

*This opinion is nonprecedential except as provided by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
A24-1892**

In the Matter of the Application of Janet T. Lamkin,
to Register the Title to Certain Land.

**Filed July 14, 2025
Reversed and remanded
Bentley, Judge**

Carver County District Court
File No. 10-CV-20-94

Patrick J. Neaton, Neaton & Puklich, PLLP, Chanhassen, Minnesota (for appellant Janet T. Lamkin)

Susan M. Tindal, Andrew A. Wolf, Iverson Reuvers, Bloomington, Minnesota (for respondent Waconia Township)

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Considered and decided by Larkin, Presiding Judge; Larson, Judge; and Bentley, Judge.

NONPRECEDENTIAL OPINION

BENTLEY, Judge

Respondent Waconia Township established a public highway by dedication over appellant Janet T. Lamkin's private road, pursuant to Minnesota Statutes section 160.05, subdivision 1(a) (2024).¹ The issue on appeal regards the width of that highway. Under the

¹ We apply the most recent version of the statutes in this opinion because the statutes have not been amended in relevant part. *See Interstate Power Co. v. Nobles Cnty. Bd. of*

belief that the width extends beyond the paved surface of the road, the township authorized an internet service company, respondent Jaguar Communications, LLC, to bury a fiber line alongside the highway. Lamkin then commenced a proceeding to register title to the property and sought a determination terminating or modifying the township and Jaguar's interest in the property.

The district court ultimately granted summary judgment in favor of the township and Jaguar after determining that there is no genuine issue of material fact regarding the width of the dedicated public highway and that the township did not exceed its authority in authorizing Jaguar to install a fiber line along the highway because the line is located within the highway's boundaries. We disagree that the grant of summary judgment was appropriate because there exists a genuine issue of material fact. We therefore reverse and remand.

FACTS

Lamkin owns and lives on a lakefront property (homestead) on North Shore Road in Carver County. Lamkin and her late husband, Allan, purchased the first portion of the homestead in 1965.² Today, the homestead is about 70 acres and comprised of five parcels of land that the Lamkins acquired over time. Lamkin's son, James, also lives on the homestead.

Comm'rs, 617 N.W.2d 566, 575 (Minn. 2000) (stating that, generally, "appellate courts apply the law as it exists at the time they rule on a case").

² Because Janet Lamkin and Allan Lamkin share a surname, this opinion refers to Janet Lamkin as Lamkin and Allan Lamkin as Allan.

In January 2020, Lamkin initiated a proceeding under Minnesota Statutes section 508.11 (2024), or “the Torrens system,” to register title to the homestead. *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 230 (Minn. 2008); *see also* Minn. Stat. §§ 508.11, .12 (2024). The township and Jaguar were named as defendants in connection with Lamkin’s application because they appeared to hold interests that might affect Lamkin’s registration for title to the homestead. Specifically, the application stated that the township “purports to have a 66-foot roadway easement for North Shore Road,” which Lamkin disputed. In turn, Jaguar had “installed underground cable on [the homestead] and it purports to have the right to do so pursuant to the [township’s] roadway easement for North Shore Road. [Lamkin] contests the validity of that easement.”

The issue on appeal is narrow. Lamkin acknowledges “that North Shore Road is a Township road that has been established.” The dispute is over the width of the township’s right-of-way. That is because, as discussed later, the township is entitled to a right-of-way for only the width of actual use. In turn, it could have authorized Jaguar to install a fiber line alongside the highway only if that area falls within the right-of-way, as determined by the width of actual use.

The relevant facts, presented in the light most favorable to Lamkin, the nonmoving party, and additional procedural history follow. *See STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002) (noting that appellate courts “view the evidence in the light most favorable to the party against whom summary judgment was granted”).

North Shore Road

Running along the north shore of Lake Waconia, North Shore Road crosses many lakefront properties, including Lamkin's. The road has been there since around the 1880s. The stretch of the road that cuts through the homestead is about 500-feet long, and its pavement is 20-feet wide. The road has a centerline but does not have lines delineating its outer edges.

In 1985, the township sought to adopt a town road map that established North Shore Road as a public road. *See* Minn. Stat. § 164.35 (2024) (describing process for recording a “town road map”). After the township notified all residents with properties abutting the road of its intent to do so, Allan sent the township two letters opposing its proposal for North Shore Road to “be deemed 66.00 feet in width pursuant to and in accordance with [Minn. Stat. § 160.04], 33.00 feet on each side of the . . . described center lines.” Allan noted that the township had “maintained the traveled surface of the road only along the northwest shore,” the road “had no shoulders,” and the township was entitled to only the width of the road that is “needed and ha[s] actually been used to support and maintain the traveled portion.” Despite Allan’s assertion that the township’s filing “should be limited to the traveled (gravel) portion of the road” and that the township “go[es] beyond that line at [its] peril,” the town road map was recorded on October 14, 1985.

Since then, the township has maintained the road without objection by the Lamkin family. The township “generally completes larger maintenance projects on a five or ten year schedule,” including a crack sealing project in 1999 and a chip sealing project in 2009. The township’s “routine practice with respect to maintenance of [t]own roads” entails

“regular periodic grading and dust guard application (where requested by area residents), certain activities specific to paved roads, such as pothole, joint, and asphalt milling, patching, and sealing, [and] other activities applicable to all roads, such as snow plowing and aggregate shouldering repairs.” It also includes tree trimming and removal, grass mowing, and maintaining culverts, which are necessary for proper drainage on the road and nearby properties.

In the winter months, the township plows snow from North Shore Road. The snowplow operator for the township affirmed that snow removal involves “plow[ing] it a few feet off of . . . the outer edge of the paved portion” of the road. He explained that he “can catch the whole width of the road with [the snowplow],” which causes snow to “fl[y] past the [snowplow].” The equipment and methods that the snowplow operator uses to plow snow depends on “[t]he conditions of how much snow [they have] had,” and in his estimation, the distance that the snow flies “can vary . . . but 20 feet is not out of the question.” He was also “sure it can throw 20, 30 feet.” In some areas, however, the trees on the homestead “prevent[] the [t]ownship plows from pushing or throwing snow further onto the [homestead].” The snowplow operator recalled asking Allan on one occasion whether he could plow the snow on the homestead, to which Allan responded, “[Y]eah, it’s fine. That’s what . . . the shoulders are for, to get the snow off.”

The Lamkins have also maintained both sides of the traveled, or paved, portion of North Shore Road by “leveling those areas, filling holes, planting grass, and creating attractive lawn areas right up to the outer edges of the traveled portions of [the road].” They have “plant[ed] numerous trees on both sides of the traveled portions of North Shore

Road,” which form a loose fence-like boundary along the areas past the edges of the paved road. They have also “mow[ed] the grass right up to the outer edge of the traveled pavement, remove[d] branches and other debris, and repair[ed] the lawn.”

Jaguar’s Installation of Fiber Line

In April and May 2018, Jaguar applied for two permits from the township, seeking to install a 3,000-foot fiber line under North Shore Road. As a “telecommunications right-of-way user” and an authorized competitive local exchange carrier (CLEC), Jaguar has a statutory right to “construct, maintain, and operate small wireless facilities, conduit, cable, switches, and related appurtenances and facilities along, across, upon, above, and under any public right-of-way,” Minn. Stat. § 237.163, subd. 2 (2024), subject to certain regulations and statutory requirements.

Around that time, Jaguar contacted the Lamkin family to inform them that part of the fiber line would be installed under the stretch of North Shore Road running through the homestead. The Lamkins “told Jaguar . . . that Waconia Township’s right-of-way for North Shore Road did not extend past the outer portions of the paved and traveled segments of North Shore Road, and that [Jaguar] would need an easement . . . to install or maintain [the fiber line].” Jaguar “seemed to ignore the . . . objections,” and the Lamkins did not take any further action.

Eventually, the township approved Jaguar’s permit applications, and Jaguar installed the fiber line within the public right-of-way easement that the township believes it has. The subterranean fiber line runs no more than 25 feet from the road’s centerline and enables Jaguar to provide internet service to about 30 customers living on North Shore

Road, including the Lamkins. In March 2023, Jaguar learned about Lamkin’s Torrens application contesting the validity of Jaguar’s easement to install and maintain its fiber line adjacent to the portion of North Shore Road on the homestead.

The township and Jaguar filed answers to Lamkin’s Torrens application, and then both the township and Jaguar moved for summary judgment in January 2024. The township argued that the undisputed facts showed the township had acquired a 66-foot right-of-way over North Shore Road on two independent grounds—common-law dedication, whereby a landowner can expressly or impliedly dedicate private property for use as a public road, and statutory dedication under Minnesota Statutes section 160.05 (2024). Jaguar argued that it has a statutory right to construct and operate its fiber line along public roads and, as long as the township had a right-of-way over North Shore Road, Jaguar acted within that right by installing the fiber line beneath the portion of the road on the homestead. Jaguar also raised laches as a separate, independent basis for summary judgment.

On May 13, 2024, the district court filed an order granting respondents’ motions for summary judgment. Relevant here, the district court determined that there was no genuine issue of material fact regarding whether the township had established actual use of a 62-foot-wide right-of-way for a continuous period of six years, as required by Minnesota Statutes section 160.05. The district court relied on deposition testimony that the township at times throws snow 20 feet from the edge of the pavement and determined that the township’s “actual use” therefore extends to that range—31 feet from the road’s centerline, for a total width of 62 feet. And because it was undisputed that Jaguar’s fiber line fell within 25 feet of the centerline, the district court also concluded that Jaguar was entitled to

maintain its fiber line along the recognized public right-of-way on North Shore Road. Accordingly, the district court denied and dismissed the portion of Lamkin's application challenging the validity of the township and Jaguar's easement on the homestead.

The district court filed an order and decree of registration, subject to the township's 62-foot-wide right-of-way over the portion of North Shore Road running through the homestead and Jaguar's resulting easement.

Lamkin appeals.

DECISION

Appellate courts "review a district court's summary judgment decision de novo." *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). Summary judgment is appropriate only "if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. Our review requires us to determine "whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment." *Riverview*, 790 N.W.2d at 170. In doing so, we view the evidence in the light most favorable to the nonmoving party (here, Lamkin). *STAR Ctrs., Inc.*, 644 N.W.2d at 76-77. "A genuine issue of material fact exists when there is sufficient evidence regarding an essential element to permit reasonable persons to draw different conclusions." *St. Paul Park Refining Co. v. Domeier*, 950 N.W.2d 547, 549 (Minn. 2022) (quotations omitted). A fact is "material" if "its resolution will affect the outcome of the case." *Sayer v. Minn. Dep't of Transp.*, 790 N.W.2d 151, 162 (Minn. 2010).

Lamkin argues that the district court erred by granting summary judgment in favor of the township and Jaguar because there is a genuine issue of material fact with respect to the width of the dedicated highway based on the township's actual use. The township and Jaguar maintain that summary judgment was appropriate because there is no genuine dispute that the width of the highway is 62 feet and includes the fiber line. We first address the district court's grant of summary judgment for the township and then turn to the issues on summary judgment as they pertain to Jaguar.

I

Under Minnesota law, “[w]hen any road or portion of a road has been used and kept in repair and worked for at least six years continuously as a public highway by a road authority, it shall be deemed dedicated to the public to the width of the actual use.” Minn. Stat. § 160.05, subd. 1(a). In such cases, the road will “be and remain, until lawfully vacated, a public highway whether it has ever been established as a public highway or not.” *Id.* The dedication of a road by public use is limited “to the extent of *actual use* over the statutory period.” *Barfnecht v. Town Bd. of Hollywood Twp.*, 232 N.W.2d 420, 423 (Minn. 1975) (emphasis added). But that does not necessarily limit “[t]he width of the prescriptive easement . . . to that portion of the road actually traveled.” *Id.* The width may include areas such as “the shoulders and ditches that are needed and [that] have actually been used to support and maintain the traveled portion.” *Id.* “The boundary of a public highway acquired by public use is a question of fact.” *Id.*

The township and Jaguar argue, and the district court agreed, that there is no genuine dispute among the parties that the township, at times, throws snow 20 feet from the edge

of the pavement. They maintain that such intermittent use of the land where the snow is stored constitutes “actual use” of that land for purposes of establishing the width of the public highway under section 160.05, subdivision 1(a). It follows, in their view, that there is no genuine issue of material fact regarding the width of the public highway, so they are entitled to judgment as a matter of law. There are several problems with this argument.

First, Lamkin *does* dispute that the township regularly throws snow 20 feet from the edge of the pavement during the winter months. Viewing the record in the light most favorable to Lamkin, as we must, *STAR Ctrs., Inc.*, 644 N.W.2d at 76-77, the snowplow operator’s testimony establishes only that, in his estimation, snow being thrown or pushed 20 feet from the outer portion of the paved area of the North Shore Road is “not out of the question.” But, according to the snowplow operator, that distance “can vary on the snow.” His testimony illustrates that variability. On the one hand, he was “sure [the snowplow] can throw [the snow] 20, 30 feet.” But he also estimated, based on photographs from a certain year, that snow and ice was plowed only “three feet.” Another township employee testified in his deposition that the snowplow operator told him the 20-foot estimate was based on a “visual observation,” not an actual measurement, and that 20 feet was a “maximum” distance that “varie[d] from one place to the other” and from year to year.

Lamkin maintains that the 20-foot estimate is not representative of typical snow storage along the road and references evidence in the record from January 2024 when there was less snowfall. Lamkin also points to record evidence that, in some areas along the road, trees block the snow from flying as far as other places. And even the township acknowledges that the 20-foot distance, which established the total width of 62-feet, is not

“an exact figure under all circumstances.” Considering the record as a whole in the light most favorable to Lamkin, there is a genuine issue of material fact with respect to the amount of land that the township actually uses to store plowed snow.

Second, even if there was no dispute that snow is intermittently thrown 20 feet from the edge of the pavement, Lamkin disputes that the use of land in that way constitutes “actual use” for purposes of establishing a public highway by dedication. Again, “[t]he boundary of a public highway acquired by public use is a question of fact.” *Barfnecht*, 232 N.W.2d at 423. The township’s use of the land for snow storage may be relevant to a factual determination as to what portion of the homestead was actually used for the public, but neither the township nor Jaguar offer any support that intermittently storing snow on land establishes actual use of that land *as a matter of law*. The township cites nonprecedential opinions that suggest snowplowing can be relevant to fact-finding on actual use, but none conclude that, as a matter of law, it is sufficient to establish actual use. *See In re Twp. Resol. 01-03*, No. A03-1522, 2004 WL 1327280, at *2-3 (Minn. App. June 15, 2004) (considering intermittent snowplowing for determination of actual use); *Johnson v. City of Shorewood*, No. A06-2353, 2008 WL 434680, at *13 (Minn. App. Feb. 19, 2008) (concluding that township’s paving shoulder of a curb to temporarily store snow did not constitute a taking); *Theusch v. Berg*, No. A07-848, 2008 WL 1972487, at *3 (Minn. App. May 6, 2008) (affirming dedication of public road and supporting slopes based on

combination of regular road work and maintenance that included snowplowing), *rev. denied* (Minn. July 15, 2008).³

The township also relies on *Rivers v. Hennepin County*, but that decision does not support the premise that the storage of plowed snow is sufficient to establish actual use as a matter of law. No. C4-90-21, 1990 WL 105926, at *2 (Minn. App. July 31, 1990). There, we reversed a district court’s finding that the county established actual use by plowing snow because “no witness for the county testified to the *actual use* for snowplowing,” so the testimony amounted at most to “variable” and “speculative” evidence about “the actual distance that snow may be thrown during snowplowing operations.” *Id.* Here, the snowplow operator’s testimony provides some evidence about the actual distance that snow travels. But *Rivers* does not suggest that the snowplow operator’s testimony is enough, in itself, to resolve the factual question regarding the width of the dedicated highway.

Third, as our caselaw indicates, a fact-finder determining the width of the roadway based on actual use must consider the totality of the circumstances. That includes an assessment of the nature of the use and how often it is maintained. *Norfolk Township v. Joffer*, 353 N.W.2d 216, 218 (Minn. App. 1984) (explaining that public use can be established through “seasonal,” “sporadic[]” use established by “a small number of persons,” as well as maintenance that is “performed when necessary” and does not cover all parts of the road). Here, the fact-finder might consider the extent of land used to store snow, the frequency of plowing to that extent, as well as other maintenance activity, such

³ Nonprecedential opinions are not binding authority but may be cited for their persuasive value. Minn. R. Civ. App. P. 136.01, subd. 1(c).

as any work performed on the culvert located in the disputed portion of North Shore Road. *See Leeper v. Hampton Hills, Inc.*, 187 N.W.2d 765, 768 (Minn. 1971) (considering totality of similar record evidence). Weighing all relevant information, the fact-finder is tasked with determining the boundary of the public road.

In sum, there exists a genuine dispute over the width of the township's right-of-way over North Shore Road such that the evidence, including the extent and frequency of the township's storage of plowed snow, "permit[s] reasonable persons to draw different conclusions." *St. Paul Park Refining Co.*, 950 N.W.2d at 549 (quotation omitted). We therefore conclude that the district court erred in granting summary judgment in favor of the township.

II

Next, we turn to the district court's grant of summary judgment for Jaguar. Lamkin concedes that, if the fiber line was installed within the boundary of the township's right-of-way, Jaguar has a valid interest in the property. We agree. There is no dispute that Jaguar is a state-approved public utility service provider that is entitled to "construct, maintain, and operate small wireless facilities, conduit, cable, switches, and related appurtenances and facilities along, across, upon, above, and under any public right-of-way." Minn. Stat. § 237.163, subd. 2. Thus, for the width of North Shore Road that the township can establish actual use, the township has an easement for that public right-of-way, and it had the authority to grant Jaguar's permit to install the fiber line.

Lamkin also does not dispute Jaguar's assertion that its fiber line is buried within 25 feet from the road's centerline. That means, if the township establishes a right-of-way

that is at least 50 feet wide, then Jaguar’s fiber line would fall within that right-of-way. If, on the other hand, the township’s right-of-way is less than 50 feet wide, Jaguar’s fiber line may not fall within the right-of-way. As we explained above, the precise boundary of North Shore Road acquired by public use presents a genuine issue of material fact. *Rixmann*, 723 N.W.2d at 495. Because the extent of Jaguar’s right turns on that same issue, the district court erred in granting summary judgment in favor of Jaguar for the same reasons that summary judgment in favor of the township was not appropriate.⁴

Reversed and remanded.

⁴ We note that Jaguar alternatively argues that it is entitled to summary judgment under the doctrine of laches because Lamkin waited nearly three years after Jaguar applied for permits to challenge Jaguar’s right to do so. Although we “may affirm a grant of summary judgment if it can be sustained on any grounds,” *Doe v. Archdiocese of St. Paul*, 817 N.W.2d 150, 163 (Minn. 2012), we may decline to consider alternative grounds for summary judgment that the district court did not address, *see Monson v. Suck*, 855 N.W.2d 323, 329-30 (Minn. App. 2014) (declining to address on appeal alternative arguments that the district court did not address in the first instance), *rev. denied* (Minn. Dec. 30, 2014). On remand, the district court should determine in the first instance whether Jaguar is entitled to summary judgment on this alternative ground.