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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0214**

Dwaine C. Ratfield, Kathleen M. Ratfield, individually
and as trustees of the Dwaine and Kathleen Ratfield
Living Trust dated March 23, 2006,
Appellants,

vs.

Stephen Zuckerman, et al.,
Respondents,

South Harbor Township,
Respondent.

**Filed September 5, 2017
Affirmed
Kirk, Judge**

Mille Lacs County District Court
File No. 48-CV-16-1320

Mike Fleming, Ledin, Hofstad, Troth & Fleming, Pine City, Minnesota; and

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respondents Stephen Zuckerman, et al.)

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Considered and decided by Kirk, Presiding Judge; Worke, Judge; and Ross, Judge.

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

KIRK, Judge

Following a successful cartway petition under Minn. Stat. § 164.08, subd. 2(a) (2004), by respondent cartway petitioners, the district court upheld respondent township's cartway order and awarded damages to the affected landowners. The affected landowners, including appellant landowners, were not compensated. Appellants filed a district court action, seeking payment of the previously awarded damages, and the district court granted summary judgment in favor of respondents. Appellants challenge the summary judgment order on appeal. Because the district court did not err in concluding that appellants' claims were barred by the statute of limitations, res judicata, and otherwise fail, we affirm.

FACTS

Respondents Stephen, Robert, and Michael Zuckerman and Joby Properties (collectively the Zuckermans) own land at the western tip of a peninsula that protrudes into Lake Mille Lacs in South Harbor Township. In 2003, the Zuckermans filed a petition to establish a cartway that would connect the Zuckermans' land to the sole public road serving the peninsula. The proposed cartway route would traverse several parcels of land on the peninsula, including land owned by appellants Dwaine C. Ratfield and Kathleen M. Ratfield, individually and as trustees (collectively the Ratfields), and would follow the route that had been used by property owners on the peninsula for decades.

In April 2006, the township granted the Zuckermans' petition, recorded the cartway, and awarded damages to the Ratfields and other affected landowners. The township

required no security or bond from the Zuckermans to guarantee payment of the damages. The Zuckermans paid damages of \$29,048.20 to the township for the costs and expenses it incurred during the cartway proceedings. The township did not allocate any of the damages to the affected landowners. It is undisputed that the Zuckermans have not paid damages to the affected landowners, and because the cartway damages have not been paid, the cartway has not been opened. No tree removal, widening, or other work consistent with the opening of the 33-foot-wide cartway has ever occurred, and the Zuckermans continue to rely on granted and prescriptive easements over the land of others to reach their property.

The Ratfields and the other affected landowners sought judicial review of the cartway order, which the district court upheld in November 2006. In July 2008, the district court issued an amended damages award, increasing the amounts awarded to the affected landowners, including the Ratfields. In 2009, the Ratfields and the other affected landowners appealed the 2006 order affirming the cartway and the 2008 amended award for damages to this court. While the appeal was pending, the parties dismissed their appeal on the issue of damages, and this court did not review the 2008 damages award on its merits. This court affirmed the cartway order under the mandatory establishment provision of Minn. Stat. § 164.08, subd. 2(a),¹ in an unpublished opinion on which judgment was

¹ The statute provides that “[u]pon petition presented to the town board by the owner of a tract of land containing at least five acres, who has no access thereto except . . . over the lands of others, or whose access thereto is less than two rods in width, the town board by resolution shall establish a cartway at least two rods wide connecting the petitioner’s land with a public road.”

entered on April 23, 2010. *Ratfield v. South Harbor Twp.*, No. A09-0586, 2010 WL 696114 (Minn. App. Mar. 2, 2010).

In late 2013, a dispute arose over the Zuckermans' use of an easement over the Ratfields' property, and the Zuckermans commenced a second district court action against the Ratfields. The action was settled in July 2016, and the Zuckermans were granted a prescriptive easement over the Ratfields' property. The settlement provided that the Ratfields were not precluded from pursuing cartway damages.

From January 2014 through November 2015, while the second district court action was pending, the Ratfields and other affected landowners asked the township to assist in collecting and securing the cartway damages awarded in the first district court action. In January and March 2014, the Ratfields sent letters to the township demanding payment.

In May 2014, at the request of the Ratfields and other affected landowners, the district court administrator docketed the district court's 2008 damages award as a money judgment against the township in the first district court action. The township objected, and the district court rescinded the docketed judgment on May 16, 2014. At a hearing on the motion to void the money judgment, the district court explained on the record that the 2008 damages award did not give rise to a judgment in the traditional sense, but rather, was a determination of the damages owed if and when the cartway is opened.

In November 2015, the Ratfields and other affected landowners formally petitioned the township board to request that it pursue collection of the cartway damages from the Zuckermans. Later in November 2015, the Ratfields reiterated their request at a township board meeting and asked that the township send the Zuckermans a bill or otherwise attempt

to collect the cartway damages. The landowners argued that the cartway statute obligated the township to demand and collect payment from the Zuckermans. The township board advised that it was under no obligation to bill the Zuckermans for the cartway damages. In the December 2016 district court order now on appeal, the district court noted that “[the Ratfields’] attempt to involve the [township] board in their collection efforts was not based upon any established statutory or administrative process.”

The Ratfields served the Zuckermans and the township with a complaint in a third district court action in June 2016 and filed an amended complaint in July. The Ratfields sought payment from the Zuckermans for the cartway damages that were awarded in 2008 and argued that the township failed to provide any security or guaranty of payment for the affected landowners. The Ratfields also sought to join the other affected landowners to the action, which the district court denied. In December 2016, the district court granted summary judgment in favor of the township and the Zuckermans, denied the Ratfields’ motions, and dismissed the action with prejudice. This appeal follows.

D E C I S I O N

On appeal, the Ratfields argue that the district court erred in granting summary judgment to the Zuckermans and the township, in denying their motions, and in dismissing their claims with prejudice. The Ratfields contend that the action is not barred by the statute of limitations or res judicata and challenge the district court’s decision on several bases, arguing that: (1) an uncompensated-recorded taking occurred when the cartway was established and recorded in April 2006, the right to use the cartway and the right to damages reciprocally vested, and the Ratfields and other affected landowners are entitled to just

compensation in the amounts ordered in the 2008 damages award; (2) the township failed in its duty to secure or collect damages for the affected landowners, and the cartway statute is unconstitutional on its face and as applied; (3) the recorded cartway constitutes an ongoing slander of title against the property of the affected landowners; (4) the 2008 damages award should be enforced as a declaratory judgment under Minn. Stat. § 164.07, subd. 9 (2016); and (5) the court erred in failing to address joinder.²

In its December 2016 order and judgment, the district court made the undisputed finding that the Zuckermans had not paid the damages awarded to the Ratfields or to the other affected landowners in connection with the cartway's establishment and recording. Minn. Stat. § 164.08, subd. 2(c) (2004), provides that "[t]he amount of [cartway] damages shall be paid by the petitioner to the town before such cartway is opened." Thus, the district court held that because the damages have not been paid, the cartway has not opened. The district court also concluded that no genuine issues of material fact remained, that the applicable statute of limitations had expired, that the Ratfields' other claims were barred by res judicata, and otherwise failed, and that the Ratfields were not entitled to damages.

This court reviews the district court's legal conclusions on summary judgment de novo, viewing the evidence in the light most favorable to the party against whom summary judgment was granted. *Commerce Bank v. W. Bend Mut. Ins. Co.*, 870 N.W.2d 770, 773

² The district court has broad discretion in deciding whether to allow the joinder of additional parties to an action. *Grothe v. Shaffer*, 232 N.W.2d 227, 233 (Minn. 1975). The other affected landowners were party to the first district court action and 2009 appeal, and unlike the Ratfields, they have elected not to continue to pursue legal action. The district court did not abuse its discretion in denying the joinder motion outright.

(Minn. 2015). “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).

I. The Ratfields’ action for cartway damages is barred by the six-year statute of limitations.

An action for compensation for a taking of private property is subject to the six-year statute of limitations set forth in Minn. Stat. § 541.05, subd. 1(4) (2016); *Kottschade v. City of Rochester*, 760 N.W.2d 342, 347 (Minn. App. 2009). The Zuckermans and the township agree that the six-year statute of limitations applies. Although the Ratfields argue on appeal that several different statutes of limitations could apply, the Ratfields conceded in a memorandum filed on September 16, 2016 with the district court that the six-year statute of limitations is appropriate here. We conclude that the district court properly applied the six-year statute of limitations when it dismissed the Ratfields’ third district court action as untimely.

If we accept the Ratfields’ argument that a taking occurred and damages were due to the affected landowners in April 2006 when the cartway was established and recorded, then the time to file a district court action for the nonpayment of cartway damages expired six years later in April 2012. If, instead, we accept the Ratfields’ other argument that the rights of the parties reciprocally vested when the right to the taking and the damages for the taking were finally determined by this court’s April 2010 judgment affirming the cartway’s establishment, then, at the latest, the time for the Ratfields to assert a claim for

nonpayment of the cartway damages expired in April 2016. The Ratfields served the parties with their complaint in the third district court action in June 2016. Accordingly, viewing the evidence in the light most favorable to the Ratfields, under either date the Ratfields' action is barred by the six-year statute of limitations.

The Ratfields argue that we should apply the doctrine of "equitable tolling," which allows a court "to consider the merits of a claim when it would otherwise be barred by a statute of limitations." *Sanchez v. State*, 816 N.W.2d 550, 560 (Minn. 2012). The party seeking equitable tolling must establish: "(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way." *Pace v. DiGuglielmo*, 544 U.S. 408, 418, 125 S. Ct. 1807, 1814 (2005). We need not determine if the doctrine of equitable tolling applies here, because even if it did, there is no evidence of extraordinary circumstances in the record.

The Ratfields contend that they did not know until October 2013 that the Zuckermans would refuse to pay the cartway damages or until November 2015 that the township would not pay or collect the damages for the cartway. But that contention is unsupported by the record. From 2006 until the present, the Zuckermans have made no damage payments to the Ratfields or the other affected landowners. Additionally, the township's cartway order made clear that it was not in the public's interest to expend any township funds for the establishment, grading, or maintenance of the cartway, and that the township took no responsibility for the condition of the cartway road. See Minn. Stat. § 164.08, subd. 2(d) (2004) ("Town road and bridge funds shall not be expended on the cartway unless the town board . . . by resolution determines that an expenditure is in the

public interest.”). Further, the township did not require a bond or other security from the Zuckermans to ensure payment for the affected landowners. The Ratfields had all of the information necessary to assert a claim for non-payment of cartway damages as early as April 2006, or as late as April 2010, but failed to do so until June 2016. The Ratfields provide no equitable basis for this court to disregard the applicable six-year statute of limitations.

Because the district court properly applied the six-year statute of limitations here, which all parties conceded applied, this court need not address the Ratfields’ other statute-of-limitations arguments.

II. The Ratfields’ claims are barred by res judicata.

The district court concluded that the Ratfields’ claims are also barred by the doctrine of res judicata. Res judicata is a finality doctrine which dictates that there be an end to litigation. *Federated Mut. Ins. Co. v. Litchfield Precision Components, Inc.*, 456 N.W.2d 434, 439 (Minn. 1990). Pursuant to the doctrine of res judicata, “a final judgment on the merits bars a second suit for the same claim by parties or their privies.” *Id.* (quoting *Kaiser v. N. States Power Co.*, 353 N.W.2d 899, 902 (Minn. 1984)). Res judicata applies not only to every matter that was actually raised and litigated, but to every matter that could have been litigated. *Mattsen v. Packman*, 358 N.W.2d 48, 49 (Minn. 1984). Thus, a party has an obligation to raise all possible issues during the course of a litigated matter.

The Ratfields did not raise their constitutional claims against the cartway statute or their slander-of-title claim until 2016. These issues could have been raised in the first district court action and the related 2009 appeal. Therefore, the district court properly

concluded that they are barred by res judicata, in addition to their applicable statutes of limitation.

It is undisputed that currently no monetary judgment against the township or the Zuckermans exists. The 2008 damages award was initially challenged in the 2009 appeal, along with the cartway order, and the parties could have argued at that time that the district court failed to enter a monetary judgment on the damages award. Instead, while the 2009 appeal was pending, the parties dismissed their appeal of the damages award, forgoing appellate review. To the extent that the Ratfields request that judgment be entered on the 2008 damages award, that claim is barred by res judicata, as well as the applicable six-year statute of limitations. Further, that is the exact issue the district court addressed in May 2014 when it entered, then rescinded, a monetary judgment against the township for the 2008 damages award in the first district court action. The Ratfields were clearly a party to that action and failed to appeal. Their attempt to appeal this issue now is untimely.

III. The township failed to collect or secure damages for the affected landowners as required by the cartway statute and the township's condemnation authority.

We conclude that the district court did not err in granting summary judgment to the Zuckermans and township on the Ratfields' action, but we nonetheless note our concern due to the township's failure to collect and secure just compensation for the affected landowners here. The "establishment of a cartway under Minn. Stat. § 164.08[], is an exercise of eminent domain, the inherent power of a governmental entity to take privately owned property and convert it to public use, provided the owner is compensated." *Silver v. Ridgeway*, 733 N.W.2d 165, 169 (Minn. App. 2007). This conclusion is supported by

the fact that the establishment of a cartway creates a public road. *Id.* And although the cartway petitioner, not the condemning authority, ultimately compensates the affected landowners for the taking, that fact does not alter the township's underlying responsibility as the condemning authority to ensure just compensation. *Id.* at n.5; U.S. Const. amend. V; Minn. Const. art. I, § 13.

“A state's ability to use eminent domain to take an individual's property is an awesome power.” *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 875 (Minn. 2010). The Fifth Amendment to the United States Constitution guarantees that “private property [shall not] be taken for public use, without just compensation,” and article I, section 13 of the Minnesota Constitution provides that “[p]rivate property shall not be taken, destroyed or damaged for public use without just compensation therefor, first paid or secured.” Thus, “[w]hen the government condemns property, it must put a property owner ‘in as good a position pecuniarily as if his property had not been taken.’” *Id.* at 876 (citing *Olson v. United States*, 292 U.S. 246, 255, 54 S. Ct. 704, 708 (1934)).

The cartway statute provides that, “[t]he amount of [cartway] damages shall be paid by the petitioner to the town before such cartway is opened.” Minn. Stat. § 164.08, subd. 2(c). Although compensation is owed to the affected landowners and must be paid by the cartway petitioner, the plain language of the statute requires that the petitioner pay the cartway damages *to the town* before the cartway can be opened. Thus, inherent in the cartway statute's language is the township's responsibility to collect and secure payment of the cartway damages for the affected landowners.

Here, in establishing and recording the cartway, the township, in its discretion, did not require a bond or other security from the Zuckermans. The township was not required to do so. *See* Minn. Stat. § 164.08, subd. 2(c). But the township's decision not to require a guaranty of payment upfront did not relieve the township of its responsibility to collect and ensure just compensation for the taking it authorized under the cartway statute and the law of eminent domain.

The Zuckermans have made no attempt to pay the affected landowners the cartway damages, as required to open the cartway, but they did pay partial damages to the township in 2006. The township accepted the entire payment and did not distribute any portion to the affected landowners. The township was reimbursed for the costs and expenses it incurred during the cartway proceedings, but it has made no effort to secure or collect the damages owed to the affected landowners. Instead, the Ratfields filed the third district court action seeking compensation on their own, contravening the law of eminent domain and the cartway statute. Further, the cartway recording remains on the books, and the township has taken no action to vacate it, although it is clear that the Zuckermans do not intend to pay the cartway damages to open the cartway.

It is incumbent on the township to take appropriate action to either collect or secure just compensation for the cartway damages, which are payable to the township, or to vacate the township's recorded cartway order. This authority is found in the law of eminent domain and implied in the language of the cartway statute, which allows the township to require a bond or other security from the cartway petitioner, but affords no similar authority to the affected landowners to guarantee such payment. Minn. Stat. § 164.08, subd. 2(c).

Accordingly, the district court's finding that the Ratfields' attempt to involve the township board in their collection efforts was not based on any established statutory or administrative process is erroneous. Indeed, "in any society the fullness and sufficiency of the securities which surround the individual in the use and enjoyment of his property constitute one of the most certain tests of the character and value of the government." *Monongahela Navigation Co. v. United States*, 148 U.S. 312, 324, 13 S. Ct. 622, 625 (1893). Nonetheless, because we conclude that this finding does not affect the district court's determination that the Ratfields failed to file their action for damages within the applicable statute of limitations, and that the Ratfields' other claims fail or are otherwise barred by res judicata, we affirm.

Affirmed.