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IN THE
COURT OF APPEALS OF INDIANA

Bender Enterprises, LLC,
Appellant,

v.

Duke Energy, LLC,
Appellee.

October 21, 2022

Court of Appeals Case No. 22A-PL-1230

Appeal from the Monroe Circuit Court

The Honorable Geoffrey J. Bradley, Judge

Trial Court Cause No. 53C01-2111-PL-2434

Bailey, Judge.

Case Summary

[1] This case involves a condemnation action brought by Duke Energy Indiana, LLC, ("DEI"), against Bender Enterprises, LLC, ("Bender"), to acquire an easement on Bender's real estate. Bender filed objections to DEI's action, and the trial court overruled those objections on the grounds that Bender had failed to allege specific facts supporting them. The restated, dispositive issue on appeal is whether the trial court erred in so ruling.

[2] We affirm.

Facts and Procedural History

[3] Bender is a company that owns real estate in Monroe County, Indiana ("the Bender Real Estate"). DEI is an Indiana public utility serving the Bloomington, Indiana, area. On November 23, 2021, DEI filed a "Complaint in Condemnation" in which it sought to take "a perpetual and non-exclusive" easement "containing 0.53 acres, more or less," across the Bender Real Estate. App. at 10, 14, 16. DEI's complaint alleged the easement was necessary to connect its "Bloomington 11th Street Substation to [its] Bloomington Rogers Street Substation 69kV" and for underground electric distribution line facilities. *Id*. at 11. DEI also alleged that it had "made an effort to purchase the aforesaid easement interest from [Bender] for the amount of Two Hundred Sixty-Five Thousand Dollars ($265,000.00), and [DEI] has been unable to agree with [Bender] for the purchase of the same." *Id*.

[4] On December 14, 2021, Bender sought and obtained a thirty-day extension of time in which to file its response to the complaint. On January 13, 2022, Bender filed its "Response to Complaint in Condemnation, Objection to Proceeding[,] and Request for Jury Trial." *Id*. at 21. For its objections, Bender stated in relevant part: "[T]he taking of the easement interest as described in [DEI]'s Complaint in Condemnation, is not necessary. The designated location of the Easement Strip,… is capricious, arbitrary[,] and not based upon accepted engineering and industry standards." *Id*. at 23.

[5] On January 27, 2022, Bender filed its notice to the court that it had served DEI with discovery requests. On February 2, DEI filed a "Motion to Overrule" Bender's objections on the grounds that the objections were "legally insufficient and should be stricken as a matter of law without a hearing." *Id*. at 30. On May 24, the trial court issued its "Order on [Bender's] Objection to Proceeding" in which it overruled Bender's objections because they were "generic," and because Bender "fail[ed] to [plead] any additional information to support those assertions." Appealed Order at 3. Bender now appeals that ruling.[1]

Discussion and Decision

[6] Bender appeals the trial court order overruling his objections to DEI's condemnation action. "The State has inherent authority to take private

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[1] *See* Ind. Code § 32-24-1-8(e) (allowing defendants in eminent domain proceedings to appeal interlocutory orders overruling their objections).

property for public use" with just compensation. *Knott v. State*, 973 N.E.2d 1259, 1262 (Ind. Ct. App. 2012), *trans. denied*. Moreover, the legislature may delegate the State's eminent domain authority to other entities. *Utility Center v. City of Fort Wayne*, 985 N.E.2d 731, 733 (Ind. 2013). Thus, the focus of judicial review in eminent domain proceedings is narrow. *Knott*, 973 N.E.2d at 1262. "Like the trial court, we must restrict our review to whether the condemnation proceedings were legal, whether the condemning [entity] had authority to condemn the property in question, and whether the property was to be taken for a public purpose." *Id*.

[7] Indiana Code Chapter 32-24-1 *et seq*. sets forth Indiana's general eminent domain proceedings. Condemnation proceedings "involve two stages and are summary in nature until the question of damages is reached." *State ex rel. Bd. of Aviation Comm'rs of City of Warsaw v. Kosciusko Cnty. Superior Ct.*, 430 N.E.2d 754, 755 (Ind. 1982). In the first stage, eminent domain proceedings are initiated by a would-be condemnor filing a complaint in the trial court. Ind. Code § 32-24-1-4(a). The property owner may then file objections to the condemnation proceedings within thirty days from the date it receives notice of the action. I.C. § 32-24-1-8(b). The trial court, upon written motion, may grant the property owner one thirty-day extension of time in which to file objections. *Id*. The property owner may object based on the following: lack of subject matter or personal jurisdiction; lack of authority "to exercise the power of eminent domain for the use sought;" or "for any other reason disclosed in the complaint or set up in the objections." I.C. § 32-24-1-8(a).

[8] During this "initial or summary phase of the [condemnation] proceedings, the action consists solely of legal issues which are decided by the trial court." *Bd. of Aviation Comm'rs of City of Warsaw*, 430 N.E.2d at 755. After considering "the legality of the action and any objections which may have been filed, the trial court concludes this phase of the proceedings by entering an order of appropriation and appointing appraisers to assess the damages." *Id*. The action then moves into the second phase, where the fact-finder must determine the amount of damages sustained by the property owner.[2] *Id*.

[9] Bender does not challenge DEI's authority to initiate condemnation proceedings. *See* I.C. § 32-24-4-1(a)(1) and (b); I.C. § 32-24-1-5.9(a) (delegating eminent domain authority to public utilities). Nor does it challenge whether the proposed taking is for public use. Rather, Bender only challenges the legality of the condemnation proceedings; specifically, Bender asserts that the trial court erred when it overruled its objections on the grounds that they did not allege specific supporting facts or point to particular defects in the complaint.[3]

[10] Although Indiana Code Section 32-24-1-8 does not, on its face, provide that objections in condemnation proceedings must state specific supporting facts, our Indiana courts have long interpreted the statute as containing such a requirement. In *Joint Cnty. Park Bd. of Ripley, Dearborn[,] and Decatur Cnty.s v.*

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[2] The second stage of the condemnation proceedings are not at issue in this matter.

[3] Bender also raises the issue of whether a property owner may conduct discovery *after* filing objections to a condemnor's complaint. We do not reach that issue, as the insufficiency of Bender's objections is dispositive.

Stegemoller, our Supreme Court held that, "[i]f facts exist in addition to those disclosed by the [condemnation] complaint which would defeat plaintiff's recovery, they should be affirmatively pleaded." 228 Ind. 103, 88 N.E.2d 686, 688 (1949). When the objecting property owner fails to state additional facts supporting its objections, the trial court may overrule the objections. *See id.*; *see also, e.g.*, *State v. Collum*, 720 N.E.2d 737, 740 (Ind. Ct. App. 1999) ("It is well settled that if an objection goes to matters on the face of the complaint for appropriation of real estate, it should point out the particular defects contained therein and allege specific facts supporting such objection." (citing *Stegemoller*, 88 N.E.2d at 688)).

[11] Here, Bender failed to allege specific facts supporting its objections; rather, it simply asserted the condemnation was "not necessary" and "capricious, arbitrary[,] and not based upon accepted engineering and industry standards." App. at 23. Bender did not state why or how the condemnation was unnecessary, arbitrary, and capricious, nor did it state why or how the condemnation was not based on "accepted engineering and industry standards" or to what standards Bender referred. Rather, Bender's objections were "in effect … [a] general denial, not contemplated by [Indiana Code Section 32-24-8-1]."[4] *Collum*, 720 N.E.2d at 740.

[4] *Collum* referenced "Ind. Code § 32-11-1-5," the precursor to Indiana Code Section 32-23-1-8.

[12] However, Bender notes that *Stegemoller*—upon which *Collum* relied—was decided in 1949, before Indiana became a notice pleading state. Effective January 1, 1971, Indiana changed its procedural rules to eliminate "demurrers" and "all fictions in pleading." Ind. Trial Rules 7(C); 8(E)(1). Instead, Indiana allows "notice pleading" under which a pleading is sufficient if it contains a "simple, concise, and direct" statement, T.R. 8(E)(1), of the "operative facts" so as to put the other party "on notice as to the evidence to be presented at trial," *Palacios v. Kline*, 566 N.E.2d 573, 576 (Ind. Ct. App. 1991).

[13] Bender's assertions are not well-taken for two reasons. First, Bender fails to acknowledge that eminent domain proceedings "are not civil actions but are *actions of a special character based wholly upon the statute* by which they are authorized." *Bd. of Aviation Comm'rs of City of Warsaw*, 430 N.E.2d at 755 (emphasis added). And, unlike in normal civil proceedings, the eminent domain statutes specify proceedings under which there are two stages, the first being a *summary* proceeding in which the trial court may rule on the legality of the proposed condemnation based solely on the complaint and objections thereto. *See* I.C. § 32-24-1-8(c) ("The court may not allow pleadings in the cause other than the complaint, any objections, and the written exceptions provided for [in the second stage of an eminent domain action]."); *see also Bd. of Aviation Comm'rs of City of Warsaw*, 430 N.E.2d at 755 (noting condemnation proceedings "are summary in nature until the question of damages is reached"); *Collum*, 720 N.E.2d at 742 n.2 ("When the intended use is public, the necessity and expediency of the taking ... are legislative questions, … and a hearing

thereon is not essential to due process in the sense of the 14th Amendment." (quoting *Dahl v. N. Ind. Pub. Serv. Co.*, 239 Ind. 405, 157 N.E.2d 194, 198 (1959)). Since the eminent domain statutes do not contemplate evidentiary proceedings beyond the filing of the complaint and objections in the first stage, clearly those pleadings must articulate all the facts necessary for the fact-finder to rule on the legality of the action before proceeding to the second stage.

[14] Second, our legislature had indicated its agreement with the *Stegemoller* holding regarding the necessary specificity in eminent domain objections by failing to take any legislative action in response to that holding, even after Indiana became a notice pleading state in 1971. "[I]t is well-established that a judicial interpretation of a statute, particularly by the Indiana Supreme Court, accompanied by substantial legislative inaction for a considerable time, may be understood to signify the General Assembly's acquiescence and agreement with the judicial interpretation." *Fraley v. Minger*, 829 N.E.2d 476, 492 (Ind. 2005). Since the Indiana Supreme Court issued its decision in *Stegemoller*, our appellate courts have consistently continued to interpret the eminent domain statutes as requiring that any objections allege specific supporting facts. *See Collum*, 720 N.E.2d at 740; *see also Hass v. State, Dep't of Transp.*, 843 N.E.2d 994, 999 (Ind. Ct. App. 2006) (holding property owners' bare allegations in its objections to the taking were insufficient), *trans. denied*; *Boyd v. State*, 976 N.E.2d 767, 769 (Ind. Ct. App. 2012) ("[C]ourts may inquire into the necessity of a taking only where the landowner produces *evidence* of bad faith, fraud, capriciousness, or illegality on the condemnor's part[.]" (emphasis added) (citing *Collum*, 720

N.E.2d 737)), *trans. denied*. Yet, the General Assembly has taken no action to change the eminent domain statutes to specify that objections do not require specificity beyond that required under notice pleading rules. The Legislature's failure to do so "amounts to an acquiescence by the Legislature in the construction given by the court, and … such construction should not then be disregarded or lightly treated." *Perkinson v. Perkinson*, 989 N.E.2d 758, 763 (Ind. 2013) (quotation and citation omitted).

Conclusion

[15] We affirm the trial court's order overruling Bender's objections to the condemnation proceedings because those objections fail to state specific supporting factual allegations.

[16] Affirmed.

Riley, J., and Vaidik, J., concur.