

SUPREME COURT OF KANSAS

Mooney v. City of Overland Park, 283 Kan. 617

153 P.3d 1252 (2007) · No. No. 95,468 · Decided March 23, 2007

SUMMARY

The Supreme Court of Kansas reviewed an eminent domain valuation dispute involving property taken by the City of Overland Park. The court held that the district court properly excluded evidence of a prior sale of a small, unimproved tract as insufficiently relevant to the value of the larger improved property, and properly admitted a prior appraisal attributable to the landowners as an admission. The judgment awarding the landowners \$620,000 was affirmed.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Johnson, J.
JURISDICTION	Kansas
DECIDED	March 23, 2007
DOCKET	No. 95,468
DISPOSITION	affirmed
PROCEDURAL POSTURE	Landowners appealed from a jury verdict determining the value of property taken by the City of Overland Park through eminent domain, challenging the exclusion of comparable-sale testimony and admission of a prior appraisal valuation.
STANDARD OF REVIEW	Evidentiary rulings are reviewed under the relevance and evidentiary-rule framework; the district court has broad discretion in determining what evidence is admissible in an eminent-domain proceeding. The Supreme Court reviews the resulting ruling for abuse of discretion and reversible error.
PRECEDENTIAL VALUE	Published Kansas Supreme Court opinion; precedential
PARTIES	Herbert M. Mooney, Enid G. Mooney v. City of Overland Park, Kansas

TOPICS

- eminent domain
- evidence
- relevance
- hearsay
- appellate procedure

PRACTICE AREAS

eminent domain

evidence

real estate

appellate procedure

remedies

QUESTIONS PRESENTED

1. Whether the district court abused its discretion by excluding testimony concerning the prior sale of a small corner tract as comparable-sales evidence in determining the value of the condemned property.
2. Whether the district court properly admitted the Mooneys' prior appraiser's \$700,000 valuation as an admission attributable to the landowners and usable for impeachment and substantive evidence of value.

HOLDINGS

1. The district court properly excluded testimony about the prior sale because the small, unimproved corner tract was materially dissimilar from the larger, improved tract being condemned and the sale lacked a sufficient material or logical connection to the fair market value of the property as a whole.
2. The district court properly allowed the City to use the prior \$700,000 appraisal in cross-examining the Mooneys because the appraisal, which the Mooneys had commissioned and submitted to the court-appointed appraisers, was a statement attributable to them and admissible as an admission under K.S.A. 60-460(g).

KEY QUOTATIONS

“Generally, when considering a challenge to a district judge's admission of evidence, an appellate court must first consider relevance.” (153 P.3d at 1254-1255)

“When the owners of land subject to an eminent domain proceeding hire an appraiser to assess the value of the condemned land and submit the ensuing written appraisal to the court-appointed appraisers, the valuation opinion is a statement attributable to the landowners which is admissible as an admission under K.S.A. 60-460(g) in a subsequent trial de novo in the eminent domain proceedings.” (153 P.3d at 1257)

FACTUAL BACKGROUND

The City of Overland Park condemned approximately 1.02 acres improved with a building used by the Mooneys' specialized home-electronics business. Before the condemnation trial, the Mooneys had sold a small, unimproved corner tract to Southwestern Bell for approximately \$10.50 per square foot, and they sought to introduce that sale as evidence of the value of the remaining property. They also had hired John Schmidt, whose \$700,000 appraisal they submitted to court-appointed appraisers, but at trial their expert valued the property at \$887,000 while the City's experts valued it at \$535,000 and \$615,000. The jury awarded the Mooneys \$620,000.

PROCEDURAL HISTORY

The City condemned the Mooneys' property in September 2003. Court-appointed appraisers valued the property at \$615,000, after which the Mooneys appealed the valuation to the district court and received a de novo jury trial. The jury awarded \$620,000; the Supreme Court of Kansas affirmed.

DISPOSITION

affirmed

CASES CITED

- City of Wichita v. Sealpak Co., 279 Kan. 799, 802, 805, 112 P.3d 125 (2005)
- City of Wichita v. Eisenring, 269 Kan. 767, 778, 7 P.3d 1248 (2000)
- Consultation, Inc. v. City of Lawrence, 5 Kan. App. 2d 486, 488, 619 P.2d 150 (1980), rev. denied, 229 Kan. 669 (1981)
- U.S.D. No. 464 v. Porter, 234 Kan. 690, 694, 676 P.2d 84 (1984)
- State v. Gunby, 282 Kan. 39, 47, 144 P.3d 647 (2006)
- First Savings Bank v. Frey, 29 Kan. App. 2d 436, 440, 27 P.3d 934 (2001)
- Rostine v. City of Hutchinson, 219 Kan. 320, 329, 548 P.2d 756 (1976)
- Searcy v. State Highway Commission, 145 Kan. 709, 711-12, 67 P.2d 534 (1937)
- Cain v. City of Topeka, 4 Kan. App. 2d 192, 194-95, 603 P.2d 1031 (1979), rev. denied, 227 Kan. 927 (1980)
- State v. Heath, 264 Kan. 557, Syl. ¶ 5, 957 P.2d 449 (1998)
- Mettee v. Urban Renewal Agency, 213 Kan. 787, 789, 518 P.2d 555 (1974)
- Love v. Common School District, 192 Kan. 780, 784, 391 P.2d 152 (1964)