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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

DALE O. FLINT, and **FERN R. FLINT**,	)	
Appellants,	)	Filed September 9, 1977
v.	)	
IOWA STATE HIGHWAY COMMISSION,	)	72 2-57785
Appellee.	)	

Appeal from Linn District Court - John L. Hyland, Judge.

The plaintiff appeals a jury verdict in a matter involving condemnation by the Iowa State Highway Commission. AFFIRMED.

John D. Randall, and Ronald W. Wendt, of Cedar Rapids, counsel for appellants.

Pickens and Barnes, of Cedar Rapids, Minor Barnes and Terry J. Abernathy, counsel for appellee.

Submitted to Allbee, C.J., Donielson, Snell, Oxberger and Carter, JJ.

DONIELSON, J.

On March 2, 1972, the defendant, Iowa State Highway Commission, condemned a parcel of residential property in Cedar Rapids, Iowa, owned by the plaintiffs, Dale and Fern Flint. After the compensation commission awarded the plaintiffs $11,500 for the property, they appealed to the district court. The Flints now appeal a judgment of $12,562 entered upon a jury verdict, asserting that they were deprived of their property without receiving just compensation.

On appeal, the Flints raise these four issues as basis for reversal: (1) whether the trial judge abused his discretion in suppressing the testimony of an expert witness because of plaintiffs' failure to comply with rule 125, Rules of Civil Procedure; (2) whether the trial court erred in refusing to sustain the plaintiffs' objection to the defendant's cross-examination of the plaintiff and his son concerning valuation of the property; (3) whether the use of the term "cash price" in Instruction No. 10 regarding fair and reasonable market value was erroneous; and (4) whether the portion of the instruction which prohibited the jury from considering changes in the purchasing power of money subsequent to the date of the condemnation in the determination of fair and reasonable market value was incorrect.

I.

Rule 134 (b)(2)(B) Sanction

On November 2, 1973, interrogatories were filed requiring the designation of appraisers who were scheduled to be called as expert witnesses. On December 4, answers were filed which indicated one person — Robert Smoker. A pretrial order of January 3, 1974, set the trial for September 9, and required that discovery be completed four weeks prior to trial. This order further provided that all necessary amendments to the pleadings shall be filed at least two weeks before trial. This pretrial order also contained an "escape hatch" provision, which stated that, in the event that the parties should find it impossible to comply with the provisions of the pretrial order, they could immediately move the court for an amendment of that order and thereby bring the matter to the attention of the presiding judge for prompt disposition.

On September 9, 1974, the case went to trial as ordered. However, on that morning, the plaintiffs filed supplemental answers to the interrogatories, indicating a second appraisal witness, and that the appraisal date was September 5-6, 1974. Pursuant to appropriate motion and rule 134(b)(2)(B), R.C.P., the trial court suppressed the second appraiser's testimony.

The pretrial order entered in the instant case attempts to achieve a prompt and orderly disposition of matters before the court. The validity of such orders was recently discussed in Haumersen v. Ford Motor Co., ___ N.W.2d ___ (Iowa, filed August 31, 1977), wherein the court stated:

> We have in several cases had occasion to review sanction orders under this rule. See Sandhorst v. Mauk's Transfer, Inc., 252 N.W.2d 393 (Iowa; Smiley v. Twin City Beef Co., 236 N.W.2d 356 (Iowa); Bos Lines, Inc. v. Phillips & Phillips, 226 N.W.2d 819 (Iowa); Zimmerman v. Purex Corp., Ltd., 256 Iowa 190, 125 N.W.2d 822. In each case we held the order to be within the discretion of trial court. We recognized that a party's failure to comply defeats the purpose of discovery by reducing access of the moving party to relevant evidence and leaving the actual grounds of the controversy ill-defined prior to trial. A party's failure to answer need not be willful in order to bring about sanctions, and we will not reverse the imposition of sanctions unless the court abuses its discretion. Id. slip. op. at 9.

See also, Moose v. Rich, 253 N.W.2d 565, 569 (Iowa 1977).

Our review of the record satisfies us that the trial court did not abuse its discretion in imposing the sanction.

II.

Cross-examination

The plaintiff and his son were asked about statements they had allegedly made during a compensation commission hearing regarding their estimation of the value of the property. Flints now allege that such matters concerned an offer of compromise and were therefore inadmissible. Miller v. Iowa Electric Light and Power Co., 239 Iowa 1257, 34 N.W.2d 627 (1948).

While offers of pure compromise are not admissible under the **Miller** doctrine, they are admissible if they are a part of otherwise admissible evidence. See Langdon v. Ahrends, 166 Iowa 636, 639-40, 147 N.W. 940 (1914). In this instance, the record reflects a carefully asked question which did not purport to inquire into any compromise. Rather, the question was propounded as a result of inconsistent statements made by these witnesses. Since such interrogation was conducted for purposes of impeachment, we find no error. See State v. Peterson, 219 N.W.2d 665, 671 (Iowa 1974); State v. Frommelt, 159 N.W.2d 532, 536 (Iowa 1968).

III.

"Cash Price" Instruction

The use of the term "cash price" regarding fair and reasonable market value was not erroneous. Hetherington Letter Co. v. City of Cedar Rapids, 207 N.W.2d 800, 804

(Iowa 1973) is dispositive on this point. See also, Heins v. Iowa State Highway Commission, 185 N.W.2d 804, 810 (Iowa 1971).

IV.

Loss of Purchasing Power of Money

The Flints final contention is that the trial court erred in advising the jury that in determining a fair and reasonable market value, it could not consider changes in the purchasing power of money subsequent to the date of condemnation. In Heldenbrand v. Executive Council of Iowa, 218 N.W.2d 628, 632-35 (Iowa 1974), the court emphasized that damages in eminent domain proceedings must be established as of the time of taking, which is the date on which the compensation commission fixes the damages.

Finding no error, we affirm the judgment of the district court.

SNELL, J., concurs; ALLBEE, C.J., OXBERGER, J., and CARTER, J., concur in divisions II, III, and IV, and specially concur with division I.

CARTER, J. (specially concurring)

I concur in divisions II., III., and IV., and the result. With respect to division I., I do not believe the sanction invoked by the trial court can be sustained under Rule of Civil Procedure 134(b)(2)(B) because there had been no prior order to "provide or permit" discovery as contemplated by that rule. The pretrial order merely fixed a date for completion of discovery processes, if any. But I interpret the decision in Haumersen v. Ford Motor Company, ___ N.W.2d ___ (decided August 31, 1977) as authorizing the imposition of the challenged sanction as a reasonable means of enforcing deadlines for completion of discovery in a pretrial order.

ALLBEE, C.J., and OXBERGER, J., join in this special concurrence.