STATE OF MINNESOTA
IN COURT OF APPEALS
A17-2038

Glen M. Palecek, et al.,
Appellants,

vs.

Rushford-Peterson, Independent School District No. 239,
defendant, third party plaintiff,
Respondent,

Moonyeen Claire Holle, individually and as trustee of the
Richard Allen Holle and Moonyeen Claire Holle Revocable Trust,
Third Party Defendant.

Filed June 4, 2018
Affirmed
Bjorkman, Judge

Fillmore County District Court
File No. 23-CV-15-840

Phillip R. Krass, Malkerson Gunn Martin LLP, Minneapolis, Minnesota (for appellants)

Joseph J. Langel, Nathan B. Shepherd, Ratwik, Roszak & Maloney, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Bjorkman, Judge; and Randall, Judge.*

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

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

BJORKMAN, Judge

In this easement dispute, appellant-landowners challenge the district court's declaration that their easement permits private access rather than a public roadway over school property and the denial of mandamus relief. We affirm.

FACTS

In 2008, Moonyeen Claire Holle (Holle) and her late husband, Richard Holle[1] (collectively, the Holles), sold 16 acres of land to respondent Rushford-Peterson, Independent School District No. 239, for construction of a new school. The Holles sold the land under a lease purchase agreement (LPA), with a term that ran from August 1, 2008, to July 31, 2014. The Holles retained 52 acres bordering the east side of the school district land, which had no access to a public road. As part of the LPA, the school district granted the Holles a permanent easement—a 66-foot wide stretch along the east and south edges of the district land—to provide access to the 52 acres. Before signing the LPA, the Holles insisted that the "easement" be referred to as a "right-of-way."[2] The Holles believed that by calling it a "right-of-way," the easement would permit construction of a public road. But they never explained to the school district that they intended to reserve the right to build a public road or install utilities in the easement.

[1]Richard Holle died in 2011. Moonyeen Holle is a third-party defendant, both individually and as trustee for a trust established for the benefit of the Holles.

[2] The LPA states that the "right-of-way" is "described in Exhibit B," but Exhibit B was never completed.

Two years later, on March 18, 2010, the Holles sold the remaining 52 acres (the property) to appellants Glen M. Palecek and Denise K. Palecek under a contract for deed. The Paleceks did not investigate access issues, instead relying on the Holles' representations. The contract for deed includes a legal description of the easement and notes it is "for the purpose of ingress and egress." But the document does not specify whether the easement provides private or public access to the property.

In April 2011, the Paleceks offered to sell the property to the Minnesota Department of Natural Resources (DNR). The DNR asked the Paleceks to clarify the access issue. In response, the Paleceks drafted and had the Holles sign a "Right-Of-Way-Agreement," which grants the Paleceks "any and all rights we have to a sixty-six (66) foot right-of way" as set forth in the LPA. The Holles expressly stated that the "intent of this right-of-way is that it be set aside and dedicated for the purpose of constructing public and/or private roads as well as the installment of public and/or private utilities." This agreement was not put into recordable form and thus not accepted for filing by the county recorder.

On July 7, the school district superintendent, Charles Ehler, received a letter from the Paleceks explaining that the DNR wanted to buy their land but needed to clarify the extent of the access easement. Ehler asked the school district's attorney to draft a clarifying "access easement." This document, signed on July 27, granted the Holles, who still owned the land subject to the Paleceks' contract for deed, a private ingress/egress easement consistent with the right of way described in the LPA. The school district filed the access easement with the county recorder without consulting the Holles or the Paleceks. But both

the Holles and the Paleceks received copies of the access easement and did not object to it. The Paleceks forwarded a copy to the DNR, but the proposed sale never occurred.

The school district made its final payment under the LPA in August 2014. Holle refused to transfer the warranty deed, which was executed before Richard Holle's death and held by the Holles' attorney, because of the ongoing concerns about access to the Palecek property. Only after both the school district and the Paleceks signed documents acknowledging their satisfaction with the access agreement and releasing Holle from liability, did Holle permit her attorney to transfer the deed. In 2015, after delivering the warranty deed to the school district, Holle executed a document entitled "Right-of-Way for Public and Private Ingress and Egress" at the Paleceks' request.[3]

In November 2015, the Paleceks initiated this action seeking (1) a declaration that they have an easement for private and public access over the school district land and (2) a writ of mandamus ordering the school district to commence condemnation proceedings to compensate them for taking their property. Following a series of pretrial motions, the district court concluded that the easement terms stated in the various documents were ambiguous, requiring consideration of extrinsic evidence.[4] The district court limited the parties' presentations to evidence related to the easement terms and ordered the parties to

[3] The district court described this document as "self-serving" and stated that it had "no validity for purposes of this Court's decision" because Holle signed it after she had transferred the property to the school district.

[4] The Paleceks do not challenge the district court's decision that extrinsic evidence was needed to determine the extent of the easement.

brief their legal arguments regarding the availability of mandamus relief. At trial, the court excluded evidence of the school district's alleged encroachments on the easement.

After a three-day trial, the district court determined that a 66-foot perpetual and nonexclusive easement for the purpose of unobstructed ingress and egress exists on the school district's land for the benefit of the Paleceks' property. The court found that the easement was not intended for the purpose of a public road, stating that "[i]f the Holles, in fact, wanted to create a public street to their property, they would have had to and should have retained ownership of the property in order to dedicate the land as a public street."

After declaring the extent of the Paleceks' easement, the district court concluded the Paleceks do not have an inverse-condemnation claim because the school district did not take their property and because they have an adequate legal remedy for any impairment of the easement. The district court denied the Paleceks' motions for amended findings or a new trial, concluding that sufficient evidence supports its findings. The Paleceks appeal.

D E C I S I O N

I. The district court did not clearly err by finding that the easement in favor of the Paleceks is for private access only and not for a public right-of-way.

We review a district court's findings of fact following a court trial for clear error. *In re Distrib. of Attorney's Fees between Stowman Law Firm, P.A., & Lori Peterson Law Firm*, 855 N.W.2d 760, 761 (Minn. App. 2014), *aff'd*, 870 N.W.2d 755 (Minn. Oct. 28, 2015). A finding is clearly erroneous if we are left with the firm conviction that a mistake has been made. *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013). We view the evidence in the light most favorable to the verdict, and we may not "engage

in fact-finding," even when we "might find the facts to be different if [we] had the factfinding function." *Id.* (quotation omitted). But we review a district court's legal determinations de novo. *Id.* A party challenging posttrial decisions must demonstrate clear abuse of discretion in denying amended findings, *Zander v. State*, 703 N.W.2d 845, 857 (Minn. App. 2005), or in denying a new trial, *Frazier v. Burlington N. Santa Fe Corp.*, 811 N.W.2d 618, 625 (Minn. 2012).

The Paleceks challenge the district court's denial of their posttrial motions. Their primary argument is that the district court erred by crediting the school district's testimony over contrary testimony by the Paleceks and Holle. "[I]t is the district court's exclusive responsibility to reconcile conflicting evidence." *Am. Bank of St. Paul v. City of Minneapolis*, 802 N.W.2d 781, 789 (Minn. App. 2011). A fact-finder may reject even uncontradicted testimony, "if the surrounding facts and circumstances afford reasonable grounds for doubting its credibility." *Id.* (quotation omitted). If the record supports a district court's findings, we "may not reverse a trial court due to mere disagreement with its findings." *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 102 (Minn. 1999).

The district court's determination that the easement provides private access only is supported by the record evidence. The LPA does not, by its terms, establish a public easement. Rather, the LPA grants the Holles a "permanent right-of-way" over a 66-foot wide portion of the school district land. Holle could not remember if she informed the school district of her desire to create a public road. But the school district witnesses denied discussing a public easement, stating that the school district would not have agreed to it in any event. And the access agreement the school district prepared at the Paleceks' request

plainly describes the easement as private. Holle and the Paleceks received copies of the access agreement at the time it was recorded and made no objections.

Because there is evidentiary support for the district court's findings, we discern no clear error. And in the absence of such error, the district court did not abuse its discretion in denying the Paleceks' motions for amended findings or a new trial.

II. The district court did not abuse its discretion by denying a writ of mandamus.

A writ of mandamus may be issued to compel a court, corporation, board, or person to perform an official duty clearly imposed by law. Minn. Stat. § 586.01 (2016); *Douglas v. Stillwater Area Pub. Schs., Indep. Sch. Dist. 834*, 899 N.W.2d 546, 556 (Minn. App. 2017). Mandamus relief is not appropriate if "there is a plain, speedy, and adequate remedy in the ordinary course of law." Minn. Stat. § 586.02 (2016); *see also Douglas*, 899 N.W.2d at 556 (same). We review a district court's decision on a mandamus petition for an abuse of discretion. *Douglas*, 899 N.W.2d at 556.

A government entity must compensate a property owner when it takes the owner's property; failure to do so creates a cause of action for inverse condemnation, which can be litigated through a mandamus action. *Nolan & Nolan v. City of Eagan*, 673 N.W.2d 487, 494 (Minn. App. 2003), *review denied* (Minn. Mar. 16, 2004). Whether a taking has occurred is a legal question. *Wensmann Realty, Inc. v. City of Eagan*, 734 N.W.2d 623, 631 (Minn. 2007). To prevail on an inverse-condemnation claim, an aggrieved party must show (1) a property interest, (2) government taking of the property, (3) taking for a public use, and (4) nonpayment of just compensation. *Hall v. State*, 908 N.W.2d 345, 352 (Minn. 2018).

The Paleceks argue that the district court abused its discretion by denying their mandamus request without an evidentiary hearing. We disagree for two reasons. First, the Paleceks have not suffered a taking by a government entity. The district court declared that they retain what the school district originally granted to the Holles—a 66-foot, unobstructed, access easement over the school district land. The fact that the district court found the easement authorizes private access rather than a public road, as the Paleceks advocated, does not change the fact that they have an easement. Their reliance on *Nolan* does not persuade us otherwise. In *Nolan*, this court reversed dismissal on the pleadings of an allegation that the Minnesota Department of Transportation's construction of a storm sewer system caused "frequent, regular, and permanent" flooding on the Nolan partnership's property that was so extensive that it amounted to a taking. 673 N.W.2d at 491. We concluded that the partnership adequately pleaded its claim because recurrent flooding could rise to the level of a taking. *Id.* at 492-93. And we observed that legal remedies for negligence, trespass, and nuisance would be inadequate if a taking occurred. *Id*. at 493-94. In contrast, the Paleceks have an access easement that the school district must honor under contract law. *See Lindberg v. Fasching*, 667 N.W.2d 481, 487 (Minn. App. 2003) (stating that an "express grant creating the easement is a contract"), *review denied* (Minn. Nov. 18, 2003). There has been no taking because the district court declared the Paleceks' easement right.

Second, the Paleceks have an adequate legal remedy. As noted above, based on the evidence adduced at trial, the district court defined the nature of the Paleceks' easement. To the extent the school district has obstructed the Paleceks' use of the easement, or does

so in the future, the Paleceks may pursue contract remedies, including money damages or a court order to remove any obstructions. Because the Paleceks have a "plain, speedy, and adequate remedy in the ordinary course of law," they are not entitled to mandamus relief. *Douglas*, 899 N.W.2d at 556 (quotation omitted).

Affirmed.