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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1988**

Michael Norman Andersen,
Appellant,

vs.

Robert James Buehler, et al.,
Respondents,

Concord Township,
Respondent.

**Filed June 10, 2019
Affirmed
Smith, John, Judge***

Dodge County District Court
File No. 20-CV-14-770

Michael S. Dove, Christopher E. Bowler, Gislason & Hunter LLP, New Ulm, Minnesota
(for appellant)

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Minnesota (for respondents Robert Buehler, Charles Giesler, Douglas Rhodes)

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Concord Township)

Considered and decided by Connolly, Presiding Judge; Slieter, Judge; and Smith,
John, Judge.

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

UNPUBLISHED OPINION

SMITH, JOHN, Judge

We affirm because the district court's determination of the easement's location is not clearly erroneous, and the district court did not abuse its discretion by finding appellant in civil constructive contempt of court.

FACTS

Appellant Michael Norman Andersen is the fee owner of a parcel of land in Concord Township. Until 1984, a township road running across Andersen's property provided hunting and fishing access to a neighboring property. In April 1984, Concord Township vacated the town road pursuant to Minn. Stat. § 160.09, subd. 3 (1984), and granted a perpetual easement over Andersen's property to respondent Robert J. Buehler, the owner of the neighboring parcel. The town meeting minutes vacating the road and establishing the easement were filed with the county recorder and Andersen did not appeal the vacation of the town road, nor the establishment of the easement over his property.

In 2014, Buehler entered an agreement with respondent Charles W. Giesler that permitted Giesler to hunt on Buehler's property. That spring, Giesler and respondent Douglas J. Rhodes used the easement to access Buehler's land for hunting. In July 2014, Andersen commenced suit against Buehler, Giesler, and Rhodes (the neighbors) to quiet title to his property, and for trespass. Andersen later amended his complaint to include a claim for relief against respondent Concord Township (the township), contesting the existence of the easement.

After a hearing, the district court issued its preliminary findings by letter and recommended that the parties attempt settlement with regard to the easement's location. The parties were unable to agree. In its 2017 order, the district court found that Buehler's property was landlocked and does not have legal access "other than by use of the easement over the Andersen Property," and dismissed Andersen's challenge to the easement with prejudice as "untimely under Minnesota law." The district court determined that Buehler "possesses an easement, no greater than 16 feet wide, over the Subject Property for purposes of ingress and egress from the Buehler Property over the Andersen Property pursuant to the Town Board's action on August 12, 1984." The district court also found that Giesler and Rhodes did not trespass and dismissed Andersen's action with prejudice.

In 2018, the neighbors moved to hold Andersen in constructive civil contempt for violating the district court's 2017 order, alleging that Andersen blocked their access to the easement by placing trees across the easement, piling snow across the easement, and blocking the easement with sixteen large concrete blocks. After completing a survey of his property, which identified a "potential access easement," Andersen moved to amend the district court's order pursuant to Minn. R. Civ. P. 60.02, requesting that the court clarify its order to state that the easement requested by the neighbors coincides with the "Surveyed Easement."

After a hearing, the district court issued an order denying Andersen's motion for amended findings, noting that the "Subject Property is defined at paragraph 5 of the Court Order and was the Township Road, also known as the Moreland Road. For purposes of clarification, the Court will now use 'Moreland easement' to be clear as to the location."

The district court also noted that “throughout the entirety of the case” it had requested that the parties survey the property and negotiate alternate access, even delaying entry of the January 20 findings to allow the parties more time to reach agreement. But the parties did not provide a survey or alternate access until Andersen moved to amend the order. Accordingly, the district court rejected Andersen’s request to move the easement as “being untimely, not the result of mistake, inadvertence, surprise, excusable neglect, nor is there any reason justifying relief from the January 20, 2017” order. The district court also made a factual finding that Andersen’s proposed alternate access “does not extend fully to the Buehler landlocked parcel, nor is the surface and grade of the alternative access of such quality to permit access during all seasons and periods of adverse weather.”

With respect to the contempt motion, the district court found that Andersen “intentionally and willfully violated the Court’s Order by interfering with the reasonable use” of the easement by leaving downed trees across the easement, by causing a large pile of snow to be placed on the easement which blocked access, by placing “16 extra-large concrete blocks” across the easement, and by intentionally downing trees to block the easement after the blocks were removed. The district court noted that “[a]s of the date of the hearing, trees were still blocking access to the Moreland easement.” The district court further found that Andersen’s “willful disobedience of the Court Order has impeded and prejudiced [the neighbors’] reasonable use and enjoyment of the Moreland easement” and caused them to suffer actual loss. The district court granted the neighbors’ motion and found Andersen in constructive civil contempt. The district court stayed an indefinite jail sentence on the condition that Andersen remove all access obstructions from the easement

within ten days, not interfere with the neighbors' reasonable use and enjoyment, and pay attorney fees.

DECISION

Andersen appeals from the district court order denying his Minn. R. Civ. P. 60.02 motion. “The decision whether to grant Rule 60.02 relief is based on all the surrounding facts of each specific case, and is committed to the sound discretion of the district court. As such, a district court will not be reversed on appeal except for a clear abuse of discretion.” *Gams v. Houghton*, 884 N.W.2d 611, 620 (Minn. 2016) (citations and quotations omitted). Andersen challenges the district court’s factual findings with regard to the location of the easement.

[W]e review the district court’s factual findings for clear error. That is, we examine the record to see if there is reasonable evidence in the record to support the court’s findings. And when determining whether a finding of fact is clearly erroneous, we view the evidence in the light most favorable to the verdict. To conclude that findings of fact are clearly erroneous we must be left with the definite and firm conviction that a mistake has been made.

Rasmussen v. Two Harbors Fish Co., 832 N.W.2d 790, 797 (Minn. 2013) (quotations and citations omitted).

Andersen contends that the district court improperly changed the location of the easement from the section line of his property, to the vacated road. Andersen argues that the district court’s January 2017 order (Order I) placed the easement on the section line of his property. Order I states:

Prior to April 12, 1984, a Township road extended north and south along the section line commencing from a point at the

Northwest corner of the Southwest Quarter (SW1/4) of Section 13 and the Northeast corner of the Southeast Quarter (SE1/4) of Section 14, thence South one mile to its termination point at Southwest corner of the Northeast Quarter (NE1/4) of Section 23 (hereinafter “Subject Property”).

Order I further states that when the town board vacated the road in 1984, it “established an easement over the Subject Property.” The district court concluded in Order I that Buehler “possesses an easement, no greater than 16 feet wide, over the Subject Property”

In the district court’s October 2018 order (Order II) the district court stated that the “Subject Property” was defined in Order I as “the Township Road, also known as the Moreland Road.” Based on the unambiguous language of Order I and Order II, it does not appear that the district court modified the location of the easement. Rather, the district court recognized the existing easement, pursuant to the township’s action in 1984 and specified in Order II that references to the “Subject Property” meant the vacated township road. The district court’s factual finding is well-grounded in the record, and we discern no error.

Andersen challenges the district court’s decision to hold him in contempt. On review of a district court’s decision whether to hold a party in contempt, the factual findings are subject to reversal only if they are clearly erroneous, while the district court’s decision to invoke its contempt powers is subject to reversal only for an abuse of discretion. *Mower Cty. Human Servs. ex rel. Swancutt v. Swancutt*, 551 N.W.2d 219, 222 (Minn. 1996).

Andersen's argument regarding the contempt issue rests on the premise that the easement is not located over the vacated town road. Andersen contends that he didn't violate the order because the easement was located along the section line itself, which he did not block. Both the court's orders and the town meeting minutes from the 1984 vacation unambiguously state that the easement is located over the vacated road. Andersen doesn't deny that he blocked the vacated road. Thus, the district court did not abuse its discretion by concluding that Andersen violated its order.

Affirmed.