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IN THE
COURT OF APPEALS OF INDIANA

624 Broadway, LLC,
Appellant-Plaintiff,

v.

Gary Housing Authority,
Appellee-Defendant.

December 27, 2021

Court of Appeals Case No. 21A-CT-653

Appeal from the Lake Superior Court

The Honorable Stephen E. Scheele, Judge

Trial Court Cause No. 45D05-1910-CT-1085

Mathias, Judge.

[1] 624 Broadway, LLC appeals the trial court's entry of summary judgment for the Gary Housing Authority on 624 Broadway's complaint for damages relating to the Gary Housing Authority's exercise of eminent domain over real property owned by 624 Broadway. 624 Broadway raises four issues for our review, which we restate as follows:

I. Whether federal law permitting an administrator appointed by the Secretary of the United States Department of Housing and Urban Development ("HUD") to act in his own discretion in the capacity of the Gary Housing Authority preempts state laws that require a seven-member Board of Commissioners for a local housing authority and the approval by the fiscal body that created the housing authority before the authority can exercise eminent domain.

II. Whether Indiana law permits the Gary Housing Authority to exercise eminent domain to acquire real property for a mixed-use development that will include affordable housing.

III. Whether 624 Broadway's claim that the manner in which the Gary Housing Authority exercised eminent domain violated federal statutory and regulatory procedures is cognizable.

IV. Whether the Gary Housing Authority provided 624 Broadway with the notice to which 624 Broadway was constitutionally due in the Gary Housing Authority's exercise of eminent domain.

We affirm in part, reverse in part, and remand with instructions.

Facts and Procedural History

[2] The Gary Housing Authority is a municipal corporation established by the Gary Common Council. The Gary Housing Authority receives substantial funds from HUD pursuant to annual contribution agreements, which agreements require the Gary Housing Authority to meet certain affordable

housing standards. Those same agreements recite HUD's federal statutory authority to take over the Gary Housing Authority in the event HUD were to find the Gary Housing Authority in substantial default of the contribution agreements.

[3] In 2013, HUD designated the Gary Housing Authority as "troubled" under federal housing law, and, based on that designation, HUD concluded that the Gary Housing Authority was in substantial default of its contribution agreements. Appellant's App. Vol. IV p. 206. Accordingly, HUD entered into a Cooperative Endeavor Agreement with the City of Gary. Pursuant to the Cooperative Endeavor Agreement,[1] the City of Gary dissolved the Gary Housing Authority's Board of Commissioners, and, in their place, the Secretary of HUD appointed a HUD employee as an administrator over the Gary Housing Authority. The Cooperative Endeavor Agreement made clear that the HUD administrator's role was "to serve as [the Gary Housing Authority's] Board of Commissioners" and, in that capacity, to "t[ake] possession of [the Gary Housing Authority's] assets, projects, and programs" in order to "correct the conditions that led to [the Gary Housing Authority's] troubled status and recover [the Gary Housing Authority's] performance." *Id.* at 228.

[4] In 2017, the Gary Housing Authority "sought to acquire all of the properties within the western 600 block of Broadway [Avenue] for the purpose of building

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[1] HUD and the City of Gary modified the Cooperative Endeavor Agreement from time to time, and, in 2019, they converted the agreement into a Transitional Agreement.

a block long mixed-use development, inclusive of affordable housing." Appellant's App. Vol. II p. 178. At that time, HTO Investments, LLC, owned the real property located at 624 Broadway Avenue ("the property"). The Gary Housing Authority then proceeded to exercise the power of eminent domain as provided under Indiana Code sections 32-24-1-1 to -17 ("Chapter 1"), and it ordered an appraisal of the property in late 2017 and again in late 2018. Both appraisals valued the property at $24,000.

[5] On January 11, 2019, the Gary Housing Authority offered to purchase the property from HTO Investments for $24,000. However, on January 15, HTO Investments instead sold the property for $25,000 to 624 Broadway. In March, the Gary Housing Authority performed an updated title search for the property, which reflected 624 Broadway as the fee simple title holder. The Gary Housing Authority then filed a complaint against 624 Broadway to acquire the property through eminent domain. 624 Broadway filed various objections and alleged that the Gary Housing Authority had failed to follow the proper procedures under Chapter 1. In May, the Gary Housing Authority moved to dismiss its complaint, which the trial court granted.

[6] On August 15, the Gary Housing Authority re-initiated eminent domain proceedings against the property, this time as an administrative taking under

Indiana Code sections 32-24-2-1 to -17 ("Chapter 2").[2] Pursuant to Chapter 2, the HUD administrator, acting as the Board of Commissioners of the Gary Housing Authority, adopted a resolution declaring a necessity and desire for the Gary Housing Authority to acquire the property through eminent domain. The August 15 resolution set a September 19 hearing date for remonstrances against the condemnation of the property. The Gary Housing Authority then published notice of the resolution in newspapers of general circulation in the municipality on August 21 and August 28. The Gary Housing Authority did not mail notice of its resolution to 624 Broadway's registered agent, John Allen.

[7] However, Allen did learn of the September 19 hearing, attended it, and spoke at it. At the conclusion of the hearing, the Gary Housing Authority confirmed the August 15 resolution. The Gary Housing Authority then adopted a second resolution that listed 624 Broadway as the only affected property owner of the condemnation and established a damage award of $75,000 for the taking of the property. The September 19 resolution set a hearing date of October 17 for any remonstrances against the damage award. The Gary Housing Authority published notice of the resolution in newspapers of general circulation in the municipality on September 21, September 28, and October 5. Again, however,

[2] Chapter 2 provides an alternate procedure to Chapter 1 for a municipality exercising the power of eminent domain. *Util. Ctr., Inc. v. City of Ft. Wayne*, 985 N.E.2d 731, 735 (Ind. 2013). Indiana Code section 36-7-18-28(a)(2) permits a local housing authority to exercise the power of eminent domain under Chapter 2 in certain circumstances.

the Gary Housing Authority did not provide written notice of its resolution to Allen.

[8] Nonetheless, Allen learned of the October 17 hearing date, and 624 Broadway hired an appraiser to assess the property. 624 Broadway then requested that the Gary Housing Authority continue the October 17 hearing date for 624 Broadway's appraiser to complete his valuation, but the Gary Housing Authority denied the request. On October 16, 624 Broadway filed its complaint against the Gary Housing Authority seeking injunctive relief based on the Gary Housing Authority's alleged denial of 624 Broadway's procedural rights. 624 Broadway subsequently amended its complaint to more specifically allege a violation of its constitutional and statutory procedural rights and to add a request for damages.[3] Meanwhile, on October 17, the Gary Housing Authority confirmed the September 19 resolution and issued a check to 624 Broadway in the amount of $75,000. On October 28, 624 Broadway's appraiser completed his valuation of the property and determined that the property had a fair market value of $325,000.

[9] In June 2020, the Gary Housing Authority filed is motion for summary judgment on 624 Broadway's amended complaint. 624 Broadway responded and also moved for summary judgment. In relevant part, 624 Broadway

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[3] We reject the Gary Housing Authority's assertion that the last amended complaint did not relate back to the October 16 filing date, and we further agree with 624 Broadway that the originally filed complaint operated as a timely petition for judicial review from the housing authority's October 17 decision. Thus, we need not consider the Gary Housing Authority's assertion that 624 Broadway's claims were untimely.

asserted that the Gary Housing Authority unlawfully exercised the power of eminent domain. 624 Broadway further asserted numerous constitutional and statutory procedural violations based on the manner in which the Gary Housing Authority exercised eminent domain. The Gary Housing Authority responded that 624 Broadway's arguments were preempted by federal law or otherwise were not supported by the law and the facts. After a hearing, the trial court granted the Gary Housing Authority's motion for summary judgment, denied 624 Broadway's motion, and entered its order as a final judgment. This appeal ensued.

Standard of Review

[10] 624 Broadway appeals the trial court's entry of summary judgment for the Gary Housing Authority as well as the court's denial of 624 Broadway's motion for summary judgment. Our standard of review in summary judgment appeals is well established. As our Supreme Court has made clear, "[w]e review summary judgment *de novo*, applying the same standard as the trial court." *G&G Oil Co. v. Cont'l W. Ins. Co.*, 165 N.E.3d 82, 86 (Ind. 2021).

[11] "Indiana's distinctive summary judgment standard imposes a heavy factual burden on the movant." *Siner v. Kindred Hosp. Ltd. P'ship*, 51 N.E.3d 1184, 1187 (Ind. 2016). We draw all reasonable inferences in favor of the non-moving party and affirm summary judgment only "if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Id.* (quoting Ind. Trial Rule 56(C)).

And we "give careful scrutiny to assure that the losing party is not improperly prevented from having its day in court." *Id.* (quoting *Tankersley v. Parkview Hosp., Inc.*, 791 N.E.2d 201, 203 (Ind. 2003)). Further, "[p]arties filing cross-motions for summary judgment neither alters" our standard of review "nor changes our analysis—we consider each motion separately to determine whether the moving party is entitled to judgment as a matter of law." *G&G Oil Co.*, 165 N.E.3d at 86 (quoting *Erie Indem. Co. v. Estate of Harris*, 99 N.E.3d 625, 629 (Ind. 2018)).

[12] Here, the parties' arguments on summary judgment broadly fall into two categories: whether the Gary Housing Authority had the lawful ability to exercise eminent domain on these facts, and whether the manner in which the Gary Housing Authority exercised that ability was consistent with constitutional and statutory procedural guarantees. Specifically, 624 Broadway asserts that federal law authorizing HUD to take over a troubled local housing authority does not preempt state-law quorum and membership requirements for the housing authority's Board of Commissioners; that federal law granting to the HUD administrator discretion in the management of a local housing authority does not preempt Indiana's requirement that a housing authority seeking to exercise eminent domain first obtain the approval of the fiscal body that created the housing authority; and that Indiana's Housing Authorities Act, I.C. §§ 36-7-18-1 to -44, prohibits a local housing authority from exercising eminent domain to acquire real property for the purposes of a mixed-use development that is inclusive of affordable housing. And, on its procedural

arguments, 624 Broadway asserts that the Gary Housing Authority was required to follow various federal statutory and regulatory procedures and, further, that the manner in which the Gary Housing Authority exercised eminent domain here denied 624 Broadway proper notice and an opportunity to be heard.

[13] We conclude that 624 Broadway's arguments regarding whether the Gary Housing Authority had the lawful ability to exercise eminent domain fail. We also conclude that 624 Broadway's procedural argument under the claimed federal statutes and regulations is not cognizable. However, we agree with 624 Broadway that the Gary Housing Authority failed to provide constitutionally required notice to 624 Broadway in the Gary Housing Authority's exercise of eminent domain.[4]

I. Under Federal Law, the HUD Administrator Has Discretion to Act in the Capacity of the Gary Housing Authority and, thus, Indiana's Statutory Requirements for a Board of Commissioners or for a Housing Authority to First Obtain Approval by the Local Fiscal Body are Preempted.

[14] We first consider 624 Broadway's two arguments on appeal that the Gary Housing Authority's exercise of eminent domain was unlawful under Indiana's

[4] Because of our resolution of this appeal on the notice to which 624 Broadway was due, we need not reach 624 Broadway's alternative argument that the Gary Housing Authority's taking of and award of damages for the property are not supported by sufficient evidence.

statutory requirements relating to the authority of Boards of Commissioners of local housing authorities. In particular, 624 Broadway first asserts that Indiana Code section 36-7-18-5, which states that the Board of Commissioners for a local housing authority for a city "shall" consist of "seven (7) persons," and Indiana Code section 36-7-18-13, which requires "[f]our (4) commissioners" of the Board to be present for a quorum, prohibit a single HUD administrator from acting in the capacity of the Gary Housing Authority. Second, 624 Broadway asserts that, under Indiana Code section 36-7-18-14(1), the "approval of the fiscal body that established" the Gary Housing Authority, the Gary Common Council, was required before the HUD Administrator could exercise eminent domain.

[15] 624 Broadway's argument that the Gary Housing Authority's exercise of eminent domain should fail due to an absence of the statutory number of commissioners would create an impermissible conflict between state and federal law. Under the Supremacy Clause of the United States Constitution, federal law is "the supreme Law of the Land," the "Laws of any state to the Contrary notwithstanding." U.S. Const. Art. VI, cl. 2. As the Supreme Court of the United States has explained:

> A fundamental principle of the Constitution is that Congress has the power to preempt state law. Even without an express provision for preemption, we have found that state law must yield to a congressional Act in at least two circumstances. When Congress intends federal law to "occupy the field," state law in that area is preempted. And even if Congress has not occupied the field, state law is naturally preempted to the extent of any

> conflict with a federal statute. We will find preemption where it is impossible for a private party to comply with both state and federal law, and where "under the circumstances of a particular case, the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."

Crosby v. Nat'l Foreign Trade Council, 530 U.S. 363, 372–73 (2000) (cleaned up).

[16] The United States Code expressly authorizes the Secretary of HUD to appoint an administrator to act in the capacity of a local housing authority that is in substantial default of its agreements with HUD. Specifically, the United States Code provides as follows:

> [U]pon . . . a substantial default by a public housing agency with respect to the covenants or conditions to which the public housing agency is subject . . . the Secretary may—
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> (iv) take possession of all or part of the public housing agency, including all or part of any project or program of the agency . . . .

42 U.S.C.A. § 1437d(j)(3)(A) (West 2021). If the Secretary takes possession of a public housing agency pursuant to subparagraph (A)(iv), the Secretary may "appoint . . . an individual . . . as an administrative receiver to assume the responsibilities of the Secretary for the administration of all or part of the public housing agency." 42 U.S.C.A. § 1437d(j)(3)(B)(III)(bb). And:

> If the Secretary (or an administrative receiver appointed by the Secretary) takes possession of a public housing agency (including all or part of any project or program of the agency), or if a receiver is appointed by a court, *the Secretary or receiver shall be deemed to be acting not in the official capacity of that person or entity, but rather in the capacity of the public housing agency*, and any liability incurred, regardless of whether the incident giving rise to that liability occurred while the Secretary or receiver was in possession of all or part of the public housing agency (including all or part of any project or program of the agency), shall be the liability of the public housing agency.

42 U.S.C.A. § 1437d(j)(3)(H) (emphasis added).

[17] Thus, as a matter of federal law, the HUD administrator exercised the authority of the Gary Housing Authority's Board of Commissioners. It would be impossible for the single HUD administrator to act in the capacity of the Gary Housing Authority if a quorum of the seven-member Board of Commissioners was acting in that same capacity. We conclude that Indiana's statutory membership and quorum requirements are inconsistent with HUD's federal authority under 42 U.S.C.A. § 1437d when HUD has appointed an administrator over that housing authority. Those requirements of Indiana law must yield to the HUD administrator's authority under the United States Code.[5]

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[5] 624 Broadway also asserts that the denial of the statutory quorum denied 624 Broadway its due process rights. But 624 Broadway's due-process argument is derivative of its assumption that the statutory quorum requirement applies. As we reject that position, we conclude that 624 Broadway's related due-process argument on is not supported by cogent reasoning, and we do not address it further.

[18] Likewise, we cannot agree with 624 Broadway's assertion that the HUD administrator's exercise of eminent domain, in his capacity as the Gary Housing Authority, is subject to the approval of the Gary Common Council. The United States Code grants the Secretary of HUD's appointed administrator, broad discretion to manage problematic housing authorities. 42 U.S.C.A. § 1437d(j)(3). For example, the United States Code directs that the administrator may "make . . . arrangements acceptable to the Secretary and in the best interests of the public housing residents and families . . . for managing all, or part, of the public housing administered by the agency or of the programs of the agency." 42 U.S.C.A. § 1437d(j)(3)(A)(v).

[19] To require the Gary Common Council to approve the HUD administrator's exercise of his federal statutory discretion would create "an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Crosby*, 530 U.S. at 373. Where, as here, HUD has appointed an administrator to manage a troubled local housing authority, Indiana Code section 36-7-18-14(1)'s requirement that the local housing authority obtain the approval of the local fiscal body before the housing authority can exercise eminent domain is an unacceptable obstacle to the HUD administrator's exercise of his discretion under federal law. Thus, that requirement of Indiana law must yield to the HUD administrator's discretion under the United States Code. We therefore affirm the trial court's entry of summary judgment for the Gary Housing Authority on 624 Broadway's claims under Indiana Code sections 36-7-18-5, -13, and -14(1).

II. 624 Broadway's Argument that the Gary Housing Authority is not Authorized to Exercise Eminent Domain to Acquire Property for a Mixed-Use Development Project Fails as a Matter of Law.

[20] 624 Broadway also argues that the Gary Housing Authority is not authorized to exercise eminent domain to acquire property for a mixed-use development project.[6] In support of its position, 624 Broadway relies on Indiana Code section 36-7-18-2, which provides that "[t]he clearance, replanning, and reconstruction of the areas in which unsanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property may be acquired." According to 624 Broadway, that language prohibits a housing authority from acquiring property for a mixed-use development, even if that development would include affordable housing.

[21] We cannot agree. The plain language of section 36-7-18-2 does not restrict a housing authority from providing "safe and sanitary dwelling accommodations for persons of low income" in a mixed-use development, or from otherwise acquiring a specific property when that property is within an area of unsanitary or unsafe housing conditions. Therefore, we reject 624 Broadway's argument

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[6] The Gary Housing Authority does not assert on appeal that this argument is preempted by the HUD administrator's discretion under federal law.

that the Gary Housing Authority's use of eminent domain here is contrary to section 36-7-18-2, and we affirm the trial court's entry of summary judgment for the Gary Housing Authority on this issue.

III. 624 Broadway's Argument that the Gary Housing Authority Violated Federal Statutory and Regulatory Procedures Also Fails as a Matter of Law.

[22] 624 Broadway next asserts numerous violations of federal procedures and related regulations under the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C.A. §§ 4601–4655 ("the Uniform Act"). In particular, 624 Broadway relies on section 4651 of the Uniform Act. But section 4602 of the Uniform Act explicitly states that section 4651 creates "no rights or liabilities and shall not affect the validity of property acquisitions . . . ." As we have previously acknowledged: "The intent of the Congress in enacting [section] 4602 . . . could not have been expressed more clearly: the policies set forth in [section] 4651 are advisory only, and they create no right in the condemnee to judicial review of an agency's property acquisition practices." *City of Mishawaka v. Sara*, 396 N.E.2d 946, 947 (Ind. Ct. App. 1979) (citations omitted). Accordingly, we affirm the trial court's entry of summary judgment for the Gary Housing Authority on 624 Broadway's claims under the Uniform Act and associated federal regulations.

IV. The Gary Housing Authority Failed to Provide 624 Broadway with the Constitutional Notice to Which 624 Broadway was Due.

[23] We thus turn to the 624 Broadway's arguments that the Gary Housing Authority denied 624 Broadway the notice to which 624 Broadway was constitutionally due. The designated evidence is clear that the Gary Housing Authority purported to exercise eminent domain over the property under the procedures of Chapter 2.[7] In particular, under Indiana Code section 32-24-2-6(b) (2019), the Gary Housing Authority published notice of its resolution to acquire the property in a relevant newspaper for two consecutive weeks. The published notice named a date at least ten days after the date of last publication on which the Gary Housing Authority would hear remonstrances against the condemnation of the property. The Gary Housing Authority did not attempt any other service method likely to give actual notice of that resolution to 624 Broadway.

[24] Following the hearing on remonstrances, the Gary Housing Authority, acting under section 32-24-2-8, then passed a resolution that established a damage award of $75,000 and set a hearing date for any remonstrances against the damage award. The Gary Housing Authority published notice of that resolution

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[7] As the designated evidence establishes that the Gary Housing Authority initiated eminent domain proceedings under Chapter 2, 624 Broadway's alternative claim for inverse condemnation must fail. *See, e.g.*, *Lake Cnty. v. House*, 168 N.E.3d 278, 286 (Ind. Ct. App. 2021) (noting that a claim for inverse condemnation exists if the government takes property but fails to initiate eminent domain proceedings), *trans. denied*.

in a relevant newspaper for three consecutive weeks and named a date for remonstrances against the damage award that was at least ten days after the date of last publication.[8] But, again, the Gary Housing Authority did not attempt any other service method likely to give actual notice to 624 Broadway of that resolution or hearing date.[9]

[25] 624 Broadway argues on appeal that, although the statutes relied on by the Gary Housing Authority authorized notice by publication, those statutes did not absolve the Gary Housing Authority of its constitutional obligation to attempt a service method likely to provide 624 Broadway with actual notice where, as here, the Gary Housing Authority was aware of the name and address of 624 Broadway's registered agent. The Gary Housing Authority responds that it followed the statutes and, thus, gave 624 Broadway all the notice it was due. We agree with 624 Broadway.

[26] The parties agree that the Gary Housing Authority's exercise of eminent domain against the property required the Gary Housing Authority to provide 624 Broadway with notice of both the taking and the valuation of the property. The only question is the type of notice that was required. 624 Broadway asserts that it was entitled to a service method likely to give actual notice on these facts,

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[8] At the time of the Gary Housing Authority's administrative taking of the property, Indiana Code section 32-24-2-8(c) (2019) provided, "[i]f the owner is a nonresident, . . . the municipality shall notify the owner by publication[.]" The address for 624 Broadway's registered agent was in Schererville, not in Gary.

[9] The parties appear to agree on appeal that the Gary Housing Authority complied with the statutory procedures in effect at the time of the administrative taking.

and the Gary Housing Authority asserts that constructive notice by way of publication was sufficient.

[27] As we have explained:

> In the seminal case regarding due process and notice, the Supreme Court held that the Due Process Clause requires at a minimum "that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313, 70 S. Ct. 652, 656–57, 94 L. Ed. 865 (1950). "This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest." *Id.* at 314, 70 S. Ct. at 657. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Id.* "[W]hen notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it." *Id.* at 315, 70 S. Ct. at 657. The Court held that alternatives to personal service and actual notice of a suit, such as publication, are permissible
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> > where it is not reasonably possible or practicable to give more adequate warning. Thus it has been recognized that, in the case of persons missing or unknown, employment of an indirect and even a probably futile means of notification is all that the situation permits and creates no constitutional bar to a final decree foreclosing their rights . . . . [Parties] whose interests or whereabouts could not *with due diligence* be ascertained come clearly within this category.

> *Id.* at 317, 70 S. Ct. at 658–59 (emphasis added). *Mullane* thus clearly indicates that although it is acceptable in some instances to proceed with a lawsuit by using a service method that it is unlikely to give actual notice to an interested party, this is only the case if that party's whereabouts cannot reasonably and in the exercise of due diligence be ascertained.

Munster v. Groce, 829 N.E.2d 52, 58 (Ind. Ct. App. 2005) (alterations and emphasis original to *Munster*); *see also Jones v. Flowers*, 547 U.S. 220, 234–38 (2006) (quoting *Mullane*, 339 U.S. at 315, 317, for the rule that "notice by publication is adequate only where 'it is not reasonably possible or practicable to give more adequate warning'" and holding that "there were several reasonable steps [Arkansas] could have taken" beyond notice by publication before taking a taxpayer's property).

[28] Indiana Code sections 32-24-2-6 and -8 (2019) authorized the Gary Housing Authority to employ notice by publication, but that authorization could not diminish or dilute the constitutional parameters regarding constructive notice. Indeed, the Court in *Mullane* considered a New York statute that, on its face, like the statutes here, authorized only notice by publication. 339 U.S. at 309–10. The Court held that the statutory language was constitutionally appropriate to parties "whose interests or addresses are unknown." *Id.* at 318. But the Court further held that the statutory language did not deprive "known [parties] of known place of residence" of their due process right to a service method likely to give actual notice. *Id.* More specifically, the Court held that "[t]he statutory notice to known [parties] is inadequate . . . because under the circumstances it is

not reasonably calculated to reach those who could easily be informed by other means at hand." *Id.* at 319.

[29] The same is true here. The Gary Housing Authority knew the name and address of 624 Broadway's registered agent, Allen. Indeed, in its initial attempts to exercise eminent domain under Chapter 1, the Gary Housing Authority had no issues providing Allen with actual notice. Yet, once the Gary Housing Authority initiated its proceedings under Chapter 2, it ceased attempting to provide Allen with actual notice. Instead, the Gary Housing Authority simply relied on notice by publication. Under the circumstances, the Gary Housing Authority's use of notice by publication was not reasonably calculated to reach Allen. Rather, the Gary Housing Authority's use of notice by publication was a "mere gesture, [which] is not due process." *Id.* at 315.

[30] Still, the Gary Housing Authority asserts, citing *Hagemann v. City of Mount Vernon*, 238 Ind. 613, 154 N.E.2d 33 (1958), that the Indiana Supreme Court has held that *Mullane* does not apply to eminent domain proceedings. But the court in *Hagemann* did not hold that *Mullane* is inapplicable to eminent domain proceedings. Rather, the court held that it is beyond the power of our legislature to limit the right of judicial review of administrative decisions. 238 Ind. at 37, 154 N.E.2d at 621–22. Indeed, in reaching that holding, the court recognized that eminent domain proceedings must comply with due process. *Id.* And no decision of an Indiana appellate court citing *Hagemann* cites it for the proposition relied on by the Gary Housing Authority.

[31] The Gary Housing Authority further asserts that its failure to serve actual notice of the resolutions on Allen was harmless as he eventually learned of the two meetings and was able to attend them. But we cannot agree. The Gary Housing Authority's failure to attempt a service method likely to give actual notice contributed to 624 Broadway's inability to obtain its own appraisal of the property expediently, which in turn contributed to 624 Broadway's inability to present competing evidence of its damages. We cannot say with confidence that, had the Gary Housing Authority provided Allen the notice to which he was due, as it was required to do, it would have assessed the same damage award for the property.

[32] A judgment entered without proper notice to a party is void. *See, e.g.*, *Anderson v. Wayne Post 64, Am. Legion Corp.*, 4 N.E.3d 1200, 120–07. Therefore, the Gary Housing Authority's decision to condemn the property and its valuation of the damage award are void. We reverse the trial court's entry of summary judgment for the Gary Housing Authority accordingly, and we likewise reverse the court's denial of 624 Broadway's related motion for summary judgment. The designated evidence establishes no genuine issue of material fact regarding whether the Gary Housing Authority provided 624 Broadway with the notice to which it was due. It did not. As the Gary Housing Authority's taking of the property was contrary to law, we remand with instructions to enter summary judgment for 624 Broadway on its claim that the Gary Housing Authority's administrative taking of the property violated 624 Broadway's right to notice of the taking and the valuation, to vacate the Gary Housing Authority's

administrative taking and valuation of the property, and to hold any further proceedings that are consistent with this opinion.

Conclusion

[33] In sum, we affirm the trial court's entry of summary judgment for the Gary Housing Authority on 624 Broadway's claims under Indiana Code sections 36-7-18-2, -5, -13, and -14(1). We also affirm the trial court's entry of summary judgment for the Gary Housing Authority on 624 Broadway's claims under the Uniform Act and associated federal regulations. However, the trial court erred when it granted the Gary Housing Authority's motion for summary judgment on 624 Broadway's claim that it had been denied proper notice and denied 624 Broadway's related motion for summary judgment on that issue. Thus, we reverse the trial court's judgment and remand with instructions for the court to enter summary judgment for 624 Broadway on its claim that the Gary Housing Authority's administrative taking and valuation of the property violated 624 Broadway's right to notice, to vacate the Gary Housing Authority's administrative taking and valuation of the property, and to hold any further proceedings that are consistent with this opinion.

[34] Affirmed in part, reversed in part, and remanded with instructions.

Tavitas, J., and Weissmann, J., concur.