STATE OF MINNESOTA
IN COURT OF APPEALS
A09-0105

Mary Peters Schramel, et al.,
Appellants,

vs.

Collegeville Township, Minnesota,
Respondent.

Filed October 20, 2009
Affirmed
Hudson, Judge

Stearns County District Court
File No. 73-CV-07-4085

Joseph A. Krueger, Kandace T. Hartneck, Brown & Krueger, P.A., 124 Lake Street South, Long Prairie, Minnesota 56347 (for appellants)

Kenneth A. Bayliss, Joel M. Frye, Quinlivan & Hughes, P.A., P.O. Box 1008, 400 South First Street, Suite 600, St. Cloud, Minnesota 56302-1008 (for respondent)

Considered and decided by Lansing, Presiding Judge; Shumaker, Judge; and Hudson, Judge.

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

HUDSON, Judge

In this land-dispute case, appellants argue that the district court erred by granting summary judgment to respondent on count III of appellants' complaint. Appellants

further contend that the district court abused its discretion by denying their motion to amend the complaint. We affirm.

FACTS

This case involves a strip of land in the Collegeville Township of Stearns County. The land runs between lots 30 and 31 in the Sunset View subdivision, adjacent to Big Fish Lake. In the 1923 plat creating the subdivision, the land is designated as an "alley" and is dedicated to public use. Appellant David Carlson currently owns lot 30 in the subdivision, and appellant Mary Peters Schramel owns lot 31.[1]

In 2007, appellants filed a five-count complaint against respondent Collegeville Township to determine ownership and use of the land. Appellants claimed that from 1923 to 1992, the land was overgrown with shrubbery and existed as a wetland. But sometime between 1992 and 1993, respondent initiated a project—over the objection of adjoining property owners—to convert the land into a public access road to Big Fish Lake. Appellants alleged that when the vegetation was removed from the land, the surrounding area experienced severe runoff and erosion problems. Appellants sought a declaratory judgment stating that respondent had abandoned the land and, therefore, had no authority to convert the land. Alternatively, appellants sought a judgment stating that any authority respondent had over the land was limited to protecting the land as a wetland.

[1] Carlson owns lot 30 as Trustee of the Erra C. Carlson Living Trust, dated August 27, 2002.

After cross-motions for summary judgment, the district court dismissed three of the counts in the complaint. Consequently, only two claims remained before the district court: count III of the complaint, which alleged that the land's designation as an "alley" in the plat did not mean "public access"; and count IV of the complaint, which alleged that appellants never had actual or constructive knowledge that the word "alley" appeared on the 1923 plat and, therefore, appellants were entitled to a determination that no public-alley designation ever existed.

In regard to count IV, appellants argued that the term "alley" did not appear on the original plat and must have been added to the plat after it was recorded in 1923. In its answer to the complaint, respondent generally denied appellants' allegation that the plat had been altered. But after the district court's ruling on the parties' cross-motions for summary judgment, respondent moved the district court to amend its answer and add an alternative defense. Specifically, respondent sought to assert that even if the plat was altered, the land became dedicated to public use under Minn. Stat. § 160.05, subd. 1 (2006), which provides that "[w]hen any road or portion of a road has been used and kept in repair and worked for at least six years continuously as a public highway by a road authority, it shall be deemed dedicated to the public." The district court granted respondent's motion to amend.

In response, appellants moved to amend their complaint to add a count alleging that respondent did not have the authority to convert the land because respondent did not maintain the road for six continuous years under Minn. Stat. § 160.05, subd. 1, and because respondent did not hold a public hearing with respect to its plans for the land

pursuant to Minn. Stat. § 164.07, subd. 2 (2006). Subsequently, appellants voluntarily dismissed count IV of the complaint. But despite the dismissal of count IV, appellants continued to pursue their motion to amend.

Respondent opposed the proposed amendment, arguing that because appellant dismissed count IV, respondent was no longer going to assert an alternative defense under Minn. Stat. § 160.05, subd. 1; therefore, appellants' proposed amendment would serve no purpose. Ultimately, the district court denied appellants' motion, holding that appellants' statutory arguments did not affect ownership of the land and that appellants' proposed claims were barred by the doctrine of laches.

Respondent renewed its motion for summary judgment on count III of the complaint—the claim that the land's designation as an "alley" in the plat did not mean that the alley was publicly accessible. The district court concluded that the plat—on its face and as a matter of law—granted the public use of the land to gain access to the lake. As a result, the district court granted respondent's motion for summary judgment on count III. This appeal follows.

D E C I S I O N

I

Appellants challenge the district court's grant of summary judgment to respondent on count III of the complaint. Summary judgment is appropriate "when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law." *Fabio v. Bellomo*, 504 N.W.2d 758, 761

(Minn. 1993) (citing Minn. R. Civ. P. 56.03). On appeal from summary judgment, we review the record to determine whether there is any genuine issue of material fact for trial and whether, in granting summary judgment, the district court committed an error of law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). We "view the evidence in the light most favorable to the party against whom judgment was granted." *Fabio*, 504 N.W.2d at 761.

The moving party has the burden of showing the absence of a genuine issue of material fact. *Anderson v. State, Dep't of Natural Res.*, 693 N.W.2d 181, 191 (Minn. 2005). To defeat a summary-judgment motion, the nonmoving party cannot rely on denials or general averments, but must offer specific facts to show that there is a genuine issue of material fact for trial. Minn. R. Civ. P. 56.05; *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997). No genuine issue of material fact exists "when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions." *DLH, Inc.*, 566 N.W.2d at 71; *see also Schroeder v. St. Louis County*, 708 N.W.2d 497, 507 (Minn. 2006) ("A party need not show *substantial evidence* to withstand summary judgment. Instead, summary judgment is inappropriate if the nonmoving party has the burden of proof on an issue and presents *sufficient evidence* to permit reasonable persons to draw different conclusions.").

"The plat itself furnishes the exclusive rule for its own construction for all time unless reformed by judicial decree." *Cunningham v. Vill. of Willow River*, 68 Minn. 249,

250, 71 N.W. 532, 533 (1897). "In construing a plat to determine the intent of the dedicator, the plat as a whole, inclusive of all lines and language found thereon, must be considered, and no part thereof is to be ignored as superfluous or meaningless." *Bryant v. Gustafson*, 230 Minn. 1, 8, 40 N.W.2d 427, 432 (1950). Construction of the plat is subject to the same rules that govern construction of contracts. *Cunningham*, 68 Minn. at 250, 71 N.W. at 533. Accordingly, courts may consider parol evidence to construe a plat only when the plat is ambiguous or incomplete. *See Mollico v. Mollico*, 628 N.W.2d 637, 640 (Minn. App. 2001) (parol evidence is only admissible if the contract is ambiguous or incomplete).

In count III of the complaint, appellants alleged that the land's designation as an "alley" in the plat did not mean "public access." The district court determined that the plat—on its face and as a matter of law—granted the public use of the land to gain access to the lake. We agree. The plat designates the land as an "alley" and states that the land owners "dedicate[d] all streets, [a]venues, [a]lleys, [l]anes or [p]arks, as shown on the annexed plat, to the public for use as such forever." Accordingly, the plat clearly and unambiguously dedicates the land to public use.

Appellants nevertheless contend that the land is not subject to public use. In support of their claim, appellants rely on affidavits describing the land as a wetland, a surveyor's opinion that the designation of "alley" should not be construed as a right of public access, and a video showing that another piece of land also designated as an "alley" on the plat is nothing more than a drainage ditch. But this evidence is parol evidence, which may only be considered if a plat is ambiguous or incomplete. Because

the plat here unambiguously dedicates the land to public use, appellants cannot rely on parol evidence to contradict the plat's explicit dedication. *See Mollico*, 628 N.W.2d at 641.

Appellants further argue that any public use of the land should be limited to its use as a wetland. But this claim, too, directly contradicts the express language of the plat. The plat designates the land as an "alley" and dedicates the use of all alleys "to the public for use *as such* forever." The phrase "as such" indicates that the public was granted use of the land as an alley, not use of the land as a wetland.

Because the plat clearly and unambiguously dedicates the land to public use, appellants cannot show that there is a genuine issue of material fact as to count III of their complaint. Therefore, the district court did not err by granting summary judgment to respondent with respect to count III of the complaint.

II

Next, appellants argue that the district court abused its discretion by denying their motion to amend the complaint. The Minnesota Rules of Civil Procedure provide that after responsive pleadings have been served, "a party may amend a pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." Minn. R. Civ. P. 15.01. "[A]mendment of pleadings should be liberally allowed unless the adverse party would be prejudiced." *Rosenberg v. Heritage Renovations, LLC*, 685 N.W.2d 320, 332 (Minn. 2004). But the denial of a motion to amend is proper if the movant's proposed amendment fails to allege a viable claim. *Davis v. Midwest Discount Sec., Inc.*, 439 N.W.2d 383, 388 (Minn. App. 1989). A

district court's decision to deny a motion to amend a complaint will not be reversed absent a clear abuse of discretion. *Fabio*, 504 N.W.2d at 761.

Appellants contend that in 1992, respondent was granted authority to alter the land and did, in fact, remove vegetation and an ice ridge from the land. Appellants note, and the district court found, that between 1996 and 2007, respondent took no further action to maintain the land. According to appellants, respondent's failure to maintain the land between 1996 and 2007 shows that respondent did not maintain the road for six continuous years under Minn. Stat. § 160.05, subd. 1. Further, appellants argue that under Minn. Stat. § 164.07, subd. 2, respondent failed to hold a public hearing with respect to its plans for the land; therefore, respondent never gained ownership of the land pursuant to the statute. Appellants sought to amend their complaint to specifically address respondent's alleged failures under sections 160.05 and 164.07.

The district court denied appellants' motion to amend on the ground that their statutory arguments did not affect ownership of the land. In reaching its conclusion, the district court relied on *Bryant*, which states that

> [w]here a passageway is dedicated by a plat to a use authorized by statute and such passageway leads to a navigable water, such dedication, whether it be to a quasi-public or a private use, is to be construed—absent an indication of a contrary intent—as intended to enable the beneficiaries of the use to get to such water for the more convenient enjoyment of recreation and navigation.

230 Minn. at 9, 40 N.W.2d at 433. The district court interpreted *Bryant* as creating a "right of access" for passageways that lead to water, and because the land in this case leads to a lake, the right of access applies here. According to the district court,

appellants' statutory claims had no effect on ownership of the land because "[n]othing in *Bryant* suggests that this right of access is quashed in absence of a public hearing."

We disagree with the district court's application of *Bryant*. *Bryant* only addressed a landowner's right of access to a passageway that was dedicated by plat to the landowner's use—it did not concern a determination of land ownership. Therefore, the district court incorrectly applied *Bryant* to reason that appellants' statutory claims have no effect on ownership of the land. Additionally, the district court held that *Bryant* precluded both of appellants' statutory claims because the right of access recognized in *Bryant* was not dependent on a public hearing. The absence of a public hearing, however, was only one of appellants' statutory claims—appellants also argued that respondent failed to maintain the land for six continuous years under Minn. Stat. § 160.05, subd. 1. Consequently, even if we were to agree with the district court's interpretation of *Bryant*, *Bryant* would not preclude both of appellants' statutory claims.

The district court also determined that both of appellants' claims were barred by the doctrine of laches. But the district court concluded that laches applied because appellants "lost their right to object to the lack of a hearing because they did not do so in a timely manner." Again, the absence of a hearing only relates to appellants' claim under Minn. Stat. § 164.07, subd. 2, and the district court does not explain how laches bars appellants' argument under Minn. Stat. § 160.05, subd. 1.

Notwithstanding the district court's misapplication of *Bryant* and its failure to adequately address appellants' claim under Minn. Stat. § 160.05, subd. 1, on this record, the error was harmless under Minn. R. Civ. P. 61 and, therefore, we affirm the denial of

appellants' motion to amend. First, the district court correctly applied laches to appellant's proposed claim under Minn. Stat. § 164.07, subd. 2. Laches is an equitable doctrine intended "to prevent one who has not been diligent in asserting a known right from recovering at the expense of one who has been prejudiced by the delay." *Klapmeier v. Town of Ctr. of Crow Wing County*, 346 N.W.2d 133, 137 (Minn. 1984) (quotation omitted); *Harr v. City of Edina*, 541 N.W.2d 603, 606 (Minn. App. 1996). The doctrine seeks "to promote vigilance and to discourage delay in enforcing rights" and to prevent parties who have procrastinated unreasonably and without excuse from bringing stale claims. *State ex rel. Sawyer v. Mangni*, 231 Minn. 457, 468, 43 N.W.2d 775, 781 (1950).

The district court concluded that "under the doctrine of laches, [appellants] have lost their right to object to the lack of a hearing because they did not do so in a timely manner." In support of its conclusion, the district court found that

> [appellants] allege that they, or their predecessors in interest, were involved in a lawsuit concerning this strip of land in 1992. A temporary restraining order was dissolved in December 1992. After this, [appellants] allege that in the winter of 1992 or 1993, [respondent] cut down trees, removed shrubbery and removed part of a glacial ice ridge. [Appellants], or their predecessors, did not appeal the removal of the restraining order or take other legal action concerning [respondent's] actions.

Appellants do not challenge the district court's findings and do not dispute that the absence-of-hearing claim under Minn. Stat. § 164.07, subd. 2, was available to them and their predecessors as early as 1992. Because the record does not reflect any apparent excuse for the delay in bringing their absence-of-hearing claim, the district court did not abuse its discretion by applying laches to appellants' claim under Minn. Stat. § 164.07,

subd. 2. *See Filister v. City of Minneapolis*, 270 Minn. 53, 59–60, 133 N.W.2d 500, 504–05 (1965) (holding that in an action to set aside zoning restrictions, the plaintiffs and their predecessors were "guilty of laches" where they failed to timely challenge the restrictions and "remained passive when they had a duty to act.").

Second, appellants' argument under Minn. Stat. § 160.05, subd. 1, is not a viable claim. Appellants contend that because respondent did not maintain the land for six consecutive years pursuant to Minn. Stat. § 160.05, subd. 1, respondent effectively abandoned its ownership of the land. But section 160.05 only provides a means by which a road may be deemed a public highway—it does not provide an independent cause of action of abandonment for noncompliance. Instead, noncompliance is simply a defense that can be asserted against the dedication of a public road under the statute. Because Minn. Stat. § 160.05, subd. 1, does not create a cause of action for abandonment, appellants' proposed claim is not viable, and the district court properly denied appellants' motion to amend the complaint. *See Davis*, 439 N.W.2d at 388.

Further, appellants' proposed claim under Minn. Stat. § 160.05, subd. 1, was a direct response to the alternative defense raised by respondent under the same section. But at the hearing on appellants' motion to amend, respondent explicitly abandoned its alternative defense. Because respondent is no longer asserting a defense under section 160.05, appellants' proposed claim under that section serves no purpose. *See Gunnufson v. Onan Corp.*, 450 N.W.2d 179, 181 (Minn. App. 1990) ("Amendment may also be denied where it would legally serve no purpose.").

Appellants argue that even if their proposed claims lacked legal propriety, the district court should have allowed them to amend their complaint. In support of their position, appellants rely on 1 David F. Herr & Roger S. Haydock, *Minnesota Practice* § 15.01 (5th ed. 2009). But *Minnesota Practice* § 15.01 says the exact opposite: "In determining whether to permit leave to amend a complaint the trial court must review the legal propriety of the amendment. If the amendment does not assert a legally recognizable claim, then the amendment ought to be denied." *See also Envall v. Indep. Sch. Dist. No. 704*, 399 N.W.2d 593, 597 (Minn. App. 1987) ("An amendment may also be denied if it will accomplish nothing, such as when the amendment does not state a cognizable legal claim."). Accordingly, appellants' argument is without merit.

Because the district court did not err by granting summary judgment to respondent on count III of the complaint, and because the district court did not abuse its discretion by denying appellants' motion to amend, we affirm the district court's decision.

Affirmed.