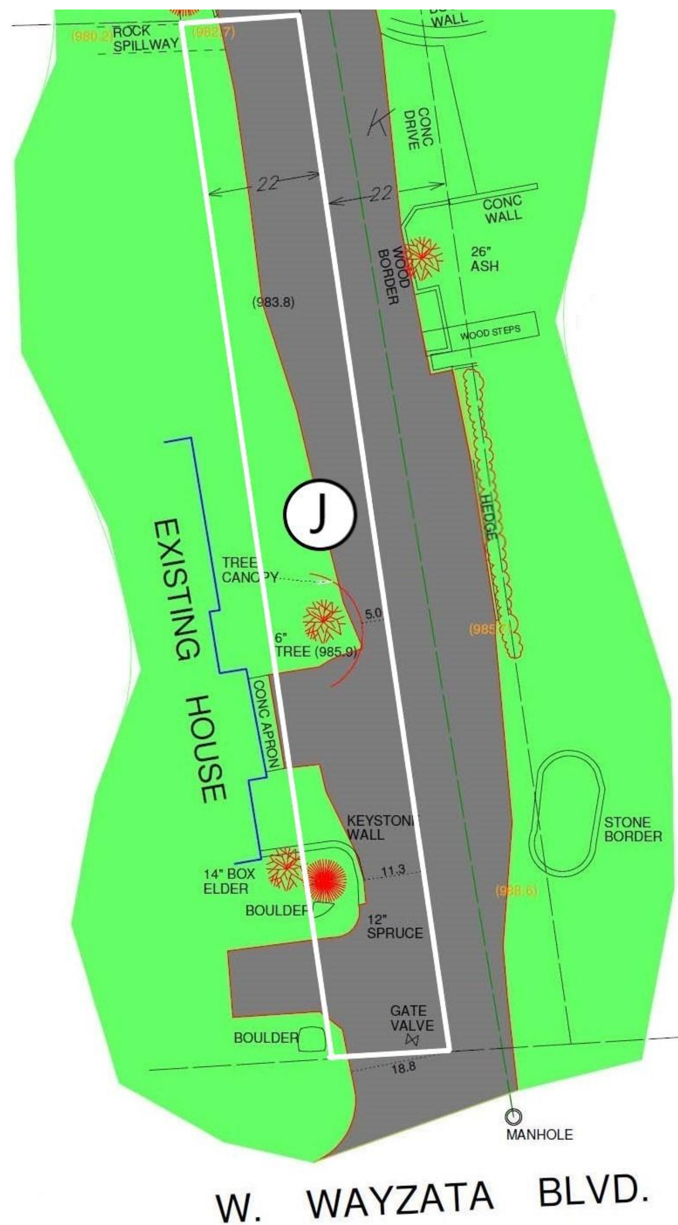
NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellant challenges findings and conclusions of the district court regarding the existence of private nuisances upon an access easement, the scope of injunctive relief ordered, the preclusion of expert testimony, the related denial of a motion for a partial new trial, and the denial of appellant's request for attorney fees. We affirm in part and remand.

FACTS

Appellant William Bradley holds an easement "of ingress and egress for road purposes" over Tract J: a 22-foot wide tract of land owned by respondents Cody and Brady Haislet. In May 2017, Bradley initiated a private nuisance action against the Haislets, alleging generally that they were maintaining permanent obstructions interfering with Bradley's easement rights. The relevant tract and obstructions are depicted as follows:



We summarize the history of the parties' respective properties, prior litigation, and the proceedings leading to this appeal as follows.

Underhill Circle and the Parties' Properties

Frederick and Lydia Patch once owned all of the land constituting Underhill Circle in Long Lake, Minnesota. In 1946, they conveyed a portion of the land to Gratia Clasen "[s]ubject to and together with an easement for right of way for road purposes over a strip of land 44 feet in width" with a detailed description of metes and bounds. Later that year, Frederick and Lydia conveyed another portion of the land to Carl and Alice Olson "[s]ubject to and together with an easement for right of way for road purposes over a strip of land 44 feet in width" described by metes and bounds. In 1949, Frederick and Lydia conveyed additional land to Roger Patch "[s]ubject to and together with an easement granted and reserved for right of way for road purposes over a strip of land 44 feet in width" with a description of metes and bounds. In 1958, a land survey designated various tracts of land as Tracts A through L. Clasen's land was not included in the survey; the land transferred to the Olsons comprised Tracts A and K while the land transferred to Roger comprised Tracts B and J. In 1963, Frederick and Linda conveyed Tracts E and G to Roger and Pauline Patch while "[r]eserving and granting an Easement over Tract G for road purposes together with an easement for road purposes over Tracts H, I, J, K, and L."

In 1966, Roger subdivided Tract B into separate tracts designated as Tract A and Tract B in a separate survey. For clarity, we refer to these subdivisions as "Sub-Tract A" and "Sub-Tract B." That same year, Roger and Pauline transferred Tracts E and G to Walter and Phyllis Arnold "together with easement for right of way for road purposes as

shown in" Clasen's deed. In 1968, the Arnolds transferred Tracts E and G to George and Catherine Helmstetter "[s]ubject to restrictions, reservations and liens of record" and "[t]ogether with easement for right of way for road purposes as shown in" the Clasen deed. In 1968, Roger, Pauline, and Lydia Patch conveyed a deed of appurtenant easement to the Helmstetters granting an "easement of ingress and egress for road purposes" on Tracts H, I, J, and L.

In 1973, the Helmstetters transferred Tracts E and G to John and Laynn Thomas "together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining." On November 1, 1975, the Thomases transferred Tracts E and G to appellant William Bradley "[s]ubject to restrictions, reservations, and easements of record" and "[t]ogether with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining." Bradley's certificate of title indicates that his ownership of Tracts E and G is "[s]ubject to and together with an easement for right of way for road purposes as shown in [the Clasen deed]."

Charles Webster purchased Tracts A and K in 1978. He subdivided the tracts into northern and southern portions. Daniel Larson purchased the southern half of both parcels from Webster sometime around 1999. The certificates of title indicate that both northern and southern portions are "[s]ubject to and together with an easement for right of way for road purposes, as shown in [the Olson Deed], as to Trac[t] K."

Roger later transferred Sub-Tract A and Tract J to Charlene Blodgett. In 2006, Blodgett transferred Sub-Tract A and Tract J to William and Carol Kelley, subject to "easements, covenants and restrictions of record."

The Kelley Litigation

After purchasing the property, the Kelleys made alterations on Tract J. They erected a stone retaining wall around a first tree, planted a second tree approximately eight feet from the boundary line dividing Tract J from Tract K, erected a fence, removed asphalt from a portion of the road, and covered portions of the road with dirt and grass seed. In March 2011, Bradley sued the Kelleys, alleging that the Kelleys were maintaining a private nuisance upon the easement.

The case proceeded to a jury trial in 2012. The jury found that the Kelleys "unreasonably interfered with [Bradley's] easement for road purposes"; the Kelleys "created a nuisance that adversely affected [Bradley's] use of the easement for road purposes," directly causing damages to Bradley; and $4,200 was sufficient to compensate Bradley for the damages caused by the private nuisance.

In November 2012, following the jury verdict, the district court issued its findings, conclusions, and order for judgment. It explained that the jury was not asked "which of the claims made by [Bradley] amounted to unreasonable interference or a nuisance" and that it was "the exclusive role of the Court to determine what, if anything, amounted to an unreasonable interference with or a nuisance in the easement, whether a legal remedy is inadequate, and whether an injunction is necessary to prevent great and irreparable injury."

The district court indicated that the 1946 conveyance to Clasen was "the genesis of the easement that is the subject of this litigation." It explained that "[t]he division between Tracts J and K is the centerline of the 44-foot side easement described in 1946." The district court reasoned that "[t]he easement on Tract J *and Tract K* is ingress and egress for

road purposes," (emphasis added) which was unambiguous as to purpose but ambiguous as to the specifics of its construction and laneage. It undertook to "resolve the ambiguities," noting that part of the road was maintained on Tract J (on the west) and the other on Tract K (to the east), that the property owners had agreed to the routing of the road, and that the road's configuration "met [Bradley's] rights as a dominant holder of the easement" prior to October 2010.

The district court determined that the fence was a nuisance and ordered its removal. As for the retaining wall and first tree, the district court credited William Kelley's testimony that he had not removed asphalt when building the wall. The district court concluded that the wall neither substantially changed nor interfered with Bradley's use of the access easement and was not a nuisance. Regarding added topsoil/grass and removed asphalt, the district court determined that the conditions constituted a nuisance and ordered the Kelleys to remove the soil and grass and repair the asphalt. The Kelleys removed the fence but failed to comply with the remainder of the district court's order.

Kelley Litigation: Appeal, Stay, and Disposition

Bradley appealed, challenging the district court's dismissal of a trespass claim, its denial of a motion to disqualify counsel, and its denial of his motion for attorney fees. *Bradley v. Kelley*, No. A13-0063, 2014 WL 3557922, at *1 (Minn. App. July 21, 2014), *review denied* (Minn. Sept. 24, 2014). Bradley raised no other issues on appeal, and the parties completed written briefing on April 18, 2013, when Bradley submitted his reply brief. On May 20, 2013, the Kelleys notified this court that they had initiated bankruptcy proceedings. On May 23, 2013, we issued an order staying appellate proceedings pursuant

to 11 U.S.C. § 362. The bankruptcy court terminated the automatic stay relating to Bradley's appeal and this court dissolved the stay in appellate proceedings by order filed January 22, 2014. On July 21, 2014, we affirmed on each issue. *Id.*

Partial Compliance, Foreclosure, Clearing of Certificate of Title

After the Kelleys declared bankruptcy, the Federal National Mortgage Association (Fannie Mae) foreclosed on Sub-Tract A and Tract J. On November 30, 2015, Fannie Mae conveyed Sub-Tract A and Tract J to the Haislets. On January 23, 2017, the district court in a separate proceeding adopted a report of the Hennepin County Examiner of Titles and issued findings, conclusions, and an order stripping the money judgments for the Haislets' certificate of title and directing the creation of a new certificate of title.

Bradley Commences Action Against the Haislets

In February 2017, Bradley's counsel sent the Haislets a letter asserting Bradley's easement rights and requesting authorization

> to remove the permanent obstructions that have been placed on the Easement on Tract J and to contract with [an asphalt company] to install an asphalt surface over the East 20 feet of the 22 foot wide Bradley Easement and thereby allow Bradley the full use and enjoyment of his Easement.

Bradley then commenced this action, alleging that the Haislets had been unresponsive and were maintaining nuisances interfering with his easement rights.

Preclusion of Expert Testimony Regarding Tract K

Before trial, the parties disputed the admissibility of evidence regarding Bradley's use of, or right to use, Tract K. The district court heard motions in limine in January 2019. A transcript of the hearing was not produced on appeal, but other portions of the record

indicate that Bradley sought to introduce expert evidence to tell the district court "about the law of easements" and Torrens titles as it concerned his disputed rights with respect to Tract K. The district court apparently rejected the request, concluding that it alone would decide the law.

Court Trial

The case proceeded to a court trial. We have already summarized much of the undisputed evidence and testimony. We summarize additional evidence as follows.

A civil engineer and land surveyor testified that Bradley's easement over Tract J is 22 feet wide from east to west. He testified that the retaining wall extended 10.7 feet into the access easement, (2) the second tree's drip line encroached 17 feet into the access easement, and (3) the asphalt on Tract J was 5 feet at its narrowest point, measured from the second tree's drip line, and 15 feet at its broadest.

The Haislets' mother, a real estate agent, testified that she represented the Haislets in their purchase of Sub-Tract A and Tract J from Fannie Mae. She testified that she was aware that there was an easement on Tract J and that she was aware that there had been an easement dispute between the property's previous owners and Bradley, but she advised her sons to go ahead with the purchase regardless.

Brady Haislet testified that he was aware of the existence of an easement on Underhill Circle for road purposes that included the paved area in front of Sub-Tract A. Brady claimed there were safety issues with having almost the entire easement paved and that it was important to have some lawn in front of the house to prevent traffic from driving

mere feet from the front door. Brady also confirmed his understanding that Bradley had an easement over the entirety of Tract J "[f]or ingress, egress, and utilities."

Cody Haislet testified that he and Jen Haislet, his wife, occupied the house on Sub-Tract A. He acknowledged that, were a car parked on the road in front of the Haislets' home, Bradley might have to drive around the parked car and onto Tract K. Jen Haislet testified that the Underhill Circle road was occupied by only seven houses and that it was "very rare that you even pass another car a lot of the times coming down the road."

Bradley testified that it was his understanding that he had an easement to travel over Tracts H, I, J, and L, but that he had no legal right to travel over Tract K. Bradley recalled observing William Kelley making various alterations on his property and to the road, including chopping up asphalt, covering portions of the road with dirt and grass, and planting the second tree. After the Haislets moved in, Bradley photographed various instances of the Haislets' parked vehicle extending a short distance into the roadway, as well as guests' vehicles parked on the side of the road.

Findings of Fact, Conclusions of Law, and Order for Judgment

On January 21, 2020, the district court issued its findings of fact, conclusions of law, and order for judgment. The district court found that the Kelleys had made various alterations on Tract J, which included building the retaining wall, planting a second tree, erecting a fence, removing portions of asphalt, and covering other portions of asphalt with dirt and grass. The district court found that these actions "reduced the usuable portion of the surface of Tract J for driving to approximately eight[ ]feet of width at its narrowest point."

The district court declined to reconsider the 2012 determination that the retaining wall and first tree were not a nuisance. As for the added topsoil and grass seed, and the removal of certain asphalt, the district court acknowledged that "the present obstructions were considered a nuisance . . . in the Kelley Litigation" and found "that the topsoil and grass seed placed on the asphalt road, and the portions of the asphalt road that were removed are private nuisances."

Regarding Bradley's request for injunctive relief, the district court reasoned that it "must balance the[] competing rights" of the Haislets as fee owners and Bradley as easement owner "to construct an equitable remedy that gives necessary assurances to the current and future owners of the subject property." The district court then explained:

> [Bradley] argues that twenty feet of pavement over Tract J is necessary for him to drive to and from his house because he has no existing right to travel over the neighboring Tract K. The current roadway on Underhill Circle runs over the center of Tracts J and K. The record does not support the claim that [Bradley] is prohibited from driving down the portion of the roadway that's located on Tract K. Whether Bradley has a legal right to drive over Tract K is not properly before the Court in this litigation, and in any event is not ripe for adjudication. . . . Bradley's claim that he has no legal right to drive over Tract K is based upon his fear that the property owners of Tract K could, at some point in the future, prevent him from driving down Tract K. As such, Mr. Bradley wishes the Court to construct its equitable relief for his full use [and] enjoyment over Tract J as if he has no ability to use any portion of Tract K.
>
> In fact, the record demonstrates that the paved roadway over Tracts J and K has been used for ingress and egress by all residents of Underhill Circle, including Mr. Bradley, for many years before the Kelleys began making alterations. There are no actions pending that seek to prevent Mr. Bradley from using the roadway as it exists, nor is there any evidence or testimony

> from any of the property owners of Underhill Circle that they are seeking or anticipating to prevent Mr. Bradley from driving along the roadway as it exists. Further, past use of this roadway by Mr. Bradley for ingress and egress cannot be ignored by the Court in considering whether these alterations to Tract J "substantially changed" his use of the easement for the purposes of determining whether, and to what extent, injunctive relief is necessary.

The district court found that paving 20 feet of Tract J was "not required to prevent great and irreparable injury" and was unnecessary for Bradley to reach his home.

The district court concluded that "the most equitable remedy is for an injunction in accordance with" the injunctive relief ordered in the Kelley litigation because such relief "would remedy the unresolved issues from the prior litigation[] while allowing [Bradley] full use and enjoyment of the easement for ingress and egress purposes." The district court ordered the Haiselts to (1) remove the topsoil and grass placed by the Kelleys atop asphalt after October 1, 2010, (2) replace the portions of removed asphalt, and (3) not make any other alterations to the asphalt road as it existed in October 2010.

The district court denied Bradley's request for attorney fees in the absence of a contractual or statutory provision allowing such fees. It also found that "there has been no showing that [the Haislets] violated Minn. R. Civ. P. 11 or Minn. Stat. § 549.211 [(2020)] such that sanctions [of attorney fees] would be merited."

Motion for Amended Findings and Partial New Trial

Bradley filed a motion for a partial new trial pursuant to Minn. R. Civ. P. 59.03 and a motion for amended findings pursuant to Minn. R. Civ. P. 52.02. He contended that a partial new trial was warranted so the district court could hear expert testimony clarifying

that Bradley had no right to drive on Tract K. Bradley also sought amended findings and conclusions regarding the creation of an easement in the Clasen deed, the grant of an easement to the Arnolds, the grant of an easement to the Helmstetters, the portion of usable roadway with regard to the second tree, the district court's decision not to revisit the 2012 determination, and the non-existence of Bradley's easement over Tract K.

Order Denying Motions for New Trial and Amended Findings & Conclusion

The district court denied Bradley's motions. It concluded that the exclusion of expert testimony regarding the existence of a Tract K easement was not prejudicial because Bradley's legal rights regarding Tract K were not properly before the district court, and it made no findings or conclusions related to Bradley's legal rights as to Tract K. The district court rejected Bradley's request to measure the usable portion of the easement from the second tree's dripline as an improper measurement. Regarding the prior district court's determinations, the district court reaffirmed that "this matter has already been decided . . . and the Court will not reconsider this issue." Last, the district court declined to amend its finding that the record did not support Bradley's claim that he was prohibited from driving on the road on Tract K as follows:

> The[re] are no facts in the record that indicate that Mr. Bradley is prohibited from driving down Tract K. There was no testimony from any of the numerous residents of Underhill Circle indicating any present intention to prohibit Mr. Bradley from driving down Tract K. None of the claims for relief in [Bradley's] Complaint seek any remedy involving Tract K. And the Court noted later . . . that whether [Bradley] has a legal right to drive down Tract K is not properly before the Court, and in any event is not ripe for adjudication.

This appeal follows.

DECISION

Bradley challenges the district court's findings and conclusions, its decision to order limited injunctive relief, its preclusion of expert testimony and the related denial of a motion for a partial new trial, and its denial of his request for attorney fees.[1] The Haislets urge us to affirm in all respects.

I. The district court did not err in its private nuisance analysis, but a limited remand for findings and conclusions regarding the second tree and the parked vehicles is necessary.

The district court found that the added topsoil/grass and the removed asphalt were nuisances. Bradley argues that the district court erred as a matter of law in several respects. But in essence, he contends that the district court erred by failing to find that the first tree, the retaining wall, the second tree, the remainder of the Haislets' lawn, and parked vehicles are private nuisances.

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[1] After this appeal was argued and taken under advisement, Bradley moved to remand the matter with directions for the district court to hold an evidentiary hearing addressing recent alleged factual developments. Without moving to supplement the record on appeal and based on apparent hearsay, Bradley asserts that the Haislets "have applied for a Demolition Permit . . . to completely demolish the house" because it was destroyed by fire. Bradley then predicts that "[i]f a new house is constructed . . . the new house will comply with" current building codes, "the front door will not be facing Underhill Circle Road," and "the side of the new house . . . will be set back at least 10 feet from the Boundary Line." The Haislets did not file a response to the motion.

The facts on which Bradley relies are not in the record on appeal and we have no reason to join in Bradley's speculation about the siting and orientation of a new home. Further, jurisdiction will return to the district court as a matter of course after the conclusion of this appeal. Accordingly, we deny Bradley's motion to remand for an evidentiary hearing, without prejudice to Bradley's right to bring a motion for relief in the district court. We express no opinion about the merits of such a motion.

An action for private nuisance is governed by Minn. Stat. § 561.01 (2020), which provides:

> Anything which is . . . an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance. An action may be brought by any person whose property is injuriously affected or whose personal enjoyment is lessened by the nuisance, and by the judgment the nuisance may be enjoined or abated, as well as damages recovered.

"For an interference with the enjoyment of life or property to constitute a nuisance, it must be material and substantial." *Citizens for a Safe Grant v. Lone Oak Sportsmen's Club, Inc.*, 624 N.W.2d 796, 803 (Minn. App. 2001). "A court measures the degree of discomfort by the standards of ordinary people in relation to the area where they reside." *Id.* "Whether a private nuisance exists . . . presents a question of fact. To establish that fact, proof is necessary as to the effect and consequences of the thing claimed to affect such person or his property injuriously." *Hill v. Stokely-Van Camp, Inc.*, 109 N.W.2d 749, 753 (Minn. 1961). "We give a [district] court's findings of fact great deference and will not set them aside unless they are clearly erroneous." *Citizens*, 624 N.W.2d at 803.

A private nuisance action "is limited to real property interests." *Anderson v. State, Dep't of Nat. Res.*, 693 N.W.2d 181, 192 (Minn. 2005). An easement is "an interest in land in the possession of another which entitles the owner of such interest to a limited use or enjoyment of the land in which the interest exists." *Minneapolis Athletic Club v. Cohler*, 177 N.W.2d 786, 789 (Minn. 1970). "An easement appurtenant is one that is granted for the benefit of the grantee's land." *Block v. Sexton*, 577 N.W.2d 521, 525 (Minn. App. 1998). An easement appurtenant runs with the land and transfers to subsequent land

owners. *See Swedish-Am. Nat'l Bank of Minneapolis v. Conn. Mut. Life Ins. Co.*, 86 N.W. 420, 422 (Minn. 1901).

A. The district court properly declined to reconsider the 2012 determination regarding the first tree and retaining wall.

Bradley argues that the district court erred by declining to reconsider the 2012 determination that the retaining wall and first tree do not constitute a nuisance because the doctrines of res judicata and collateral estoppel are inapplicable. The Haislets disagree.

"Res judicata and collateral estoppel are related doctrines. Fundamental to both doctrines is that a right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction cannot be disputed in a subsequent suit between the same parties or their privies." *Hauschildt v. Beckingham*, 686 N.W.2d 829, 837 (Minn. 2004) (quotation omitted). "Collateral estoppel . . . applies to specific legal issues that have been adjudicated and is also commonly and accurately known as 'issue preclusion.'" *Id.* Res judicata is a broader doctrine applicable to a set of circumstances, and "[o]nce there is an adjudication of a dispute between parties, res judicata prevents either party from relitigating claims arising from the original circumstances, even under new legal theories." *Id.* Minnesota courts do not rigidly apply either doctrine, and "the focus is on whether their application would work an injustice on the party against whom the doctrines are urged." *Id.*

> For collateral estoppel to apply, all of the following prongs must be met: (1) the issue must be identical to one in a prior adjudication; (2) there was a final judgment on the merits; (3) the estopped party was a party or was in privity with a party to the prior adjudication; and (4) the estopped party was given a full and fair opportunity to be heard on the adjudicated issue.

Id.; *see also Rucker v. Schmidt*, 794 N.W.2d 114, 122 (Minn. 2011) (setting forth elements governing application of res judicata).

> Res judicata applies as an absolute bar to a subsequent claim when (1) the earlier claim involved the same set of factual circumstances; (2) the earlier claim involved the same parties or their privies; (3) there was a final judgment on the merits; (4) the estopped party had a full and fair opportunity to litigate the matter.

Hauschildt, 686 N.W.2d at 840.[2] The applicability of collateral estoppel or res judicata is a question of law we review de novo, but if applicable, we review the district court's decision to apply either doctrine for an abuse of discretion. *In re Estate of Perrin*, 796 N.W.2d 175, 179 (Minn. App. 2011).

Bradley argues that the district court's 2012 determination was factually and legally unsupported and that its analysis mistakenly presumed that Bradley held an easement over Tract K. But his argument regarding errors in the 2012 determination does not address the applicability of the legal doctrines of collateral estoppel or res judicata, and so his argument fails.

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[2] Minnesota recognizes an exception to the mutuality requirement in the application of res judicata.

> [W]here the liability of defendant is altogether dependent upon the culpability of one exonerated in a prior suit upon the same facts, when sued by the same plaintiff, in such cases the unilateral character of the estoppel is justified by the injustice which would result in allowing a recovery against a defendant for conduct of another, when that other had been exonerated in a direct action.

Myhra v. Park, 258 N.W. 515, 519 (Minn. 1935) (quotation omitted).

First, the circumstances in the Kelley and Haislet cases are functionally identical. In both cases, Bradley claimed that the retaining wall and first tree were a private nuisance interfering with his access easement. Bradley's present claim is premised on the same facts as the claim resolved against him in 2012. The issue is identical to the one already litigated.

Second, Bradley does not dispute that he was a party in the first action. Bradley sued the Kelleys and lost on the issue of the retaining wall and first tree. Title to Tract J passed from the Kelleys to Fannie Mae, and from Fannie Mae to the Haislets. "'Privies' to a judgment are those who are so connected with the parties in estate or in blood or in law as to be identified with them in interest, and consequently to be affected with them by the litigation." *Rucker*, 794 N.W.2d at 118 (quotation omitted).

Third, Bradley does not dispute that the Kelley litigation resulted in a final judgment on the merits. For the purposes of res judicata and collateral estoppel, "a judgment becomes final when it is entered in the district court and it remains final, despite a pending appeal, until it is reversed, vacated or otherwise modified." *Brown-Wilbert, Inc. v. Copeland Buhl & Co., P.L.L.P.*, 732 N.W.2d 209, 221 (Minn. 2007). The district court concluded that the retaining wall and first tree were not a nuisance. Judgment was entered in December 2012, and we affirmed on appeal.

Fourth, Bradley had a full and fair opportunity to litigate the issue. His claims proceeded to a jury trial and the parties submitted post-verdict memoranda in which they disputed whether the district court should order the retaining wall removed.

The elements of res judicata and collateral estoppel were met, and the application of the doctrines was permissible. Nothing in the record indicates that the district court abused its discretion by declining to reconsider the 2012 determination.[3]

B. The district court did not misapply the law or modify Bradley's easement rights, but a limited remand is necessary for findings and conclusions regarding certain alleged nuisances.

Bradley contends that the district court erred as a matter of law because the deed of appurtenant easement affords him the right to travel over *all* of Tract J and therefore a permanent obstruction on any portion of the easement is a nuisance. He also suggests that the district court's findings and conclusions effectively modified his easement rights, allowing the Haislets to appropriate over half of Tract J for their exclusive use.

At the outset, we observe that Bradley's arguments regarding permanent obstructions relate, in part, to the first tree and retaining wall. Because the district court properly declined to reconsider the 2012 final determination that those conditions were not nuisances, we do not address those conditions further. We consider Bradley's arguments with regard to the other alleged obstructions: the remaining portion of the Haislets' lawn, the parked vehicles, and the second tree.

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[3] For the first time in his reply brief, Bradley contends that the principles of res judicata and collateral estoppel should not apply because a separate district court concluded in proceedings subsequent that the Haislets were not bound by the Kelley litigation. Arguments raised for the first time in a reply brief which exceed the scope of the respondents' brief are not properly before us. *See Minn. Sands, LLC v. County of Winona*, 940 N.W.2d 183, 199 n.15 (Minn. 2020), *cert. denied sub nom. Minn. Sands, LLC v. County of Winona, Minnesota*, 141 S. Ct. 1054 (2021). We strike the argument but note that, even were we to consider it, the relevant decision concerned a money judgment and injunctive relief ordered against the Kelleys specifically.

The construction of an easement is a question of law that we review de novo. *Lindberg v. Fasching*, 667 N.W.2d 481, 487 (Minn. App. 2003), *review denied* (Minn. Nov. 18, 2003). An easement created by express grant "is dependent entirely upon the construction of the terms of the easement agreement." *Id.* (quotation omitted). "When the terms of an easement grant are unclear, extrinsic evidence may be used to aid in the interpretation of the easement grant; however, when the language granting the easement is clear and unambiguous, the court's power to determine the extent of the easement granted is limited." *Bergh & Misson Farms, Inc. v. Great Lakes Transmission Co.*, 565 N.W.2d 23, 26 (Minn. 1997).

The parties dispute whether and to what extent the deed of appurtenant easement is ambiguous; they agree that the easement language is unambiguous as to its purpose ("ingress and egress for road purposes") but disagree as to whether ambiguity exists as to the "specifics," such as lanes and road coverage. The deed of appurtenant easement is unambiguous in the dimensions of its grant; it conveyed an easement "in, over, and upon" Tract J without any limitation on its width or length. That is, the easement exists on the entirety of Tract J. The district court recognized this fact, stating, "The record demonstrates that [Bradley] owns an easement for ingress and egress purposes *over Tract J*." (Emphasis added.) Nothing in the district court's decision, or this opinion, alters the terms of the easement.

But "the grant of an easement over land does not preclude the grantor from using the land in a manner *not unreasonably interfering with the special use for which the easement was acquired*." *Minneapolis Athletic*, 177 N.W.2d at 789 (emphasis added); *see*

also Grinnell Bros. v. Brown, 171 N.W. 399, 400 (Mich. 1919) ("It is elementary that an easement once granted is an estate which cannot be abridged or taken away, either by the grantor or his subsequent grantees. On the other hand, the grantor of the easement of a right of way may use the way in any manner he sees fit, provided he does not unreasonably interfere with the grantee's reasonable use in passing to and fro." (quotation omitted)). Further, a landowner and easement grantor "may make any use of his land which does not interfere with a reasonable use of the way." *Minneapolis Athletic*, 177 N.W.2d at 790.

Here, the clear and unambiguous language of the deed of appurtenant easement specified the "special use" for which the easement was acquired: "ingress and egress for road purposes." Accordingly, the Haislets are prohibited from unreasonably interfering with *that* special use. *See id.* at 789.

Bradley presumes that *any* interference over *any* of the 22-foot width of Tract J is a de facto nuisance because he is entitled to use its entire width for ingress and egress. Bradley fails to cite any binding authority standing for the proposition that *any* impediment lying within the boundaries of an access easement automatically constitutes a private nuisance without regard to the plaintiff's ability to utilize the easement for its intended purpose of ingress and egress.

Bradley's persuasive authorities do not support that premise. Bradley cites *Athanasakoupolous v. Bogart*, claiming that we "held that the Easement Holder was entitled to the full use and enjoyment [of the easement] without 'impediments' of his entire 24 feet in width . . . for purposes of ingress and egress to his house." No. A18-0045, 2018 WL 6729752 (Minn. App. Dec. 24, 2018), *review denied* (Minn. Mar. 19, 2019). Bradley

mischaracterizes our analysis and holding. In *Athanasakoupolous*, the district court concluded that sodding over a portion of a drive did not impede the use of the driveway. *Id.* at *4. The appellants argued "that the district court's reasoning ignores other explicit language in the [easement document], which mandates that there be unfettered vehicular traffic on all 24 feet of the easement." *Id.* (quotation omitted). We *rejected* the argument, explaining:

> The [easement document] does not provide a right to unfettered vehicular traffic on all 24 feet of the driveway easement. The purpose of the driveway easement, as described in the [easement document], is to allow "pedestrian and vehicular ingress to and egress from public streets and the applicable group of Benefitted Lots." Appellants, as owners of lots benefitted by the driveway easement, have a privilege to use the easement for that limited purpose. To hold that appellants have a right to unfettered vehicular traffic on all 24 feet of the driveway easement would impermissibly enlarge the scope of that easement beyond the purpose expressly agreed upon by the parties.

Id. Our reasoning in *Athanasakoupolous* merely clarifies that "unreasonable interference" concerns interference with an easement's purpose and use. The same is true of *Dunkley v. Hueler*, in which we explained that the property owners' "ability to modify and use the driveway . . . is limited only by the terms of the driveway agreement and the common-law prohibition on unreasonable interference with an easement holder's use of the easement." No. A19-2047, 2020 WL 5507847, at *4 (Minn. App. Sept. 14, 2020), *review denied* (Minn. Dec. 15, 2020).

We discern no misapplication of law in the district court's analysis generally. The district court's findings and conclusions were properly aimed at addressing Bradley's

claims that specific permanent conditions upon Tract J interfere with his use of the tract for ingress and egress. Relatedly, we reiterate that nothing in the district court's findings and conclusions altered the express terms of the deed of appurtenant easement. The district court recognized that Bradley held an easement upon Tract J.

We turn next to the remaining alleged obstructions. Bradley characterizes *all* of the lawn on Tract J as a permanent obstruction interfering with his right of ingress and egress (not just the grass which encroached upon the asphalt, which the district court ordered removed). But he fails to cite (1) any evidence that the other grass substantially interferes with his ability to travel to and from his property, (2) any caselaw in which grass was held to be a private nuisance, or (3) any provision of the deed of appurtenant easement indicating the way in which the ground was to be maintained. The situation is more comparable to *Athanasakoupolous*, in which we explained, "The record supports the district court's determination that the sod on the unpaved portion of the easement has not unreasonably interfered with that purpose." 2018 WL 6729752, at *5. We see no error in the district court's decision to limit its nuisance determination to the added grass/topsoil.

As for the second tree, the district court made no findings and conclusions regarding whether it is a nuisance. The district court found that the Kelleys altered the property by planting the second tree and acknowledged Bradley's claim that the second tree is a nuisance. It indicated that the "present obstructions were considered a nuisance by the Court in the Kelley Litigation," but in 2012 the district court similarly did not find whether the second tree amounts to a nuisance. And ultimately, the district court's nuisance determination in this case did not refer to the second tree; it found "that the topsoil and

grass seed placed on the asphalt road, and the portions of the asphalt road that were removed are private nuisances."

The district court likewise failed to make findings and conclusions regarding obstructions of the easement by the Haislets' vehicle or their guests' vehicles. Bradley presented evidence regarding these alleged obstructions and the Haislets testified regarding the parked vehicles. On appeal, Bradley contends that the vehicles substantially interfere with his easement rights by reducing the asphalt portion of the easement "to less than one foot."

Whether and to what extent the second tree or parked vehicles interfere with Bradley's easement rights of ingress and egress on Tract J are questions of fact for the district court's determination. *See Hill*, 109 N.W.2d at 753. And we are in no position to decide whether the second tree or parked vehicles are private nuisances. *See Kucera v. Kucera*, 146 N.W.2d 181, 183 (Minn. 1966) ("It is not within the province of this court to determine issues of fact on appeal."). "Resolution of factual disputes is uniquely a district court function" and "remand is the appropriate remedy when the district court has made insufficient findings to enable appellate review." *Gams v. Houghton*, 869 N.W.2d 60, 65 (Minn. App. 2015), *aff'd as modified*, 884 N.W.2d 611 (Minn. 2016). Accordingly, remand to the district court is appropriate for determination as to whether the second tree or the parked cars are private nuisances, and if so, what relief is appropriate.

C. The district court did not presume or decide that Bradley had a legal right to use Tract K.

Bradley contends that the district court erred by considering Bradley's use of Tract K (the tract adjacent to Tract J) in determining whether obstructions on Tract J unreasonably interfere with Bradley's use of the access easement. The Haislets argue that the district court correctly concluded that the issue of Bradley's rights regarding Tract K was neither before the court nor ripe for adjudication, but they also argue that there is evidence that Bradley has an easement over Tract K.

The extent to which the district court considered Tract K is unclear. But the district court's analysis clarifies that it did not reach its decision in consideration of Bradley's right to use, or his actual use of, Tract K. Reading the district court's analysis in context, it is clear that the district court attempted to address Bradley's request that the court "construct its equitable relief for [Bradley's] full use [and] enjoyment over Tract J as if he has no ability to use any portion of Tract K." Further, the district court expressly stated, "Whether Bradley has a legal right to drive over Tract K *is not properly before the Court in this litigation, and in any event is not ripe for adjudication*." (Emphasis added.)

The district court rightly declined to make any determination regarding Bradley's right to use Tract K. The owners of the two portions of Tract K were not parties to the lawsuit, and the record does not indicate that any action regarding Tract K was pending contemporaneously with this action. Bradley's nuisance action was premised upon his easement rights to *Tract J*, and it is clear that the district court sought to limit its

consideration to whether the Haislets had unreasonably interfered with Bradley's right to use *Tract J* for ingress and egress to his home.

We are mindful of the facts that the preexisting roadway occupies a portion of Tract J and Tract K and that Bradley's easement has been encroached upon in the past by certain nuisances in the roadway created by the Kelleys and maintained by the Haislets (as found by two district courts). We clarify that our review today is limited to the alleged nuisance conditions upon Tract J as litigated at trial. We express no opinion regarding the parties' (or their successors') rights or remedies in the event of further encroachment or obstruction.

Because the district court did not err by relying on Bradley's right to use, or actual use of, Tract K, we see no basis for reversal.[4]

II. The district court did not abuse its discretion by ordering limited injunctive relief.

Bradley urges us to reverse the district court's denial of his request for an order requiring the Haislets to authorize the removal of various obstructions and the paving of almost all of Tract J. He contends that the district court erroneously balanced his easement interest against the Haislets' interests as fee owners, violated his equal-protection rights, and "[e]rred as a [m]atter of [l]aw in determining [that the Haislets] are entitled to a [w]indfall [p]rofit in the amount of $100,000 on their property at the expense of [Bradley]." The Haislets disagree.

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[4] The parties present various substantive arguments regarding Bradley's right to drive on Tract K. We do not reach the issue because, as set forth above, the district court did not decide the issue. Further, we see no principled reason to reach the question when the owners of that tract were not joined in district court and are not parties to this appeal.

Minn. Stat. § 561.01 provides that "by the judgment the nuisance may be enjoined or abated." We review a district court's decision regarding injunctive relief for an abuse of discretion. *Citizens*, 624 N.W.2d at 806. "This court will not set aside a district court's findings regarding entitlement to injunctive relief unless they are clearly erroneous." *Id.* at 807. We review legal questions de novo. *See id.* at 802.

A. The district court did not err by considering both the Haislets' interests as fee owners and Bradley's interest as an easement holder.

In its portion of analysis addressing injunctive relief, the district court indicated that it needed to "balance the[] competing rights" of the Haislets as owners in fee simple against Bradley's "entitle[ment] to the full use and enjoyment of th[e] easement" in order "to construct an equitable remedy that gives necessary assurances to the current and future owners of the subject property." Bradley argues that the district court misapplied the law because there is no balancing test in the case of an express easement and that the district court violated Bradley's right to equal protection by allowing the Haislets to maintain permanent obstructions despite his easement.

Bradley's first argument rests on the mistaken premise that any obstruction upon the tract is *per se* a nuisance. More importantly, Bradley ignores the fact that Minn. Stat. § 561.01 "codifies an equitable cause of action; consequently, it implicitly recognizes *a need to balance the social utility of defendants' actions with the harm to the plaintiff*." *Highview N. Apartments v. Ramsey County*, 323 N.W.2d 65, 71 (Minn. 1982) (emphasis added). Given the equitable nature of a private nuisance action, the district court did not

err by balancing the Haislets' interests as owners in fee simple against Bradley's interest as an easement holder.

Bradley's equal-protection argument likewise fails. The Minnesota Constitution provides, "No member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers." Minn. Const. art. I, § 2. Bradley contends that there are "no Minnesota Cases or other authorities which have allowed the Fee Simple Owner of Property subject to an Express Written Deed of Appurtenant Easement to maintain permanent obstructions on the easement which block the use of the easement for its intended purposes." As set forth herein, the district court properly declined to reconsider whether the first tree and retaining wall were nuisances, and Bradley fails to support his assertion that the remainder of the Haislets' lawn substantially interferes with his easement rights. The status of the second tree and vehicles are meanwhile the subjects of a limited remand.

The district court did not abuse its discretion in deciding the appropriate scope of injunctive relief as to the alleged nuisance conditions it expressly addressed. We therefore decline to reverse on these grounds.

B. The district court did not determine that the Haislets were entitled to a $100,000 windfall.

Bradley argues that the district court erred by determining that the Haislets were entitled to a windfall profit of $100,000 by allowing them to maintain obstructions on Tract J. Construed generously, the argument appears directed at the equity of the district court's ordered injunctive relief, which was less than what Bradley requested. We reject

the argument because the district court never made findings regarding changes in the Haislets' property's value or any unscrupulous motives by the Haislets or their mother. Further, Bradley cites no authority requiring the district court to consider the collateral consequences of its decision with respect to the values of dominant and servient properties. We decline to reverse on this ground.

III. The district court did not abuse its discretion by precluding expert testimony regarding Tract K or by denying Bradley's motion for a partial new trial.

Bradley argues that the district court abused its discretion by precluding expert testimony regarding the existence of an easement on Tract K, thereby denying him the right to a fair trial. The Haislets argue otherwise.

We review a district court's evidentiary rulings for an abuse of discretion. *Doe v. Archdiocese of St. Paul*, 817 N.W.2d 150, 164 (Minn. 2012). We review a district court's denial of a motion for a partial new trial for an abuse of discretion. *See Larson v. Gannett Co.*, 940 N.W.2d 120, 131 (Minn. 2020). "Entitlement to a new trial on the grounds of improper evidentiary rulings rests upon the complaining party's ability to demonstrate prejudicial error." *Kedrowski v. Lycoming Engines*, 933 N.W.2d 45, 62 (Minn. 2019) (quotation omitted).

In denying Bradley's posttrial motion, the district court concluded that Bradley failed to demonstrate any prejudice "[b]ecause the Court did not base its findings or conclusions on whether Mr. Bradley had a legal right to drive over Tract K." As set forth above, the district court did not presume or conclude that Bradley had an easement over

Tract K, and so the district court did not abuse its discretion by denying Bradley's motion for a partial new trial.

Further, the district court properly precluded expert testimony in the first instance. Expert testimony is admissible to the extent it assists the district court in understanding the evidence or determining an issue of fact. Minn. R. Evid. 702. Testimony that embraces legal analysis or mixed questions of law and fact is "not deemed to be of any use to the trier of fact." *Conover v. N. States Power Co.*, 313 N.W.2d 397, 403 (Minn. 1981). Expert testimony regarding a legal right as to Tract K was of no use to the district court in its capacity as fact-finder, and it was the district court's province to determine legal rights. The district court did not abuse its discretion by precluding expert testimony on the issue.

IV. The district court did not abuse its discretion by denying Bradley's request for attorney fees.

Bradley contends that the district court abused its discretion by denying his motion for attorney fees because counsel for the Haislets "have advanced frivolous claims in this action that [the Haislets] are entitled to the exclusive use and enjoyment of more than one half of [Bradley's] Easement" and "have advanced known baseless arguments."

Sanctions in the form of attorney fees are permissible for frivolous conduct pursuant to Minn. Stat. § 549.211, subds. 2(2), 3, and Minn. R. Civ. P. 11.02(b), .03. "Whether to award sanctions requires determining whether counsel had an objectively reasonable basis for making the factual or legal claim." *Gibson v. Trs. of Minn. State Basic Bldg. Trades Fringe Benefits Funds*, 703 N.W.2d 864, 869 (Minn. App. 2005), *vacated in part*, No. A05-39, 2005 WL 6240754 (Minn. Dec. 13, 2005) (order). We review a district

court's denial of a motion for attorney fees for an abuse of discretion. *Minn. Humane Soc'y v. Minn. Federated Humane Soc'ys*, 611 N.W.2d 587, 590-91 (Minn. App. 2000).

Bradley fails to demonstrate how the district court abused its discretion by denying an award of attorney fees. The mere fact that the Haislets disputed whether and to what extent they were maintaining nuisances did not amount to frivolous conduct. We have carefully reviewed the record, and nothing in the Haislets' submissions to the district court rose to the level of frivolous or baseless arguments. The district court did not abuse its discretion by denying Bradley's motion for attorney fees.

Conclusion

In summary, the district court's findings are supported by the record. The district court's analysis and conclusions comport with caselaw and the terms of Bradley's easement, which affords him the right of ingress and egress for road purposes. The terms of the injunctive relief ordered by the district court were properly aimed at affording Bradley the full use and enjoyment of his easement *for that special use*. We affirm in part and remand to the district court for the limited purpose of issuing findings and conclusions regarding whether the second tree and vehicles constitute nuisances and, if so, the appropriate relief.

Affirmed in part and remanded; motion denied.