STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0940

City of Willmar, petitioner,
Respondent,

vs.

Mark O. Kvam, as Trustee of the
Mark O. Kvam Revocable Trust, et al.,
Appellants,

Craig Groothuis, et al.,
Respondents Below.

Filed December 2, 2013
Affirmed
Hudson, Judge

Kandiyohi County District Court
File No. 34-CV-07-623

Robert J. Lindall, Peter G. Mikhail, Kennedy & Graven, Chartered, Minneapolis, Minnesota (for respondent)

Keri A. Phillips, Rinke-Noonan, St. Cloud, Minnesota (for appellants)

Considered and decided by Schellhas, Presiding Judge; Hudson, Judge; and Ross, Judge.

U N P U B L I S H E D O P I N I O N

HUDSON, Judge

On appeal from a condemnation-related dispute where the district court mistakenly distributed funds from a statutory quick-take account, appellant property owners argue

that the district court erred in ruling the mistake was a clerical error correctable at any time pursuant to Minn. R. Civ. P. 60.01, and requiring appellants to return the mistakenly distributed funds. Because the district court properly classified the error as clerical, we affirm.

FACTS

Appellants owned several parcels of land acquired by the City of Willmar in eminent domain proceedings. Pursuant to Minn. Stat. § 117.042 (2006), the city deposited $241,000 in a quick-take account with the Kandiyohi County court administrator in June 2008. Of that total, $197,000 represented the appraised value of appellants' properties as determined by the city. The remaining $44,000 of the deposit was attributable to the appraised value of a parcel of land owned by Groothuis, who is not a party to this appeal. The taking was challenged, but the city prevailed. *See City of Willmar v. Kvam*, 769 N.W.2d 775 (Minn. App. 2009), *review denied* (Minn. Oct. 20, 2009).

In April 2011, Groothuis settled with the city for $63,642.31. The city paid Groothuis directly and did not move for disbursement of the $44,000 Groothuis funds in the quick-take account. Appellants thereafter settled with the city for $250,000, and on July 8, 2011, the district court issued an order authorizing the court administrator to release the quick-take "funds deposited for Parcel Nos. 2, 4–5, 6, 8–9, 11, 12, 14, and 25 in the amount of $197,000 plus interest." The named parcels all belonged to appellants; parcel 3, owned by Groothuis, was not listed in the order. The order was prepared by appellants' attorney and not objected to by the city.

At that time, $248,256.37 remained in the account. But later that same day, an employee in court administration called appellants' attorneys and informed them that because appellants were the only parties left on the account, the remaining $248,256.37 would be disbursed to them. The court employee erroneously included the $44,000, plus interest, attributable to the Groothuis land in the total amount, although the court's order did not authorize its disbursement. The district court directed its staff to have appellants' attorney calculate the accrued interest for each appellant's individual share, and $248,256.37 was disbursed according to the attorney calculations. The city was unaware of this communication.

Over six months later, on January 27, 2012, the city's attorney contacted court administration to inquire about the $44,000 it had deposited for Groothuis, believing it should still be in the quick-take account. The city was informed that there was no money on deposit with respect to the Groothuis land. Six months later, on July 31, 2012, the city contacted court administration a second time and was again informed that there were no funds on deposit for the Groothuis land, nor was there an order authorizing any disbursement for that land. The city then contacted the district court judge directly, inquiring about the $44,000. The judge replied by letter in August 2012, stating that he was unaware the city had paid the Groothuis settlement directly, and that the $44,000 plus interest had been distributed to appellants.

On December 11, 2012, the city moved the district court to: (1) determine ownership of the $44,000 deposited for the Groothuis land; (2) order appellants to return

to the court administrator the overpayment of $44,000, plus interest; and (3) order the court administrator to pay the city $44,000, plus interest.

The city argued that the Groothuis funds were disbursed to appellants through an error of court administration, that appellants should have known of the error, and that appellants had been unjustly enriched by the overpayment. Appellants responded that the error was not the court's; rather, the city erred by paying Groothuis directly and not promptly moving for disbursement of the quick-take funds. Appellants further argued that the city's motions were time-barred because the city's actions (and inactions) constitute mistakes or neglect pursuant to Minn. R. Civ. P. 60.02, requiring correction within one year of the court's July 8, 2011 order. The city responded, arguing that it was the court's clerical error that led to the erroneous disbursement, and thus it could be corrected at any time pursuant to Minn. R. Civ. P. 60.01.

On March 20, 2013, the district court issued an order stating that: (1) the city is the owner of the $44,000, plus interest; (2) appellants must reimburse the $44,000, plus interest to the court administrator; and (3) upon receipt of the reimbursement, the court administrator must pay $44,000, plus interest, to the city. The district court concluded that $44,000, plus interest, was erroneously disbursed to appellants because of errors made by the court, including: (1) not specifying in its order the exact amount of money to be disbursed to appellants; and (2) a mistake by a court employee in disbursing the Groothuis funds to appellants without an order authorizing that disbursement. The district court classified these errors as clerical in nature, correctable at any time pursuant to Minn. R. Civ. P. 60.01. This appeal follows.

D E C I S I O N

We review de novo the district court's determination that the erroneous disbursement was a clerical error by the court, correctable at any time pursuant to Minn. R. Civ. P. 60.01. *Brazinsky v. Brazinsky*, 610 N.W.2d 707, 710 (Minn. App. 2000).

Appellants argue that the erroneous disbursement was due to the city's neglect in paying the Groothuis settlement directly and failing to move for disbursement of the Groothuis funds in a timely manner. Appellants contend that because the district court had to investigate the matter to determine that court administration had mistakenly distributed the funds deposited for the Groothuis parcel, the error was not "apparent upon the face of the record," and thus not a clerical error. *See Gould v. Johnson*, 379 N.W.2d 643, 646 (Minn. App. 1986) (quotation omitted), *reviewed denied* (Minn. Mar. 14, 1986). The city argues that the district court properly applied rule 60.01 "to make the record speak the truth" because it is undisputed that the district court's July 8, 2011 order did not authorize the Groothuis quick-take funds to be released.

Minn. R. Civ. P. 60.01 provides for relief from clerical errors:

> Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time upon its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected with leave of the appellate court.

A clerical "mistake ordinarily is apparent upon the face of the record and capable of being corrected by reference to the record only. It is usually a mistake in the clerical work of transcribing the particular record. It is usually one of form. It may be made by a

clerk, by counsel, or by the court." *Medtronic, Inc. v. Advanced Bionics Corp.*, 630 N.W.2d 438, 447 (Minn. App. 2001) (quoting *Wilson v. City of Fergus Falls*, 181 Minn. 329, 332, 232 N.W. 322, 323 (1930)). A motion for correction of a clerical error "can only be used to make the judgment or record speak the truth and cannot be used to make it say something other than what originally was pronounced." *Gould*, 379 N.W.2d at 647 (quotation omitted). On the other hand, a mistake under rule 60.02 is generally a substantive mistake made by one or both of the parties. *Id.* at 647; *Egge v. Egge*, 361 N.W.2d 485, 488 (Minn. App. 1985). An error is not clerical if an assumption about the parties' intentions must be made to conclude that an order or decree is erroneous. *Egge*, 361 N.W.2d at 488.

Here, no such assumption about the parties' intentions must be made to ascertain that appellants received an overpayment. Appellants have no connection or claim to the $44,000 Groothuis funds. Importantly, amounts deposited into the quick-take account for landowners can be removed only under the court's direction. *See* Minn. Stat. § 117.042 (2012). The court's July 8, 2011 order explicitly authorized the distribution of $197,000 plus interest that was deposited by the city for appellants' parcels of land. There is no mention of the Groothuis land or corresponding funds in the order; therefore, disbursement of the funds violated Minn. Stat. § 117.042.

Appellants also argue that the Groothuis funds were not paid by mistake, but rather properly distributed to them as interest on the award of $197,000. This argument is based on a faulty premise. Appellants cite *State by Spannaus v. Carney*, 309 N.W.2d 775, 776 (Minn. 1981), for the proposition that a district court has discretion to award

interest in amounts that may be more, less, or equal to the statutory rate. However, the holding in *Spannaus* referred specifically to interest on an award of condemnation damages, not interest earned on a quick-take deposit. *Id*. at 776. A "[quick-take] deposit does not represent an award of damages for the taking but only the condemnor's valuation of the property." *Fine v. City of Minneapolis*, 391 N.W.2d 853, 855 (Minn. 1986). As the Minnesota Supreme Court has explained, the eminent domain statutes encompass two types of interest:

> One type of interest derives from the court administrator's statutory obligation to deposit into an interest-bearing account amounts deposited with the court pursuant to the quick take procedure. Minn. Stat. § 117.042(b) (2000). The court administrator is required to pay the interest earned to the ultimate recipient(s) of the amount deposited. *Id*. The other type of interest is on an award of damages and is at the statutory rate of interest on judgments established in Minn. Stat. § 549.09 (2000). Minn. Stat. § 117.195, subd. 1 (2000). This interest is paid by the condemning authority. *See id*.

In re Condemnation by the City of Minneapolis, 632 N.W.2d 586, 587–88 (Minn. 2001). Here, the district court's order was not an award of damages. Rather, the parties settled the issue of damages themselves, and the order merely authorized the release of quick-take funds.

The error here is "apparent upon the face of the record" because a comparison of the funds the district court authorized to be disbursed and the funds that were actually disbursed by the court administrator plainly reveals the error. *Medtronic, Inc.*, 630 N.W.2d at 447 (quotation omitted). While the better practice may be for the city to promptly disburse quick-take funds as it settles claims with landowners, the delay here

was not the cause of the erroneous disbursement. Had the court administration employee followed the explicit language of the July 8, 2011 order, $44,000, plus interest, would have remained in the quick-take account. Thus, the pertinent error was made "by a clerk . . . or by the court." *Id.* Accordingly, the district court did not err by finding the error to be clerical and correctable at any time pursuant to Minn. R. Civ. P. 60.01.

Affirmed.

Dated: _____ _____
Judge Natalie E. Hudson