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2018 IL App (3d) 170382-U

Order filed March 7, 2018

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2018

THE COUNTY OF WILL,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellee,	)	Will County, Illinois,
	)	
v.	)	
	)	
SWANETTE TRIEM,	)	
	)	Appeal No. 3-17-0382
Defendant-Appellant,	)	Circuit Nos. 12-ED-31, 12-ED-33, and
	)	12-ED-35 (Consolidated)
and	)	
	)	
William R. Krygsheld and Greatbank	)	
Trust Company,	)	
	)	Honorable Roger D. Rickmon,
Defendants.	)	Judge, Presiding.

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JUSTICE WRIGHT delivered the judgment of the court.  
Justices McDade and Schmidt concurred in the judgment.

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**ORDER**

¶ 1 *Held:* The trial court did not abuse its discretion by barring defendants from presenting undisclosed opinion testimony regarding the value of defendants' land. The trial court also did not err by entering a directed verdict in favor of plaintiff regarding the amount of just compensation.

¶ 2 This appeal arises from multiple condemnation cases filed by plaintiff, the County of Will (Will County), wherein the Will County Division of Transportation attempted to acquire portions of defendants' properties by exercising the power of eminent domain. The trial court granted Will County's motion to bar defendants from presenting undisclosed opinion testimony regarding the value of the land being sought at trial. After this ruling, defendants did not participate in the jury trial that concluded after the trial court granted Will County's request for a directed verdict in favor of Will County. Defendants appeal. We affirm.

¶ 3 FACTS

¶ 4 On May 24, 2012, the Will County Board approved a resolution that authorized the Will County State's Attorney's Office to commence condemnation proceedings against certain property owners related to a plan for improvement of Pauling-Goodenow Road (County Highway 23) over Plum Creek. Will County sought to acquire small areas of property adjacent to County Highway 23 in an effort to widen and resurface the road. In the resolution, Will County board members concluded that: (1) it was necessary to acquire the properties for the improvement of County Highway 23, (2) the project was for a public purpose, and (3) negotiations with the property owners regarding the amount of appropriate compensation to be provided had been unsuccessful.

¶ 5 Subsequently, on July 17, 2012, Will County filed three complaints for eminent domain against the defendants, Swanette Triem, William R. Krygsheld, and Greatbank Trust Company (collectively, defendants), in case Nos. 12-ED-31, 12-ED-33, and 12-ED-35. After defendants were served with process, some of the defendants appeared *pro se* and other defendants were represented by counsel at various points in the proceedings. Several attorneys also withdrew their appearances on behalf of defendants during the proceedings.

¶ 6 On June 16, 2014, Will County propounded interrogatories and requests for the production of documents on defendants. After defendants failed to respond to the written discovery requests, Will County’s counsel sent defendants two letters, on July 23, 2014, and on August 8, 2014, requesting the responses pursuant to Illinois Supreme Court Rule 201(k). See Ill. S. Ct. Rule 201(k) (eff. May 29, 2014). On November 19, 2014, the trial court ordered defendants to complete all written discovery by December 17, 2014.

¶ 7 Defendants failed to complete written discovery as ordered. Consequently, Will County filed a motion for sanctions under Illinois Supreme Court Rule 219(c) on January 2, 2015, in all three cases, case Nos. 12-ED-31, 12-ED-33, and 12-ED-35. See Ill. S. Ct. Rule 219(c) (eff. Jul. 1, 2002). On March 6, 2015, the trial court held a hearing on Will County’s motion for sanctions. No one appeared on defendants’ behalf at the hearing. On that same date, the trial court granted Will County’s motion for sanctions pursuant to Rule 219(c). On September 16, 2015, the trial court consolidated the three matters.

¶ 8 On March 24, 2015, defendants filed a motion to vacate the Rule 219 sanctions. On June 23, 2016, the trial court granted defendants’ motion and gave defendants another opportunity to comply with the outstanding written discovery requests within 21 days.

¶ 9 On July 14, 2016, defendants, by their counsel, served a copy of defendants’ answers to interrogatories and responses to requests for production on Will County. Will County’s interrogatory No. 3 asked defendants to identify all witnesses who would testify at trial, along with the subject of their testimony. Defendants answered interrogatory No. 3 by stating, in relevant part:

“[T]he Plaintiff [*sic*] intends to call a real estate appraiser to testify to the value of the subject property. The Defendants’ have not retained an appraiser at this time,

but the investigation continues for an appraiser. The Defendants will timely supplement this Answer with any appraiser who is retained. For a list of additional witnesses, see below. Defendants retained the right to supplement this list.

Representative of Illiana Insurance Services BR, 1395 Main St., Crete, IL 60417; Representative will testify to the value of Subject Property.<sup>1</sup>

Fred Tradowski [*sic*]. Mr. Tradowski [*sic*] will be called to testify to his valuation of the Subject Property.”<sup>2</sup>

Will County’s interrogatory No. 4 stated:

“Pursuant to Illinois Supreme Court Rule 213(f), provide the name and current mailing address of each opinion witness who will offer any testimony and state:

- a. The subject matter on which the opinion witness is expected to testify;
- b. The conclusions and opinions of the opinion witness and the bases therefore; including reports of the witness, if any;
- c. The qualifications of each opinion witness, including a curriculum vitae and/or resume, if any; and
- d. The identity of any written reports of the opinion witness regarding this matter.”

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<sup>1</sup>According to a letter contained in the record from Illiana Insurance Services BR, dated August 25, 2008, the company inspected the home located at 609 W. Goodenow Road in Beecher, Illinois, for insurance purposes and estimated the cost of replacing the home was \$956,000 in 2008. This document does not address the value of the portion of the property sought in the condemnation proceeding.

<sup>2</sup>Based on our review of the record, it appears that Fred Tadrowski completed pretrial appraisals of the parcels at issue on behalf of Will County.

Defendants answered interrogatory No. 4 by stating that a list of Defendants' witnesses could be found in the answer to another interrogatory. In August 2016, defendants' counsel withdrew her appearance as attorney for defendants. Defendants did not later supplement their interrogatory answers.

¶ 10 On November 15, 2016, the trial court set the matter for a jury trial for the week of March 24, 2017. On March 24, 2017, the court ordered the jury trial to start on March 27, 2017, before Judge Roger Rickmon. On March 27, 2017, Will County filed a motion to bar any witness testimony proffered by defendants that had not been fully disclosed in accordance with Rule 213(f). Ill. S. Ct. R. 213(f) (eff. Jan. 1, 2007).<sup>3</sup> In the motion, Will County stated that defendants had not disclosed the bases of any valuation opinion witness's testimony and therefore, should be barred from presenting any such testimony at trial. On March 27, 2017, the trial court granted Will County's motion to bar undisclosed witness testimony, and the matter proceeded to trial.

¶ 11 After the court's ruling barring defendants from presenting undisclosed witness testimony at trial, defendants handed a note to the trial judge. The note stated, "We refuse to proceed with this jury trial until we have time to retain an attorney for the County's jury." After delivering the note to the court, defendants left the courtroom. Thereafter, a jury was selected, with defendants *in absentia*, and Will County presented evidence to the jury. Will County presented valuation opinions of an expert land appraiser, David White. According to the trial exhibits, White opined that on July 17, 2012, the date of the filing of the eminent domain suit, the value of parcel 4 (0.07 acres) was \$1500. White opined that on July 17, 2012, parcel 6 (0.161 acres) and parcel 8 (0.067 acres) were valued at \$7000 and \$3000, respectively.

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<sup>3</sup>This case was tried before the amendment to Rule 213, effective January 1, 2018. Therefore, we apply the preamendment version of the rule.

¶ 12 At the conclusion of Will County’s case-in-chief, the court granted Will County’s motion for a directed verdict in favor of Will County. The trial court found that competent valuations for all parcels were offered by Will County and that no valuation evidence was offered by defendants. Based on Will County’s valuation evidence, the trial court awarded defendants the following amounts: \$1500 for parcel 4; \$7000 for parcel 6; and \$3000 for parcel 8.

¶ 13 On April 24, 2017, the defendants filed a posttrial motion to vacate the directed verdict and to vacate any order barring defendants from presenting evidence to a judge or a jury. However, defendants failed to appear at the hearing on their posttrial motion scheduled on May 22, 2017. The trial court denied defendants’ posttrial motion. On June 13, 2017, defendants filed a timely notice of appeal pertaining to the May 22, 2017, court order.

¶ 14 ANALYSIS

¶ 15 On appeal, defendants, *pro se*, argue that the trial court erred by denying their posttrial motion.<sup>4</sup> Defendants request this court to vacate the directed verdict in favor of Will County and vacate the order barring defendants from presenting valuation evidence at trial.

¶ 16 Conversely, Will County argues that defendants’ *pro se* appellate brief should be stricken because the brief is unintelligible and fails to comply with the requirements of Illinois Supreme Court Rules 341 and 342. See Ill. S. Ct. R. 341 (eff. Jul. 1, 2017); Ill. S. Ct. 342 (eff. Jul. 1, 2017). Alternatively, Will County argues that defendants waived their right to the instant appeal by refusing to participate in the jury trial.

¶ 17 We agree that defendants’ brief violates multiple provisions of the Illinois Supreme Court Rules. For example, defendants’ appellate brief does not contain a statement of the “nature of the

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<sup>4</sup>The record on appeal does not contain key documents, such as the transcript of the jury trial and the transcript of the hearing on defendants’ posttrial motion. Any doubts that may arise from the incomplete record will be resolved against the appellants. See *Foutch v. O’Bryant*, 99 Ill. 2d 389, 392 (1984).

action,” a statement of the “issues presented for review,” a statement of jurisdiction, a “statement of facts,” an “argument” section with citation to authorities, or an appendix, as required by Rules 341 and 342. See Ill. S. Ct. R. 341 (eff. Jul. 1, 2017); Ill. S. Ct. 342 (eff. Jul. 1, 2017). The fact that a party appears *pro se* does not relieve that party from complying with the Illinois Supreme Court Rules. *Voris v. Voris*, 2011 IL App (1st) 103814, ¶ 8.

¶ 18           Nonetheless, defendants’ noncompliance with the rules does not prevent us from addressing the merits of defendants’ appeal because the issues in this case are not complex. In the interest of justice, we first consider whether the trial court erred by barring defendants from offering undisclosed opinion testimony at trial regarding the value of the land sought in this eminent domain proceeding.

¶ 19           Illinois Supreme Court Rule 213(f) requires a party, upon written interrogatory, to disclose, among other things, the identities of all witnesses who will testify at trial. Ill. S. Ct. R. 213(f) (eff. Jan. 1, 2007). Further, Rule 213(f) provides, in pertinent part:

“(2) *Independent Expert Witnesses*. An “independent expert witness” is a person giving expert testimony who is not the party, the party’s current employee, or the party’s retained expert. For each independent expert witness, the party must identify the subjects on which the witness will testify and the opinions the party expects to elicit. An answer is sufficient if it gives reasonable notice of the testimony, taking into account the limitations on the party’s knowledge of the facts known by and opinions held by the witness.

(3) *Controlled Expert Witnesses*. A “controlled expert witness” is a person giving expert testimony who is the party, the party’s current employee, or the party’s retained expert. For each controlled expert witness, the party must identify: (i) the

subject matter on which the witness will testify; (ii) the conclusions and opinions of the witness and the bases therefor; (iii) the qualifications of the witness; and (iv) any reports prepared by the witness about the case.”

*Id.* Rule 213(i) imposes a duty on a party to supplement or amend any prior answer whenever new or additional information subsequently becomes known to that party. Ill. S. Ct. R. 213(i) (eff. Jan. 1, 2007). Further, Rule 213(g) limits the testimony that can be given by a witness on direct examination at trial to “information disclosed in answer to a Rule 213(f) interrogatory, or in a discovery deposition.” Ill. S. Ct. R. 213(g) (eff. Jan. 1, 2007). The committee comments to Rule 213(g) provide that “to avoid surprise, the subject matter of all opinions must be disclosed pursuant to this rule \*\*\*, and that no new or additional opinions will be allowed unless the interests of justice require otherwise.” Ill. S. Ct. R. 213(g), Committee Comments. The Rule 213 disclosure requirements are mandatory and subject to strict compliance by the parties. *Sullivan v. Edward Hospital*, 209 Ill. 2d 100, 109 (2004).

¶ 20 Illinois Supreme Court Rule 219(c) (eff. Jul. 1, 2002) empowers a trial court to impose a sanction upon any party who unreasonably fails to comply with the discovery rules or any order entered under these rules. *Shimanovsky v. General Motors Corp.*, 181 Ill. 2d 112, 120 (1998). Rule 219(c)(iv) allows the trial court to bar an undisclosed witness from testifying at trial. Ill. S. Ct. R. 219(c)(iv) (eff. Jul. 1, 2002). “Where a party fails to comply with the provisions of Rule 213, a court should not hesitate sanctioning the party, as Rule 213 demands strict compliance.” *Sullivan*, 209 Ill. 2d at 110. The decision to impose a particular sanction under Rule 219(c) lies within the sound discretion of the trial court, and will not be reversed absent an abuse of discretion. *Shimanovsky*, 181 Ill. 2d at 120.



¶ 21 The record reveals that defendants were served with written discovery in June 2014. Defendants did not answer the written discovery until July 2016. Defendants' 2016 written responses stated, "The Defendants' have not retained an appraiser at this time, but the investigation continues for an appraiser." Defendants did not supplement their interrogatory answers to identify such a witness before the jury trial scheduled for March 27, 2017. Thus, defendants failed to comply with the disclosure requirements for retained expert witnesses set forth in Rule 213(f)(3). See Ill. S. Ct. R. 213(f)(3) (eff. Jan. 1, 2007).

¶ 22 In addition, although defendants identified two other witnesses, the defendant's first witness would be a representative of Illiana Insurance. Defendant's second witness was Tadrowski. Defendants failed to disclose the opinions defendants expected to elicit from these witnesses. See Ill. S. Ct. R. 213(f)(2) (eff. Jan. 1, 2007). Thus, defendants failed to comply with the disclosure requirements for independent expert witnesses set forth in Rule 213(f)(2). See Ill. S. Ct. R. 213(f)(2) (eff. Jan. 1, 2007).

¶ 23 Therefore, we conclude the trial court did not abuse its discretion by imposing sanctions in this case. The trial court properly entered an order barring defendants from presenting undisclosed witness testimony as an authorized sanction for defendants' failure to comply with the discovery rules and the corresponding court orders regarding the production of discovery.

¶ 24 Next, we consider whether the trial court erred by entering a directed verdict in favor of Will County at the conclusion of Will County's case-in-chief and awarding damages to defendants in the amounts testified to at trial by Will County's land appraiser. A directed verdict is properly entered where "all of the evidence, when viewed in its aspect most favorable to the opponent, so overwhelmingly favors movant that no contrary verdict based on that evidence could ever stand." *Maple v. Gustafson*, 151 Ill. 2d 445, 453 (1992). A trial court's ruling on a

motion for directed verdict is reviewed *de novo*. *Buckholtz v. MacNeal Hospital*, 337 Ill. App. 3d 163, 167 (2003). Here, defendants refused to participate in the trial and did not submit any evidence for the consideration of the trier of fact. Given these circumstances, the trial court did not err in entering a directed verdict in favor of Will County as to the amounts of just compensation to be paid to defendants for the land taken.

¶ 25 For these reasons, we affirm the trial court's May 22, 2017, order denying defendants' posttrial motion to vacate the directed verdict entered in favor of Will County and to vacate the order barring defendants from presenting undisclosed valuation evidence.

¶ 26 CONCLUSION

¶ 27 The judgment of the circuit court of Will County is affirmed.

¶ 28 Affirmed.