

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

JANUARY 22, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

NOTICE

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No. 96-1336

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**GEORGE D. FRENCH, JR., D/B/A
ORDE ADVERTISING COMPANY,**

Petitioner-Appellant,

v.

**RONALD R. FIEDLER, SECRETARY
WISCONSIN DEPARTMENT OF
TRANSPORTATION, AND THE
WISCONSIN DEPARTMENT OF
TRANSPORTATION,**

Respondents-Respondents.

APPEAL from a judgment of the circuit court for Brown County:
JOHN P. HOFFMAN, Judge. *Affirmed.*

Before Cane, P.J., Myse and Carlson, JJ.

CARLSON, J. George French, Jr., d/b/a Orde Advertising Company, appeals a summary judgment concluding that certain billboard site leases were terminated and that the sign owner had no legal basis for claiming compensation from the State. Orde contends that the trial court erred by failing

to properly follow *Vivid, Inc. v. Fiedler*, 174 Wis.2d 142, 497 N.W.2d 153 (Ct. App. 1993), *modified*, 182 Wis.2d 71, 512 N.W.2d 771 (1994). It claims that *Vivid* held that the Wisconsin Constitution requires the State to pay just compensation for personal property such as billboards that are "taken" as part of highway condemnation proceedings. Because the trial court properly determined that the leases were terminated, we conclude that there was no taking, and Orde is not entitled to compensation. Accordingly, we affirm the judgment.

The Department of Transportation was engaged in the reconstruction of Riverside Drive in the Green Bay area. Orde had back-to-back advertising structures located on St. Joseph Orphan Asylum property. As part of the project, the department acquired a portion of the property following negotiations and a warranty deed conveyance. Orde's billboards were located on this portion.

There was no written lease between Orde and St. Joseph. Orde possessed month-to-month tenancy and was paying St. Joseph \$80 per month for the right to have the billboards at that location. The department did not undertake to acquire any property interests from Orde, but instead informed Orde that as a tenant, it would have to remove its signs. The department did advise Orde that as a displaced tenant, it would be entitled to relocation benefits under § 32.19, STATS.

On September 2, 1988, the Diocese of Green Bay, the owner of the St. Joseph property, advised Orde's counsel by letter that regardless of the outcome of the highway widening project, its plans no longer included outdoor advertising at that site and that it expected the billboards to be removed no later than December 31, 1989.

On April 3, 1989, the department informed Orde that the property acquisition had been completed and the signs would not have to be removed until at least July 5, 1989, but a notice to vacate could come at any time thereafter. On March 12, 1990, the department notified Orde that the signs would have to be removed by May 1, 1990. The department acknowledged that since the parties had not been able to reach a settlement on relocation benefits, Orde could file a claim under § 32.20, STATS. The signs were removed on or about May 8, 1990. Orde still has the signs in its possession.

On July 31, 1990, French, on behalf of Orde, filed a \$66,500 claim for relocation benefits. The department refused to approve the claim within ninety days, and it was deemed denied. Orde then commenced this inverse condemnation action under § 32.10, STATS.

The State filed a summary judgment motion on the basis that Orde, as a matter of law, did not have a claim for which relief could be granted. The court granted the motion.

While the matter was pending in the trial court, it was stayed pending a decision in *Vivid*. When the case was reactivated following the supreme court's decision in *Vivid*, the summary judgment motion was rebriefed. The trial court determined that although a sign company could have a constitutional claim based on the court of appeals decision in *Vivid*, Orde could not make out such a claim in this case because the Diocese had terminated Orde's sign site lease.

Orde's principal contention is that the department and the trial court ignored the court of appeals holding in *Vivid*. Orde argues that under the terms of *Vivid*, it is entitled to bring this action for inverse condemnation for the department's taking of the outdoor signs and sign sites. We conclude that Orde's reliance on *Vivid* is misplaced. We are satisfied that the trial court properly determined that when the Diocese terminated the month-to-month tenancy in Orde's use of the billboard site, it effectively ended any right Orde had to seek compensation from the State for an alleged taking. Any rights Orde had vanished when the Diocese terminated the lease arrangement, even under its interpretation of *Vivid*.

Our review of summary judgments is de novo; we apply the same methodology as the trial court and consider the legal issues independently, without deference to the trial court's decision. *Hake v. Zimmerlee*, 178 Wis.2d 417, 420-21, 504 N.W.2d 411, 412 (Ct. App. 1993). Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Germanotta v. National Indem. Co.*, 119 Wis.2d 293, 296, 349 N.W.2d 733, 735 (Ct. App. 1984).

The facts of this case are distinguishable from *Vivid*. Orde had an oral agreement with the Diocese to allow the placement of the billboards. Although that agreement had been in effect for some time, it was nothing more than a month-to-month tenancy. According to Orde, it was paying \$80 per month for the site lease. Orde had no contractual right to any form of automatic extension or renewal of this agreement. In *Vivid*, however, the billboard company had a five-year lease subject to renewal for a like period. Vivid also intended to have the signs fixed to the site indefinitely.

Orde simply was not in the same position as Vivid in terms of its rights under the lease. All Orde possessed was the right to at least a twenty-eight-day notice of termination of the tenancy. See § 704.19(3), STATS. In fact, Orde received significantly more than thirty days' notice. After the State began negotiations to acquire the St. Joseph property, the Diocese advised Orde by letter dated September 2, 1988, that its plans for the property after the widening "will not include present or new locations for any outdoor advertising. Should the highway department not complete the widening for some reason we would still expect the Orde billboards to be removed on or before December 31, 1989."

This letter constitutes written notice of the termination of the month-to-month tenancy. Orde received nearly sixteen months' notice of the termination by this letter. However, prior to the December 31, 1989, deadline, the State acquired ownership of the property. In fact, in an April 3, 1989, letter, the State informed Orde that it had acquired ownership and, based on highway widening plans at the time, the signs could remain until at least July 5, 1989, but that a notice to vacate could come at any time thereafter. Even if this letter were construed as a revised notice of termination of tenancy, Orde received a minimum of three months' notice.

As it happened, Orde was permitted to keep its signs on the property until they were removed on May 8, 1990, thirteen months after the State's April 3, 1989, letter and twenty months after the September 2, 1988, letter from the Diocese. Orde cannot complain that it had insufficient notice of the termination of the lease.

When the State acquired ownership, it also acquired the same rights of the original owner with respect to this lease. As with the prior owner,

the new owner could terminate the lease with twenty-eight days' notice.¹ Orde possessed no greater rights with respect to the leasehold interest after the State took ownership than it had when the Diocese owned the property.

After acquiring ownership, the department was in the analogous position as the city in *City of Whitewater v. Vivid, Inc.*, 140 Wis.2d 612, 412 N.W.2d 519 (Ct. App. 1987). In that case, Vivid had a site lease on property owned by the city. At the end of the lease, the city declined to renew the lease. Vivid sought compensation for the loss of its leasehold interest. That case holds that a city as landowner has all the same rights as a private landowner and is under no obligation to renew a lease. *Id.* at 619, 412 N.W.2d at 522. By declining to renew a lease, the city did not trigger any compensation rights concerning Vivid. Just as Vivid could not be heard to complain that city ownership somehow gave them greater rights under the leasehold, Orde cannot argue that it magically was endowed with any greater rights under the month-to-month tenancy than it had with the Diocese.

Similarly, in *Riebs v. Milwaukee County Park Comm'n*, 252 Wis. 144, 31 N.W.2d 190 (1947), the Wisconsin Supreme Court held that a tenant's compensable interest is limited to the time remaining on the lease. *See also Maxey v. Redevelopment Auth.*, 94 Wis.2d 375, 401, 288 N.W.2d 794, 806 (1980). *Riebs* concerned tenants who operated a concession stand on property leased for over fifty years from the City of Milwaukee. The tenants had expected the leasehold interest to continue indefinitely. The court held that, notwithstanding their subjective beliefs, the compensable interest was limited to the remaining time on the actual lease. *Id.* at 148, 31 N.W.2d at 192. Therefore, if either the Diocese or the department terminated the Orde lease, the maximum compensable interest to Orde would be the value of the one-month termination right. Because Orde had between sixteen to twenty months' prior notice of termination, it has no compensable interest in this case.

¹ A month-to-month tenant has no property interest that entitles him to compensation. If a lessee is a month-to-month tenant, the state, having succeeded to the title of the landlord as condemnor, has the right to terminate the tenancy on a month's notice. *See* 2 NICHOLS ON EMINENT DOMAIN § 5.06(4) at 5-129-30 (rev. 3d ed. 1995).

Therefore, the decision in this case does not turn on either the court of appeals decision in *Vivid* or an interpretation of the supreme court's review of that decision. It is unnecessary to reach those issues because both the Diocese and the department gave more than adequate notice of termination of the month-to-month tenancy, thus ending any property rights Orde had in the St. Joseph location. Without any property rights at stake, there is no "taking." The court did not err when it decided as a matter of law that Orde had no compensable property interest in the billboard site and granted summary judgment to the State. The judgment is therefore affirmed.

By the Court. – Judgment affirmed.

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