

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0516**

PPB Holdings, L.P.,
Appellant,

vs.

County of Carver,
a political subdivision of the State of Minnesota,
Respondent.

**Filed January 21, 2025
Affirmed
Reyes, Judge**

Carver County District Court
File No. 10-CV-18-918

Patrick J. Neaton, Neaton & Puklich, PLLP, Chanhassen, Minnesota (for appellant)

Peter G. Mikhail, Joshua P. Weir, Kennedy & Graven, Chtd., Minneapolis, Minnesota (for respondent)

Considered and decided by Reyes, Presiding Judge; Bratvold, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

In this partial condemnation proceeding following a taking of appellant's property, appellant challenges the district court's denial of its motion for an interest-rate adjustment in lieu of the presumed statutory rate. We affirm.

FACTS

Respondent Carver County (the county) condemned a significant portion of residential real-estate property and property rights owned by appellant PPB Holdings, L.P., in connection with a roadway-expansion project in November 2013. The county then took possession of PPB's property under Minn. Stat. § 117.042 (2022) by paying a "quick-take" deposit of \$122,000 with the court administrator, effective November 6, 2013. In September 2018, three commissioners appointed by a district court awarded PPB \$381,000 in just-compensation damages. PPB appealed the commissioners' decision to the district court and requested a jury trial.

In August 2021, a jury awarded PPB \$786,000 in just-compensation damages. The jury valued the property at \$1,500,000 before the taking and \$714,000 after the taking. The district court entered judgment on the just-compensation damages on August 17, 2021. On December 2, 2021, the county deposited \$878,225.25 with the court administrator. This deposit represented the \$664,000.00 balance owed on the just-compensation award and \$214,225.28 in interest on the balance owed based on the statutory rate of 4% per annum from November 6, 2013, to December 2, 2021, (the interest period), in accordance with Minn. Stat. §§ 117.195 (2022) and 549.09, subd. 1(c) (2022). Nearly two years later, PPB moved to have the interest rate increased from the statutory rate of 4% to PPB's asserted rate of 14.2% for the interest period, arguing that the statutory rate does not guarantee a fair rate of return.

In support of its argument, PPB submitted an affidavit from Richard Dorsey, a partner at PPB who is an experienced residential investor and licensed mortgage broker.

Dorsey asserted that, if the county had paid PPB the entire award of \$786,000 at the time of the initial deposit, rather than the \$122,000 quick-take deposit that the county initially paid¹, PPB would have invested that money into other residential real-estate properties, such as townhomes and single-family properties. Dorsey calculated the 14.5% per annum interest rate by “[c]ombining the aforesaid median sales price increase of 9.26% per year in value [of a residential home], with the 7.35% per year rental income return” and “allowing a 2.11% reduction in the aforesaid 16.61% annual investment return” on those properties to cover “theoretical management costs” for the interest period. PPB’s median sales price of a residential home is taken from Minneapolis Area Realtors’ data compiled by NorthStar MLS, while the net rental-income return is based on Dorsey’s investment on behalf of PPB in one townhome in Eden Prairie. PPB did not provide any factual support for the 2.11% reduction to the rental-income return to cover any “theoretical management costs” other than Dorsey’s averment.

In opposition to PPB’s motion, the county submitted an affidavit from Tom Kerber, an investments manager in the Carver County Treasurer’s office in support of the 4% statutory interest rate. Kerber concluded that investments in real estate were not low risk based on information he obtained from other credible sources. For example, Kerber cited

¹ We note that appellant’s brief and Dorsey’s first affidavit appear to assert that the interest-rate calculation should be based on the entire award of \$786,000 rather than the \$664,000 balance owed. That is incorrect. The proper interest-rate calculation is based on the \$664,000 amount, which is the difference between the \$786,000 damages award that the county deposited in 2021 and the \$122,000 quick-take deposit by the county effective November 6, 2013. The appropriate rate of interest is determined by Minn. Stat. §549.09, subd. 1(c)(1)(i) (2020). *See* Minn. Stat. § 117.195 subd. 1. The parties agree that the statutory interest is for the interest period is 4%.

to Bloomberg News, which stated that the real-estate market experienced major swings between 2016 to 2022. Kerber also cited to data he reviewed from the St. Louis Federal Reserve, which noted that commercial real-estate prices “fluctuated wildly” from 2006 to 2022 and stated that multiple publications reported that residential real estate “experienced dramatic market crashes.” Kerber further stated that, during the interest period, “U.S. Treasury rates . . . remained below 3.0% and were frequently less than 2.0%” and that the St. Louis Federal Reserve reported corporate bonds yielded “from 2.0% to just under 5%.” Additionally, Certificates of Deposit (CDs) performed “briefly above 2% at the beginning of the decade” in 2010 and “remained below 1.5% for the rest of the decade.”

Dorsey submitted a supplemental affidavit and later submitted a second affidavit. Neither one addressed any of Kerber’s statements or data.

The district court denied PPB’s motion, determining that PPB failed to overcome the presumption that the statutory rate is reasonable. This appeal follows.

DECISION

I. The district court retained jurisdiction to determine whether the interest rate provided PPB with just compensation.

The county argues that the district court did not have subject-matter jurisdiction to decide PPB’s motion for an interest-rate increase because PPB filed its motion for an interest-rate adjustment after the district court entered final judgment. We disagree.

Subject-matter jurisdiction is a court’s “statutory or constitutional power to adjudicate the case.” *Giersdorf v. A & M Constr., Inc.*, 820 N.W.2d 16, 20 (Minn. 2012) (quoting *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 89 (1998)). “Subject matter

jurisdiction . . . can be raised at any time in the proceeding.” *Tischer v. Hous. & Redev. Auth. of Cambridge*, 693 N.W.2d 426, 430 (Minn. 2005). Whether a district court has subject-matter jurisdiction is a question of law that this court reviews de novo. *County of Washington v. City of Oak Park Heights*, 818 N.W.2d 533, 538 (Minn. 2012).

“Interest on a condemnation [award] from the time of the State’s possession until the time of payment is an element of just compensation and as such the [district] court has the authority to determine the rate of interest necessary to give the landowner just compensation.” *State by Spannaus v. Carney*, 309 N.W.2d 775, 775 (Minn. 1981). The district court should not strictly apply the statutory interest rates in a just-compensation proceeding without considering whether the interest rate provides just compensation. *Id.* at 776; *see also State by Humphrey v. Baillon Co.*, 480 N.W.2d 673, 676 (Minn. App. 1992) (reversing and remanding because district court did not independently determine what interest rate would provide landowner with just compensation).

The county agrees that “the rate of interest on condemnation awards is a judicial determination,” but nevertheless challenges the district court’s decision to hear and decide PPB’s motion for an interest-rate adjustment because the district court had entered final judgment. The district court entered final judgment on the just-compensation damages on August 17, 2021. However, at that time, the county had not made a final payment on the balance owed and, more importantly, the district court had not determined the interest to be paid on the balance owed for the interest period. The county made a final payment on December 2, 2021. Because the district court did not decide the issue of the appropriate interest rate to be applied to the balance owed, PPB could challenge the interest rate the

county applied. *Cf. Spaeth v. City of Plymouth*, 344 N.W.2d 815, 825-826 (Minn. 1984) (concluding that district court had continuing jurisdiction to determine amount of attorney fees awarded to Spaeth after entry of judgment). We therefore conclude that the district court had subject-matter jurisdiction to hear PPB's motion and decide the appropriate interest rate to provide PPB with just compensation. *Baillon Co.*, 480 N.W.2d at 676.

II. The district court appropriately applied the presumptive statutory interest rate.

PPB argues that the district court erred by applying the presumptive 4% statutory interest rate authorized by section 549.09, subdivision 1(c)(i), because its own real-estate investments for the interest period were “a safe, prudent and secure investment with steady annual appreciation.” We are not persuaded.

Under the United States and Minnesota constitutions, a property owner is entitled to just compensation for property taken by the government for public use. U.S. Const. amend. V; Minn. Const. art. I, § 13. Interest on a condemnation award from the time of the taking until the time of payment is an element of just compensation. *Carney*, 309 N.W.2d at 776.

“In [] condemnation actions, the [district] court should presume that the statutory rate is reasonable and, therefore, meets the requirements of just compensation and should order judgment at that rate unless the condemnee rebuts this presumption and affirmatively shows that another rate is reasonable and affords just compensation.” *State by Humphrey v. Jim Lupient Oldsmobile Co.*, 509 N.W.2d 361, 363-64 (Minn. 1993). This statutory interest rate “provides a floor and not a ceiling on the rate of interest payable to the

landowner.” *Baillon*, 480 N.W.2d 673 at 676. When considering whether another interest rate is reasonable, district courts look to ones that (1) guarantee safety of principal and (2) are very low risk. *Lupient*, 509 N.W.2d at 363-66.

The supreme court has provided a nonexclusive list of very low-risk investments that justify an interest-rate adjustment which include: “certificates of deposit from federally insured banks, United States Treasury Bills with maturities within the relevant time period, other government bonds, and long[-]term corporate bonds from AAA rated companies with maturities within the relevant time period.” *Id.* at 364 n.3.

Whether an interest rate provides just compensation is a mixed question of law and fact. *Lupient*, 509 N.W.2d at 365 (Minn. 1993) (Simonett, J., concurring). “When reviewing mixed questions of law and fact, [this court] correct[s] erroneous applications of law, but accord[s] the [district] court discretion in its ultimate conclusions and review[s] such conclusions under an abuse of discretion standard.” *Porch v. Gen. Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002) (quotations omitted).

The supreme court’s decision in *Lupient* is instructive. In *Lupient*, the state acquired title and right to Lupient’s property and deposited appraised damages with the court administrator. *Lupient*, 509 N.W.2d at 362. The commissioners later awarded Lupient an additional award of just-compensation damages. *Id.* Months later, the state deposited its final payment with the district court based on the statutory interest rate, which averaged 7% per year. *Id.* Lupient argued that the state should pay an increased interest rate of 13.2% per year based on a pension plan. *Id.* The supreme court concluded that Lupient had not overcome the presumption of applying the statutory interest rate because the

evidence showed that the rate of return on the pension plan “varied wildly from year to year, from 23.4 percent in 1989, to 0.6 percent in 1990, and then back up to 23 percent in 1991.” *Id.* at 364. The supreme court further stated that “[t]hese fluctuations do not appear to be consistent with a low-risk investment.” *Id.*

PPB’s argument fails for several reasons. First, PPB relies on Dorsey’s affidavit averring that the *median* residential home sales price increased during the interest period by 9.26%. But Dorsey’s own exhibit C to his supplemental affidavit shows significant fluctuations in the historical median sales price of homes.

Second, PPB failed to rebut Kerber’s affidavit which highlighted significant market fluctuations during the interest period. Specifically, Kerber stated that “the real estate sector was up 10.70% in 2017 and then in 2018 it was down -2.27%. In 2019, it was up again 28.84% and then in 2020 it was down -2.27%. In 2021 it was up 45.97% and then in 2022 it was down -26.20%.” Like in *Lupient*, these wildly fluctuating numbers do not reflect an investment that is “very low risk” or one that “guarantee[s] the safety of principal.” *Id.* By contrast, interest rates for corporate bonds, CDs, and government bonds generally remained below 4%. Simply put, there is no parallel that can be drawn between these “very low risk” investments and residential real-estate investments.

Third, PPB’s purported rental-income return is based on PPB’s investment in *one townhome* following the collapse of the real-estate market rather than based on broad data from an independent, reliable third party during the interest period. This is hardly the basis for a reasonable, alternative investment that would guarantee safety of principal and that is very low risk. *Id.*

We therefore conclude that the district court appropriately applied the law and did not abuse its discretion by denying PPB's motion for an interest-rate adjustment.²

Affirmed.

² Because we affirm the district court's decision on the merits, we do not address the county's additional arguments on laches and waiver.