

WISCONSIN SUPREME COURT
WEDNESDAY, APRIL 10, 2013
9:45 a.m.

In this bypass of the District II Court of Appeals (Headquartered in Waukesha), the Supreme Court reviews a decision by Walworth County Circuit Court, Judge James L. Carlson, presiding. A party may ask the Supreme Court to take jurisdiction of an appeal or other pending Court of Appeals' proceeding by filing a petition to bypass pursuant to sec. (Rule) 809.60, Stats. A matter appropriate for bypass usually meets one or more of the criteria for review, sec. (Rule) 809.62(1), Stats., and one the Court feels it will ultimately choose to consider regardless of how the Court of Appeals might decide the issues.

2012AP805/840

Waller v. American Transmission Co.

This bypass involves two prior Court of Appeals' decisions and three circuit court decisions arising from a dispute over the condemnation of property for the location of an electrical transmission line project in Walworth County. The Supreme Court examines Wis. Stat. § 32.06(3m), the uneconomic remnant statute.

Some background: Under section 32.06(3m), "uneconomic remnant" means the property remaining after a partial taking of property, if the property remaining is of such size, shape or condition as to be of little value or of substantially impaired economic viability. If acquisition of only part of a property would leave its owner with an uneconomic remnant, the condemnor shall offer to acquire the remnant concurrently and may acquire it by purchase or by condemnation if the owner consents.

Scott N. Waller and Lynnea S. Waller owned property along the path of a power transmission line that was being upgraded near the crossing of Interstate 43 over Mound Road just outside Delavan. The transmission line project began with administrative proceedings before the Public Service Commission (PSC) and the Department of Natural Resources (DNR), both of which must review and approve all aspects of certain high-voltage projects.

The PSC considered the safety and public health implications of the proposed transmission line, including its distance from houses and other buildings and the associated electromagnetic fields at various distances from the line. Scott Waller testified before the PSC about his concerns that the proposed line would be too close to his house, might create a health hazard, and could impair his property value.

The PSC issued a certificate of public convenience and necessity (CPCN). The PSC found that the transmission line would promote the reliability of the electrical grid and would not have an undue adverse impact on public health and welfare.

American Transmission Co. (ATC) then set out to acquire the real estate interest needed to proceed with the line, including an easement along Wallers property. When negotiations to purchase the easement and the whole property failed, ATC made a jurisdictional offer of \$99,500 on March 20, 2008, to acquire a 45-foot wide easement along two sides of the Wallers' 1.5-acre property. The Wallers rejected the offer.

Three lawsuits resulted from ATC's jurisdictional offer:

- A right-to-take action (Case No. 08-CV-520—the "right-to-take case") under Wis. Stat. § 32.06(5), asserting the taking would leave an uneconomic remnant;

- An action commenced by ATC to determine just compensation under Wis. Stat. § 32.06(7) (Case No. 08-CV-955 – the “valuation case”); and
- A relocation benefits case under Wis. Stat. § 32.20 (Case No. 10-CV-69 – the “relocation case”), claiming that ATC’s taking of the easement forced the Wallers to move and required compensation.

The bypass petition filed by ATC arises out of final judgments and orders entered in the right-to-take case and the relocation case. The appeals also implicate the valuation case, though neither party appealed the jury verdict in Walworth County Circuit Court Case No. 08-CV-955, assigning \$38,000 in value to the property after the taking of the easement.

The petition raises the following issues:

1. How must a landowner raise a claim that a condemner has taken too *little* property, leaving the landowner with an uneconomic remnant: In a valuation proceeding, in an inverse condemnation action, or in a right-to-take action?
2. Did the circuit court properly interpret and apply the uneconomic remnant statute, Wis. Stat. § 32.06(3m)?
3. May a landowner recover litigation expenses for obtaining a judicial ruling that the property that remains after a taking in an uneconomic remnant?
4. Is a landowner who voluntarily moves from a property because of personal preferences nonetheless “displaced,” entitling the landowner to relocation benefits under Wis. Stat. § 32.19?