2014 IL App (5th) 130134-U

NO. 5-13-0134

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

GARY WILSON, CHARLOTTA WILSON, and MATTHEW WILSON, Plaintiffs-Appellants, v. ROBINSON TOWNSHIP, Defendant-Appellee.	)	Appeal from the Circuit Court of Crawford County. No. 13-MR-4 Honorable Kimbara Harrell, Judge, presiding.

PRESIDING JUSTICE WELCH delivered the judgment of the court.
Justices Goldenhersh and Cates concurred in the judgment.

ORDER

¶ 1 *Held*: An eminent domain judgment is not void and may not be collaterally attacked on administrative review of a determination of a county superintendent of highways to alter a roadway where the circuit court had jurisdiction over the parties and the subject matter in the eminent domain proceeding.

¶ 2 In this appeal, the appellants, Gary L. Wilson, Charlotta Wilson, and Matthew Wilson, argue that the taking of the land of one of the appellants, Gary L. Wilson, by Robinson Township through eminent domain, for the purpose of altering a road, was void *ab initio* because the township had failed to comply with the provisions of the Eminent Domain Act (735 ILCS 30/1-1-1 to 99-5-5 (West 2012)) and the Illinois Highway Code (605 ILCS 5/6-101 to 6-329 (West 2008)). The appellants argue that at the time of the filing of the eminent domain action, no formal resolution or ordinance had been adopted by Robinson Township authorizing the taking of Gary L. Wilson's property. The appellants argue that, because Robinson Township failed to initiate formal proceedings at the township level prior

to initiating eminent domain proceedings, in violation of the Eminent Domain Act, the taking of Gary L. Wilson's land is void *ab initio*.

¶ 3 This case comes before us as an appeal from the circuit court of Crawford County in an administrative review of a decision of the Crawford County superintendent of highways granting a petition to alter a township road by straightening it to make it safer. The appellants were objectors in the administrative proceeding seeking authority to alter the road. The proposed alteration of the road would result in Gary L. Wilson losing approximately .7 acres of land. The circuit court of Crawford County affirmed the decision of the county superintendent of highways.

¶ 4 As part of the process of seeking authority to alter the road, an eminent domain action had been commenced against Gary L. Wilson to determine the value of the land he would lose. The record of the eminent domain proceeding has not been included in the record on appeal. However, attached as an exhibit to the township's response to the complaint for administrative review is a copy of an order entered in the eminent domain action on August 21, 2012, valuing the property to be taken at $4,092 per acre.

¶ 5 The administrative proceeding to alter the road was commenced pursuant to section 6-303 of the Illinois Highway Code (the Code) (605 ILCS 5/6-303 (West 2008)), by the filing with the Robinson Township highway commissioner, David Lachenmayr, of a petition signed by 15 legal voters residing in Robinson Township, asserting that a stretch of roadway was unsafe for motorists and should be straightened. Although the record does not reflect on what date the petition was filed with the township, the signatures contained thereon are dated between December 2 and December 4, 2010.

¶ 6 There being objectors to the petition (the appellants), on August 27, 2012, a final public hearing was held pursuant to section 6-311 of the Code (605 ILCS 5/6-311 (West 2008)) at which the township highway commissioner heard and considered reasons for and

against the proposed alteration of the road. On August 30, 2012, the township highway commissioner entered an order granting the petition for alteration of the road by straightening it to make it safer for motorists.

¶ 7 Pursuant to section 6-312 of the Code (605 ILCS 5/6-312 (West 2008)), the appellants appealed to the county superintendent of highways from the township commissioner's decision. On October 1, 2012, a public hearing was held by the county superintendent to finally determine whether the road should be altered. The county superintendent heard testimony both for and against the road alteration, and determined that it should be straightened to make it safer for motorists. The county superintendent granted the petition for alteration and affirmed the decision of the township highway commissioner. The county superintendent's order was entered October 5, 2012. Attached thereto were the survey and plat of the proposed alteration.

¶ 8 The appellants sought judicial review of the county superintendent's decision pursuant to section 6-315a of the Code (605 ILCS 5/6-315a (West 2008)) and the Administrative Review Law (735 ILCS 5/3-101 to 3-113 (West 2012)), by the filing of a complaint in the circuit court of Crawford County. Although the eminent domain proceeding had been a different proceeding than the administrative proceeding appealed from, in their complaint for administrative review, the appellants characterized their appeal as one from "said Superintendent's effective denial of [the appellants'] appeal of Robinson Township Road Commissioner's decision to take [Gary L. Wilson's] land pursuant to eminent domain." The complaint complained that Robinson Township had initiated eminent domain proceedings to seize Gary L. Wilson's land without first initiating formal proceedings at the township level, that the valuation established in the eminent domain proceeding for the land was inadequate, that the finding that the road would be made safer by alteration was contrary to the manifest weight of the evidence, and that the township had failed to provide proper notice

to the appellants.

¶ 9 Robinson Township filed a response to the complaint arguing that issues pertaining to the eminent domain proceeding were not properly before the court in the administrative review proceeding–the appellants had not appealed from the final order in the eminent domain proceeding and could not seek review in the administrative review proceeding. Further, the response pointed out that the circuit court had already ruled that the township had provided proper notice of the proceedings to the appellants. Accordingly, the only issue properly before the court was whether the superintendent's finding that altering the road would make it safer was contrary to the manifest weight of the evidence.

¶ 10 On February 25, 2013, the circuit court of Crawford County entered an order affirming the decision of the Crawford County superintendent of highways. The courts concluded that the superintendent's findings were not contrary to the manifest weight of the evidence. The court did not address the other issues raised by the appellants.

¶ 11 On appeal, the appellants argue that the eminent domain judgment valuing Gary L. Wilson's property is void *ab initio* and can be attacked at any time, including in the context of an appeal from the administrative orders, because it was entered prior to the entry of the decisions of the Robinson Township highway commissioner and the Crawford County highway superintendent authorizing alteration of the road. In their brief on appeal, the appellants argue as follows: "In sum, Plaintiffs contend that the procedural requirements of eminent domain were not complied with as formal proceedings at the township level as required by statute were not initiated prior to initiating eminent domain proceedings." The appellants contend that "[t]he outcome of this case is directly controlled by the Supreme Court case of *Goldman v. Moore*, 35 Ill. 2d 450 (1966), which mandates reversal in this matter."

¶ 12 *Goldman* involved an eminent domain proceeding instituted to acquire land for a

school district. The issue before the supreme court was whether the procedure followed by the school board was adequate to sustain its exercise of the power of eminent domain. Prior to the filing of the petition for eminent domain, no formal resolution concerning the acquisition of the land had been adopted. The defendant contended that a public body must, as a condition precedent to the filing of an eminent domain petition, adopt a valid enabling ordinance or resolution containing a finding that the proposed taking is necessary. The supreme court held that although the eminent domain statute does not specifically require formal action by the public body prior to institution of an eminent domain suit, such action is still required. 35 Ill. 2d at 453. The dismissal of the eminent domain action was affirmed.

¶ 13 The appellants ask us to remand this case back to the circuit court to make findings as to whether the Township "complied with the procedural and notice requirements."

¶ 14 A review of that portion of the Illinois Highway Code which permits townships to alter roads will prove helpful. Existing township roads may be altered upon the filing with the township highway commissioner of a petition signed by not less than 5% of legal voters, or 12 legal voters, whichever is less, residing in any road district. 605 ILCS 5/6-303 (West 2008). Upon receipt of the petition, the highway commissioner shall fix a time and place to examine the road to be altered and hear reasons for and against the widening. 605 ILCS 5/6-305 (West 2008). At such meeting, the commissioner shall decide and publicly announce whether he will grant or refuse the prayer of the petition and shall endorse upon or annex to the petition a brief memorandum of such decision, which shall be filed in the office of the district clerk. 605 ILCS 5/6-305 (West 2008). If the highway commissioner enters a preliminary order for the alteration, he shall then cause a survey and plat of the road to be made. 605 ILCS 5/6-307 (West 2008). Further, when the highway commissioner has entered a preliminary order for the alteration of a township road, and a survey has been completed in accordance with section 6-307 of the Code (605 ILCS 5/6-307 (West 2008)),

proceedings shall be taken to fix the damages which will be sustained by the adjoining landowners by reason of such alteration of the road. 605 ILCS 5/6-308 (West 2008). The highway commissioner is expressly authorized to commence an eminent domain action against any landowner damaged by the alteration with whom an agreement as to the amount of damages cannot be reached. 605 ILCS 5/6-309 (West 2008).

¶ 15 Within 20 days after the damages likely to be sustained by reason of the alteration of the road have been finally ascertained, the highway commissioner shall hold a public hearing at which he shall hear and consider reasons for or against the proposed alteration of the road, and at which time he shall publicly announce his final decision relative thereto. 605 ILCS 5/6-311 (West 2008). A written order shall be filed within five days in the office of the district clerk. 605 ILCS 5/6-311 (West 2008).

¶ 16 An appeal may be taken from the final decision of the township highway commissioner to the county superintendent of highways, who shall hold a public hearing to finally determine upon the alteration of the road. 605 ILCS 5/6-312 (West 2008). The county superintendent must file an order with the survey plat attached with the district clerk. 605 ILCS 5/6-313 (West 2008).

¶ 17 Judicial review of the decision of the county superintendent may be had in accordance with the Administrative Review Law. 605 ILCS 5/6-315a (West 2008).

¶ 18 We admit to some difficulty in understanding the appellants' argument. We are further hampered by the absence of a complete record on appeal. However, we understand the appellants' argument to be premised on the absence in the record of a copy of the memorandum of decision of the township commissioner, following the preliminary hearing required by section 6-305 of the Code, and which is required to be filed within five days of that hearing in the office of the district clerk. 605 ILCS 5/6-305 (West 2008). In proceedings under the Code to alter an existing road, this memorandum of decision is the

authorizing ordinance, resolution, or other formal action required by our supreme court in *Goldman v. Moore*, 35 Ill. 2d 450 (1966), prior to the institution of eminent domain proceedings by a public body. The appellants are correct that the record on appeal is devoid of any such memorandum of decision, or any other authorizing resolution, ordinance, or other formal action taken prior to the filing of the eminent domain action.

¶ 19 Nevertheless, any such error in the administrative proceedings does not render the eminent domain judgment void *ab initio*, allowing it to be attacked in the context of the administrative review proceeding. Our supreme court has held that, because of the disastrous consequences which follow when orders and judgments are allowed to be collaterally attacked, orders should be characterized as void only when no other alternative is possible. *J.S.A. v. M.H.*, 224 Ill. 2d 182, 211 (2007).

¶ 20 The question whether a judgment is void or voidable depends on whether the court entering the challenged order possessed jurisdiction over the parties and the subject matter. *In re Marriage of Mitchell*, 181 Ill. 2d 169, 174 (1998). Judgments entered in a civil proceeding may be collaterally attacked as void only where there is a total want of jurisdiction in the court which entered the judgment, either as to the subject matter or as to the parties. *Mitchell*, 181 Ill. 2d at 174. A voidable judgment, however, is one entered erroneously by a court having jurisdiction and is not subject to collateral attack. *Mitchell*, 181 Ill. 2d at 174.

¶ 21 There is no suggestion in the case at bar that the circuit court entering the eminent domain judgment against Gary L. Wilson did not have jurisdiction over the subject matter or parties in the eminent domain action. That the township may have exceeded its authority in bringing the eminent domain action without first having taken the appropriate formal action does not equate to the circuit court's having exceeded its authority by entering the eminent domain judgment. The circuit court had jurisdiction over the eminent domain

proceeding and the parties thereto. Accordingly, the eminent domain judgment may have been voidable in a direct attack against it, but it is not void and may not be collaterally attacked in the administrative review proceeding. Accordingly, we reject the appellants' argument on appeal and affirm the decision of the circuit court.

¶ 22 For the sake of clarity, we point out that *Goldman v. Moore*, 35 Ill. 2d 450 (1966), the case upon which the appellants rely, was not a collateral attack on an eminent domain judgment. It involved a posttrial motion to vacate the eminent domain judgment and dismiss the petition because the procedure followed by the school board was not adequate to sustain its exercise of the power of eminent domain because the school board had not first adopted a formal resolution or ordinance authorizing the action. The case at bar involves a collateral attack on a *voidable* judgment, which is not permitted.

¶ 23 For the foregoing reasons, the judgment of the circuit court of Crawford County is hereby affirmed.

¶ 24 Affirmed.