

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-CA-00638 COA**

MARY ANN M. SMITH

APPELLANT

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

DATE OF JUDGMENT:	01/29/96
TRIAL JUDGE:	HON. JOHN NEWTON HUDSON
COURT FROM WHICH APPEALED:	FRANKLIN COUNTY SPECIAL COURT OF EMINENT DOMAIN
ATTORNEY FOR APPELLANT:	WAYNE DOWDY
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: LUCIEN C. GWIN III
NATURE OF THE CASE:	CIVIL - EMINENT DOMAIN
TRIAL COURT DISPOSITION:	JUDGMENT ENTERED ON JURY VERDICT OF \$75,000 IN JUST COMPENSATION
DISPOSITION:	AFFIRMED 2/10/98
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	3/30/98

BEFORE BRIDGES, C.J., COLEMAN, AND DIAZ, JJ.

BRIDGES, C.J., FOR THE COURT:

Mary Ann M. Smith appeals from the judgment of the Franklin County Special Court of Eminent Domain where just compensation was entered at \$75,000. The Mississippi Transportation Commission had previously acquired from Smith a tract of land amounting to 0.6534 acres, which included Smith's residence. Smith argues that the trial court committed reversible error by not allowing her to testify as to her opinion of the value of her real property. Finding no error, we affirm.

FACTS

On October 12, 1994, the Mississippi Transportation Commission filed a petition for condemnation of real property belonging to Smith. Smith had lived on this property since 1976, and was notified by the Commission that her residence and approximately .6 acres was needed in order to four-lane U.S. Highway 84 in Franklin County, Mississippi. At the trial, an appraisal expert, Dixie Clay, testified that the before and after value of the property was \$48,000 and \$4,085, respectively, and that the just compensation due to Smith was \$44,000. Smith wanted to testify as to her opinion regarding the value of the property, and the Commission objected. Smith was allowed to testify outside the presence of the jury as to her opinion regarding the value of the property, and she stated that she believed the property to be worth \$169,905. After the Court and the Commission cross examined Smith as to her knowledge of property values and other sales in the county, the trial court judge determined that Smith had no foundation or basis to even give a layman's opinion regarding the before and after value of the property. Smith was not allowed to testify in the presence of the jury, and the court of eminent domain entered a jury verdict of \$75,000. Smith now appeals.

ARGUMENT AND DISCUSSION OF LAW

I. WHETHER THE COURT ERRED AND COMMITTED REVERSIBLE ERROR WHEN IT REFUSED TO ALLOW THE TESTIMONY OF THE OWNER OF THE CONDEMNED PROPERTY TO GIVE HER OPINION REGARDING THE VALUE OF THE PROPERTY.

The authority of this Court to interfere with the verdict of the jury in an eminent domain case is very limited. The jury's determination in an eminent domain case is more than merely advisory. *State Highway Comm'n of Mississippi v. Warren*, 530 So. 2d 704, 707 (Miss. 1988). This Court is not authorized to substitute its judgment for the collective judgment of the jury simply on a conclusion that, in the Court's opinion, the compensation is inadequate.

Smith argues that the trial court committed reversible error in disallowing her to testify as to her opinion of the value of the property. Smith was questioned by the court and opposing counsel as to her knowledge of property values in the area. The trial judge would not allow her to give her opinion of the property's value in the presence of the jury because she did not have any knowledge as to the property's worth; she only could state how much she had been told it would cost to rebuild her home. While the law does state that a landowner need not possess the expert qualifications of an appraiser in order to give her opinion of the value of her land, there is a requirement that the landowner give an opinion based on her own unique view of the property. *Potters II v. State Highway Comm'n of Mississippi*, 608 So. 2d 1227, 1235 (Miss. 1992). Smith's opinion was not her own, but that of her ex-husband and a contractor. The amount was based solely on replacement costs, not the actual value of the property.

In *Mississippi State Highway Comm'n v. Franklin County Timber Company*, 488 So. 2d 782, 786 (Miss. 1986), the supreme court held that "there is no talismanic test which might mechanically be applied to determine whether one can give an opinion regarding value in a eminent domain proceeding." What must be shown is that the witness has "substantial familiarity with the fair market values of properties of the type in issue and a like familiarity with the property in issue." *Id.* Smith's testimony regarding other sales in the area was based on offering prices, not actual selling prices. Smith never saw any paperwork on what the other properties sold for, nor did she confirm with the other sellers that their property actually sold for the amounts they were asking.

In *Pearl River Valley Water Supply District v. Wood*, 252 Miss. 580, 597, 172 So. 2d 196, 204 (Miss. 1965), the Mississippi Supreme Court stated:

We have in former decisions recognized the rule that a witness does not have to be a certified public appraiser or an expert in the fields of appraisal or real estate merchandising in order to testify as to land values. A witness need not have actually bought and sold land adjacent to or in the immediate neighborhood of the land in question; he need not use the highly specialized and modern standard market data approach, or comparison, to deal with control areas and be able to plot median prices. Laymen can testify as to the value of a condemnee's land provided they are familiar with it before and after the taking thereof, and cognizant of land values of comparable property as to quality, use and location, which is adjacent, near or reasonably close to the subject land so that the same comparisons, favorable or unfavorable, can be fairly made, based upon sales they have made or about which they have direct personal knowledge.

Furthermore, 18 Am. Jur., *Eminent Domain*, Sec. 355, p. 1000 states:

It is, of course, proper to determine the qualifications of such witnesses before their testimony as to value is received. It will not be presumed that a witness is competent to give an opinion but it must be shown that he has some peculiar means of forming an intelligent, correct judgment as to the value of the property in question or the effect upon it by a particular improvement, beyond what is possessed by men generally. It is apparent that the opinion of a witness should not be admitted where it appears that his opportunity for knowledge concerning the land was slight or that his knowledge was remote in point of time.

Smith did not have any familiarity with the fair market values in her area. Her opinion as to the value of her property being worth \$169,905 was based solely on replacement costs, and was exposed on cross-examination as being an exaggerated and unrealistic opinion of property values in her area. *Potters II* states that "[n]othing in this rule, however, empowers a landowner to present an opinion based on legally irrelevant factors." *Potters II*, 608 So. 2d at 1235. Smith has failed to prove reversible error, and this issue is without merit.

THE JUDGMENT OF THE FRANKLIN COUNTY SPECIAL COURT OF EMINENT DOMAIN OF COMPENSATION IN THE AMOUNT OF \$75,000 IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.

McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.