2021 WL 5980701
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District Court of Appeal of Florida, Second District.

TIDEWATER PRESERVE MASTER ASSOCIATION, INC., Appellant,
v.
DEPARTMENT OF TRANSPORTATION, Appellee.

No. 2D21-223
|
December 17, 2021

Appeal pursuant to Fla. R. App. P. 9.130 from the Circuit Court for Manatee County; Charles Sniffen, Judge.

Attorneys and Law Firms

Andrew Prince Brigham, Trevor S. Hutson, and Christopher C. Bucalo, of Brigham Property Rights Law Firm, Jacksonville, for Appellant.

Marc Peoples, Assistant General Counsel, Department of Transportation, Tallahassee, for Appellee.

Opinion

ROTHSTEIN-YOUAKIM, Judge.

***1** In this appeal of the trial court's order granting the Florida Department of Transportation's (FDOT) petition for an order of taking, Tidewater Preserve Master Association, Inc., argues that the court erred in determining that FDOT had made a good faith estimate of the value of the affected property based upon a valid appraisal. Having considered the parties' arguments in their briefs and at oral argument in light of the record and the pertinent caselaw, we affirm.

This appeal arises out of FDOT's project to construct new interstate bridge structures over both land and water in Manatee County. Because the project will affect a portion of the Association's property, FDOT petitioned for an order of taking pursuant to the "quick take" procedure set forth in Chapter 74, Florida Statutes (2020).

> [I]n a "quick take" proceeding, the condemning authority must file a declaration of taking that includes a good faith estimate of value based on a valid appraisal. Prior to taking possession of and title to the condemned property, the taking authority is required to make a deposit of sufficient funds with the court. The amount to be deposited in the court registry in a quick-take proceeding is determined by the trial judge.

Fla. Water Servs. Corp. v. Utilities Comm'n, 790 So. 2d 501, 504 (Fla. 5th DCA 2001) (first citing § 74.031, Fla. Stat. (1999); then citing § 74.061, Fla. Stat. (1999)[1]; and then citing *Bainbridge v. State Rd. Dep't*, 139 So. 2d 714, 716 (Fla. 1st DCA 1962)).

> While the deposit of the estimate of value into the court's registry enables a condemning authority to take title to the land, the estimate does not establish the value of the property rights, and the court's determination that the estimate was made in good faith based upon a valid appraisal is not a finding of just compensation.

Pierpont v. Lee County, 710 So. 2d 958, 961 (Fla. 1998) (citing *Fla. E. Coast Ry. Co. v. Broward County*, 421 So. 2d 681 (Fla. 4th DCA 1982)). Rather, the determination of just compensation is ultimately for a jury to decide. *See Rorabeck's Plants & Produce, Inc. v. Sch. Dist. of Palm Beach Cnty.*, 853 So. 2d 473, 477 (Fla. 4th DCA 2003) ("The amount to be deposited by the taking authority in a quick-take condemnation proceeding represents the trial court's judgment of the amount necessary to fully compensate the property owner based on the evidence presented, subject to a final determination by a jury at trial." (citing *Fla. Water Servs. Corp.*, 790 So. 2d at 504)).

On appeal, the Association argues that FDOT acted in bad faith because it instructed its appraiser to rely on hypothetical conditions that would limit the size of the "parent tract" and categorically exclude the possibility of temporary and permanent severance damages.[2] The Association argues further that the appraiser's chosen methodology of determining the parent tract rendered his appraisal invalid. To put it bluntly, however, these arguments find no support in the record.

***2** FDOT's appraiser, Ron Sparks, is a state-certified general real estate appraiser with thirty-plus years of experience. At the hearing, the Association accepted Sparks as an expert without objection. Sparks testified regarding the methodology that he had employed in conducting his appraisal and his reasons for employing it.

He testified concerning his evaluation of contiguity, unity of ownership, and unity Sparks testified that he had visited the site between ten and twenty times over the course of preparing his appraisal.of highest and best use—the three factors that must be considered in connection with determining the parent tract. *See Dade County v. Midic Realty, Inc.*, 551 So. 2d 499, 500 (Fla. 3d DCA 1989) ("The determination of what portion of property is to be considered the 'parent tract' is made based upon the three factors of physical contiguity, unity of ownership, and unity of use." (citing *Dep't of Transp., Div. of Admin. v. Jirik*, 498 So. 2d 1253, 1255 (Fla. 1986))). With regard to FDOT's instruction that Sparks consider hypothetical conditions in conducting his appraisal, the evidence established that consideration of hypothetical conditions is consistent with Uniform Standards of Professional Appraisal Practice, and there is no dispute that Sparks fully disclosed in his appraisal all of the hypothetical conditions that he had considered pursuant to FDOT's authorization.

The Association's expert, certified real estate appraiser Matthew Ray, testified that although he had not yet appraised the property or even actually set foot on it, he had driven past it on the highway multiple times and had reviewed pictures. Ray testified that FDOT's hypothetical conditions were inappropriate given the development plan. He testified further that the methodology that Sparks had employed to identify the parent tract was inappropriate given the relationship between Sparks's proposed parent tract and the surrounding property and the nature and use of the property as a whole. He disagreed with Sparks's assessment of the requisite three factors.

But one expert's disagreement with another expert's chosen methodology is hardly sufficient to establish that either expert's methodology is "invalid." At most, Ray's testimony casts doubt on the *accuracy* of Sparks's appraisal (just as Sparks's appraisal casts doubt on the accuracy of Ray's testimony) and FDOT's estimate, but "inaccurate" is not the same as "in bad faith" or "invalid," and in any event, the accuracy of FDOT's estimate was not the question before the trial court. Because the Association has wholly failed to establish error in the court's resolution of the question that *was* before it, we affirm.

Affirmed.

LaROSE and KHOUZAM, JJ., Concur.

All Citations

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Footnotes

1 These statutory provisions have not changed.

2 *See Dade County v. Midic Realty, Inc.*, 551 So. 2d 499, 500 (Fla. 3d DCA 1989) ("Where only a portion of a larger tract of land is condemned, severance damages may be awarded as to the remainder portion, if both the remainder portion and the condemned portion are part of a 'single tract' or, in other words, the 'parent tract.' ").

