

RENDERED: DECEMBER 4, 2009; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-002533-MR

HART COUNTY BANK AND
TRUST COMPANY

APPELLANT

v. APPEAL FROM HART CIRCUIT COURT
HONORABLE JOHN DAVID SEAY, JUDGE
ACTION NO. 07-CI-00184

COMMONWEALTH OF KENTUCKY,
TRANSPORTATION CABINET,
DEPARTMENT OF HIGHWAYS

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: MOORE AND NICKELL, JUDGES; HARRIS,¹ SENIOR JUDGE.

HARRIS, SENIOR JUDGE: Hart County Bank and Trust Company appeals from
an interlocutory order and judgment, which allowed the Commonwealth of

¹ Senior Judge William R. Harris sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

Kentucky, Transportation Cabinet, Department of Highways (DOT), to condemn a portion of the Bank's real property. On appeal, the Bank argues that: (1) the DOT failed to negotiate in good faith prior to commencing the condemnation proceedings; and (2) the trial court erred by failing to provide it with sufficient time to prepare for the condemnation hearing. We affirm.

The DOT contacted the Bank concerning the purchase of a portion of its land for the purpose of expanding Highway 31-W in Munfordville, Hart County, Kentucky. The DOT offered the Bank \$5,200.00 for the 896 square feet of land plus a temporary easement of 1,039 square feet. During the negotiations, a disagreement arose concerning a separate 20-foot strip of land adjacent to the property in question. Each party claimed ownership of the adjacent 20-foot strip of land. The DOT set a deadline of June 29, 2007, to avoid the initiation of condemnation proceedings.

The DOT filed the condemnation action in Hart Circuit Court on August 21, 2007. The trial court appointed commissioners to assess the amount of compensation due to the Bank for the taking. The commissioners awarded the Bank \$7,500.00 for the property. The trial court held a hearing on November 20, 2007. The trial court then entered an interlocutory judgment finding that the DOT was entitled to condemn the property and adopted the commissioners' award of \$7,500.00. Both parties have filed exceptions to the commissioners' award, which

are presently pending in Hart Circuit Court. This appeal from the interlocutory judgment followed.

The Bank argues that the DOT failed to negotiate in good faith prior to the initiation of the condemnation proceedings because the dispute concerning the adjacent 20-foot strip of land was not resolved.

The law is well-established that a condemnor is required to make “a reasonable effort in good faith to acquire the land by private sale at a reasonable price.” *Eaton Asphalt Paving Co., Inc. v. CSX Transp., Inc.*, 8 S.W.3d 878, 883 (Ky. App. 1999) quoting *Usher and Gardner, Inc. v. Mayfield Independent Bd. of Education*, 461 S.W.2d 560, 562-63 (Ky. 1971). The failure to negotiate in good faith may serve as the basis for dismissing a condemnation action. *Id.*

The record indicates that the DOT offered the Bank \$5,200.00 for the land described in the condemnation complaint. This offer did not take into account the disputed 20-foot strip nor was the strip described in the complaint. The commissioners valued the property in question at \$7,500.00, from which both parties have filed exceptions. We cannot conclude that the DOT made an unreasonable offer. More importantly, the dispute over the adjacent 20 foot strip of land does not implicate the DOT’s right to condemn the property described in the complaint. There is no question that the taking is for a public purpose and that the DOT made a bona fide offer prior to the initiation of the condemnation proceedings. The trial court did not make any findings concerning the disputed 20 foot strip of land. Therefore, the DOT is not condemning that portion of the land.

The title dispute concerning the adjacent land was not properly before the trial court at this stage of the proceeding. Any dispute as to the value of what is actually being taken will be considered at the trial on damages. *Id.* at 883-84. The interlocutory order and judgment of the trial court simply found that the DOT had the right to condemn the property described in the complaint.

Next, the Bank argues that the trial court did not allow it sufficient time to prepare for the condemnation hearing. We disagree.

KRS 416.610(4) requires trial courts to “proceed forthwith” in its determination of whether the right to condemn exists.

The complaint was filed on August 16, 2007. The summons was issued on October 9, 2007. The Bank filed its answer on October 22, 2007. The hearing was held on November 20, 2007. The only issue before the trial court was the DOT’s right to condemn the land described in the complaint. We cannot conclude that the trial court abused its discretion by failing to grant the Bank a continuance.

Accordingly, the interlocutory order and judgment of the Hart Circuit Court is affirmed.

ALL CONCUR.

BRIEF AND ORAL ARGUMENT
FOR APPELLANT:

Dwight Preston
Elizabethtown, Kentucky

BRIEF AND ORAL ARGUMENT
FOR APPELLEE:

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