

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Lila Ruth Meyer as Trustee and
Other Named Successor Trustees
of the Lila Ruth Meyer
Revocable Trust Dated
March 27, 2017,

Appellants-Defendants,

v.

City of Rushville,
Appellee-Plaintiff.

September 23, 2021

Court of Appeals Case No.
21A-PL-277

Appeal from the Rush Circuit
Court

The Honorable J. Steven Cox,
Special Judge

Trial Court Cause No.
70C01-1912-PL-503

Jeffery L. Meyer,
Appellant-Defendant,

v.

City of Rushville,
Appellee-Plaintiff.

Court of Appeals Case No.
21A-PL-278

Appeal from the Rush Circuit
Court

The Honorable J. Steven Cox,
Special Judge

Trial Court Cause No.
70C01-1912-PL-501

Weissmann, Judge.

[1] Eminent domain proceedings for seizing private property are powerful instruments of government which must be wielded in compliance with statute. Indiana’s eminent domain statutes require notice to the landowner which includes at least three critical components: 1) notice of the court date; 2) notice of the right to object within 30 days; and 3) inclusion of the full text of the statute outlining procedures for objections, either as an attachment or as part of the language of the notice. In this case, the government missed 2 of these 3 necessary components, batting a .333 in a game requiring no missed hits. Because the necessary notice never issued, the trial court erred in issuing an order of condemnation.

Facts

[2] At issue is land owned by the Lila Ruth Meyer Revocable Trust and Jeffery Meyer (collectively “Meyer”) in Rush County, just north of City’s corporate limits. In 2018, City sought to acquire some of the land through eminent

domain. City alleged the property was needed “for parts of the right-of-way and drainage detention pond facilities necessary to the Cherry Street Extension,” which was part of the Rushville Industrial Corridor Project development.¹

Jeffery Meyer App. Vol. II, p. 120; Trust App. Vol. II, p. 223.

[3] While City’s eminent domain action was pending, the Indiana General Assembly amended the statute under which City had sought to acquire the land. *See* Ind. Code § 36-1-4-5 (retroactively barring municipalities from acquiring through eminent domain properties outside its corporate boundaries “unless a statute expressly provides otherwise”). The amendment was due, in part, to the efforts of Appellant Jeffery Meyer. At City’s behest, the trial court dismissed the eminent domain action in September 2019.

[4] Undeterred, City initiated a second eminent domain action, which ultimately was heard by a different judge. The second action involved the same land and related to the same overall project but was based on two statutes not mentioned in the first action: Indiana Code § 36-9-23-14, which concerns use of eminent domain by a municipality for “sewage works”; and Indiana Code § 36-9-6.1-3,

¹ City filed separate condemnation actions under different case numbers on the same date against Jeffery Meyer and the Lila Ruth Meyer Trust. However, both Jeffery Meyer and the Trust (by its trustees) were represented by the same counsel in the trial court proceedings and have the same counsel on appeal. Moreover, Jeffery Meyer and the Trust defendants filed nearly identical objections and motions to dismiss on the same dates. Jeffery Meyer App. Vol. II, p. 115; Jeffery Meyer App. Vol. III, p. 2; Trust App. Vol. II, p. 217; Trust App. Vol. III, p. 64. The two cases were consolidated for hearing in the trial court and therefore remain consolidated on appeal. *See* Ind. Appellate Rule 38(A).

which relates to the use of eminent domain by “a works board carrying out a thoroughfare plan.”

- [5] City filed its complaints for condemnation December 3, 2019. The summonses issued the next day, notifying Meyer that:

An answer or other appropriate response in writing to the complaint must be filed either by you or your attorney within THIRTY (30) days, commencing the day after you receive this Summons, (or thirty-three (33) days if this Summons was received by mail), or a judgment by default may be rendered against you for the relief demanded by plaintiff.

Jeffery Meyer App. Vol. II, p. 89; Trust App. Vol. II, p. 186.

- [6] The pleadings omitted specific language about condemnation objections that was required by Indiana Code § 32-24-1-6(a). In addition, the wording of the notices incorrectly specified that Meyer’s objections were due 33 days after Meyer received the summonses by certified mail when Indiana Code § 32-24-1-8(b)(3) specifies a 30-day period for response. In other words, the notices Meyer received erroneously suggested the objections were due January 9, 2020—three days later than the actual deadline.

- [7] On December 30, 2019, Meyer filed motions to extend the period for objections by 30 days. Meyer alleged in those motions that, “[p]ursuant to Ind. Code § 32-24-1-8(b)(3), [Meyer] has until January 6, 2020[,] to file objections to the proceedings – with the Court’s permission – an extension of thirty (30) days may be given.” Jeffery Meyer App. Vol. II, p. 112; Trust App. Vol. II, p. 214.

Thirty days from January 6, 2020, was February 5, 2020. However, in Meyer’s final plea for relief in those motions, Meyer requested the trial court extend the period for objections “until February 7, 2020” Jeffery Meyer App. Vol. II, p. 113; Trust App. Vol. II, p. 215.

[8] No ruling on Meyer’s motions for extension occurred before Meyer filed the objections on February 7, 2020. City moved to strike Meyer’s objections as untimely, given that they were filed more than 60 days after Meyer was served with the complaints. City also requested the trial court strike Meyer’s motions to dismiss and counterclaims for abuse of process. City argued the eminent domain statutes did not authorize the filing of a motion to dismiss or counterclaim. The trial court agreed with City and struck the objections, motions to dismiss, and counterclaims, ultimately ordering that Meyer’s land be condemned.

Discussion and Decision

[9] Meyer challenges the trial court’s rejection of Meyer’s objections as untimely. Finding that the City failed to issue the notices required by law, we conclude the trial court abused its discretion in striking the objections.

[10] Resolution of this issue depends on our interpretation of the applicable statutes. Where, as here, the underlying facts are not in dispute and the issues are questions of law—that is, interpretation of statutes—a *de novo* standard of review applies. *Hutchinson v. City of Madison*, 987 N.E.2d 539, 541 (Ind. Ct. App. 2013). When we are presented with a question of statutory construction,

we first determine whether the legislature’s language is clear and unambiguous. *Utility Center, Inc. v. City of Fort Wayne*, 985 N.E.2d 731, 734 (Ind. 2013). If so, we need not ascertain legislative intent but, instead, must give effect to the plain and ordinary meaning of the words used. *Id.*

[11] Landowners are entitled to due process in eminent domain actions. *Derloshon v. City of Fort Wayne*, 234 N.E.2d 269, 272 (Ind. 1968). At a minimum, the notice must reasonably convey the required information. *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 94 L. Ed. 865. The legislature has spoken plainly and unambiguously as to how to accomplish proper notice through Indiana Code § 32-24-1-6(a). Where a city files a condemnation complaint seeking to acquire land through its powers of eminent domain, Indiana Code § 32-24-1-6(a) imposes the following requirements, among others:

1. a notice shall be issued “requiring the defendants to appear before the court” on a certain day and “show cause, if any, why the property sought to be condemned should not be acquired.”
2. the “notice must also provide notice to defendants of their right to object under [Indiana Code § 32-24-1-8] not later than thirty (30) days from the date the notice is served.”
3. the notice must include, “either as an attachment or as part of the language of the notice, the full text of [Indiana Code § 32-24-1-8].”

[12] The “notice” in these cases—which, for purposes of this disposition, we will construe as including the complaints and summonses Meyer received by mail

on December 7, 2019—met only the first of the three statutory mandates set forth above. The complaints specified the date on which Meyer was required to appear in court to show cause. Jeffery Meyer App. Vol. II, pp. 49, 89-90; Trust App. Vol. II, pp. 93, 186-187.

[13] Though the summonses indicated that Meyer had a right to respond, they did not specify that objections must be filed “not later than thirty (30) days from the date the notice is served.” In fact, the summonses do not contain the word “objections” at all. Instead, they specify that “[a]n answer or other appropriate response in writing to the complaint must be filed . . . within . . . thirty-three (33) days if this Summons was received by mail” Jeffery Meyer App. Vol. II, p. 89; Trust App. Vol. II, p. 186.

[14] Furthermore, neither the complaints nor the summonses contained the full text of Indiana Code § 32-24-1-8, either within their text or as attachments, as required by Indiana Code § 32-24-1-6(a). Jeffery Meyer App. Vol. II, pp. 49-90; Trust App. Vol. II, pp. 93-187. Neither the summonses nor the complaints even cite Indiana Code § 32-24-1-8. *Id.*

[15] Eminent domain proceedings “are statutory actions of a special character, based wholly upon the statute by which they are authorized.” *State v. Rousseau*, 209 Ind. 458, 199 N.E. 587, 588 (1936). “[They] are not in a strict sense ordinary civil actions.” *Id.* Yet, the notices here essentially were typical summonses issued in civil cases. As such, they lacked most of the content mandated by the legislature for notices in eminent domain cases and indicated a

deadline applicable for an answer to a civil complaint rather than the deadline for objections in this eminent domain action.

- [16] City describes this non-compliance with Indiana Code § 32-24-1-6(a) as a mere scrivener’s error. But to render compliance with Indiana Code §§ 32-24-1-6(a) and -8 optional, as City implicitly advocates, would frustrate the clear purpose of those statutes to ensure landowners receive proper notice and would violate our own precedent requiring strict construction of statutes concerning eminent domain. *See, e.g., Utility Ctr., 985 N.E.2d at 735. Cemetery Co. v. Warren Sch. Twp., et al., 236 Ind. 171, 139 N.E.2d 538, 544 (1957).*
- [17] Compliance with statutory procedures, which are aimed at protecting the rights of property owners whose land is being condemned by the government, is the small cost municipalities pay to exercise eminent domain powers expressly delegated to them by the legislature. *See Utility Center, 985 N.E.2d at 733.*
- [18] We reverse the trial court’s order of condemnation and remand for further proceedings consistent with this opinion.²

Mathias, J., and Tavitas, J., concur.

² Meyer also challenges the trial court’s striking of Meyer’s motions to dismiss, as well as Meyer’s counterclaims for abuse of process, which Meyer raised in the objections. Both sides focus on Indiana Code § 32-24-1-8. Subsection (a) of that statute is expansive, allowing objections filed under its authority to be based on “any . . . reason disclosed in the complaint or set up in the objections,” including jurisdictional defects such as those raised in a motion to dismiss. Given our disposition, which basically resets the proceedings to the initial notice stage and allows Meyer to file new objections, we need not address these additional claims by Meyer.