

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1078**

Catherine Jordan,
Appellant,

vs.

Town of Brevator,
Respondent.

**Filed April 6, 2020
Affirmed
Worke, Judge**

St. Louis County District Court
File No. 69DU-CV-18-2238

William D. Paul, William D. Paul Law Office, Duluth, Minnesota (for appellant)

Scott A. Witty, Hal J. Spott, Hanft Fride, P.A., Duluth, Minnesota; and

William T. Helwig, Rudy Law Firm, Cloquet, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Worke, Judge; and Florey,
Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant argues that the district court erred by granting respondent-town summary judgment in this road-vacation dispute, because: (1) the town failed to comply with the

procedures to vacate a town road set forth in Minn. Stat. § 164.07 (2018); (2) appellant's predecessor in interest did not consent to the vacation; (3) an error in the legal description renders the 2000 order void; and (4) the town improperly reserved an easement in its 2018 order. We affirm.

FACTS

This dispute arose from appellant Catherine Jordan's attempt to undue the vacation of a portion of Gist Road by respondent Town of Brevator (the town) which her father—and predecessor in interest—Ross Jordan agreed to in 2000.

In April 1999, Ross Jordan requested that the town replace a caved-in culvert along Gist Road that led into his driveway. He proposed to pay for the labor and gravel if the town replaced the culvert. The town agreed, with the caveat that Ross Jordan not be allowed to alter the culvert because it would be the town's property.

In August 1999, Ross Jordan attended a town meeting and requested to purchase four feet of the culvert from the town because he wanted to use the road as a dike for a pond on his property. The town proposed abandoning the road and selling him the culvert for \$750. He agreed to the proposal.

During a March 14, 2000 town meeting, a motion to vacate the section of Gist Road in accordance with the agreement carried. A hearing regarding the road vacation was set for April 11, 2000, and notice was to be published in a local newspaper.

Ross Jordan and his wife attended the April 11 hearing and signed the agreement. The board agreed to the vacation, and a motion approving the agreement was made and carried. The agreement provides:

[T]he Town of Brevator shall vacate, as a [t]own road, the last 300 foot section [of Gist Road] which crosses the creek and pond spillway.

. . . .

It is agreed that upon vacating the above mentioned 300 feet of the Gist Road, that Ross Jordan [and] any other controlling persons, shall be responsible for maintaining the vacated section of roadway. Ross Jordan enters into this agreement with the Town of Brevator knowing that the vacated section of roadway is the only established access to his property.

That same day, the town issued an order vacating the end of Gist Road. The order contained an error in the legal description of the vacated portion of road. The first call of the order reads: “Gist Road commencing at the *Southeast* corner of the NW ¼ of NE ¼ of Section 33” (Emphasis added.) It should actually read: “commencing at the *Northeast* corner.”

Appellant first raised issues with the 2000 vacation of Gist Road in August 2017. Appellant requested that the town resume maintenance of the previously vacated road, and brought up the error in the legal description of the vacation order. In October 2017, the town board approved a corrective vacation order to remedy the error in the original legal description. Because the board was unaware of the previously executed agreement between the town and Ross Jordan, it also approved the reservation of a cartway-access easement along the vacated portion of Gist Road in the corrective vacation order.

In August 2018, appellant filed a complaint in district court, seeking to declare that the 2000 vacation order was void and to enjoin the town from conducting further vacation proceedings.

Following a September 10, 2018 public hearing, the town board approved a motion to again vacate the end of Gist Road. On September 23, 2018, the town issued a second corrective-vacation order, remedying the error in the legal description in the 2000 vacation order, vacating an additional 380 feet of Gist Road beyond the portion originally vacated in 2000, and reserving a cartway-access easement along the portions of Gist Road vacated by the order.

Following a hearing on the parties' cross-motions for summary judgment, the district court found the 2000 and 2018 vacation orders valid and enforceable. Because it found both orders to be valid, the district court limited the effect of the 2018 order to the additional 380 feet of Gist Road not already vacated by the 2000 order, as the town had relinquished all interest in the originally vacated 300 feet of Gist Road via the 2000 order. The district court granted the town summary judgment. This appeal followed.

D E C I S I O N

Appellant argues that the district court erred by granting summary judgment in favor of the town. This court reviews “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) (quotation omitted). This court reviews the evidence in the light most favorable to appellant as the party against whom summary judgment was granted. *See STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002). We address appellant's challenges to the 2000 and 2018 road-vacation orders in turn.

2000 vacation order

Appellant asserts that three errors in the original vacation of the final 300 feet of Gist Road deprived the town board of jurisdiction to vacate the road, rendering the April 11, 2000 vacation order void.¹

Appellant first argues that the town's 2000 vacation order is void because the town failed to comply with the statutorily prescribed procedural requirements to vacate a road. Appellant identifies three asserted failures by the town to comply with the procedures set forth in Minn. Stat. § 164.07, subd. 2(a): (1) the town did not prepare a notice of hearing; (2) the town did not serve the notice; and (3) the town did not post the notice. Despite these alleged procedural errors, the record demonstrates that Ross Jordan attended the road-vacation hearing, agreed to the vacation, and initiated the proceedings so that he could use the end of Gist Road as a dike for a pond.

Under similar circumstances, the supreme court determined that proceedings for the laying out of a public road “are valid as to all persons properly served, and to those also, upon whom notice is not served, who appear and take part therein.” *Freeman v. Pine City*

¹ The district court, relying on *Dahlin v. Neslund*, 147 N.W. 240 (Minn. 1914), and *Sonnek v. Town of Minn. Lake*, 52 N.W. 961 (Minn. 1892), determined that there is no limitation period for challenges to a road-vacation order. But that is not what *Dahlin* and *Sonnek* provide. In both cases, the supreme court held that failure to timely appeal the road orders under the statutory timeline for damages did not preclude later challenges to their facial validity. *Dahlin*, 147 N.W. at 240; *Sonnek*, 52 N.W. at 962. Neither case involved a discussion of the timeliness of those facial challenges. Regardless of whether appellant's challenge to the facial validity of the 2000 order is construed as an action for breach of contract or on a statutorily created liability, it appears to be untimely. See Minn. Stat. § 541.05, subd. 1(1)-(2) (2018). However, because the town did not appeal the district court's timeliness determination, this issue is not before us for review.

Twp., 286 N.W. 299, 302 (Minn. 1939) (quotation omitted). The supreme court held that when an owner of affected land “was present at the hearing of the petition for the road . . . [and] was one of the petitioners[,] [a]s to him and his land the road is valid regardless of proof of posting or serving notice.” *Id.* Upon this basis, appellant cannot assert that the road-vacation proceedings were procedurally void when Ross Jordan appeared, participated, and agreed to the vacation.

Appellant next argues that the 2000 order is void because it landlocked Ross Jordan’s property without his consent, in violation of Minn. Stat. § 160.09, subd. 3 (2018) (“When a . . . town road is the only means of access to any property . . . containing an area or combined area of five acres or more, the . . . road shall not be vacated without the consent of the property owner unless other means of access are provided.”). This assertion is not supported by the record. The agreement between Ross Jordan and the town states: “Ross Jordan enters into this agreement with the Town of Brevator knowing that the vacated section of roadway is the only established access to his property.” Ross Jordan’s consent satisfies the statutory requirement.

Finally, appellant argues that the 2000 order is facially void because an error in the legal description of the portion of Gist Road to be vacated makes it impossible to locate. Appellant relies on *Dahlin* for the proposition that when “the description in the road order . . . is impossible of location upon the surface of the earth . . . [i]t is clear that these proceedings are void,” but *Dahlin* is distinguishable. 147 N.W. at 240 (quotation omitted).

First, *Dahlin* involved the creation of a road, whereas here the to-be-vacated portion of Gist Road already existed, and therefore was not “impossible of location upon the

surface of the earth.” *See id.* The vacation agreement provides: “Gist Road . . . continues westward for another 300 feet across the creek and pond spillway onto the property owned by Ross Jordan. . . . [T]he Town of Brevator shall vacate . . . the last 300 foot section which crosses the creek and pond spillway.” Despite the error of using “southeast” instead of “northeast” in the first call of the vacation order, there is no impossibility in locating the final 300 feet of Gist Road, after crossing the creek and pond spillway, which already existed upon the ground.

Next, the district court relied on *Ingelson v. Olson* for the proposition that it is possible to supply an omitted call in a road order when it is clear and obvious, based on the other calls in the road description, what the omitted call should be. 272 N.W. 270, 276 (Minn. 1937). While the present dispute involves a misrecital rather than an omission, due to the physical presence of Gist Road upon the ground it is equally clear that if the other calls of the 2000 road-vacation order are to make any sense, the district court did not err in relying on *Ingelson* for the authority to replace the call “southeast” with the call “northeast” to give effect to the remainder of the order.

Accordingly, summary judgment on appellant’s claims pertaining to the 2000 road-vacation order was appropriate because Ross Jordan’s participation excused any alleged procedural defects, Ross Jordan consented to the landlocking of his property, and the misrecital in the legal description of the vacated segment of Gist Road did not invalidate the order.

2018 vacation order

Appellant's challenges to the town's 2018 road-vacation order relate to the town's reservation of a cartway-access easement. Because the district court upheld the validity, as amended, of the 2000 road-vacation order, the district court limited its analysis of appellant's challenges to the 2018 order to the additional 380 feet of Gist Road that were not already vacated by the 2000 order. As pointed out by the district court, none of the land impacted by the 2018 road-vacation order "passed over, abutted, or led to the Jordan property."

Appellant asserts that the reservation of the cartway-access easement invalidates the 2018 order because the land over which the easement was reserved is held in trust by the United States for the Fond du Lac Band, and the town did not have the authority to reserve the easement. The district court, however, noted that appellant lacked standing to bring claims on behalf on the Fond du Lac Band.

Because the reservation of the cartway-access easement does not impact appellant's land, appellant does not have standing to challenge the 2018 order. *See In re Gillette Children's Specialty Healthcare*, 883 N.W.2d 778, 783-84 (Minn. 2016) ("Under Minnesota law, [s]tanding is acquired in two ways: either the plaintiff has suffered some injury-in-fact or the plaintiff is the beneficiary of some legislative enactment granting standing." (quotation omitted)). Therefore, the district court appropriately granted the town summary judgment on appellant's claims pertaining to the 2018 order.

Affirmed.