

*This opinion is nonprecedential except as provided by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
A25-0359**

In re the Matter of the Application of State of Minnesota
to Register the Title to Certain Land.

**Filed January 12, 2026
Affirmed
Reyes, Judge**

Otter Tail County District Court
File No. 56-CV-20-1941

Eric G. Nasstrom, Scott A. Peitzer, Morrison Sund PLLC, Eden Prairie, Minnesota (for
appellant Richard M. Chodek)

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Minnesota (for respondent State of Minnesota)

Considered and decided by Frisch, Presiding Chief Judge; Reyes, Judge; and
Larson, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

In this land-registration proceeding, appellant argues that the district court erred by
(1) permitting the state to register its express easement; (2) permitting the state to register
a prescriptive easement; and (3) determining that the public could utilize the easements to
reach the state's water-access site as the state's invitees. We affirm.

FACTS

In 2020, respondent State of Minnesota filed an application to register its title to a water-access site on Jolly Ann Lake in Otter Tail County along with title to two easements, under the Minnesota Torrens Act, Minn. Stat. §§ 508.01-.84 (2024).¹ One of the easements is an express easement, which the state purchased along with the water-access site. The other is an easement by prescription.

In 1957, Delmer Korf acquired a significant piece of land that abuts Jolly Ann Lake. In 1976, Korf and his wife sold a portion of their land located directly on the shore of Jolly Ann Lake (the “water-access site”) to the McQuillens. As part of the same conveyance, the Korfs granted to the McQuillens a 33-foot-wide easement for ingress and egress over their remaining land (the “access easement”), connecting the water-access site to County Road 126. In 1986, the McQuillens sold the water-access site along with the access easement to the state.

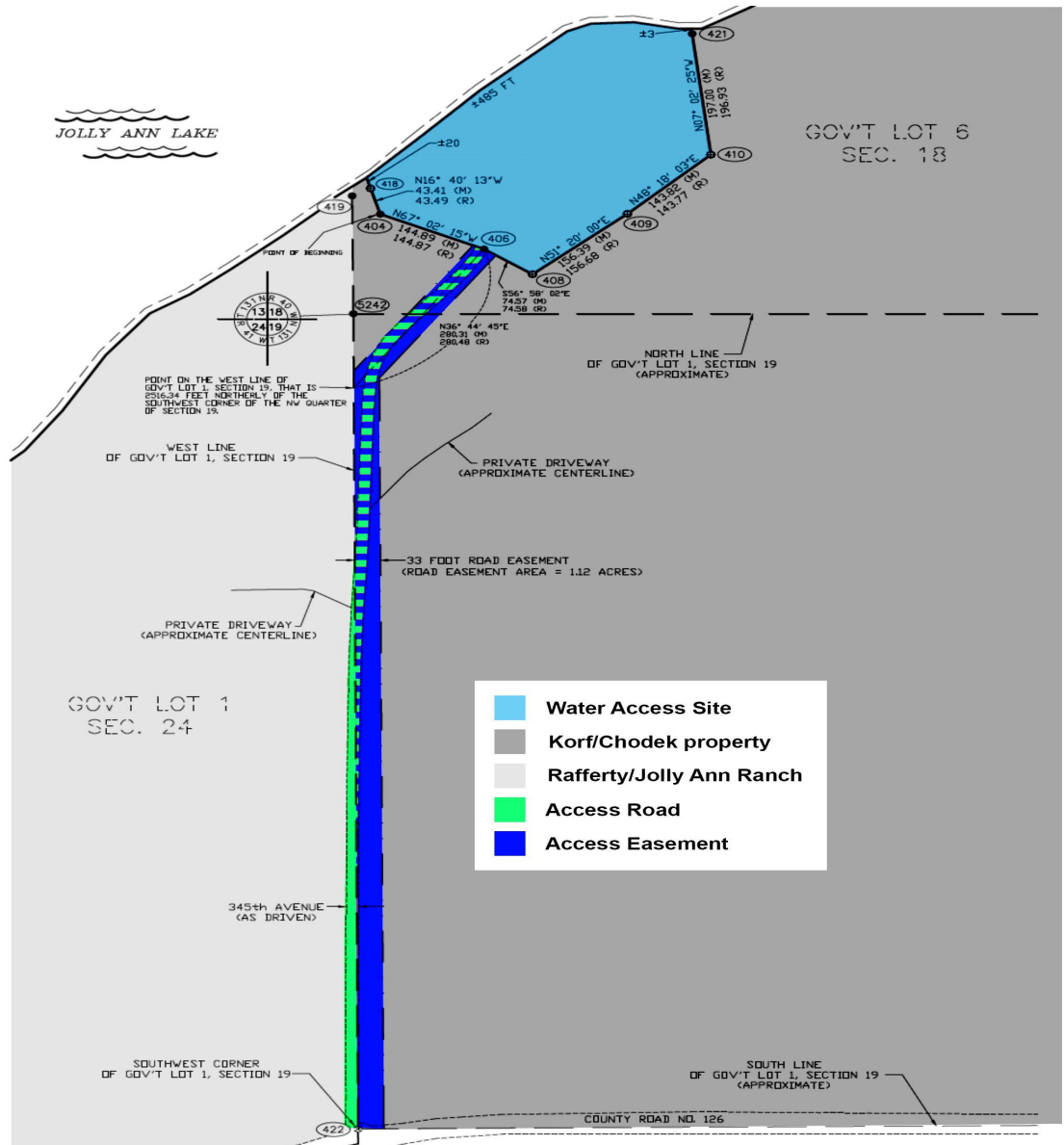
When Korf acquired the property, a small gravel or dirt road (the “access road”) already existed connecting County Road 126 with what is now the water-access site. The access road and access easement travel the same path for a good portion of the way from the water-access site to the county road. The access road then crosses over the access easement’s western boundary and encroaches on property to the west.²

¹ Minnesota adopted the Torrens system to “clear up and settle land titles,” authorizing a proceeding by which title could be settled by judicial decree. *See Hersh Props., LLC v. McDonald’s Corp.*, 588 N.W.2d 728, 733 (Minn. 1999) (quotation omitted).

² The adjacent property owners are not parties to this appeal.

The Korfs later sold the remainder of their land to the Ericksons, who sold it to appellant Richard Chodek in 2001. Chodek's deed contains the same description of the access easement, which burdens his property, on the same terms as the McQuillens' and the state's deeds. Chodek's title-insurance policy, issued in conjunction with the purchase of the property, also notes the access easement and excepts from coverage both the legal description of the access easement and the "variation" between the access road and access easement. The various interests are depicted in the graphic below.³

³ This graphic was created by the state based on the survey and legal descriptions contained in the record. The parties do not dispute the underlying facts depicted in the graphic.



When the McQuillens owned the water-access site, they operated a small resort on the property. From the time the state purchased the property from the McQuillens, it has used the water-access site to provide public access to Jolly Ann Lake. The state, through the Minnesota Department of Natural Resources (the “DNR”), has regularly improved and maintained the access road, including regrading it and adding gravel every one or two years. The DNR’s staff and contractors use the access road to perform regular maintenance

tasks, although they perform maintenance more often in the summer than in the winter. Even during the months when the DNR does not actively maintain the road, the public still uses it for travel on foot and by snowmobile.

Chodek has regularly used the access road to reach his home. Chodek also used the access road to reach the water-access site as a contractor for the state for 13 years. Twice, in November 2015, and from November 2017 to June 2018, Chodek blocked the access road to prevent the public from using it to reach the water-access site. During the time the road was blocked, the DNR received dozens of complaints from members of the public and neighboring property owners because they were unable to reach the water-access site. In June 2018, after requesting that Chodek remove the gate blocking the road to no avail, the DNR removed it.

After the state filed its Torrens application, Chodek intervened as of right pursuant to Minnesota Rule of Civil Procedure 24.01. The state moved for summary judgment on its title-registration action, arguing that (1) the access easement was not barred by the Marketable Title Act and, therefore, the state held a valid express easement allowing the DNR's staff and members of the public to access the water-access site and (2) it held a valid prescriptive easement where the access road encroached onto adjacent lands. The state also argued that it was entitled to summary judgment on any trespass claim raised by Chodek.⁴

⁴ Chodek does not seek review of the district court's trespass determination.

The district court granted summary judgment for the state, determining that “the Marketable Title Act [did] not apply . . . [because] 40 years had not passed from the time the State obtained the property to when [it] filed its application to register title to the land.” Based on this determination, the district court granted the state’s request to register its interest in the access easement. The district court similarly allowed the state to register a 16-foot-wide prescriptive easement corresponding with the access road. The district court denied the state’s request to include the language “and members of the public” in the access-easement description but determined that the public could continue to use the easement to reach the water-access site as the state’s invitees.

This appeal follows.

DECISION

Chodek argues that the district court erred by granting summary judgment to the state by (1) allowing it to register an express easement; (2) allowing it to register a prescriptive easement; and (3) determining that the public could utilize the easements as the state’s invitees. We address each issue in turn.

On appeal from a grant of summary judgment, appellate courts review de novo “whether there are any genuine issues of material fact and whether the district court erred in applying the law.” *Sampair v. Village of Birchwood*, 784 N.W.2d 65, 68 (Minn. 2010). “[W]e view the evidence in the light most favorable to the party against whom summary judgment was granted.” *Id.*

I. The district court did not err by determining that the state’s express easement is enforceable under the Marketable Title Act.

A. The Marketable Title Act

Chodek first argues that the district court erred by allowing the state to register the access easement because the Marketable Title Act (MTA) bars the state from registering the easement. *See* Minn. Stat. § 541.023 (2024). We disagree.

The MTA requires the owner of any less-than-fee-simple “right, claim, interest, incumbrance, or lien founded upon any instrument, event or transaction” to record a notice of the same “within 40 years . . . setting forth the name of the claimant, a description of the real estate affected[,] and of the instrument, event[,] or transaction on which such claim is founded.” Minn. Stat. § 541.023, subd. 1. If a claimant does not record their interest within 40 years, they “shall be conclusively presumed to have abandoned all right, claim, interest, incumbrance or lien based upon such instrument, event, or transaction.” *Id.*, subd 5.

A party must meet two requirements for the MTA to apply. “First, the party desiring to invoke the statute for his own benefit must have a requisite ‘claim of title based upon a source of title, which source has then been of record at least 40 years,’ (i.e., a recorded fee simple title).” *Wichelman v. Messner*, 83 N.W.2d 800, 819 (Minn. 1957) (quoting Minn. Stat. § 541.023, subd. 1). Second, “the person against whom the [MTA] is invoked must . . . ‘have abandoned all right, claim, [or] interest . . . in the property.’” *Id.* (quoting Minn. Stat. § 541.023, subd. 5). The parties do not dispute that Chodek’s fee-simple title has a source of title that is over 40 years old. Instead, they disagree about what instrument the

easement is “founded upon,” because that instrument starts the 40-year timeframe within which the MTA requires the state to register its easement.

Chodek argues that the district court erred when it determined that the access easement was founded upon the 1986 McQuillen-state conveyance because, under the MTA, it was founded upon the 1976 Korf-McQuillen conveyance, which created the access easement. As a result, he claims that the state filed an untimely Torrens application to register the access easement in 2020, rendering the easement unenforceable. Assuming without deciding that Chodek’s interpretation of the statute is correct, we evaluate whether the state’s possession of the access easement satisfies the MTA’s possession exception.

B. The Possession Exception

The state contends that it qualifies for the possession exception in the MTA because it has used its easement continuously and consistent with the nature and purpose of the easement as granted. Chodek argues that the state has at least abandoned through nonuse all parts of the access easement that do not coincide with the access road.

The MTA does not “bar the rights of any person, partnership, state agency or department, or corporation in possession of real estate.” Minn. Stat. § 541.023, subd. 6. When the interest being possessed is an easement, the standard of possession is “use sufficient to put a prudent person on notice of the asserted interest in the land, giving due regard to the nature of the easement at issue.” *Sampair*, 784 N.W.2d at 70. The party seeking the protection of the possession exception in the MTA has the burden to prove “possession beginning at the deadline for filing notice under the MTA—i.e., within 40

years of when the property interest was created—and continuing through the filing of the relevant action regarding ownership.” *Id.* at 67, 73.

Here, assuming that the express easement was founded upon the Korf-McQuillen conveyance in 1976 that created the access easement, the state’s “deadline for filing notice” was 40 years later in 2016. Its “relevant action regarding ownership” was its 2020 Torrens application. Therefore, under *Sampair*, the state has the burden to prove possession beginning in 2016 and continuing through its Torrens filing in 2020. *See id.* at 71 (explaining that “claimant’s possession must begin or have begun at the end of the 40-year period for filing notice and must continue until action is commenced.” (quotation omitted)).

The undisputed facts in the record establish that the state maintained the access road during those years, and indeed for decades earlier. There has been a sign marking the entrance to the access road leading to the state’s water-access site since 1991. The record also shows that Chodek was on notice of the state’s possession of the easement. For example, the easement appears in his 2001 deed and is excepted from coverage in his title report. Chodek used the access road to reach his own home and to reach the water-access site during the 13 years the state contracted with him to perform maintenance for the state.

Chodek also blocked the access road for a short time in November 2015 and from November 2017 to June 2018. The DNR received multiple complaints from the public during the second time period, and it responded by requesting that Chodek remove the gate that he had installed to prevent the public from using the access road. Because Chodek was unresponsive, the DNR removed the gate so that the public could once again reach Jolly Ann Lake by using the access road.

The state must demonstrate that, despite Chodek's temporary blockages of the access easement, it maintained "use sufficient to put a prudent person on notice" of its interest in the land. *See Sampair*, 784 N.W.2d at 70. Here, the state maintained use sufficient for members of the public to know to call the DNR when Chodek blocked the road. Chodek's letters to the state complaining of the public's use of the access easement and his installation of a gate across the access easement provides additional evidence that the state's use sufficiently put Chodek on notice that the state and the public were using the access easement.

We are not persuaded by Chodek's argument that the state abandoned the portion of the access easement that extended beyond the width of the actual road. The access road did not delineate the outer boundaries of the access easement. Furthermore, "[a] claim of abandonment can be upheld only [when] nonuse is accompanied by affirmative and unequivocal acts indicative of an intent to abandon and is inconsistent with the continued existence of the easement." *Richards Asphalt Co. v. Bunge Corp.*, 399 N.W.2d 188, 192 (Minn. App. 1987). Chodek provides no evidence of affirmative actions taken by the state showing that it intended to abandon any part of the easement. Because the state demonstrated use sufficient to satisfy the MTA's possession exception, thereby preserving its right to register its express easement in the Torrens action, we conclude that there are no material fact issues and the district court did not err by granting summary judgment to the state.

II. The district court did not err by determining that the state is entitled to a prescriptive easement coinciding with the current access road leading to the state's water-access property.

Chodek next argues that, because Minnesota law prohibits private parties from taking government property by adverse possession, the state has no legal authority to use “the doctrine of prescriptive easement to gain access to real property.” We are not persuaded.

Our caselaw demonstrates that governmental bodies can obtain property by way of a prescriptive easement. For example, in *Quist v. Fuller*, the supreme court held that public use of land as a roadway established a prescriptive easement in favor of the city of Blaine. 220 N.W.2d 296, 298-300 (Minn. 1974).

Chodek further claims that the state did not meet its burden “to establish by clear and convincing evidence” that it had continuously used the access road for 15 years, as required by law to establish a prescriptive easement.

To establish a prescriptive easement, a party must prove “by clear and convincing evidence” use of someone else’s land “in an actual, open, continuous, exclusive, and hostile manner for 15 years.” *Rogers v. Moore*, 603 N.W.2d 650, 657 (Minn. 1999). “[T]he element of continuous use for a prescriptive easement must be established by clear and convincing evidence consonant with the type of use asserted.” *Id.* For example, establishing and maintaining a driveway over another’s property can be sufficient to support a prescriptive easement claim. *See id.* at 658.

Although Chodek contends that the state employee providing testimony of the state’s continuous use only had personal knowledge beginning in 2013, the employee had

access to maintenance records of prior employees and provided testimony about the DNR's maintenance of the access road from at least 1991. The state provided other evidence, including a photo of the sign at the entrance to the access road, which marked it as the way to reach a public water-access site, and a letter written by Chodek in 2016. Chodek's letter acknowledged that the public had used the access road for ingress and egress to the lake "over the years," acknowledged that Chodek contracted with the DNR to provide maintenance services at Jolly Ann Lake for 13 years, and stated that the DNR had a right to use the "long stretch of gravel" between the county road and the DNR's water-access site "by virtue of the easement conveyed many years ago."

After reviewing this and all of the other evidence presented, the district court determined that both the DNR and members of the general public had "used the Jolly Ann Lake water-access site since 1986." While the maintenance of the road was more frequent during "non-winter months," the district court concluded that the DNR had used and maintained the access road "at least monthly." The district court acknowledged that Chodek had blocked the access road twice, but determined that, by the time the first blockage occurred in 2015, "the DNR had been continuously using the access road for 29 years." We conclude that the district court properly determined that the state demonstrated continuous use of the prescriptive easement area, entitling it to register its prescriptive easement. It therefore properly granted summary judgment to the state regarding the prescriptive easement.

III. The district court did not err by determining that members of the public may utilize the access easement as the state's invitees.

Lastly, Chodek argues that the district court erred by determining that the general public may use the access road to reach the water-access site as the state's invitees because (1) other statutory methods are available for the state to create property interests for the general public; (2) the state does not possess the land over which the easement falls so it cannot give permission for others to use the easement; and (3) the easement does not include "invitees" in its grant. We disagree.

As an initial matter, the availability of other statutory methods that the state could utilize to "create property interests" is irrelevant to our consideration of whether the public may utilize the access road as the state's invitees. Furthermore, Chodek's argument that he, as the fee owner of the servient estate, would have to give permission for members of the public to use the easement is contrary to caselaw, in which we have concluded that an easement interest "is not subject to the will of the possessor of the land." *Willenberg v. Frye*, 3 N.W.3d 23, 28 (Minn. App. 2024) (quoting *Larson v. State*, 790 N.W.2d 700, 703-04 (Minn. 2010)).

We next consider the invitee issue. The supreme court has considered whether the owner of a dominant estate could invite others to use an easement to reach their property when the easement did not include a specific grant to the grantee's invitees. See *Giles v. Luker*, 9 N.W.2d 716, 718 (Minn. 1943). In *Giles*, a property owner conveyed land to a buyer with a deed that included an easement reservation "excepting and reserving to the grantors, their heirs, executors[,] and assigns a permanent right of way for traveling by foot

or wagon.” *Id.* at 717. The owner of the servient estate argued that the dominant-estate owner could not allow gravel trucks to traverse the easement to facilitate the operation of a gravel pit on the dominant estate. *Id.* The supreme court concluded that an easement created by a grant “may include every reasonable use to which the dominant estate may be devoted and is not limited to the purposes for which the dominant estate was used at the time the [easement] was created.” *Id.* at 718. Furthermore, rather than limiting use to the easement owner “by himself in propria persona,” the supreme court concluded that, with the easement owner’s permission, “[a]ll persons having occasion may . . . transact business with [the easement owner] by passing” over the easement. *Id.*

Here, the state’s deed granting it ownership of the water-access site and the access easement uses language similar to the deed in *Giles*. The Korfs granted to the McQuillens, “their assigns, the survivor of said parties, and the heirs and assigns of the survivor,” the water-access site, “together with a 33 foot road easement for ingress and egress.” The McQuillens later granted the same to the state. Even though the dominant estate is now a water-access site and no longer a resort as used by the McQuillens, the state’s use is a reasonable use under *Giles*. Use of the access easement is not limited to use by the DNR or the state alone, as Chodek argues. Rather, anyone with permission from the state may use the access easement to reach its water-access site.

Furthermore, the district court’s determination did not expand the scope of either the access easement or the prescriptive easement. The scope of an easement created by an express grant depends “entirely upon the construction of the terms of the easement agreement.” *Lindberg v. Fasching*, 667 N.W.2d 481, 487 (Minn. App. 2003) (quotation

omitted), *rev. denied* (Minn. Nov. 18, 2003). The scope of a prescriptive easement is “defined by the use made of the land giving rise to the easement.” *Block v. Sexton*, 577 N.W.2d 521, 525-26 (Minn. App. 1998) (quotation omitted). While the holder of an easement may use the land in other ways that align with the general purpose for which the easement was acquired, the extent of the easement “should not be enlarged by legal construction beyond the objects originally contemplated.” *Id.* at 526 (quotation omitted).

The district court determined that the general public had “used the Jolly Ann Lake [water-access] site as invitees of the DNR to date.” It also noted that the public had used the access road to reach the resort when it was in operation on the water-access site, although during that time, the public had to pay a fee to the resort. Ultimately, the district court determined that “[t]he nature of the use of the [water-access] site did not change even though the DNR does not charge a nominal fee for access use.” We agree.

The undisputed record demonstrates that, for many decades, both easements have allowed ingress and egress for members of the public to use the water-access site. Continuing to allow the public to travel the easement does not enlarge the easement’s scope. Because there are no issues of material fact and the district court properly applied the law, we conclude that the district court did not err by determining that the state may allow members of the public as its invitees to utilize the access easement or access road to reach the water-access site.

Affirmed.