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Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

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UTAH STATE ROAD COMMISSION,

Plaintiff-Appellant,

-v-

EARL SAMPSON and LERLYNN C. SAMPSON, his wife; GULF OIL CORPORATION; FIRST STATE BANK OF SALINA,

Defendants-Respondents.

CASE NO. 14323

BRIEF OF RESPONDENTS

APPEAL FROM THE JUDGMENT OF THE SIXTH JUDICIAL DISTRICT COURT, IN AND FOR SEVIER COUNTY, STATE OF UTAH, THE HONORABLE DON V. TIBBS, JUDGE, PRESIDING.

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FILED
JAN 30 1976
Clerk, Supreme Court, Utah

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IN THE SUPREME COURT OF THE STATE OF UTAH

- -

UTAH STATE ROAD COMMISSION,	:	
Plaintiff-Appellant,	:	
-v-	:	
EARL SAMPSON and LERLYNN C. SAMPSON, his wife; GULF OIL CORPORATION; FIRST STATE BANK OF SALINA,	:	CASE NO. 14323
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APPEAL FROM THE JUDGMENT OF THE SIXTH JUDICIAL DISTRICT COURT, IN AND FOR SEVIER COUNTY, STATE OF UTAH, THE HONORABLE DON V. TIBBS, JUDGE, PRESIDING.

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IN THE SUPREME COURT OF THE STATE OF UTAH

- -

UTAH STATE ROAD COMMISSION, Plaintiff-Appellant, -v- EARL SAMPSON and LERLYNN C. SAMPSON, his wife; GULF OIL CORPORATION; FIRST STATE BANK OF SALINA, Defendants-Respondents.	:	CASE NO. 14323

- -

BRIEF OF RESPONDENTS

- -

NATURE OF THE CASE

This is an action in condemnation by the Utah State Road Commission to acquire 3.21 acres of land located in Salina City, Sevier County, Utah for the purpose of constructing a portion of Interstate Highway I-70.

DISPOSITION IN THE LOWER COURT

The case was tried to a jury on the issue of just compensation to be awarded for the taking and damaging of respondents' properties which resulted in a judgment on the verdict in the sum of $63,000.

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The State of Utah made a motion for a new trial which was denied by the trial judge.

PRELIMINARY STATEMENT

"R" stands for record. "TR" stands for transcript of record.

STATEMENT OF FACTS

The landowners, Earl Sampson and Lerlynn Sampson, his wife, long-time residents of Salina, Utah, acquired approximately seven acres of land and developed a dairy business upon said property in the year 1958 (TR. 40). This dairy was in continuous and full operation from 1958 until the date of condemnation. The property was fully fenced with steel posts, net fencing, and barbed wire and was located within the corporate limits of Salina City (TR 21, 22, 70, 71). There had been constructed upon the land various improvements consisting of a modern cinder block milking parlor, corrals, lounging sheds, pens, mangers, concrete pads, water troughs, and a concrete silage pit (TR. 21-40). At the date of taking the property was zoned residential, although it had a permissive use for dairy operation based upon its long existence (TR. 71). A substantial protion of the property fronted on a hard-surfaced city street and was serviced by electricity, city culinary water, and city sewer system (TR. 21, 22, 67) (Exhibit P-1).

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On November 1, 1974, the Utah Road Commission filed a complaint in the District Court of Sevier County, State of Utah to condemn 3.21 acres of the subject property for highway development (R. 1); and the area of take ran approximately through the middle of the seven-acre tract (TR. 40, 81, 82) (Ex. P-1). Included in the area condemned were substantial portions of the corrals, lounging sheds, mangers, water troughs, concrete pads, bull pen, and fencing (TR. 40, 81, 83). As a consequence of the taking, the concrete silage pit and approximately one acre of land on the east side of the condemned parcel were severed and left in a "landlocked" condition (TR. 45, 94) (Ex. P-1). The dairy operation, of necessity, was terminated; and the remainder of the improvements located outside of the area of the taking were rendered useless and of no value (TR. 40, 45, 81-83). At the date of condemnation Mr. Sampson was maintaining a dairy herd of approximately fifty milking cows and fifty dry cows (TR. 70, 83).

The case proceeded to trial on the issue of damages and, in essence, the testimony relative to dollar amount illicited is summarized in the Statement of Facts set forth by the appellant in its brief.

At the conclusion of the trial, the jury returned a verdict as follows:

"...Market value of property taken by the State $16,050

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"Damages, if any, to remaining land and improvements

by reason of severence $46, 950

"Total judgment $63, 000 "

(R. 25).

Appellant subsequently filed a motion for a new trial which, after argument, was denied by the trial judge.

ARGUMENT

POINT I

THE JUDGMENT IS AMPLY SUPPORTED BY THE GREATER WEIGHT OF THE EVIDENCE.

The appellant concedes that the verdict of $46, 950 for severence damages is within the range of the "expert" testimony and does not challenge that portion of the verdict (Page 5 of Appellant's brief).

An analysis of appellant's argument indicates that their position is predicated upon the theory that the testimony given by a property owner in a condemnation action is not competent evidence which can support a verdict; that only the testimony of an "expert" will support such a verdict, and that in the instant case there was no evidence other than that of the landowner to support the portion of the verdict dealing with the award rendered for market value of property taken. We do not and cannot agree with such a position in the light of the

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evidence and applicable law. It would appear that appellant contends that the property owner should be extended the courtesy of telling the jury what he thinks his property is worth and what amount, if any, his properties have been damaged; but that if it should happen that a jury accepts such testimony, it should then be immediately withdrawn and the landowner advised that his testimony really carries no weight at all.

At page 12 of appellant's brief, it is stated: "The fact that Mr. Sampson had been in the dairy business for a great number of years may have qualified him as an expert concerning the operation of the dairy, the cost of such an operation, the value of and replacement cost of the milking parlor and other improvements..." (Emphasis added), yet they challenge this same witness' qualifications to testify relative to the value of the land upon which such improvements have been constructed, occupied, and maintained for nearly 17 years. If the landowner is admittedly qualified to testify as to the value of the improvements and knowledgeable on such matters of importance, how can appellants logically contend that the same witness is totally lacking in the qualification and knowledge relative to the value of the land upon which such improvements exist?

Mr. Sampson testified that he had owned and operated the subject

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land and dairy business since 1958 and gave detailed testimony relative to the nature and extent of the land and improvements with which we are concerned (TR. 21-44). In further support of the testimony which he gave concerning the value of his raw land, he testified that he had made inquiries of other property owners and had investigated other sales. He found that a parcel of land located immediately east and across the creek from his property had sold for $5, 000 per acre. This land had none of the amenities of sewer, water, or hard-surface streets, such as his property enjoyed, and had been previously used as an alfalfa farm (TR. 41, 42, 43, 52, 53). Such sale was further corroborated by the expert witness for the landowner, who identified this sale as having occured in 1973 (TR. 75, 76).

It is of interest to note that with the exception of the aforementioned sale in 1973, none of the "expert" witnesses were able to find truly comparable sales and relied upon sales of agricultural land located primarily outside the city limits, with little or no utilities available (TR. 73-76, 125-127, 201-206). In one instance the State's witness, Mr. Adams, used as one of his comparable sales a parcel of land covered with salt grass, which had no sewer, water, or electricity and fronted on a gravel lane; and due to its location, was acquired by the City of Salina as a site for a sewer lagoon (TR. 201-206). To

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contend that the landowner's testimony has no weight and should be totally disregarded smacks of total absurdity when tested in the light of the comparable sales relied upon by the other witnesses.

At page 5 and 6 of appellant's brief, it is stated that the landowner "testified that the land taken had a value of $60,000." We believe this to be an obvious, unintentional error as nowhere in the record does such testimony exist.

The total jury verdict was the same amount as the sum testified to by Memory Cain, expert appraiser for the landowners.

At first glance, one might well assume that the jury arrived at this verdict of $63,000 by adopting the testimony of Mr. Cain. However, upon a more careful analysis of the verdict, we find that the jury did not adopt the exact testimony of any witness with respect to the $46,950 severance damages, but selected and arrived at that amount after careful deliberation, which sum was within the range of the expert testimony. One, by the same process of analysis, might assume that the jury arrived at its verdict for the value of the "property taken" by adopting one segment of Mr. Sampson's testimony. To do so would, in our opinion, be fraught with the same obvious unwarranted assumption and constitute an unwarranted invasion upon the rights of the jury. It is important to keep in mind that involved in the "taking"

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was not only 3.21 acres of raw land but also a substantial portion of the improvements which consisted of corrals, lounging sheds, mangers, loading chutes, concrete slabs, water troughs, and fencing (Ex. P-1) (TR. 36, 45, 68-69, 83, 193). The expert testimony relative to the value placed upon the improvements taken, exclusive of land, ranged from a low of $2,637 as testified to by State witness, Harry Dyson, (TR. 135), to a high of $12,096 as testified to by State witness, Aldon Adams (TR. 185-194), with the landowner's expert witness at $4,387 (TR. 96-97). With such a variation and range of testimony, it is impossible to say how the jury arrived at the figure of $16,050 except by pure conjecture and speculation.

Counsel for the appellant did not object to the landowner's testimony at the time of trial and cross-examined him in detail relative to his knowledge of the value of his land and improvements, thus giving the jury a full opportunity to weigh his testimony (TR. 50-57).

This court has long recognized the principle that where there exists any reasonable combination of testimony to support a verdict, the same should not be disturbed.

In the case of Weber Basin Water Conservancy District v. Nelson, 11 Utah 2d 253, 358 P.2d 81, this court said:

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> "...The jury was entitled to believe or disbelieve in part or in whole the testimony of the two appraisers. Regardless of how arrived at, the jury chose the 'before' value of plaintiff's appraiser and the 'after' value of defendants' appraiser. Presumptions and intendments cannot be indulged in to establish a contradiction or inconsistency in the findings or answers of a jury to special interrogatories, the presumption being always to the contrary. And this court cannot go behind the answers and analyze or speculate as to the process by which the jury arrived at them."

See also Cottrell v. Grand Union Tea Co., 5 Utah 2d 187, 299 P.2d 622

89 C.J.S. Trial § 562, p. 324.

This principle of law was again pronounced in the recent case of City of Tucson v. Gastelum, 541 P.2d 590 (Ariz.-Oct. 1975) wherein that court said:

> "...There were no special interrogatories submitted to the jury. We do not know how it arrived at its estimate of severence damages. Appellant's calculations are sheer speculation. Where the amount of damages or the value of property is concerned, and where witness pick varying sums as proper estimates of damages or the value of the property the trial court and the jury are not bound to fix the verdict or judgment at the exact sum testified to by any one of the witnesses, especially when the conclusions are based upon many factors. They may instead take part of the necessary factors from the testimony

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of one witness and part from that of another and reach a result anywhere between the highest and lowest estimate which may be arrived at by using the value factors appearing in the testimony. Any combination which is reasonable will be sustained by the trial court."

Appellant has cited the case of State Road Commission v. Silliman, 22 Utah 2d 33, 448 P.2d 347, ostensibly to show that a litigant is bound by the testimony of "expert" witnesses only. Appellant would like the Silliman case to say that an owner's testimony of damages in a condemnation case could never form the basis to support a jury's finding. However, in the Silliman case the verdict for severance damages exceeded the highest figure of any witness (including the landowner). This court held the verdict was therefore excessive "as a matter of law." It instructed that otherwise the verdict could not be set aside unless so excessive as to be shocking to one's conscience. The Silliman case too presented a factual situation entirely different from the case at bar.

The State Road Commission would like to have this court construe the ruling in the case of Utah State Road Commission v. The Steele Ranch, 533 P.2d 888 (Utah 1975), to say that in all condemnation actions a jury verdict cannot stand if it exceeds the highest "expert" testimony

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and that the testimony of the landowner will not support such a verdict. A careful reading of The Steele Ranch case clearly distinguishes that case from the instant action and presents a factual situation substantially different. At issue in The Steele Ranch case was the determination of the more sophisticated question of severance damages, an issue generally considered more complicated and difficult of ascertainment than a determination of damages resulting from a "take." Furthermore, there existed a lack of unity of title to the properties which were involved in The Steele Ranch case, which caused this court to comment:

> " .... Along with the foregoing is to be considered a further difficulty; that the manner in which the case was submitted to the jury permitted them to appraise the severance damages, not only to the remainder of the ranch property but also the adverse effect upon the resident's property..."
> " ....In view of the frailties we have discussed above concerning the evidence as to severence damages and the manner in which the jury was allowed to consider it, it is our conclusion that there is not a sufficiently sound foundation that the award of $75,000 can fairly and justly be regarded as being supported by substantial evidence." (Emphasis added)

This court, in a long line of cases, has consistently held with the great weight of authority that a landowner is a competent witness

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to testify concerning the value of his property taken and damaged in an action under the law of eminent domain. See Salt Lake & U. R. Co. v. Schramm, 56 Utah 53, 189 Pac. 90, 92 (1920); Provo River Water Users Assn. v. Carlson, 103 Utah 93, 133 P.2d 777; State Road Commission v. Dillree, 25 Utah 2d 184, 478 P.2d 507. Similarly the Tenth Circuit Court of Appeals has upheld the right of a property owner to testify concerning the value of property which he occupies and operates. Telluride Power Co. v. Williams, 164 F.2d 685 (Tenth Circuit, 1947). See also San Francisco Bay Area Rapid Transit District v. McKeegan, 71 Cal Rptr. 204 (1968); State of New Mexico v. Chavez, 80 N.M. 394, 456 P.2d 868, 870 (1969); United States v. 3,698.63 Acres of Land, Burleigh, Emmons & Morton Counties, State of North Dakota, 416 F.2d 65, 66 (Eighth Circuit 1969).

It was observed in the Schramm case, Supra, that:

> "In cases like the one under consideration the qualification of witnesses to express an opinion as to market value necessarily is a question to be largely determined by the trial judge. If it is shown that the witness is competent to express an opinion as to values, no matter what the source of the qualifying information may be, he should be permitted to testify. The sources of the witnesses' information may vary according to the peculiar means of opportunity the witness has of forming an opinion and judging the premises all her life, and has been interested

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> and alert in making inquiry as to its value, may not be as well qualified to speak as the banker, lawyer, or real estate man, having more or less to do with sales and transfers of real property. The means and extent of the knowledge of any witness may be gone into on cross-examination, and rebutted by the testimony of other competent witnesses, whose opinions may differ as to value. No rule can be formulated for determining the means by which a witness shall acquire the necessary knowledge to qualify him to speak that will apply in all cases. If, under all the circumstances, he was in a position to obtain knowledge and form a correct judgment as to values, whether or not buying, selling, leasing, or using the property for purposes for which it is adaptable is immaterial, so long as the jury is given the benefit of the facts upon which the opinion of the witness is based." (citing authority)

This issue was before the New Mexico Supreme Court in the case of State of New Mexico v. Chavez, 80 N. M. 394, 456 P. 2d 868, 870. In adopting the rule permitting such testimony, the court stated:

> "Appellant concedes that the prevailing rule permits an owner to testify concerning the value of his land both before and after a taking by condemnation (citing authority), It argues, however, that because the rule has been stated as one of practical necessity. ***we should adopt the rule followed by a minority of jurisdictions which denies the right of an owner to testify concerning the value of his property taken or damaged

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by the sovereign through the use of eminent domain. ***"

In the Eighth Circuit Court case of United States v. 3,698.63 Acres, Supra, the court upheld jury verdicts which were in excess of the values placed upon land by the landowner's own appraisers. One defendant obtained an award of $137,500 after his expert witness testified to damages of only $128,000. Another defendant obtained an award of $34,500 as compared with his two experts' testimonies of $32,500 and $31,450. In both instances two landowners had testified to figures in excess of the awards. One landowner had testified that he arrived at his figures on the basis of "...mostly the use of the land--what it's worth to me..." The Eighth Circuit Court of Appeals said that, as a matter of law, it could not say that the owner's opinions on land value wholly lacked weight.

In the Chavez case, Supra, the testimony of the landowner's sole expert witness was stricken; and an award of $25,000 was upheld on the basis of a $35,000 figure testified to by the landowner himself.

In another case recently before this court, Utah State Road Commission v. Dillree, 25 Utah 2d 184, 478 P.2d 507, the precise issue was presented as exists in the instant case; and in ruling that matter, this court stated:

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> "...Mr. Dillree, being an owner of the property together with his wife, was a competent witness as to the value of the property taken and as to the severance damages incurred..."

In the light of the foregoing authorities, the testimony and evidence adduced at the trial, there is no sound basis to hold that the jury verdict in the instant action is unsupported by competent and sufficient evidence and testimony.

CONCLUSION

A fundamental and basic factor to be considered in this matter is that the appellant filed a motion for new trial subsequent to the entry of the jury verdict. Judge Don V. Tibbs denied this motion.

The trial judge, having heard all of the evidence and having observed the demeanor of the witnesses, is in a distinct advantageous position to make a proper ruling with respect to the sufficiency of the evidence, which is the only real issue and a matter particularly within the province of the trial judge.

To contend that the verdict of the jury is not founded upon sufficient evidence is to challenge the factual findings of the jury and the trial judge.

We respectfully submit that the verdict and judgment should be affirmed.

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Respectfully submitted,

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I hereby certify that I delivered two copies of the foregoing Respondents' Brief to Vernon B. Romney, Attorney General, and Harold D. Mitchell, Assistant Attorney General, this ______ day of ______________________________, 1976.

____
BRANT H. WALL

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