

IN THE
COURT OF APPEALS OF INDIANA

CAUSE NO. 24A- PL-00073

DUKE ENERGY INDIANA, LLC,

Plaintiff-Appellant,

v.

DIANA LYNN YOCKEY, a/k/a DIANA L.
YOCKEY, f/k/a DIANA L. MYERS,

Defendant-Appellee,

GERMAN AMERICAN BANCORP,

Defendant-Appellee.

Appeal from the

Knox Circuit Court

Cause No. 42C01-2206-PL-000024

The Honorable
Monica C. Gilmore, Judge

BRIEF OF APPELLANT

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STATEMENT OF ISSUES

1. Whether the trial court erred by sustaining the objections that Diana Lynn Yockey, a/k/a Diana L. Yockey, f/k/a Diana L. Myers (“Yockey”) filed to Duke Energy Indiana, LLC’s (“DEI”) Amended Complaint in Condemnation (“DEI’s amended complaint”) because Yockey’s objections are general denials and contain no factual specificity as long-standing Indiana case law requires.

2. Whether the trial court erred when it ruled that DEI's amended complaint required additional detail about the necessity for its vegetation easement when neither the Indiana Eminent Domain Act ("Act"), specifically Ind. Code § 32-24-1-4, nor Indiana case law require that necessity be pled in an eminent domain complaint.

STATEMENT OF CASE

On June 9, 2022, DEI filed its Complaint in Condemnation ("original complaint") in this eminent domain case in Knox Superior Court No. 2 to appropriate a permanent easement upon, over, along, under, through and across a portion of certain real estate owned by Yockey ("subject real estate"), for DEI's Vincennes 3431 electric line project located in Knox County, Indiana ("DEI's Project"). (Appellant's Appendix ("App.") Vol. II., p. 11.) DEI's acquisition in this case is part of DEI's Project to manage vegetation growth in proximity of DEI's overhead, electrical transmission line facilities. (App. Vol. II., p. 11-12.)

On July 7, 2022, Yockey appeared by counsel and filed her Objection, Answer and Other Responsive Pleadings ("Yockey's initial objections"). (App. Vol. II., p. 24.) Yockey's initial objections alleged that DEI's proposed easement would encumber Yockey's residence. (App. Vol. II., p. 25.) Since DEI did not intend to encumber Yockey's residence, and to ensure that its proposed easement could not be misinterpreted, DEI undertook a metes and bounds survey to specifically define the real estate to be encumbered. (App. Vol. II, p. 32.) DEI's survey includes a review of Knox County records, which shows Yockey's real estate that is subject to DEI's proposed easement is split into two separate, but contiguous, property tax parcels. (App. Vol. II., p. 81-86.) As such, DEI's easement is necessarily divided into two permanent, non-

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exclusive easements (collectively “Easements”), one for each tax parcel. These two Easements will encumber the same real estate that DEI intended to encumber with its pre-survey easement but also eliminate any allegation that Yockey’s residence will be encumbered.

On August 12, 2022, with Yockey’s consent, DEI filed an Agreed Motion to Stay Proceedings to allow time to discuss settlement of this immediate case, which the trial court subsequently granted until January 25, 2023. (App. Vol. II., p. 31.) On August 18, 2022, the trial court *sua sponte* entered its order reassigning this case from Knox Superior Court No. 2 to Knox Circuit Court, pursuant to Knox County Local Rule LR42-AR00-3.4(11)¹. (App. Vol. II., p. 35.) On October 5, 2023, Defendant, German American Bancorp (“German American”), appeared by counsel and filed its Motion for Order Enlarging Period for Response to Complaint, which the trial court granted on October 7, 2022. (App. Vol. II., p. 36.) On October 12, 2022, during the stay, German American filed its Objection, Answer and Other Responsive Pleadings which were neither considered nor addressed since the matter was stayed (“Bank’s objections”). (App. Vol. II., p. 38.)

Ultimately, since DEI and Yockey were unable to reach a settlement agreement, DEI filed its amended complaint because the Easements now matched the two property tax parcels, which added information not contained in DEI’s original complaint. On May 12, 2023, DEI filed its Unopposed Motion for Leave of Court to File Amended Complaint to include the Easements over the two tax parcels and the metes and bounds survey

¹ Knox County Local Rule LR42-AR00-3.4(11) provides: “All . . . ‘PL’ (civil plenary) [cases] shall be filed in Knox Circuit Court or Knox Superior Court 1.”

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information, which the trial court granted on May 15, 2023. (App. Vol. II., p. 55.) DEI's amended complaint was filed on May 24, 2023. (App. Vol. II., p. 76.)

On June 13, 2023, Yockey filed her Amended Objection, Answer, and Other Responsive Pleadings in response to DEI's Amended Complaint ("Yockey's objections"). (App. Vol. II., p. 92.) However, German American did not renew its objections.

On July 21, 2023, DEI filed its Motion to Overrule Defendant's Amended Objection, Answer and Other Responsive Pleadings ("DEI's motion to overrule"). (App. Vol. II., p. 136.) The trial court scheduled a hearing on DEI's motion to overrule Yockey's objections for December 7, 2023 at 1:15 PM ("hearing"). (App. Vol. II., p. 155.) At the conclusion of the hearing, the trial court verbally denied DEI's motion to overrule and sustained Yockey's objections. On December 12, 2023, the trial court entered its Order denying DEI's motion to overrule and sustaining Yockey's objections ("trial court's order"). (App. Vol. II., p. 10.) On January 10, 2024, DEI filed its Notice of Appeal. (App. Vol. II., p. 157.)

In its verbal order, the trial court sustained two of Yockey's objections, which are contained in its paragraphs no. 4 and no. 5. (Transcript ("Tr."), Vol. II, p. 35-36.)

Paragraph no. 4 states only: "Yockey denies the truth of the averments in paragraph 4 of the Amended Complaint." (App. Vol. II., p. 92.) Similarly, paragraph no. 5 states:

Yockey denies the truth of the averments in paragraph 5 of the Complaint and the referenced Exhibit A and Exhibit B. Furthermore, Yockey objects to the expanded easement interest, rights, and privileges Duke Energy is now seeking to condemn as set forth in paragraph 5 of the Amended Complaint.

(App. Vol. II., p. 92.)

STATEMENT OF FACTS

Pursuant to Ind. Code § 8-1-8-1(a), DEI is an Indiana public utility to which the Legislature has delegated eminent domain power. DEI filed the instant condemnation action to acquire the Easements from the subject real estate, which it needs as part of DEI's Project to ensure its ability to reliably maintain vegetation growth in the proximity of its electrical poles in accordance with federal and state requirements. (App. Vol. II., p. 76.) The Easements DEI seeks to acquire are, together, approximately 0.263 acres. (App. Vol. II., p. 81-86.)

Yockey is the owner of the subject real estate, which is approximately 1.05 acres and has about 400 feet of frontage along Wheatland Road in Knox County, Indiana. The subject real estate is two separate property tax parcels, both of which DEI seeks to encumber with its Easements.

SUMMARY OF ARGUMENT

The trial court's order denying DEI's motion to overrule and sustaining Yockey's objections directly conflicts with long-standing Indiana case law requiring that objections in an eminent domain case be pled with factual specificity and not be mere conclusory denials to a condemning authority's exercise of its eminent domain power. Here, Yockey's objections are only general denials of the allegations in DEI's amended complaint and are factually unsupported, which is contrary to the law. As such, the trial court's order should be reversed.

Furthermore, the trial court erred by ruling that DEI's amended complaint required additional information about its necessity for the Easements being acquired

because neither the Act nor Indiana case law require that necessity be pled. The trial court's order should be reversed for this reason as well.

ARGUMENT

1. The trial court erred by sustaining Yockey's objections, which consist of general denials to DEI's amended complaint and do not include factual specificity as long-standing Indiana case law mandates.

The trial court's order should be reversed because it incorrectly denied DEI's motion to overrule and sustained Yockey's objections, which completely lack specific factual support as Indiana court decisions have mandated for over 70 years.

Significantly, this Court affirmed the factual specificity requirement for eminent domain case objections as recently as October, 2022. See *Bender Enterprises, LLC v. Duke Energy Indiana, LLC*, 201 N.E.3d 206, 209-210 (Ind. Ct. App. 2022). As such, the trial court's order should be reversed.

First, The Indiana Eminent Domain Act, Ind. Code § 32-24-1 *et seq.* ("Act"), governs these proceedings. Second, long ago, the Indiana Supreme Court held that a general, factually unsupported objection to an eminent domain condemnation complaint is inadequate as a matter of law. In *Joint County Park Board of Ripley, Dearborn and Decatur Counties v. Stegemoller*, 88 N.E.2d 686 (Ind. 1949), the Indiana Supreme Court held:

[If] the objections go to matters on the face of the complaint, they perform the office of a demurrer and should point out the particular defects therein. (Citations omitted.) *If facts exist in addition to those disclosed by the complaint which would defeat plaintiff's recovery, they should be affirmatively pleaded.*

(Emphasis added.) *Id.* at 688. An objection stating simply that a taking is unnecessary, without specific facts alleging how and why, is legally insufficient. An objecting

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defendant must provide facts showing that the condemning authority either cannot exercise the power of eminent domain or is acting for illegal or fraudulent purposes. The *Stegemoller* court overruled a trial court's order sustaining factually unsupported objections and further held:

The appellees fail to point out with particularity any reason why [the condemning authority] had no right to exercise . . . eminent domain. *It was in effect an answer in general denial, not contemplated by the act.* The trial court sustaining [the objection] . . . was error.

(Emphasis added.) *Id.* Recently, this Court affirmed the long-standing requirement that a defendant plead specific facts in support of objections in an eminent domain case:

Although Indiana Code Section 32-24-1-8 does not, on its face, provide that objections in condemnation proceedings must state specific supporting facts, *our Indiana courts have long interpreted the statute as containing such a requirement.* In *Joint Cnty. Park Bd. of Ripley, Dearborn and Decatur Cnty.s v. Stegemoller*, our Supreme Court held that, "[i]f facts exist in addition to those disclosed by the [condemnation] complaint which would defeat plaintiff's recovery, they should be affirmatively pleaded." 228 Ind. 103, 88 N.E.2d 686, 688 (1949). When the objecting property owner fails to state additional facts supporting its objections, the trial court may overrule the objections. *See id.*; *see also, e.g., State v. Collom*, 720 N.E.2d 737, 740 (Ind. Ct. App. 1999) ("It is well settled that if an objection goes to matters on the face of the complaint for appropriation of real estate, it should point out the particular defects contained therein and allege specific facts supporting such objection." (citing *Stegemoller*, 88 N.E.2d at 688)).

(Emphasis added.) *Bender Enters.*, 201 N.E.3d at 209-210. The *Bender* court continued:

Since the Indiana Supreme Court issued its decision in *Stegemoller*, our appellate courts have consistently continued to interpret the eminent domain statutes as requiring that any objections allege specific supporting facts. *See Collom*, 720 N.E.2d at 740; *see also Hass v. State, Dep't of Transp.*, 843

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N.E.2d 994, 999 (Ind. Ct. App. 2006) (holding property owners' bare allegations in its objections to the taking were insufficient), *trans. denied*; *Boyd v. State*, 976 N.E.2d 767, 769 (Ind. Ct. App. 2012) ("[C]ourts may inquire into the necessity of a taking only where the landowner produces *evidence* of bad faith, fraud, capriciousness, or illegality on the condemnor's part[.]" (emphasis added) (citing *Collom*, 720 N.E.2d 737)), *trans. denied*.

Bender Enters., 201 N.E.3d at 211. Since the bases for objections to a condemnation complaint are limited to lack of authority to condemn, lack of jurisdiction, an occurrence of fraud, illegality or arbitrary and capricious decision making, objections must be pled with specificity. *Ellis v. Pub. Serv. Co.*, 168 Ind. Ct. App. 269, 342 N.E.2d 921, 924 (1976) (citing *Dahl v. Northern Ind. Public Service Co.*, 239 Ind. 405, 157 N.E.2d 194 (1959)). If a defendant simply makes unsupported objections in an eminent domain case, a trial court should summarily dispose of them, particularly if the condemning authority files a motion to overrule or motion to strike. Ind. Code § 32-24-1-8(e); see *Boyd v. State*, 976 N.E.2d 767 (Ind. Ct. App. 2012); *Knott v. State*, 973 N.E.2d 1259 (Ind. Ct. App. 2012); *Bender Enters., LLC v. Duke Energy, LLC*, 201 N.E.3d 206 (Ind. Ct. App. 2012). A trial court need not conduct a hearing to summarily dismiss incorrectly pled objections. ("Where the intended use is public, the necessity and expediency of the taking may be determined by such [public] agency . . . and a hearing thereon is not essential to due process . . ." (Emphasis added.) *Bragg v. Weaver*, 251 U.S. 57, 40 S. Ct. 62, 64 (1919).

As set out above, Yockey's objections, like those in the *Bender* case, are general denials to DEI's amended complaint, totally lack factual specificity and provide only general and unsupported requests for the trial court to make broad findings.

Nevertheless, the trial court sustained Yockey's objections provided in paragraph nos. 4

and 5. As in *Bender*, Yockey's objections sustained in this immediate case by the trial court, "[utterly fail to] stat[e] why or how the condemnation was unnecessary, arbitrary, [or] capricious" as Indiana courts require. *Bender Enters.*, 201 N.E.3d at 210. Yockey's objections were inadequate and amounted to ". . . general denial[s], not contemplated by [Indiana Code Section 32-24-1-8]." *Id.* (citing *Collom*, 720 N.E.2d at 740.) Therefore, the trial court erred in sustaining Yockey's objections and since this is a matter of law, this Court should not only reverse the trial court but overrule Yockey's objections and remand this case to the trial court for the next phase of the condemnation proceedings.

2. The trial court erred by ruling DEI's amended complaint needed additional information about why it was condemning the Easements, which neither the Act nor Indiana case law require.

The trial court supplanted the Act because it decided during the hearing that DEI's amended complaint should have included additional information about the necessity of its Easements acquisition, which neither the Act (specifically I.C.. § 32-24-1-4(b)) nor Indiana case law requires. (Tr., Vol. II, p. 35-36.) On this point, this Court expressly held that, "the necessity of the taking is *presumed* [and] *need not be pled by the condemnor.*" (Emphasis added.) *Collom*, 720 N.E.2d at 741-742 (citing 11A I.L.E., Eminent Domain § 99, n. 91).

Notably, long-standing Indiana case law holds that a trial court may only inquire into the necessity of a condemning authority's appropriation when specific facts challenging necessity are raised through a defendant's legal objections. *Id.*; see also *Dahl*, 239 Ind. At 412; *Cemetery Co. v. Warren School Twp. of Marion County*, 236 Ind. 171, 189, 139 N.E.2d 538, 546-47 (Ind. 1957). Yockey's objections did none of this and for this reason, the trial court's order should be reversed.

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The *Collom* decision is directly on point. In *Collom*, the trial court sustained a landowner's necessity objection because the condemning authority did not plead necessity for its appropriation in its complaint and held that "[the condemning authority] has introduced no evidence in support of its Complaint for Appropriation . . . and in particular as to the necessity of [its] appropriation of the [landowner's] real estate . . ."

Id. at 739. The Indiana Court of Appeals reversed the trial court in *Collom* and expressly held:

[I]t has long been established that *the necessity of taking property for public use is purely a legislative question and not a proper subject for judicial review*; where the intended use is public this question may be determined by such [condemning authority] and in such manner as the legislature may designate.

(Emphasis added.) *Id.* at 740. The *Collom* court further held:

[T]he necessity of the taking is presumed, need not be pled by the condemnor, and can be disproved only by the defendant's production of evidence of fraud, capriciousness, or illegality on the condemnor's part.

(Emphasis added.) *Id.* at 741-742. "[A] court may not inquire into the administrative determination of the propriety, reasonableness, or necessity for the taking of property by eminent domain by a property authority, except for fraud, or where the proceeding is a subterfuge for taking property for a private use." *Id.* (citing *Cemetery Co.*, 236 Ind. at 189.)

As in *Collom*, the trial court in this case incorrectly determined that:

[I]n [DEI's Amended Complaint], Paragraph 5, DEI has a present public need and necessity to condemn two easement interests for the overhead electric line facilities described above affecting the real estate of [Yockey]. That, to me, is no different than Paragraph Number 5 of [Yockey's Objections], Yockey denies the truth of the averments in Paragraph 5 of

[DEI's Amended Complaint]. They are both cursory statements. They are both not specified in saying one or the other.

(Tr., Vol. II, p. 35.) The trial court compounded its error when it ruled that if Yockey must provide specificity in support of its objections, DEI too must specifically plead necessity in its amended complaint. However, there is no pleading parity. The condemning authority may simply say the taking is necessary, and unless the objecting landowner offers factual support claiming otherwise, the landowner's objection to necessity must be overruled. "[C]ourts cannot substitute their judgment for the judgment of the condemning authority for what is in fact needed for the accomplishment of their immediate purpose." *Collom*, 720 N.E.2d. at 742 (citing *Meyer v. Northern Indiana Public Service Co.*, 254 Ind. 112, 116, 258 N.E.2d 57, 59 (1970)).

The trial court had no basis to sustain Yockey's objections in paragraphs nos. 4 and 5 without factually supported objections showing that the taking was for some improper purpose. As such, the trial court's order should be reversed.

CONCLUSION

DEI respectfully requests that: (1) the trial court's order sustaining Yockey's objections provided in paragraph nos. 4 and 5 be reversed; (2) this Court overrule Yockey's objections as a matter of law; and (3) the trial court's order that DEI plead necessity with more specificity be overruled as well; (4) and for all other just and proper relief in the premises.

Respectfully submitted,



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VERIFICATION

I certify that I have performed a word count, and this brief contains no more than 14,000 words.



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CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing Brief of Appellant has been duly served upon all counsel of record listed below, via the Indiana Electronic Filing System, on this 1st day of March, 2024:

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