



ATTORNEYS FOR APPELLANT

Michael W. McClain
Caitlin P. Kidd
Goldberg Simpson, LLC
Prospect, Kentucky

ATTORNEY FOR APPELLEE

Ralph C. Melbourne
Church Langdon Lopp & Banet,
LLC
New Albany, Indiana

IN THE
COURT OF APPEALS OF INDIANA

Shawn L. Beasley,
Appellant-Defendant,

v.

Harrison County Board of
Commissioners,
Appellee-Plaintiff.

November 16, 2022

Court of Appeals Case No.
22A-CP-673

Interlocutory Appeal from the
Harrison Circuit Court

The Honorable John T. Evans,
Judge

Trial Court Cause No.
31C01-2108-MI-75

Bradford, Chief Judge.

Case Summary

- [1] Shawn L. Beasley (“Beasley”) is the owner of property in Harrison County, Indiana, a portion of which the Harrison County Board of Commissioners (“the Board”) is seeking to acquire and use for a county road improvement project.

The Board filed a complaint for the appropriation of the property, to which Beasley filed an objection because he claimed that the Board failed to conduct good-faith negotiations with him as to the acquisition of his property as required by statute and argued that the complaint should be dismissed. The trial court overruled Beasley's objection, finding that the Board had complied with the statutory requirements and that the offer to Beasley was in good faith as a matter of law. Beasley appeals the trial court's order and asserts that the trial court erred in overruling his objection to the proceedings. For its part, the Board argues that Beasley's appeal must be dismissed because he failed to follow the statutory requirements set forth in Indiana Code section 32-24-1-8(g). We agree with the Board, and therefore dismiss Beasley's appeal.

Facts and Procedural History

- [2] Beasley owns real property located at 6172 Old Lanesville Road NE, in Georgetown, Harrison County, Indiana. The Board is the governing authority for Harrison County, Indiana. The Board is seeking to obtain a portion of Beasley's property for the purpose of a county road improvement project, which will include the complete reconstruction of Old Lanesville Road, including shoulders, side ditches, drainage structures, and all other related construction.
- [3] On June 4, 2021, the Board made an offer ("the Offer") to Beasley in the amount of \$18,880.00 as compensation for the portion of the land the Board sought to obtain and for a temporary easement across Beasley's property. The Offer was based on appraisals obtained by the Board. Beasley refused the Offer,

and he and the Board were unable to agree upon a purchase price or upon the amount of benefits and damages, if any, which Beasley may sustain by reason of the Board's intended appropriation of his property.

[4] On August 20, 2021, the Board filed its complaint for appropriation of real estate, requesting that the trial court order the appropriation of the real estate it sought to acquire and to appoint three disinterested parties to appraise the interests to be appropriated and the amount of the benefits and damages, if any, caused by the appropriation. On September 13, 2021, Beasley filed his answer, in which he admitted that he had refused the Offer and stated that he did not believe the Board had made a satisfactory offer to adequately compensate him for the proposed condemnation.

[5] On November 16, 2021, Beasley filed his objection to proceedings pursuant to Indiana Code section 32-24-1-8(a)(3), alleging that "the offer [he] received from [the Board] of \$18,800.00 is grossly inadequate to compensate him for [the Board's] exercise of its eminent domain powers." Appellant's App. Vol. II p. 61. Beasley further alleged that he had hired an appraiser who had prepared an appraisal report and had valued the Board's taking of Beasley's property to result in damages in an amount not less than \$200,000.00. Beasley stated that his objection to the proceedings was "[b]ecause of the great disparity between [the Board's] offer and the damages [he] will incur by [the Board's] actions, he objects to these proceedings." Appellant's App. Vol. II p. 62. Among other things, Beasley requested as relief that the trial court dismiss the complaint with prejudice. Beasley did not allege that the Board had failed to negotiate with

him, failed to operate in good faith, or failed to follow the statutory requirements set forth under Indiana Code section 32-24-1-3. The only stated basis for his objection was that he believed the Offer was grossly inadequate.

[6] On February 23, 2022, a hearing was held on Beasley's objection, at which Beasley alleged for the first time that the Board did not conduct good-faith negotiations with him, asserting that the appraisal underlying the Offer was unreliable and deficient because it failed to utilize appropriate procedures. The trial court requested to hear legal argument for Beasley's "good faith" argument before deciding whether to hear evidence regarding the sufficiency or value of the appraisal. Appellant's App. Vol. II p. 24.

[7] In making his argument that the Board had not conducted good-faith negotiations in its effort to purchase his property, Beasley's counsel stated that he was not alleging that the Board had skipped any of the statutory steps or that the Board had acted with any ill will. He stated he was only arguing that the appraisal, although done by an independent appraiser and reviewed by a second appraiser and the county engineer, was deficient in the way it was done and the information it used such that it was not possible to determine if it was a good-faith offer. The Board contended that it had used an independent appraiser whose valuation was based on the fair market value of the property and submitted the Offer in a uniform offer letter which satisfied the two requirements for a good-faith offer as a matter of law. After hearing this argument, the trial court stated it did not need to hear any additional evidence.

[8] On February 24, 2022, the trial court issued its order overruling Beasley’s objection. The trial court concluded that, because there was no factual dispute that the Board obtained an independent appraisal for the property at issue, based the Offer on that appraisal, and set forth its offer in a uniform letter sent to Beasley, the Offer was a good-faith offer as a matter of law. On March 25, 2022, Beasley filed his notice of appeal and appealed the trial court’s order pursuant to Indiana Code section 32-24-1-8(e), which allows “[a]ny defendant [to] appeal the interlocutory order overruling the objections and appointing appraisers in the manner that appeals are taken from final judgments in civil actions.” The Notice of Filing of Transcript was filed with this court on May 6, 2022.

Discussion and Decision

[9] Beasley argues on appeal that the trial court erred when it overruled his objection. In response, the Board asserts that this appeal should be dismissed because Beasley failed to follow the statutory procedures under Indiana Code section 32-24-1-8.

[10] Under Indiana Code section 32-24-1-8(e), “[a]ny defendant may appeal the interlocutory order overruling the objections and appointing appraisers in the manner that appeals are taken from final judgments in civil actions.” Indiana Code section 32-24-1-8(g) states “[t]he transcript *must* be filed in the office of the clerk of the supreme court *not later than thirty (30) days* after the notice of the defendant’s appeal is filed.” (Emphases added). The provisions of the act

authorizing the taking of an appeal before final judgment in eminent-domain proceedings are special in character, and “the party seeking to appeal thereunder *must* bring himself clearly within the procedure which he undertakes to invoke, since statutes providing for appeals from interlocutory orders must be strictly construed.” *Pouch v. Pub. Serv. Co.*, 165 Ind. App. 608, 610, 333 N.E.2d 812, 813 (1975) (emphasis added). In *Pouch*, this court held that the appellants, who failed to timely file a transcript pursuant to the statute governing appeals of orders overruling objections to a condemnation action, could not seek an appeal under that statute. *Id.* at 611, 333 N.E.2d at 813.

[11] Here, Beasley filed his notice of appeal on March 25, 2022. The Notice of Filing of Transcript was filed with the Clerk of the Harrison County Circuit Court on May 6, 2022, which was over thirty days after his notice of appeal was filed. Therefore, Beasley failed to strictly comply with Indiana Code section 32-24-1-8(g) and cannot claim relief under the statute.

[12] Dismissed.

Pyle, J., and Altice, J., concur.