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a child abuse registry in Nebraska for abuse and neglect. He acknowledged that Melaya had been the subject of a neglect proceeding in 2007 which was transferred to the Tribe and which resulted in placement of Melaya with Mindy's mother and closure of the case. He admitted to being surprised when he later learned that Mindy's mother had immediately returned the child to Mindy.

The record in this case shows that Mindy had not lived on the reservation since she was a young child, that her children had never lived there, and that there was no evidence that the Tribe had the ability to subpoena Nebraska witnesses to appear in its proceedings. In addition to these factors, the record also shows it is in the children's best interests that jurisdiction of this case remain with the juvenile court.

## CONCLUSION

The ICWA does not change the cardinal rule that the best interests of the child are paramount. Based on the factors set forth in *In re Interest of Brittany C. et al.*, 13 Neb. App. 411, 693 N.W.2d 592 (2005), and our finding that it is in the children's best interests for jurisdiction to remain with the juvenile court, we find that the court did not abuse its discretion in denying the motions to transfer jurisdiction to the tribal court. Accordingly, we affirm the juvenile court's decision.

AFFIRMED.

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# ROBERT C. KRUPICKA, APPELLANT, V. VILLAGE OF DORCHESTER, NEBRASKA, APPELLEE.

804 N.W.2d 37

Filed October 11, 2011. No. A-11-044.

1. **Eminent Domain: Proof.** A good faith attempt and failure to agree prior to the institution of condemnation proceedings must be alleged and proved, and must appear on the face of the petition.
2. ____: ____. The good faith requirement is in the nature of a condition precedent to the right to condemn and is satisfied by proof of an offer made in good faith with a reasonable effort to induce the owner to accept it.

3. **Eminent Domain: Trial: Damages.** If there is an issue between the parties as to whether good faith negotiations took place before condemnation proceedings began, that issue should be tried to the court and determined as a preliminary matter before proceeding to trial on the matter of damages.
4. **Eminent Domain: Appeal and Error.** An appeal from the district court's determination that good faith negotiations occurred prior to the filing of a condemnation petition presents a mixed question of law and fact.
5. **Eminent Domain: Jurisdiction.** Statutory provisions requiring good faith attempts to agree prior to institution of condemnation proceedings are jurisdictional, and objection based on the failure of the record to show that the parties cannot agree may be raised at any time by direct attack.
6. **Jurisdiction: Appeal and Error.** The question of jurisdiction is a question of law, which an appellate court resolves independently of the trial court; however, findings as to any underlying factual disputes will be upheld unless clearly erroneous.
7. ____: ____. Before reaching the legal issues presented for review, it is the duty of an appellate court to settle jurisdictional issues.
8. **Final Orders: Appeal and Error.** The three types of final orders which may be reviewed on appeal are (1) an order which affects a substantial right in an action and which in effect determines the action and prevents a judgment, (2) an order affecting a substantial right made during a special proceeding, and (3) an order affecting a substantial right made on summary application in an action after a judgment is rendered.
9. **Eminent Domain: Final Orders.** Condemnation is a special statutory proceeding.
10. **Eminent Domain.** Condemnation proceedings are void in the case no attempt to agree occurs.
11. ____. Failure to engage in good faith negotiations is a complete defense to the condemnation of one's land.
12. **Eminent Domain: Final Orders: Appeal and Error.** An order finding that good faith efforts were made prior to the condemnation of one's land affects a substantial right and is thus final and appealable under Neb. Rev. Stat. § 25-1902 (Reissue 2008).
13. **Eminent Domain.** Pursuant to Neb. Rev. Stat. § 76-704 (Reissue 2009), if any condemnee fails to agree with the condemnor with respect to the acquisition of property sought by the condemnor, a petition to condemn the property may be filed by the condemnor in the county court of the county where the property or some part thereof is situated.
14. ____. In order to satisfy the statutory requirement set forth in Neb. Rev. Stat. § 76-704.01(6) (Reissue 2009), there must be a good faith attempt to agree, consisting of an offer made in good faith and a reasonable effort to induce the owner to accept it.
15. **Intent: Words and Phrases.** Good faith is a state of mind consisting of honesty in belief or purpose and the absence of intent to defraud.
16. **Eminent Domain: Contracts.** It is not necessary that a good faith offer made as a prerequisite to a condemnation proceeding be made in such a way that if it is accepted by the landowner, a binding contract is thereby effected.

Appeal from the District Court for Saline County: VICKY L. JOHNSON, Judge. Affirmed.

William G. Blake and Jarrod P. Crouse, of Baylor, Evnen, Curtiss, Grimit & Witt, L.L.P., for appellant.

Mathew T. Watson, of Crosby Guenzel, L.L.P., and David A. Jarecke, of Blankenau Wilmoth, L.L.P., for appellee.

INBODY, Chief Judge, and SIEVERS and MOORE, Judges.

SIEVERS, Judge.

In this appeal, the primary issue is whether the Village of Dorchester, Nebraska (Village), satisfied the prerequisite for the institution of a condemnation action by having previously engaged in good faith negotiations with the landowner, Robert C. Krupicka, with respect to the taking of 37.11 acres of his land by the power of eminent domain. After our review of the record, we find that the district court did not err when it found that good faith negotiations occurred, and thus we find Krupicka's appeal of that decision to be without merit. Pursuant to our authority under Neb. Ct. R. App. P. § 2-111(B)(1) (rev. 2008), we have ordered this case submitted for decision without oral argument.

## FACTUAL BACKGROUND

Krupicka is the owner of a 160-acre farm located near Dorchester, which Krupicka uses for custom farming. The Village owns a mechanical wastewater treatment plant adjacent to the northeast portion of Krupicka's land. The land on which the plant is located was apparently obtained by the Village via a previous condemnation action against Krupicka.

On October 8, 2008, the clerk of the Village contacted Krupicka by letter to notify him that the Village had been ordered by the State of Nebraska to alter the current wastewater treatment facility to meet current federal and state standards. The letter recites:

> Please be advised that the Village . . . has determined that the ideal location for these upgrades is on the ground where the current facility is located. This land is located at

> the intersection of County Roads 1450 and E, Dorchester, Nebraska, more specifically described as the Northwest Quarter of Section 29, Township 8, Range 3, Dorchester, Saline County, Nebraska.
>
> At this time, the Village . . . is interested in entering into negotiations with you regarding the purchase of more land at that location. While the Village has certain requirements with regard to size and shape, it certainly can make accommodations in an attempt to make the necessary land purchase as convenient for you as possible.

The legal description provided in the letter is for Krupicka's entire 160-acre parcel, not a specific part thereon.

On October 17, 2008, Krupicka met with the Village's attorney, Scott Gropp, about the acquisition of a portion of his 160-acre parcel for the expansion of the Village's wastewater treatment facility. The Village intended to build several lagoons on land contiguous to the existing mechanical plant to treat wastewater in compliance with government regulations. Gropp sent a letter to Krupicka dated October 21, 2008, in which he responded to various questions he had been unable to answer at the October 17 meeting, most of which required input from the project engineers, JEO Consulting Group, Inc. (JEO). He also offered to discuss compensation for the removal of "core" samples from the northeast portion of Krupicka's land, next to the existing plant, to determine the feasibility of building the lagoons in that proposed location.

On December 31, 2008, Gropp sent Krupicka another letter, stating that after further research, the Village had determined that Krupicka's land was in fact the appropriate location for the wastewater treatment lagoons. In this letter, Gropp explained that he had been authorized by the Village to enter into negotiations for the acquisition of a portion of Krupicka's land. The letter recites:

> As we have discussed in our previous conversations, we are interested in acquiring 40 acres of your land located at [legal description of entire 160-acre parcel]. . . .
>
> The Village . . . is tendering an offer of $2200.00 per acre of land. If this is not acceptable, you may contact me to discuss price and specific land configurations to make

> the acquisition as convenient as possible for you and your remaining ground in that section.
>
> Please respond to me by January 10, 2009 . . . . Should you choose not to respond, I will consider that a refusal of our offer and will begin proceedings to acquire the land through the [Village's] eminent domain rights under the laws of the State of Nebraska.

We note that the exact number of acres desired by the Village is not included in the letter.

Gropp received a telephone call from Barry Hemmerling in early January 2009 indicating that Krupicka had obtained him as legal counsel. Hemmerling told Gropp that Krupicka was unhappy with the proposed layout for the lagoons and asked whether the plan could be adjusted. Hemmerling testified in a deposition, received at trial, that the plan Krupicka originally received was a 40-acre, four-lagoon system adjacent to the existing plant and north of a creek that runs across Krupicka's property. Gropp suggested they meet directly with the JEO project manager to discuss alternative plans, which they did. The first meeting occurred on January 22, 2009. At that meeting, the project manager explained to Krupicka that the necessary water surface area for the lagoons required a land acquisition in the 35- to 40-acre range and told him that there was a September 1 deadline for a final design. Krupicka expressed concern with being able to use a pivot irrigator on his land near the location of the lagoons, as well as other farming issues. At the second meeting, held on February 3, 2009, Krupicka suggested that the lagoons be moved from the northeast portion of his land to the south side of the creek located on his parcel.

The superintendent of sewer, water, and electrical for the Village, Edward Dvorak, was involved with creating alternative lagoon designs to accommodate Krupicka's suggestions and concerns. Dvorak testified that Krupicka "was always wanting to change the design or go to a different area or totally forget about the lagoons and go to a mechanical plant" and that he was "very resistant to having these lagoons placed on his property."

On March 13, 2009, Gropp sent a letter to Hemmerling that contained several enclosures from JEO, including a letter summarizing the problems with locating the lagoon system anywhere other than the north side of the creek. He also enclosed two alternative design layouts produced as a result of their meetings. The letter from JEO recites in part: "Relocation of the proposed lagoon cells to the south of the existing creek is not recommended by our office [and] would not be feasible for the community without incurring excessive costs." The alternative designs enclosed in the letter, which were received into evidence as exhibits 20 and 21, each depict a four-lagoon system in the same approximate part of Krupicka's land as initially proposed—adjacent to the existing wastewater treatment plant and to the north of the creek. The following text appears in the bottom left-hand corner of exhibits 20 and 21: "NOTE: DIMENSIONS ARE APPROXIMATE & WILL VARY. AREA SHOWN = 35.0 ACRES." A third alternative design, received at trial as exhibit 22, was presented to Krupicka at some point thereafter. It depicts a four-lagoon system in approximately the same location as the other two designs. The text in the lower left-hand corner of exhibit 22 states: "NOTE: DIMENSIONS ARE APPROXIMATE & WILL VARY. AREA SHOWN = 36.7 ACRES."

In a letter dated March 25, 2009, Hemmerling wrote to Gropp:

> After considerable consideration, [Krupicka] has decided that if the only option is to place the lagoons on the north side of the creek[,] he wants them placed in the northeast corner.
>
> I believe the Village has previously offered the sum of $2,200 an acre for the land it wishes to take. That offer is hereby rejected and [Krupicka] would counter with an offer of $10,000 per acre.

Gropp sent a letter to Hemmerling, dated April 15, 2009, rejecting Krupicka's $10,000-per-acre offer and countering with an offer of $3,650 per acre "for the land in the northeast quarter of . . . Krupicka's land."

In a letter dated June 18, 2009, Hemmerling informed Gropp that Krupicka wanted to negotiate directly with Gropp and the Village. Gropp was given permission to contact Krupicka directly from then on, although Hemmerling asked, as a courtesy, to be sent a copy of any future communication in the matter. Krupicka testified at trial that the reasons he wanted to negotiate directly with the Village were to speed up the negotiation process and to save money.

Krupicka attended at least two Village board meetings regarding the purchase of his land. One such meeting occurred on August 3, 2009. Krupicka was not on the agenda for that meeting, but he was allowed to speak. He said that he wanted to postpone the decision on the lagoons for another month or two because he was dissatisfied with the plans. Krupicka was told that was not possible due to the September 1 deadline, which he had been told of previously. The Village reiterated its offer of $3,650 per acre, which Krupicka refused, and he walked out of the meeting. The board then authorized the condemnation of approximately 37 acres of Krupicka's land.

Dvorak, who was present at the August 3, 2009, meeting, testified in the district court that the board discussed the 37.11-acre, three-lagoon plan that was ultimately implemented at that meeting, although he could not recall whether that conversation took place before or after Krupicka walked out. In any event, Gropp testified that he was "[a]bsolutely" certain the Village made an offer to Krupicka for approximately 37 acres and that there was no ambiguity as to the location of those 37 acres on Krupicka's land. Gropp testified that he presented Krupicka with an approximately 37-acre, three-lagoon drawing from JEO in late July 2009. Krupicka claims that he never received that document. Instead, he asserts that he received a 35-acre plan and that he was not made aware of the 37-acre plan prior to a September 4, 2009, board hearing, detailed below. Gropp was unable to produce the 37-acre, three-lagoon plan he testified that he gave to Krupicka in late July 2009, as will be discussed shortly.

The next correspondence in evidence is a letter from Gropp to Hemmerling, which contains an enclosed copy of the "Petition to Condemn Property and for Appointment of

Appraisers," filed in the county court for Saline County on August 7, 2009. The petition states that the Village had been presented with several options, including upgrading the existing wastewater treatment facility, but that after discussions with JEO, it determined that the most environmentally sound and cost-effective method was to proceed with a lagoon-type wastewater treatment facility on 37 acres of Krupicka's real property "adjacent to the existing treatment plant." The petition recites that the 37 acres would be located in a section of land legally described as follows: "All located in the Northwest Quarter (NE1/4), Section Seventeen (29), Township Eleven (8) North, Range Eighteen (3), Village of Dorchester, Saline County, Nebraska." The petition requests the county court to appoint three appraisers to view the property and ascertain the damage sustained by Krupicka. Three appraisers were duly appointed on August 14.

We note that the condemnation petition refers to "Attachment A," which purports to be a copy of the "most recent [37-acre] offer from the [Village to Krupicka]." Instead, attachment A is the April 15, 2009, letter from Gropp to Hemmerling discussed above, which contains the Village's $3,650-per-acre offer. Attachments B, C, and D are the alternative four-lagoon designs mentioned above and received into evidence as exhibits 20, 21, and 22. Gropp testified that at some point while he was drafting the petition, he realized the 37-acre, three-lagoon drawing was missing, and that he attempted, unsuccessfully, to locate it. Gropp testified on cross-examination that he could not find the drawing because he gave his only copy to Krupicka in July 2009 and that JEO was unable to reproduce the drawing for him. Gropp further testified that he determined through his legal research that he needed to only make a prima facie case to the county court that good faith negotiations were made. He concluded that the documents he attached to the petition—the letter and the three alternative designs from JEO—met that burden, and that thus, the final design did not need to be included.

At a hearing on September 4, 2009, the Village's final 37.11-acre plan, prepared by JEO on September 3, was provided to the appraisers and to Krupicka. The appraisers

viewed Krupicka's property and, according to the return of appraisers filed September 9, valued his damages at $160,000, or $4,311.51 per acre. The return of appraisers recites that the appraisers "did carefully inspect and view the property which is described in Exhibit 'A' attached hereto and incorporated herein by this reference." "Exhibit 'A'" is not attached, and the return of appraisers does not contain a legal description of Krupicka's condemned property.

On October 6, 2009, Gropp filed an amended petition which incorporates an exact legal description of the 37.11-acre parcel that was being condemned. In a letter to Krupicka sent on that same date, Gropp told Krupicka that he placed the required deposit of $160,000 with the Saline County Court. He also explained that the amended petition contains the final legal description presented to the appraisers at the September 4 hearing prior to viewing the land. The letter recites in part: "At the time of the original filing [on August 7, 2009], that particular legal [description] had yet to be determined as the survey results were not in yet." Why a legal description of the 37.11-acre property was not attached as exhibit A to the return of appraisers filed on September 9 is unclear, since the appraisers and Krupicka were provided with a copy of the final 37.11-acre drawing at the hearing on September 4.

After the condemnation petition was filed, Hemmerling assisted Krupicka in negotiations for a construction easement appurtenant to the lagoons. The negotiations did not specifically delineate the legal description of the easement, but Hemmerling did receive an aerial photograph of the proposed easement. In a letter dated March 2, 2010, Hemmerling informed Gropp that Krupicka would consent to a temporary construction easement for the sum of $8,500. On July 8, 2010, in exchange for consideration of $8,500, Krupicka signed a temporary construction easement that set forth a legal description of the easement.

## PROCEDURAL HISTORY

On October 9, 2009, Krupicka filed his notice to appeal from the return of appraisers. Pursuant to Neb. Rev. Stat.

§ 76-717 (Reissue 2009), the filing of the notice of appeal vested jurisdiction in the district court for Saline County. In his petition on appeal, filed November 24, Krupicka alleged that (1) the $160,000 appraisal of damages was inadequate and (2) the acquisition of his real property by the Village was invalid because there were not good faith negotiations prior to the commencement of condemnation proceedings.

Trial on the sole issue of good faith negotiations was held in the district court on November 23, 2010. At trial, Krupicka, Dvorak, and Gropp testified and a total of 32 exhibits were received into evidence. After the close of evidence, a briefing schedule was announced and the court took the matter under advisement. On December 16, 2010, the district court entered its order, in which it found that the Village entered into good faith negotiations with Krupicka prior to filing the condemnation petition. The order recites:

> Whether the missing 37 acre plan was given to Krupicka, or whether he was given a copy of a 35 acre plan in August, 2009, he was well aware that the Village wanted to purchase a 35-40 acre plot in the northeast corner of his [land]. While the land may not have been described in metes and bounds, due to the uncertainty over which plan would be selected and the exact acreage to be taken, Krupicka had fair notice of what the Village expected to take. It makes sense to delay incurring the expense of a survey until the exact parcel to be taken is determined.
>
> . . . The Village made Krupicka an offer in good faith, and undertook reasonable efforts to induce him to accept it. These efforts included the various changes in placement of the lagoon[s], switching from four to three [lagoons], and the development of three [alternative] plans for the lagoon[s]. . . . The fact that a contract was not presented does not defeat the Village's claim that it engaged in good faith negotiations. In fact, it is clear that the Village engaged in extensive, albeit unsuccessful, negotiations, with Krupicka before filing its petition to condemn.

Krupicka now appeals.

## ASSIGNMENT OF ERROR

Krupicka alleges that the trial court erred in finding that the Village engaged in good faith negotiations prior to filing its condemnation petition.

## STANDARD OF REVIEW

[1-3] A good faith attempt and failure to agree prior to the institution of condemnation proceedings must be alleged and proved, and must appear on the face of the petition. See, *Higgins v. Loup River Public Power Dist.*, 159 Neb. 549, 68 N.W.2d 170 (1955); Neb. Rev. Stat § 76-704.01(6) (Reissue 2009). This requirement is in the nature of a condition precedent to the right to condemn. *Moody's Inc. v. State*, 201 Neb. 271, 267 N.W.2d 192 (1978). The requirement is satisfied by proof of an offer made in good faith with a reasonable effort to induce the owner to accept it. *Id*. If there is an issue between the parties as to whether good faith negotiations took place before condemnation proceedings began, that issue should be tried to the court and determined as a preliminary matter before proceeding to trial on the matter of damages. See, *id.*; *Suhr v. City of Seward*, 201 Neb. 51, 266 N.W.2d 190 (1978).

[4-6] An appeal from the district court's determination that good faith negotiations occurred prior to the filing of a condemnation petition presents a mixed question of law and fact. Statutory provisions requiring good faith attempts to agree prior to institution of condemnation proceedings are jurisdictional, and objection based on the failure of the record to show that the parties cannot agree may be raised at any time by direct attack. See *Higgins v. Loup River Public Power Dist.*, 157 Neb. 652, 61 N.W.2d 213 (1953). The question of jurisdiction is a question of law, which an appellate court resolves independently of the trial court. *State v. State Code Agencies Teachers Assn.*, 280 Neb. 459, 788 N.W.2d 238 (2010). However, findings as to any underlying factual disputes will be upheld unless clearly erroneous. *Collection Bureau of Grand Island v. Fry*, 9 Neb. App. 277, 610 N.W.2d 442 (2000).

## ANALYSIS

### *Did District Court's Determination Regarding Good Faith Negotiations Affect Krupicka's Substantial Right?*

[7] Before reaching the legal issues presented for review, it is the duty of an appellate court to settle jurisdictional issues. *Myers v. Nebraska Invest. Council*, 272 Neb. 669, 724 N.W.2d 776 (2006). The Village contends that we do not have jurisdiction to hear this appeal, because the district court's order deals with only the issue of good faith negotiations, not the matter of damages, and is thus not a final and appealable order under Neb. Rev. Stat. § 25-1902 (Reissue 2008).

[8,9] The three types of final orders which may be reviewed on appeal are (1) an order which affects a substantial right in an action and which in effect determines the action and prevents a judgment, (2) an order affecting a substantial right made during a special proceeding, and (3) an order affecting a substantial right made on summary application in an action after a judgment is rendered. *State v. Silvers*, 255 Neb. 702, 587 N.W.2d 325 (1998); § 25-1902. The Nebraska Supreme Court has specifically held that condemnation is a special statutory proceeding. *Webber v. City of Scottsbluff*, 155 Neb. 48, 50 N.W.2d 533 (1951). Therefore, since the challenged order arose in a special proceeding, the issue before us is whether the order affects a substantial right of Krupicka.

In *SID No. 1 v. Nebraska Pub. Power Dist.*, 253 Neb. 917, 919, 573 N.W.2d 460, 463 (1998), the Nebraska Public Power District (NPPD) commenced condemnation actions in the county court for Fillmore County for the purpose of acquiring "'easement right-of-way'" over two tracts of land. The Sanitary and Improvement District No. 1 of Fillmore County, Nebraska (S.I.D. 1), claimed an interest in the land and was awarded two separate amounts for the parcels by the court-appointed appraisers. S.I.D. 1 appealed both awards to the district court for Fillmore County. In its amended petitions on appeal, S.I.D. 1 alleged in part that the subject parcels were public property over which NPPD had no authority to condemn. The district court consolidated this and other issues for

trial, but reserved the issue of the adequacy of the damages awarded to S.I.D. 1 by the appraisers. After a bench trial, the district court found that NPPD had the authority to acquire the two easements by the power of eminent domain under Neb. Rev. Stat. §§ 70-301 and 70-670 (Reissue 1996). (We note that § 70-301, then as now, recites that the "procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724" and, further, that under § 76-704.01(1) (1996), as well as the current version of that statute, a condemnation petition must contain a "statement of the authority for the acquisition.") S.I.D. 1 immediately appealed the district court's decisions to the Nebraska Supreme Court.

While those cases were pending, NPPD filed motions to dismiss for lack of jurisdiction based upon its contention that the orders of the district court were not final because of the pendency of other issues, including the matter of damages. In its examination of this jurisdictional issue, the Supreme Court's opinion recites:

> In a special proceeding, an order is final and appealable if it affects a substantial right of the aggrieved party. *City of Lincoln v. Twin Platte NRD*, [250 Neb. 452, 551 N.W.2d 6 (1996)]; *Jarrett v. Eichler*, 244 Neb. 310, 506 N.W.2d 682 (1993). A substantial right is an essential legal right, not a mere technical right. A substantial right is affected if the order affects the subject matter of the litigation, such as diminishing a claim or defense that was available to the appellant prior to the order from which the appeal is taken. *Currie v. Chief School Bus Serv.*, 250 Neb. 872, 553 N.W.2d 469 (1996); *Jarrett v. Eichler, supra*. In this case, the orders from which the appeals are taken eliminated what S.I.D. 1 alleged to be a complete defense to condemnation, and thus affected a substantial right. Therefore, we conclude that we have jurisdiction to hear and determine these appeals under § 25-1902.

*SID No. 1 v. Nebraska Pub. Power Dist.*, 253 Neb. at 921, 573 N.W.2d at 465.

In the present case, Krupicka appealed the return of appraisers in the district court, alleging in his brief that (1) the

amount of damages was insufficient and (2) the Village failed to engage in good faith negotiations. Similar to S.I.D. 1, Krupicka's second allegation deals with one of the required components that must appear on the face of a condemnation petition, which he alleged did not occur, namely, "[e]vidence of attempts to negotiate in good faith with the property owner." See § 76-704.01(6) (Reissue 2009). In line with Nebraska Supreme Court cases which direct the issue of good faith negotiations to be tried to the bench separately from the issue of damages, see *Moody's Inc. v. State*, 201 Neb. 271, 267 N.W.2d 192 (1978), and *Suhr v. City of Seward*, 201 Neb. 51, 266 N.W.2d 190 (1978), the district court held a hearing on the sole issue of good faith negotiations and determined that such had occurred. Krupicka appealed from the district court's decision, despite the reservation of the issue of damages for a later trial.

[10-12] The requirement of good faith negotiations is mandatory and jurisdictional, and condemnation proceedings are void in the case no attempt to agree occurs. See, *Prairie View Tel. Co. v. County of Cherry*, 179 Neb. 382, 138 N.W.2d 468 (1965); *Higgins v. Loup River Public Power Dist.*, 159 Neb. 549, 68 N.W.2d 170 (1955). Thus, Krupicka's claim that the Village failed to engage in good faith negotiations would be a complete defense to the condemnation of his land. The order from which Krupicka appeals eliminated this complete defense to condemnation, and thus, under *SID No. 1 v. Nebraska Pub. Power Dist.*, 253 Neb. 917, 573 N.W.2d 460 (1998), the order finding that good faith efforts had been made affected a substantial right. Accordingly, we have jurisdiction under § 25-1902 to hear his appeal.

*Did Good Faith Negotiations Occur Prior to Filing of Condemnation Petition?*

Krupicka's substantive allegation is that the district court erred when it determined that he and the Village had engaged in good faith negotiations. His argument is essentially that the Village never provided him with a valid offer because it failed to provide a legal description of the land to be condemned and that, consequently, the good faith negotiation requirement was

not satisfied. As such, he contends that the condemnation of his land is void and that the Village should be required to undertake efforts to negotiate in good faith. However, Krupicka does not seek the return of his land—the taking of the 37.11 acres has already occurred and the three-lagoon wastewater treatment facility has already been built, according to our record. His underlying desire in voiding the condemnation, which is conceded in his brief, is to receive greater compensation from the Village for the land that was taken.

[13-15] Under Neb. Rev. Stat. § 76-704 (Reissue 2009),

> [i]f any condemnee shall fail to agree with the condemner with respect to the acquisition of property sought by the condemner, a petition to condemn the property may be filed by the condemner in the county court of the county where the property or some part thereof is situated.

A condemnation petition must contain evidence of attempts to negotiate in good faith with the property owner. § 76-704.01(6). The Nebraska Supreme Court has said that the statutory requirement that a condemnor make a good faith offer and reasonably attempt to induce settlement is mandatory and jurisdictional. *Prairie View Tel. Co. v. County of Cherry, supra.* The condemnor's unsuccessful attempt to reach an agreement with the condemnee must be alleged and proved in the condemnation proceedings and must appear on the face of the record. *Id.* In order to satisfy this statutory requirement prior to the institution of condemnation proceedings, there must be a good faith attempt to agree, consisting of an offer made in good faith and a reasonable effort to induce the owner to accept it. *Id.* Good faith is a state of mind consisting of honesty in belief or purpose and the absence of intent to defraud. See Black's Law Dictionary 762 (9th ed. 2009).

In his brief, Krupicka argues that good faith negotiations never occurred, citing *Prairie View Tel. Co. v. County of Cherry*, 179 Neb. 382, 138 N.W.2d 468 (1965). In *Prairie View Tel. Co.*, the County of Cherry sought to condemn real estate owned by Edgar Grooms and Martin Grooms for the purpose of a county road. On motion, the district court dismissed the action on the ground that the county did not

attempt to agree with the Groomses by making a good faith offer and a reasonable attempt to induce them to accept said offer for the right-of-way in controversy. The county appealed to the Nebraska Supreme Court, which affirmed the judgment of the district court.

In its rather brief opinion, the *Prairie View Tel. Co.* court found that the only evidence in the record of negotiations between the parties was a letter sent by the Cherry County Board of Commissioners (Board) to the Groomses. In the letter, the Board referred to a prior request that the Groomses appear "'to negotiate the opening of the section lines between sections 31, 32, 30 and 29, Township 35, Range 26, for the purpose of building a public road.'" *Id.* at 384, 138 N.W.2d at 470. The letter continued, "'Since you failed to appear as requested, and the Board failed to find you home after making a trip to your residence, we submit the following offer as required by law . . . .'" *Id.* The county then offered the Groomses $3,000 "'for all damages.'" *Id.* The county never indicated what part of the Groomses' land it intended to take. Three weeks after the letter was written, the county passed a resolution to acquire an 82½-foot right-of-way across the Groomses' property, but that action was never communicated to the Groomses. Nothing further was done in the matter until the county filed its condemnation petition. Based on those facts, the Supreme Court held that "there was no offer made in good faith because the county never informed the [Groomses] as to the amount of land it was taking." *Id.* at 385, 138 N.W.2d at 470. We comment that the inadequacy of good faith efforts appears rather self-evident.

Clearly, *Prairie View Tel. Co.* is distinguishable from the case before us. Here, the Village indicated with reasonable clarity the amount of land, as well as its location, that it wanted to acquire. Throughout the negotiation process, the Village represented that it sought 35 to 40 acres in the northeast quarter of Krupicka's 160 acres, and a legal description of the applicable quarter section was provided. The exact design and location, which would determine the precise legal description, were matters about which the Village sought Krupicka's input, as well as offering reasonable accommodations. This

was still not finally determined by the Village at the time the condemnation petition was filed, due to ongoing negotiations with Krupicka and thus a delay in making a final survey. Nonetheless, Krupicka can hardly be heard to complain he was not fully aware that 35 to 40 acres in the northeast part of his quarter section were at issue—and that the exact amount of land would depend on the final design and survey thereof. We agree with the district court that "[i]t makes sense to delay incurring the expense of a survey until the exact parcel to be taken is determined."

Moreover, although there is a dispute over whether Krupicka received the final JEO drawing with the approximately 37-acre, three-lagoon plan the Village ended up using, the other three drawings Krupicka admittedly received are in evidence and they are in essentially the same location as the portion of Krupicka's land that was ultimately condemned. The first two drawings, exhibits 20 and 21, are for approximately 35 acres. On the bottom of each drawing, the following text is printed: "DIMENSIONS ARE APPROXIMATE & WILL VARY." The third drawing, exhibit 22, is for a 36.7-acre lagoon system, and the same text is printed on the bottom. The record also reveals that Krupicka was initially provided with a drawing depicting 40 acres with the lagoons at about the same location. Unlike the landowners in *Prairie View Tel. Co. v. County of Cherry*, 179 Neb. 382, 138 N.W.2d 468 (1965), the Village gave Krupicka a series of drawings evidencing quite precisely where the lagoons would be—and the variances between the various iterations of the drawings cannot be said to be material.

## CONCLUSION

[16] When the course of this proceeding is recalled, it appears to us that the actions of the Village in trying to reach an agreement are the epitome of good faith. The Village's numerous efforts at altering the design of the lagoons in order to address Krupicka's concerns are ample evidence that it attempted to induce Krupicka to accept its offer. It is important to note: "It is not . . . necessary that the offer be made in such a way that if it is accepted by the owner a binding contract is thereby

effected." 6 Julius L. Sackman, Nichols on Eminent Domain § 24.14[2] at 24-236 (3d ed. 2009). Thus, the district court's finding that the Village engaged in good faith negotiations with Krupicka was not clearly erroneous, and it is affirmed.

AFFIRMED.

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## IN RE INTEREST OF ETHAN M., A CHILD UNDER 18 YEARS OF AGE. STATE OF NEBRASKA, APPELLEE, V. THERESA S., APPELLEE, AND DANIEL M., APPELLANT.

809 N.W.2d 804

Filed October 11, 2011. No. A-11-203.

1. **Juvenile Courts: Appeal and Error.** An appellate court reviews juvenile cases de novo on the record and reaches its conclusions independently of the juvenile court's findings.
2. **Statutes: Time.** Procedural amendments to statutes are ordinarily applicable to pending cases, while substantive amendments are not.
3. **Words and Phrases.** A substantive right is one which creates a right or remedy that did not previously exist and which, but for the creation of the substantive right, would not entitle one to recover.
4. ____. A procedural right is simply the method by which an already existing right is exercised.
5. **Juvenile Courts: Parent and Child.** Except as provided in Neb. Rev. Stat. § 43-283.01(4) (Cum. Supp. 2010), reasonable efforts shall be made to preserve and reunify families prior to the placement of a juvenile in foster care to prevent or eliminate the need for removing the juvenile from the juvenile's home and to make it possible for a juvenile to safely return to the juvenile's home.
6. **Juvenile Courts: Parental Rights.** Once a plan of reunification has been ordered to correct the conditions underlying an adjudication under Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008), the plan must be reasonably related to the objective of reuniting the parents with the children.
7. **Juvenile Courts: Minors.** The purpose of the juvenile code is to serve the best interests of the juveniles who fall within it.

Appeal from the Separate Juvenile Court of Lancaster County: TONI G. THORSON, Judge. Reversed and remanded for further proceedings.

Joy Shiffermiller, of Shiffermiller Law Office, P.C., L.L.O., for appellant.