COURT OF APPEALS
DECISION
DATED AND FILED

December 6, 2012

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2011AP492 **Cir. Ct. No. 2008CV2048**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

DSG EVERGREEN FAMILY LIMITED PARTNERSHIP,

PLAINTIFF-RESPONDENT,

V.

TOWN OF PERRY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County: JUAN B. COLÁS, Judge. *Affirmed and cause remanded with directions.*

Before Lundsten, P.J., Sherman and Blanchard, JJ

¶1 BLANCHARD, J. This is a non-transportation, partial taking case. The Town of Perry acquired 12.13 acres of a 92-acre parcel owned by DSG Evergreen Family Limited Partnership, resulting in a jury trial on the question of just compensation as measured by the difference between: (1) the fair market

value of DSG's 92 acres immediately before the partial taking, and (2) the fair market value of its remaining property immediately after the taking. The jury found the difference to be $312,500, which is more than four times the award of $73,500 made by the Dane County Condemnation Commission and more than two-and-a-half times the Town's jurisdictional offer of $117,500. In addition, pursuant to WIS. STAT. § 32.28(3)(g) (2009-10),[1] the circuit court awarded DSG, as the prevailing party, litigation expenses totaling $277,411.83, including $190,400 for attorneys' fees. The Town appeals the resulting judgment and raises or purports to raise eight issues, which we summarize in our discussion below. We conclude that, to the extent that the Town has presented developed arguments on the eight issues, each such argument is without merit. We therefore affirm.

BACKGROUND

¶2 The following are basic background facts; we will provide additional background as necessary in the discussion section. As we reference at several points, our work was made considerably more difficult by the repeated failure of the Town to present coherent, relevant arguments with accurate record citations.

¶3 Pursuant to WIS. STAT. § 32.06(7), the Town filed a petition for condemnation proceedings on February 22, 2006, describing a 12.13-acre parcel belonging to DSG, explaining that a jurisdictional offer by the Town had been rejected by DSG, and requesting a court order assigning the condemnation damages issue to the Dane County Condemnation Commission. The Town's

[1] All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted. The parties do not suggest that there have been any relevant changes in the applicable statutes during any time relevant to this case, so we cite the current version for ease of reference.

purpose in seeking condemnation was to "construct[] a public park to be known as the Hauge Log Church Historic District Park."

¶4 The petition also addressed access between the proposed remainder parcel and County Highway Z, which runs north-south along the eastern side of the DSG property. Under the terms of the petition, after the taking DSG would retain: (1) "a non-exclusive permanent access easement, which shall run with the land"; and (2) "a southerly extension" of this access easement. In addition,

> The Town will replace the existing field road on the 12.13 acre parcel to be acquired with a new field road from Highway Z along the northern boundary of the Hauge Church Park boundary to the western boundary of the proposed Park in order to provide access to [DSG's] other lands in the Town of Perry and for park-related purposes.

In other words, the Town proposed that DSG would have access between its remainder parcel and the highway via one or more easements. The petition also indicated that, in the event of a taking, "the Town will not oppose [DSG's] construction … of a field road on the southerly extension of the access easement as described above or a town road on either the access easement or the southerly extension of the easement" if state and local laws were met. If the town road were constructed and approved, the Town pledged to "accept" "dedication" of the road over the above described easement area.

¶5 Consistent with the references described in the above petition, the operative jurisdictional offer (in the amount of $117,500) included an easement for DSG and the possibility of roads or road improvements, expressing the Town's intent "to provide [DSG] access from [its] remaining lands to County Highway Z," in the manners described above.

¶6 After the clerk of courts docketed a condemnation damages award of $73,500, the court ordered the filing of an amended award in July 2008, after which the County paid $73,500 to DSG. As a result, title to the 12.13 acres vested in the Town.[2]

¶7 Following a three-day trial in February 2009, the jury returned a unanimous verdict, making the following findings in response to the only two questions posed: (1) the fair market value of DSG's entire property on February 23, 2006, and immediately before the taking, was $923,400; (2) the fair market value of the remaining property immediately after February 23, 2006, assuming that the public project was completed by then, was $610,900.

¶8 Following trial, the court denied the Town's post-trial motions and held a hearing on DSG's motion for litigation expenses. The court then entered judgment against the Town in the amount of $239,000 as just compensation (the just compensation amount found by the jury of $312,500, minus the $73,500 paid by the Town following the condemnation commission award), plus $277,411.83 for litigation expenses, together with interest dictated by relevant statutes and not in dispute in this appeal.

[2] We note that the record is in some respects confusing, in part because the Dane County Condemnation Commission submitted an insufficiently specific award to the circuit court on March 7, 2008, and the circuit court was obligated to order the commission to file an amended award. However, we believe that our summary is accurate as to facts relevant to this appeal.

DISCUSSION

I. Reasonable Access

¶9 The first issue raised by the Town involves a general assertion that DSG's claim for just compensation was premised on its loss of reasonable access from County Highway Z to its remaining property after the partial taking, but that DSG failed to support this claim with evidence or legal authority. The argument comes in two parts, but both are undeveloped.

¶10 The first part of the Town's argument is stated as follows in a subheading (with capitalization altered here), "DSG failed to present any facts that [its] access in 'after condition' was not reasonable." The second part bears the subheading (with capitalization altered here), "The jury verdict was improperly based upon a question of law."

¶11 The Town does not explain whether either part of the argument is based on a motion in limine from one of the parties that was granted or denied by the circuit court, on a proposed jury instruction accepted or rejected by the court, or on any other category of ruling made by the court before, during, or after trial. The first part of the argument focuses on the testimony of one witness, but does not suggest that the Town objected to this testimony or moved for it to be stricken, or that the Town made any argument for a jury instruction related to this testimony. The second part of the argument similarly makes no reference to any ruling of the circuit court.

¶12 We pause to note that, here and elsewhere in its briefing, the Town appears not to recognize one or more of the following baseline rules of appellate advocacy: (1) that, as a general rule, we do not review issues not shown to have

been raised in the circuit court, ***Schinner v. Schinner***, 143 Wis. 2d 81, 94 n.5, 420 N.W.2d 381 (Ct. App. 1988); (2) that a party generally forfeits any issue not raised in the circuit court, ***Schill v. Wisconsin Rapids Sch. Dist.***, 2010 WI 86, ¶45, 327 Wis. 2d 572, 786 N.W.2d 177, and; (3) that the "primary function of the court of appeals is error correction" of *specific*, *identified decisions of the circuit courts*, *see* ***Blum v. 1st Auto & Cas. Ins. Co.***, 2010 WI 78, ¶50, 326 Wis. 2d 729, 786 N.W.2d 78. In contravention of these baseline rules, the Town generally takes a free form approach, one not explicitly rooted in record citations or identified rulings of the circuit court.

¶13 The Town participated in briefing and argument on legal issues before, during, and after trial, some of it extensive. However, it is not enough that we might be able to discover, within this extensive record, references to written arguments in motions or oral arguments reflected in transcripts. In order to carry its burden as an appellant, it is the Town's obligation, at a bare minimum, to identify, within the relevant argument sections of its principal brief, using relevant, accurate citations to the record, the specific errors that it contends the circuit court made, and advance the basis for this court to conclude that the Town preserved arguments it now makes on appeal related to the identified alleged errors. It has failed in that obligation, and the failure is fatal to its argument. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (we need not consider undeveloped arguments).

¶14 We could end there, with the conclusion that the Town's argument is undeveloped. However, as we explain in the following two paragraphs, as far as we can discern from the briefing, the Town does not have a meritorious argument to present.

¶15 DSG responds on this issue that at trial it was DSG's theory, which DSG asserts appears to have been accepted by the jury, that through the partial taking the Town took title to all of DSG's frontage property along public roads, thereby depriving DSG of the valuable opportunity to create up to six residential lots on its property, due to Dane County zoning requirements for public road frontage to support residential lots. DSG points to testimony from its engineer "that a town road meeting the required [county zoning] standards would not fit within the footprint of the easement given by the Petition." Thus, DSG argues, authority cited by the Town regarding the quality and nature of changed access in eminent domain cases is irrelevant to this case, because DSG rested its claim on its alleged loss of the ability to use the remainder parcel for residential, as opposed to agricultural, purposes due to the alleged loss of road frontage as a result of the partial taking.

¶16 The Town's primary reply to this argument is to assert that it is conclusively defeated by ***Narloch v. DOT***, 115 Wis. 2d 419, 340 N.W.2d 542 (1983). However, the Town fails to cite any proposition from ***Narloch*** that undercuts DSG's argument, much less any that conclusively defeats it. If anything, ***Narloch*** appears to support DSG's position. In ***Narloch***, the court rejected a series of arguments made by the state Department of Transportation, as condemnor, involving interpretation of the term "existing right of access" in WIS. STAT. § 32.09(6)(b) (1981-82), such as the DOT's argument that this term included only access points existing at the time of condemnation that had been improved, and for which DOT had already granted permits under WIS. STAT. § 86.07(2) (1981-82). *See* ***Narloch***, 115 Wis. 2d at 429, 432-33. None of the court's treatment of the issues in that case appears to support the Town's free form discussion, at least to the extent that we can discern the outlines of a legal

argument from the Town's discussion. Rather, consistent with DSG's theory, other portions of ***Narloch*** support a conclusion that a restriction on access in a partial taking that deprives the property owner of the most advantageous use of the property is compensable. *See* ***id.*** at 429-33.

¶17 In sum, if the Town preserved an argument that the circuit court committed an error related to the concept that DSG retained reasonable access to its property, the Town has failed on appeal to provide a developed argument on the topic, and, as far as we can discern from the Town's briefing, the Town has no meritorious argument to present.

II. Post-Trial Motion to Change Verdict

¶18 The Town argues that the court committed error in denying its post-trial motion to change the verdict based on a legal proposition which the Town submits the jury failed to understand. The alleged correct legal proposition is that, as a matter of law, there was no reduction in the value of DSG's property as a result of changed access affecting DSG's ability to develop the remainder parcel, regardless whether DSG retained an easement as opposed to a fee interest in frontage property where the Town proposed to grant an easement. As best we understand the argument, the Town contends that the circuit court should have changed the jury verdict because the jury failed to understand the law based on inadequate jury instructions. We agree with DSG that the circuit court correctly determined that the Town waived this legal argument at trial, pursuant to WIS. STAT. § 805.13(3), pertaining to the jury instructions and verdict conference.

¶19 We begin our discussion by noting our concern over the fact that the Town's argument on this issue in its principal brief is not accurate in a significant

respect. The following is the entirety of the discussion on this issue in the Town's principal brief:

> The trial court refused to change the answer for two reasons. First, the trial court believed that the Town waived the argument by not making a motion for a directed verdict before the verdict was entered....
>
> **A. The Trial Court Erred in Finding the Issue [W]as Waived**
>
> Although DSG's [public road] frontage arguments were pure questions of law, the trial court refused to reach the legal issue, ruling that the Town waived it by not moving for a directed verdict before the case was submitted to the jury. [record citation].
>
> However, the trial court's waiver conclusion ignores longstanding statutory law. WIS. STAT. § 805.14[5](e) states:
>
> > It is not necessary to move for a directed verdict or dismissal prior to submission of the case to the jury in order to move subsequently for a judgment notwithstanding the verdict or to change answer.
>
> A post-verdict motion for a directed verdict was therefore proper and should have been decided on the merits by the trial court.

¶20 However, the transcript of the post-trial motion hearing reveals that counsel for DSG made an additional, broader waiver argument, readily recognizable as based at least in part on WIS. STAT. § 805.13(3), and that the court made clear, during the course of extensive back and forth discussion with counsel, that its ruling was based on that argument, as revealed by the following portions of the record:

> THE COURT: Wasn't this legal issue present[,] though[,] before the verdict was rendered? I mean, it was out there and it could have been either a request for an instruction or a request for something in terms of the form

> of verdict that would have addressed this issue and said[,] before the jury can find whatever the finding would be, the jury must find that the access was insufficient under [the county zoning] ordinance. There could have been something done in terms of an instruction or a modification to the verdict form, couldn't there, to have addressed this?
>
> MR. REYNOLDS: I have to be honest, I hated the verdict form. I mean, I think it's very confusing[,] but that's kind of—in a partial taking that's what the Supreme Court says needs to happen in terms of the before and after condition....
>
> ….
>
> THE COURT: … I am going to find, first of all, that this is an issue which could have been raised by a motion for a directed verdict or a request for a jury instruction or a request for a modification of the form of verdict or additional questions on the form of verdict during the trial and was not, and to that extent I think it was waived. And so I'm going to conclude that it was waived.[3]

¶21 With the record properly understood, we turn to the substance of the waiver argument that DSG made and that the circuit court ruled on. WIS. STAT. § 805.13(3) requires counsel to state "the grounds for objection [to a jury instruction or verdict] with particularity on the record. Failure to object … constitutes a waiver of any error in the proposed instructions or verdict."

¶22 The Town's counsel did not place any contemporaneous objection on the record to the lack of the sort of instruction or verdict form that it now suggests should have been given. It was only *after* the jury returned its verdict

[3] We cannot be certain of the degree to which the Town's inaccurate presentation of the record to this court is due to inattention, an attempt at "spin," or some combination of the two. We remind counsel for the Town of his clear obligation as an officer of the court to present accurate information to courts, and note that it further reflects poorly on the Town's counsel that, after DSG calls attention to the Town's misuse of the record, the Town fails even to acknowledge the inaccuracy in its reply brief.

that the Town argued to the court for the first time that the verdict was flawed because the jury did not understand a "simple legal fact." The time for the Town to have called the court's attention to this purported "simple legal fact" was when it could have been addressed properly: before the court settled on its instructions and verdict forms.

¶23 The Town's reply on this issue is to assert, "The Town urged the trial court to find that [DSG's] easement access to Highway Z was adequate for DSG to develop its property" for residential use. However, it is far from clear that the Town's purported request for a "finding" by the circuit court could constitute a request for or objection to any particular jury instruction or verdict form. Regardless, the two portions of the record that the Town cites to support this assertion do not show that the Town requested any particular "finding" now explained by the Town.[4]

¶24 In sum, the Town's failure to object or offer alternative instructions or verdict forms constituted a waiver of any error on this issue.

III. Post-Evaluation Evidence

¶25 While not entirely clear from the Town's argument,[5] it appears that the Town intends to argue that the circuit court erroneously exercised its discretion

[4] It appears that the closest any cited statement of the Town's counsel comes to this concept is the following, made during the final pretrial hearing: "Now, the public road is really not an issue in my view that even this jury should be considering." This qualified and somewhat ambiguous statement ("really not … in my view"), made without citation to authority, was not part of an argument for or against any jury instruction or verdict question.

[5] We choose not to reject this argument as undeveloped, although we could, based at least in part on the lack of record citations in the argument section devoted to this issue.

in barring evidence that, subsequent to the evaluation date, the Town granted two easements to DSG, recorded on April 14, 2008. To clarify, the Town does not argue that the circuit court failed to allow evidence showing that, *by the time of the evaluation date*, the Town had indicated it would grant or intended to grant some type of easement or easements to DSG. It could not make this argument, because the court in fact made clear that evidence of the Town's actions pre-dating the evaluation date would be allowed. Rather, the Town argues that the court was required to admit evidence of the Town's actions *after* the evaluation date, namely evidence that the Town granted two easements after that date. For the following reasons, we conclude that the Town has failed to establish that the circuit court erroneously exercised its discretion in excluding this evidence. *See* ***Martindale v. Ripp***, 2001 WI 113, ¶¶28-29, 246 Wis. 2d 67, 629 N.W.2d 698 (court's evidentiary rulings subject to broad discretion).

A. Circuit Court's Ruling

¶26 In making its ruling, the circuit court focused in part on one of the obvious and apparent reasons why the legislature established a fixed evaluation date for the purpose of determining just compensation, as opposed, for example, to allowing just compensation to be determined based on all pretrial events. *See* WIS. STAT. § 32.06(7).[6] The court observed that

> it makes sense that there ought to be a fixed [d]ate and that we avoid … having [to shift] targets or … [account for] negotiation or offers or actions by one party or the other which might have an effect on the value of the property

[6] The transcript appears to show that the court referred to WIS. STAT. § 32.09(7), but it is evident from a review of § 32.09(7) and WIS. STAT. § 32.06(7), and from the context of the court's remarks, that the court was referring to § 32.06(7), and neither party suggests otherwise on appeal.

> after the take. And the legislature has decided the date of … the lis pendens is going to be the date of evaluation for the purposes of fixing just compensation.

¶27 The court also considered discussion in ***Bembinster v. State***, 57 Wis. 2d 277, 203 N.W.2d 897 (1973), in which the supreme court stated that the determination of market value in condemnation cases may include consideration of "reasonably probable" prospective land uses, that is, land use changes that occur after the evaluation date. Thus, under ***Bembinster***, a court may admit evidence of the "reasonable probability" of favorable rezoning post-taking that would permit a more profitable use. ***Id.*** at 283. As discussed in more detail below, the circuit court deemed as non-binding "dicta or an illustrative example" a passage in ***Bembinster*** that was heavily relied upon by the Town.

¶28 In addition, the court relied for persuasive authority on ***Michigan Department of Transportation v. Haggerty Corridor Partners Ltd. Partnership***, 700 N.W.2d 380, 389 (Mich. 2005), which contains an extensive discussion of what that court believes is a fundamental lack of logic in allowing any post-taking events or occurrences to be used as evidence relevant to a just compensation decision, because just compensation is determined by what actors in the relevant real estate market would actually know at the moment of the taking. To summarize for purposes here, the Michigan court stated as follows:

> A posttaking occurrence cannot possibly affect the fair market value of property on the day of the condemnation, because the occurrence has not yet come to pass and, thus, cannot contribute to the mass of information affecting the market value of the property on that day. In short, a posttaking zoning change is irrelevant to the just compensation calculation because it does not make the *fact of consequence*—that information regarding the reasonable possibility of a zoning change may have impacted the market value of property on the date of the taking—more probable or less probable.

Id. (footnote omitted).

B. Town's Arguments

¶29 The Town challenges the court's evidentiary decision on the basis of two sets of authorities: ***Bembinster*** and authority from other jurisdictions. As we explain below, neither convinces us that the circuit court erroneously exercised its discretion by excluding the easement evidence.

¶30 Addressing first ***Bembinster***, the Town submits that the following passage in ***Bembinster*** is dispositive (we emphasize the key phrase):

> The type of evidence which has been admitted as material[,] as tending to prove a reasonable probability of change[,] includes the granting of many variances which showed a continuing trend that will render rezoning probable, *the actual amendment of the ordinance subsequent to the taking*, and an ordinance rezoning neighboring property. *See* 4 Nichols, *Eminent Domain*, pp. 12-414 to 12-419, sec. 12.322[2].

Bembinster, 57 Wis. 2d at 284-85. From this passage, the Town apparently extrapolates that the circuit court was *required* to admit the particular easement evidence at issue here. We disagree. The court in ***Bembinster*** did not address the issue presented here, namely, whether particular post-taking actions by the condemnor (here, easements granted post-evaluation date) may be considered, or must be considered, to be relevant evidence in establishing a "reasonably probable" prospective action. The quoted passage, on its face, is made in reference to a zoning ordinance, which distinguishes it from easements granted by the condemnor, a difference that the Town does not effectively address in its briefing.

¶31 The passage on which the Town relies in ***Bembinster*** is part of a longer paragraph in which the court is canvassing authorities, such as treatises and courts of other jurisdictions, referring to what is "generally stated" by these authorities as to the probability of rezoning. ***Id.*** at 284-85. It does not appear that, in listing a category of evidence "which *has been* admitted," according to one authority, the court intended to endorse a rule that Wisconsin circuit courts *must* admit such evidence in a just compensation trial, let alone must admit evidence of a reasonable probability of some other type of event under the control of the condemnor. We therefore reject the Town's argument that the quoted passage from ***Bembinster*** dictates a different result than the one that the circuit court reached.[7]

¶32 For its second set of authority, the Town relies on citations to NICHOLS ON EMINENT DOMAIN and opinions from courts in other states. However, regarding the NICHOLS treatise, as DSG points out, various statements in that treatise support the positions of each party. For that reason alone, we do not view the competing NICHOLS treatise citations as a sound reason to conclude that the circuit court misapplied Wisconsin law. Moreover, the Town fails to explain why the circuit court in this case was obligated to follow what the Town

[7] The Town's primary focus on appeal is to criticize the circuit court for referring to the passage in ***Bembinster v. State***, 57 Wis. 2d 277, 203 N.W.2d 897 (1973), as non-binding dictum, on the ground that this is precluded by ***Zarder v. Humana Ins. Co.***, 2010 WI 35, ¶58, 324 Wis. 2d 325, 782 N.W.2d 682. The court actually used two formulations: "dicta or an illustrative example." We will assume that the first formulation is prohibited under ***Zarder***. However, we glean that, in using the phrase "illustrative example," the court likely intended to distinguish the passage at issue in ***Bembinster*** in a manner similar to our view of the passage. And in any case, we may uphold the circuit court on an evidentiary ruling relying on a basis that is independent from that relied on by the circuit court. *See* ***Randall v. Randall***, 2000 WI App 98, ¶7, 235 Wis. 2d 1, 612 N.W.2d 737 (court of appeals will search the record for reasons to uphold circuit court's discretionary rulings).

itself quotes the NICHOLS treatise as explaining is only a "modern trend" "away from *automatically excluding* evidence of acts occurring after the date of valuation." (Emphasis added.) We decline to address the additional persuasive authority from other jurisdictions because the Town does not point to any compelling aspect of this authority.

¶33 The Town begins a confusing reply argument on this issue by focusing on what it labels the "day of the take," April 11, 2008, the day the Town took title to the property by paying the award to the clerk of courts and also recorded one of the two easements at issue, one that the Town asserts would expand "the footprint of the Town Park Road." However, the Town fails to explain what error the circuit court made in concluding that the critical date is instead the evaluation date, February 23, 2006, which was the date placed before the jury for its consideration on the "before and after" just compensation issue, without any objection from the Town to which it now calls our attention. As its leading authority in the reply brief, the Town cites an opinion of this court involving the "project influence rule" that, so far as we can discern from the Town's arguments, has no bearing on this issue. Again, if there is a persuasive argument, supported by Wisconsin law, that undermines the circuit court's evidentiary ruling, the Town fails to present it.

¶34 In sum, the Town has failed to establish that the court's evidentiary ruling was a clearly erroneous exercise of the court's discretion.

IV. Jury Request For Appraisals

¶35 The Town argues that the circuit court erroneously exercised its discretion in declining to allow the jury, while deliberating, to see the appraisal done on the Town's behalf after the jury asked to see the parties' appraisals. Once

again, the Town presents a misleading version of the record in the argument section of its brief, but regardless of that defect, the record plainly reflects that the Town's argument is without merit under the applicable legal standard.

¶36 Whether a court should allow an exhibit to be sent to the jury room during deliberations is a discretionary decision. ***State v. Anderson***, 2006 WI 77, ¶27, 291 Wis. 2d 673, 717 N.W.2d 74. "We will not reverse a discretionary decision if the record shows that discretion was in fact exercised and we can perceive a reasonable basis for the court's decision." ***State v. Hines***, 173 Wis. 2d 850, 858, 496 N.W.2d 720 (Ct. App. 1993).

¶37 The court did not, as the argument section of the Town's brief implies, flatly deny the jury's request to see the appraisals.[8] Instead, the court decided that, in order to remain consistent with the ruling discussed above excluding evidence of the post-taking easements, the jury could not see a complete copy of the Town's appraisal because it included evidence regarding these easements. Thus, the court determined, after input from the parties, that it would send only certain information from the appraisals to the jury, along with a note inviting the jury to "describe specific portions of the appraisals that you would like to see." The jury returned its verdict before this could be accomplished. We see no erroneous exercise of discretion in the court's approach.

[8] Again, we are not able to reach any conclusive determination regarding counsel's intentions here, but we caution counsel that misleadingly incomplete representations of the record to courts is not acceptable conduct for an officer of the court.

V. Excessive Verdict

¶38 The Town argues that the verdict represents a "windfall" to DSG because "there was simply no evidence to support" it and "no legal or factual basis to award DSG damages for a loss of access." Although framed as a challenge to an "excessive verdict," the only basis the Town advances for this argument is that the evidence was insufficient to support the verdict. DSG responds with record citations supporting the verdict and an explanation of its theory of the case, which it submits did not involve a loss of access. In failing to respond to these arguments in its reply brief, the Town concedes them.[9]

VI. Project Completion

¶39 The Town argues that the circuit court, in some manner, "refuse[d] to acknowledge the completion of the project even after the Town showed proof that the road was built providing DSG with reasonable access to Highway Z." DSG responds that this argument does not make sense, in light of the fact that the jury was explicitly directed to consider the "after" value as if the project were completed. In failing to reply, the Town concedes the point.

¶40 Further, the Town fails to cite to the portion of the record showing the court's alleged "refusal." In short, the Town has failed to describe any identifiable error by the circuit court.

[9] We recognize that, scattered in various parts of the Town's principal brief and reply brief, there may be references that might be fashioned into at least a partial reply to the arguments made by DSG on this issue. However, it is the Town's obligation, not this court's, to put these pieces together to show why the Town believes that the evidence is insufficient to support the verdict. *See* ***Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.***, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979).

VII. Alleged Efforts To Incur Severance Damages

¶41 Over the course of nearly four pages of text in its principal brief, the Town makes a series of disjointed references to the concept that DSG was allegedly awarded severance damages that it "incurred when it swapped land during the pendency of the condemnation." However, an essential figure is absent from this recitation: the circuit court. At this juncture in its principal brief—and as we noted above, not for the only time in its briefing—the Town appears oblivious to the primary purpose of an appeal, which is for this court to determine whether the circuit court committed an error requiring remand or reversal. However, we need spend no further time on this issue, because, again, DSG provides a response rooted in record citations, including an argument that the Town expressly waived its right to have the jury instructed that it could consider the degree to which DSG allegedly attempted to increase its compensation, and, again, the Town concedes each point by failing to reply.

VIII. Litigation Expenses

¶42 The Town argues that the circuit court "abandoned reason" in reaching its decision as to the amount of attorneys' fees to be awarded after conducting a four-day trial on the issue. However, we conclude that the record reflects a reasoned approach.

¶43 The Town challenges the fees award in a number of undeveloped ways, but we view the thrust of the Town's challenge to be an assertion that it was irrational for the court to have concluded both that: (1) each side engaged in over litigation of the case; and (2) the number of hours for which the prevailing party's (DSG's) attorneys could be compensated would be reduced from 725 to 544 hours, based in part on the actual number of hours worked by the losing party's

(the Town's) attorney. We conclude that this approach rationally reduced the attorneys' fees due to over litigation. The Town points to no rule preventing the court from awarding substantial fees to the prevailing party in a condemnation case, regardless whether both sides engaged in over litigation, and the Town fails to persuade us that the court's approach was otherwise unreasonable under the circumstances here. There were likely a variety of ways in which the court could have arrived at a reasonable amount of fees to award DSG as the prevailing party; the Town fails to demonstrate that the particular calculation the court made was arbitrary. The Town argues that the court should have relied on the method of calculation advocated by its experts, but fails to explain why the court was obligated to do so.

¶44 DSG also seeks to recover its litigation expenses incurred on appeal, pursuant to WIS. STAT. § 32.28(3)(g).[10] We question whether it is necessary for a party to obtain a ruling from this court in order to recover appellate litigation expenses under § 32.28(3)(g), as opposed to simply requesting them from the circuit court following remittitur. Nonetheless, to avoid possible confusion, we address the matter. In ***Narloch v. State Department of Transportation***, 115 Wis. 2d 419, 439, 340 N.W.2d 542 (1983), the supreme court held that "litigation

[10] Six days after we issued our original opinion in this case, DSG filed its motion for inclusion of litigation expenses. The Town filed a response objecting to DSG's motion. We ordered supplemental briefing. The Town fails to make any non-frivolous argument in either of its submissions that would justify denial of DSG's request for appellate litigation expenses.

Separately, the Town points out that this court failed to decide a motion for judicial notice filed by the Town. However, to the extent that the Town is arguing that the facts discussed in its motion for judicial notice would have affected the outcome of this appeal, it is mistaken. The motion for judicial notice is without merit because it requests that this court take judicial notice of facts that were not before the circuit court at the time that court made its decision. Moreover, even if we had taken judicial notice of the facts discussed in the Town's motion, those facts would have no effect on our decision to affirm the circuit court.

expenses" under § 32.28(3)(g) included recovery of those expenses that a prevailing condemnee incurs in an appeal. Here, pursuant to § 32.28(3)(g) and ***Narloch***, 115 Wis. 2d at 439, DSG, the prevailing condemnee, is entitled to litigation expenses associated with the appellate proceedings.

¶45 Finally, the Town alleges DSG engaged in "unscrupulous tactics," without coherently tying this allegation to any decision of the circuit court that this court should find erroneous for a reason explained by the Town that was preserved for appeal. This is yet another inappropriate submission to this court by the Town.

CONCLUSION

¶46 For these reasons, each issue raised by the Town is either undeveloped or without merit, and accordingly the judgment is affirmed. After remittitur, the circuit court shall award litigation expenses incurred on appeal to the respondent, in an amount to be determined by the circuit court.

By the Court.—Judgment affirmed and cause remanded with directions.

Not recommended for publication in the official reports.