

Commonwealth Of Kentucky

Court of Appeals

NO. 1999-CA-002468-MR

HERBERT W. CHISM AND NINA H. CHISM

APPELLANT

v. APPEAL FROM MEADE CIRCUIT COURT
HONORABLE SAM MONARCH, JUDGE
ACTION NO. 99-CI-00077

COMMONWEALTH OF KENTUCKY,
TRANSPORTATION CABINET,
DEPARTMENT OF HIGHWAYS

APPELLEE

OPINION AND ORDER

DISMISSING

** ** * * *

BEFORE: EMBERTON, CHIEF JUDGE; HUDDLESTON AND McANULTY, JUDGES.
McANULTY, JUDGE. Herbert W. Chism and Nina Chism (hereinafter appellants) appeal the interlocutory order and judgment of the Meade Circuit Court. The court found under KRS 416.610(2) that the Commonwealth of Kentucky, Transportation Cabinet, Department of Highways (hereinafter Commonwealth) had authority to condemn 2.801 acres of appellants' property and take an additional

0.0725 acres temporarily for easements, and that the report of the court's appointed Commissioners conformed to KRS 416.580.

On appeal, appellants argue that the Commonwealth improperly joined the separate parcels owned by appellants into a single action, which decreased the amount of damages or just compensation they are likely to recover. Appellants note that they obtained the four tracts of land named in the appellee's petition from separate deeds over a period of years. Appellants concede that a single petition could be filed, but argue that they were entitled to have the Commissioners make a report on the fair market value of each piece of their property separately from every other tract. Appellants believe this would have resulted in a different valuation than resulted from the Commissioners' examination and assessment below.

The judgment appellants appeal from is interlocutory. An "interlocutory judgment," in KRS 416.610, is final and appealable as to the issue of the right to condemn and the right to immediate entry. The issues appellants raise have to do with valuation rather than right to take, and so the appeal from the interlocutory judgment is not proper and cannot afford them relief.

Appellants acknowledge that if they are unsuccessful on appeal, they may make these arguments in the trial on exceptions to be held. However, they request that this Court

give the court below guidance on how to handle the issues they raise. We respectfully decline to give an advisory opinion in this unauthorized appeal.

For the reasons stated in this opinion, IT IS HEREBY ORDERED that this appeal be and the same is hereby dismissed.

ENTERED: April 18, 2003

/s/ William E. McAnulty, Jr.
Judge, Court of Appeals

ALL CONCUR.

BRIEF FOR APPELLANT:

Dwight Preston
Lewis & Preston
Elizabethtown, Kentucky

BRIEF FOR APPELLEE:

Lanna Martin Kilgore
Bowling Green, Kentucky