

Summary of SC92470, *St. Louis County, Missouri v. River Bend Estates Homeowners' Association, et al.*

Appeal from the St. Louis County circuit court, Judge Ellen H. Ribaud
Argued and submitted Nov. 28, 2012; opinion issued Sept. 10, 2013

Attorneys: St. Louis County was represented by County Counselor Patricia Redington, Carl W. Becker and Stephanie L. Hill of the county counselor's office in Clayton, (314) 615-7042; and the property owners were represented by Robert Denlow and Paul G. Henry of Denlow & Henry of Clayton, (314) 725-5151.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A county appeals a judgment that awarded property owners damages for the county's taking of their real property by eminent domain. In a 6-0 decision written by Judge Patricia A. Breckenridge, the Supreme Court of Missouri affirms the circuit court's decision. The heritage value statute's requirement of additional compensation when property has been held by the same family for 50 or more years does not violate the state constitution. Further, the trial court did not abuse its discretion in its evidentiary rulings or in overruling the county's motion for a new trial.

Facts: In 1904, Arthur and Stella Novel were deeded a 15-acre tract of property, which they operated as a farm until their deaths, after which it passed to their descendants. In December 2009, St. Louis County entered an order of condemnation for the property under eminent domain, which the trial court granted. After the descendants and the county were unable to agree on proper compensation for the property, the trial court appointed commissioners to make the determination, to which the trial court later added heritage value for a total of \$480,000 in damages. The descendants then requested a jury trial and were awarded \$1.3 million in damages plus \$650,000 in heritage value. The county filed a motion for a new trial, which was overruled. The county appeals.

AFFIRMED.

Court en banc holds: (1) The fact the transcript is incomplete does not require a new trial. Although bench conferences (dialogue away from the jury, just with the judge) were omitted from the official transcript of the trial, the county and descendants stipulated (agreed) to a transcript of what was said, which eliminates any prejudice the missing record could have caused. Further, the substance of any other inaudible testimony and statements is apparent from the context and is not key testimony or argument nor material to issues raised.

(2) The trial court did not abuse its discretion in its evidentiary rulings regarding the admission and exclusion of testimony from the witnesses. The county failed to preserve its claims of error regarding the descendants' attachment to the property or unwillingness to sell. The court properly excluded evidence of the heritage value statute, which was irrelevant to determining fair market value. The trial court did not err in excluding a statement one descendant made at the commissioners' hearing because it was not a statement against interest or inconsistent with trial

testimony. The county did not preserve for review its claim about testimony from the descendants' appraiser, and the court properly excluded a portion of testimony from the county's appraiser. The court also properly excluded testimony from two witnesses who formed their opinions in anticipation of litigation but did not provide those opinions in discovery.

(3) The trial court did not abuse its discretion in overruling the county's motion for a new trial. An appraiser's testimony valuing the property at \$1.3 million was substantial evidence to support the jury's verdict, which was not so grossly excessive as to warrant a new trial.

(4) The heritage value statute's requirement of additional compensation when property has been held by the same family for 50 or more years does not violate the Missouri Constitution's provision requiring "just compensation" for land taken by public use. "Just compensation" serves as a constitutional floor below which the legislature cannot descend, but it does not prevent the legislature from exercising its prerogative to allow additional compensation to certain property owners whose real property is taken for public use. Further, because the primary object of the expenditure in the heritage value statute is to compensate a class of persons whose property is acquired through eminent domain for the benefit of the public, that compensation is legal. Heritage value compensation is not part of the "just compensation" mandated by the constitution, so there is no constitutional mandate that it be ascertained by a jury.