



**COURT OF APPEALS  
SECOND DISTRICT OF TEXAS  
FORT WORTH**

**NO. 02-16-00287-CV**

OAK LAWN APARTMENTS, LTD.

APPELLANT

V.

THE STATE OF TEXAS

APPELLEE

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FROM COUNTY COURT AT LAW NO. 3 OF TARRANT COUNTY  
TRIAL COURT NO. 2016-000101-3

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**OPINION**  
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**I. INTRODUCTION**

This is an appeal from a condemnation proceeding. See Tex. Prop. Code Ann. § 21.063 (West 2014). In a single issue, Appellant Oak Lawn Apartments, Ltd. argues that the trial court erred by entering a final judgment on the special commissioners' award over Oak Lawn's objection. Because we hold that the statements in Oak Lawn's "Motion To Withdraw Award Of Special

Commissioners” do not constitute a statement of objections to the special commissioners’ award, and that, thus, the underlying administrative proceeding was never converted into a judicial proceeding over which we have jurisdiction, we will dismiss this appeal for want of jurisdiction.

## **II. PROCEDURAL BACKGROUND**

Appellee The State of Texas filed a petition for condemnation seeking to acquire fee simple title to the land and improvements owned by Oak Lawn and others<sup>1</sup> so that the State, acting by and through the Texas Transportation Commission, could widen, straighten, or extend State Highway 360. The trial court appointed three disinterested real property owners residing in Tarrant County to serve as special commissioners. The special commissioners held a hearing to assess the damages for the acquisition of the property through eminent domain and issued an award for \$2,034,432.00. The State thereafter deposited the amount of the award into the county court at law’s registry.

Nineteen days after the special commissioners filed their findings and issued the award, Oak Lawn filed a “Motion To Withdraw Award Of Special Commissioners.” The body of the motion, in its entirety, is set forth as follows:

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Defendant, OAK LAWN APARTMENTS LTD,  
in the above-styled and numbered condemnation proceeding and

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<sup>1</sup>The remaining defendants that the State sued below are not parties to this appeal.

files this **Motion to Withdraw the Award of Special Commissioners** deposited in the registry of the Court, as follows:

I.

Upon proper notice to all parties, the Special Commissioners Hearing was held on April 21, 2016. The Special Commissioners awarded \$2,034,432.00 as adequate compensation for the condemnation of this property, which was filed with the court on May 11, 2016. Objections were filed by Defendant to the Award of the Special Commissioners.

II.

On May 11, 2016, Plaintiff, the State of Texas, deposited the Award of the Special Commissioners into the Registry of this Court in the amount of **TWO MILLION THIRTY[-]FOUR THOUSAND FOUR HUNDRED THIRTY[-]TWO DOLLARS and NO/100 DOLLARS (\$2,034,432.00)**. Although the parties have not yet agreed to a final compensable amount, the \$2,034,432.00 deposited into the Registry of the Court is not in dispute.

III.

The Defendant in this condemnation proceeding, OAK LAWN APARTMENTS LTD, own[s] the subject property to this condemnation. Therefore, the Defendant [is] now entitled to withdraw the Award from the Registry of this Court in the amount of **TWO MILLION THIRTY[-]FOUR THOUSAND FOUR HUNDRED THIRTY[-]TWO DOLLARS and NO/100 DOLLARS (\$2,034,432.00)**.

[I]V.

WHEREFORE, PREMISES CONSIDERED, Defendant pray[s] that the Clerk of the Court be ORDERED to pay the amount of **TWO MILLION THIRTY[-]FOUR THOUSAND FOUR HUNDRED THIRTY[-]TWO DOLLARS and NO/100 DOLLARS (\$2,034,432.00)** to the Defendant, OAK LAWN APARTMENTS LTD.

Approximately two months later, the State filed a motion for entry of judgment and an application for writ of possession. The trial court found that no

objections to the special commissioners' award were filed and signed a "Judgment Of Court In Absence of Objection." Oak Lawn then perfected this appeal.

### **III. MOTION TO WITHDRAW AWARD DOES NOT CONSTITUTE AN OBJECTION**

In its sole issue, Oak Lawn argues that the trial court erred by entering a final judgment on the special commissioners' award over the objection Oak Lawn made in its "Motion To Withdraw Award Of Special Commissioners." The disposition of Oak Lawn's issue turns on whether its motion to withdraw the award constitutes a written statement of objections under the relevant condemnation statute.

#### **A. Standard of Review and Rules of Statutory Construction**

We review issues of statutory construction de novo. *Tex. Lottery Comm'n v. First State Bank of DeQueen*, 325 S.W.3d 628, 635 (Tex. 2010). In construing statutes, our primary objective is to give effect to the legislature's intent. *Id.* (citing *Galbraith Eng'g Consultants, Inc. v. Pochucha*, 290 S.W.3d 863, 867 (Tex. 2009)). "Where text is clear, text is determinative of that intent." *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 437 (Tex. 2009) (op. on reh'g). Thus, we rely on the plain meaning of the text as expressing legislative intent unless a different meaning is supplied by legislative definition or is apparent from the context, or the plain meaning leads to absurd results. *Tex. Lottery Comm'n*, 325 S.W.3d at 635; see also *Fitzgerald v. Advanced Spine Fixation Sys.*, 996 S.W.2d 864, 866 (Tex. 1999) (explaining that "it is a fair assumption that the Legislature

tries to say what it means, and therefore the words it chooses should be the surest guide to legislative intent”).

## **B. The Law on Eminent-Domain Proceedings**

Chapter 21 of the Texas Property Code governs eminent-domain proceedings. *See generally* Tex. Prop. Code Ann. §§ 21.001–.103 (West 2014); *In re Energy Transfer Fuel, LP*, 250 S.W.3d 178, 180–81 (Tex. App.—Tyler 2008, orig. proceeding) (explaining that “[a]n eminent domain proceeding is not within the general jurisdiction of the court; any power to act is special and depends upon the eminent domain statute”). The Texas eminent-domain scheme is a two-part process that begins with an administrative proceeding followed, if necessary, by a judicial one. *Amason v. Nat. Gas Pipeline Co.*, 682 S.W.2d 240, 242 (Tex. 1985); *see also City of Tyler v. Beck*, 196 S.W.3d 784, 786 (Tex. 2006).

The initial filing of the petition and the commissioners’ hearing and award constitute the administrative proceeding part of the eminent-domain scheme. *See Hubenak v. San Jacinto Gas Transmission Co.*, 141 S.W.3d 172, 179 (Tex. 2004). The condemning entity initiates a condemnation proceeding by filing a petition in the proper court. Tex. Prop. Code Ann. § 21.012. The court then appoints three special commissioners to conduct a hearing and to determine just compensation. *Id.* §§ 21.014–15. Once the commissioners have made an award, the condemnor, if satisfied, must pay the amount of the award to the

condemnee, deposit that amount in the court's registry, or post a sufficient bond. *Id.* § 21.021(a).

On the filing of objections, the special commissioners' award is vacated, and the administrative proceeding converts into a normal pending judicial cause with the condemnor as plaintiff for the purpose of proving its right to condemn and the landowner as defendant. See *id.* § 21.018(b); see also *Beck*, 196 S.W.3d at 786; *Denton Cty. v. Brammer*, 361 S.W.2d 198, 200 (Tex. 1962). Either party may challenge the special commissioners' award by filing a written statement of their objections in the same court. See Tex. Prop. Code Ann. § 21.018(a); *Hubenak*, 141 S.W.3d at 179. Objections to the special commissioners' award need not utilize particular words but must be filed with the court and must identify the substance of the party's complaint by stating the "grounds" for its objections. See Tex. Prop. Code Ann. § 21.018(a); *Pappas Rests., Inc. v. State*, No. 01-15-00001-CV, 2016 WL 3900720, at \*7 (Tex. App.—Houston [1st Dist.] July 14, 2016, no pet.) (mem. op.). The objecting party must then secure service of citation on the adverse party and try the case in the manner of other civil causes. Tex. Prop. Code Ann. § 21.018(b); *Beck*, 196 S.W.3d at 786; see also *Amason*, 682 S.W.2d at 242.

Absent timely-filed objections, the court has a ministerial duty to enter judgment in accordance with the special commissioners' award. *Tex. Dep't of Transp. v. A.P.I. Pipe & Supply, LLC*, 397 S.W.3d 162, 167–68 (Tex. 2013); *John v. State*, 826 S.W.2d 138, 141 n.5 (Tex. 1992); *Blasingame v. Krueger*, 800

S.W.2d 391, 394 (Tex. App.—Houston [14th Dist.] 1990, orig. proceeding). In the absence of timely-filed objections, the trial court’s judgment on the commissioners’ findings and award is not appealable. See, e.g., *Pearson v. State*, 315 S.W.2d 935, 938 (Tex. 1958) (“[I]f no objections are filed[,] . . . [n]o jurisdiction is conferred upon the court to do anything more than accept and adopt the award as its judgment. . . . There is nothing which the court . . . can hear and determine by the exercise of its judicial powers. . . . [A]nd there is no right of appeal therefrom.”).

### **C. Analysis**

Oak Lawn argues on appeal that two sentences in its “Motion to Withdraw Award of Special Commissioners” constitute its section 21.018(a) written statement of objections to the special commissioners’ award. Oak Lawn points to the second sentence of paragraph I that states, “Objections were filed by Defendant to the Award of the Special Commissioners,” and to the second sentence of paragraph II that states, “[a]lthough the parties have not yet agreed to a final compensable amount, the \$2,034,432.00 deposited into the Registry of the Court is not in dispute.” Oak Lawn argues that these two sentences<sup>2</sup> are sufficient to constitute a section 21.018(b) statement of written objections to the

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<sup>2</sup>We have reviewed the record to determine if any other document filed by Oak Lawn could be construed as an objection to the condemnation award and have found no other documents filed by Oak Lawn during the period mandated by section 21.018(a). See Tex. Prop. Code Ann. § 21.018(a).

special commissioners' award because "the threshold for a sufficient objection [in the eminent-domain context] is low."

Under section 21.018(a), a party to a condemnation proceeding objects to the findings of the special commissioners "by filing a written statement of the objections and their grounds with the court that has jurisdiction of the proceeding." See Tex. Prop Code Ann. § 21.018(a). Giving section 21.018(a) its plain meaning, as we are required to do, an objecting party must file a written document; the document must set forth the party's objections (e.g., an objection that the condemnor did not have the authority to condemn the property at issue, an objection that the award is insufficient, etc.); and the document must set forth the grounds for the stated objections. Although the plain language of section 21.018(a) does not require the "written statement of the objections and their grounds" to adhere to strict or formal pleading requirements, see *State v. King*, 437 S.W.2d 420, 423 (Tex. Civ. App.—El Paso 1969, no writ), the plain language of the statute reflects the legislature's intent that the written statement, at a minimum, must apprise the trial court that objections have been filed. See *id.* at 423–24 (holding sufficient objector's letter, which "requested that we notify you of his disapproval of the findings of the three partial and bias commissioners appointed to assess the value of his property" and requesting that the letter be considered "as his request for Jury Trial in these proceedings").

The two sentences in Oak Lawn's motion to withdraw the award that Oak Lawn contends satisfy the requisites of section 21.018(a) do not constitute a



written statement of objections. Instead, Oak Lawn's motion to withdraw the award indicates only that "[o]bjections were filed." But none were. The record does not include, and Oak Lawn does not contend it filed, a separate document stating Oak Lawn's objections to the special commissioners' award.

Alternatively, even if we generously construe Oak Lawn's motion to withdraw the award as a "written statement of the objections," Oak Lawn's motion to withdraw the award would still fail to comply with section 21.018(a), which also requires grounds for the objections. See Tex. Prop. Code Ann. § 21.018(a). Oak Lawn argues that the statement in its motion—that "[a]lthough the parties have not yet agreed to a final compensable amount, the \$2,034,432.00 deposited into the Registry of the Court is not in dispute"—sets forth the ground for its "[o]bjections": inadequate compensation. But this sentence in Oak Lawn's motion to withdraw the award reflects only that the parties purportedly had not agreed on a final compensable amount and that the amount deposited into the court registry was *not* in dispute; this sentence—construed by Oak Lawn as stating the grounds for its "[o]bjections"—did not inform the trial court or the State that Oak Lawn was objecting to the award on the ground that it was inadequate, nor did it set forth any other ground to support its "[o]bjections."

Oak Lawn, relying on a statement from *Hubenak*, argues that section 21.018 of the property code does not give the trial court discretion to assess the adequacy of an objection before transforming the administrative proceeding into a pending cause. 141 S.W.3d at 179. *Hubenak*, relying on section 21.018(b),

states that “if there are objections, ‘the court shall cite the adverse party and try the case in the same manner as other civil causes.’” *Id.* The key portion of that statement is “if there are objections.” As discussed above, the plain language of section 21.018 makes clear that the trial court must first be alerted that there are objections and of the grounds for them via the filing of the “written statement of the objections” before the administrative case is transformed into a pending judicial cause. Tex. Prop. Code Ann. § 21.018(a), (b).

Oak Lawn further argues that after it filed its “[o]bjections,” “the [t]rial [c]ourt failed to cite the [State] and try the case” pursuant to section 21.018(b). Even assuming that Oak Lawn had filed objections, which it did not, it was not incumbent on the trial court to cite the State. The Texas Supreme Court has interpreted section 21.018(b) as requiring the objecting party to secure service of citation on the adverse party. See *Beck*, 196 S.W.3d at 786. If Oak Lawn thought its motion to withdraw the award constituted objections, it was required to secure service of citation on the State. See *id.* Oak Lawn did not do so, nor did it take any other action within the required time frames to alert the trial court that its motion to withdraw the award constituted a timely-filed written statement of objections pursuant to section 21.018(a). Oak Lawn’s conduct following the filing of its motion to withdraw the award is thus inconsistent with treating that document as a written statement of objections.

Having thoroughly reviewed Oak Lawn’s motion to withdraw the award, we conclude that it does not satisfy the requisites of section 21.018(a) and thus does

not constitute a statement of objections to the special commissioners' award. See Tex. Prop Code Ann. § 21.018(a); *Pappas Rests., Inc.*, 2016 WL 3900720, at \*5 (holding that notice of appearance of substitute counsel did not satisfy section 21.018 and thus did not constitute an objection to the special commissioners' award); *Groves v. Wind Energy Transmission Tex., LLC*, No. 11-12-00107-CV, 2012 WL 3537811, at \*2 (Tex. App.—Eastland Aug. 16, 2012, no pet.) (mem. op.) (holding that special appearance did not constitute a timely-filed objection to special commissioners' award because special appearance did not attack award).

Furthermore, because Oak Lawn's motion to withdraw the award did not constitute a statement of objections that alerted the trial court to the grounds on which Oak Lawn was attacking the special commissioners' award, the statutory requirements were not met to transform the underlying administrative proceeding into a pending judicial cause. See *generally* Tex. Prop. Code Ann. § 21.018(b) (stating that “[i]f a party files an objection to the findings of the special commissioners,” then court shall try the case in the same manner as other civil causes) (emphasis added). Consequently, the trial court's judgment, which merely adopted the special commissioners' findings as the judgment of the court, is not appealable. See *id.* § 21.061 (stating that if no party files timely objections, the judge has a ministerial duty to adopt the commissioners' findings as the judgment of the court); *Pearson*, 315 S.W.2d at 938; *Musquiz v. Harris Cty. Flood Control Dist.*, 31 S.W.3d 664, 667 (Tex. App.—Houston [1st Dist.] 2000, no pet.).

Because Oak Lawn attempts to appeal from a judgment that is not appealable, we lack jurisdiction over this appeal. See *Pearson*, 315 S.W.2d at 938; *Musquiz*, 31 S.W.3d at 667; *Patrick Media Grp., Inc. v. Dallas Area Rapid Transit*, 879 S.W.2d 375, 377 (Tex. App.—Eastland 1994, writ denied) (“Absent objections to the commissioners’ award by the parties to the condemnation proceeding, we have no jurisdiction to entertain this appeal.”); *Storey v. Irving*, 475 S.W.2d 856, 857 (Tex. Civ. App.—Dallas 1971, no writ) (“The order complained of was an administrative order and not a judgment in a civil case, and there is no right of appeal therefrom.”).

#### IV. CONCLUSION

Having determined that the judgment from which Oak Lawn attempts to appeal is not appealable, we dismiss this appeal for want of jurisdiction. See Tex. R. App. P. 42.3(a), 43.2(f).

/s/ Sue Walker  
SUE WALKER  
JUSTICE

PANEL: WALKER and PITTMAN, JJ., and CHARLES BLEIL (Senior Justice, Retired, Sitting by Assignment).

DELIVERED: January 11, 2018