

IN THE COURT OF APPEALS OF IOWA

No. 3-369 / 12-1366
Filed June 12, 2013

HAWKEYE LAND COMPANY,
Plaintiff-Appellant,

vs.

CITY OF CORALVILLE, IOWA,
Defendant-Appellee.

Appeal from the Iowa District Court for Johnson County, Robert E. Sosalla, Judge.

Hawkeye Land Company (Hawkeye) appeals from the district court ruling denying its application for a permanent injunction. **AFFIRMED.**

Jon M. McCright, Cedar Rapids, and Andrew Potter, Cedar Rapids, for appellant.

Kevin D. Olson, Coralville, and Terry J. Abernathy and Stephanie L. Hinz of Pickens, Barnes & Abernathy, Cedar Rapids, for appellee.

Heard by Vogel, P.J., and Vaitheswaran and Bower, JJ.

BOWER, J.

Hawkeye Land Company (Hawkeye) appeals from the district court ruling denying its application for a permanent injunction.¹ Hawkeye seeks to prevent the city of Coralville, Iowa (Coralville) from constructing a street extension over railroad tracks in which Hawkeye claims an interest, and argues the district court erred in denying its application for injunction. Because we find that Hawkeye has an adequate remedy at law, we find no error.

I. Background Facts and Proceedings

Hawkeye filed an application for an injunction on April 6, 2012. The subject of its application is a parcel of land and railroad tracks located in Coralville, Iowa, which have, until recently, represented the southern end of Coral Ridge Avenue. The application is Hawkeye's response to the city of Coralville's decision to extend Coral Ridge Avenue over the tracks for purposes of providing street access to a developing subdivision.

Prior to beginning construction on the street extension, Coralville did not initiate eminent domain proceedings. Instead, the city engaged in negotiations with Heartland Rail Corporation (Heartland) under the belief that Heartland, not Hawkeye, held the rights necessary to approve the street extension over the railroad tracks.² An agreement was reached between Coralville and Heartland.

¹ Hawkeye also requested a temporary injunction; however, that issue is not before us today.

² The parties appear to agree that Coralville has entered into similar negotiations and executed similar agreements with Heartland before constructing three earlier street crossings over the same railroad tracks. Hawkeye argues that each of these instances represents a taking similar to the case currently before us; however, those instances are not presented for our review today.

Ownership of various rights with respect to the railroad tracks is the sharpest point of contention between the parties. Hawkeye and Heartland both claim to have received ownership rights from the railroad's original owner, Chicago Pacific Corporation (CPC). Heartland claims to have purchased rights from CPC and then granted the rights to operate the rail line to Iowa Interstate while retaining the right to grant certain types of easements, including easements necessary to construct a street over the tracks. Coralville argues it has purchased such an easement. Hawkeye argues it purchased certain rights from CPC, including the right to grant easements for "transportation and transmission systems" by "whatever means," which it argues includes streets. The dispute is: which entity actually possesses the right to grant easements necessary to extend Coral Ridge Avenue over the tracks and whether that entity has been properly compensated. If Hawkeye possesses the necessary rights, the street extension could constitute a taking under the Iowa Constitution requiring eminent domain proceedings and payment to Hawkeye. If Heartland owns the right to grant easements, eminent domain proceedings are not necessary because Coralville has compensated Heartland.

II. Standard of Review

We review the issuance or denial of injunctions de novo. See Iowa R. App. P. 6.907; *Max 100 L.C. v. Iowa Realty Co.*, 621 N.W.2d 178, 180 (Iowa 2001).

III. Discussion

The district court denied Hawkeye's application for a permanent injunction and found that Hawkeye had failed to show it will suffer irreparable harm and has no adequate remedy at law. The district court further found that Hawkeye's rights, if any, can be determined in an action for money damages, as money damages would be the result regardless of what type of action was brought.

The Iowa Constitution provides for the taking of private property after just compensation has been made. Iowa Const. art. I, § 18. Permanent and physical government intrusions to private property must be accompanied by just compensation. *Harms v. City of Sibley*, 702 N.W.2d 91, 98 (Iowa 2007). The Iowa Code sets out principles that must be followed when condemnation proceedings are initiated for the purpose of employing the power of eminent domain. Iowa Code § 6B.54 (2011). Our supreme court has recognized that the Iowa Constitution requires that payment be made before land is appropriated, not after. *Henry v. Dubuque & P.R. Co.*, 10 Iowa 540, 543 (Iowa 1860).

In order to obtain an injunction in such a case, the landowner must prove irreparable injury and that no adequate legal remedy is available. *In re Luloff*, 569 N.W.2d 118, 123 (Iowa 1997). When property has been subject to condemnation, the landowner may permanently enjoin the eminent domain proceedings. *Id.* To do so, the landowner must prove elements in addition to the usual injunction standards, including a showing of fraud, abuse of discretion, or some other gross impropriety. *Gardner v. Charles City*, 144 N.W.2d 915, 919 (Iowa 1966). These additional showings are excused if the landowner can show

a “violation of the constitutional or statutory provisions governing the exercise of the power of eminent domain.” *Id.*

In each case where a permanent injunction has enjoined condemnation under eminent domain, condemnation has occurred first. That has not happened in this case. No condemnation proceedings were brought by the city of Coralville. Iowa law, however, provides a separate and distinct remedy for instances where a taking has occurred without a condemnation proceeding.

When a governmental agency has taken private land for public use without properly following the condemnation proceedings and using eminent domain, mandamus is the proper remedy. *Frost v. Sioux City*, 209 N.W.2d 5, 6 (Iowa 1973). “Mandamus is the proper procedural device to compel condemnation when there has been a taking of private property for public use without just compensation.” *Schaller v. State*, 537 N.W.2d 738, 743 (Iowa 1995) (internal quotations and citations omitted). This is otherwise known as “inverse condemnation.” See *Kingsway Cathedral v. Iowa Dep’t of Transp.*, 711 N.W.2d 6, 9 (Iowa 2006) (describing inverse condemnation as the generic title for all actions to recover from the appropriation of a property interest). “[M]andamus will lie to compel the institution of condemnation proceedings where land has been taken for road purposes without authority of law and without compensating the owner.” *Baird v. Johnston*, 297 N.W. 315, 316 (1941).³

³ Hawkeye relies upon *Plattsmouth Bridge Co. v. Globe Oil and Refining Co.*, 7 N.W.2d 409 (Iowa 1943), to establish that injunctive relief is available when there has been an illegal taking. *Plattsmouth* does not address the applicability of a mandamus action. See 7 N.W.2d at 411–12.

The various property rights of the parties need not be decided at this time. The sole question before us today is whether Hawkeye is entitled to an injunction. A mandamus action is available to it, and as that action will result in the same outcome as a condemnation proceeding, it provides an adequate remedy at law.⁴ Because Hawkeye is unable to satisfy the necessities to obtain an injunction, we affirm the decision of the district court.

AFFIRMED.

⁴ Hawkeye does not argue that Coralville would be unable to acquire the easement through condemnation proceedings, which is equivalent to an admission that the rights necessary to the street extension will be obtained by the city, one way or another. Cases cited by Hawkeye raise the possibility of an injunction where the entity using the eminent domain power is acting outside the eminent domain authority and was not reasonably likely to cure the error, such as a municipality attempting to condemn land without a sufficient public purpose. See, e.g., *Banks v. City of Ames*, 369 N.W.2d 451, 454–55 (Iowa 1985). This is not such a case. The only alleged illegality by the city that could prevent use of the eminent domain power in this case is the encumbrances placed upon the subject property. Once removed, there would be no continuing illegality and the condemnation process would proceed normally, resulting in a determination of compensation and the taking of the property. The only issue is the compensation due, should it be found that Hawkeye possesses the required rights. A mandamus action will achieve the same purpose and result as would have occurred had Coralville instituted condemnation proceedings.