

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

October 12, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 94-1317

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

BRUCE BALDWIN MOHS and
JEANNETTE HIGHT MOHS,

Plaintiffs-Appellants,

v.

STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS,

Defendant-Respondent.

APPEAL from a judgment of the circuit court for Dane County:
GERALD C. NICHOL, Judge. *Affirmed.*

Before Dykman, Sundby, and Vergeront, JJ.

PER CURIAM. Bruce and Jeannette Mohs (collectively, "Mohs") appeal from a judgment dismissing their petition for inverse condemnation pursuant to § 32.10, STATS. The trial court ruled on summary judgment that

there was no taking by the Department of Transportation and therefore no right to compensation. We agree and therefore affirm.

From 1970 until 1991, the Mohs owned approximately fifteen acres abutting a section of Highway 51 designated as a controlled access highway under § 84.25, STATS., and lying near its intersection with Highways 12 and 18 in Madison. In 1951, the Mohs' predecessor in title, received a permit from DOT for a driveway from Highway 51 into the property. A gravel and dirt driveway was constructed and has been used ever since for access to the property.

In the late 1980's, DOT undertook a road improvement project in the vicinity of the Mohs' property. Because the project included plans to eliminate the Mohs' Highway 51 access, and because there was no alternative access to the property, DOT offered to purchase the Mohs' access rights for \$50,000, which they refused. Several months later, DOT notified the Mohs that it would not pursue the acquisition of their rights after concluding "that it is inappropriate for the department to acquire access rights and pay damages when a controlled access highway has been designated." The Mohs transferred title to the property in 1991 and began this action in 1993, seeking compensation for the taking of the driveway access.

Summary judgment is appropriate if, as here, the material facts are not in dispute, and allow only one reasonable inference. See *Wagner v. Dissing*, 141 Wis.2d 931, 939-40, 416 N.W.2d 655, 658 (Ct. App. 1987). We decide summary judgments in the same manner as the trial court and without deference to its decision. *Schaller v. Marine Nat'l Bank*, 131 Wis.2d 389, 394, 388 N.W.2d 645, 648 (Ct. App. 1986).

Notwithstanding DOT's earlier plans, the undisputed facts establish that no taking of the access rights occurred. DOT's project is complete and the driveway remains unchanged and available for access. Although the Mohs argue that it is the right to use the driveway as opposed to its actual use that is significant, they offered no proof that the permit issued in 1951 has ever been revoked. Alternatively, even if it were, such action would be a noncompensable exercise of DOT's police powers, as set forth in § 84.25(5), STATS., providing that:

No person shall have any right of entrance upon or departure from or travel across any controlled-access highway, or to or from abutting lands except at places designated and provided for such purposes, and on such terms and conditions as may be specified from time to time by the department.

Additionally, during the project, DOT created a second access point to the property via a gravel road between it and the nearest road. By that road, the property retains access to Highway 51, although by a less direct route. Therefore, even if DOT had eliminated direct access to the highway, the Mohs retained indirect access that was only slightly less convenient. Taking a direct access does not require compensation if reasonable, indirect access is provided in its place. *Schneider v. State*, 51 Wis.2d 458, 463, 187 N.W.2d 172, 174-75 (1971).

By the Court.—Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.