

2013 IL App (2d) 130396-U
No. 02-13-0396
Order filed May 15, 2013

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

ROCK RIVER WATER RECLAMATION DISTRICT, an Illinois unit of local government,)	Appeal from the Circuit Court of Winnebago County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 12-ED-2
)	
THE SANCTUARY CONDOMINIUMS OF ROCK CUT, an Illinois condominium association, and Unknown Owners,)	
)	Honorable
)	Edward J. Prochaska,
Defendants-Appellants.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Schostok and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* Where appeal would unduly delay proceedings in the trial court and certified questions did not present issues involving a substantial basis for a difference of opinion, leave to appeal pursuant to Illinois Supreme Court Rule 308 (eff. February 26, 2010) would be denied.

¶ 2 The instant appeal arises out of an attempt by plaintiff, the Rock River Water Reclamation District, to condemn an easement across property owned by defendant, The Sanctuary

Condominiums of Rock Cut. An earlier attempt by plaintiff had failed due to the enabling ordinance not stating that the taking was necessary and not adequately describing the property sought to be taken. Plaintiff enacted an ordinance stating the necessity of the taking and incorporating a description of the property by reference. Plaintiff then initiated a new eminent domain action, and defendant moved to dismiss. The trial court denied the motion. Defendant then moved to certify the following two questions:

- “1. Must a sanitary district organized under the Sanitary District Act of 1917 (70 ILCS 2405/0.1 *et seq.* [(West 2012)] (Act)) comply with the property-description and notice-of-public-hearing-on-proposed-ordinances requirements of sections 22a.5 and 22a.6 of the Act regarding persons whose property will be subject to condemnation for a proposed local improvement, but whose property will not be assessed to pay for the improvement, before the sanitary district may exercise its power of eminent domain to take that property?
2. Does the judgment entered in the original condemnation action bar the present action under the doctrine of *res judicata*?”

The trial court granted defendant’s request for certification in accordance with Illinois Supreme Court Rule 308 (eff. February 26, 2010).

¶ 3 Supreme Court Rule 308 governs certified questions. It allows the trial court to make an interlocutory order appealable where “there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation.” If the trial court makes such a finding, this court may, in its discretion, allow an appeal of the order. Appeal under Rule 308 is limited to pure questions of law, it is “not intended to allow for an interlocutory appeal of merely an application of the law to the facts of a specific case.” *Walker v. Carnival Cruise Lines, Inc.*, 383 Ill. App. 3d 129, 133 (2008). Furthermore, we are

typically limited to the precise question certified and may not rule on any underlying order. *Barbara Sales, Inc. v. Intel Corp.*, 227 Ill. 2d 45, 58 (2007). Rule 308 should be “strictly construed and narrowly exercised” (*Voss v. Lincoln Mall Management*, 166 Ill. App. 3d 442, 445 (1988)), and appeals pursuant to this rule should be limited to exceptional circumstances (*Morrissey v. City of Chicago*, 334 Ill. App. 3d 251, 258 (2002)). The extent an appeal will delay proceedings in the action below is a factor to consider, and requests for certification made shortly before a trial are generally disfavored. *Voss*, 166 Ill. App. 3d at 449. Moreover, that a trial is likely to be short weighs against granting such a request. *Id.*

¶ 4 Plaintiff asserts that in this case, an appeal “would unduly prolong the proceedings [and] increase the costs for both parties.” Plaintiff represents that the only issue remaining is the cost of the taking and states that this issue can be resolved in a half-day bench trial with minimal witnesses. Whether plaintiff’s half-day estimate is accurate, it does not appear to us that further substantial proceedings are necessary to resolve this matter at the trial level.

¶ 5 Moreover, it does not appear to us that either certified question presents an issue for which there is a “substantial ground for difference of opinion.” The law regarding eminent domain and *res judicata* is reasonably well-developed (see, e.g., *City of Chicago v. Midland Smelting Co.*, 385 Ill. App. 3d 945, 958-60 (2008)), and the language of the Sanitary District Act of 1917 (70 ILCS 2405/0.1 et seq. (West 2012)) is sufficiently clear to guide the proceedings below.

¶ 6 Accordingly, defendant’s request for leave to appeal is denied, and this appeal is dismissed.

¶ 7 Appeal dismissed.