

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1184**

Keith B. Hagen, et al.,
Appellants,

vs.

Windemere Township,
Respondent.

**Filed May 6, 2019
Affirmed
Halbrooks, Judge**

Pine County District Court
File No. 58-CV-17-425

John J. Steffenhagen, Jason S. Raether, Hellmuth & Johnson, PLLC, Edina, Minnesota (for appellants)

Scott A. Witty, Hal J. Spott, Hanft Fride, P.A., Duluth, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Cleary, Chief Judge; and Halbrooks, Judge.

S Y L L A B U S

Under Minn. Stat. § 365.10, subd. 11 (2018), when no maintenance or construction has been conducted on a section of a town road for 25 years or more, the town board lacks authority to open or maintain that section of the road unless the town's electors grant that authority. In the absence of authority to open or maintain a road, no duty exists to open or maintain the road.

OPINION

HALBROOKS, Judge

This appeal arises from a dispute over maintenance and repair of a 2,280-foot section of a town road and bridge. Appellant-landowners challenge the district court’s rulings in favor of respondent-township on cross-motions for summary judgment on appellants’ claims for mandamus, negligence, and nuisance. Appellant-landowners argue that the district court erred in determining that Minn. Stat. § 160.09, subd. 3 (2018), is not applicable. Because we conclude that respondent-township lacks authority to maintain the road and therefore has no duty to maintain it, we affirm.

FACTS

At issue in this appeal is the maintenance and repair of a 2,280-foot section of Wetherille Road, located in Windemere Township. Wetherille Road was established as a town road in 1916 and constructed in the 1920s. The parties agree that respondent Windemere Township maintained Wetherille Road from its establishment until 1974. This dispute concerns the southernmost 2,280 feet of the road, which includes a bridge. It has not been maintained since 1974.

In 1988, appellant Daniel M. Ring purchased a parcel of land abutting Wetherille Road.¹ In 1991, Ring and other town residents requested that the township “re-establish, repair, upgrade, and maintain the [2,280-foot] section of Wetherille Road.” The township

¹ In 2004, Ring purchased two additional parcels abutting Wetherille Road, and appellant Keith B. Hagen also purchased a parcel of land abutting the road. Ring and Hagen are referred to as “the landowners” throughout the opinion.

unanimously denied the request. Later in 1991, Ring and other residents requested that Pine County address the decision of the township board not to repair or maintain the 2,280-foot section of the road. Pine County treated the request as an impassable-road complaint pursuant to Minn. Stat. § 163.16 (1990) and did not act on the complaint. In 1993, the township performed maintenance and repair on approximately 3,000 feet of the road. But the final 2,280 feet of road, including the bridge, was not repaired.

In 2014, the landowners and others filed a second impassable-road complaint with Pine County alleging that the township's refusal to repair Wetherille Road "prohibits the reasonable use of a forty acre parcel at the south end of it" and that the township's "refusal to maintain the Road, or possible abandonment of the road, violates Minn. Stat. § 160.09, subd. 3." The township board chair responded to the county and the landowners by letter: "After much discussion concerning the Wetherille Road, Windemere Town has decided we cannot afford to get involved rebuilding this road. The Town has many roads that are in need of repair at this time."

Later that year, the Minnesota Department of Natural Resources (DNR) sent a letter to the township stating that the bridge at issue needed to be removed or repaired and that if "the Town has abandoned the section of the road containing the collapsed Bridge, adjacent property owners are responsible for removal or repair. If this road section has not been abandoned, the Town is responsible."

At a township board meeting in September, the board determined that township electors would decide at the annual meeting in March 2015, whether the township should remove or repair the bridge. At the annual meeting, the township's electors passed

motions, citing Minn. Stat. § 365.10, subd. 11, “not to spend any money on the Wetherille Road extension” and “not to spend any money on the Bridge that crosses the Willow River.”

In 2017, the landowners commenced an action in district court seeking a writ of mandamus to compel the township to maintain the entirety of Wetherille Road and to repair the bridge, arguing that the township improperly vacated the road under Minn. Stat. § 160.09, subd. 3, because it did not gain their consent. The landowners also brought claims for negligence and nuisance. The parties filed cross-motions for summary judgment, and the district court granted the township’s motion. The district court concluded that the township has not vacated the road because it did not follow the statutory procedures for doing so, and therefore Minn. Stat. § 160.09, subd. 3, is not applicable. The district court also concluded that the township did not effectively vacate the road by the vote of its electors at the annual meeting. Although the road was never vacated, the district court determined, under Minn. Stat. § 365.10, subd. 11, that the township lacks authority to maintain the road in the absence of electorate approval and action by the town board. The district court granted the township’s motion for summary judgment.² This appeal follows.

² The district court also determined that, even if the township had vacated the road, the landowners’ consent is not required under Minn. Stat. § 160.09, subd. 3, because the road is not the only means of access to their property. Finally, the district court concluded that, based on the common-law doctrine of abandonment, the township has abandoned the road. We need not address these grounds because application of Minn. Stat. § 365.10, subd. 11, resolves this appeal.

ISSUES

- I. Did the district court err by granting summary judgment on the landowners' mandamus claim?
- II. Did the district court err by granting summary judgment on the landowners' negligence and nuisance claims?

ANALYSIS

The landowners argue that the district court erred by granting summary judgment to the township. “We review the grant of summary judgment de novo to determine ‘whether there are genuine issues of material fact and whether the district court erred in its application of the law.’” *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quoting *Stringer v. Minn. Vikings Football Club, LLC*, 705 N.W.2d 746, 754 (Minn. 2005)). On appeal, the parties do not assert that genuine issues of material fact make summary judgment improper. Accordingly, our review concerns the district court’s application of the law.

I.

The landowners contend that the district court erred by granting the township’s motion for summary judgment with respect to their petition for an alternative writ of mandamus. See Minn. Stat. § 586.03 (2018) (setting forth the contents of an alternative writ of mandamus: a statement of facts showing the defendant’s obligation to perform the act and omission to do so, and a command that the defendant do the required act or show cause). “Mandamus is an extraordinary legal remedy.” *Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162, 171 (Minn. 2006) (quotation omitted). It has two primary purposes: “to compel the performance of an official duty clearly imposed by law”

and “to compel the exercise of discretion when that exercise is required by law.” *Id.*; see Minn. Stat. § 586.01 (2018). “When a decision on a writ of mandamus is based solely on a legal determination” this court reviews the determination de novo. *Breza v. City of Minnetrista*, 725 N.W.2d 106, 110 (Minn. 2006).

Here, the landowners sought a writ of mandamus to compel the township to re-establish, repair, and maintain the 2,280-foot section of the road and bridge. Their claim for mandamus rests on their assertion that the township has a duty under Minn. Stat. § 160.09, subd. 3, to obtain their consent before vacating the road. If consent is not obtained, the landowners contend that the road is not vacated and the township retains a duty to repair and maintain the road. The landowners contend that the district court erred in concluding that Minn. Stat. § 160.09, subd. 3, is inapplicable here. The subdivision provides, in relevant part, prerequisites for the vacation of local roads, including, in some circumstances, consent of certain landowners. Minn. Stat. § 160.09, subd. 3.

The procedure for vacating a road is governed by Minn. Stat. §§ 164.06-.07 (2018). Minn. Stat. § 164.06, subd. 1, states, “A town board, when authorized by a vote of the electors at the annual meeting, or at a special meeting called for that purpose, may establish, alter, or vacate a town road . . . in accordance with section 164.07, subdivisions 2 to 12” The referenced provisions set forth the procedures for a town to establish, alter, or vacate a town road. See Minn. Stat. § 164.07, subds. 1-12. The procedures include notice to affected landowners, a hearing, an examination of the road, and a determination of damages. *Id.*, subds. 2-3, 5. The statute also sets forth an appeal process for landowners or occupants. *Id.*, subd. 7. The language of the statute makes plain that “vacating” a town

road is a specific and prescribed process that occurs only when a township follows the statutory procedure.

Here, the township asserts that it did not attempt to vacate the town road. And no record evidence suggests that the township took steps to vacate the road in compliance with the procedures spelled out in Minn. Stat. §§ 164.06, subd. 1, .07, subds. 2-12. The district court determined that, although the township held a meeting and decided not to spend money on the road, no “additional steps by the town board” were taken to vacate the road. The meeting referenced by the district court did not comply with the statutory requirements for vacation including the notice requirement, an examination of the road, or a damages determination. Minn. Stat. § 164.07, subds. 2-3, 5. Because the township did not vacate, or attempt to vacate, the road, the district court correctly determined that Minn. Stat. § 160.09, subd. 3, does not apply and, any prerequisites, including the landowners’ consent, are not required.

The district court also determined that, pursuant to Minn. Stat. § 365.10, subd. 11, the township lacks the authority to maintain the road “in the absence of electorate approval and action by the Town Board.” Minn. Stat. § 365.10 (2018) sets forth the powers of a town’s electors at an annual meeting. Subdivision 11 states that the electors “may let the town board, by resolution, determine whether to open or maintain town roads . . . under the jurisdiction of the town board upon which no maintenance or construction has been conducted for 25 years or more.” Minn. Stat. § 365.10, subd. 11.³

³ Minn. Stat. § 365.10, subd. 11, also provides that Minn. Stat. § 163.16 (2018) (providing for impassable-road complaints to the county) “does not apply to town roads described in

“When interpreting a statute, we first look to see whether the statute’s language, on its face, is clear or ambiguous. A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation.” *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) (quotation and citation omitted). We conclude that the language of Minn. Stat. § 365.10, subd. 11, is unambiguous. Based on the language of this subdivision, the township properly brought the issue of whether to repair and maintain the road and bridge, which had not been repaired since 1974, to its electors at the annual meeting in 2015. The electors voted to prohibit the township from expending funds on the road and bridge. We agree with the district court that, in the absence of elector approval, the township lacks the authority to maintain the road.

The landowners argue that the township could not take action under Minn. Stat. § 365.10, subd. 11, absent a judicial determination that the road was abandoned. But this assertion is in conflict with the statute’s plain language. The statute provides that a township’s electors may vote to let the town board determine whether to open or maintain a road “upon which no maintenance or construction has been conducted for 25 years or more.” Minn. Stat. § 365.10, subd. 11. Nothing in the plain language of the statute suggests that a judicial determination of abandonment is required before the township’s electors may act under this subdivision. The district court correctly determined that a judicial determination of abandonment is not required by Minn. Stat. § 365.10, subd. 11.

this subdivision,” but the subdivision “does not limit the right of town voters or land owners to petition to establish a cartway under section 164.08.”

Because the district court properly concluded that the township did not vacate or attempt to vacate the town road, Minn. Stat. § 160.09, subd. 3, does not apply. And because the township lacks authority to maintain the road in the absence of a vote of its electors and board action pursuant to Minn. Stat. § 365.10, subd. 11, it has no duty to maintain the road, and mandamus cannot lie. *See* Minn. Stat. § 586.01 (2018); *Mendota Golf*, 708 N.W.2d at 171. Accordingly, the district court properly granted the township’s motion for summary judgment on the landowners’ mandamus claim.

II.

Next, we turn to the landowners’ tort claims. The landowners assert that the district court’s grant of summary judgment on their negligence claim was error. A claim for negligence has four elements: duty of care, breach of that duty, injury, and the breach of the duty being the proximate cause of the injury. *Funchess v. Cecil Newman Corp.*, 632 N.W.2d 666, 672 (Minn. 2001).

The district court determined, in relevant part, that no duty of care exists because the township does not have authority to maintain the road. Minn. Stat. § 365.10, subd. 11, as previously noted, states that a town’s electors “may let the town board, by resolution, determine whether to open or maintain town roads . . . under the jurisdiction of the town board upon which no maintenance . . . has been conducted for 25 years or more.” Here, the disputed section of the road has not been maintained for more than 25 years. Based on the statute’s plain language, the town board does not have authority to open or maintain the road unless the town’s electors vote to allow the town board to decide whether to do so, which did not occur here. In fact, the town’s electors voted to prohibit the town board

from opening or maintaining the road. Thus, the district court concluded that the landowners' claim for negligence "fails as a matter of law." We agree.

The landowners contend that the township's duty of care and breach of duty occurred before the electors' March 2015 vote and that such a vote could not "extinguish liability for negligence that had already occurred." But the landowners do not cite any legal authority to support this contention. And under Minn. Stat. § 365.10, subd. 11, the town no longer has the authority to maintain the road after it has been unmaintained for more than 25 years, absent the approval of its electors. Accordingly, we conclude that the district court did not err by granting summary judgment to the township on the landowners' claim for negligence.

The landowners also assert that the district court erred by granting summary judgment on their nuisance claim. An action for private nuisance is governed by Minn. Stat. § 561.01 (2018), which states:

Anything which is injurious to health, or indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance. An action may be brought by any person whose property is injuriously affected or whose personal enjoyment is lessened by the nuisance, and by the judgment the nuisance may be enjoined or abated, as well as damages recovered.

This court has held that a plaintiff states an actionable claim for nuisance when he or she "presents evidence that the defendant intentionally maintains a condition that is injurious to health, or indecent or offensive to the senses, or which obstructs the free use

of property.” *Wendinger v. Forst Farms, Inc.*, 662 N.W.2d 546, 552 (Minn. App. 2003), review denied (Minn. Aug. 5, 2003).

The township argues that a conclusion that “observance of the rights and powers of electors under Minn. Stat. § 365.10, subd. 11,” results in a nuisance, would “undermine the statutory scheme created by the Legislature.” We agree. Such a conclusion would violate the canons of statutory construction. Compliance with one set of statutory provisions should not be considered a violation of another. Such a construction would be “inconsistent with the manifest intent of the legislature.” See Minn. Stat. § 645.08 (2018). Accordingly, the district court did not err by granting summary judgment to the township on the landowners’ claim for nuisance.

D E C I S I O N

The vote of the township’s electors not to maintain the section of road was not an attempt to vacate it, and thus Minn. Stat. § 160.09, subd. 3, is inapplicable. Because the township’s electors did not vote, pursuant to Minn. Stat. § 365.10, subd. 11, to allow the town board to determine whether to maintain the road, the township lacks the authority and duty to do so, and the district court properly granted summary judgment to the township on the landowners’ claim for mandamus. For the same reasons, we discern no error in the district court’s grant of summary judgment to the township on the landowners’ claims for negligence and nuisance.

Affirmed.