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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0906**

Kevin Gerrard,
Appellant,

Anita Gerrard,
Appellant,

vs.

City of Princeton,
Respondent,

County of Mille Lacs,
Respondent,

State of Minnesota Department of Transportation,
Respondent.

**Filed March 3, 2014
Affirmed
Kirk, Judge**

Mille Lacs County District Court
File No. 48-CV-10-1945

Kevin and Anita Gerrard, Princeton, Minnesota (pro se appellants)

Paul D. Reuvers, Susan M. Tindal, Iverson Reuvers Condon, Bloomington, Minnesota
(for respondent City of Princeton)

Scott T. Anderson, Trevor S. Helmers, Rupp, Anderson, Squires & Waldspurger, P.A.,
Minneapolis, Minnesota (for respondent County of Mille Lacs)

Lori Swanson, Attorney General, Mathew Ferche, Assistant Attorney General, St. Paul,
Minnesota (for respondent State of Minnesota Department of Transportation)

Considered and decided by Kirk, Presiding Judge; Connolly, Judge; and Crippen, Judge.*

UNPUBLISHED OPINION

KIRK, Judge

Appellants brought an action against respondents city, county, and state agency, claiming that respondents trespassed on appellants' land during construction of a traffic roundabout and placement of a municipal welcome sign. Appellants challenge the district court's findings that respondents did not trespass on their property or take their property without just compensation, and that the city held a valid permit to place a municipal welcome sign within a highway right-of-way easement. Because the district court's findings are supported by the record and are not clearly erroneous, we affirm.

FACTS

Appellants Kevin and Anita Gerrard brought suit against respondents City of Princeton (Princeton), Mille Lacs County (the county), and the Minnesota Department of Transportation (MnDOT) for numerous property-rights violations arising from the construction of a traffic roundabout and placement of a municipal welcome sign in Princeton. The Gerrards' property consists of three city lots and a triangular tract of land located at the northwest corner of Highway 95 and Rum River Drive.¹

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

¹ Rum River Drive is also known as County State Aid Highway 29.

The Gerrards' property is subject to a number of easements. In 1933, the State of Minnesota condemned part of the Gerrards' property to construct a trunk highway and acquire a highway right-of-way easement for County State Aid Highway 29. In 1981, the state quitclaimed its interest in the easement to the county. In 1975, the Gerrards' property was subject to another condemnation proceeding by the state for the purpose of constructing Highway 95 and acquiring a highway right-of-way easement that gave the state exclusive control over all trees within the right-of-way. Both the 1933 and 1975 easements were recorded with the county recorder.

In 1997, Princeton obtained a permit from MnDOT to establish, maintain, and construct a municipal welcome sign at the southwest intersection of Highway 95 and Rum River Drive. The Gerrards purchased the property as joint tenants in 2004 with notice of the easements. In 2008, the county began constructing a traffic roundabout and new bridges that cross the Rum River. During construction of the traffic roundabout, Princeton removed the municipal welcome sign and trimmed or removed tree branches within the easement right-of-way. The Gerrards initiated a 13-count lawsuit against respondents alleging assault, battery, six counts of trespass, two counts of private nuisance, inverse condemnation, abuse of process, and enjoinder of prosecution.

The respondents individually moved for summary judgment. The district court granted MnDOT's motion on all counts and granted both the county's and Princeton's motions on all counts except for one count of trespass, which alleged that Princeton trespassed on the Gerrards' land in July and September 2009 and unlawfully cut down

trees. The district court later denied the Gerrards' motion for reconsideration of its decision to grant summary judgment to the respondents.

The district court held a court trial on the sole remaining count of trespass. Kevin Gerrard testified that in July 2009, county employees trespassed on their property when they cut down tree branches near the scour sign on the Dunn Bridge, located south of Highway 95 and directly west of Rum River Drive. Anita Gerrard testified that in September 2009, Princeton employees trespassed on their property when they removed a tree that had fallen near the municipal welcome sign, located proximately south of the intersection of Highway 95 and west of Rum River Drive.

After the Gerrards rested their case, Princeton and the county moved for an involuntary dismissal under Minn. R. Civ. P. 41.02(b). The district court granted the motion because it found that the Gerrards' July and September 2009 trespass claims involved trees that were completely contained within the scope of the 1975 easement.

The Gerrards moved the district court for judgment as a matter of law and a new trial based on several theories, including abuse of discretion, misconduct of the prevailing party, and newly discovered material evidence, which included a 2009 MnDOT booklet about utility easements and pictures of the construction of the roundabout taken in 2010. At a hearing, the Gerrards argued that the MnDOT permit was invalid on several grounds, including that it was for the wrong county, contained irregularities, and lacked the signature of the commissioner of highways and authorization of the federal government. The Gerrards argued that as fee holders they should not have to go through

discovery to acquire evidence to litigate their claims. The district court denied the Gerrards' motion in its entirety and dismissed the case.

D E C I S I O N

I. The district court did not abuse its discretion when it granted summary judgment to respondents.

“We review a district court’s summary judgment decision do novo. In doing so, we determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment.” *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010) (citation omitted). “We view the evidence in the light most favorable to the party against whom summary judgment was granted. We review de novo whether a genuine issue of material fact exists. We also review de novo whether the district court erred in its application of the law.” *STAR Centers, Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002) (citations omitted).

The Gerrards argue that the district court erred when it found that Princeton’s placement of the municipal welcome sign did not constitute trespass or inverse condemnation. “Trespass encompasses any unlawful interference with one’s person, property, or rights, and requires only two essential elements: a rightful possession in the plaintiff and unlawful entry upon such possession by the defendant.” *Special Force Ministries v. WCCO Television*, 584 N.W.2d 789, 792-93 (Minn. App. 1998) (citations omitted), *review denied* (Minn. Dec. 15, 1998). An easement grants the right to pass over the land. *Minneapolis Athletic Club v. Cohler*, 287 Minn. 254, 257, 177 N.W.2d 786, 789 (1970).

A review of the record affirms the district court's findings that Princeton did not trespass on the Gerrards' property because the municipal welcome sign was located completely within the scope of a valid easement located at the southwest intersection of Highway 95 and Rum River Drive. The 1975 easement clearly gives the state an easement for highway, highway right-of-way purposes, and control of all trees located within the easement. Because the municipal welcome sign was located within a valid easement, we conclude that the Gerrards' inverse condemnation claim is without merit.

The Gerrards argue that Princeton failed to comply with Minn. Stat. § 173.025 (2012) and that a reasonable person would conclude that compliance with the statute requires a letter or application with specific details of the municipal identification entrance sign and the actual signature of the MnDOT Commissioner of Highways. The Gerrards also argue that the statute requires Princeton to acquire state and federal permission. The Gerrards cite neither the record nor legal authority to support this claim, and this court normally declines to consider such issues on their merits. *State v. Sontoya*, 788 N.W.2d 868, 876 (Minn. 2010); *see State v. Tomassoni*, 778 N.W.2d 327, 335 (Minn. 2010). But in the interests of justice, we will review their claims. Minn. R. App. P. 103.04.

We conclude the Gerrards' argument is without merit. The plain language of the statute provides that “[a] local road authority may erect a municipal identification entrance sign within the right-of-way of a trunk highway with the written permission of the commissioner.” Minn. Stat. § 173.025. In its summary judgment order, the district court found that the Gerrards failed to create a genuine issue about the validity of the

MnDOT permit and cited a statement by the assistant attorney general who represented MnDOT, who confirmed that the state gave Princeton permission to place the sign at the intersection of Highway 95 and La Grande Avenue.² The evidence presented at trial shows that Princeton’s permit fully complied with the statutory requirements of Minn. Stat. § 173.025. For these reasons, we conclude that the district court properly found that Princeton complied with the requirements of section 173.025, and its permit was valid.

II. The district court did not abuse its discretion when it dismissed the Gerrards’ trespass claim under Minn. R. Civ. P. 41.02(b).

An appellate court evaluates the district court’s dismissal under Minn. R. Civ. P. 41.02 “under an abuse of discretion standard.” *Modrow v. JP Foodservice, Inc.*, 656 N.W.2d 389, 395 (Minn. 2003). For any claim that was tried on its merits, the district court’s “[f]indings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the [district] court to judge the credibility of the witnesses.” Minn. R. Civ. P. 52.01. In reviewing findings of fact under rule 52.01, “we view the record in the light most favorable to the judgment of the district court.” *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999).

The Gerrards raise a number of issues relating to errors the district court made in its findings after it involuntarily dismissed their claim under Minn. R. Civ. P. 41.02(b). We conclude they are all without merit. First, the Gerrards argue that the district court erred in determining who owned the easement. But the issue of who owned the easement

² La Grande Avenue is now known as County State Aid Highway 29/Rum River Drive.

is irrelevant to the Gerrards' claim of trespass because the district court found no evidence that anyone trespassed onto their property and unlawfully cut down their trees.

Second, the Gerrards argue that the MnDOT permit does not allow the city or county to go onto the easement to cut trees. Here, the Gerrard's argument fails because the record shows that the 1975 easement gave the state exclusive control over trees located within the scope of the easement.

Third, the Gerrards argue that they were precluded during trial from introducing evidence about the legality of MnDOT's permit because the district court granted respondents summary judgment on this issue. A review of the record shows that the district court's detailed findings about the history and validity of the MnDOT permit were supported by property records, affidavits, exhibits, and testimony. This court gives deference to these findings. Minn. R. Civ. P. 52.01. The Gerrards failed to provide any credible evidence that the easements or the MnDOT permit were not valid at the time they purchased the property. Hence, the district court did not abuse its discretion when it granted respondents involuntary dismissal under Minn. R. Civ. P. 41.02(b).

III. The district court did not err when it denied the Gerrards' motion for a new trial.

“We review a district court's new trial decision under an abuse of discretion standard.” *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 892 (Minn. 2010). The Gerrards argue that the district court erred when it failed to grant them a new trial because it ignored the newly discovered material evidence, and respondents should have been forced to “effectively counter” their arguments by “provid[ing] a legal permit with a Commissioner[’s] signature.” The Gerrards seem to misunderstand that they, not the

respondents, carry the burden of demonstrating why the merits of this case warrant a new trial.

Grounds for a new trial include “material evidence newly discovered, which with reasonable diligence could not have been found and produced at the trial.” Minn. R. Civ. P. 59.01(d). The evidence produced by the Gerrards is not new and could have been discovered with reasonable diligence before the trial. Admission of the evidence at trial would not have produced a different outcome. *See Disch v. Helary, Inc.*, 382 N.W.2d 916, 919 (Minn. App. 1986) (holding that a new trial will not be granted unless the newly discovered evidence is so important that “it will probably produce a different result at another trial”), *review denied* (Minn. Apr. 24, 1986). We also note that state agencies can delegate to any subordinate employee the exercise of specified statutory powers subject to the commissioner’s control, such as signing a permit. Minn. Stat. § 15.06, subd. 6(1) (2012).

Finally, the Gerrards argue that condemnation proceedings should have occurred before the traffic roundabout project started. This court will not consider this claim because a review of the record reveals that the Gerrards failed to raise it before the district court. *See Thiele v. Stitch*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts generally do not consider issues not presented to or decided by the district court).

For these reasons, the district court did not abuse its discretion when it denied the Gerrards’ motion for a new trial.

Affirmed.