

IN THE COURT OF APPEALS 07/02/96

OF THE

STATE OF MISSISSIPPI

NO. 94-CA-00457 COA

**STEPHEN EARL RUSSELL, TERESA GAYLE RUSSELL CHISM, TWYLA RANELL
RUSSELL LOFTISS, BENTLEY RAY RUSSELL, PATTY BELINDA RUSSELL
STOUFFER, PAMILA DIANE RUSSELL STARKEY AND NINA ANGELA RUSSELL
ZONZACK**

APPELLANTS

v.

MISSISSIPPI TRANSPORTATION COMMISSION

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. FRANK A. RUSSELL

COURT FROM WHICH APPEALED: PONTOTOC COUNTY SPECIAL COURT OF EMINENT
DOMAIN

ATTORNEY FOR APPELLANTS:

PHILIP L. TUTOR

ATTORNEY FOR APPELLEE:

JAMES P. JOHNSTONE

NATURE OF THE CASE: EMINENT DOMAIN

TRIAL COURT DISPOSITION: JURY AWARD OF \$19,961.45 TO PLAINTIFFS

BEFORE BRIDGES, P.J., DIAZ, AND SOUTHWICK, JJ.

SOUTHWICK, J., FOR THE COURT:

The Mississippi Transportation Commission initiated this action in a special court of eminent domain in Pontotoc County seeking condemnation of property belonging to the Russell family. A jury determined that approximately \$20,000.00 would provide appropriate compensation to the Russells for the taking of their property. The Russells appeal, contending that the trial court reversibly erred in making two of its evidentiary rulings. We affirm.

FACTS

The Russells owned fifty-four acres of rolling land in Pontotoc County. Of this land, the Commission sought nearly eleven acres. The condemnation of that portion of the Russell land would result in the division of their acreage into two parcels. The Commission proposed paying the Russells the sum of \$7,575.00 in compensation for the taking. The Russells valued the cost of the condemnation to be nearly \$90,000.00.

At trial, evidence was presented concerning the Commission's plans, competing value appraisals of the condemned property, appraisals of timber on the condemned land, and estimates of the potential value of the use of the land. The jury was afforded a view of the property and, following its deliberations, awarded compensation in the amount of \$19,961.45.

DISCUSSION

1. Expert Opinions

The Russells contend that the trial court abused its discretion in refusing to exclude the testimony of an expert witness presented by the Commission because he was employed by the Commission. In making their argument, the Russells rely on two primary authorities—the rules of evidence and *Hudspeth v. Mississippi State Highway Commission*, 534 So. 2d 210 (Miss. 1988). Neither authority supports the Russells' position.

At its heart, the Russells' argument is that the expert witness, as an employee of the Commission, could not have been impartial. Under the Russells' view of the law, since both the rules of evidence and *Hudspeth* require that an expert witness be "fair, impartial, and have no interest in the outcome of the proceedings," that no employee of a party can testify as an expert on its behalf. The Russells' position is specious at best.

As was the case here, an expert's bias in favor of one party or another can be underscored for the jury through effective cross-examination. Whether that expert's testimony is worthy of belief and the degree on which it is relied is an issue solely to be resolved by the jury provided that the expert is qualified to testify. *Wilmoth v. Peaster Tractor Co.*, 544 So. 2d 1384, 1386 (Miss. 1989) (citations omitted); *Paulk v. Housing Authority*, 228 So. 2d 871, 873 (Miss. 1969). Were the rules of evidence applied in the manner proposed by the Russells, only expert witnesses retained by the court would be permitted to testify in Mississippi courts. This is not the law in this State. The Russells also

mistakenly rely on *Hudspeth* to make their argument. Quite simply, *Hudspeth* is not applicable to this case. In *Hudspeth*, the supreme court ruled that a reconciliation of section 11-27-89 of the Mississippi Code with Rule 706 of the Mississippi Rules of Evidence required that no party in an eminent domain proceeding could call a *court appointed* appraiser as a witness. *Hudspeth*, 534 So. 2d at 213; *see, Mississippi State Highway Comm'n v. Hayes*, 541 So. 2d 1023, 1025 (Miss. 1989) (citation omitted); *Mississippi State Highway Comm'n v. Culpepper*, 536 So. 2d 18, 19 (Miss. 1988) (citation omitted). We are not presented here with such a situation. The Russells' objections concerning the impartiality of the Commission's witness should have been (and were) taken to the jury, not to the trial court.

2. *Incomparable Sales*

The Russells also contend that the trial court abused its discretion in refusing to admit testimony concerning what they alleged were comparable sales of other property in the vicinity of the condemned property. "[E]vidence of the sale price of similar property is admissible in eminent domain proceedings" as a means of valuing the property. *Dennis v. City Council*, 646 So. 2d 1290, 1294 (Miss. 1994) (citations omitted); *Pearl River Valley Water Supply Dist. v. Wright*, 203 So. 2d 69, 71 (Miss. 1967). However, our review of the excluded evidence in this case demonstrates that it was not similar to the condemned property. Instead, its nature was entirely different from that of the property taken.

The condemned property was an undeveloped tract of land. The sales sought to be introduced in evidence by the Russells concerned individual lots with road frontage. Evidence of sales of other properties more akin to the condemned property was introduced, affording the jury a guide to valuing the subject property. Thus, the trial court was called upon to determine the relevancy of evidence concerning sales of frontage lots. These sales are not comparable in "area, location, size, topography, [or] improvements" *Wright*, 203 So. 2d at 71. We cannot say that the trial court's exclusion of this evidence upon its determination that the quality of these sales made the evidence irrelevant was an abuse of discretion. *See Times Square Realty, Inc. v. City of Grenada*, 421 So. 2d 1053, 1056 (Miss. 1982).

THE JUDGMENT OF THE SPECIAL COURT OF EMINENT DOMAIN OF PONTOTOC COUNTY IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANTS.

FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING, McMILLIN, AND PAYNE, JJ., CONCUR.