

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 4, 2007

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2005AP259

Cir. Ct. No. 2003CV231

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

WILLIAM J. MEIS AND DEBRA M. MEIS,

PLAINTIFFS-APPELLANTS-CROSS-RESPONDENTS,

v.

STATE OF WISCONSIN, DEPARTMENT OF TRANSPORTATION,

DEFENDANT-RESPONDENT-CROSS-APPELLANT.

APPEAL and CROSS-APPEAL from a judgment and orders of the circuit court for Grant County: ROBERT P. VAN DE HEY, Judge. *Reversed and cause remanded with directions.*

Before Higginbotham, P.J., Dykman and Lundsten, JJ.

¶1 HIGGINBOTHAM, P.J. William J. and Debra M. Meis appeal a judgment entered following a jury verdict awarding the Meises just compensation for property taken by the Wisconsin Department of Transportation (DOT) for a

road project. Specifically, the Meises challenge evidentiary rulings made by the trial court in an eminent domain proceeding brought pursuant to WIS. STAT. § 32.05(10) (2005-06),¹ and the award resulting from that proceeding. DOT cross-appeals the trial court's order denying its motion to dismiss. DOT argues that the trial court lacked competency to entertain the Meises' appeal under § 32.05(10) of the condemnation commission's decision dismissing the Meises' challenge to the price paid by DOT for the Meises' property. Specifically, DOT asserts that, because under § 32.05(10), an "award" is a prerequisite to an appeal and the Grant County Condemnation Commission did not issue an award, the circuit court lacked competency to proceed with the Meises' appeal. DOT also argues that the trial court erroneously construed the condemnation commission's dismissal of the Meises' challenge as an "award." We agree and therefore reverse the judgment and orders of the circuit court and remand with directions to dismiss the Meises' circuit court appeal.

BACKGROUND

¶2 The pertinent facts are not in dispute. In August 2002, DOT acquired by deed property belonging to the Meises for a road project.² Unsatisfied with the price DOT paid for the property, the Meises filed an application with the circuit court pursuant to WIS. STAT. § 32.05(9), asking that the Grant County Condemnation Commission consider their challenge to the compensation paid by DOT for their condemned property. However, the day before a scheduled hearing,

¹ All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

² We observe that WIS. STAT. § 32.05(2a) provides the procedure concerning awards for property taken by way of conveyance, as in this case.

the Meises informed the commission that they would not appear at the hearing because they did not have enough time to produce an appraisal report, and DOT was unwilling to stipulate to a continuance.³ Apparently, assuming that the commission would make an award regardless whether they appeared at the hearing and with the intent to simply exercise their statutory right to appeal the commission's award, neither the Meises nor their attorney appeared at the hearing. DOT appeared and moved the condemnation commission to dismiss the Meises' application. The condemnation commission granted DOT's motion and dismissed the Meises' application "in lieu of issuing an award," concluding that the Meises abandoned their request that the commission make an award for damages.

¶3 The Meises wrote the commission objecting to the dismissal because the commission had no authority to dismiss their application in lieu of issuing an award. The Meises also complained that counsel for DOT was aware that the Meises had no intention of abandoning their claim for an award, and that DOT was taking advantage of their unwillingness to grant the Meises a continuance to obtain an appraisal report. When the commission still did not issue an award, the Meises filed a Notice of Appeal and Appeal⁴ with the circuit court, pursuant to WIS. STAT. § 32.05(10), seeking judicial de novo review of the commission's decision.

³ We note that the Meises did not withdraw their application for just compensation.

⁴ An appeal of a condemnation commission's award under WIS. STAT. § 32.05 is a unique sort of appeal in that it does not involve a review of a lower tribunal's action. An appeal under § 32.05(10) is an opportunity for the property owner to have the circuit court conduct a de novo trial, either to the court or to a jury, to determine the amount of just compensation. The circuit court does not in any sense review a condemnation commission's just compensation award. Indeed, § 32.05(10) prohibits any party from disclosing to the court the amount of compensation awarded by a commission.

¶4 In the circuit court, DOT moved to dismiss the Meises' appeal because under WIS. STAT. § 32.05(10) an appeal must be made within sixty days after the filing of the commission's award and the commission had not issued an award. Therefore, DOT argues, the court lacked competency to proceed. The Meises countered that the commission lacked the statutory authority to dismiss their application and was required under WIS. STAT. § 32.05(9) to issue an award. DOT responded by arguing that the nature of these proceedings is a request for determination of just compensation under § 32.05(10), not a judicial review of the actions of the condemnation commission, and that, because the commission did not issue an award, there was no action pending before the circuit court.

¶5 The circuit court agreed with the Meises and concluded that WIS. STAT. § 32.05(9) requires the commission to make an award. The court also determined, based on "the manner in which the [commission's] order was drafted and then signed," that the court was required to construe the commission's decision dismissing the application as issuing an award because the only decision the commission was authorized to issue was an award. The court then entered an award "for whatever was previously paid" by DOT, determined that the Meises' appeal to the court was timely, and dismissed DOT's motion. A jury awarded the Meises \$46,765 for the property taken by DOT.

¶6 The Meises challenge evidentiary rulings by the trial court before and during the jury trial, as well as the award made by the jury. DOT cross-appeals the court's decision denying its motion to dismiss and its decision that the commission lacked the authority to dismiss the Meises' application and to not

issue an award.⁵ Because our resolution of DOT's cross-appeal on whether the circuit court had competency to adjudicate the Meises' appeal is dispositive, we do not address the other issues raised by the Meises or DOT.

DISCUSSION

¶7 The dispositive issue is whether, under WIS. STAT. § 32.05(10), the circuit court had the power to entertain an appeal from the condemnation commission's decision dismissing the Meises' application. DOT argues that the circuit court lacked competency to adjudicate the Meises' appeal because, under § 32.05(10), an award is a prerequisite to an appeal and here the commission did not issue an award. The Meises argue that to deny their constitutional right to just compensation simply because the condemnation commission did not label their decision an "award" is contrary to due process and "flies directly in the face of the principle that remedies under the condemnation statute are to be liberally construed." We conclude that the circuit court lacked competency to proceed with the Meises' appeal of the condemnation commission's decision dismissing their application.

¶8 This case requires us to construe and apply WIS. STAT. § 32.05(10). Statutory interpretation begins with an examination of the statutory text. *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110. We give the text of a statute its common, ordinary, and accepted meaning, although we give technical or specially defined words their technical or

⁵ Although we, too, question the commission's statutory authority to dismiss the Meises' application in lieu of issuing an award, we do not address that issue because our conclusion that the circuit court lacked competency to entertain the Meises' appeal is dispositive.

special definitions. *Id.* If the statute is unambiguous, we apply the plain meaning of the statute to give effect to the legislature’s policy choices. *Id.*, ¶¶44, 46.

¶9 The issue we address relates to the circuit court’s competency to adjudicate the Meises’ appeal under WIS. STAT. § 32.05(10). The supreme court has described “a circuit court’s inability to adjudicate the specific case before it because of a failure to comply with a statutory requirement as a loss of competence.” *Kett v. Community Credit Plan, Inc.*, 228 Wis. 2d, 1, 13 n. 12, 596 N.W.2d 786 (1999) (citations omitted). Competency is often confused with subject matter jurisdiction. *See id.* “When the concepts of subject matter jurisdiction and competency are applied to circuit courts, the distinction is that *subject matter jurisdiction* is plenary and constitutionally-based and *is not affected by statutes, whereas statutory requirements may affect a court’s competency*, depending on the nature of the requirement.” *Stern v. WERC*, 2006 WI App 193, ¶24, 296 Wis. 2d 306, 722 N.W.2d 594 (emphases added). The statutory requirement absent here was an “award” by the commission.

¶10 WISCONSIN STAT. § 32.05(10)⁶ authorizes a circuit court to entertain an appeal “[w]ithin 60 days after the date of filing of the commission’s award.”

⁶ WISCONSIN STAT. § 32.05(10) provides in relevant part:

APPEAL FROM COMMISSION’S AWARD TO CIRCUIT COURT. (a) Within 60 days after the date of filing of the commission’s award, any party to the proceeding before the commission may appeal to the circuit court of the county wherein the property is located. Notice of such appeal shall be given to the clerk of the circuit court and to all persons other than the appellant who were parties to the proceeding before the commissioners. Notice of appeal may be given by certified mail or by personal service. The clerk shall thereupon enter the appeal as an action pending in said court with the condemnee as plaintiff and the condemnor as defendant. It shall thereupon proceed as an action in said court subject to all the provisions of

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The plain language, then, provides that the trigger for an appeal under § 32.05(10) is an “award.” Without an “award,” there is no starting point for application of the statute.

¶11 The condemnation commission did not issue an award to the Meises. Instead, the commission dismissed the Meises’ application seeking just compensation without addressing the issue of compensation and without issuing an award. The record does show that the Meises filed an appeal with the Grant County Clerk of Court. However, what they appealed was not the commission’s award, but rather the commission’s decision dismissing their application. Accordingly, the circuit court lacked competency to proceed with the Meises’ appeal. *See Acheson v. Winnebago County Highway Comm.*, 14 Wis. 2d 475, 478, 111 N.W.2d 446 (1961) (A circuit court “[has] no authority to entertain an appeal taken prior to the making of an award by the [condemnation] commissioners appointed for that purpose.”) (Citation omitted.)⁷

law relating to actions brought therein and shall have precedence over all actions not then on trial. The sole issues to be tried shall be questions of title, if any, under ss. 32.11 and 32.12 and the amount of just compensation to be paid by condemnor. It shall be tried by jury unless waived by both plaintiff and defendant. Neither the amount of the jurisdictional offer, the basic award, nor the award made by the commission shall be disclosed to the jury during such trial.

(b) The court shall enter judgment for the amount found to be due after giving effect to any amount paid by reason of a prior award. The judgment shall include legal interest on the amount so found due from the date of taking if judgment is for the condemnor, and from 14 days after the date of taking if judgment is for the condemnee.

⁷ DOT argues that the Meises could have challenged the condemnation commission’s dismissal of their application by way of certiorari. DOT may be correct. We do not address that issue, however, because it is not germane to the dispositive issue at hand. In any event, the

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¶12 For this same reason, we conclude the circuit court erred when it construed the condemnation commission’s decision dismissing the Meises’ appeal as an “award” of damages. Simply put, the commission issued nothing remotely resembling an award. Instead, the commission dismissed the Meises’ application.

¶13 In sum, we conclude that the circuit court lacked competency to entertain the Meises’ appeal. We therefore reverse and remand with directions that the circuit court vacate the judgment and dismiss the Meises’ appeal.

By the Court.—Judgment and orders reversed and cause remanded with directions.

Not recommended for publication in the official reports.

Meises do not present any argument that the circuit court should have construed their WIS. STAT. § 32.05(10) action as one seeking certiorari review.

