STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0617

In the Matter of the Application of Mojtaba Sharifkhani to Register Title to Certain Land.

Filed December 19, 2022
Affirmed
Reyes, Judge

Ramsey County District Court
File No. 62-CV-18-2813

David M. Robbins, Meyer, Njus, Tanick, P.A., Minneapolis, Minnesota (for appellant Mojtaba Sharifkhani)

Katherine M. Melander, Brian W. Varland, Heley, Duncan & Melander, P.L.L.P., (for respondents RK Ventures, L.L.C., Drake Bank, United States Small Business Administration)

Andrew M. Luger, United States Attorney, Ana H. Voss, Assistant United States Attorney (for respondent United States Small Business Administration)

Considered and decided by Reyes, Presiding Judge; Larkin, Judge; and Halbrooks, Judge.*

NONPRECEDENTIAL OPINION

REYES, Judge

Following a court trial in a Torrens registration proceeding under Minn. Stat. §§ 508.01-.84 (2022), appellant challenges the district court's determination that the Minnesota Marketable Title Act (MTA), Minn. Stat. § 541.023 (2022), did not extinguish

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

a recorded easement, arguing that the MTA possession exception does not apply to a misused easement. We affirm.

FACTS

Appellant Mojtaba Sharifkhani is the fee owner of land that is burdened by the easement at issue in this case. In April 2018, Sharifkhani filed an application to have the title to the land registered. In his application, Sharifkhani sought an adjudication that the following recorded easement from 1933 had been terminated:

> Easement for driveway for vehicles and for footway for pedestrians to pass and to repass to and from Walnut Street, along and over the same, on and over the southeasterly twelve 12 feet of the southwesterly one-half of Lot 8, and the southeasterly 12 feet of Lot 9, in Block 27, Rice and Irvine's Addition to Saint Paul, Minnesota, as established in Book 921, Page 445 as Document No. 849079.[1]

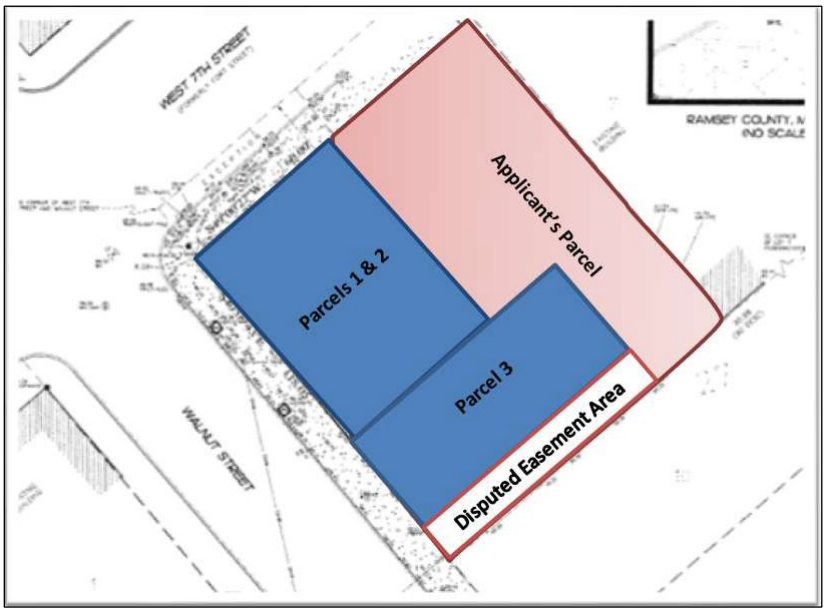
Based on its expressed terms, the easement benefits and runs with the land referred to by the parties as parcel 3 and legally described as:

> The Northwesterly 38 feet of the Southeasterly 50 feet of the Southwesterly one-half of Lot 8 and the Northwesterly 38 feet of the Southeasterly 50 feet of Lot 9, Block 27, Rice and Irvine's Addition to Saint Paul, Ramsey County, Minnesota.

In other words, the easement gives those having an interest in parcel 3 vehicular and pedestrian access along parcel 3 to Walnut Street over a 12-foot swath owned by Sharifkhani. Respondent RK Ventures, LLC, is the fee owner of parcel 3, and respondents Drake Bank and U.S. Small Business Administration hold mortgages secured by RK

[1] This is referred to as the "Disputed Easement Area" in the diagram.

Ventures's property (collectively, respondents). RK Ventures also owns contiguous parcels 1 and 2, which have no rights to the easement.



In 1933, Sharifkhani's predecessor-in-title granted the easement to the predecessor-in-title to parcel 3. From the time of the grant to the present, parcels 1 and 2 have been used as commercial properties. From the time of the grant until 1999, parcel 3 contained a house and was used as residential property. Parcel 3's residents used the easement to access the house.

In summer 1999, the house was demolished and, soon after, parcels 1, 2, and 3 came under common ownership. Then, parcels 1 and 2 became Tom Reid's Hockey City Pub (the Pub). Between summer 1999 and 2008, parcel 3 contained a parking area.

In 2008-2009, the Pub constructed an outdoor patio over part of the parking area on parcel 3. From 2008-2009 until May 2017, the remaining parking area of parcel 3 was still accessible by vehicle and by pedestrians through the easement. A 2017 addition created a single structure covering parcels 1, 2, and 3. The easement is now used as an emergency

exit for the entire Pub, as a personal exit for an RK Ventures member, and as a path to haul trash from the Pub.

When Sharifkhani sought a legal determination in the Torrens proceeding that the MTA terminated the easement in April 2018, respondents filed answers in opposition. After the parties stipulated to many key facts, including that the MTA possession exception was satisfied from May 15, 1973, to January 1, 1999, the examiner of titles held a court trial in August 2021. The district court adopted the examiner's recommendation and determined that the evidence presented showed continuous use since May 15, 1973, thereby meeting the MTA possession exception, and precluding termination of the easement by operation of the MTA. This appeal follows.

DECISION

I. The MTA and caselaw interpreting that statute.

In this appeal from a Torrens registration proceeding, the parties disagree over how the use of an easement should be treated under the MTA. Sharifkhani's arguments turn on two areas of easement law: (1) the legal interpretation of the MTA possession exception and (2) the extent of common law on acceptable uses of easements. Sharifkhani urges this court to, in effect, apply equitable principles established under general easement caselaw to the statutory MTA possession exception. We therefore start our analysis with an overview of the MTA and the MTA possession exception.

The MTA provides recorded fee simple owners of real property with a way to remove old conditions and restrictions that interfere with the property's marketability. *Wichelman v. Messner*, 83 N.W.2d 800, 819 (Minn. 1957). The express policy underlying

the statute is that "ancient records shall not fetter the marketability of real estate." Minn. Stat. § 541.023, subd. 5. 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 by a person, partnership, corporation, other legal entity, state, or any political division thereof, 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 sworn to by the claimant* . . . 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 . . . .

Id., subd. 1 (emphasis added). Therefore, when one party holds property in fee simple that has been recorded for over 40 years, and a second party claims an interest in that property that is also at least 40 years old, then the second party or its predecessors-in-interest must file the statutorily required notice of its claim within 40 years of the creation of its interest. *Sampair v. Village of Birchwood*, 784 N.W.2d 65, 68 (Minn. 2010). The purpose of the notice is "to confirm the continuation" of the second party's interest in the property and "to eliminate stale claims that may clutter" the first party's title. *Id.* at 69. "Any potential claimant who has not filed the statutorily prescribed notice within 40 years of the creation of its interest 'shall be conclusively presumed to have abandoned' any interest it might have had in the property." *Id.* (quoting Minn. Stat. § 541.023, subd. 5). The Minnesota Supreme Court has held that easements are property interests that can be eliminated under the MTA. *Id.*

However, even if the holder of an easement fails to record the statutorily prescribed notice, the easement holder can turn to the MTA possession exception: the MTA does not "bar the rights of any person . . . in possession of real estate." Minn. Stat. § 541.023, subd. 6. A party claiming this possession exception has the burden of proving possession by a preponderance of the evidence. *See Sampair*, 784 N.W.2d at 74. To show possession of an easement under the MTA, a party must demonstrate continuous "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. If a party fails to prove "continuous" use of an easement during the relevant period, the MTA extinguishes the party's interest in the easement. *Id.* at 71.

II. The district court correctly determined that respondents' use of the easement constitutes continuous use under the MTA possession exception.

Sharifkhani asserts that respondents improperly expanded the use of the easement, which is a misuse and cannot constitute continuous use for purposes of the MTA possession exception. We are not persuaded.

This issue presents a mixed question of law and fact. "When reviewing mixed questions of law and fact, we correct erroneous applications of law, but accord the district court discretion in its ultimate conclusions and review such conclusions under an abuse of discretion standard." *In re Est. of Sullivan*, 868 N.W.2d 750, 754 (Minn. App. 2015) (quotation omitted). "A district court abuses its discretion by making findings of fact that

are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record." *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quoting *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022)).

A. The district court correctly applied the law and did not abuse its discretion by determining that respondents' use of the easement satisfies the MTA possession exception.

Sharifkhani argues that the district court misapplied the MTA because respondents misused the easement and, therefore, failed to prove use necessary for the possession exception to preserve their right to the easement. We are not convinced.

The district court correctly relied on two appropriate authorities on the MTA possession exception: (1) the text of Minn. Stat. § 541.023, subd. 6, providing that the MTA does not "bar the rights of any person . . . in possession of real estate" and (2) the Minnesota Supreme Court decision in *Sampair*, interpreting the statute's application to easements. *Sampair*, 784 N.W.2d at 66. As noted above, a party claiming the MTA possession exception must show "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 66, 70.

The district court determined that respondents' historical use, including various types of foot and vehicle traffic, and respondents' current use of the easement, including use as an emergency exit for the Pub, as a personal walkway, and as a path to haul trash from the Pub, constituted continuous use sufficient to put a prudent person on notice of the interest, giving due regard to the nature of the easement. Because the record supports the district court's determination, it did not abuse its discretion.

B. Because misuse of an easement is not addressed by the MTA or *Sampair*, we decline to do so here.

Sharifkhani argues that respondents misused the easement. Specifically, he cites *Cohler* to argue that it is "well settled" that an easement may not be expanded "beyond the objects originally contemplated or expressly agreed upon by the parties." *Minneapolis Athletic Club v. Cohler*, 177 N.W.2d 786, 789-90 (Minn. 1970). Moreover, Sharifkhani cites *Kretz* to assert that the rule from *Cohler* prohibits a party from imposing "the burden of serving a larger tract than that contemplated in the [original grant]" by, in this case, enclosing parcels 1 and 2 with parcel 3. *Kretz v. Fireproof Storage, Co.*, 149 N.W. 648, 651 (Minn. 1915). According to Sharifkhani, respondents' unlawful misuse is not "continuous use" that gives "due regard to the nature of the easement" for the purposes of satisfying the MTA possession exception. *Sampair*, 784 N.W.2d at 70. Ultimately, Sharifkhani attempts to connect a common-law determination of easement misuse with the statutory MTA analysis. Sharifkhani relies on *Cohler*, *Kretz*, and nonbinding cases from other jurisdictions to argue that a misused easement cannot satisfy the MTA possession exception.[2]

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[2] *Christensen v. City of Pocatello*, 124 P.3d 1008 (Idaho 2005); *Carbone v. Vigliotti*, 610 A.2d 565 (Conn. 1992); *Abington Ltd. P'ship v. Heublein*, 717 A.2d 1232 (Conn. 1998); *Soho LLC v. Bergman*, 915 N.Y.S.2d 555 (2011); *Grygiel v. Monches Fish & Game Club, Inc.*, 787 N.W.2d 6 (Wis. 2010); *Schadewald v. Brule*, 570 N.W.2d 788 (Mich. App. 1997); *Brown v. Voss*, 715 P.2d 514 (Wash. 1986); *Nat'l Lead Co. v. Kanawha Block Co.*, 288 F. Supp. 357 (1968), *aff'd*, 409 F.2d 1309 (4th Cir. 1969); *Wetmore v. Ladies of Loretto, Wheaton*, 220 N.E.2d 491 (Ill. App. Ct. 1966); *Cooper v. Sawyer*, 405 P.2d 394 (Haw. 1965); *Penn Bowling Recreation Ctr. v. Hot Shoppes*, 179 F.2d 64 (D.C. Cir. 1949); *McCullough v. Broad Exch. Co.*, 92 N.Y.S. 533 (1905), *aff'd*, 77 N.E. 1191 (N.Y. 1906); *DND Neffson Co. v. Galleria Partners*, 745 P.2d 206 (Ariz. Ct. App. 1987).

We decline Sharifkhani's invitation to apply an equitable determination of easement misuse to the MTA possession exception for three reasons: (1) the MTA does not address misuse; (2) Minnesota caselaw, chiefly *Sampair*, does not provide the analytical framework to do so; and (3) Sharifkhani's argument relies on cases that do not apply equitable determinations of easement misuse to Minnesota's MTA, or another state's relevant MTA. First, Sharifkhani's argument requires us to engage in statutory interpretation. The MTA simply states: "This section shall not . . . bar the rights of any person, partnership, or corporation in possession of real estate." Minn. Stat. § 541.023, subd. 6.

The goal of statutory interpretation is to "ascertain and effectuate the intention of the legislature." *Christianson v. Henke*, 831 N.W.2d 532, 536 (Minn. 2013) (quotation omitted). When conducting statutory interpretation, the first step is to determine whether a statute's language is ambiguous. *Id.* If the statute is unambiguous, then a court should "enforce the language of the statute and not explore the spirit or purpose of the law." *Id.* at 537; *see* Minn. Stat. § 645.16 (2022).

Neither party argues that the MTA possession exception provided in Minn. Stat. § 541.023, subd. 6, is ambiguous, and we conclude that it is not. We therefore apply the plain meaning of the MTA and the MTA possession exception. *See Christianson*, 831 N.W.2d at 536. The plain language of the possession exception does not contain the word "misuse" and does not qualify "possession." In other words, the MTA is silent about the type of possession necessary to satisfy the exception to the abandonment presumption under the MTA. Minn. Stat. § 541.023, subd. 6. When considering silence, "courts are

not free to substitute amendment for construction and thereby supply the omissions of the legislature." *Rohmiller v. Hart*, 811 N.W.2d 585, 590 (Minn. 2012) (quotation omitted). We therefore cannot add language to the MTA that the legislature did not include.

Second, Sharifkhani argues that, under *Sampair*, use of an easement that has expanded beyond the originally intended scope is not use that gives "due regard to the nature of the easement at issue." 784 N.W.2d at 70. But the *Sampair* court adopted this phrase as a way to create "a more flexible MTA possession standard for easements" because "the nature of easements [varies]" so "the nature of the possession also varies." *Id.* In other words, "'possession of a town road will differ from that of a private easement'" and, therefore, the type of use necessary to put a "prudent person on notice" of the easement holder's interest in property will differ depending on the nature of the easement. *Id.* (quoting *Township of Sterling v. Griffin*, 244 N.W.2d 129, 133 (1976)).

Here, the district court determined that respondents have continuously used an easement created for vehicular and pedestrian driveway and footway access between parcel 3 and Walnut Street such that a prudent person is put on notice of respondents' interest in the property. Therefore, the MTA possession exception applies, and the burden on Sharifkhani's property is not extinguished by operation of the MTA.[3]

Affirmed.

[3] Sharifkhani alternatively argues that misuse of the easement can also be found by measuring the "material" increase in the burden on servient property. Because we do not conclude that misuse impacts the analysis under the MTA possession exception, we do not reach this issue.