

*This opinion is nonprecedential except as provided by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
A23-0528**

Spring Grove Township,
Respondent,

vs.

Brian Myrah,
Appellant,

Karen Fried, et al.,
Defendants.

**Filed December 26, 2023
Affirmed
Smith, John, Judge***

Houston County District Court
File No. 28-CV-19-919

Ken D. Schueler, John T. Giesen, Dunlap & Seeger, P.A., Rochester, Minnesota (for respondent)

Thomas M. Manion, Manion Law LLC, Hopkins, Minnesota (for appellant)

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

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

NONPRECEDENTIAL OPINION

SMITH, JOHN, Judge

We affirm because the district court did not abuse its discretion in determining that the disputed portion of Bee Hill Drive is a town road and in finding appellant failed to establish his estoppel defense.

FACTS

In December 2019, respondent Spring Grove Township (township) filed a complaint against appellant Brian Myrah based on Myrah's obstruction of what the township claimed was a town road. The complaint sought declaratory relief that the road now known as Bee Hill Drive is a town road. Myrah filed an answer asserting various affirmative defenses, including that the road was abandoned and that the township's claims are barred by equitable and promissory estoppel. The other named landowners did not oppose the township's requested relief.

The district court held a bench trial from May 31 to June 1, 2022. During trial, Myrah's counsel stipulated that a road had been established at the disputed area. As a result, the central issue was whether the township had abandoned the road or whether the township was estopped from claiming the road existed by a note that Myrah had obtained from the township board.

The Road and Myrah's Property

The obstructed section of the road is part of Bee Hill Drive, which was formally established as State Line Road in 1873. State Line Road ran along the Iowa and Minnesota border, dipping in and out of Iowa and Minnesota, from County Road 4 in the west to

County Road 16 in the east. By the 1950s, the western portion of the road, from County Road 4 to the southwestern corner of what is now Myrah's property, was no longer in use and became overgrown. Then, in 1986, the township recorded its interest in the remaining portion of the road under the statutory process. In the 1990s, the road was renamed "Bee Hill Drive" to give it a unique name for police and first responders answering 911 calls.

Myrah's property, which he purchased in 2007, is about an acre of land right on the Iowa border. The property is located under the curve of the road where it diverges from, and then returns to, the border, a few miles to the west of County Road 16.

The Township's Case

The township clerk testified that there were no issues with Myrah and the road until 2016. That year, a nearby landowner expressed concerns about obstructions on the road, and, in spring 2017, the township learned about a fence across the road. Three nearby landowners testified that they and their families had regularly used the road for hunting or for access to fields until Myrah put up that fence. The township clerk also testified that the township requested that Myrah remove the obstructions, but Myrah refused. The township clerk explained that Myrah claimed that the disputed section of the road belonged to him based on a 2007 note written by the township board.

Because of the obstructions, the township requested that the county surveyor conduct a survey to identify the right of way of Bee Hill Drive. The county surveyor, a registered surveyor who testified as an expert for the township, testified that he completed a retracement survey of the road which identified several obstructions, all in the portion of the right of way running southwest from Myrah's driveway to the Iowa border. Over

Myrah's objection, the surveyor testified that the obstructed section is a township road based on documentary evidence, aerial photography showing the road's continued use, and the lack of vacating documentation. The township also introduced the retracement survey identifying the right of way of Bee Hill Drive around Myrah's property based on the existing roadbed and other physical evidence. Myrah did not challenge the retracement survey, the surveyor's qualifications as an expert, or the foundation for the surveyor's opinion.

The township clerk also testified about the note that Myrah relied on to claim the disputed area belonged to him and that the road had been abandoned. The township clerk explained that, in 2007 before purchasing the property from Mark Mahr, Myrah approached the clerk for assurance that the township would not reopen the road west of the property, making a through road between County Roads 4 and 16. The township clerk wrote Myrah a note that stated: "The Spring Grove Township Road known as Bee Hill Drive runs between Houston County Road #16 and the property now owned by Mark Mahr. Any Spring Grove Township roadway that existed running west from the said property is officially abandoned." The township clerk acknowledged that the note was signed by all members of the township board, explaining that the clerk wrote and signed the note, and Myrah then went and found the other members separately to sign it.

Myrah's Case

Myrah testified that his understanding, based on the 2007 note, was that the township road ended on the east side of his property. Myrah did not introduce his own survey or other expert analysis. Myrah also testified he did not recall anyone using the road

to access fields. One of Myrah's witnesses, a former owner of the property from 1971 until the 1990s, similarly testified that she never saw anyone using the road.

On cross-examination, the township's attorney questioned Myrah about the 1993 warranty deed transferring the property to the predecessor-in-title of Myrah's property, the 2007 warranty deed transferring the property to Myrah and his parents, and the 2010 quitclaim deed from Myrah's parents to Myrah. Myrah acknowledged that the legal description of the property in the 1993 deed—which stated that the property's northern boundary was the south side of the public highway—was different from the legal description in the 2007 and 2010 deeds—which stated that the public highway was within the property. Myrah could not explain why the legal descriptions differed or if he had title to the property where the township claimed the road existed.

In its closing summation, the township argued that Myrah stipulated that Bee Hill Drive was established as a public road and that Myrah failed to prove estoppel by abandonment. In his summation, Myrah acknowledged that there was a township road that ran between County Road 4 and County Road 16. But he argued the township had intentionally abandoned "Bee Hill Drive running west from the easterly line of the Myrah property to the [Iowa] border," and that the township was estopped from claiming that section of road exists based on the 2007 note.

Order and Posttrial Motions

The district court issued an order declaring that the disputed section of Bee Hill Drive is a public township road, enjoining Myrah from interfering with the public's use of the road, and ordering Myrah to remove the obstructions from the right of way, except for

a barn addition. The district court found that “Myrah stipulated at trial that Bee Hill Drive was established as a road” and determined that Myrah failed to prove estoppel or abandonment of the road.

Myrah filed a motion for amended findings, order, and judgment or for a new trial, and for an order staying enforcement of the judgment. Myrah argued that many of the district court’s factual findings were clearly erroneous, that there was “perjured testimony,” and that a new trial or amended findings were appropriate under Minnesota Rule of Civil Procedure 59.01(a), (c), (d), (f), and (g). The township opposed the motion.

The district court denied Myrah’s motion for a new trial or amended findings. In its accompanying memorandum, the district court explained that Myrah’s case was “hampered by the credibility of their witnesses” and that it “received ample evidence and made the determination that [Myrah] has manufactured a self-serving interpretation that the note by [the township clerk] . . . meant he owned the roadway, even though it was still being used on rare occasion by the public and adjoining landowners for access purposes.”

DECISION

Myrah challenges the district court’s declaration that the disputed section of Bee Hill Drive is a public town road. He first argues that the disputed section of Bee Hill Drive is not a road. In the alternative, he argues the township is estopped from claiming the disputed section as a road under the doctrine of promissory estoppel.

We review the district court’s findings of facts following a bench trial under the clearly erroneous standard. Minn. R. Civ. P. 52.01. Under that standard, a finding is clearly erroneous only if it is “manifestly contrary to the weight of the evidence or not reasonably

supported by the evidence as a whole.” *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotation omitted). “When reviewing mixed questions of law and fact, we correct erroneous applications of law, but accord the district court discretion in its ultimate conclusions and review such conclusions under an abuse of discretion standard.” *Porch v. Gen. Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002) (quotation omitted), *rev. denied* (Minn. June 26, 2002).

I. The record supports the district court’s determination that the disputed section of Bee Hill Drive is a town road.

Myrah challenges the district court’s determination that the disputed section of Bee Hill Drive is a town road.

In Minnesota, a road may be formally established by a township pursuant to the process described in Minnesota Statutes section 164.07 (2022) or created by common-law or statutory dedication. *See Bengston v. Village of Marine on St. Croix*, 246 N.W.2d 582, 584 (Minn. 1976). A road generally continues unless vacated pursuant to statute or abandoned. *See* Minn. Stat. § 164.07 (explaining formal process for vacating a town road); *cf. Reads Landing Campers Ass’n, Inc. v. Twp. of Pepin*, 546 N.W.2d 10, 14 (Minn. 1996) (“We have always been reluctant to grant such vacation of a public street without something more than mere nonuse, because platted and dedicated streets are not always utilized immediately after such dedication, but are reserved for future use as the needs of the municipality may change.”); *Neill v. Hake*, 93 N.W.2d 821, 829 (Minn. 1958) (“Public rights therein may not thereafter be divested without public consent or operation of law.”).

Myrah argues that (1) the district court clearly erred by finding that he stipulated to the establishment of Bee Hill Drive, (2) the township did not formally establish “Bee Hill Drive” under Minnesota Statute section 164.07, and (3) the district court abused its discretion by accepting the county surveyor’s testimony that a town road existed. We review each argument in turn.

First, Myrah argues that he stipulated only to the establishment of State Line Road, not Bee Hill Drive. We disagree. The record shows that Myrah’s counsel stipulated that a road was “created” at the disputed area, that both parties referred to Bee Hill Drive and State Line Road interchangeably, and that State Line Road was renamed Bee Hill Drive in the 1990s to assist police and first responders answering 911 calls. As a result, the record supports the district court’s finding that Bee Hill Drive is the road formerly known as State Line Road, and the district court did not err by finding that Myrah stipulated that Bee Hill Drive was established as a road.¹

Second, Myrah argues that the district court erred because the township did not prove it followed the process under section 164.07 for altering a town road. Myrah concedes that State Line Road was formally established under section 164.07, but he asserts that the township was required to follow that process again to rename the road Bee Hill Drive. We disagree. Myrah identifies no authority that requires a town to engage in the

¹ For the first time on appeal, Myrah asserts that Bee Hill Drive is in a different location than State Line Road. “A reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it.” *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (quotation omitted). Because Myrah never raised this argument in district court, it is outside the purview of the record, and is forfeited.

formal process outlined in section 164.07 to rename a road. As a result, Myrah has not established error. *See Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944) (“[O]n appeal error is never presumed . . . [and] the burden of showing error rests upon the one who relies upon it.”).

Finally, Myrah argues that the district court abused its discretion by relying on the county surveyor’s opinion that “Bee Hill Drive” is a township road. He asserts that the surveyor’s opinion was an impermissible “legal conclusion.” We are unpersuaded. This court reviews decisions regarding the admission of evidence for an abuse of discretion. *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn. 1997). Under Minnesota Rule of Evidence 702, “a qualified expert witness may testify in the form of an opinion so long as the testimony has foundational reliability and is helpful to the fact-finder.” *Cont’l Retail, LLC v. County of Hennepin*, 801 N.W.2d 395, 399 (Minn. 2011). “Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.” Minn. R. Evid. 704. Thus, although opinions involving a legal analysis or mixed question of law and fact are not deemed helpful for the trier of fact, opinions as to factual matters are admissible even if the opinion embraces the ultimate issue. *See Conover v. N. States Power Co.*, 313 N.W.2d 397, 403 (Minn. 1981); Minn. R. Evid. 704 1977 comm. cmt.

Here, Myrah does not dispute the surveyor’s qualifications or the foundational reliability of the surveyor’s opinion that the disputed area is a town road. He challenges the opinion only as “ultimate issue testimony.” But the surveyor’s opinion that the disputed area is a road is a factual opinion based on the surveyor’s review of plat maps, documentary

evidence, and physical evidence. The surveyor did not opine on the effect of the evidence, such as the 2007 note, supporting Myrah's claim that the road was abandoned or that the township was estopped from asserting the road still exists. Thus, although the surveyor's opinion "embrace[d] an ultimate issue to be decided by the trier of fact," that opinion was proper under rule 704. We discern no abuse of discretion in the district court's decision to admit the opinion.

In sum, the district court did not abuse its discretion by determining that the disputed section of Bee Hill Drive is a town road.

II. The district court did not err by determining that Myrah failed to establish estoppel.

In the alternative, Myrah argues that, because he relied on the 2007 note written by the township clerk, the road is abandoned under the doctrine of promissory estoppel.

Promissory estoppel is "an equitable form of action based on good-faith reliance." *Olson v. Synergistic Techs. Bus. Sys., Inc.*, 628 N.W.2d 142, 152 (Minn. 2001). Such a claim "requires proof that (1) a clear and definite promise was made, (2) the promisor intended to induce reliance and the promisee in fact relied to his or her detriment, and (3) the promise must be enforced to prevent injustice." *Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 746 (Minn. 2000); *see also Meriwether Minn. Land & Timber, LLC v. State*, 818 N.W.2d 557, 565 (Minn. App. 2012), *rev. denied* (Minn. Sept. 25, 2012). Promissory estoppel, like equitable estoppel, may be applied against the state to the extent that justice requires. *Christensen v. Minneapolis Mun. Emps. Ret. Bd.*, 331 N.W.2d 740, 749 (Minn. 1983). Following a bench trial, we review the district court's equitable

determinations for an abuse of discretion. *See City of N. Oaks v. Sarpal*, 797 N.W.2d 18, 23-24 (Minn. 2011).

Myrah challenges (1) the district court's interpretation of the 2007 note and (2) the district court's determination he did not reasonably rely on the 2007 note. We consider each argument in turn.

First, Myrah challenges the district court's reading of the 2007 note. He asserts that the note is ambiguous and thus the district court, and this court, should construe it against the township. We disagree. As an initial matter, promissory estoppel requires a "clear and definite promise." *Meriwether*, 818 N.W.2d at 567. As a result, if Myrah is correct that the note is ambiguous, then his promissory-estoppel claim fails. *See id.*

Moreover, the plain language of the 2007 note fully supports the district court's reading that the township did not promise to abandon the road running *through* Myrah's property. The note states that "[a]ny Spring Grove Township roadway that existed *running west* from the said property is officially abandoned." (Emphasis added.) As a result, the township at most promised that the road running west from Myrah's property was abandoned, and the 2007 note was not a "clear and definite promise" to abandon the disputed area of the road.

Second, Myrah argues that he "reasonably relied on the fact that there was no roadway burdening the Myrah property." He asserts that the district court made clearly erroneous findings about the deeds transferring the property to Myrah and that he acted in good faith because those deeds "showed no public roadway on or adjacent to Myrah's property." We are unpersuaded.

The 1993 deed transferring the property to Myrah's predecessor states that the property's northern border was "along the south side of the public highway." But the 2007 deed transferring the property to Myrah and his parents, as well as the 2010 quitclaim deed transferring the full property to Myrah, state that there is a "public highway located in said forty." The record shows that, at trial, Myrah was asked to explain the difference between the legal descriptions in the 1993 deed and the 2007 and 2010 deeds and could not. As a result, the record supports the district court's finding that Myrah "failed to explain why or how Myrah's predecessor in title could transfer the land above the south side of the public highway, given he did not own it." And, contrary to Myrah's assertion that the deeds "showed no public roadway on or adjacent to Myrah's property," the deeds explicitly note the existence of a public highway either adjacent to or within the property.

Even if the district court made erroneous findings related to the deeds, the district court separately found that Myrah relied on "a self-serving interpretation of the plain language of the note," because, as outlined above, the 2007 note did not promise that the disputed section of the road was abandoned. And Myrah does not challenge the district court's finding that, in response to the continued use of the road, Myrah "erect[ed] a fence in order to stop users [from] accessing the road" rather than having the property surveyed or pursuing legal vacation of the road. As a result, the district court did not err by

determining Myrah did not reasonably rely on the 2007 note and did not abuse its discretion by rejecting Myrah's promissory-estoppel claim.²

Affirmed.

² Because we conclude that Myrah has not fulfilled the elements for a promissory-estoppel claim, we need not address the township's argument that estoppel in the context of a public road required Myrah to prove abandonment under the test set forth in *Reads Landing Campers Association, Inc. v. Township of Pepin*, 546 N.W.2d 10 (Minn. 1996).