

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1329**

Terry L. Smeby,
Respondent,

vs.

Janet K. Hanson, et al.,
Appellants,

Joshua Hanson, et al.,
Defendants.

**Filed June 1, 2021
Affirmed
Ross, Judge**

Becker County District Court
File No. 03-CV-19-1679

Zenas Baer, Zenas Baer Law Office, Hawley, Minnesota (for respondent)

Sean T. Foss, O’Keeffe, O’Brien, Lyson & Foss, Ltd. Fargo, North Dakota (for appellants)

Considered and decided by Smith, Tracy M., Presiding Judge; Ross, Judge; and
Connolly, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

In this quiet-title action, disputing township neighbors claim ownership of undeveloped land previously dedicated by plat as a road. The land was never used as a road because the township board voted to vacate it. The disputing neighbors sit on opposite sides

of the road and opposing sides of complex ownership arguments over the validity and legal consequences of the township's vote to vacate. (The appellants say that either the township possessed road-vacation authority and they obtained title by operation of statute or the township lacked road-vacation authority and they own the road by adverse possession. The respondent says that the township lacked road-vacation authority but that adverse possession cannot apply to public roads and he owns the road by a chain of valid conveyances unaffected by any statute.) The district court granted summary judgment to the respondent because it deemed the township's road vacation ineffectual, interpreting Minnesota Statutes section 505.14 (2020) to require judicial action to vacate a platted road. We hold instead that a different Minnesota statute (section 164.07, subdivision 1 (2020), overlooked by the district court) authorized town boards to vacate town roads, including roads dedicated by plat. But we nevertheless affirm the summary-judgment conclusion because we reject the appellants' statute-based ownership claims as resting on a flawed application of another statute, Minnesota Statutes section 507.17 (2020).

FACTS

Janet and Ronald Hanson and Terry Smeby own abutting parcels in Becker County originally owned by Henry and Esther Ness. The boundary between these two Cormorant Township parcels runs along a swath of undeveloped land that, based on the Nesses' 1964 plat, comprised an L-shaped road dedicated to the public. Whether that boundary runs along one side of that dedicated road or along the other is the question this case presents. The answer determines who owns the road.

The 1964 Ness plat that included the road was promptly recorded and approved by the Becker County Board of Commissioners, but no public entity ever developed the dedicated land for use as a roadway. Just three years after the platting, in 1967 the Nesses concurred that the town board should vacate the road. Contemporaneous town board meeting minutes show that the board then voted to vacate. For reasons not shown in this litigation, no additional public record of that town action existed until 2006, when the town board recorded its 1967 road vacation in the Becker County recorder's office.

Both the Hanson and Smeby parties hold deeds that include the disputed swath of land comprising the platted road. Regarding the Hansons' deed, the swath purportedly passed from the Ness family to the Hansons in a nonlinear fashion. The Nesses had conveyed the swath to Beverly and Harley Thomas in 1976 by a deed that described the boundary in reference to the innermost edge of the road, effectively *excluding* the swath from the conveyance. But when the Thomases conveyed the parcel to Hanson in 2006—twelve days after the town board recorded the 1967 plat vacation—the Thomas-to-Hanson deed *included* the disputed swath. Regarding Smeby's deed, the swath purportedly passed to Smeby directly. In 2019 the personal representative of the Nesses' estate conveyed the swath to Smeby by deed.

To resolve the parties' conflicting deeds to the platted road, Smeby brought this quiet-title action. The district court granted summary judgment favoring Smeby. This appeal follows.

DECISION

The validity of the township's 1967 road vacation is at the heart of the dispute on appeal. The Hansons had argued to the district court that they had good title to the swath comprising the platted road because, once the township vacated the road, ownership reverted to the dedicating fee owner, the Nesses, and by operation of statute (Minnesota Statutes section 507.17), the Nesses' interest in the road passed to the Thomases even though the Ness-to-Thomas deed did not expressly include the road. The district court rejected the Hansons' argument based on its conclusion that the township lacked road-vacation authority—authority the district court believed rested only in the district court. The Hansons had also argued alternatively that, if the township lacked authority to vacate the road, they were entitled to it by adverse possession, an argument the district court rejected on its reasoning that one cannot adversely possess a public road.

The Hansons argue that the district court erred as a matter of law when it concluded that the township lacked authority to vacate the road, consequently erring when it determined that section 507.17 does not govern their claim. They again alternatively argue that, if the township lacked authority to vacate the road, the district court failed to recognize that one is not precluded from adversely possessing a public road if the road was abandoned. The arguments are only partly persuasive.

I

We first decide whether the law authorized the town board to vacate the road, and we hold that it did. The district court's legal conclusion that the town board lacked authority to vacate is a conclusion we review de novo. *See Lefto v. Hoggsbreath Enters., Inc.*,

581 N.W.2d 855, 856 (Minn. 1998). The answer depends on whether the authority to vacate arises from Minnesota Statutes section 505.14 (as Smeby contends) or from section 164.07, subdivision 1 (as the Hansons contend). For the following reasons, we conclude that section 164.07 controls.

The first of the two statutes purportedly at odds with each other does indeed, as the district court concluded and Smeby argues, vest in the district court the authority to vacate a platted street: “Upon the application of the owner of land included in any plat, . . . *the district court may vacate* or alter all, or any part, of the plat, and adjudge the title to all streets, alleys, and public grounds to be in the persons entitled thereto.” Minn. Stat. § 505.14 (emphasis added). Implicitly reasoning that this section provides *the exclusive* means to vacate and observing that “no Section 505.14 district court action was commenced by Hanson or anyone else to vacate the platted street,” the district concluded that “the dedicated roadway remains intact.”

But this conclusion overlooks the second of the two statutes, and that statute as it appeared in 1967 seems to contradict the district court’s implied conclusion that section 505.14 was the exclusive means of road vacation. That statute in relevant part vested vacation authority in a town board, independent of judicial action, providing that “[a]ny town board may alter or vacate a town road.” Minn. Stat. § 164.07, subd. 1 (1964). The only question remaining is whether a “town road” includes one that is a road only in plat form, never having been opened for use as a public roadway.

We are certain from our de novo consideration of the meaning of “town road” in section 164.07 that the legislature did not mean to exclude town roads appearing only on

plats. Nothing in the text is ambiguous, and nothing in the section suggests that the legislature meant the statute to apply only to physically operating town roads but not platted town roads. And as we attempt to discern legislative meaning, “[t]he rules of construction forbid adding words or meaning to a statute that were intentionally or inadvertently left out.” *Genin v. 1996 Mercury Marquis*, 622 N.W.2d 114, 117 (Minn. 2001). Because the statute authorized a town board to vacate a “town road” and does not exclude town roads that exist only through platting, Cormorant Township had authority to vacate the platted road in 1967 when its board voted to do so.

This plain-language statutory interpretation does not depend on, but is corroborated by, an amendment to the statute in 1995 and the history of the amendment. The current, amended version of section 164.07 provides that “[a]ny town board may alter or vacate a town road, *including those dedicated to the public by plat.*” 1995 Minn. Laws. ch. 25 (emphasis added). The added language in the “including” phrase does not, as a matter of grammar, substantively change the statute; it merely identifies a class of town roads that is *included* in the operative phrase that authorizes town board vacation. The subsidiary clause does not expand the meaning of the main clause in any way, as the word “including,” in its commonly understood usage, indicates that what follows is a subset of the main clause. *See LaMont v. Indep. Sch. Dist. No. 728*, 814 N.W.2d 14, 19 (Minn. 2012) (stating “[t]he word ‘includes’ is not exhaustive or exclusive”). It is true that we presume that a statutory amendment intends to change the law. *Auto Owners Ins. Co. v. Perry*, 749 N.W.2d 324, 328 (Minn. 2008). But this is only a presumption, which is rebutted when it is evident that the legislature intended only to clarify the law. *Frieler v. Carlson Mktg. Grp., Inc.*,

751 N.W.2d 558, 566 (Minn. 2008). As Justice Simonett perceptively explained, “If . . . an amendment seeks only to ‘clarify’ the interpretation of the statute,” then “the legislature is not changing its mind but is only making clear the legislative intent that was always there.” *Rural Am. Bank of Greenwald v. Herickhoff*, 485 N.W.2d 702, 708 (Minn. 1992) (Simonett, J., concurring specially). Our plain-language review assures us that, by adding the “including” phrase, the legislature meant only to clarify its intent.

Although we have reached our conclusion based on the plain and unambiguous language in the statute aided by the plain language of its amendment, we add that, even if we saw some ambiguity, the result would be the same. This is because we may turn to “contemporaneous legislative history” if “the words of a law are not explicit,” Minn. Stat. § 645.16 (2020), and the history of the amendment confirms our understanding that it was intended only to clarify rather than change the law. Bill author Senator Steve Murphy explained during a committee meeting on the proposed change to section 164.07, “[This] is a bill *that just clarifies* the jurisdiction that townships have over their own roads.” (Emphasis added.) Not surprisingly then, the session law’s heading verifies that the amendment is merely “clarifying [the] authority of town board[s] to . . . vacate a town road[] dedicated by plat.” 1995 Minn. Laws ch. 25. For the reasons we have outlined, we hold that the town board had the authority to vacate the road in 1967, and we reverse the district court conclusion to the contrary. We turn to whether the Hansons obtained title to the road under section 507.17 by virtue of the 1967 vacation.

II

The Hansons' ownership theory depends not only on the township's authority to vacate the road but also on their follow-up contention that, once the township vacated the road, the swath comprising it reverted to the Nesses and was conveyed from the Nesses to the Thomases by operation of Minnesota Statutes section 507.17, which states as follows:

Every conveyance of real estate which abuts upon a vacated street, alley, or other public right-of-way shall be construed to include that part of such right-of-way or street which, either by operation or presumption of law, attaches thereto upon such vacation, unless such conveyance expresses a contrary intention.

Based on this statute, the Hansons argue that the Ness-to-Thomas deed conveyed the entire road despite omitting the road from the property description and that, therefore, the later Thomas-to-Hanson deed that expressly included the road conveyed title to them. The argument fails.

The flaw in their argument is that the statute's exception phrase, "unless such conveyance expresses a contrary intention," describes the Ness-to-Thomas deed as it regards the road. The metes and bounds description of the parcel conveyed to the Thomases defines the boundary as the "westerly line of a dedicated public road" and "along the northerly line of said dedicated public road." This demarcation expressly excludes the L-shaped platted road from the conveyed parcel, therefore "express[ing] a contrary intention" than the statutorily presumed intention to convey the road.

We are not persuaded otherwise by the Hansons' reliance on *White v. Jefferson*, 124 N.W. 373 (Minn. 1910). Consistent with the statutory language we have just applied,

White holds that, when a deed lacks an express reservation and circumstances do not justify inferring that the grantor intended to reserve an interest in an abutting roadway, the conveyance should be construed to include up to the center of the street subject to the public easement. *Id.* at 374. But the Ness-to-Thomas deed expressly outlined the property conveyed to Thomas so as not to convey any part of the platted roadway. And in *Betcher v. Chicago, Milwaukee & St. Paul Ry. Co.*, the supreme court read a deed that conveyed property with the boundary to run “along said southerly line of” an identified street as conveying title up to the street’s southern boundary. 124 N.W. 1096, 1098 (Minn. 1910). We apply the same effect to the conveyance demarcation language here.

The Hansons therefore do not own the road by virtue of the vacation and section 507.17. Although we disagree with the district court’s reasoning, we affirm its legal conclusion rejecting the Hansons’ statute-based ownership claims. We turn only briefly to the Hansons’ alternative theory of ownership based on adverse possession.

III

The Hansons argue that the district court erred by determining that they could not adversely possess a public road. They cite caselaw establishing that, if a public road is abandoned, then ownership may indeed pass to an adverse possessor. *See City of Rochester v. N. Side Corp.*, 1 N.W.2d 361, 363 (Minn. 1941). But they argued on appeal only that, *if* the town board lacked authority to vacate the road, its attempted vacation demonstrated its abandonment and defeats the district court’s reason for rejecting their adverse-possession claim. We have already agreed with the Hansons’ argument that the township had vacation authority. And at oral argument, their counsel reaffirmed their position, stating that they

did not assert an adverse-possession claim if the road had indeed been vacated. We therefore need not address the merits of any adverse-possession theory.

We hold that the township exercised its statutory authority in 1967 when it voted to vacate the platted road. But we hold that, notwithstanding the road vacation, the Ness-to-Thomas conveyance did not pass title to the road and that, therefore, Thomas lacked title to convey to the Hansons in the Thomas-to-Hanson conveyance. We affirm the district court's summary judgment decision.

Affirmed.