IN THE SUPREME COURT OF THE STATE OF NEVADA

COUNTY OF CLARK, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA,

Appellant,

vs.

PLANE REALTY CORPORATION, A NEVADA CORPORATION,

Respondent.

No. 34904

FILED

JUL 13 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

COUNTY OF CLARK, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA,

Appellant,

vs.

PLANE REALTY CORPORATION, A NEVADA CORPORATION,

Respondent.

No. 35205

ORDER OF REVERSAL AND REMAND

These are consolidated appeals from a judgment after a jury verdict in an eminent domain case. On appeal, the County contends that the district court erred in: (1) concluding that court congestion allows the date of valuation to be changed; (2) using the 1992 date as the relevant starting date for the accrual of prejudgment interest; (3) awarding the full amount of the expert witness fees in violation of a specific Nevada statute capping such fees; and (4) allowing the landowner's appraiser to testify at trial as to the value of another property not included in his appraisal or revealed in his deposition.

First, the County argues that the district court misapplied the clear language of NRS 37.120 by allowing the disputed parcel to be valued as of the date of trial rather

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than as of the date of the complaint. We agree. The plain language of NRS 37.120 allows the date of valuation to be changed only where the action is not tried within two years of the complaint, "and the delay is caused primarily by the plaintiff." We conclude that NRS 37.120 is unambiguous and that court congestion does not fall within the plain meaning of delay "caused primarily by the plaintiff."[1] Accordingly, we conclude that the district court erred in altering the valuation date from the date of the first service of summons, and we reverse and remand for a new valuation of the disputed parcel.[2]

Next, the County contends that the district court erred in awarding prejudgment interest from April 22, 1993, a date corresponding to six months after the Clark County Planning Commission first said that there would "probably" be a condemnation proceeding for the landowner's property. We agree. The general rule for calculating prejudgment interest is that the interest should be calculated from the "taking" date "when precondemnation activities of the government become unreasonable or oppressive in such a manner that those

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[1]See Erwin v. State of Nevada, 111 Nev. 1535, 1538-39, 908 P.2d 1367, 1369 (1995) (holding that where the language of a statute is plain and unambiguous, and its meaning clear and unmistakable, there is no room for construction, and that this court will not search for a meaning beyond the statute itself).

[2]We also reject Plane Realty's contention that NRS 37.120 is unconstitutional in light of Kirby Forest Industries, Inc. v. United States, 467 U.S. 1 (1984). The Nevada statutory scheme utilized by the County in this case closely resembles that contained in 40 U.S.C. § 258a. The Court in Kirby Forest noted that § 258a is constitutionally firm because "the Fifth Amendment does not forbid the Government to take land and pay for it later," but only requires that the "just compensation" paid for the land reflect the value of the land on the date of the taking. Id. at 10. Here, because the takings date occurred at or before the County's filing of its complaint, no constitutional guarantees of "just compensation" are offended.

activities affect the market value of the property."[3] Guiding this determination is the rule from State, Department of Transportation v. Barsy,[4] which provides that a taking occurs when the government goes beyond the "planning stage" to the "acquiring stage," which is evidenced by: (1) actual condemnation occurring; (2) steps being taken to commence eminent domain proceedings; or (3) an "official" act or expression of intent to condemn. Finally, Sproul Homes v. State ex rel. Department of Highways[5] holds that statements that lack finality or definiteness are not official expressions of an intent to condemn and that entering the land to survey does not constitute steps toward commencing an eminent domain proceeding.

In this case, we conclude that the statement from the Clark County Planning Commission meeting that condemnation proceedings would "probably" take place is not an "official" expression of intent to condemn sufficient to constitute the relevant taking date. Instead, a more definite expression or action is necessary. Although our review of the record shows such a definite action took place on November 15, 1994, when the Clark County Board of County Commissioners voted to adopt a resolution approving and authorizing the acquisition of disputed property, it is possible that another definite and official action predates this resolution. Accordingly, we remand the matter for a factual finding on this issue.

Additionally, the County argues that the district court erred in failing to grant its motion for reconsideration

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[3]City of Sparks v. Armstrong, 103 Nev. 619, 621-22, 748 P.2d 7, 8-9 (1987) (citing Sproul Homes v. State ex rel. Dep't Hwys., 96 Nev. 441, 611 P.2d 620 (1980)).

[4]113 Nev. 712, 720-21, 941 P.2d 971, 976-77 (1997).

[5]96 Nev. 441, 611 P.2d 620 (1980).

requesting that the prejudgment interest award corresponding to the period between the first and second trial be deleted. We disagree. Because Plane Realty is deprived of the use of the condemnation proceeds up until the time it actually receives payment from the County, the district court properly included the period between the first and second trial in the prejudgment award.[6]

Next, the County contends that the district court erred in awarding costs for expert witnesses and the appraisal report because it applied the general costs statute contained at NRS 18.020 rather than applying the eminent domain costs statute contained at NRS 37.190. We agree. NRS 37.190, which is part of Nevada's eminent domain statutory scheme, expressly limits the maximum amount a district court may award for expert witnesses and appraisal reports.[7] By relying on NRS 18.020, the district court improperly ignored the principle of statutory construction, which states that special laws prevail over general,[8] and this court's holding in State, Department of Highways v. Alper.[9] Accordingly, we conclude that the

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[6]See County of Clark v. Alper, 100 Nev. 382, 392-93, 685 P.2d 943, 950 (1984) (holding that the award of prejudgment interest compensates for the loss that occurs from the landowner being deprived of the use of the "proceeds that should have been paid at the time of the taking").

[7]See NRS 37.190 ("Costs may be allowed or not, and if allowed may include a maximum of $350 for appraisal reports used at the trial and $150 for fees of expert witnesses who testify at the trial, and may be apportioned between the parties on the same or adverse sides, in the discretion of the court.").

[8]See Maxwell v. SIIS, 109 Nev. 327, 849 P.2d 267 (1993) ("[A] specific statute takes precedence over a general statute.").

[9]101 Nev. 493, 706 P.2d 139 (1985) ("NRS 37.190 specifically authorizes the recoupment of witness fees in eminent domain actions. As the statute limits the award to $150, the district court[, which awarded expert witness fees beyond the maximum provided by NRS 37.190,] acted without legislative authority.").

district court erred in applying NRS 18.020 and should apply NRS 37.190 on remand.[10]

Finally, the County contends that the district court erred in admitting testimony regarding the sale price of Paul Anka's neighboring property because it was not a comparable sale and was never disclosed by Plane Realty's appraiser in his report or deposition. Although not necessary to our disposition here, we disagree and conclude that by questioning Plane Realty's appraiser on cross-examination regarding why he only used three properties as comparable properties and whether he determined a value for any other properties, the County impeached the landowner on the comprehensiveness of his report and opened the door to rehabilitation testimony regarding other properties considered by the appraiser.[11] Additionally, we note that "the trial court is allowed wide discretion in passing on matters relating to expert testimony

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[10]We have also reviewed Plane Realty's contention that NRS 37.190 is violative of the state and federal constitutional guarantees of just compensation and equal protection and conclude that they lack merit. See 1A Nichols on Eminent Domain, § 4.109 at 4-147 ("In accordance with general principles of law under which a sovereign is exempt from payment of costs, neither a state nor the United States is liable for costs when it seeks to take land by eminent domain, unless such liability is expressly created by statute."); City of Los Angeles v. Ortiz, 409 P.2d 1142, 1145 (Cal. 1971) ("[T]he constitutional requirement for just compensation does not compel a condemner to pay a condemnee's litigation costs."); Armijo v. State, 111 Nev. 1303, 1304, 904 P.2d 1028, 1029 (1995) ("[W]here no suspect classification or fundamental right is involved, the role of this court is to determine whether the classification bears a rational relationship to the legislative purpose sought to be effected.").

[11]See United Fire Insurance Co. v. McClelland, 105 Nev. 504, 510, 780 P.2d 193, 197 (1989) (holding that after opposing counsel brought out on cross-examination that the plaintiff's expert witness did not believe the defendant was liable at the time of the deposition, he opened the door to the testimony on redirect that the witness now believed the defendant to be liable).

in cases"[12] and that "[t]riers of fact should not be limited in their exposure to [ ] expert opinion where [the] opinion may shed light on the true value of the condemned property."[13] We conclude that the district court did not abuse its discretion in permitting Plane Realty's appraiser to testify about the Paul Anka sale.[14]

Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

Young, J.

Shearing, J.

Agosti, J.

cc: Hon. Mark W. Gibbons, District Judge
Clark County District Attorney
Law Offices of Kermitt L. Waters
Clark County Clerk

[12]City of Elko v. Zillich, 100 Nev. 366, 369, 683 P.2d 5, 7 (1984).

[13]Armstrong, 103 Nev. at 622, 748 P.2d at 9.

[14]With respect to Plane Realty's reference to the sale in its closing argument, the County failed to preserve the issue for review because it did not lodge a proper objection. See Southern Pac. Transp. Co. v. Fitzgerald, 94 Nev. 241, 244, 577 P.2d 1234, 1235 (1978) (noting that "[t]o preserve the contention for appellate review, specific objections must be made to allegedly improper closing argument").