No. A11-1116

STATE OF MINNESOTA

IN SUPREME COURT

Brett R. Hanson, et. al.,

Appellants,

vs.

Northern States Power Company, et. al.,

Respondents.

APPELLANTS' BRIEF and ADDENDUM

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How raised: Trial court: In a condemnation action, Respondents, by motion, sought an order in Stearns County District Court reconciling Minnesota Chapter 216E and Minnesota Chapter 117.

Court of Appeals: The court of appeals granted discretionary review and reversed the district court, J. Cleary dissenting. Northern States Power Co. v. Aleckson, 819 N.W.2d 709 (Minn. Ct. App. 2012).

Ruling: Trial court: The district court found that Minnesota Chapter 117 applies to proceedings based on Minn. Stat. § 216E.12, subd. 4, providing for relocation benefits under Minn. Stat. § 117.52.

Court of Appeals: The court of appeals reversed the district court's order, J. Cleary dissenting.

Authority: Minn. Const. art. I, § 13
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II. Did the Court of Appeals err in finding that Respondents, when using the power of eminent domain to condemn private land for the construction of 345 kilovolt electric transmission lines, are not required to comply with Minn. Stat. § 117.187 to provide minimum compensation to landowners who exercise their rights under Minn. Stat. § 216E.12, subd. 4?

How raised: Trial court: In a condemnation action, Respondents, by motion, sought an order in Stearns County District Court reconciling Minnesota Chapter 216E and Minnesota Chapter 117.

Court of Appeals: The court of appeals granted discretionary review and reversed the district court, J. Cleary dissenting. Northern States Power Co. v. Aleckson, 819 N.W.2d 709 (Minn. Ct. App. 2012).

Ruling: Trial court: The district court found that Minnesota Chapter 117 applies to proceedings based on Minn. Stat. § 216E.12, subd. 4, providing for minimum compensation to Appellants under Minn. Stat. § 117.187.

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STATEMENT OF THE CASE

This is an appeal of the August 6, 2012 decision of the Minnesota Court of Appeals, reversing the Order and Judgment of the Stearns County District Court issued May 18, 2011 by Judge Frank Kundrat. A. Add. 001-008.[1] This Court granted Appellants' petition for review of an adverse decision by the court of appeals by order filed on October 16, 2012. A. Add. 018-019.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

This case arises in the context of condemnation proceedings begun by Respondents in 2010 as part of the CAPX2020 project. CAPX2020 is a multi-phase project undertaken by a conglomerate of public utility companies to construct over 600 miles of new high voltage electrical transmission lines (hereinafter, "HVTL") traversing 21 Minnesota counties, from North and South Dakota across Minnesota into Wisconsin. A. App. 007-008.[2]

Appellants in this case were not willing sellers of their homes. Appellants are private homeowners with young families. John and Jeannie Stich have four children under the age of nine at the time of the condemnation proceeding. A. App. 079-082. John Stich built much of their home himself. A. App. 084-085. Brett and Nancy Hanson have two children - one in middle school, the other in high school. A. App. 087-090. Part of Respondents' permanent easement goes directly through the Hanson's pole shed. A. App. 092-093.

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[1] References to Appellant's Addendum.
[2] References to Appellant's Appendix.

On October 20, 2010, Respondents initiated a condemnation action by filing a Petition with the Stearns County district court administrator. A. App. 098-112. Respondents sought to acquire easements for the construction, operation, and maintenance of a 345 kilovolt HVTL from Monticello to St. Cloud, Minnesota. A. App.024.

Appellants became aware that Respondents would place 150-to-170 foot tall poles with 345-kilovolt double-circuit HVTL in their backyards. A. App. 094-096. Reluctantly, Appellants exercised their rights under Minnesota statute § 216E.12, subd. 4. The statute provides Appellants the right to require Respondents to buy their property in fee. Appellants obtained an appraisal of their property, requested relocation benefits and minimum compensation to obtain a similar property in the community. Such requests were denied by Respondents.

Respondents then brought a motion to reconcile Minnesota Statutes Chapters 216E and 117. A. App. 113-138. Both parties briefed the issue and the court heard arguments on February 16, 2011. A. App. 139-175. The district court found that because the legislature did not expressly exempt or except the application of Chapter 117 to Chapter 216E, the remedies and benefits provided for in Chapter 117 apply to Chapter 216E. Thus, Respondents were required to provide minimum compensation and relocation benefits to Appellants when exercising their rights under Minn. Stat. § 216E.12, subd. 4.

Similarly situated landowners in Wright County sought the same benefits as Appellants in this case. The Wright County District Court also found that the statutes are clear and unambiguous, and that Respondents must comply with the provisions of Chapter 117. A. App. 176-190. Respondents sought discretionary review in the Court of Appeals under Minn. R. Civ. P. 105. A. Add. 009-011. The Court of Appeals granted review and reversed the district court in a 2-1 decision, with Judge Cleary dissenting. A. Add. 012-017. Respondents petitioned for review and the petition for review was granted on October 16, 2012. A. Add. 018-019.

ARGUMENT

I. WHEN INTERPRETING A STATUTE, THE COURT APPLIES A DE NOVO STANDARD OF REVIEW.

No deference is given to a lower court on questions of law. Modrow v. J.P. Foodservice, Inc., 656 N.W.2d 389, 393 (Minn. 2003). Interpretation of a statute is a question of law that the appellate court reviews de novo. Weston v. McWilliams & Associates, Inc., 716 N.W.2d 634 (Minn. 2006).

The object of the court when interpreting statutory provisions is to "ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16 (2012). When interpreting a statute, the court first determines whether the statute's language, on its face, is clear or ambiguous. American Family Ins. Group v. Schroedl, 616 N.W.2d 273 (Minn. 2000). If the language of the statute is clear and free from ambiguity, courts apply its plain meaning. Id.; see also Minn. Stat. § 645.16 (stating that when the words of a statute are clear, "the letter of the law

shall not be disregarded under the pretext of pursuing the spirit"). Whenever possible, a statute should be interpreted to give effect to all of its provisions; no word, phrase, or sentence should be deemed superfluous, void, or insignificant. Amaral v. Saint Cloud Hosp., 598 N.W.2d 379, 384 (Minn. 1999).

Courts review a statute's content to discern meaning in the full context of the act or provision and consider sections of a statute that related to the same subject matter. City of East Bethel v. Anoka County Housing and Redevelopment Authority, 798 N.W.2d 375, 380 (Minn. Ct. App. 2011). Additionally, courts "should be extremely cautious in reading an exception into a statute." United States v. City Nat'l Bank of Duluth, 31 F.Supp. 530, 535 (D. Minn. 1939). The standard of review requires that the court of appeals decision, which is based on statutory interpretation, be given no deference.

II. THE COURT OF APPEALS ERRED IN FINDING THAT APPELLANTS ARE NOT QUALIFIED FOR RELOCATION BENEFITS WHEN THEY EXERCISE THEIR RIGHTS UNDER MINN. STAT. § 216E.12, subd.4, BECAUSE APPELLANTS ARE "DISPLACED PERSONS" ELIGIBLE FOR REMEDIES UNDER MINN. STAT. § 117.52.

The Minnesota Constitution requires that private property shall not be taken, destroyed or damaged for public use without just compensation therefor, first paid or secured. See Art. I, § 13. Minnesota eminent domain law pre-empts other statutes or laws regarding eminent domain:

> Notwithstanding any other provision of law, including any charter provision, ordinance, statute, or special law, all condemning authorities, including home rule charter cities and all other political subdivisions of the state, must exercise the power of eminent domain in accordance with the

provisions of this chapter, including all procedures, definitions, remedies, and limitations. Minn. Stat. § 117.012, subd.1 (2012).

The only exceptions to preemption do not apply here.[3] All condemning authorities using the power of eminent domain must comply with all the remedies and provisions of this chapter.

A. The court of appeals erred in finding that Minn. Stat. § 117.52 does not apply to Appellants when invoking Minn. Stat. § 216E.12, subd.4 because the court incorrectly interpreted the definition of "displaced person" to the coercive power of eminent domain.

The court of appeals focused narrowly on the "choice" or "election" that condemnees are forced to make when exercising their rights under Minn. Stat. § 216E.12, subd. 4, also known as the "Buy the Farm" statute. The statute provides, in relevant part, that when a homestead is proposed to be acquired for the construction of a HVTL with a capacity of 200 kilovolts or more by eminent domain proceedings, the fee owner shall have the option to require the utility to condemn a fee interest in any amount of contiguous, commercially viable land within 60 days after receipt of the notice of the objects of the petition filed pursuant to Minn. Stat. § 117.055. Under Minn. Stat. § 216E.12, Appellants had only 60 days to decide whether to live with a HVTL and permanent easement on their homesteads or whether to move away and sell their land to the

[3] The only exceptions to the application of Chapter 117 are found in Minn. Stat. § 117.012, subd. 3, for taking of property under laws relating to drainage or to town roads when those laws themselves expressly provide for the taking and specifically prescribe the procedure and the taking of property for a project undertaken by a watershed district under chapter 103D or for a project undertaken by a drainage authority under chapter 103E.

Respondents. The court of appeals' interpretation of the rights of landowners and the responsibilities of condemning authorities in Minnesota is wrong.

Nothing in this statute limits or prohibits the private landowner from receiving all the benefits available under Chapter 117 when exercising their rights under Minn. Stat. § 216E.12. Minn. Stat. § 117.012 requires "all condemning authorities to exercise the power of eminent domain in accordance with the provisions of this chapter, including all procedures, definitions, remedies and limitations." Minnesota Statute § 117.012 further provides, "additional procedures, remedies or limitations that do not deny or diminish the substantive and procedural rights and protections of owners under this chapter may be provided by other law..." A perfect example of "additional remedies" is the option provided under Minn. Stat. § 216E.12, subd. 4.

The court of appeals majority incorrectly applied the definition of "displaced person" as written in the Uniform Relocation Act. 42 USC § 4601(6)(A)(i)(I) (2006), hereinafter ("URA"). Minnesota adopted URA's definition under Minn. Stat. § 117.50. That definition states, in relevant part:

> **(A)** The term "displaced person" means, except as provided in subparagraph (B)—
>
> **(i)** any person who moves from real property, or moves his personal property from real property—
>
> **(I)** as a direct result of a written notice of intent to acquire or the acquisition of such real property in whole or in part for a program or project undertaken by a Federal agency or with Federal financial assistance;

The court of appeals found Appellants were not entitled to relocation benefits because they voluntarily chose to leave their property. However, there is nothing voluntary about the entire process. Any choice in condemnation, such as whether to move away from the power lines as provided in Minn. Stat. § 216E.12, or whether to remain with a power line and permanent easement on their property does not remove Appellants from Chapter 117. Appellants' choices were made in reaction to the condemnation action thrust upon them by Respondents in which all or part of their property would be taken for a HVTL project.

The United States Court of Appeals, Eighth Circuit, found the "URA was intended to benefit those displaced by public agencies with coercive acquisition power, such as eminent domain. It was intended to benefit individuals who were not willing sellers." Moorer v. Dep't of Hous. and Urban Development, 561 F.2d 175 (8th Cir. 1977). Courts have generally ruled in favor of the property owners when presented with the question of whether justice and fairness require that economic injuries caused by the entity using eminent domain for a public purpose be compensated. Wensmann Realty, Inc. v. City of Eagan, 734 N.W.2d 623, 632 (Minn. 2007). See also, DeCook v. Rochester Int'l Airport Joint Zoning Bd., 796 N.W.2d 299 (Minn. 2011); Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982).

The definition of "displaced person" includes situations like this one, where Appellants moved from their homes as a direct result of a written notice of intent to acquire real property "in whole or in part" for a government project. The

definition includes Appellants, because part of their land was to be taken for a permanent easement, before they exercised their rights under Minn. Stat. § 216E.12, subd. 4. Either way, all or part of their land would be taken. Therefore, Appellants meet the requirements of "displaced person" under Chapter 117.

B. Appellants must move because Minn. Stat. § 216E.12, subd. 4 provides that an easement taking may be expanded to a taking of the entire contiguous parcel in fee, thus title transfers to Respondents.

Due to the permanent easement taking applicable to their homesteads, Appellants exercised their rights under Minnesota law to require a total taking of their land in fee. Once the election was made, title must transfer and Appellants must leave. Appellants had no choice as to where the power line would be built. Appellants were notified that their homesteads were on the approved route for a HVTL. Appellants were thrust into a judicial process in which there was, and continues to be, much uncertainty.

Appellants do not know how much money they will be paid for their homes by Respondents. Since no agreement was reached in negotiation, Appellants proceeded with condemnation hearings. Respondents appealed both commissioner's awards and Appellants cross-appealed. A. App. 191-239. During the pendency of these proceedings, Appellants had to obtain new homes without knowing if they will be paid enough money to buy a true replacement for their

homes. Appellants are in a worse financial situation due to the move, because their relocation expenses were not paid by Respondents.

Respondents, wielding the power of eminent domain, have the choice as to where the lines will be built and are able to continue building their project through the use of "quick-take" easements provided for in Minn. Stat. § 117.042. Once a quick take petition is granted, title transfers to Respondents for the permanent easement. Appellants may still be in their homes while construction takes place, even if they elect to be bought out in whole by Respondents, because the entire condemnation process takes much more time than a typical arm's length home sale.

The court of appeals majority relied upon the interpretation of a federal regulation in a congressional committee report it found "particularly instructive" to show that Congress considered circumstances akin to those present here. Northern States Power Co. v. Aleckson, 819 N.W.2d 709, 713 (Minn. Ct. App. 2012). The report was written in 1987 when the Uniform Relocation Act was amended. H.R. Rep. No. 100-27, at 230 (1987) reprinted in 1987 U.S.C.C.A.N. 121, 230. The report is helpful, however, Respondents failed to provide the context of the report that clearly shows why it is not applicable to this case.

The House committee provided specific examples of situations it described as "voluntary," rendering property owners ineligible for relocation assistance. The report states: "For example, such cases may include a person selling property to an entity that does not have the power of eminent domain." Id. A. App. 240-

241. Clearly, that is not the case here. Respondents have the power of eminent domain and are using it to complete one of the largest HVTL construction projects the state has seen in 30 years.

The other example provided by the committee is when "the sale of property to the Federal or State agency in response to a public invitation or solicitation for offers by an agency which makes it clear that it will not purchase the property unless a mutually satisfactory agreement between the two parties can be reached." A. App. 241. Again, that is not the case here. Respondents' project goes on even while the instant litigation continues and is not contingent upon the making of a mutually satisfactory agreement between the parties. Neither example applies in this case. Respondents' attempt to place a square peg in a round hole does not work. In taking the House report out of context, Respondents merely provide the court with more reasons to find in Appellants favor because neither example has anything to do with eminent domain.

The court of appeals also relied on federal relocation regulations found in 49 C.F.R. § 24.2(a)(9)(ii)(D) (2011) for the proposition that Appellants who elected to expand the taking of a permanent easement to a total take in fee under Minn. Stat. § 216E.12, subd. 4 are not "displaced persons" eligible for relocation benefits, because they are not displaced as a direct result of a project. The appendix to this regulation states that only persons or businesses that are temporarily displaced, (for less than a year) due to rehabilitation of a building are those not to be considered "displaced persons." A. Add. 020-031.

Appellants are not temporarily displaced due to the rehabilitation of a building. They are "displaced persons" due to a condemnation action which triggered a series of events, resulting in a total fee taking of their residential homesteads. Respondents cited many outdated cases in a footnote to their brief to the court of appeals. See pg. 19, Appellant's Brief (discussing the definition of "displaced person" in cases decided before the 1987 Amendments to the Uniform Relocation Act were passed.) These cases are not helpful to the court because they are not based on current law.

In In the Matter of Jensen Field v. Board of Regents of the University of Minnesota, 817 N.W.2d 724 (2012), the Minnesota Court of Appeals found that airplane hangar tenants whose leases were not renewed due to a federal wind energy project were "displaced persons" because the leases were not renewed was due to the federally-funded project. The court cited 49 C.F.R. § 24.203(b) (2010), which states, in relevant part, eligibility for relocation assistance shall begin on the date of notice of the initiation of negotiations, defined in § 24.2(a)(15). Similarly, Appellants became "displaced persons" when Respondents provided notice of their intent to take an easement on their homesteads. This is not an arm's length transaction on the open market. Appellants did not voluntarily give up their homes because they did not want to move and never planned on moving.

III. THE COURT OF APPEALS ERRED IN DETERMINING APPELLANTS ARE NOT ENTITLED TO MINIMUM COMPENSATION UNDER MINN. STAT. § 117.187 WHEN EXERCISING THEIR RIGHTS UNDER MINN. STAT.

§ 216E.12, subd.4 BECAUSE THE END RESULT IS A TOTAL TAKING IN FEE IN A CONDEMNATION ACTION.

Appellants and all other condemnees in the wake of the CAPX2020 project face many uncertainties, such as: will there be comparable housing available in their community? Will they have to change school districts? Will they have enough money to purchase a comparable home to what they once had? Will the market value go down and result in an unfavorable appraisal? These public concerns were meant to be addressed by Minn. Stat. § 117.187. Respondents' interpretation of the statute would not only interfere with legislative intent, it would also cause real harm to the affected homeowners.

This Court has previously held that where property owners elect to expand the taking of an easement to a complete taking of their land in fee, utilities must additionally purchase any property contiguous to easements they condemn for HVTL right-of-ways as a condition precedent to their use of the power of eminent domain against the landowners. Cooperative Power Ass'n v. Aasand, 288 N.W.2d 697, 700 (Minn. 1980). The Aasand court stated that such a purchase is an acquisition for a public purpose. Id. The court did not construe the statute as any sort of limitation on the property owner's rights, but rather as a precondition to Respondent's use of eminent domain. Judge Cleary, in his dissent, found that Respondents, "...ignore the obvious precondition to such an election: an involuntary taking of the private residential property..." of Appellants. Northern States Power Co. v. Aleckson, 819 N.W.2d 709 at 714 (Minn. Ct. App. 2012) (J.

Cleary, dissenting). Any choice Appellants have in the matter is a mere, "Hobson's choice." Id.

The Aasand court found Minn. Stat. § 216E.12 responds to parties most affected by the operation of HVTL and eases the difficulties of relocation by shifting the transaction cost of locating a willing purchaser for the burdened property from landowner to utility. Id. As a matter of public policy, the burden of the transaction costs should fall on the condemning authority, not the individual landowners who are being asked to sacrifice their homes for the greater good.

The district court found that the legislature did not except minimum compensation under Minn. Stat. § 117.187 or relocation benefits under Minn. Stat. § 117.52 from Chapter 216E proceedings. In fact, it found the legislature provided that all condemning authorities "must exercise the power of eminent domain in accordance with the provisions of" Minnesota Statutes Chapter 117.

The court of appeals found that Appellants' arguments were "disingenuous" because Appellants could live in their homes and accept the power lines and permanent easement. But Respondents have been allowed to hold the state's power of eminent domain to take private land, against the will of the owner, for public use. Projects built for the benefit of the public as a whole can be a severe detriment to the individual private owner. Because the power of eminent domain is such a thorough invasion of property rights and can cause such major disruption of the peace and enjoyment of residences, businesses, and farms, the legislature intended broad landowner protection. The protection is

not for the acquiring authority; rather, it is for the individual landowner being forced into a situation they can neither control nor stop.

The Aasand court found that Minn. Stat. § 216E.12, subd.4 "reflects a creative legislative response to a conflict between rural landowners and utilities concerning HVTL right-of-ways." Aasand, at 700. Appellants should not be penalized for exercising their rights under Minn. Stat. § 216E.12, subd.4 and should be accorded minimum compensation and relocation benefits.

CONCLUSION

If the court of appeals decision is not reversed, there will be a chilling effect on future HVTL condemnees who may not be able to afford to move away from the power lines, rendering Minn. Stat. § 216E.12, subd. 4 practically useless. The legislature provided no limitation, exemption, or exception in Minnesota Statutes Chapter 117 upon which Respondents may avert their obligation to Appellants when exercising their rights under Minn. Stat. § 216E.12, subd.4.

The court of appeals decision runs contrary to the plain meaning of established Minnesota law and should be reversed. The district court correctly determined that Appellants are entitled to relocation benefits and minimum compensation when they exercise their rights under Minn. Stat. § 216E.12, subd. 4, because Appellants have no choice in the taking of their land for a HVTL project implemented by Respondents on behalf of the public.

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Dated: 11-14-12 By: _____

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RULE 132.01 subd. 3 CERTIFICATE

Pursuant to Rule 132 of the Minnesota Rules of Civil Appellate Procedure, the undersigned certifies that:

1. Appellants' Brief was prepared using Word 2010 in 13 point text;
2. Appellants' Brief contains 4,041 words including all text, headings, footnotes, and quotations; and
3. Appellants' Brief complies with the typeface and word count requirements of Rule 132.01.

QUINLIVAN & HUGHES, P.A.

Dated: 11-14-12 By: _____

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