

Nos. 1-16-2868 and 1-16-2873 (cons.)

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
FIRST JUDICIAL DISTRICT

JOSEPH T. SELBKA, LYDIA R. SELBKA and)	On Appeal from the
CHICAGO TITLE LAND TRUST CO., as successor)	Circuit Court
to Worth Bank and Trust, as Trustee under Trust)	of Cook County
Agreement dated January 13, 1988 and known as)	
Trust No. 4266, an Illinois land trust,)	No. 96 L 50625 (cons. with
)	No. 15 L 50359)
Plaintiffs-Appellants,)	
)	Honorable
v.)	Alexander P. White,
)	Judge Presiding
THE ILLINOIS STATE TOLL HIGHWAY)	
AUTHORITY, <i>et al.</i> ,)	
)	
Defendants-Appellees.)	
)	
THE ILLINOIS STATE TOLL HIGHWAY)	
AUTHORITY,)	
)	
Plaintiff-Appellee,)	
)	
v.)	
)	
WORTH BANK & TRUST, as Trustee under a Trust)	
Agreement dated January 13, 1988 and known as Trust)	
No. 4266, an Illinois Land Trust; JOSEPH T. SELBKA)	
and LYDIA R. SELBKA,)	
)	
Defendants-Appellants.)	

JUSTICE MASON delivered the judgment of the court.
Presiding Justice Hyman and Justice Neville concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court properly found that Toll Highway Authority had complied with terms of agreed judgment order entered in condemnation case and dismissed the petition to revive that judgment.

¶ 2 In these consolidated appeals, we are asked to interpret the terms of an agreed judgment order entered 17 years ago in condemnation proceedings initiated by the Illinois State Toll Highway Authority (the Authority) concerning land owned through a land trust of which Joseph T. and Lydia R. Selbka were the beneficiaries. Because the manner of ownership is immaterial for our purposes, we treat the property as owned by the Selbkas. The judgment, entered in 2000, required the Authority to construct an access road to the property "in substantial conformity" with plans (attached as an exhibit to the judgment) within five years of the date the judgment was entered. The road was not completed until 2007. In 2015, the Selbkas filed two proceedings: an action seeking to compel specific performance of the terms of the judgment order by the Authority and a separate petition to revive the judgment. The trial court dismissed both actions finding that (i) the action seeking specific performance was time-barred and (ii) the petition to revive the judgment failed because the Authority had complied with the judgment. We address only the latter argument as it is dispositive and affirm.

¶ 3 The property that was the subject of the condemnation proceedings is a 7.7 acre parcel contained within a 36 acre parcel in Lemont, Illinois. As an administrative agency established pursuant to the Toll Highway Act (605 ILCS 10/1 (West 2016)), the Authority is, incident to its authority to construct, operate, regulate and maintain a system of toll highways, authorized to acquire property through eminent domain. The Authority commenced condemnation proceedings to acquire the 7.7 acre parcel in 1995 for the

purpose of constructing an interchange at I-355 and 127th Street in Lemont as part of a larger southern extension of I-355. On July 30, 1996, the circuit court entered an order setting preliminary just compensation in the amount of \$554,000. The Authority deposited that amount with the Cook County Treasurer on August 12, 1996, and the Selbkas were allowed to withdraw that sum a short time later. Contemporaneously with the Selbkas' withdrawal of the preliminary just compensation award, title was vested in the Authority.

¶ 4 The remainder of the parcel, which the Selbkas continued to own, was landlocked as a result of transfer of title to the Authority. The litigation continued for several years until 2000, when the parties entered into a stipulation and agreed final judgment order. The order set the final just compensation award at \$554,000, the amount already paid by the Authority.

¶ 5 Among other things, the parties agreed that within five years of the date the agreed judgment was entered, the Authority would construct an access road connecting the remainder parcel to 127th Street. The judgment provided that the road would be constructed "in substantial conformance" with plans attached as Exhibit C to the judgment. In somewhat redundant language, the judgment further required construction of the access road in a manner that would "comply with all local and state regulations for streets to assure proper legal access in accordance with applicable local and state regulations in order to provide access to the remainder of the property." The court further determined that the just compensation award was inclusive of any damages to the remainder parcel as a result of the taking.

¶ 6 Compliance with the agreed judgment order's requirement that the Authority construct an access road necessitated the acquisition of six additional parcels by the Authority. The access road is an extension of a roadway commonly known as Alba Road.

¶ 7 The interchange, including the newly constructed access road to the remainder parcel, opened to the public on November 11, 2007. On February 26, 2010, the Authority and the Village of Lemont entered into an agreement whereby the Authority conveyed the access road to the village. The village agreed to assume all responsibility and liability as a result of such ownership. A short time later, the Authority quitclaimed the parcels comprising the new access road to the village. The Selbkas have used Alba Road to access their property since 2007.

¶ 8 On May 14, 2015, the Selbkas filed a complaint seeking to enforce the agreed judgment order, alleging that the Authority had failed to comply with its terms. The complaint was amended in October 2015 to assert additional claims and request damages in excess of \$750,000. That same month, because the judgment had been entered more than seven years earlier, the Selbkas filed a petition to revive the judgment. 735 ILCS 5/2-1602 (West 2014) (providing for petition to revive judgment within 20 years after its entry); 735 ILCS 5/12-208 (West 2014) (limitation on enforcement provision requiring judgments to be revived by petition when more than seven years have elapsed since entry).

¶ 9 The gist of the Selbkas' arguments in both proceedings regarding the Authority's compliance with the judgment was that although the Authority had constructed an access road connecting the remainder property to 127th Street, that road was not suitable and did not meet the village's requirements for residential development. In particular, the Selbkas

claimed that local zoning requirements applicable to residential development required a minimum 66-foot width to allow for utilities, sewer and water services to be installed and that, as constructed, the access road was only 30 feet wide at the point it intersected with the remainder parcel. The Selbkas also alleged the access road failed to satisfy the minimum street turning radius of 200 feet. The Selbkas claimed that the Authority owned land adjacent to the access road that was vacant and unused and requested that the Authority be required to reconfigure the access road using that land so that the property could be developed for residential use. The proceedings were ultimately consolidated under the condemnation case.

¶ 10 The Authority moved to dismiss both the specific performance action and the petition to revive pursuant to section 2-619. 735 ILCS 5/2-619 (West 2014). As to the specific performance action, the Authority contended that it was time-barred, citing the four-year statute of limitations for construction-related claims. 735 ILCS 5/13-214 (West 2014). Under section 13-214, actions "based upon tort, contract or otherwise against any person for an act or omission *** in the design, planning supervision, observation or construction, or construction of an improvement to real property" must be filed within four years of the date the plaintiff knew or reasonably should have known of the act or omission. *Id.* The Authority provided the affidavit of its Senior Project Engineer, Brian Bottomley, who attested to the fact that Alba Road opened to the commuting public on November 11, 2007, more than seven years before the Selbkas filed their complaint. As to the petition to revive the judgment, the Authority, again relying on Bottomley's affidavit, moved to dismiss and argued that Alba Road, as constructed, (i) was in substantial conformity with the plans attached to the agreed judgment order and (ii)

provided "proper legal access" to the remainder parcel. The Authority further contended that nothing in the agreed judgment required construction of an access road that would enable residential development of the remainder.

¶ 11 In response to the Authority's motions, Joseph Selbka submitted an affidavit, which attached drawings prepared by an engineering firm. The drawings showed how Alba Road could be extended to allow the remainder to be developed for residential use. Extension of the access road in the manner depicted in the drawings would require the Authority to dedicate additional land to allow for construction of a 66-foot wide road with a 200-foot turn radius that would comply with the requirements for residential development. The affidavit did not specify how Alba Road, as constructed, was not "in substantial conformity" to the plans attached to the agreed judgment order.

¶ 12 The trial court agreed with the Authority's arguments and dismissed both the complaint and the petition to revive. The Selbkas timely appealed both rulings.

¶ 13 Our review of the orders from which the Selbkas appeal requires us to interpret the meaning of the agreed judgment order entered in 2000. Although we are dealing with the meaning of a court order, which normally requires discernment of the court's intent, here we are concerned with an agreed judgment order, which also necessitates an examination of the intent of the parties in agreeing to its terms. We construe the meaning of the agreed judgment order "in a reasonable manner so as to give effect to the apparent intention" of the parties and the trial court. *Granville Beach Condominium Association v. Granville Beach Condominiums, Inc.*, 227 Ill. App. 3d 715, 720 (1992). "[W]here the language of the order is clear and unambiguous, it is not subject to construction." *Purcell & Wardrope, Chartered, v. Hertz Corp.*, 279 Ill. App. 3d 16, 21 (1996). Although neither

party articulates the standard of review, we review the trial court's ruling on a section 2-619 motion to dismiss *de novo*. *Moon v. Rhode*, 2016 IL 119572, ¶ 15.

¶ 14 There is no dispute that the access road provides the Selbkas with legal access to the remainder parcel. Indeed, we may infer that had the Village of Lemont determined that the extension of Alba Road was not suitable for that purpose, it would not have accepted the conveyance from the Authority and the responsibilities and liabilities associated with that conveyance. What the plain language of the agreed judgment order obligated the Authority to do was construct an access road that would provide "proper legal access" to the remainder parcel. Nothing the Selbkas submitted in the trial court demonstrated that the access road, as constructed, did not provide "proper legal access" to the remainder.

¶ 15 The gloss the Selbkas place on the agreed judgment order is that it required the Authority to provide "*full* legal access," meaning that the access road was required to accommodate residential development. But nothing in the agreed order supports this conclusion. The phrase "full legal access" appears nowhere in the order, and even if it did, it would not constitute a requirement that the Authority construct an access road that could accommodate residential development. The plans attached as exhibit C to the order contain no minimum width or turn radius measurements, and in his affidavit, Joseph Selbka does not identify any local or state regulation with which the access road, as constructed, does not comply. Although the Selbkas complain that the access road intersects the remainder parcel at its narrowest point, the agreed judgment order does not specify any particular location for the new access road. Particularly since the plans developed by the engineering firm would require the Authority to devote additional

property to construction of a different access road—an affirmative undertaking nowhere imposed on the Authority in the agreed judgment order—we cannot construe that order in the manner urged by the Selbkas. Thus, because the Authority complied with the terms of the agreed judgment order, the Selbkas' petition to revive that judgment was properly denied. *Dec & Aque v. Manning*, 248 Ill. App. 3d 341, 349 (1993) (recognizing satisfaction of a judgment as a defense to a petition to revive).

¶ 16 Our conclusion that the access road constructed by the Authority substantially complied with the plans attached to the agreed judgment order renders unnecessary discussion of whether the 20-year statute of limitations applicable to enforcement of judgments or the 4-year statute applicable to construction-related claims applies to the Selbkas' specific performance claim. Because the Authority's compliance with the agreed judgment order is a defense in both cases, we need not determine which limitations period applies.

¶ 17 We affirm the judgment of the circuit court of Cook County.

¶ 18 Affirmed.