



IN THE COURT OF APPEALS OF IOWA

GORDON HULL,	)	
Plaintiff-Appellant,	)	Filed March 26, 1985
vs.	)	<u>5-69</u>
BOARD OF SUPERVISORS OF MAHASKA	)	<u>84-1123</u>
COUNTY, IOWA,	)	
Defendant-Appellee.	)	

Appeal from the Iowa District Court for Poweshiek County on change of venue from Mahaska County - James D. Jenkins, Judge.

Plaintiff appeals from the dismissal of his petition seeking judgment for an alleged condemnation award. **AFFIRMED.**

Randall C. Stravers and M. H. Pothoven of Clements, Blomgren & Pothoven, Oskaloosa, for plaintiff-appellant.

Charles A. Stream, Mahaska County Attorney, Oskaloosa, for defendant-appellee.

Considered by Donielson, P.J., Snell and Sackett, JJ.

SACKETT, J.

In 1980, Defendants Mahaska County Supervisors took action to change the course of a secondary road in their county. Plaintiff is a landowner in the area of the proposed change. Iowa Code §§306.27 through 306.37 prescribe the procedure for such change. If the supervisors are unable to obtain the necessary right of way by agreement with adjoining landowners, a condemnation procedure is commenced. Notice is served pursuant to §306.29 on certain persons specified in the statute, including individual owners of the tract or parcel to be taken. There is no dispute that plaintiff was properly notified of the proposed condemnation in accordance with the statute.

The parties also agree that the appraisers subsequently met and assessed the damage to plaintiff from the proposed condemnation at \$19,000. On June 18, 1980, after the assessment, the county dismissed plaintiff's award as being excessive and rerouted the roadway to go around plaintiff's property.

Plaintiff contends, because the project was continued rather than dismissed in its entirety, that the county owes him the assessed \$19,000 as damages.

After hearing plaintiff's evidence the trial court dismissed the cause. The findings concluded that plaintiff had failed to appeal within 20 days of the board's action, pursuant to §306.17, and the district court was therefore without jurisdiction to hear the matter. The court further determined if the district court did have jurisdiction to hear the case, plaintiff had totally failed on the issue of damages. Plaintiff appealed challenging both of the trial court's findings.

The crux of plaintiff's argument is the appraisers issued him an award of \$19,000. He contends because the board went ahead with the project, he is entitled to the \$19,000 even though the project was changed to avoid a taking of his land. Plaintiff argues the supervisors had a right to dismiss the entire project, but were not entitled to modify the project without paying plaintiff the \$19,000. There are several flaws in plaintiff's argument.

First, the appraisers, appointed under §306.28, who make an assessment under §306.31, do not make awards of damages. Section 306.31 provides:

Upon the appointment of three appraisers, the county auditor shall cause them to appear before him and to take oath that they will faithfully and impartially assess the damages claimed. Said appraisers shall forthwith proceed to the assessment of said damages and make written report thereof to the board of supervisors. (emphasis added).

The statute directs the appraisers to assess and report, not render an award. An award of damage is only made by the board. Section 306.34 provides in applicable part ". . . the board shall proceed to determine the damages to be awarded to each claimant. . . ." (emphasis added).

We determine there was never an award of damages made to plaintiff. The most that plaintiff can claim is that there was an irregularity in the proceedings before the board or that the board acted illegally. However that issue was not before the trial court nor is it before us.

The board made its decision to route the road around plaintiff's property on June 18, 1980. No timely appeal pursuant to §306.35 and §306.17 was taken of that decision. While arguably the plaintiff might contend because he was not awarded damages he had no right of appeal under these sections, we need not address that issue. The plaintiff had the right to request a writ of certiorari with the district court challenging the legality of the board action. Iowa R. Civ. P. 306. However, this petition would have been entertained only if filed within 30 days of the board's action. Iowa R. Civ. P. 319. In Smiths v. Dubuque County, 1 Iowa 492, 496 (1855), the Iowa Court held "If the court¹ proceeded irregularly, in establishing the road, the irregularity should have been corrected by a direct proceeding to that end, and not on this application to be let in to claim damage."

We determine the trial court properly dismissed plaintiff's action. We affirm.

AFFIRMED.

¹ The court referred to was a county court.