STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2299

State of Minnesota,
through its Department of Natural Resources,
Respondent,

vs.

County of Kittson,
and all other persons unknown claiming
any right, title, estate, interest, or lien in the
real estate described in the Complaint herein,
Appellant.

Filed September 7, 2010
Affirmed
Worke, Judge

Kittson County District Court
File No. 35-CV-07-245

Lori Swanson, Attorney General, Samantha K. Juneau, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Timothy A. Sime, Gerald W. VonKorff, Rinke Noonan, St. Cloud, Minnesota (for appellant)

Lisa B. Hanson, Roseau County Attorney, Michael P. Grover, Assistant County Attorney, Roseau, Minnesota (for amicus Roseau County)

Considered and decided by Johnson, Presiding Judge; Halbrooks, Judge; and Worke, Judge.

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

WORKE, Judge

Appellant argues that the district court erred in quieting title of ditch-embankment roads in favor of respondent, asserting that a 1909 court order designated the land as public roads and the doctrine of laches applies. We affirm.

FACTS

The State Drainage Commission (SDC) was created in the early 1900s to implement an extensive drainage system of ditches designed to convert outstate swamp and marshlands into habitable and farmable properties. *See* Minn. Gen. Stat. § 2651, subds. 1, 2 (Supp. 1909). In 1909, the SDC targeted appellant Kittson County and Roseau County for the proposed State Ditch 72 (SD 72), and petitioned the district court for approval. The district court appointed a panel of "viewers" to conduct a study of the proposed drainage project. The viewers estimated that the benefits of SD 72 would outweigh the costs, noting that "all roads, corporate roads and railroads . . . will be made better by [its] construction." The viewers concluded that the "proposed ditch will be of great benefit to the public health by the removal of large bodies of stagnant water and will be of public utility." The viewers also recommended that "the highway along the proposed ditch be leveled and completed by the [c]ontractor that excavates the proposed ditch."

In December 1909, the district court confirmed the viewers' report and granted the petition. Since the creation of SD 72, the state has owned the property in fee simple. Following abolishment of the SDC, ditch-oversight responsibilities were eventually

transferred to respondent Department of Natural Resources. While rural roads exist along the embankments of the ditches, neither the county nor the state sought to establish the embankment roads as public roads following the 1909 order.

In 2006, appellant sought to create all-terrain-vehicle (ATV) trails along the embankment roads of several lateral ditches of SD 72. Because SD 72 was part of a larger area of land designated as a wildlife management area (WMA) by respondent decades earlier, appellant contacted respondent regarding its intentions. Respondent informed appellant that ATV use is prohibited in the WMA. The parties attempted to negotiate a resolution, but when the negotiations stalled appellant passed a resolution in April 2007 declaring several embankment roads along SD 72 to be public roads. Respondent filed an action to quiet title, seeking a determination that appellant had no right or interest in the embankment roads other than the right to operate and maintain the lateral ditches.

The district court concluded that the embankment roads were state property and quieted title accordingly. The district court determined that the 1909 order established only SD 72 and did not create public roads along the embankments of the ditches, as appellant contended.[1] The district court also noted that appellant failed to prove the requisite elements of statutory and common-law dedication to establish public roads on the embankments. Finally, the district court concluded that the quiet-title action was not precluded by the doctrine of laches. This appeal follows.

[1] The district court further concluded that any interest in the embankment roads derived by appellant from the 1909 order was extinguished by the Marketable Title Act.

D E C I S I O N

A district court's findings of fact are given great deference, and shall not be set aside unless clearly erroneous. Minn. R. Civ. P. 52.01. "If there is reasonable evidence to support the [district] court's findings of fact, a reviewing court should not disturb those findings." *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999). But "[a]n appellate court is not bound by, and need not give deference to, the district court's decision on a question of law." *Bondy v. Allen*, 635 N.W.2d 244, 249 (Minn. App. 2001) (citing *Frost-Benco Elec. Ass'n v. Minn. Pub. Utils. Comm'n*, 358 N.W.2d 639, 642 (Minn. 1984)).

Appellant principally argues that the district court erred in concluding that the 1909 order did not create public roads along the ditch embankments for two reasons. First, appellant asserts that the 1909 order adopted the viewers' report that recommended the construction of roads along the ditch embankments, thereby tacitly creating public roads. Second, appellant contends that the 1909 order should be construed in favor of establishing public roads based on the statute authorizing the creation of ditches: "This act shall be liberally construed so as to promote the public health, the construction and improvement of roads." Minn. Gen. Stat. § 2651, subd. 33 (Supp. 1909).

Neither argument is persuasive. The plain language of the 1909 order does not reference the creation of any road, much less a road being established as a "public road." The viewers' report mentioned roads only twice: first, in noting that the proposed ditch would benefit "all roads, corporate roads and railroads" in the area; and second, in recommending that "the highway along the proposed ditch be leveled and completed by

the [c]ontractor that excavates the proposed ditch." This language, at most, pertains to the *construction* of roads adjacent to the ditch embankments, not to the establishment of a public-road system. Additionally, the statutory language authorizing the construction of the ditches did not instruct the SDC or the courts to create roads for the benefit of the ditches; conversely, it noted that ditches were to be created for the benefit of existing and future roads. Minn. Gen. Stat. § 2651, subds. 5, 8 (Supp. 1909). Accordingly, even granting appellant the most liberal reading of the 1909 order, only the construction of a road was authorized—not the legal establishment of a public road.

There is also no evidence in the record that the issue of establishing public roads was presented to the district court in 1909, and the district court's order is devoid of any reference to any other statute other than the ditch-drainage statute. The district court did not err in concluding that the 1909 order did not establish public roads.[2]

Appellant also argues that the district court abused its discretion by failing to apply the doctrine of laches to respondent's claim. "Laches is an equitable doctrine applied 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." *Winters v. Kiffmeyer*, 650 N.W.2d 167, 169 (Minn. 2002) (quotation omitted). "The doctrine of laches is designed to promote vigilance and to discourage delay." *State ex rel. Sawyer v. Mangni*, 231 Minn. 457, 468, 43 N.W.2d 775, 781 (1950). The decision whether to apply

[2] Because we conclude that the 1909 order did not create public roads, we do not address the district court's analysis of the Marketable Title Act.

laches lies within the district court's discretion. *In re Marriage of Opp*, 516 N.W.2d 193, 196 (Minn. App. 1994), *review denied* (Minn. Aug. 24, 1994).

The district court concluded that appellant's claim of laches failed because respondent did not know of any contention by appellant that the 1909 order created public roads until the ATV discussions arose in 2006, and respondent timely brought an action to quiet title thereafter. The basis for appellant's claim that the embankment roads are public roads was unknown until the parties discussed ATV use in the WMA in 2006. Respondent promptly filed this quiet-title action following the parties' failed negotiations and appellant's resolution declaring the embankment roads to be public roads. Thus, any delay in bringing the action was extremely minimal, if present at all.

Appellant nevertheless argues that laches should preclude this action because the doctrine may be applied to ratify government action in cases when the government later claims that it lacked the authority for its actions. *See City of Staples v. Minn. Power & Light Co.*, 196 Minn. 303, 307, 265 N.W. 58, 60 (1936). But this argument misconstrues respondent's position. Respondent does not argue that the SDC *lacked authority* to enact the creation of public roads during the 1909 ditch-petition proceedings; rather, respondent argues that the SDC *never created* public roads during the 1909 proceedings. Thus, *City of Staples* is inapposite and the district court did not abuse its discretion in determining that the doctrine of laches did not apply.

Affirmed.