

2001

Utah State Road Commission v. CARLOS JOHNSON and RUTH L. JOHNSON, his wife; FIRST SECURITY BANK OF UTAH, N.A.; IDEAL NATIONAL LIFE INSURANCE COMPANY : Appellant's Response to Petition for Rehearing

Utah Supreme Court

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

BRIGHAM YOUNG UNIVERSITY  
J. Reuben Clark Law School

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UTAH STATE ROAD COMMISSION, :  
 Plaintiff-Appellant, : Case No. 14225  
 -vs- :  
 CARLOS JOHNSON and RUTH L. :  
 JOHNSON, his wife; FIRST :  
 SECURITY BANK OF UTAH, N.A.; :  
 IDEAL NATIONAL LIFE INSURANCE :  
 COMPANY, :  
 Defendants-Respondents. :

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APPELLANT'S RESPONSE TO RESPONDENT'S  
 PETITION FOR REHEARING

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Clerk, Supreme Court, Utah

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

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UTAH STATE ROAD COMMISSION, :  
Plaintiff-Appellant, :  
-vs- :  
CARLOS JOHNSON and RUTH L. :  
JOHNSON, his wife; FIRST :  
SECURITY BANK OF UTAH, N. A.; :  
IDEAL NATIONAL LIFE INSURANCE :  
COMPANY, :  
Defendants-Respondents. :

Case No. 14225

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APPELLANT'S RESPONSE TO RESPONDENT'S  
PETITION FOR REHEARING

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BRIEF OF RESPONDENTS  
STATEMENT OF THE CASE

The plaintiff initiated the instant action against the defendants to acquire by eminent domain their property for road construction purposes. The case was tried before a jury with the Honorable G. Hal Taylor, presiding. Plaintiff appealed and alleged error by the trial court. The Supreme Court reversed the trial court after examination of the briefs of the parties.

## RELIEF SOUGHT

The plaintiff seeks to have defendants' Petition for Rehearing denied and an affirmation of this court's decision of May 20, 1976, reversing the trial court and remanding the case to the District Court for a new trial.

## ARGUMENT

THE SUPREME COURT PROPERLY FOUND THE OPINION EVIDENCE OF THE PROPERTY OWNER INADMISSIBLE, SINCE ITS BASIS WAS NOT PERMITTED BY LAW.

The defendants, in their Petition for Rehearing, seem to be arguing that whenever a witness in a condemnation case is the owner of the property to be taken, that such witness can then testify to anything he so desires relating to the value of his property and said testimony is proper. This position is clearly contrary to the law. A witness, even after he has qualified to render opinion testimony is governed by the requirements of relevance, competence, foundation and all other rules of evidence applied by the court.

In a condemnation case, as the plaintiff has already pointed out in its brief, the testimony relating to just compensation must be what the "fair market value" of the subject property was on the date of taking. Even a qualified witness cannot be allowed to testify as to

his opinion of what just compensation is if he uses a basis of something other than that which would establish "fair market value."

The property owner, in the instant case, used as his basis for value what the property was worth to him, that he would not have sold it for less and operating the tavern on the property was his life's work. These elements or criteria are not proper in establishing fair market value.

To support this conclusion, the plaintiff refers this court to the cases cited in its brief on appeal filed in this case, the cases cited in this court's opinion and the case of Brown v. Town of Eustis, 293 F. 197 (D.C. Florida) (1923), wherein the court rejected an owner's testimony because it was based on the personal value to him and not market value.

This proposition is also stated in Nichols on Eminent Domain as follows:

"Sentimental value to the owner, or his unwillingness to part with the property, can have no consideration in determining market value. . . ."  
Nichols on Eminent Domain, Vol. 4  
§ 12.2[2] pp. 12-79, 12-80

This court was absolutely correct in its finding that, "The basis upon which the owner stated the value

of the property was not permitted by law." There was no other testimony offered by the property owner in this case which would have provided an acceptable basis for his testimony. He did not recite sales of comparable properties to support his opinion of value. He did not testify that he made a cost analysis of what it would cost to replace the improvements on the property and then deduct accrued depreciation in order to establish the value of the improvements and then add the value of the land. He did not utilize a capitalized rental income approach as a method of establishing market value. These are the traditional methods used by evaluation witnesses in establishing market value of real estate in condemnation cases.

If the property owner's testimony were allowed to stand, it would allow property owners in all such cases to say virtually anything they wanted to regarding the value of their property. An owner could say property, to him, was worth any amount and whether that testimony was based on the value to him because of his sentimental attachment or because he felt he had developed some business "good will" over the years his testimony would still stand just because he was an "owner." Such inadmissible testimony would become admissible just because it came from

an owner who had lived on the property for many years and was familiar with it.

Plaintiff submits that an owner is subject to the same restrictions as to the admissibility of his testimony (after qualification as a witness) as any other witness. If the basis for the testimony of an appraiser is inadmissible because he used improper elements in establishing fair market value the same basis or elements are not rendered unobjectionable because they come from the mouth of the "owner."

The defendants, in their Petition for Rehearing, have confused a property owner's right to testify with the substantive content of his testimony. The right to testify may exist, but the content of the testimony offered may be inadmissible. In the instant case, even if the right of the owner to testify did exist, the opinion testimony offered by him relating to value should have been stricken, since it lacked proper foundation and was based on elements of value which are inadmissible in a condemnation trial.

The plaintiff respectfully requests that this court deny the defendants' Petition for Rehearing, that the original finding of this court stand and this case be remanded to the District Court for a new trial.

Respectfully submitted,

DONALD S. COLEMAN

Assistant Attorney General  
Attorney for Appellant