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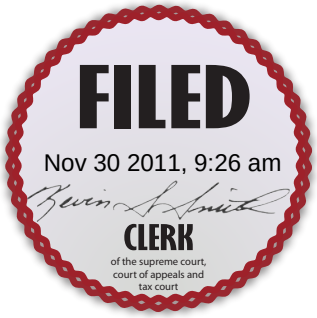

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IN THE
COURT OF APPEALS OF INDIANA

LARRY W. PFLUG, REBECCA K. PFLUG, MICHAEL G. PFLUG, KRISTI A. PFLUG, GENE A. PFLUG, and GLORIA J. PFLUG,	)	
Appellants-Defendants,	)	
vs.	)	No. 26A04-1104-PL-217
STATE OF INDIANA,	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE GIBSON CIRCUIT COURT
The Honorable Jeffrey F. Meade, Judge
Cause No. 26C01-1010-PL-38

November 30, 201

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Three brothers and their spouses jointly owned land that was designated for appropriation by eminent domain. Pursuant to the eminent domain statute, the State obtained a property assessment from appraisers and filed it in court. The clerk of the court then mailed a copy of the assessment to each owner via certified mail. The owners then had twenty days from the mailing date to file their exceptions to the assessed value of their property. However, they did not file their exceptions until twenty-two days after the date listed on the certified mail return receipts, and the trial court granted the State's motion to strike the exceptions as untimely.

The owners, Larry W. Pflug and Rebecca K. Pflug, Michael G. Pflug and Kristi A. Pflug, and Gene A. Pflug and Gloria J. Pflug (collectively, the "Landowners") now appeal the trial court's order, claiming that the mailings were received and signed by only three of the six Landowners and that, as such, they were not properly served until five days after the return receipt date, when the other three Landowners supposedly gained actual knowledge of the appraisers' report. Finding no error, we affirm.

Facts and Procedural History

The three Pflug brothers and their spouses owned a tract of land in Gibson County. Each brother held his undivided one-third interest with his spouse as tenants by the entireties. Each couple was a tenant in common vis-à-vis the other two couples. On October 21, 2010, the State Department of Transportation ("the State") filed a complaint for the appropriation of the Landowners' tract as part of the Interstate 69 expansion project. The trial court

subsequently appointed three independent appraisers to assess the property. On December 21, 2010, the appraisers filed a report with the trial court that assessed the fair market value of the Landowners' tract at $137,500. The trial court issued an order on December 30, 2010, directing the clerk of the court to send copies of the assessment report via certified mail to each of the six Landowners.

Six return receipts were signed, all of them dated January 5, 2011. Rebecca signed the return receipt for both her copy of the assessment and Larry's copy. Likewise, Kristi signed for her copy and Michael's copy, and Gene signed for his copy and Gloria's copy. On January 27, 2011, the Landowners filed exceptions to the assessment report, claiming that Larry, Michael, and Gloria did not receive proper service on January 5, 2011, and that the operative date for their notice was not until January 10, 2011, when the three purportedly gained actual knowledge of the assessment.

The State filed a motion to strike the Landowners' exceptions as untimely, and on February 14, 2011, the trial court granted the State's motion. Notwithstanding, the trial court granted the Landowners' subsequent motion for a hearing on the issue of timeliness. On April 15, 2011, the trial court issued an order reaffirming its February 14, 2011 order striking the Landowners' exceptions to the assessment as untimely and awarding them $137,500 as compensation for the State's appropriation of their tract. The Landowners appeal. Additional facts will be provided as necessary.

Discussion and Decision

The Landowners contend that the trial court erred in ordering that their exceptions to

the appraisers' report of assessed value be stricken as untimely. In its order, the trial court entered findings of fact and conclusions of law. As such, we apply a two-tiered standard of review: first, we consider whether the evidence supports the findings of fact; and second, we consider whether the findings support the judgment. *Wymberley Sanitary Works v. Batliner*, 904 N.E.2d 326, 333 (Ind. Ct. App. 2009), *trans. denied*. We may not set aside the judgment unless it is clearly erroneous. *Id*. "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference. A judgment is clearly erroneous if it relies on an incorrect legal standard." *Id*. (citations and quotation marks omitted). In conducting our review, we neither reweigh evidence nor judge witness credibility; rather, we consider only the evidence and reasonable inferences most favorable to the judgment. *Id*. Although we defer substantially to findings of fact, we do not defer to conclusions of law. *Id.*

Here, the Landowners do not challenge the trial court's findings. Rather, they assert that the trial court misinterpreted the notice requirements contained in the eminent domain statute. "Eminent domain proceedings are statutory, and where the statute fixes a definite procedure[,] it must be followed." *Hass v. State Dep't of Transp.*, 843 N.E.2d 994, 997 (Ind. Ct. App. 2006), *trans. denied*. Indiana Code Section 32-24-1-11 addresses notice requirements and time limitations for filing exceptions to assessed value of property appropriated via eminent domain and provides in pertinent part,

> (a) Any party to an action under this chapter aggrieved by the assessment of benefits or damages may file written exceptions to the assessment in the office of the circuit court clerk. Exceptions to the assessment must be filed not later than twenty (20) days after the filing of the

report.

….

> (c) Notice of filing of the appraisers' report shall be given by the circuit court clerk to all known parties to the actions and their attorneys of record by certified mail. The period of exceptions shall run from and after the date of mailing. Either party may appeal a judgment as to benefits or damages as in civil actions.

In *State v. Universal Outdoor, Inc.*, 880 N.E.2d 1188 (Ind. 2008), our supreme court harmonized subsections (a) and (c), holding that "the exception filing period commences with the filing of the appraisers' report, in accordance with subsection (a), and ends twenty days after the court clerk's *mailing* of notice of filing of the report to the parties, as prescribed in subsection (c)." *Id*. at 1192 (emphasis added). "[U]nless exceptions are filed within the statutory period, there is no jurisdiction to try the issue of damages." *Id*. at 1191 (citing *S. Ind. Gas & Elec. Co. v. Decker*, 261 Ind. 527, 529, 307 N.E.2d 51, 53 (1974)).

Here, the appraisers' report was filed December 21, 2010. Thus, the Landowners could have filed written exceptions to the appraisers' assessment of their property value at any time from that date to twenty days after the clerk of the court sent each of them a notice by certified mail. The record does not indicate the date upon which the notices were actually mailed. However, the record contains copies of the six return receipts, all of which bear a date of January 5, 2011. Appellants' App. at 58-63. Even using that date in calculating the twenty days, the period for filing exceptions would have expired January 25, 2011. The Landowners did not file their exceptions until January 27, 2011, and therefore such filing was untimely as a matter of law.

The Landowners' argument that the twenty-day period did not begin to run until the three non-signatory spouses purportedly gained actual notice of the appraisers' report is based on a false premise. As stated, the period for filing exceptions extends only to twenty days after the clerk's *mailing*, not the Landowners' *receipt*, of the notices. *Universal Outdoor*, 880 N.E.2d at 1192. Based on the foregoing, we find no error in the trial court's determination that the Landowners' exceptions were untimely filed. Accordingly, we affirm.

Affirmed.

BAILEY, J., and MATHIAS, J., concur.