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IN THE
COURT OF APPEALS OF INDIANA

Raylu Enterprises, Inc.,
Appellant-Defendant,

v.

City of Noblesville, Indiana,
Appellee-Plaintiff

March 6, 2023

Court of Appeals Case No.
22A-PL-2243

Appeal from the
Hamilton Superior Court

The Honorable
David K. Najjar, Judge

Trial Court Cause No.
29D05-2110-PL-7618

Opinion by Judge Vaidik
Judges Tavitas and Foley concur.

Vaidik, Judge.

Case Summary

[1] The City of Noblesville, Indiana, ("Noblesville") initiated eminent-domain proceedings to appropriate a parcel of real estate owned by Raylu Enterprises, Inc. ("Raylu"). The two parties later agreed on compensation for the real estate, and Raylu agreed to withdraw its objection to the proceedings.

[2] Notwithstanding this agreement, Raylu sought to assert an inverse-condemnation claim against Noblesville, arguing that while it had been compensated for the taking of its real estate, it had not been compensated for the taking of its business, which operated on the real estate. Noblesville moved to strike this claim, arguing in part that Indiana law historically does not recognize damages for the loss of a business in an eminent-domain action. The trial court granted the motion to strike. Raylu now appeals and argues this longstanding precedent should be re-examined considering the 2002 recodification of the eminent-domain laws. Because the 2002 recodification did not affect the substance of Indiana property law, we affirm.

Facts and Procedural History

[3] Raylu owned a .189-acre parcel of real estate in Hamilton County and maintained a pizza parlor on the property. In October 2021, Noblesville filed a complaint under the eminent-domain statutes to appropriate Raylu's property for a public-road improvement project. Raylu filed, among other motions, an

answer, objections to the complaint, and an inverse-condemnation counterclaim, asserting that, should Noblesville prevail, it "will have taken Raylu's business as well as its real estate without appropriate compensation." Appellant's App. Vol. II p. 40. A few months later, Noblesville moved to strike Raylu's answer, objections, and counterclaim.

[4] While the counterclaim and the motion to strike were still pending, the parties submitted an "Agreed Final Judgment" to the court in which Noblesville agreed to pay Raylu $227,000 as "just compensation for the appropriation" and Raylu "agree[d] to withdraw its Objections to the tak[ing] of real estate." *Id.* at 14.

[5] Thereafter, Raylu filed a "Motion to Determine Remaining Issues," claiming the parties' agreement was "for the value of the real estate only" and that there remained issues relating to the "[c]ondemnation of Raylu's business" as laid out in its counterclaim. *Id.* at 55-56. Noblesville again moved to strike Raylu's initial filings, including the inverse-condemnation counterclaim, as well as the new motion. Following a hearing, the trial court struck Raylu's counterclaim, finding that "Indiana law in this area is clear that business losses or loss of retirement or future income cannot be considered." *Id.* at 12.

[6] Raylu now appeals.[1]

Discussion and Decision

[7] Raylu argues the trial court erred in striking the inverse-condemnation counterclaim. Indiana Trial Rule 12(F) permits a trial court to "order stricken from any pleading any insufficient claim or defense or any redundant, immaterial, impertinent, or scandalous matter." A trial court has broad discretion when it rules on a motion to strike. *Wood v. Scott Cnty. Bd. of Comm'rs*, 162 N.E.3d 1105, 1108 (Ind. Ct. App. 2020). Where, however, the motion to strike also involves legal interpretation of a statute, it presents a pure question of law which we review de novo. *Id.*

[8] Article 1, Section 21 of the Indiana Constitution provides that "[n]o person's property shall be taken by law, without just compensation; nor, except in case of the State, without such compensation first assessed and tendered." Under the Indiana eminent-domain statutes, the government may file an action to formally seize private property for a public purpose. Ind. Code § 32-24-1-3. However, if the government seizes property for a public purpose but fails to initiate eminent-domain proceedings, the "person having an interest in [the] property" may bring suit to recover damages under the eminent-domain

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[1] The trial court's order struck not only the inverse-condemnation counterclaim but also the answer, finding it to be procedurally barred under Indiana Code section 32-24-1-8(c), which allows a defendant in an eminent-domain suit to file only certain pleadings. On appeal, Raylu challenges only the trial court's decision to strike the inverse-condemnation counterclaim.

statutes. I.C. § 32-24-1-16. Cases brought under Section 32-24-1-16 are known as inverse-condemnation actions. *State v. Dunn*, 888 N.E.2d 858, 861 (Ind. Ct. App. 2008), *trans. denied*.

[9] Here, Noblesville initiated eminent-domain proceedings against Raylu's property. Raylu contends this involved only its real estate, while its inverse-condemnation claim involves the business on the real estate. Noblesville responds that, even assuming Raylu may assert a counterclaim, its requested relief is unavailable under Indiana law and thus the trial court did not err in striking it.[2] We agree.

[10] Raylu seeks compensation for "the taking of its business." Appellant's Br. p. 14. But in *Elson v. City of Indianapolis*, 204 N.E.2d 857, 861 (Ind. 1965), our Supreme Court explained:

> The general rule in this country is that such business and the fruits thereof are too uncertain, remote and speculative to be used as the criterion of the market value of the land upon which the business is conducted. Neither the value of such business nor the profits therefrom are ordinarily considered insofar as the market value of the land upon which the business is conducted is concerned.

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[2] The eminent-domain statutes provide a "court may not allow pleadings in the cause other than the complaint, any objections, and the written exceptions provided for in [I.C. § 32-24-1-11]." Ind. Code § 32-24-1-8(c). Thus, at trial Noblesville argued, and the trial court found, that Raylu's inverse-condemnation counterclaim is procedurally barred as it is not one of the permitted enumerated pleadings. However, on appeal Noblesville argues only the merits of the claim. As such, we reach the merits without deciding whether such a claim is permitted under the eminent-domain statutes.

(Citation omitted); *see also State v. Hierholzer*, 207 N.E.2d 218, 220 (Ind. 1965) (In eminent-domain suit "it was error to admit into evidence over objections testimony of business profits and the value of such business."). A few years later, the Court expanded on this reasoning:

> [N]et profits made by a business on a particular location [are] too speculative, since they [are] affected greatly by the manner in which the business was conducted, the good will, the efficiency of the business organization and many other intangible factors not related to the land. It may be pointed out that a business may be moved and take with it its good will, the efficiency of its organization and all its personal property. However, those things attached to the real estate, such as the desirability of the location, which results in a large volume of traffic connected with a business, is an element attached to the real estate which may be taken into consideration by the appraisers in determining the value of the real estate as a business site.

Steinmetz v. State, 231 N.E.2d 232, 234 (Ind. 1967).

[11] Therefore, Raylu may only receive compensation for the value of its real estate, which has already been given in the eminent-domain proceedings. Raylu cannot receive compensation for "the taking of its business" because its business has not been taken, it may operate elsewhere. And to the extent Raylu is arguing it should be compensated for the value of operating its business on that specific real estate, that compensation is already factored into the value of the real estate itself.

[12] Raylu acknowledges the above case law but argues this precedent should be re-examined due to the 2002 recodification of the eminent-domain statutes.

Specifically, Raylu points out that the statutes in effect at the time of the above case law restricted an inverse-condemnation suit to a person "having an interest in any **land**," I.C. § 32-11-1-12 (repealed by P.L. 2-2002, § 9 S.E.A. 57) (emphasis added), but in 2002 this phrase was altered to allow suit from a person "having an interest in any **property**," I.C. § 32-24-1-16 (emphasis added). Raylu contends this change shows "that the General Assembly intended to broaden the scope of [Section 32-24-1-16] to include personal property," such as a business. Appellant's Br. p. 15. We disagree.

[13] Our Supreme Court has held "[t]he 2002 recodification had no substantive effect on the law." *Util. Ctr., Inc. v. City of Fort Wayne*, 985 N.E.2d 731, 733 n.1 (Ind. 2013). In fact, in recodifying property law the legislature stated,

> The purpose of the recodification act of the 2002 regular session of the general assembly is to recodify prior property law in a style that is clear, concise, and easy to interpret and apply. Except to the extent that:
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> > (1) the recodification act of the 2002 regular session of the general assembly is amended to reflect the changes made in a provision of another bill that adds to, amends, or repeals a provision in the recodification act of the 2002 regular session of the general assembly; or
> >
> > (2) the minutes of meetings of the code revision commission during 2001 expressly indicate a different purpose;

> the substantive operation and effect of the prior property law continue uninterrupted as if the recodification act of the 2002 regular session of the general assembly had not been enacted.

I.C. § 32-16-1-2. Therefore, absent an amendment or express indication of the code-revision committee—neither of which is present for Section 32-24-1-16—the recodification had no effect on the case law.[3] *See Burd Mgmt., LLC v. State*, 831 N.E.2d 104, 107 (Ind. 2005) (rejecting the State's argument that because of the 2002 recodification an earlier court decision should not apply and citing Section 32-16-1-2).

[14] The trial court did not abuse its discretion in striking Raylu's inverse-condemnation counterclaim.

[15] Affirmed.

Tavitas, J., and Foley, J., concur.

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[3] The Indiana Code Revision Commission had three meetings during the interim 2001 session. The minutes are provided below.

Indiana Code Revision Commission, Legislative Services Agency, June 5, 2001, https://archive.iga.in.gov/interim/2001/minutes/CRSC465.pdf.

Indiana Code Revision Commission, Legislative Services Agency, November 1, 2001, https://archive.iga.in.gov/interim/2001/minutes/CRSC4B1.pdf.

Indiana Code Revision Commission, Legislative Services Agency, October 2, 2001, https://archive.iga.in.gov/interim/2001/minutes/CRSC4A2.pdf.