2019 IL App (2d) 180850-U
No. 2-18-0850
Order filed October 18, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE CITY OF WEST CHICAGO, a municipal corporation, Plaintiff-Appellant, v. VIRGINIA R. PIETROBON AS TRUSTEE OF JOHN F. PIETROBON FAMILY TRUST, DATED DECEMBER 19, 1990, AS TO AN UNDIVIDED 22.93 PERCENT INTEREST AND VIRGINIA R. PIETROBON AS TRUSTEE OF THE JOHN F. PIETROBON MARITAL TRUST DATED DECEMBER 19, 1990, AS TO AN UNDIVIDED 77.07 PERCENT INTEREST, UNKNOWN OWNERS, and NON-RECORD CLAIMANTS, Defendants-Appellees.	)	Appeal from the Circuit Court of Du Page County. No. 16-ED-27 Honorable Kenneth Popejoy, Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Presiding Justice Birkett and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court erred in concluding that burden did not shift to defendants in condemnation action after it erroneously determined that plaintiff's condemnation ordinance was based on a mistake of fact and did not establish a *prima facie* case; trial court's determination that taking was neither reasonable nor necessary could not be reviewed—due to initial error, it was unclear whether trial court applied

appropriate legal standard and case had to be remanded to allow the trial court to clarify its findings.

¶ 2 I. INTRODUCTION

¶ 3 Following an evidentiary hearing, the circuit court of Du Page County granted with prejudice the traverse and motion to dismiss of defendants (Virginia R. Pietrobon (as trustee of the John F. Pietrobon Family Trust, dated December 19, 1990, as to an undivided 22.93 percent interest and as trustee of the John F. Pietrobon Marital Trust, dated December 19, 1990, as to an undivided 77.07 percent interest), unknown owners, and non-record claimants). Plaintiff, the City of West Chicago, now appeals. For the reasons that follow, we vacate and remand.

¶ 4 II. BACKGROUND

¶ 5 The instant appeal arises out of an attempt by plaintiff to condemn a portion of real property owned by defendants. Plaintiff sought to acquire the property to construct a road. The property at issue was identified as "Reque Road" on various public documents; however, this road did not, in fact, exist and the property was owned by defendants (we will refer to the land that is the object of plaintiff's petition as "Reque Road" or the "subject property"). Reque Road is on the western boundary of defendants' property. The land to the west of Reque Road is owned by the A&A Conte Joint Venture Limited Partnership (A&A Conte).

¶ 6 On November 21, 2016, plaintiff enacted an ordinance authorizing the taking. The preamble of the ordinance states, *inter alia*: (1) "since as early as 1945, a public road, which over the years has come to be known as 'Reque Road,' has been designated on public records to intersect with North Avenue"; (2) "in recognition of the existence in the public record of" this road, the Illinois Department of Transportation (IDOT) constructed a full-access intersection where Reque Road and North Avenue were thought to meet, "allowing ingress and egress from both east and west" (North Avenue is a divided roadway at this point); (3) "while designated as a

public road, Reque Road has never been constructed, existing only as a dirt road providing access to the property adjacent thereto"; (4) "the property designated as Reque Road is a part of the real property which bears the common address 31W161 North Avenue"; (5) "dispute exists as to whether the property designated as 'Reque Road' is publicly dedicated; therefore, to enable current and future development of property to be served by Reque Road, the City Council determined that it is reasonable, necessary, and in the public interest and welfare to acquire the property designated as 'Reque Road' "; (6) defendants are owners of the property at issue; and (7) plaintiff unsuccessfully attempted to negotiate the purchase of the property from defendants. Plaintiff filed its complaint on November 23, 2016 (it was subsequently amended on September 1, 2017). Plaintiff sought to acquire the westernmost 49.5 feet of defendants' property.

¶ 7 At the evidentiary hearing on plaintiff's complaint, Michael Guttman first testified. Guttman is the City Administrator of West Chicago. He has been employed by plaintiff since 1998, initially as the assistant city administrator. He holds a degree with majors in urban and regional planning and public administration. His education included land planning. In the course of his duties, Guttman reviews all resolutions and ordinances that are presented to the City Council.

¶ 8 Guttman testified that the city is attempting to acquire the subject property for a roadway. Historically, it has been identified as Reque Road, and it is owned by defendants. Guttman explained, "There is the land historically known as Reque Road that is 33 feet by approximately 1,400 feet north to south, as well as another parcel or portion of land to its east which is 16 and a half feet wide, and, again, running north, south the land approximately [*sic*] 1,400 plus feet."

¶ 9 Guttman noted that Reque Road is identified on two "tax maps"—one from 1974 and one from 2014—maintained by Du Page County. The land to the east of Reque Road (defendants'

property) is zoned for "regional shopping" uses, and the land to the west is zoned for manufacturing uses (A&A Conte's property). These uses are reflected on plaintiff's zoning map. Guttman identified another map as the "2006 comprehensive plan." Despite being dated 2006, it is "still referred to as a planning document" by plaintiff. In the area abutting the proposed Reque Road, the plan envisions land uses including "office, research, light industrial, and in the far rear behind that it would be manufacturing." Current uses in the area are predominantly business, commercial, and manufacturing. Guttman testified that he, as the city administrator, envisioned such uses being developed "in the coming years."

¶ 10 Guttman testified that if the condemnation is successful, plaintiff will own Reque Road, and it will "be opened to anyone wishing to travel on it." He opined that a road was needed in this area because (1) public documents have shown a road in this location since the 1940s; (2) plaintiff has a contractual obligation with one of the adjoining property owners; and (3) it would facilitate economic development.

¶ 11 Guttman identified another document, from the 1940s, as "Taylor's assessment plat." He explained, "It shows 11 parcels ranging in acreage from 4 to 15 acres as well as what we've been talking about in terms of Reque Road on the westernmost edge." This map does not refer to Reque Road, instead simply identifying the area as a public road. Guttman added that many of these parcels would be landlocked if Reque Road was not developed.

¶ 12 Currently, the area called Reque Road is a gravel surface, and "someone uses it to access farmland in the back." It is usually gated, but Guttman has seen it open on occasion. Plaintiff then introduced a document showing an easement held by Earl Craig which allowed passage over the Reque Road right-of-way to provide access to property.

¶ 13 Guttman also identified a document from 1989 as a petition for the annexation of defendants' property. Guttman explained that this was a voluntary annexation, and the petition was submitted by the property owner. The petition contains a plat of annexation, and Reque Road is identified as a public road on that document.

¶ 14 Guttman testified that "the property that the City seeks to acquire for purposes of Reque Road, and as a matter of fact that was owned by the Pietrobon's [*sic*] of which Reque Road is a part all abuts Illinois Route 64." IDOT has jurisdiction over Route 64 (which is also known as North Avenue). IDOT does not need approval from plaintiff to perform work on Route 64; however, it usually shares its plans for construction with plaintiff. In 2011, IDOT completed a project widening this route, adding lanes and making it a limited-access highway. Limited access "means that there are very few points along the highway where there is full access where there is free movement left or right from any direction." That is, prior to construction one could turn either direction from any point entering the highway while afterwards, at most points, there was only right-in/right-out access. However, IDOT constructed a full-access point at Reque Road, where someone entering the highway could turn in either direction. Guttman opined that this would affect the development of defendants' property, making it more valuable. It also would enhance safety "because you finally have an opportunity for a traffic signal once it's fully developed." This is "highly desired for any kind of business use."

¶ 15 Guttman first learned that Reque Road was not actually public property in late 2014. Plaintiff then attempted to acquire it from defendants. Guttman explained that plaintiff had an "obligation per annexation agreements with the property owner to the west that a road would be constructed." Plaintiff "hoped for there to be a nice business part [*sic*] there at some point in time, and a public roadway would be a key component to that." He added, "having that land

under control is critical because if it takes too long to try to acquire something when development is in hand we could lose that potential user." The annexation agreement Guttman referred to was with A&A Conte. When asked whether there was "any development plan for" the A&A Conte property, Guttman replied, "No end users have been identified." A&A Conte has submitted a grading plan for the property, but nothing else.

¶ 16 Guttman then identified the annexation agreement between plaintiff and A&A Conte. Guttman was the City Administrator at the time the agreement was executed. The agreement is valid for twenty years, which is typical. In the agreement, the parties specified how the property was to be zoned, namely, manufacturing. The property is currently being used for farming and a concrete-crushing operation. Part of the agreement specifies that all truck traffic must enter and exit the parcel using Reque Road. Guttman opined that this was a "much safer access." He acknowledged that at the time this agreement was executed, plaintiff believed Reque Road to be a public road.

¶ 17 The agreement also requires A&A Conte to "install and construct roadway improvements within the Reque Road right-of-way." Guttman explained that it was "good public policy to have new development pay for itself." Even though A&A Conte was to pay for the development, plaintiff would own the road. Plaintiff frequently compels developers "to build public infrastructure such as roads as part of their developments." A&A Conte would also donate 16.5 feet of its property to create the right-of-way (when Reque Road was thought to be public, this would have resulted in property owners on both sides of it giving up 16.5 feet). The city code specifies that a road right-of-way requires 66 feet. Guttman anticipated that Reque Road would be used primarily by industrial, employee, and customer traffic. At the time of the hearing, A&A Conte was in the process of installing storm water and flood management

improvements. They had also graded the northern portion of the property and were constructing a detention basin. Guttman testified that it was possible that A&A Conte would "divide the property so there would be multiple ownership of the property at the time of development." All such owners would be able to use Reque Road to access their property.

¶ 18 Guttman further explained that though a formal development plan had not yet been tendered to plaintiff, it was nevertheless sound policy for plaintiff to acquire the property for the roadway. It was desirable to have as much in place as possible so that development "can move expediently." He continued, "No property owner is going to wait three and a half years for things to work themselves out." If things are "in place," property owners "feel more comfortable investing." Plaintiff has employed such a strategy in other developments. In the year and a half preceding the hearing, development "has picked up tremendously."

¶ 19 On cross-examination, Guttman acknowledged that he knew Arturo Conte, who owns the A&A Conte property. Guttman first met him in 2004, when Conte approached plaintiff about annexing his property. Guttman could not recall if he met with Conte personally or if matters were handled by his staff. In 2004, Conte did not share a development plan with plaintiff. Conte also sought a zoning change from residential to manufacturing. They discussed using Reque Road to access the property. At this time, plaintiff believed that Reque Road was a public road.

¶ 20 Guttman agreed that Reque Road is identified as being owned by defendants in the 1989 annexation agreement that resulted in defendants' land being annexed by plaintiff. However, plaintiff continued to mistakenly believe that Reque Road was public until late 2014. At the time that plaintiff entered into the annexation agreement with A&A Conte, it believed that Reque Road was a public road.

¶ 21 Guttman identified an email from a civil engineer stating that A&A Conte had not tendered a "concept plan or engineering plan for the improvement to Reque Road." Guttman had never seen such a plan. Hence, a development plan would "have to go through the full application" process, including first submission to the staff and then to the City Council. Guttman was asked whether he was "aware of any development plan even in the preliminary stages." He replied, "Not with any end users." Moving the roadway to the west further on to the A&A Conte property would add expense, because there is a drainage ditch that would have to be accounted for. This expense would be borne by A&A Conte and any other owners, as there would be a recapture agreement. It could also conflict with a Du Page county rule known as the "rule of avoidance" that "may not let that ditch be moved."

¶ 22 Based on the mistaken belief that Reque Road was public property, plaintiff intended to take 16.5 feet from each adjoining property owner, to be equal and fair. When the mistake was discovered, plaintiff did not change the proposed taking because the engineer remained "certain that that's the best route." Though A&A Conte has never submitted a development plan that would require the acquisition of a right-of-way, plaintiff's purpose in the acquisition was to foster economic development.

¶ 23 On redirect-examination, Guttman testified that under the annexation agreement with A&A Conte, A&A Conte was required to dedicate 16.5 feet of land for the right-of-way as well. Counsel pointed out that the access point constructed by IDOT was based on where Reque Road was believed to exist.

¶ 24 Defendants then called Victor Pietrobon. His mother is Virginia Pietrobon. The subject property is currently owned by a trust, of which his mother is a trustee. This property was the family farm. `His father made the roadway referred to as Reque Road. Victor currently

maintains it, and keeps the roadway gated. Plaintiff has never maintained the road. The property to the west is owned by A&A Conte, who purchased it in 1997. Arturo Conte is Victor's cousin. Victor has granted A&A Conte permission to use the road from time to time. Victor first became aware of the annexation agreement between plaintiff and A&A Conte in 2014. Prior to A&A Conte acquiring the property to the west, there was no ditch adjacent to Reque Road; rather, "it was all cattails." Victor identified a picture of an A&A Conte front-end loader removing cattails. A&A Conte dug the ditch. Since A&A Conte acquired the property, it has been "getting filled in." A&A Conte crushes concrete there and sells landscape materials. Vehicles enter and exit via a driveway on the A&A Conte property to North Avenue.

¶ 25 In 2014, plaintiff sent defendants a letter requesting that the gate on Reque Road be removed. The letter was from Robert Flatter, on behalf of plaintiff. Victor met with Flatter soon thereafter. Victor showed Flatter documents demonstrating that Reque Road was actually defendants' property. Flatter subsequently sent plaintiff a letter stating that they did not have to take the gate down and that the city would review the matter. Plaintiff conducted no cross-examination.

¶ 26 Defendants next called Arturo Conte. He testified that A&A Conte is a joint venture owned by him and his parents. A&A Conte owns about 32 to 34 acres of land west of defendants' property, which was purchased in April 1997. Currently (at the time of the hearing), there was a concrete crushing operation on part of the property and part of it was being farmed. A&A Conte "also [has] permits in order to do land development on it." Based on what his parents told him and what plats of survey show, Arturo believes that Reque Road is a public road. Arturo engaged in discussions with plaintiff to annex the A&A Conte property. This

property was purchased for development purposes. He added, "[O]ur intent has always been to develop the property as light industry."

¶ 27 Arturo was unsure of whether there were any actual drawings at the time of the annexation concerning development of the property. Grading plans and plans for a detention facility did exist. Some drawings show buildings on the property. Arturo could not recall whether A&A Conte dug the ditch along the border of Reque Road.

¶ 28 On cross-examination, Arturo testified that A&A Conte has agreed to donate a 16.5 foot strip of property to become part of the Reque Road right-of-way. The grading work being performed on the property is in anticipation of future development. Completing these improvements will facilitate the sale of the property. He added, "No bank's going to lend money on something that's not finished." A&A Conte has agreed to construct Reque Road, because, "[i]n order to have a development, you need access in order to get in it." Further, there was a recapture agreement, so A&A Conte would fund the project initially and then would recoup the investment from future users of the property. It was Arturo's understanding that Reque Road would be a public road, open to use by anyone.

¶ 29 A&A Conte's current access to North Avenue is right-in/right-out only. Conversely, the Reque Road intersection built by IDOT would allow for full, signalized access. IDOT told Arturo that they would not build a signalized intersection for a private driveway. It was Arturo's understanding that Reque Road had been gated to prevent unauthorized dumping.

¶ 30 In a letter opinion, the trial court granted defendants' traverse and motion to dismiss. In it, the trial court first noted that plaintiff bore the initial burden of establishing a *prima facie* case. It added that a *prima facie* case is typically established by the introduction of the ordinance by the condemning body authorizing the taking. The trial court then examined the ordinance. It

noted that the second clause of the recitals (it referred to the recitals as "whereas clauses") stated that "since as early as 1945, a public road, which over the years has come to be identified as 'Reque Road,' has been designated on public records to intersect with North Avenue in the City of West Chicago." The trial court stated, "The Court takes issue with that portion of the ordinance referencing Reque Road as a 'public road,' as *no* proof was put forth that Reque Road was, in fact, 'a public road.' " (Emphasis in original.) It then noted that the third recital stated IDOT improved North Avenue "in recognition of the existence in the public record of 'Reque Road.' " Here, the trial court found, "Neither the Court's determination nor especially [plaintiff's] determination as to the existence of [*sic*] non-existence of any 'public road' known as Reque Road or the like should be based in any manner on some administrative decision by [IDOT]." It made similar findings regarding the fourth and sixth recitations.

¶ 31 The trial court further made the following finding: "This Court has determined through the evidentiary hearing on defendants' Traverse and Motion to Dismiss that 'Reque Road' is ***not*** a public road, has never been dedicated, formally acknowledged or utilized in any manner as a 'public road.' " (Emphasis in original.) It noted that the annexation agreement between defendants and plaintiff contains a description of defendants' property indicating that defendants own Reque Road. The trial court found that the annexation agreement between plaintiff and A&A Conte was "prepare[d] under the *false* understanding that there was in fact a 'Reque Road right of way.' " (Emphasis in original.) The city's contractual obligation to A&A Conte was therefore based on a "false premise." (Emphasis omitted.) The trial court cited Guttman's testimony, including that plaintiff first became aware that Reque Road was private in 2014. The trial court concluded the initial portion of its opinion as follows:

> "Clearly, the city must meet its *prima facie* burden through introduction into evidence of its ordinance authorizing condemnation of the property. The problem in this particular case is that the ordinance is flawed based on the *incorrect assumption* that Reque Road is a 'public road' and/or has been previously publicly dedicated. That puts a question with this Court as to whether [plaintiff] has in fact made its *prima facie* case thereby shifting the burden to the Defendants to establish by clear and convincing evidence that [plaintiff's] attempt to acquire the property is a clear piece of discretion."

Although the trial court's ruling is not entirely clear here, we understand its statement regarding there being a "question" as to whether plaintiff has set forth a *prima facie* case as a finding that plaintiff did not establish a *prima facie* case.

¶ 32 The trial court also considered whether the proposed taking was for a public purpose. It found that it was not. The trial court first found, "The problem with [plaintiff's argument that the taking is for a public purpose] is that regardless of what words are utilized whether 'Public Road' or 'Reque Road' neither of those words are a correct designation of the *private* property owned by [defendants]." It further found, "There is only one property owner with the City of West Chicago who would benefit from [plaintiff's] taking and that is A&A Conte." It noted that as far as A&A Conte was concerned, the only benefit would be access to the westbound lanes of North Avenue at the intersection constructed by IDOT, as A&A Conte already had access to the eastbound lanes. The trial court continued, the proposed Reque Road "goes nowhere to the south." That is, "There is no other road it is being connected to, there is no other ownership of any other properties which would be utilizing the potential 'road' except for Defendants and *** A&A Conte." Moreover, "this road does not tie into any other 'roadway plan/system,' any other development plans, any other long term planning or the like to show any public purpose." The

trial court cited Guttman's testimony that A&A Conte "has no current development plans or roadway plans and has only referenced vague planning goals."

¶ 33 The trial court also found that the project was not necessary within the meaning of eminent-domain law (*i.e.*, reasonably convenient, expedient, useful). Here, it relied on its finding that plaintiff was going forward based on the incorrect assumption that Reque Road was public.

¶ 34 The trial court therefore granted defendants' traverse and motion to dismiss. This appeal followed.

¶ 35 III. ANALYSIS

¶ 36 This appeal raises two main issues. First, we must address the trial court's determination that plaintiff failed to set forth a *prima facie* case. Second, we will consider the trial court's additional findings that the proposed taking was not for a public purpose and that the taking was not necessary. As a preliminary matter, we will review the law concerning eminent domain.

¶ 37 Generally, a defendant in a condemnation proceeding may challenge the action by filing a traverse and motion to dismiss. *City of Chicago v. Midland Smelting Co.*, 385 Ill. App. 3d 945, 965 (2008). In the face of such a motion, the condemnor bears the initial burden of setting forth a *prima facie* case regarding any issues in dispute. *Id.* The introduction of a valid ordinance authorizing the taking establishes a *prima facie* case, and the burden shifts to the party opposing the condemnation to bring forth evidence that the condemning authority has abused its discretion. *Id.* To fulfill this burden here, defendant must show that the plaintiff has "abused its discretion" in determining that the taking was necessary and served a public purpose. *Alsip Park District v. D & M Partnership*, 252 Ill. App. 3d 277, 284 (1993); see also 735 ILCS 30/5-5-5(b) (West 2016). Defendant must establish these propositions by clear and convincing evidence.

Village of Wheeling v. Exchange National Bank of Chicago, 213 Ill. App. 3d 325, 334 (1991). We review a trial court's ruling on a traverse and motion to dismiss using the manifest-weight standard of review. *Illinois State Toll Highway Authority v. South Barrington Office Center*, 2016 IL App (1st) 150960, ¶ 31. Hence, we will reverse only if an opposite conclusion to the trial court's is clearly apparent. *DeLong v. Cabinet Wholesalers, Inc.*, 196 Ill. App. 3d 974, 978 (1990). Questions of law are reviewed *de novo*. *South Barrington Office Center*, 2016 IL App (1st) 150960, ¶ 31. We now turn to the individual issues presented in this appeal.

¶ 38 A. PLAINTIFF'S *PRIMA FACIE* CASE

¶ 39 We first turn to the threshold question of whether the trial court correctly determined that plaintiff failed to establish a *prima facie* case. As noted, the introduction of a valid ordinance is generally sufficient to satisfy this burden. *Midland Smelting Co.*, 385 Ill. App. 3d at 965. The trial court found that the ordinance enacted by plaintiff was insufficient because it was based on the false premise that Reque Road was public. According to the trial court, "The problem in this particular case is that the ordinance is flawed based on the *incorrect assumption* that Reque Road is a 'public road' and/or has been previously publicly dedicated." (Emphasis in original.)

¶ 40 To perhaps state the obvious, as the plaintiff has filed an action for condemnation, plaintiff was clearly aware that Reque Road was not public. The ordinance authorizes a condemnation ("That the City, its staff and the City's Corporation Counsel, Bond, Dickson & Conway, are hereby authorized to take the necessary steps by condemnation to acquire fee simple title to the [subject property]."). If plaintiff believed that Reque Road was public, it would not be seeking to condemn it; rather, it would most likely be seeking an injunction preventing defendants from interfering with its enjoyment of its property.

¶ 41 Indeed, the recitals relied on by the trial court to find that plaintiff based the ordinance on a mistake of fact simply document a *past* mistake. It is certainly true that prior to 2014 (per Guttman's testimony), plaintiff did believe Reque Road was public. The recitals acknowledge this earlier misunderstanding. The second, third, and fourth recitals state that Reque Road was identified on various public documents, which is true; they do not state that Reque Road existed or was actually public. Contrary to the trial court's finding, the fifth recital expressly states that "the property designated as Reque Road is a part of the real property" owned by defendants. The trial court also placed some weight on the sixth recital, which states a dispute exists as to whether Reque Road is public. In any dispute, one side is wrong, so that Reque Road is actually private does not contradict this recital. Moreover, it is clear that no dispute exists between plaintiff and defendant on this point, as plaintiff has expressly stated that Reque Road belongs to defendants. Further, IDOT apparently did believe that Reque Road was public, given its construction of an intersection to serve it, which would arguably constitute a dispute.

¶ 42 In sum, given the fact that plaintiff specifically acknowledged that Reque Road was private property in the recitals, never contradicted this position elsewhere in the ordinance, and sought condemnation of the right-of-way, it is abundantly clear that plaintiff did not base the ordinance "on the *incorrect assumption* that Reque Road is a 'public road' and/or has been previously publicly dedicated." In other words, an opposite conclusion to the trial court's is clearly apparent here. Moreover, it would be an odd proposition indeed that plaintiff's past mistake of fact would forever disable it from condemning the property at issue.

¶ 43 As noted, by introducing a valid ordinance, plaintiff established a *prima facie* case. M*idland Smelting Co.*, 385 Ill. App. 3d at 965. Accordingly, the burden shifted to defendants to

come "forward with evidence to rebut the *prima facie* case." *Department of Transportation of the State of Illinois v. Callender Construction Co.*, 305 Ill. App. 3d 396, 401 (1999).

¶ 44 B. ADDITIONAL FINDINGS

¶ 45 The trial court also found that the proposed taking was neither necessary nor did it serve a public purpose. However, the trial court's initial error makes our review of these issues problematic. Had the trial court correctly determined that plaintiff had met its *prima facie* case, the question before the court would have properly been whether defendant established by clear and convincing evidence that plaintiff abused its discretion in determining that the taking was necessary and in furtherance of a public purpose. See *Midland Smelting Co.*, 385 Ill. App. 3d 945 ("However, the introduction into evidence of a valid ordinance reciting the necessity for taking private property for a public purpose establishes a *prima facie* case authorizing the acquisition of the property in question, making it the burden of the party challenging the condemnation to come forward with evidence that the condemnor abused its discretion with respect to its decision concerning the necessity of the taking."); *Callender Construction Co.*, 305 Ill. App. 3d at 405 ("The general rule where the right of eminent domain is granted is that necessity for its exercise is not a judicial question, and its exercise is not the proper subject for judicial interference *unless* to prevent clear abuse of such power." (Emphasis in original.)). An abuse of discretion occurs only where no reasonable person could agree with the decision under review. See *Trettenero v. Police Pension Fund of the City of Aurora*, 333 Ill. App. 3d 792, 801 (2002). From our reading of the trial court's letter opinion, it does not appear that the trial court applied this standard.

¶ 46 Therefore, we must remand to allow the trial court to clarify its findings regarding necessity and public purpose. It is unclear to us whether the trial court found that the evidence

produced by defendant on these issues met the high standard of establishing that plaintiff has abused its discretion. On remand, the trial court should make this determination.

¶ 47 IV. CONCLUSION

¶ 48 In light of the foregoing, the order of the circuit court of Du Page County is vacated and this cause is remanded with instructions.

¶ 49 Vacated and remanded, with instructions.