

IN THE COURT OF APPEALS OF IOWA

No. 9-445 / 88-1591

FILED

DEC 21 1989

CLERK SUPREME COURT

JERRY D. ARMSTRONG and KAREN S. ARMSTRONG,

Appellees,

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vs.

**STATE OF IOWA, IOWA DEPARTMENT OF TRANSPORTATION, and POLK
COUNTY, IOWA,**

Appellants.

Appeal from the Iowa District Court for Polk County,
Rodney J. Ryan, Judge.

The department appeals a jury verdict in the amount of
\$185,079 in this condemnation case. **REVERSED AND
COMPENSATION COMMISSION AWARD REINSTATED.**

Thomas J. Miller, Attorney General; Charles J.
Krogmeier, Special Assistant Attorney General; Mark Hunacek
and David A. Ferree, Assistant Attorneys General; for
appellants.

Ed Skinner of Skinner, Beattie & Wilson P.C., Altoona,
for appellees.

Heard by Oxberger, C.J., and Donielson and Hayden, JJ.

HAYDEN, J.

Defendants, the State of Iowa, the Iowa Department of Transportation (Department), and Polk County, appeal a jury verdict in the amount of \$185,079 in this condemnation case. The Department raises the following issues for our consideration: (1) the district court did not have jurisdiction because the plaintiffs did not timely and properly serve the Department with their notice of appeal; (2) the district court erred in admitting evidence of unaccepted offers to purchase and sell other land, as well as in improperly allowing hearsay testimony concerning the sale of the condemned property; and (3) the district court wrongfully admitted evidence concerning the motive of the Department in condemning the land and the necessity of the condemnation. Because we find the district court lacked jurisdiction over the subject matter, we reverse the jury verdict and reinstate the award by the Polk County Compensation Commission (Commission).

The plaintiffs, Jerry D. Armstrong and Karen D. Armstrong, bought 19.5 acres of land in 1985 for approximately \$105,000. On April 7, 1987, the Department condemned this land and the Commission awarded the Armstrongs \$150,000. Dissatisfied with the award, the plaintiffs filed a notice of appeal with the Polk County Sheriff's office on May 6, 1987, and on May 22, 1987, filed a petition in support of appeal of condemnation award.

They asked for an award of \$250,000, interest, a reasonable attorney fee, and costs. On June 1, 1987, the notice of appeal was served on the attorney general by certified mail.

In March of the following year the Department filed a motion to dismiss for lack of subject matter jurisdiction. This motion was orally overruled after a hearing.

In October a jury returned a verdict in the amount of \$185,079. The Department now appeals that award.

The threshold issue in this appeal is whether the district court had jurisdiction of the subject matter of this lawsuit. Because we find the district court lacked jurisdiction, we do not consider the remaining evidentiary issues raised by appellant.

We review the district court's decision to correct errors of law. Iowa R. App. P. 4.

Although district courts have general and original jurisdiction in most cases, in some their jurisdiction is appellate only. Mazzoli v. City of Des Moines, 63 N.W.2d 218, 219 (Iowa 1954). Iowa Code section 472.1 provides "the procedure for condemnation of private property for works of internal improvement and other public uses, . . . unless and except as otherwise provided by law, shall be in accordance with the provisions of this chapter." "Only by the process of appeals does the district court obtain jurisdiction over both the subject matter and the

parties." Mazzoli, 63 N.W.2d at 219. "Its jurisdiction is appellate only." Id. Jurisdiction of the subject matter is the power to hear and determine matters of the general class of cases to which a particular proceeding belongs. State v. Ryan, 351 N.W.2d 186, 187 (Iowa 1984) Lack of subject matter jurisdiction can be raised at any stage of the proceedings. Id. Jurisdiction is a statutory matter and cannot be conferred by consent, waiver, or estoppel. Id.

The supreme court has consistently held an appellant must comply with the provisions of section 472 in order to perfect an appeal from the Commission's award of damages. Wade Farms, Inc. v. City of Weldon, 419 N.W.2d 718 (Iowa 1988); Chao v. Waterloo, 346 N.W. 2d 822, 824 (Iowa 1984); Kenkel v. Iowa State Highway Comm'n, 162 N.W.2d 762, 765 (Iowa 1968). Compliance with these code provisions constitute jurisdictional prerequisites. Chao v. Waterloo, 346 N.W.2d at 824 (citing to Carmichael v. Iowa State Highway Comm'n, 156 N.W.2d 332, 335 (Iowa 1968)).

Iowa Code section 472.18 states that:

[A]ny interested party may, within thirty days from the date of mailing the notice of the appraisal of damages, appeal to the district court. . . . At the time of appeal, the appellant shall give written notice that the appeal has been taken to the adverse party, or the adverse party's agent or attorney . . . and the sheriff.

Section 472.19 provides for service of notice:

Such notice of appeal shall be served in the same manner as an original notice. In case of condemnation proceedings instituted by the state department of

transportation, when the owner appeals from the assessment made, such notice of appeal shall be served upon the attorney general, or the department general counsel to the state department of transportation, or the chief highway engineer for the department.

The question for this court is whether the Armstrongs complied with this statute in order to confer jurisdiction on the district court.

The date of the condemnation, April 7, 1987, commences the running of the thirty days. The plaintiffs, through their attorney, filed their notice of appeal with the Polk County Sheriff's Office. The sheriff personally served the Polk County Treasurer. The Iowa Attorney General was not served until June 1, 1987, and then by certified mail. The Armstrongs argue personal service to the Polk County Treasurer and the sheriff should satisfy the jurisdictional prerequisites of sections 472.18 and 472.19. We do not agree.

The supreme court has consistently required notice be served in substantial compliance with section 472 for the district court to have jurisdiction. "The effect of a contrary holding would be to extend the time within which an appeal may be taken. This we cannot do." Kenkel v. Iowa State Highway Commission, 162 N.W. 2d 762, 765 (Iowa 1968).

In Wade Farms, Inc. v. City of Weldon, 419 N.W.2d 718, 721 (Iowa 1988), the court concluded neither notice given the city conferred jurisdiction on the district court. The

first notice was mailed and received within the statutory thirty days, but was not served in the manner of an original notice as required by section 472.19(1). Id. The second notice, although properly served, was not done until more than thirty days after the mailing of the appraisement notice. Id.

We do not share the district court's reluctance to apply Wade to the instant case. The supreme court's holding in Wade does not change the statute, but serves to clarify and interpret code sections 472.18 and 472.19. Additionally, the holding is consistent with previous decisions interpreting those sections prior to the 1971 amendment.

Armstrongs' failure to appeal within the time specified in section 472.18 and in the manner required by section 472.19(1) deprived the district court of jurisdiction.

REVERSED AND COMPENSATION COMMISSION AWARD REINSTATED.