

*This opinion is nonprecedential except as provided by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
A22-0180**

In the Matter of: Petition to Vacate Town Road, Kenneth Kuk, et al.,
Appellants,
Joseph VanKeulen Revocable Living Trust, et al.,
Plaintiffs,

vs.

Township of Custer,
Respondent.

**Filed October 3, 2022
Affirmed
Larson, Judge**

Lyon County District Court
File No. 42-CV-17-899

Kevin K. Stroup, Stoneberg Gile & Stroup, P.A., Marshall, Minnesota (for appellants)

Paul D. Reuvers, Iverson, Reuvers, Condon, Bloomington, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Tracy Smith, Judge; and
Larson, Judge.

NONPRECEDENTIAL OPINION

LARSON, Judge

Appellants Kenneth and Nancy Kuk appeal the district court's decision to dismiss their inverse-condemnation claim. The Kuks challenge the district court's determination that they retain reasonably convenient and suitable access to their property following respondent Township of Custer's decision to remove a bridge. We affirm.

FACTS

In 1995, the Kuks purchased 160 acres of land (the property) within the township in Lyon County. About half the property is tillable farmland. Around the same time, the Kuks recorded a private easement for permanent access to the property from the south across a neighbor's land (southern easement). The southern easement extends north from 140th Street to the southwest corner of the property. The southern easement constitutes the Kuks' primary access to the property and has been continuously used for access since before the Kuks purchased the property.

The township built the bridge at issue in this appeal in 1920. The bridge spanned the Cottonwood River and provided access to the property's northeast corner. The bridge sat at the dead end of 150th Street. Thus, prior to the bridge's removal, the property had access to both 140th Street and 150th Street. The bridge's later removal terminated the property's access to 150th Street.

The Kuks expressed a desire to build a residential home on the property's northeast corner, calling it the "homestead site." The Kuks rarely, if ever, used 150th Street and the bridge to access their property despite owning the property for over fifteen years before the bridge's closure. A regular vehicle last traversed the bridge in 1995 or 1996. Since then, the bridge's dilapidated condition meant that only smaller recreational vehicles, like a four-wheeler, could cross it. And the Kuks never took affirmative steps to build a home on the homestead site.

In July 2010, the Minnesota Department of Transportation (MnDOT) reviewed the bridge for possible replacement. In a letter to Lyon County, MnDOT noted that the bridge

showed signs of rot and rust. Rather than replacement, MnDOT recommended “a road in lieu of [the] bridge”—meaning MnDOT would provide funds to build or develop public road access rather than to replace the bridge. In October 2011, the county inspected the bridge and temporarily closed it pending further analysis and load rating. In November 2011, the county issued an inspection report that found the bridge critically deficient. The county informed the township of its finding and instructed the township to install “bridge closed” signs. The township put up the signs and adopted a resolution closing the bridge based on the county’s finding.

After closing the bridge, the township and county sought permission to replace the bridge using state funding. MnDOT denied both requests and again suggested a “road in lieu” option. The township adopted resolutions to close the bridge and request its removal. Though further negotiation with the Kuks led to a tentative proposal for a road-in-lieu agreement, MnDOT ultimately rejected that proposal. The township voted to proceed with bridge removal, and the county subsequently passed a motion to remove the bridge.

In 2013, the Kuks sued the township. In an amended complaint, the Kuks brought several claims based on the township’s decisions to close the bridge and authorize its removal, including an inverse-condemnation claim. In January 2015, the district court granted summary judgment to the township on all claims. The Kuks did not appeal the summary-judgment decision. In March 2015, the township board renewed its request for the county to remove the bridge. The bridge was removed in July 2015.

In 2016, the Kuks petitioned the township to vacate a portion of 150th Street, the township road formerly connected to the bridge. At the public hearing on the petition, the

Kuks presented an appraisal estimating their damages based on the property's reduction in value after the bridge closure and the cost to build a new access road to reach the homestead site—totaling between \$202,500 and \$287,500. The township denied the petition and later passed a resolution to that effect. The resolution stated that the road segment the Kuks sought to vacate “remain[ed] needed by the public . . . to serve as a means to provide access to the river.” The resolution further stated that vacation and the resulting damages “would put an unreasonable financial burden on the [township’s] taxpayers.”

In 2017, the Kuks initiated the current action against the township. In a joint notice of appeal and complaint, the Kuks appealed the township’s decision denying the petition to vacate a portion of 150th Street and sought damages for failure to provide alternative access. The complaint also sought a writ of mandamus ordering the township to initiate eminent-domain proceedings and compensate the Kuks for inverse condemnation. A complicated litigation ensued, including three motions for summary judgment. Ultimately, only the inverse-condemnation claim remained for trial.

In August 2021, the district court held a bench trial on the inverse-condemnation claim. The district court heard testimony from numerous witnesses and received stipulated exhibits. In December 2021, the district court dismissed the Kuks’ inverse-condemnation claim. The district court determined that: (1) the Kuks maintain full access to their property through the southern easement; (2) the bridge’s removal did not segregate any part of the Kuks’ property that would have been historically accessible over the removed bridge; (3) the Kuks’ property, including the homestead site, has historically been used for

agricultural purposes; and (4) the Kuks maintain “reasonably convenient and suitable access” to the property.

The Kuks appeal.¹

DECISION

The Kuks challenge the district court’s decision to dismiss their inverse-condemnation claim against the township. On appeal from a judgment where there has been no motion for a new trial, we review only “whether the evidence sustains the findings of fact and whether such findings sustain the conclusions of law and the judgment.” *Erickson v. Erickson*, 434 N.W.2d 284, 286 (Minn. App. 1989).

The state must compensate landowners whose private property is taken for public use. *See* Minn. Const. art. I, § 13. An inverse-condemnation action seeks to compel the state to compensate a landowner for its interference with a private-property interest. *Oliver v. State ex rel. Comm’r of Transp.*, 760 N.W.2d 912, 915 (Minn. App. 2009), *rev. granted* (Minn. Apr. 29, 2009) *and appeal dismissed* (Minn. Nov. 16, 2009). To prevail, a landowner “must establish that the state interfered with ownership, possession, or enjoyment of a property right.” *Id.* The Kuks argue that the district court erred when it

¹ The township filed a notice of related appeal (NORA) challenging the district court’s decision to reject the township’s res judicata and collateral estoppel arguments on summary judgment. This court filed an order explaining that the township could present its arguments on alternative grounds for affirmance without filing a NORA. Because we reject the Kuks’ arguments to reverse the district court, we need not reach the township’s arguments on alternative grounds to affirm.

dismissed their inverse-condemnation claim after finding that they maintain “reasonably convenient and suitable access” to their property despite the bridge removal.²

Minnesota law establishes that property owners have the right to “reasonably convenient and suitable access to a public street or highway that abuts their property.” *Grossman Invs. v. State by Humphrey*, 571 N.W.2d 47, 50 (Minn. App. 1997) (quotation omitted), *rev. denied* (Minn. Jan. 28, 1998). Reasonable-access claims present mixed questions of law and fact. *Id.* Whether reasonably convenient and suitable access remains after a change in access is “a question of fact to be determined in light of the circumstances peculiar to each case.” *Johnson v. City of Plymouth*, 263 N.W.2d 603, 607 (Minn. 1978); *see also Hendrickson v. State*, 127 N.W.2d 165, 173 (Minn. 1964) (explaining that reasonable access is a question for the fact finder). But whether the “change in access constitutes a taking is determined as a matter of law.” *Oliver*, 760 N.W.2d at 916. We review a district court’s findings of fact for clear error, and a finding is clearly erroneous if we are left with the firm conviction that a mistake has been made. *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021). We review legal questions de novo. *C & R Stacy, LLC v. Cnty. of Chisago*, 742 N.W.2d 447, 457 (Minn. App. 2007).

A right to reasonable access is “a property right in the nature of an easement.” *State by Mondale v. Gannons Inc.*, 145 N.W.2d 321, 329 (Minn. 1966). When the state alters a

² The Kuks also argue that the township’s decision to remove the bridge was malicious or inappropriate and ask us to conclude that the bridge’s removal constituted a taking on that basis. Because the Kuks did not raise this issue before the district court, we decline to address it. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (explaining that appellate courts “generally consider only those issues that the record shows were presented and considered by the [district] court in deciding the matter before it” (quotation omitted)).

property owner's access, there can be a taking without physical appropriation. *Grossman*, 571 N.W.2d at 50. "What constitutes reasonable access . . . depend[s] to some extent on the nature of the property under consideration." *Johnson*, 263 N.W.2d at 607. But not every change in access supports a claim for damages. *Id.* Even a "substantial inconvenience" may not support a reasonable-access claim. *Id.*

When evaluating a reasonable-access claim, we do not consider landowner preferences for a particular access point, but we can consider the landowner's intended use. *See Oliver*, 760 N.W.2d at 917. When making that consideration, we generally focus on "[t]he convenience and suitability of ingress and egress . . . between the abutting road and the parcel's perimeter," not the property's interior. *Id.*

The Kuks argue that they lost reasonably convenient and suitable access to the property because (1) they only have access via the southern easement rather than a public road; (2) the southern easement does not accommodate regular vehicles and would require extra winter maintenance; and (3) accessing the homestead site from the southern easement requires traversing a ravine and steep hillside. The Kuks further argue that even if the southern easement provides reasonably convenient and suitable access to the southern portion of the property, it does not provide reasonably convenient and suitable access to the homestead site. These arguments are not persuasive.

The evidence sustains the district court's findings that the Kuks maintain reasonably convenient and suitable access. *See Erickson*, 434 N.W.2d at 286. The southern easement provides ingress and egress to 140th Street. Landowners have historically used the entire property, including the homestead site, for agriculture and that remains the current use.

Even before the Kuks recorded the southern easement, previous owners accessed the property from the south; the southern easement has been the property's primary access. And the southern easement continues to provide suitable access to the property for agricultural purposes.

With respect to the bridge, the Kuks suspected in 1995 that the bridge had limited capacity and could not be relied on to provide permanent access. The Kuks secured the southern easement because they anticipated problems with the bridge. And the Kuks have always used the southern easement, rather than the bridge, to access the property to farm.

We discern no clear error in the district court's determination that the Kuks maintain reasonably convenient and suitable access. Therefore, we conclude as a matter of law that the township's removal of the bridge did not constitute a taking.³

Affirmed.

³ We are not persuaded otherwise by the Kuks' assertion that the access issue "can be measured by the economic harm caused to their property by the [t]ownship's removal of the bridge." Damages are calculated only after a determination that a property owner has lost reasonably convenient and suitable access. *See Hendrickson*, 127 N.W.2d at 173 (explaining that *if* plaintiffs are entitled to recover, *then* the measure of damages is the difference in market value of the property before and after the change in access); *Grossman*, 571 N.W.2d at 50 (noting that a district court will only appoint a commissioner to determine damages if it first determines that a taking has occurred). The alleged diminution in the value of the property based on the relative inaccessibility of the homestead site is irrelevant to the access question in this case.