

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 14, 2012

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2011AP1038

Cir. Ct. No. 2010CV3891

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

WILLKOMM DEVELOPMENT, LLP,

PLAINTIFF-APPELLANT,

v.

WISCONSIN DEPARTMENT OF TRANSPORTATION,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Racine County:
DENNIS J. BARRY, Judge. *Affirmed.*

Before Brown, C.J., Reilly, J. and Neal Nettesheim, Reserve Judge.

¶1 PER CURIAM. Willkomm Development, LLP appeals from an order dismissing its WIS. STAT. § 32.05 (2009-10)¹ appeal challenging the amount of compensation it received for property it conveyed to the State of Wisconsin in lieu of condemnation. We agree with the circuit court that Willkomm did not timely file its appeal. Therefore, we affirm.

¶2 The following facts are undisputed. On February 17, 2010, Willkomm conveyed property to the State of Wisconsin in lieu of condemnation. The conveyance, a warranty deed, noted that JP Morgan Chase Bank, NA had an interest of record in the property. Willkomm concedes that it received a copy of the warranty deed at the February 17 closing. A February 17, 2010 letter from the Division of Transportation, System Development transmitted to Willkomm the State's payment for the property and stated that "[t]he original conveyance has been recorded with the Racine Register of Deeds." The letter also stated:

Section 32.05(2a), Wisconsin Statutes, provides that within six months after the date of the recording of this conveyance you have the right to appeal from the amount of compensation stated on this conveyance in the manner set forth in Sec. 32.05(9) to (12) and Ch. 808 and 809, Wisconsin Statutes....

On April 7, 2010, the deed was recorded at the Racine County Register of Deeds.²

¶3 On December 21, 2010, Willkomm filed its WIS. STAT. ch. 32 appeal challenging the compensation it received for the property. The State moved to

¹ All subsequent references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

² The negotiation diary included in the record indicates that there was a delay in obtaining a partial mortgage release from JP Morgan Chase. On the date the partial release was received, April 5, 2010, the condemnor sent the warranty deed to the Register of Deeds for recording.

dismiss because Willkomm's ch. 32 appeal was not filed within six months of April 7, 2010, the date the conveyance was recorded. *See* § 32.05(2a).

¶4 WISCONSIN STAT. § 32.05(2a) provides in pertinent part:

The condemnor shall record any conveyance by or on behalf of the owner of the property to the condemnor executed as a result of negotiations under this subsection with the register of deeds of the county in which the property is located. The conveyance shall state the identity of all persons having an interest of record in the property immediately prior to its conveyance, the legal description of the property, the nature of the interest acquired and the compensation for such acquisition. The condemnor shall serve upon or mail by certified mail to all persons named therein a copy of the conveyance and a notice of the right to appeal the amount of compensation under this subsection. Any person named in the conveyance may, within 6 months after the date of its recording, appeal from the amount of compensation therein stated in the manner set forth in subs. (9) to (12) and chs. 808 and 809 for appeals from an award under sub. (7). For purposes of any such appeal, the amount of compensation stated in the conveyance shall be treated as the award and the date the conveyance is recorded shall be treated as the date of taking and the date of evaluation.

¶5 Willkomm argued in the circuit court that the plain language of WIS. STAT. § 32.05(2a) means that it should have received a copy of the recorded conveyance in order to trigger the six-month appeal period. The State objected that Willkomm's construction was at odds with the statute's plain language.

¶6 The circuit court granted the State's motion to dismiss because the condemnor acted as required by the plain language of the statute. The court found that Willkomm received a copy of the conveyance at the February 17 closing and

notice of its appeal rights in the February 17 letter transmitting payment for the property.³ These findings are supported by the record.

¶7 On appeal, Willkomm renews its argument that WIS. STAT. § 32.05(2a) means that the six-month appeal period does not commence until the condemnor provides a copy of the recorded conveyance with notice of the appeal rights. The State disagrees with Willkomm’s view of the statute, as do we.

¶8 Statutory interpretation presents a question of law that we review de novo. *Harnischfeger Corp. v. LIRC*, 196 Wis. 2d 650, 659, 539 N.W.2d 98 (1995). We primarily focus on the statutory language as an expression of the legislature’s intent. *State ex rel. Kalal v. Circuit Court*, 2004 WI 58, ¶44, 271 Wis. 2d 633, 681 N.W.2d 110. When the statute’s language manifests a clear meaning, we apply that meaning. *Lincoln Sav. Bank, S.A. v. DOR*, 215 Wis. 2d 430, 441, 573 N.W.2d 522 (1998). We cannot rewrite a clear statute to meet a litigant’s desired construction of it. *See La Crosse Hosp. v. La Crosse Cnty.*, 133 Wis. 2d 335, 338, 395 N.W.2d 612 (Ct. App. 1986).

¶9 Willkomm relies upon the order of the statutory language to buttress its claim that the condemnor had to serve a recorded copy of the conveyance and the appeal rights to trigger the six-month appeal period. We, however, focus on the plain language of the provision at issue. The plain language of the statute does not require that the condemnor serve the owner with the recorded conveyance. The statute states: “The condemnor shall serve upon or mail by certified mail to

³ The court observed that Willkomm actually had extra time to challenge the compensation because the six-month appeal period did not start until the conveyance was recorded on April 7, 2010, almost two months after the closing.

all persons named therein a copy of the conveyance and a notice of the right to appeal the amount of compensation under this subsection.” WIS. STAT. § 32.05(2a). The meaning is plain. To construe the statute as Willkomm urges would require adding the word “recorded” to this provision, which we cannot do.

¶10 Willkomm argues that the statute is ambiguous. The record does not establish that Willkomm made this argument in the circuit court, and we do not consider it for the first time on appeal. *See Segall v. Hurwitz*, 114 Wis. 2d 471, 489, 339 N.W.2d 333 (Ct. App. 1983).

¶11 Willkomm next argues that WIS. STAT. § 32.05(2a) requires that the condemnor inform the owner when the appeal time commences and ends. Again, Willkomm reads into the statute a requirement that is not there. Furthermore, it is undisputed that the February 17 letter informed Willkomm that the six-month appeal period commences upon recording of the conveyance.

¶12 Finally, Willkomm attempts to assert the rights of JP Morgan Chase Bank, the mortgagee. The circuit court rejected Willkomm’s argument that the appeal period did not commence because JP Morgan Chase did not receive a copy of the recorded conveyance or the appeal rights. The court noted that JP Morgan did not commence an appeal or argue that its rights were adversely affected by the manner in which the condemnor proceeded. We fail to see how attempting to vindicate whatever rights JP Morgan Chase had under the statute excuses Willkomm’s failure to commence a timely appeal to challenge the compensation.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

