

FILED

APR 27 1982

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

21

CITY OF WATERLOO,)

Plaintiff-Appellee,)

vs.)

Filed April 27, 1982

SMOKE-RITE PRODUCTS, INC., CAROL)

P. WEEKLEY ENNENGA, individually and)
as Administrator of the Estate of)

JACK LEE WEEKLEY, RICHARD)
ENNENGA, and BLACK HAWK COUNTY,)
IOWA,)

Defendants,)

1-441
2-66556

CAROL P. WEEKLEY ENNENGA,)

Defendant-Appellant.)

Appeal from Black Hawk District Court - R. J. Curnan, Judge.

The defendant Carol Ennenga appeals from trial court's judgment on condemnation appeal which reversed the condemnation commission's award of \$40,000 for damages to defendant's personal property which consisted of auto salvage vehicles and parts. The defendant claims that the trial court erred in determining that damages to personal property caused by a condemnation must occur or be foreseeable as a result of the condemnation at the time the condemnation commission views the property, and in finding that such damages did not occur or were not foreseeable at that time. **AFFIRMED.**

C. A. Frerichs of Fulton, Frerichs, Martin & Andres of Waterloo, for defendant-appellant.

William S. Smith of Smith & Kennedy, Waterloo, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

PER CURIAM

The defendant property owner appeals from the trial court's determination on a condemnation appeal which denied any claim for damages to defendant's personal property as a result of the taking.

On July 21, 1978, the condemnor city commenced condemnation proceedings against defendant's land which was used as an auto salvage yard. On August 16, 1978, the condemnation commission awarded the defendant damages for the taking of the land and additional compensation for damages to personal property. On August 30, 1978, the city filed an appeal from the award. On September 12, 1978, the defendant also appealed from the condemnation commission's award. The case proceeded to trial before the court.

For purposes of the trial, the parties stipulated that the value of the land taken was \$8,200.00. The only contested issue on the appeal was whether plaintiff was entitled to additional damages beyond the value of the land as an "allowance for personal property which is damaged or destroyed or reduced in value." The basis for such an allowance in appropriate cases is found in Section 472.14, The Code. The trial court, after hearing the evidence, found that "the damage to defendant's personal property to the extent the same was damaged, destroyed, or reduced in value by the condemnation is zero." It accordingly adjudicated the amount of defendant's compensation to be \$8,200.00, the value of the land. By subsequent application of the city, it was made to appear that funds representing more than that amount had already been released to defendant as a result of the condemnation commission's award. As a result of this circumstance, judgment was entered against defendant and in favor of the city for the amount of this overage as provided by Section 472.25, The Code. Other facts necessary to our resolution of the issues on appeal are stated in the following discussion of the legal issues.

I. Defendant's first argument on appeal suggests that the adverse result arrived at with respect to her claim for additional compensation for damage to personal property was induced by erroneous conclusions of law on the part of the trial court. In urging this position, she focuses on the following two conclusions of law contained in the written decision of the trial court in this action:

4. The "time of the taking" is the date upon which the condemnation commission views the premises and fixes the damages to which the condemnnee is entitled, Heldenbrand v. Executive Council of Iowa, supra, at p. 634.

* * *

6. The time of the condemnation and the "time of taking" are synonymous, to-wit: The date upon which the condemnation commission viewed the premises and fixed the damages to which the condemnnee is entitled. Loss or damage after that time, which may be pursuable in tort or other action, unless foreseeable as a result of the condemnation, are not proper damages for the Court to consider within the scope of a condemnation appeal.

In order to determine whether the conclusions of law of which defendant complains are erroneous, as applied to her claim, or whether, if erroneous, a reversal is required, we must first examine the basis for said claim and the evidence offered in support thereof. Defendant's claim for additional compensation as an allowance for personal property damaged, destroyed, or reduced in value relates to three categories of property: (1) automobile bodies containing salvageable parts which were located on the condemned real estate; (2) salvaged auto parts on the condemned real estate which had been removed from auto bodies; and (3) automobile bodies containing salvageable parts which were not located on the condemned premises but which were moved there from another location nearly two months after the condemnation proceedings were initiated and at least three weeks after the initial determination of defendant's compensation by the condemnation commission.

Following the fixing of damages by the condemnation commission on August 16, 1978, and tender of the compensation pending the result of this appeal, the defendant was permitted to use the condemned premises for storage of the three categories of property listed above until October 16, 1978. At this time the personal property contained in categories (1) and (3) was moved by agents of the city and placed upon other real estate owned by the defendant. As a result of the latter actions, the defendant commenced a tort action against the city which is apparently still pending and which seeks recovery for alleged damages caused to the property in the moving of same by the city. The personal property contained in category (2) above was never removed from the condemned property and was eventually plowed under the ground when a dike was erected on top of said location.

It is the defendant's theory of the case that the auto salvage bodies and auto parts had value (as established by expert testimony) on the condemned premises and that such value could be realized because storage was available at that location in a manner which made both the auto bodies and the salvaged auto parts readily accessible. Conversely, defendant asserts that because she owned no other property sufficient to provide storage space in a manner which made it accessible and usable, the condemnation has caused the subject auto bodies and parts to decrease in value. As support for this claim, defendant points to the fact that space limitations at the only other location owned by her required that the auto bodies be stacked up in a manner which rendered them inaccessible for removal of parts. In pursuing this claim defendant offered no evidence as to the availability of other locations by purchase or lease where the auto salvage bodies and parts might have been stored.

The very narrow basis for defendant's claim for additional compensation for reduction in value of personal property is highlighted by the following candid

concession set forth in her brief on appeal:

The above auto salvage parts had such values because, although used, they were in an undamaged condition and stored in a manner where they were readily accessible for sale. . . . The one necessary element for the preservation of the value of the salvage parts was the availability of enough land on which the salvage autos and parts could be accommodated and stored in an undamaged condition and in a manner where the salvage parts were readily accessible for sale.

The conclusions of law contained in the trial court's decision which are challenged by the defendant on this appeal relate to the time of the taking, the time of the damage, and the foreseeability of the damage. In determining whether there was any reversible error as a result of these conclusions of law, we must first consider whether the defendant has presented any evidence of a use-connected reduction in value for which different conclusions of law as to time of taking, time of damage, and foreseeability of damage would produce a different result. Our review of the record and the applicable legal elements of proof leads to the conclusion that defendant was not prejudiced by any error of the court as to time of taking, time of damage, or foreseeability of damage. Instead, we conclude that defendant's claim for reduction of value to her personal property falls of its own weight for failure to show evidence of its causal connection to the condemnation.

We have found no authority among those relied on by defendant or otherwise which permits a condemnee to be compensated for reduction in value of movable personal property by simply showing that such property had been stored on the condemned premises and that the condemnee owned no other land suitable for storing it. Defendant seeks to sustain this contention by a misplaced reliance on those cases such as Wilson v. Fleming, 239 Iowa 718, 728-29, 31 N.W.2d 393, 398-99 (1948), which have held that ordinarily a condemnee is under no duty to minimize

damages. Minimization of damages is not the issue presented. Rather, the issue is whether the personal property was so exclusively used with the real property taken that the taking of the real property would reduce the value of the personality. See Wilkes v. Iowa State Highway Commission, 172 N.W.2d 790, 793 (Iowa 1969). Defendant suggests that Wilkes supports her position, but we disagree. We cannot conclude that the requirements of "exclusive use" and "use-connected damage," as those terms are employed in Wilkes, refer to the mere fact of physical location or storage of personal property on the condemned land. Rather, those terms refer to the fact that the condemned land is used for a purpose other than storage which gives the personal property special value which the same property will not have in the absence of the land which has been taken. Wilkes permitted recovery for reduction in value of personal property located outside of the condemned premises at a site still available to the condemnee following the taking. The compensation was based upon the loss of a use-related activity no longer available as a result of that which had been taken. No similar circumstance is presented in the instant case. We believe that on the facts of the present case, an essential element of defendant's claim would be proof that it was impossible or economically impractical for defendant to secure another suitable location for storing these salvage items in a manner which rendered them accessible for use such as was the case of the personal property involved in Estelle v. Iowa State Highway Commission, 119 N.W.2d 900 (1963). Not to require such a showing is to allow a condemnee who is economically able to relocate at a comparable location by using the compensation awarded for the real estate and the statutory moving expenses to recover for an alleged economic loss when no such loss exists. We therefore conclude that because defendant's claim is predicated solely on her lack of ownership of suitable property to which the salvage items might be moved, rather than upon proof of the non-availability of such property, that she has shown no right of recovery. This circumstance was in

no way affected by the trial court's conclusions of law of which she complains on appeal.

II. The foregoing analysis serves to defeat defendant's right to a reversal on any of the three categories of property involved. We note that, in addition, no recovery may be had for that part of the personal property not located on the condemned land at the time of the taking by reason of the holding in Gaar v. Iowa State Highway Commission, 252 Iowa 1374, 1377-78, 110 N.W.2d 558, 560 (1961).

III. Defendant also argues on appeal that the trial court erred in denying her post-trial motion for expanded findings of fact. In view of the position which has been taken by this court in Division I of this decision, such action of the trial court was without prejudice to defendant. We have considered all issues presented and find no basis for reversing the trial court's decision.

AFFIRMED.