



NUMBER 13-15-00342-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

COPANO NGL SERVICES,

Appellant,

v.

**JOHN ASHCRAFT, INDIVIDUALLY AND
AS TRUSTEE FOR THE JOHN ASHCRAFT
FAMILY TRUST 2012,**

Appellee.

**On appeal from the 23rd District Court
of Matagorda County, Texas.**

DISSENTING MEMORANDUM OPINION

**Before Justices Garza, Perkes, and Longoria
Dissenting Memorandum Opinion by Justice Perkes**

I dissent from the majority's holding because I believe Copano timely filed its objections to the special commissioners' award. The majority's holding creates one set of rules for the landowner, and another set of rules for the condemnor. This approach is

incorrect because it construes the applicable statute contrary to its clear and unambiguous language.

Section 21.049 of the Texas Property Code mandates that:

[N]ot later than the next working day after the day the decision [by the special commissioners] is filed, the clerk shall send notice of the decision by certified or registered United States mail, return receipt requested, *to the parties* in the proceeding, or to their attorneys of record, at their addresses of record.

TEX. PROP. CODE ANN. § 21.049 (West, Westlaw through 2015 R.S.) (emphasis added).

John v. State, which the majority distinguishes, explains that section 21.049 is mandatory, and that a clerk's failure to comply with the notice provision tolls the deadline for objecting to the commissioner's award. See 826 S.W.2d 138, 140–141 (Tex. 1992) (citing TEX. PROP. CODE ANN. § 21.049). *John* stresses that “[s]ince the language of the statute is clear and unambiguous, it should be enforced as written, giving its terms their usual and ordinary meaning, and without resorting to the rules of construction.” *Id.* at 140. “Party” has two ordinary meanings in the legal context: (1) a participant in a transaction, such as a party to a contract, or (2) one by or against whom a lawsuit is brought. *In re L.N.E.*, No. 05–07–01712, 2009 WL 280472, at *2 (Tex. App.—Dallas Feb. 6, 2009, no pet.) (mem. op.) (citing *Black’s Law Dictionary* 1154 (8th ed. 2004)); accord *Doe v. Roe*, 600 S.W.2d 378, 379 (Tex. Civ. App.—Eastland 1980, writ ref’d n.r.e.) (“Texas courts have long held that a ‘party’ is one by or against whom a suit is brought . . .”).

The use of the plural “parties” in section 21.049 indicates that the clerk is required to mail notice of the special commissioners’ award in a condemnation proceeding to *both*

the one by *and* against whom a suit is brought. See TEX. PROP. CODE ANN. § 21.049. This means not just the landowner, but the condemnor as well. This reading of the statute is not mutually exclusive with the rule of construction that the statutory protections must be “liberally construed for the benefit of the landowner.” *John*, 826 S.W.2d at 140 (citing *Coastal Indus. Water Auth. v. Celanese Corp. of Am.*, 592 S.W.2d 597, 599 (Tex. 1979)). Here, there is simply nothing to liberally construe.

Our sister court applied this reasoning in a case that is almost factually identical. See *Oncor Elec. Delivery Co. LLC v. Schunke*, No. 04–13–00067–CV, 2013 WL 6672494, at *3 (Tex. App.—San Antonio Dec. 18, 2013, pet. dismiss’d) (mem. op.). There, the court explicitly rejected the party-specific approach, noting that clear and unambiguous statutes must be enforced as written. *Id.* The court concluded that because the trial court clerk never mailed the notice as required under section 21.049, the condemnor’s time to file objections to the commissioners’ award was tolled. *Id.* I agree with *Oncor’s* analysis and conclusion.

The majority’s argument resorts to rules of construction by addressing policy considerations. Focusing on the “public policy” and “statutory scheme” ignores the plain and unambiguous language of the statute in favor of subjective interpretation. While I agree that section 21.049’s statutory requirements must protect the landowner, such protections cannot come at the expense of another party’s rights. Moreover, if, as the majority holds, “actual notice” of the commissioner’s award may replace statutory notice, then when any party in a condemnation hearing has “actual notice” of the commissioner’s award, section 21.049 becomes superfluous. See *City of Dallas v. TCI West End, Inc.*,

463 S.W.3d 53, 57 (Tex. 2015) (“As a general principle, we eschew constructions of a statute that render any statutory language meaningless or superfluous.”). Such a holding is a clear end-run around the notice mandate of section 21.049 because it allows the clerk to simply email the commissioner’s award to the parties instead of sending the notice by certified or registered mail.

Copano did not receive the clerk’s mailed notice until after it had filed objections to the commissioner’s award. Since the timeline to file objections did not run until a party receives the clerk’s mailed notice, I would sustain Copano’s first issue and reverse the trial court’s judgment.

GREGORY T. PERKES
Justice

Delivered and filed the
30th day of June, 2016.