

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 25, 2011

A. John Voelker
Acting Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2010AP2023

Cir. Ct. No. 2008CV1908

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**IN RE THE PETITION OF COUNTRY SIDE RESTAURANT, INC. FOR THE CLERK OF
THE CIRCUIT COURT OF WINNEBAGO COUNTY TO ACCEPT A PORTION OF AN
AWARD OF DAMAGES MADE BY THE DOT ON 10/09/08 FOR PROPERTY
LOCATED AT 1145 ABRAHAM LANE, OSHKOSH, WI:**

THE LAMAR COMPANY, LLC, D/B/A LAMAR OUTDOOR ADVERTISING,

PETITIONER-APPELLANT,

V.

COUNTRY SIDE RESTAURANT, INC.,

RESPONDENT-RESPONDENT.

**APPEAL from an order of the circuit court for Winnebago County:
KAREN L. SEIFERT, Judge. *Affirmed.***

Before Brown, C.J., Anderson and Reilly, JJ.

¶1 ANDERSON, J. The Lamar Company, LLC, d/b/a Lamar Outdoor Advertising, appeals from the circuit court’s final order that \$120,000 on deposit with the Clerk of the Circuit Court of Winnebago County shall be disbursed to Country Side Restaurant, Inc. We affirm the order.

¶2 Lamar owns an outdoor advertising billboard formerly located on premises owned by Country Side. Lamar leased space for the billboard from Country Side for an annual rent of \$5400. The premises and the sign structure were condemned by the Wisconsin Department of Transportation pursuant to its powers under WIS. STAT. ch. 32 (2009-10).¹

¶3 Thus, in September 2008, the DOT made a Jurisdictional Offer to Purchase pursuant to WIS. STAT. § 32.05(3) to Country Side and Lamar. In October 2008, the DOT issued a \$2,000,000 award of damages pursuant to § 32.05(7).

¶4 The DOT appraisal set the value of the permitted sign site at \$65,000 and the value of the sign at \$65,079.²

¶5 Lamar’s appraiser valued Lamar’s compensation rights for the sign to be \$86,400 (i.e., \$120,100 less the \$33,700 value of the sign structure). In a letter to Lamar’s attorney, Assistant Attorney General Kathleen Batha stated that “[t]he \$2 million payment to Country Side and Lamar covers all interests in the

¹ All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

² Initially, the DOT appraisal allocated \$65,100 to the permitted sign site owned by Country Side. It was then supplemented and set the value of the permitted sign site at \$65,000 and the value of the sign at \$65,079.

value of the sign site.” The letter went on to explain that if Lamar has “a claim for leasehold value or permit value, etc., [Lamar] will have to seek satisfaction from Country Side. The sign structure itself is treated as a tenant’s fixture which is not included in the payment that has been made.”

¶6 The DOT paid Lamar \$75,175 for the “in place value of the sign.” In addition, the DOT paid sign removal expenses of \$5850 and relocation expenses of \$2500. Lamar’s total compensation from the DOT for the sign was \$83,525. Lamar signed the Payment Schedule Summary Worksheet reflecting this compensation from the DOT and agreeing to waive “any right to future claims for damage or loss involving this sign.” Specifically, the waiver language declared that “[t]he reimbursement stated on this worksheet has been reviewed and agreed to by both parties. The sign owner or representative, by signing this document, waives any right to future claims for damage or loss involving this sign.”

¶7 Payment on the award of damages from the DOT was tendered in the amount of \$1,985,785.51 and made payable to Country Side and Lamar. The parties agreed to negotiate the award. The negotiation resulted in all proceeds being transferred to Country Side with the exception of a disputed amount of \$120,000. For this reason, by agreement of the parties, \$120,000 was deposited with the Clerk of the Circuit Court of Winnebago County pursuant to WIS. STAT. § 32.05(7)(d) for eventual distribution in accordance with a court order.

¶8 Lamar and Country Side were not able to reach an agreement for the distribution of the \$120,000. As a result, Lamar filed a claim for partition, citing to WIS. STAT. §§ 32.05(9)(a)3. and 820.01; Country Side filed a petition for the disbursement of the funds to Country Side.

¶9 In a hearing on May 17, 2010, Country Side argued that *Vivid, Inc. v. Fiedler*, 219 Wis. 2d 764, 580 N.W.2d 644 (1998), controls and teaches that Lamar’s exclusive remedy is under WIS. STAT. § 84.30(8). The trial court agreed and ordered that the \$120,000 deposited with the clerk be disbursed to Country Side. On July 16, 2010, the court signed an amended final order stating the same and confirming that the order of May 17, 2010, was a final appealable order. Lamar appeals this final order.

¶10 Statutory interpretation presents a question of law we review de novo. *State v. Longcore*, 2001 WI App 15, ¶5, 240 Wis. 2d 429, 623 N.W.2d 201. The goal of statutory interpretation is to determine and give effect to the legislature’s intent. *Id.* The primary source of interpretation is the statutory language itself. *Id.* If the language is unambiguous, resort to extrinsic aid for purposes of statutory interpretation would be improper. *Id.* If the language is clear and unambiguous on its face, we merely apply that language to the facts at hand. *Id.* A statute is not rendered ambiguous merely because the parties disagree as to its meaning. *Id.*, ¶6. A statute is ambiguous when it is capable of being understood in two or more different senses by reasonably well-informed persons. *See id.*

¶11 While Lamar agrees with Country Side’s position that WIS. STAT. § 84.30(8) “provides ... the exclusive right ... [or] the remedy” for the taking of its sign by eminent domain, it contends that § 84.30(8) does not provide the “procedural mechanism by which you obtain that remedy.” Lamar contends it is WIS. STAT. § 32.05 that provides the procedural mechanism by which Lamar can obtain its remedy. For support, Lamar points to the language in § 84.30(8), which states that “[i]f the department and the owner do not reach agreement as to such

amount of compensation, the department or owner may institute an action to have such compensation determined under [§] 32.05.” Sec. 84.30(8).

¶12 Lamar’s position falls apart because, even if valid, which we need not decide, it is only sustainable in the circumstances where “the department and the owner *do not* reach an agreement.” *See id.* That is not at all what happened here.

¶13 Lamar *reached* an agreement with the DOT. Exhibit F in the record is a signed agreement between Lamar and the DOT. In it, Lamar accepted a “total eligible reimbursement” of \$83,525. Lamar then signed and dated the reimbursement document. Lamar’s signature is directly under the following unambiguous waiver of rights language: “The reimbursement stated on this worksheet has been reviewed and agreed to by both parties. The sign owner or representative, by signing this document, waives any right to future claims for damage or loss involving this sign.”

¶14 Self-servingly, Lamar ignores the language in WIS. STAT. § 84.30(8) which explains that if an agreement *is* reached, the department *may terminate the sign owner’s rights by purchase. Id.* (“If the department and the owner *reach agreement* on the amount of compensation payable to such owner in respect to any removal or relocation, the department may pay such compensation to the owner and thereby require or terminate the owner’s rights or interests by purchase.” (Emphasis added.)).

¶15 Lamar attempts to persuade us that Country Side did not raise this waiver issue before the trial court and, thus, has waived the ability to argue that Lamar has waived its right to future claims for compensation for the sign. We are perplexed at Lamar’s waiver-of-waiver argument. Again, the record shows that

Lamar’s signed waiver was indeed before the trial court and is before this court as Exhibit F. The DOT paid a mutually agreed upon “compensation to [Lamar] and thereby [properly] require[d] or terminate[d] [Lamar]’s rights or interests by purchase.” *See* WIS. STAT. § 84.30(8). For this reason, we affirm the trial court. No further discussion is necessary.³

By the Court.—Order affirmed.

Not recommended for publication in the official reports.

³ Because of our disposition in this matter, we need not reach all of the arguments Lamar raises. *See Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663 (1938) (only dispositive issues need be addressed).

