

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 18, 2014

Diane M. Fremgen
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. 2014AP133

Cir. Ct. No. 2009CV1232

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

SAI RAM REAL ESTATE MANAGEMENT, LLC,

PLAINTIFF-APPELLANT,

v.

WISCONSIN DEPARTMENT OF TRANSPORTATION,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Kenosha County:
BRUCE E. SCHROEDER, Judge. *Affirmed.*

Before Blanchard, P.J., Lundsten and Kloppenburg, JJ.

¶1 PER CURIAM. Sai Ram Real Estate Management, LLC, appeals a judgment directing it to repay \$150,000 to the Wisconsin Department of Transportation in a condemnation case. The main issues relate to an internal

“administrative revision” of the price that the Department offered to pay Sai Ram during its pre-condemnation negotiation with Sai Ram. We affirm the judgment.

I. FACTS

¶2 Sai Ram commenced this action in circuit court under WIS. STAT. § 32.05(11) (2011-12)¹ as an appeal from an award of compensation made under § 32.05(7). Before trial, Sai Ram sent the Department a “demand for production of appraisal report,” and filed in court a “motion for production of appraisal report.” The memorandum filed with the motion asserted the following facts, which appear to be undisputed. The Department’s award of damages in May 2009 was approximately \$250,000. However, the appraisal report provided to Sai Ram by the Department showed damages of \$67,000, while another Department appraisal, made after the award, was for \$80,000. Sai Ram presented pre-award appraisals of \$244,000 and \$950,000.

¶3 Sai Ram argued that, because of the wide gap between the Department’s pre-award appraisal of \$67,000 and the Department’s jurisdictional offer of \$250,000, the jurisdictional offer was not based on that appraisal. Sai Ram argued that the Department had thus violated the requirement of WIS. STAT. § 32.05(2)(b) that it provide the condemnee with “a full narrative appraisal upon which the jurisdictional offer is based.” Sai Ram asked the court to order the Department to “produce the appraisal report upon which the jurisdictional offer was based. If none exists, it must produce the documentation in its file which formed the basis of the \$250,000 jurisdictional offer.”

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

¶4 The Department does not appear to have opposed the motion, and it provided Sai Ram with an “administrative revision,” which Sai Ram then forwarded to the court. That document contains a table comparing the various elements of the Department’s \$67,000 appraisal with Sai Ram’s appraisal of approximately \$950,000. It seeks an administrative revision from the “approved offering price” of \$67,000 to \$250,000. In a section called “Justification for administrative increase,” the authors wrote:

The DOT appraiser ... did not consider a cost to cure for modifications to the [Sai Ram] building for the realignment of the entrance to the gas station. The original owner’s appraisal [that is, the one for \$244,000] considered several factors when calculating damages and more weight was given [by these authors] to this appraisal than either the DOT appraisal or the owner[’]s second appraisal [that is, the one for \$950,000].

¶5 After providing this document to Sai Ram, the Department moved in limine to exclude it as evidence at trial, along with any testimony about it. Following testimony from one of the authors of the administrative revision, the court granted the motion to exclude the evidence. The court concluded that the administrative revision was inadmissible because it was an “offer of compromise.” The court entered a further order denying Sai Ram’s motion for production of an appraisal report on which the jurisdictional offer is based. The court stated that WIS. STAT. § 32.05(2)(b) does not require the Department to provide an appraisal report that equals the amount of the jurisdictional offer.

¶6 At trial, the jury awarded damages of \$100,000. Because that amount was less than the original award of \$250,000, Sai Ram is required to pay the difference back to the Department. *See* WIS. STAT. § 32.05(11)(a). Sai Ram now appeals from that judgment.

II. ADMISSIBILITY OF ADMINISTRATIVE REVISION

¶7 Sai Ram argues that the opinions of the authors of the administrative revision were admissible at trial. However, we conclude the argument is not sufficiently developed. In the discussion of this topic in Sai Ram’s opening brief, the brief recounts various facts, and then merely asserts: “It is unclear under these circumstances how and why the opinions of the DOT agents ... set out in their Administrative Revision, were not admissible into evidence.” The brief does not discuss the circuit court’s ruling that the administrative revision was inadmissible because of its role in settlement negotiations. Nor does the brief explain any particular theory of admissibility.

¶8 As to this issue, the brief fails to develop a coherent argument that applies relevant legal authority to the facts of record, and instead relies only upon conclusory assertions. This court need not consider arguments that are unsupported by adequate legal citations or are otherwise undeveloped. *See State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (undeveloped legal arguments). “We cannot serve as both advocate and judge,” *id.* at 647, and will not scour the record to develop viable, fact-supported legal theories on the appellant’s behalf, *State v. Jackson*, 229 Wis. 2d 328, 337, 600 N.W.2d 39 (Ct. App. 1999).

¶9 In Sai Ram’s reply brief, it suggests two specific arguments, but neither is sufficiently developed. The reply brief asserts that the conclusion of the administrative revision’s authors was admissible because it was “an admission by agents of the DOT.” The reply brief then appears to contest the circuit court’s evidentiary ruling when it asserts that the jurisdictional offer is not an offer of

settlement in the typical sense contemplated by WIS. STAT. § 904.08. However, the brief does not develop any further legal argument on either of these points.

III. DEPARTMENT FAILURE TO PROVIDE APPRAISAL

¶10 Sai Ram also argues that, if the administrative revision is not admissible as an appraisal, then the Department failed to provide it with an appraisal on which the jurisdictional offer is based, as required by WIS. STAT. § 32.05(2)(b). The argument is based on the wide gap between the appraisal and the jurisdictional offer, and also on the administrative revision's clear rejection of the Department's own appraisal as a basis for a jurisdictional offer. As relief, Sai Ram asks that we remand for a new trial with directions that the Department submit an appraisal that supports the jurisdictional offer.

¶11 Although the Department has not made this response, we conclude that Sai Ram cannot raise this issue in a trial following condemnation and an award of compensation. We conclude that instead a condemnee must raise this issue by filing suit *before* such an award, and immediately after the jurisdictional offer, as provided in WIS. STAT. § 32.05(5). That statute provides a forty-day period after the jurisdictional offer for the condemnee to file suit challenging the right of the condemnor to condemn the property "for any reason other than that the amount of compensation offered is inadequate." It further provides:

Such action shall be the only manner in which any issue other than the amount of just compensation, or other than proceedings to perfect title under ss. 32.11 and 32.12, may be raised pertaining to the condemnation of the property described in the jurisdictional offer.... If the action is not commenced within the time limited the owner or other person having any interest in the property shall be barred from raising any such objection in any other manner.

In addition, the statute controlling “appeals” to the circuit court after an award of compensation, such as the present case, provides that the “sole issues to be tried” are those same issues regarding title and the amount of just compensation. *See* § 32.05(11).

¶12 Sai Ram’s argument about the appraisal and the jurisdictional offer obviously does not pertain to title. We conclude that the argument also does not directly pertain to the amount of just compensation. We recognize that, in a loose sense, the appraisal issue pertains to just compensation because Sai Ram is hoping to compel the Department to produce another appraisal, for a higher amount, that would be admissible at a second trial on just compensation. However, Sai Ram’s actual legal claim here is not that inadequate compensation was paid, but that the Department violated the appraisal portion of the statute, WIS. STAT. § 32.05(2). And, the relief sought is that we order the Department to take a specific action to produce an additional appraisal.

¶13 It appears that this legal theory could have been raised, and this form of relief sought, by filing a court action under WIS. STAT. § 32.05(5) within the set period after the jurisdictional offer. Once Sai Ram received the jurisdictional offer, it possessed the same information that it later used as the basis for its motion to compel production in the current case, namely, the wide gap between the Department’s appraisal and its jurisdictional offer. Because this was an issue of proper adherence to pre-condemnation procedure, and not an issue about title or the amount of just compensation, we read the statute to require that it be raised at that time. Our application of the statute here is consistent with case law. *See Arrowhead Farms, Inc. v. Dodge Cnty.*, 21 Wis. 2d 647, 651-52, 124 N.W.2d 631 (1963) (condemnor’s failure to negotiate must be raised within forty-day period after jurisdictional offer).

IV. INTEREST OF JUSTICE AND CONCLUSION

¶14 Finally, Sai Ram argues that a new trial should be ordered in the interest of justice. Sai Ram cites no law, but we take this as a request for discretionary reversal under WIS. STAT. § 752.35. Sai Ram does not describe any sense in which the real controversy was not fully tried. Its argument appears to be that justice miscarried because the jury's verdict was against the weight of the evidence. Sai Ram has not persuaded us that justice miscarried.

¶15 We conclude that Sai Ram has not shown a basis to reverse the evidentiary ruling on the administrative revision, and that Sai Ram cannot raise an issue about noncompliance with appraisal procedures in a court case filed after condemnation. Because one of the bases for our decision was not addressed by the parties in briefing, we remind the appellant that any motion for reconsideration must be filed within twenty days after release of this opinion. *See* WIS. STAT. RULE 809.24.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

