

SUPREME COURT OF WISCONSIN

Klemm v. American Transmission Co.

2011 WI 54 (Wis. 2011) · Decided May 26, 2011

SUMMARY

The Wisconsin Supreme Court reviews whether condemnees who accepted a negotiated price, appealed under Wisconsin Statutes section 32.06(2a), and obtained a higher condemnation commission award were entitled to litigation expenses under section 32.28(3)(d). The court holds that a jurisdictional offer is not required when the statutory thresholds are met through the negotiated-price appeal route, and reverses the court of appeals.

CASE DETAILS

COURT	Supreme Court of Wisconsin
WRITING FOR THE COURT	Shirley S. Abrahamson, C.J.
JURISDICTION	Wisconsin
DECIDED	May 26, 2011
DISPOSITION	reversed
PROCEDURAL POSTURE	The Wisconsin Supreme Court reviewed a published court of appeals decision reversing a circuit court judgment awarding litigation expenses to condemnees under Wis. Stat. § 32.28(3)(d).
STANDARD OF REVIEW	The court independently reviewed the interpretation of the statutes and their application to undisputed facts, benefiting from the lower courts' analyses.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	American Transmission Company, LLC v. Mark Klemm, Jeanne Klemm

TOPICS

eminent domain

statutory interpretation

attorney fees

real estate

civil procedure

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether Wis. Stat. § 32.28(3)(d) permits an award of litigation expenses when an owner accepts a negotiated price under § 32.06(2a), timely appeals the certificate of compensation, obtains a condemnation commission award at least \$700 and 15 percent greater than the negotiated price, and neither party appeals the commission's award.
2. Whether the court needed to determine the specific event marking the beginning of recoverable litigation expenses under Wis. Stat. § 32.28(1) in a negotiated-price appeal.

HOLDINGS

1. Wis. Stat. § 32.28(3)(d) requires an award of litigation expenses when an owner accepts a negotiated price under § 32.06(2a), timely appeals the recorded compensation, receives a county condemnation commission award that exceeds the negotiated price by at least \$700 and 15 percent, and neither party appeals the commission's award, even if no jurisdictional offer was issued.
2. Wisconsin condemnation statutes must be interpreted by examining statutory text in context, giving effect to each word, avoiding surplusage, and favoring an interpretation that fulfills the statute's purpose.
3. The court declined to decide what event constitutes the 'official completive action' marking the beginning of recoverable litigation expenses in a negotiated-price appeal.

KEY QUOTATIONS

“the statutory condemnation procedure offers two different routes to the same destination.” (333 Wis. 2d at 593-594)

“Section 32.28(3) (d) was enacted to induce the condemnor to offer (whether under the negotiated price appeal route or the jurisdictional offer route) just compensation or reimburse the condemnee for litigation expenses associated with an offer of compensation that is significantly less than just compensation.” (333 Wis. 2d at 599-600)

“We need not, and therefore do not, determine the “official completive action” in a negotiated price appeal like the present case.” (333 Wis. 2d at 610-611)

FACTUAL BACKGROUND

ATC acquired an easement across the Klemms' property for construction of an electrical transmission line. The parties proceeded under Wis. Stat. § 32.06(2a), agreed to a price of \$7,750, and ATC recorded the conveyance and certificate of compensation without issuing a jurisdictional offer. The Klemms timely appealed, and the county condemnation commission awarded \$10,000. Neither party appealed the commission's award, and the parties stipulated to the amount of litigation expenses while disputing whether the Klemms were legally entitled to them.

PROCEDURAL HISTORY

American Transmission Company condemned an easement across the Klemm property under the negotiated-price procedure in Wis. Stat. § 32.06(2a). The Klemms appealed the recorded compensation, and the county

condemnation commission awarded more than the negotiated price. The circuit court awarded litigation expenses, but the court of appeals reversed, holding that § 32.28(3)(d) applies only when a jurisdictional offer has been made. The Wisconsin Supreme Court reversed the court of appeals.

DISPOSITION

reversed

CASES CITED

- State v. Martin, 162 Wis. 2d 883, 894, 470 N.W.2d 900 (1991)
- Donaldson v. State, 93 Wis. 2d 306, 315, 286 N.W.2d 817 (1979)
- Juneau County v. Courthouse Employees, Local 1312, 221 Wis. 2d 630, 641, 585 N.W.2d 587 (1998)
- Landis v. Physicians Insurance Co. of Wisconsin, Inc., 2001 WI 86, 245 Wis. 2d 1, 628 N.W.2d 893
- County of Dane v. LIRC, 2009 WI 9, 315 Wis. 2d 293, 759 N.W.2d 571
- Warehouse II, LLC v. State of Wisconsin Department of Transportation, 2006 WI 62, 291 Wis. 2d 80, 715 N.W.2d 213
- Kolupar v. Wilde Pontiac Cadillac, Inc., 2004 WI 112, 275 Wis. 2d 1, 683 N.W.2d 58
- Elliott v. Donahue, 169 Wis. 2d 310, 323-325, 485 N.W.2d 403 (1992)
- Wieczorek v. City of Franklin, 82 Wis. 2d 19, 23, 260 N.W.2d 650 (1978)
- Redev. Auth. of City of Green Bay v. Bee Frank, Inc., 120 Wis. 2d 402, 411, 355 N.W.2d 240 (1984)
- Klunker v. DOT, 109 Wis. 2d 602, 606, 327 N.W.2d 145 (Ct. App. 1982)
- Klemm v. American Transmission Co., LLC, 2010 WI App 131, 329 Wis. 2d 415, 791 N.W.2d 233