

Circuit Court for Baltimore City
Case No. 24-C-17-001714

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 352

September Term, 2018

KHOSROW D. VAGHARI

v.

MAYOR AND CITY COUNCIL OF
BALTIMORE

Fader, C.J.,
Gould,
Sharer, J., Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: February 13, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

— Unreported Opinion —

Dissatisfied with the verdict and judgment of inquisition entered following a bench trial in this eminent domain¹ case in the Circuit Court for Baltimore City, Khosrow D. Vaghari has noted this appeal, appearing *pro se*.²

In his opening brief, appellant poses 19 questions for our review, from which we have distilled the following:

1. Was the taking in compliance with appropriate City ordinances?
2. Did the trial court abuse its discretion in its assessment of damages?
3. Did the trial court abuse its discretion in denying appellant's motion for reconsideration?

Finding neither error nor abuse of discretion, we shall affirm the judgment of the circuit court.

BACKGROUND

Early in 2009 appellant, at a foreclosure sale, purchased property at 1108 West Fayette Street in Baltimore City intending to rehabilitate it for rental use. The purchase price was \$17,000. At the time of purchase the property had been vacant for two years, was uninhabitable, and subject to lead paint violation notices, conditions that continued throughout the time of appellant's ownership. During that period appellant applied to the City, on three occasions, for permits to perform rehabilitation work but in each instance failed to complete the permit process or pay the required fees.

¹ The acquisition of property through condemnation proceedings under the power of eminent domain is governed by the Maryland Code (1974, 2015 Repl. Vol.), Real Property Article (RP), §§ 12-101 through 12-212 and Maryland Rules 12-201 through 12-213.

² Although he appears *pro se* on appeal, appellant was represented by counsel at trial.

— Unreported Opinion —

The City initiated eminent domain proceedings on the property in 2017 as part of a redevelopment plan for the Poppleton neighborhood in west Baltimore, as authorized by the 2007 Poppleton Urban Renewal Ordinance, which was reauthorized in 2014.

Trial was held on February 7 and 8, 2018, before the court, appellant having waived his right to trial by jury. The evidence included the testimony of six witnesses, two of whom were real estate appraisers who qualified as experts without objection, the admission of considerable documentary evidence (all by stipulation), and a view of the premises. The view consisted of observation of the exterior only, as the building was deemed unsafe for a view of the interior.

Following trial, the court rendered a thorough oral memorandum opinion from the bench, ultimately finding the fair market value of the property to be \$17,000. A judgment of inquisition was entered on February 12, 2018 and filed among the land records. Appellant filed a timely “Motion for New Trial and for Reconsideration,” which was denied by the trial court, and noted this appeal.

DISCUSSION

The Taking

Appellant argues, variously, that the City (1) did not have the right to condemn his property and (2) that the City caused the value of his property to decrease by interfering with his efforts at rehabilitation and lead paint abatement.

His first argument has not been preserved for our review and the second lacks merit, as we shall discuss, *infra*.

The record is devoid of any evidence offered by appellant questioning the City's right to condemn the property under the Poppleton redevelopment *aegis*. The record reveals that, through his then-counsel, appellant, in August 2012, made a "formal request to proceed with the acquisition" of his property. Indeed, the record reflects that both parties repeatedly represented to the trial court that the only issue before it was the fair market value of the property. Telling as well is his statement in his opening brief that "I am not objecting [to] the City for taking the property"

Maryland Rule 8-131(a) provides that an appellate court "will not decide any ... issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]" From the record before us, it is clear that this issue was neither raised in, nor decided by, the trial court.

Damages

In his challenge to the court's valuation, appellant asserts that "[t]here is no record and logic on how the City and the Court valued the property for \$17,000." He bases his argument on the retroactive appraisal of the property, as of June 9, 2011, which his appraiser testified would have been \$130,000, plus the "reasonable legal, appraiser, and expert witness fees incurred" as a result of the taking. (Internal citations omitted). Further, he contends, in his words, that "[t]he City is not in title [sic] to take control of the building without reasonably compensat[ing] the property owner for the value of the building and the damages not limited to the attorney, appraisal fees, and other cost [sic] incurred by [him] in the process of condemnation per Md. Code Real Prop, § 12-10[6] (b)." These assertions are without merit and unsupported by the record.

Both the City and appellant called real estate appraisers to assert their respective opposing expert opinions of the fair market value of the property. The qualifications and expertise of both experts were stipulated to by the parties. In sum, the City's expert, Michael Wilson, opined that fair market value of the property at the time of the taking was \$7,967, subject to \$155 per annum in ground rent.

It was the opinion of appellant's expert, Steven Klein, in contrast, that the fair market value at the time of the taking, was \$130,000. Notwithstanding the City's valuation, it requested that the court award appellant \$17,000 in damages, essentially to make him whole for the amount he paid for the property. The court assessed the value of the property, as of the date of trial, at \$17,000 and executed an inquisition order in that amount.

Our review of the court's findings of value are controlled by Rule 8-131(c), under which, as a case tried without a jury, we ““review the case on both the law and the evidence.... [and] will not set aside the judgment of the trial court on the evidence unless clearly erroneous[.]”” *Purnell v. Beard & Bone, LLC*, 203 Md. App. 495, 505 (2012) (quoting *Rau v. Collins*, 167 Md. App. 176, 184–85 (2006)); Rule 8-131(c). Further, we ““give due regard to the opportunity of the trial court to judge the credibility of the witnesses.”” *Id.* (quoting *Rau*, 167 Md. App. at 185); Rule 8-131(c).

In a condemnation case, the question of fair market value is an issue for the trier of fact. *Montgomery County v. Soleimanzadeh*, 436 Md. 377, 392 (2013) (quoting *Solko v. State Roads Comm'n of State Highway Admin.*, 82 Md. App. 137, 148 (1990)). The fact-finder, here the judge, “is free to arrive at its own evaluation, *so long as there is evidence to support such an award[.]*” and providing the court has applied its “independent judgment

regarding the weight of any facts before it[.]” *Id.* at 392-93 (emphasis in *Soleimanzadeh*) (quoting *Solko*, 82 Md. App. at 148).

Section 12-105(b) of the Real Property Article provides the definition of “fair market value” as:

(b) The fair market value of property in a condemnation proceeding is the price as of the valuation date for the highest and best use of the property which a vendor, willing but not obligated to sell, would accept for the property, and which a purchaser, willing but not obligated to buy, would pay, excluding any increment in value proximately caused by the public project for which the property condemned is needed. In addition, fair market value includes any amount by which the price reflects a diminution in value occurring between the effective date of legislative authority for the acquisition of the property and the date of actual taking if the trier of facts finds that the diminution in value was proximately caused by the public project for which the property condemned is needed, or by announcements or acts of the plaintiff or its officials concerning the public project, and was beyond the reasonable control of the property owner.

Appellant makes no argument that the trial court misapplied the statute in its assessment of damages, nor do we find error in that regard.

In our review, we refer to excerpts from the trial court’s oral opinion dealing with the evidence of value presented by the opposing experts, which we find compelling. After reviewing the method of valuation utilized by each, and some details of their testimony, the court said:

In evaluating the expert testimony of the appraisers, the Court gives much more weight to the testimony of Mr. Wilson....

Mr. Wilson also physically observed the outside of the property. Mr. Klein on the other hand did not view the property.

* * *

— Unreported Opinion —

On balance, I accept the conclusions given by Mr. Wilson and find that the opinion rendered by Mr. Klein was based mostly on speculation and insufficient factual basis and the Court gives Mr. Klein's opinion little weight. Court also takes into account its view of the existing property ... in assessing the opinions and evaluating the opinions of the two appraisers in this case and again gives Mr. Wilson's opinion much more weight.

* * *

The Court instead accepts the expert opinion of Mr. Wilson as to the fair market value of the property today which is consistent with the Court's own view of the property from February 7th.... However, I, like [the City], acknowledge the investment made by Mr. Vaghari in the City and in the Property at 1108 West Fayette Street.

Based on all the evidence, the Court finds that the highest and best use of the property which a vendor, willing but not obligated to sell, would accept for the property and a purchaser, willing but not obligated to buy, would pay, excluding any increment in value proximately caused by the public project for which the condemned property is needed, as of today, is \$17,000.

We find abundant evidence in the record to support the trial court's conclusion of the value of the condemned property. It is patently clear that the court's award was not, in appellant's words, without "record and logic." Contrary to his assertion on appeal, appellant neither requested that the trial court award him additional damages nor offered any evidence to support an award of damages for the expenses incurred with respect to legal and appraisal fees.

Appellant further suggests that the value of the property was diminished by the actions of the City in scheduling the taking and demolition as part of the redevelopment project. The trial court directly addressed that assertion, rejecting appellant's asserted \$130,000 valuation of the property, but noting that even if it were to accept that valuation, "there is insufficient evidence to demonstrate that any reduction in the value of the property

was proximately caused by the public project at issue here....” We find no error in the court’s ruling.

Motion for New Trial or Reconsideration

We review the denial of a motion for reconsideration under an abuse of discretion standard. *Cent. Truck Ctr., Inc. v. Cent. GMC, Inc.*, 194 Md. App. 375, 397 (2010) (citing *In re Adoption/Guardianship of Joshua M.*, 166 Md. App. 341, 351 (2005)). We have said that an abuse of discretion occurs ““where no reasonable person would take the view adopted by the trial court, or when the court acts without reference to any guiding rules or principles....”” 194 Md. App. at 398 (cleaned up) (quoting *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 418–19 (2007)); *North v. North*, 102 Md. App. 1, 13 (1994) (internal quotations and citations omitted).

Appellant’s motion was premised on two grounds: (1) the trial court “incorrectly considered the effect on the value of the subject property of [the City’s] refusal to issue permits for the renovation of the property[;];” and, (2) the trial court “refused to permit [him] the opportunity to submit evidence on the value of the property had it been renovated and thus increased in value.” Neither of appellant’s assertions have merit; in fact, the record reveals them to be baseless.

As to the first, appellant testified that he applied for renovation permits on three occasions during the early years of his ownership. As the testimony revealed, and the court found, appellant failed to complete the application process and to pay the required fees. The court specifically found that he had not offered sufficient evidence to support his

— Unreported Opinion —

assertions that the City devalued the property by interfering with his attempts at rehabilitation.

His second assertion, that the court declined to permit evidence of the value of the property in a hypothetical post-renovation condition, is likewise without merit. The record is devoid of any such effort; hence, the court was not called upon to make such a ruling. Indeed, we would consider such a proffer to be speculative.

In sum, we find no abuse of discretion in the court's denial of appellant's post-trial motion.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED;
COSTS ASSESSED TO APPELLANT.**