

**Commonwealth Of Kentucky**  
**Court of Appeals**

NO. 2007-CA-000471-MR

COMMONWEALTH OF KENTUCKY,  
TRANSPORTATION CABINET,  
DEPARTMENT OF HIGHWAYS

APPELLANT

v. APPEAL FROM PULASKI CIRCUIT COURT  
HONORABLE DAVID TAPP, JUDGE  
ACTION NO. 05-CI-00342

BETTY J. CHANEY

APPELLEE

OPINION  
REVERSING AND REMANDING

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BEFORE: CLAYTON AND NICKELL, JUDGES; GRAVES<sup>1</sup>, SENIOR JUDGE.

GRAVES, SENIOR JUDGE: This is an appeal from a jury verdict in a condemnation case. The Commonwealth asserts various trial errors. We reverse.

Appellee, Betty J. Chaney, owned 35.975 acres of property in Pulaski County, Kentucky. This action arose from the taking of 7.097 acres of that property for the relocation of

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<sup>1</sup> Senior Judge John W. Graves sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Kentucky Highway 1247. This taking included Chaney's residence as well as other improvements upon the property. After the taking, Chaney's property consisted of two non-contiguous parcels: the first contained 4.534 acres and included a family cemetery and the second consisted of 24.344 acres of unimproved land.

The Commonwealth relied on two expert appraisers, Robert Knight and John Lyons. In its answers to interrogatories, the Commonwealth stated that Knight and Lyons would testify that the before value of Chaney's property was \$257,300.00 and \$250,000.00, respectively. During the discovery process, the Commonwealth realized that the initial estimates were based upon an erroneous acreage and filed amended answers to interrogatories. The amended answers reflected a before values of \$194,000.00 and \$190,000.00.

The Commonwealth made a motion to exclude the initial estimates. The trial court ruled that the estimates were admissible for both impeachment and substantive purposes. The Commonwealth's experts testified to the amended values at trial and were permitted to explain the discrepancy in the estimates. Chaney relied solely on the admission of the erroneous estimates to establish a before value. Her experts testified only to the after values and stated that they did not review or acquiesce to any of the Commonwealth's estimates. After hearing the

evidence, the jury ultimately returned a verdict finding the value of the property before the taking to be \$225,000.00 and the value after the taking to be \$43,000.00. The jury found that Chaney was entitled to the \$182,000.00 difference between these values. This appeal followed.

The Commonwealth argues that the trial court erred in allowing the admission of its two expert witnesses' initial interrogatory answers that estimated the before values of Chaney's property at \$257,000.00 and \$250,000.00.

The Supreme Court of Kentucky has stated that there is a question of relevancy "in connection with the testimony of a witness who in making his estimate of values relies upon an *irrelevant measure of value* or an element of value that *legally is noncompensable.*" *Commonwealth, Dept. of Highways v. Tyree*, 365 S.W.2d 472, 476 (Ky. 1963) (emphasis in original). If it is shown that a witness has used an improper factor, then his estimate should be completely excluded from the jury's consideration. *Id.*

The reasoning set forth in *Tyree* applies equally to the circumstances of the present case. The initial valuation in the interrogatories was based upon the wrong acreage, which is an irrelevant measure of value. This error was made clear from the outset. This evidence should not have been admitted for any purpose on relevancy grounds.

We will next examine the issue of jury instructions in this case as an issue likely to recur upon retrial. Initially,

the jury returned a verdict that did not conform to the evidence because they found an after value that was below the lowest after amount. The trial court then orally instructed the jury that they must reconsider their after value and that their finding is "no more than \$99,600.00 and no less than \$43,000.00." Chaney argues that this error was waived by the Commonwealth. However, we have reviewed the bench conference where this issue was discussed and find that the Commonwealth specifically objected to the reading of actual numerical values to the jury.

In condemnation cases, it is a long standing rule of law that the jury instructions shall not state either the maximum or minimum limits of recovery. *Commonwealth, Dept. of Highways v. Campbell*, 510 S.W.2d 1 (Ky. 1974). The statement of the limits of recovery in the jury instructions in a condemnation case constitutes prejudicial error warranting a new trial. *Id.* It is immaterial whether the statement of the limits to the jury was in an oral admonition or in written instructions.

The Commonwealth also argues that the trial court erred by excluding evidence of a comparable sale of property. The trial court excluded this evidence based on a lack of notice to the defense. Comparable sales are considered to be valuable evidence in condemnation cases and should not be lightly excluded. *Commonwealth, Dept. of Highways v. Oakland United*

*Baptist Church*, 372 S.W.2d 412, 413 (Ky. 1963). This issue should be revisited upon retrial.

Accordingly, the judgment of the Pulaski Circuit Court is reversed and remanded for proceedings consistent with this opinion.

ALL CONCUR.

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