

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAUL MOLDON AND LAUREL  
MOLDON,  
Appellants/Cross-Respondents,  
vs.  
CLARK COUNTY DISTRICT COURT  
CLERK,  
Respondent/Cross-Appellant.

No. 55080

**FILED**

**JUN 29 2011**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal and cross-appeal from district court post-judgment orders in an eminent domain action. Eighth Judicial District Court, Clark County; Michael Villani, Judge. The parties are familiar with the facts, and we do not recount them except as pertinent to our disposition. For the following reasons, we affirm.

This is the second appeal concerning the taking of interest by the Clark County District Court Clerk arising from an eminent domain action by the City of Las Vegas Downtown Redevelopment Agency.<sup>1</sup> The Redevelopment Agency commenced an eminent domain action against the Moldons in 1995 and deposited the estimated compensation, in the amount of \$725,000, with the district court clerk.<sup>2</sup> After the underlying

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<sup>1</sup>As explained below, this is actually the third appeal involving these parties that arose from eminent domain proceedings commenced in 1995, but only the two most recent appeals concern interest.

<sup>2</sup>The underlying eminent domain proceedings are described in detail in Las Vegas Downtown Redev. v. Crockett, 117 Nev. 816, 34 P.3d 553 (2001).

eminent domain action was resolved by settlement, the Moldons sought an order for the release of the deposit with accrued interest. The district court ordered the deposit be delivered to the Moldons but held that the Moldons were not entitled to the accrued interest pursuant to NRS 355.210.

The Moldons appealed the district court's decision. This court concluded that the Moldons were entitled to the interest accrued, and the district court clerk's act of placing the interest earned into the Clark County general fund constituted an unconstitutional taking. Moldon v. County of Clark, 124 Nev. 507, 516, 188 P.3d 76, 82-83 (2008). We remanded the case to the district court to determine the amount of interest owed to the Moldons on the condemnation deposit. Id.

On remand, the Moldons sought discovery on how much interest was due. During discovery, the district court clerk was only able to produce bank records for the period of October 2000 through December 2005. The Moldons disclosed two expert reports concerning the methods of calculating the interest owed. The first report by Terrence M. Clauretie, Ph.D., a professor at the University of Nevada, Las Vegas, suggested the following four ways to calculate the interest owed: (1) apply the estimated interest rates for the period when the interest rate is unknown, but apply the actual interest rate for the period when the interest rate is known; (2) apply the estimated interest rates for the entire duration of the deposit; (3) apply the interest rate of prime plus two percent for the period when the interest rate is unknown, but apply the actual interest rate for the period when the interest rate is known; or (4) apply the interest rate of prime

plus two percent for the entire duration of the deposit.<sup>3</sup> The second report by James Trippon, CPA, opined that any attempts to estimate the actual interest rate would be irrelevant and highly speculative, and therefore recommended that the interest rate of prime plus two percent should apply for the entire time.

After discovery was complete, the parties filed briefs regarding just compensation with the district court. The Moldons argued that the county had failed to properly retain evidence by failing to preserve the records from 1995 to 2000 and sought an adverse inference against the county due to spoliation. The county, however, argued that the statute of limitations had expired, or alternatively, that the doctrine of laches should bar the claim. The county claimed that because the Moldons waited more than ten years to put the district court clerk on notice of the potential claim, it was prejudiced by the Moldons' delay.

The district court held that the taking claim did not accrue until the deposit was released to the Moldons. It concluded that the claim was not barred by laches or the statute of limitations because the Moldons interposed the claim only a month after the claim arose. It also rejected the Moldons' spoliation and adverse inference claim. The district court

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<sup>3</sup>Dr. Clauretie estimated the interest rate for the unknown period by retrieving the rate of interest on one-month certificates of deposit (CD) from the Federal Reserve System for the entire period (May, 1995 to December 2008). Using only the period where he had the actual rate of interest earned, he regressed the actual interest rate against the CD rate. He found that the derived formula explained 98 percent of the variation in the actual interest rate. Using the derived formula, he offered the estimate rate of interest earned by the deposit.

further found that the Moldons were entitled to the interest actually earned and not what the Moldons believe the county should have earned. Therefore, it held that the Moldons were entitled to receive the interest actually earned, and if that interest rate is unknown, the estimated interest rates, as supplied by Terence Clauretje, Ph.D., would be applied. This appeal and cross-appeal followed.

Initially, we note that neither party sought to challenge the prior decision of this court in Moldon v. County of Clark, 124 Nev. 507, 188 P.3d 76 (2008), regarding the appropriate award of interest. In the prior appeal, this court concluded that the Moldons were entitled to the interest earned by the deposit. Moldon, 124 Nev. at 516, 188 P.3d at 82-83. Based on this holding, we remanded the case to the district court for a determination of the interest owed to the Moldons. Id. Because neither party sought timely reconsideration of this decision, we decline to revisit any issue that was previously decided. Furthermore, our review of the record, briefs, and arguments presented indicates that the claims relating to spoliation, laches, and statute of limitations are without merit.

Additionally, the amount of interest to which the Moldons are entitled is an issue of fact that we review for substantial evidence, and which “will not be set aside unless clearly erroneous.” See Sheehan & Sheehan v. Nelson Malley & Co., 121 Nev. 481, 486, 117 P.3d 219, 223 (2005) (quoting Edwards Indus. v. DTE/BTE, Inc., 112 Nev. 1025, 1031, 923 P.2d 569, 573 (1996)). We conclude that substantial evidence, produced by expert witnesses as to the appropriate amount of interest for the condemnation deposit, supported the district court’s determination regarding the amount of interest owed to the Moldons. Thus, we conclude

that the district court did not err in its determination of the amount of interest owed to the Moldons. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Douglas, C.J.  
Douglas

Cherry, J.  
Cherry

Saitta, J.  
Saitta

Gibbons, J.  
Gibbons

Pickering, J.  
Pickering

Hardesty, J.  
Hardesty

cc: Hon. Michael Villani, District Judge  
Ara H. Shirinian, Settlement Judge  
Kravitz, Schnitzer, Sloane, Johnson & Eberhardy, Chtd.  
Clark County District Attorney  
Eighth District Court Clerk