STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1714

Ross R. Lundstrom, et al.,
Appellants,

vs.

Township of Florence,
Respondent,

State of Minnesota,
Defendant.

Filed September 6, 2022
Affirmed in part, reversed in part, and remanded
Larkin, Judge

Goodhue County District Court
File No. 25-CV-20-1325

Charles O. Richardson, Richardson & Richardson, Red Wing, Minnesota (for appellants)

Jessica E. Schwie, Joshua P. Devaney, Kennedy & Graven, Chartered, Minneapolis, Minnesota (for respondent)

Considered and decided by Smith, Tracy M., Presiding Judge; Connolly, Judge; and Larkin, Judge.

SYLLABUS

A deed or other instrument that conveys a fee simple interest in part of a platted street along with a conveyance of the abutting lot is a "source of title" to that part of the street for purposes of the Minnesota Marketable Title Act.

OPINION

LARKIN, Judge

Appellant landowners challenge the district court's summary-judgment dismissal of their declaratory-judgment action regarding the parties' respective interests in the portions of two platted, unopened streets that abut appellants' lots: Barton Street and Bay Street (the disputed streets). The district court dismissed appellants' claim that respondent township's interest in the disputed streets was extinguished by the Minnesota Marketable Title Act (MTA), Minn. Stat. § 541.023 (2020), reasoning that the deeds conveying appellants' lots are not a "source of title" to the abutting streets under the MTA. The district court also granted the township's summary-judgment motion seeking a declaration that the disputed streets are platted, public, unopened roads; ordered appellants to remove all "structures, objects, and things" on Barton Street; and ordered the township to mark, and post signs identifying, the boundaries of the disputed streets.

Appellants argue that the district court erred as a matter of law in determining that their deeds do not provide a source of title for purposes of the MTA and that they are otherwise entitled to judgment as a matter of law. By notice of related appeal, respondent challenges the district court's denial of its request for costs and disbursements as the prevailing party. Because the district court erred in determining that the deeds conveying appellants' lots do not provide a source of title to the disputed streets for purposes of the MTA, and because there is no genuine issue of material fact, we reverse in part and remand for entry of judgment for appellants. In view of this reversal, we affirm the district court's denial of costs and disbursements because the township is not the prevailing party.

FACTS

This appeal regards platted, unopened streets that abut appellants' lots in respondent Florence Township on the western shore of Lake Pepin.[1] The parties stipulated that appellants Ross Lundstrom and Jean Pontzer own a fee simple interest in lots described by deed as:

> Lot 1, Block 7, and that part of vacated Bay Street lying easterly thereof, of the Town of Frontenac, according to the plat thereof on file and of record in the office of the County Recorder in and for Goodhue County, Minnesota. Said premises being situate upon Government Lot One of Section 12, in Township 112 North, of Range 13 West of the Fifth Principal Meridian; and
>
> Lot 1, Block 3 in the Town of Frontenac, and that part of the easterly half of vacated Bay Street, which accrues to said Lot by virtue of said vacation thereof, according to the recorded plat thereof, on file in the Goodhue County Recorder's Office, Goodhue County, Minnesota.

The parties also stipulated that appellant Bruce Hansen owns a fee simple interest in lots described by deed as:

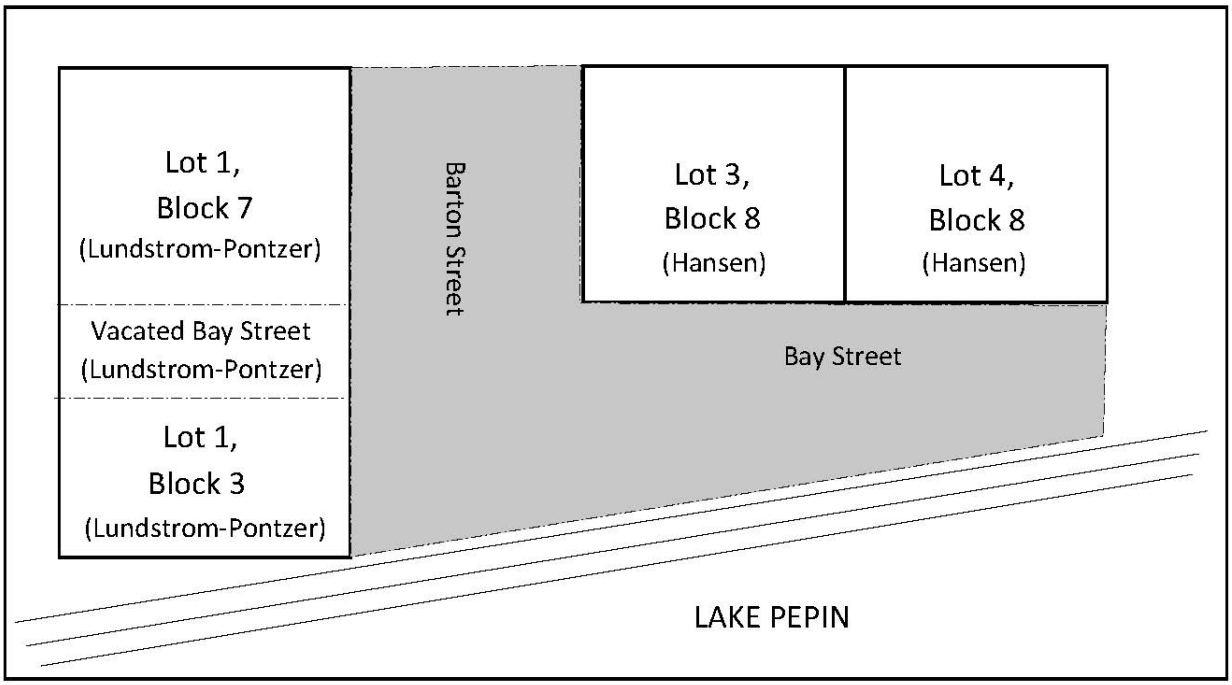
> Lots 3 and 4, in Block 8 in the Town of Frontenac, according to the plat thereof on file and of record in the office of the County Recorder for Goodhue County, Minnesota.[2]

---

[1] Lake Pepin is "a widening of the Mississippi River which forms the boundary between Minnesota and Wisconsin at this point." *Schaller v. Town of Florence*, 259 N.W. 529, 530 (Minn. 1935).

[2] The deeds and other documents on which appellants rely for chain of title extend back more than 40 years. The validity of those documents is undisputed.

The approximate layout of the lots and disputed streets is shown below. Appellants use the disputed streets as a garden and yard. The township contends that an electrical utility pole and lines are located in the Barton Street right-of-way.



Barton Street and Bay Street run perpendicular to each other and intersect at Lake Pepin. The portion of Barton Street at issue lies between the Lundstrom-Pontzer and Hansen properties and ends at Lake Pepin. The portion of Bay Street at issue lies between Hansen's property and Lake Pepin. The township's interest in the disputed streets is based on the Plat of Westervelt, which was recorded in 1857 and renamed the Plat of Frontenac in 1859. The Plat of Frontenac "dedicate[d] to public use the streets and alleys as laid out" in the plat. Since 1857, some of the platted streets have been vacated in whole or in part, including the portion of Bay Street located between the two Lundstrom-Pontzer lots, which was vacated in 1920. The parties stipulated that when platted streets were vacated, "the land accrued to adjacent lots." The stipulation states that the disputed portion of Barton

Street has not been vacated; it does not state whether the disputed portion of Bay Street has been vacated.

Appellants sued the township and the State of Minnesota, seeking a declaration that appellants are the fee owners of the disputed streets "free of any interest in Defendants herein except those proprietary and sovereign rights of the State of Minnesota."[3] In its answer, the township denied that its interest in the disputed streets was extinguished by operation of the MTA, as appellants had alleged, and asked the district court to order appellants to remove all structures, objects and things (including trees) on Barton Street "for their respective shares which is up to the middle of the right of way."

Following discovery, the parties filed cross-motions for summary judgment. The district court granted the township's motion and denied appellants' motion. The district court recognized that "Minnesota case law has held that landowners own the fee title to the center of abutting, abandoned streets" and reasoned that, "based on this case law, it would seem [appellants] have a source of title to" the disputed streets. Yet the district court concluded that "under the MTA, landowners do not have a source of title in abutting roads when those roads are not [expressly described] in the deed." Given its ruling, the district court did not determine whether the township was "conclusively presumed," under the MTA, to have abandoned its interest. The district court's order denied the township's request for costs and disbursements without explanation.

[3] The Minnesota Department of Natural Resources (DNR) filed a letter indicating that it would not file an answer provided the state's sovereign and proprietary rights with respect to Lake Pepin were addressed in the final order and decree. The DNR did not participate further in district court or in this court.

Lundstrom, Pontzer, and Hansen appeal the denial of their motion for summary judgment and the grant of summary judgment to the township. By notice of related appeal, the township challenges the denial of its request for costs and disbursements.

ISSUES

I. Is a deed or other instrument that conveys fee title to part of a platted street along with the abutting lot a source of title to the street under Minn. Stat. § 541.023, subd. 1?

II. Does a utility pole, together with electrical lines, establish the township's possession of the disputed streets under Minn. Stat. § 541.023, subd. 6?

ANALYSIS

This appeal involves application of the MTA to the township's interest in platted, unopened streets. "The declared policy of the Marketable Title Act is to prevent restrictions on uses [of land] that have not been reasserted as a matter of record within the last 40 years from 'fettering the marketability of title.'" *State v. Hess*, 684 N.W.2d 414, 422 (Minn. 2004) (quoting Minn. Stat. § 541.023, subd. 5 (2002)). "The MTA applies to every property interest 'founded by any instrument, event or transaction that is at least 40 years old.'" *Sampair v. Village of Birchwood*, 784 N.W.2d 65, 68 (Minn. 2010) (quoting Minn. Stat. § 541.023, subd. 2(a) (2008)). Specifically, the MTA applies to town roads established by order of the town board. *Township of Sterling v. Griffin*, 244 N.W.2d 129, 133 (Minn. 1976) ("[T]own roads are not exempt from the application of the [MTA]."). The MTA also applies to town roads established by statutory dedication. *Ravenna Township v. Grunseth*, 314 N.W.2d 214, 219 (Minn. 1981) (applying Minn. Stat. § 160.05, subd. 1 (1980)). And the MTA applies to streets—like those at issue here—dedicated to

the public by plat. *In re Application of Moratzka*, 974 N.W.2d 266, 269, 273 (Minn. App. 2022), *rev. granted* (Minn. June 29, 2022).

Generally, for the MTA to extinguish an interest in real property: (1) the party invoking the MTA must have a "claim of title based upon a source of title, which source has then been of record at least 40 years," and (2) the person against whom the MTA is invoked must be "conclusively presumed" to have abandoned all interest in the property. *Wichelman v. Messner*, 83 N.W.2d 800, 807 (Minn. 1957) (quotation omitted) (syllabus by the court). As explained by our supreme court:

> By operation of the MTA, when X holds property in fee simple that has been of record for over 40 years, and Y claims an interest in that property that is also at least 40 years old, then Y, or Y's predecessors in interest, must have filed the statutorily prescribed notice of Y's claim within 40 years of the creation of the interest Y now claims.

Sampair, 784 N.W.2d at 68 (citing Minn. Stat. § 541.023; *Wichelman*, 83 N.W.2d at 811-13, 819-20). An exception to the notice requirement provides that the MTA does not "bar the rights of any person . . . in possession of real estate." *Id.* at 69 (quoting Minn. Stat. § 541.023, subd. 6 (2008)).

The issue in this case is whether, under the MTA, a deed conveying a fee simple interest in a platted lot can serve as a "source of title" to the abutting street and if so, whether utility fixtures can support the township's claim to possession of the disputed streets. The issue is presented in the context of a summary judgment ruling. On appeal from summary judgment, appellate courts "review de novo whether there are any genuine issues of material fact and whether the district court erred in applying the law." *Id.* at 68.

We view evidence in the light most favorable to the party against whom summary judgment was granted. *Id.*

I.

Appellants contend that the district court erred by concluding that their deeds do not provide a "source of title" to the disputed streets within the meaning of the MTA. They argue that, as a matter of law, they hold a fee simple interest in the disputed streets by virtue of their ownership of abutting lots in the same plat, and that deeds that do not expressly describe abutting streets can be a "source of title" to the streets for purposes of the MTA.

The township does not expressly argue that appellants lack a fee simple interest in the disputed streets. Rather, it makes the narrower argument that an interest in the streets not expressly described in deeds to the abutting lots cannot serve as "source of title" under the MTA.

Minnesota caselaw provides a general presumption that the conveyance of a lot abutting a platted street conveys with the lot a fee interest to the center of the street. *See In re Robbins*, 24 N.W. 356, 357 (Minn. 1885) ("So a deed of lots conveyed as represented in a town plat, is presumed to include a grant of the soil to the center of the street, and it passes as parcel of the land and not as an appurtenant."); *see also Wait v. May*, 51 N.W. 471, 472 (Minn. 1892) (stating "where lots are conveyed in accordance with a town plat, the deed is presumed to include a grant of the soil to the center of the street, subject to the public easement."); *Bolen v. Glass*, 755 N.W.2d 1, 4 (Minn. 2008) ("As to the ownership of the underlying fee interest, we have recognized that any abutting landowner owns to the middle of the platted street or alley and that the soil and its appurtenances, within the limits

of such street or alley, belong to the owner in fee, subject only to the right of the public to use or remove the same for the purpose of improvement." (quotation omitted)).

The reasoning underlying the presumption of title to the center of the street is that "adjoining owners are presumed to have originally furnished the land in equal proportions for the sole purpose of a highway." *Robbins*, 24 N.W. at 356. The presumption "yields when a different intention is clearly manifested, or when the evidence shows there could be no foundation for it, as where the grantor at the time owned no part of the street, the same being laid wholly on the land of another." *Id.* at 357; *see also White v. Jefferson*, 124 N.W. 373, 374 (Minn. 1910) (explaining that fundamental principles of contract law determine whether owner intended to sell or retain fee interest in abutting street); *Betcher v. Chicago, M. & St. P. Ry. Co.*, 124 N.W. 1096, 1099 (Minn. 1910) (noting when "a deed of land abutting upon a street or highway expressly makes the nearer external line thereof . . . the boundary line of the tract conveyed," the grantor did not convey title to the abutting street through the deed to the tract).

Additional circumstances may affect the extent of the interest in the street presumed to transfer with the conveyance of an abutting lot. *See, e.g.*, *Lamprey v Am. Hoist & Derrick Co.*, 266 N.W. 434, 435 (Minn. 1936) ("Where land is platted with a river as one of the boundaries . . . and only a dedicated street [separates lots from] the river, the conveyance . . . of the lots . . . carries the fee title to the entire street in front of the lots . . . subject to the public easement in the street.") (syllabus by court); *Wait*, 51 N.W. at 472 (reasoning that fee title to entire street on margin of plat transferred with deed to abutting lot).

Here, the following circumstances are undisputed: (1) appellants own fee simple interests in their lots, (2) appellants' lots abut Barton Street and Bay Street, (3) Barton and Bay Streets were dedicated by plat, and (4) neither Barton nor Bay Street has been vacated.[4] There is no argument that the legal descriptions in the chain of title for appellants' lots expressly exclude the disputed streets. Nor is there an argument that any other person or entity owns fee title to the disputed streets. Moreover, in its answer, the township asked the district court to order appellants to remove all structures, objects and things (including trees) from Barton Street, "for their respective shares which is up to the middle of the right of way." The only apparent basis of "their respective shares [of Barton Street] up to the middle of the right of way" is the landowners' presumed fee simple interest to the center of the street under the well-settled precedent summarized above.

The MTA provides:

> As against *a claim of title based upon a source of title*, which source has then been of record at least 40 years, no action affecting the possession or title of any real estate shall be commenced . . . to enforce any right, claim, interest, incumbrance, or lien founded upon any instrument, event or transaction which was executed or occurred more than 40 years prior to the commencement of such action, unless within 40 years after such execution or occurrence there has been recorded in the office of the county recorder in the county in which the real estate affected is situated, a notice . . . setting forth the name of the claimant, a description of the real estate affected and of the instrument, event or transaction on which such claim is founded, and stating whether the right, claim, interest, incumbrance, or lien is mature or immature.

[4] Although the stipulation does not expressly state that the portion of Bay Street abutting Hansen's parcels has not been vacated, no party disputes that this portion of Bay Street (unlike the portion between the Lundstrom-Pontzer lots) has not been vacated.

Minn. Stat. § 541.023, subd. 1 (emphasis added).

A "source of title" can be "any deed, judgment, decree, sheriff's certificate, or other instrument which transfers or confirms, or purports to transfer or confirm, a fee simple title to real estate." *Id.*, subd. 7. Appellants rely on the deeds and other instruments conveying fee title to their lots as their source of title to the disputed streets. The district court rejected appellants' argument, concluding that, under this court's caselaw interpreting the MTA, "the abutting streets are not included in [appellants'] deeds" and "landowners do not have a source of title in abutting roads when those roads are not included in the deed."

The district court largely relied on this court's decision in *Padrnos v. City of Nisswa*, 409 N.W.2d 36 (Minn. App. 1987), *rev. denied* (Minn. Sept. 23, 1987). In *Padrnos*, a landowner sought to extinguish a township's interest in a platted "unpaved section of road" abutting the landowner's resort property. 409 N.W.2d at 37. *Padrnos* notes that the landowner had negotiated a reduction in the purchase price when he learned "the 'easement' was not included in the resort property" and there was a "corresponding loss in lakefront footage." *Id.*

In *Padrnos*, this court noted that the landowner "did not purchase the roadway property when he bought the resort and has not claimed nor has he presented evidence to support a claim of adverse possession." *Id.* at 38. Based on our determination that the landowner "did not purchase the roadway property," we concluded that he lacked a source

of title to the roadway for purposes of the MTA.[5] *Id.* at 37. Our determination in *Padrnos* that the landowner did not purchase the roadway is succinct and fact-specific. It does not address deed language, and we do not understand it to conflict with longstanding supreme court caselaw holding that a landowner is generally presumed to take title to all or part of the abutting street in the absence of evidence of a contrary intent by the grantor. Thus, we take *Padrnos* at face value. *Padrnos* does not hold that a deed to a lot abutting a street conveys only title to the lot itself unless the deed includes express language including an interest in the street. Nor does *Padrnos* hold that a deed to a lot abutting a street cannot provide a source of title to the street for purposes of the MTA unless the deed contains express language conveying title to the street.[6]

The MTA plainly establishes that "any deed, judgment, decree, sheriff's certificate, or other instrument which transfers or confirms, or purports to transfer or confirm, a fee simple title to real estate" is a "source of title." Minn. Stat. § 541.023, subd. 7. This source-

---

[5] We also noted "there is sufficient evidence to support a finding the road had been in public possession since its establishment," which was the basis for the district court's decision. *Id.* at 37, 39. A previous owner's petition to vacate the road had been denied because the road was in fact used for public access to a lake. *Id.* at 37.

Further, our understanding in *Padrnos* was that the MTA was designed to provide a defense, not a platform to assert a property interest. *Id.* at 38. Subsequent supreme court caselaw has clarified that the MTA does not function solely as a defense. *See Hess*, 684 N.W.2d at 427 (determining district court properly granted summary judgment to state in state's action under MTA to extinguish landowners' interest).

[6] The district court also relied on *Reads Landing Campers Ass'n, Inc. v. Township of Pepin*, 533 N.W.2d 45 (Minn. App. 1995), *aff'd*, 546 N.W.2d 10 (Minn. 1996). In *Reads Landing*, we relied on *Padrnos* to conclude that the MTA was inapplicable, resolved a question of riparian rights reflected in a syllabus point, and ruled on a question of common-law abandonment of a public street. 533 N.W.2d at 47-50. The supreme court granted review to address riparian rights and common-law abandonment and affirmed this court's decision on those issues. 546 N.W.2d at 11.

of-title definition contains no additional or special requirements for the deed or other instrument.[7] The statutory definition of "source of title" is broad, not limited.

Here, the only basis for the district court's conclusion that appellants' deeds are not a source of title to the disputed streets is that, solely for purposes of the MTA, these deeds did not transfer title to the disputed streets. We reject this reasoning as inconsistent with the statutory definition of "source of title" and longstanding Minnesota caselaw on the presumption of title to abutting streets, and as a misapplication of *Padrnos* and *Reads Landing*.[8] We now hold that a deed or other instrument that conveys a fee simple interest in part of a platted street along with a conveyance of the abutting lot is a "source of title" to that part of the street for purposes of the MTA. We therefore conclude that appellants have established a source of title for purposes of their claim under the MTA. There being no argument for an alternative basis to affirm the grant of summary judgment in the township's favor, we reverse the grant of summary judgment to the township.

---

[7] Subject to additional requirements, even an instrument that transfers or purports to transfer a fee simple title from a person who was not the record owner of the real estate can serve as "source of title." Minn. Stat. § 541.023, subd. 7; *Weber v. Eisentrager*, 498 N.W.2d 460, 465 (Minn. 1993).

[8] The township also argues generally that, under Minnesota caselaw, public entities have a permanent right to decide when to open and occupy platted streets. "Minnesota law is clear that the public has a property interest in platted streets that are undeveloped." *Bolen*, 755 N.W.2d at 5. But the question here is not whether the township has rights in the disputed streets, but whether those rights can be extinguished by operation of the MTA. "[T]he MTA has the stated policy that 'ancient records shall not fetter the marketability of real estate' and operates to extinguish certain, otherwise-valid interests in real estate if those interest holders failed to file the MTA's prescribed notice." *Sampair*, 784 N.W.2d at 73 (quoting Minn. Stat. § 541.023, subd. 5).

II.

We next consider whether the township has either timely recorded notice of its interest or satisfied an exception to the notice requirement, such that the township is not "conclusively presumed to have abandoned" its easement interest. Minn. Stat. § 541.023, subd. 5. Although the district court did not reach this question, the issue was fully briefed and argued in the district court and on appeal. Because we conclude it can be resolved as a question of law subject to de novo review, we reach the question in the interest of judicial economy. *See McGuire v. Bowlin*, 932 N.W.2d 819, 828 (Minn. 2019) (addressing question of law in the interest of judicial economy).

As noted above, the township "must have filed the statutorily prescribed notice of [the township's] claim within 40 years of the creation of the interest [the township] now claims." *See Sampair*, 784 N.W.2d at 68. The purpose of the notice requirement under section 541.023, subdivision 1, is to "confirm the continuation of [the township's] interest in property and to eliminate stale claims that may clutter" appellants' titles. *Id.* at 69. The parties stipulated that:

> There has not been recorded in the office of the Goodhue County Recorder, with respect to that part of Barton Street, Town of Frontenac, lying between Lot 4 Block 8 and Lot 1 Block 7 and extending to Lake Pepin, or that part of Bay Street, Town of Frontenac, lying between Lots 3 and 4 Block 8 and Lake Pepin, as depicted in the Plat of Westervelt . . . attached hereto, a notice as described in Minn. Stat. 541.023, subd. 1.

The township nonetheless argues that because the Plat of Frontenac was executed and recorded on September 30, 1857, "the Township's interest clearly fits in the exception which would prevent any claim of abandonment under the MTA or any use of the MTA

against its recorded interest in the subject roads." Even if this argument is not foreclosed by the parties' stipulation that no notice was recorded, it appears to be foreclosed by our decision in *Moratzka*, which is pending review before the supreme court. In *Moratzka*, we concluded that the recording of a plat by the landowner did not satisfy the township's duty to file notice of claim under Minn. Stat. § 541.023, subd. 1. 974 N.W.2d at 274. This court is bound by its precedential decisions. *State v. M.L.A.*, 785 N.W.2d 763, 767 (Minn. App. 2010) (stating that this court "is bound by supreme court precedent and the published opinions of the court of appeals"), *rev. denied* (Minn. Sept. 21, 2010).

The township also argues that it satisfied the possession exception to the notice requirement. A party claiming possession under Minn. Stat. § 541.023, subd. 6, has the burden of proving possession. *Sampair*, 784 N.W.2d at 74. To show possession of an easement under the MTA, a party must demonstrate "use sufficient to put a prudent person on notice of the asserted interest in the land, giving due regard to the nature of the easement at issue." *Id.* at 70. The party must prove possession "beginning at the deadline for filing notice under the MTA—i.e., within 40 years of when the property interest was created—and continuing through the filing of the relevant action regarding ownership." *Id.* at 73.

The township contends that it has established possession because "the subject roads' right of way is currently being used for the provision of electric utilities to the area." The township cites no legal authority for the proposition that an electrical utility's pole and lines located in the right-of-way of an unopened street puts a prudent person on notice of the township's interest in the street itself, and we are aware of none. In *Township of Sterling*, the supreme court held that the township failed to establish possession of a road

when it had not taken steps to physically open the roadway and had conducted little to no maintenance of the roadway. 244 N.W.2d at 133-34. The township's claim to possession here is even more attenuated. Although the township mentions "public access to the natural beauty of the river" as a reason for maintaining its interest in the disputed streets, it does not claim or point to any evidence that the public has ever used the disputed streets to access the riverfront. We conclude, as a matter of law, that the township has not identified evidence of a use sufficient to put a prudent person on notice of its easement interest in the disputed streets. *See Sampair*, 784 N.W.2d at 70.

Finally, the township argues that abandonment of a platted public street requires an affirmative act. In *Township of Sterling*, our supreme court rejected an argument that the conclusive presumption of abandonment under the MTA requires an affirmative act of abandonment. 244 N.W.2d at 133 (rejecting argument that MTA should incorporate common-law rule of road abandonment).

In sum, the township has neither timely recorded notice of its interest nor identified evidence that could satisfy the possession exception to the notice requirement. We therefore conclude that the township is conclusively presumed to have abandoned its interest in the disputed streets. *See* Minn. Stat. § 541.023, subd. 5. Accordingly, we reverse the district court's denial of appellants' motion for summary judgment and remand for entry of judgment in favor of appellants.

DECISION

Because the district court erred in determining that appellants lack a "source of title" for purposes of the MTA and because there is no genuine issue of material fact that the

township is conclusively presumed to have abandoned its interest, we reverse the district court's rulings on cross-motions for summary judgment and remand for entry of judgment in favor of appellants. In view of this reversal, we affirm the district court's denial of the township's request for costs and disbursements.

Affirmed in part, reversed in part, and remanded.