Third District Court of Appeal

State of Florida

Opinion filed July 29, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-1615
Lower Tribunal No. 14-32242

Neighborhood Planning Company, LLC, etc.,
Appellant,

vs.

State of Florida Department of Transportation,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Jacqueline Hogan Scola, Judge.

GrayRobinson, P.A., Bradley S. Gould, and Frank A. Shepherd, for appellant.

Marc Peoples (Tallahassee), Assistant General Counsel, for appellee.

Before EMAS, C.J., and FERNANDEZ, and HENDON, JJ.

FERNANDEZ, J.

Neighborhood Planning Company, LLC, ("NPC") appeals the trial court's order denying NPC's motion for a new trial in an eminent domain proceeding brought by the Florida Department of Transportation. Upon review of the record, we affirm in part and reverse in part.

This Court reviews an order denying a new trial under the abuse of discretion standard. Alonso v. Ford Motor Co., 54 So. 3d 562, 564 (Fla. 3d DCA 2011).

Concluding that the trial court did not abuse its discretion in limiting the testimony of NPC's expert as to the valuation of the land, we affirm without further discussion. See Yoder v. Sarasota Cty., 81 So. 2d 219, 221 (Fla. 1955) ("It is not proper to speculate on what could be done to the land or what might be done to it to make it more valuable and then solicit evidence on what it might be worth with such speculative improvements at some unannounced future date."), overruled in part on other grounds, State Rd. Dep't v. Chicone, 158 So. 2d 753 (Fla. 1963).

However, we find error in the jury's failure to specifically determine severance damages related to the cell tower setback, in which the Department estimated a cost of $20,000.00 and NPC estimated a cost of $30,000.00 to move the cell tower from the parcel taken to the remainder. See Fla. Dep't of Transp. v. Armadillo Partners, Inc., 849 So. 2d 279, 285 (Fla. 2003) (holding that evidence pertaining to the cost to cure to mitigate damages was admissible to determine severance damages). We are aware of the Department's argument that the jury

awarded additional damages for the lot on which the tower is located, but we are unable to determine how the jury reached its calculation, as the jury was not specifically asked to determine severance damages as to the tower setback. Pursuant to Causeway Vista, Inc. v. Fla. Dep't of Transp., 918 So. 2d 352, 355 (Fla. 2d DCA 2005), the jury was required to return a verdict that included a separate severance damages award "in an amount [not] less than the minimum amount testified to as to the value of the severance damages." Therefore, we find that the trial court erred in denying NPC's motion for a new trial on the issue of severance damages, limited to the cost of the tower setback. Id. ("[W]e hold that [the landowner] is entitled to a new trial on the issue of severance damages only—not all damages.").

Accordingly, we reverse and remand for a new trial on severance damages only, limited to the cost of the cell tower setback in an amount not less than the minimum amount testified to. We affirm as to all other issues.

Affirmed in part; reversed in part and remanded.