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**DISTRICT IV**

March 21, 2013

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You are hereby notified that the Court has entered the following opinion and order:

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2012AP110

The Charylene A. Brose Trust dated March 27, 2000 v. Village of Lake Delton (L.C. # 2009CV78)

Before Higginbotham, Blanchard, and Kloppenburg, JJ.

The Charylene A. Brose Trust dated March 27, 2000 (“Brose”) appeals a circuit court judgment awarding damages and statutory costs to the Village of Lake Delton related to the taking of lands owned by Brose. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).<sup>1</sup> We summarily affirm.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

This is an eminent domain case in which the Village of Lake Delton acquired an easement over lands owned by Brose, in order to reconstruct a road known as Canyon Road.<sup>2</sup> Brose owns a parcel of land that abuts Canyon Road to the south. It is undisputed that there was a taking by the Village of approximately 475 square feet of land from Brose when the Village reconstructed Canyon Road in 2008. The parties dispute whether an additional 988 square feet of lands also were taken by the Village from Brose.

The parties filed cross-summary judgment motions in circuit court. The court granted summary judgment in favor of the Village, finding that Canyon Road was never “laid out” or recorded and that it had been worked as a public highway for ten years or more. Accordingly, the court concluded that Canyon Road is presumed by statute to be four rods, or sixty-six feet, in width. *See* WIS. STAT. § 80.01(2) (1979-80). The court reasoned that, when one measures from the centerline of the sixty-six-foot right-of-way for Canyon Road to the property line of the Brose parcel, the disputed 988 square feet lie entirely within the right-of-way for Canyon Road, as it has existed in the same location since at least 1966. The court therefore concluded that the disputed 988 square feet were not taken from Brose by the Village.

The sole issue presented for our review is whether Canyon Road is a recorded highway that was “laid out” within the meaning of WIS. STAT. § 80.01(1) (1979-80). This issue was decided by the circuit court on summary judgment. Whether the circuit court properly granted

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<sup>2</sup> The road now known as Canyon Road has been referred to by other names in the past, including the Delton-Newport Road. For consistency’s sake, we will refer to the road as “Canyon Road” throughout this opinion and order.

summary judgment is a question of law that we review *de novo*. *Schmidt v. Northern States Power Co.*, 2007 WI 136, ¶24, 305 Wis. 2d 538, 742 N.W.2d 294.

On appeal, Brose does not dispute that Canyon Road is sixty-six feet wide. Rather, Brose disputes the location of the boundaries and centerline of Canyon Road. Brose argues that Canyon Road is a recorded highway that was laid out by a 1927 subdivision plat entitled “Map of Dawn Manor Unit Number Two,” which was recorded with the Sauk County Register of Deeds on February 17, 1927. Brose asserts that the southern border of the unnamed highway on the 1927 Dawn Manor plat map is the southernmost boundary of Canyon Road, and that this boundary should be used as a starting point for measuring the sixty-six-foot right-of-way for the road in order to determine whether any of Brose’s lands lie within the right-of-way and, thus, were taken by the Village. Using this method of measurement, Brose argues it is owed compensation for 988 square feet of its lands that lie within the right-of-way for the road, in addition to the 475 square feet that the Village concedes were taken.

The Village argues that Canyon Road is an unrecorded highway and that the 1927 Dawn Manor plat map had no legal effect on the location of the road. The Village asserts that the road was already in existence at the time the plat map was recorded. The Village further argues that the statutory procedure for laying out a highway was not followed and that, according to Wisconsin case law, strict compliance with the statutory procedure was required. See *Roberts v. Jeidy*, 256 Wis. 603, 606, 42 N.W.2d 280 (1950).

We agree with the Village and with the circuit court that the record does not establish that Canyon Road was “laid out” as that term is used in WIS. STAT. § 80.01(1) (1979-80). Warranty deeds recorded with the Sauk County Register of Deeds indicate the presence of the road now

known as Canyon Road as early as 1875. Village records show that Canyon Road was located within the Town of Delton until 1979, when it was annexed to the Village of Lake Delton. Village records also indicate that the road was paved in 1966 and remained in substantially the same location until the reconstruction project commenced in 2008.

When the Dawn Manor plat map was recorded in 1927, the laying out of town highways was governed by WIS. STAT. § 80.07 (1925), which stated:

**Order; survey; award.** Whenever the supervisors shall lay out, alter, widen or discontinue any highway they shall make and sign an order therefor, incorporating therein a description of the highway so laid out, altered, widened or discontinued, and shall cause an accurate survey thereof to be made when necessary; and such order shall be filed and recorded in the office of the town clerk, who shall note the time of recording the same in the record. Such order, together with the award of damages hereinafter mentioned, shall be so filed within ten days after the day fixed by their notice or adjournment for deciding upon such application; and in case said supervisors shall fail to file such order and award within the ten days aforesaid they shall be deemed to have decided against such application.

Case law interpreting § 80.07 (1925) has long required strict compliance with the statutory scheme. *Roberts*, 256 Wis. at 606; *State ex rel. Hewitt v. Graves*, 120 Wis. 607, 609, 98 N.W. 516 (1904). Brose contests this well-settled point of law in its reply brief, but fails to support its argument with any legal authority suggesting that strict compliance is not required.

In this case, neither the 1927 Dawn Manor plat map nor any of the other evidence presented by Brose establishes that the statutory procedure for laying out a highway was strictly followed. The Village asserts in its respondent's brief that no award of damages was filed within the ten-day period provided by statute. *See* WIS. STAT. § 80.07 (1925). In its reply brief, Brose does not rebut the Village's assertion that no damages award was filed.

Additionally, neither the 1927 Dawn Manor plat map nor the Town of Delton resolution written on it contains a “description of the highway so laid out,” as required by WIS. STAT. § 80.07 (1925). While a highway is shown on the plat map, extending beyond the boundaries of the platted area, the road itself was not included in the lands surveyed as those lands are described in the surveyor’s certification that appears on the face of the plat map. The plat map also does not mention a highway order or refer to the laying out or altering of a highway.

In sum, Brose has failed to establish that Canyon Road is a recorded highway that has been “laid out.” Therefore, we reject Brose’s argument that the 1927 Dawn Manor plat map established the southern boundary for Canyon Road. We conclude, as did the circuit court, that the disputed 988 square feet of land lie entirely within the sixty-six-foot right-of-way for Canyon Road, and were not taken from Brose by the Village when it reconstructed Canyon Road in 2008.

IT IS ORDERED that the judgment is summarily affirmed under WIS. STAT. RULE 809.21(1).

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*