NO. COA06-5

NORTH CAROLINA COURT OF APPEALS

Filed: 17 October 2006

THE TRUSTEES OF WAKE
TECHNICAL COMMUNITY COLLEGE,
Plaintiffs,

v. Wake County
No. 02 CVS 14518

BENJAMIN B. SLAUGHTER and
ROBERT L. SLAUGHTER,
Defendants.

Appeal by Defendant Benjamin Slaughter from judgment entered 11 July 2005 by Judge Evelyn W. Hill in Wake County Superior Court. Heard in the Court of Appeals 17 August 2006.

Manning Fulton & Skinner, P.A., by Leanor D.B. Hodge, for the Plaintiffs-Appellees.

Smith Debnam Narron Wyche Saintsing & Myers, L.L.P., by W. Thurston Debnam, Jr. and John W. Narron, for Defendant-Appellant.

STEPHENS, Judge.

Defendant Benjamin B. Slaughter[1] appeals a judgment awarding him just compensation for his land. In support of his appeal, Defendant challenges the exclusion of his testimony as to the fair market value of the property and the trial court's refusal to give a requested jury instruction. For the reasons stated herein, we find no error. The facts relevant to our decision are as follows:

On 29 October 2002, Plaintiffs filed an action to condemn

[1] Subsequent to the filing of this action, Defendant Robert L. Slaughter, brother of Benjamin Slaughter, died. The estate of Robert L. Slaughter has settled with Plaintiffs, and therefore, is not a party to this appeal.

44.145 acres of Defendants' land to expand the campus of Wake Technical Community College. Plaintiffs estimated that just compensation for the condemnation was $1,500,000, and thus, deposited that sum with the clerk of superior court. Defendants filed an answer denying that just compensation for their land was only $1,500,000 and asked for a jury trial to determine the matter.

Trial commenced on 10 January 2005. The single issue submitted to the jury was the fair market value of the 44.145 acres taken by Plaintiffs. On 13 January 2005, the jury returned a verdict finding the fair market value of the property to be $2,895,900. Following a hearing on the issue of apportionment[2], on 11 July 2005, the trial judge entered judgment (1) determining the amount of interest owed on the verdict, and (2) calculating the amount of compensation due Defendant Benjamin Slaughter based on his ownership interest in the property condemned. From this judgment, Defendant appeals.

By his first assignment of error, Defendant argues that the trial court committed reversible error justifying a new trial in refusing to allow him to testify as to his opinion of the fair market value of his property. We disagree.

It is well settled that expert witnesses are not required to establish the fair market value of property in condemnation cases.

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[2] Because the property belonged to both Benjamin and Robert Slaughter, and the estate of Robert Slaughter had already settled its claim, the apportionment hearing was to determine what portion of the just compensation was due Benjamin Slaughter.

Craven County v. Hall, 87 N.C. App. 256, 260-61, 360 S.E.2d 479, 481 (1987), *disc. review denied*, 321 N.C. 471, 364 S.E.2d 919 (1988). To support his argument that he should have been allowed to testify to his opinion on the value of his property, Defendant relies heavily on *North Carolina State Highway Comm'n v. Helderman*, 285 N.C. 645, 207 S.E.2d 720 (1974), in which our Supreme Court stated the following:

> Unless it affirmatively appears that the owner does not know the market value of his property, it is generally held that he is competent to testify as to its value even though his knowledge on the subject would not qualify him as a witness were he not the owner. He is deemed to have sufficient knowledge of the price paid, the rents or other income received, and the possibilities of the land for use, to have a reasonably good idea of what it is worth. The weight of his testimony is for the jury, and it is generally understood that the opinion of the owner is so far affected by bias that it amounts to little more than a definite statement of the maximum figure of his contention. . . .

North Carolina State Highway Commission, 285 N.C. at 652, 207 S.E.2d at 725 (citations and quotation marks omitted). *Compare Scott v. Smith*, 21 N.C. App. 520, 204 S.E.2d 917 (1974) (holding that landowner's proffered opinion testimony, which was based on statements made to him by others and for which he had no independent opinion, was properly excluded).

At trial in this case, the following questioning of Defendant occurred:

> Q. Do you have an opinion of the fair market value of your property on – your property being the 44.145 acres – on October 29, 2002?
>
> . . . .

A. Yes, sir.
Q. And how did you come to that opinion? What process did you go through to come to the opinion of what it was worth on that day?
A. We hired an expert, and if I remove the emotion from it and apply the common-sense of what it would take to –
COURT: Sir, make sure you're answering the question. He's not asking you what the dollar value is. He's just asking you how you came to that opinion you had, and you said because you hired an expert, if you removed your own emotional input.
A. Yes, sir. And I –
Q. Did the appraiser, Mr. Weaver, the expert that you hired, did he tell you what his opinion of value was?
A. I understand the opinion.
COURT: Did he tell you?
A. Yes, ma'am, he did.
. . . .
Q. And what opinion of value did he have with regard to the fair market value of this property?
MR. MCMILLAN: Objection.
COURT: Sustained.
Q. Do you agree with his opinion?
MR. MCMILLAN: Objection.
COURT: Sustained.
Q. Did you perform any investigations or anything on your own to help you come to your own opinion, separate from Mr. Weaver's, as to the fair market value of the property?
A. I did. . . . I looked for locations that I could adapt to fulfill the function that I am presently engaged in.
. . . .
Q. I would ask again, if I might, what is his opinion as of October 29, 2002, of the value of his property as taken.
MR. MCMILLAN: Objection.
COURT: Sustained. He testified he based that value on what it would cost to relocate, and that is not the standard by which fair market value is determined. . . . Therefore, whatever his opinion is is an

> opinion not about fair market value but about what it would cost to relocate; therefore, it is sustained.
>
> Q. Do you have – I'll ask it this way and see if I can clear that up. Do you have an opinion of the fair market value of this property on October the 29th, 2002 based upon a definition of what a willing buyer and a willing seller would pay for the property in an open market when neither are under the compulsion to buy or sell?
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> MR. MCMILLAN: Objection.
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> COURT: Sustained.
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> Q. Do you have an opinion of the fair market value of this property taking out of your equation anything having to do with relocation costs and replacement costs?
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> COURT: Mr. Narron, he's already answered your question on how he based his opinion. He indicated he based his opinion based on what it would cost him on relocate. [sic] Asking him now if he has an opinion taking that out is like closing the barn door.
>
> MR. NARRON: Okay. I understand. No further questions, Your Honor.

Plaintiffs contend that the trial judge was correct in sustaining Plaintiffs' objections because it was evident that Defendant did not appear to know the fair market value of his property, and instead, would have given an opinion based either on hearsay (the opinion of the appraiser he hired) or an invalid method of measuring value (relocation costs).

In *Scott v. Smith*, *supra*, this Court held that a landowner cannot testify as to the value of the property based on the opinions of others. In addition, relocation costs are not admissible as a measure of the fair market value of property.

Southern Bell Tel. & Tel. Co. v. Housing Authority of Raleigh, 38 N.C. App. 172, 247 S.E.2d 663 (1978) (citing *Williams v. State Hwy. Comm'n*, 252 N.C. 141, 113 S.E.2d 263 (1960); *Kings Mountain v. Cline*, 19 N.C. App. 9, 198 S.E.2d 64 (1973)). In this case, although he was asked several times and in several ways, Defendant never affirmatively asserted that he had an *independent* opinion of the value of his land. Plainly, he sought to testify as to the fair market value of his land only by referencing Mr. Weaver's opinion, and by seeking to give his opinion of how much it would cost for him to relocate the business he conducted on the land. Accordingly, the trial judge properly excluded Defendant's proposed testimony in response to the questions posed to him on this issue. This assignment of error is thus overruled.

By his second assignment of error, Defendant argues that the trial court committed reversible error in its charge to the jury by refusing to include the following pattern jury instruction:

> When evidence has been received tending to show that at an earlier time a witness made a statement which may be consistent with or may conflict with his testimony at this trial, you must <u>not</u> consider such earlier statement as evidence of the truth of what was said at that earlier time because it was not made under oath at this trial. If you believe that such earlier statement was made, and that it is consistent with or does conflict with the testimony of the witness at this trial, then you may consider this, together with all other facts and circumstances bearing upon the witness's truthfulness, in deciding whether you will believe or disbelieve his testimony at this trial.

N.C.P.I. – Civ. 101.35 (gen. civ. vol. 1992).

Defendant contends that this instruction should have been

given because one of Plaintiffs' witnesses, Neil Charles Gustafson, a real estate appraiser, testified that he reached two different opinions regarding the value of the property. His first appraisal was $3,050,000, made several months before trial. At trial, however, Mr. Gustafson testified that his opinion of the fair market value of the property on the date of taking was $680,000. Mr. Gustafson explained that he changed his opinion because, during the first appraisal, he walked the property with Defendant and Defendant made several claims about its physical characteristics, including the alleged existence of eighteen inches of compact stone on the property. Defendant also shared with Mr. Gustafson information from a professional engineer about the value that certain improvements would add to the property. Thereafter, Mr. Gustafson researched comparable sales of similar properties, resulting in the change in his opinion on the property's fair market value. Defendant contends that the change in the witness's opinion justified the trial court's giving his requested jury instruction. We disagree.

A trial court must give a requested jury instruction if it is a correct statement of the law and is supported by the evidence. *State v. Haywood*, 144 N.C. App. 223, 234, 550 S.E.2d 38, 45, *review denied and appeal dismissed*, 354 N.C. 72, 553 S.E.2d 206 (2001). The party asserting error bears the burden of showing that the jury was misled or that the verdict was affected by an omitted instruction. *Robinson v. Seaboard System Railroad, Inc.*, 87 N.C. App. 512, 524, 361 S.E.2d 909, 917 (1987), *disc. review denied*, 321

N.C. 474, 364 S.E.2d 924 (1988).

Defendant mistakenly characterizes Mr. Gustafson's testimony regarding the change in his opinion as a prior inconsistent statement. On the contrary, the evidence presented at trial established no grounds to support an instruction on impeachment of Mr. Gustafson's credibility by a prior inconsistent statement because Mr. Gustafson's first opinion on the value of the property did not constitute a prior statement that was inconsistent with his testimony explaining the change in his opinion.

Mr. Gustafson's testimony, elicited on direct examination, never contradicted any previous statements. Mr. Gustafson simply testified about the process he undertook to develop a final opinion regarding the value of the property. The mere fact that he changed his mind while appraising the property does not make his first opinion a prior inconsistent statement. Therefore, Defendant is incorrect in asserting that Mr. Gustafson's testimony contained a prior inconsistent statement justifying the requested instruction. Because the requested instruction was not supported by the evidence, we hold that the trial court did not err in refusing to instruct the jury on prior inconsistent statements. This assignment of error is without merit and is also overruled.

Although Defendant assigned other errors, they are not argued in his brief and are therefore deemed abandoned. N.C.R. App. P. 28(b)(6). In the trial of this case, we find

No error.

Judges TYSON and LEVINSON concur.

Report per Rule 30(e).