

CONDEMNATION & EMINENT DOMAIN

Condemnation & Eminent Domain: Valuation

Florida Department of Transportation v. Armadillo Partners,

849 So. 2d 279 (Fla. 2003)

In an eminent-domain proceeding, severance damages must consider any reduced value to the remaining property as a whole. When a reconstructive cure negatively impacts a portion of the remaining property, there is no additional taking of the land used to cure. Any such devaluation is but one factor to consider in determining the overall value of the remaining property. Moreover, failure by an expert appraiser to value one factor among many in calculating severance damages does not constitute a per se basis for excluding the expert witness' testimony.

FACTS AND PROCEDURAL HISTORY

In 1997, the Florida Department of Transportation (DOT) initiated eminent-domain proceedings to acquire two strips of land owned by Armadillo Partners, Inc., for a road-widening project. The DOT project reduced severely Armadillo's shopping center's 140 usable parking spaces. Expert appraisers for both parties agreed that the shopping center could not continue to operate unless a reconstruction cure relocated lost parking spaces to other portions of the remaining property. DOT's proposed cure restored 97 parking spaces to the remaining property, but required the destruction of an aesthetically-pleasing "arbor area" bordering the storefronts. *Armadillo Partners*, 849 So. 2d at 282. Armadillo's proposed cure to restore 99 parking spaces left the arbor area intact, but cost significantly more. The jury awarded Armadillo severance damages equaling the DOT appraiser's estimate, and cost to cure damages that fell in between the estimates submitted by the opposing experts.

Armadillo appealed to the Fourth District Court of Appeal, arguing that the DOT appraiser's testimony should have been excluded because it did not properly consider all the factors necessary to calculate severance damages and the cost to cure. The Fourth District found that this expert testimony should, in fact,

have been excluded because it did not provide for the loss of the arbor area. Moreover, the appellate court found further error by the circuit court in admitting the DOT's expert testimony because of inconsistencies between the DOT expert's proposed cure and DOT's then-existing construction plans for adjacent roadways.

However, the Florida Supreme Court held that there was no proper basis for excluding the DOT appraiser's expert testimony. Significantly, in quashing the decision below, the Florida Supreme Court specifically disapproved of three rulings relied upon by the Fourth District: *State Department of Transportation v. Murray*, 670 So. 2d 977 (Fla. 1st Dist. App. 1996); *Williams v. State Department of Transportation*, 579 So. 2d 226 (Fla. 1st Dist. App. 1991); and *State Department of Transportation v. Byrd*, 254 So. 2d 836 (Fla. 1st Dist. App. 1971).

ANALYSIS

Valuation of Remaining Property Impacted by a Reconstruction Cure

Before this case, three rulings by the First District Court of Appeal—*Byrd*, *Williams*, and *Murray*—controlled the issue of calculating severance damages in eminent-domain proceedings. Under these precedents, the value of land used or otherwise negatively impacted by the reconstruction cure had to be considered and valued separately. However, in this case the Florida Supreme Court reasoned that forcing a condemning authority to value separately this portion “without reference to the reduction in fair market value of the remaining property” as a whole could result in a windfall to the property owner. *Armadillo Partners*, 849 So. 2d at 285. Therefore, the Court eliminated the requirement for separate consideration and shifted to a lower standard of incorporating the cure-impacted property's devaluation within the overall valuation of the total remaining property.

Regarding the second disputed issue, the Court refused to require consistency between the condemning authority's proposal to cure and the then-existing project development plans. The Court noted that any reconstruction project resulting from a partial taking would proceed at the option of the remaining property owner, after the owner receives a net condemnation award. The Court reasoned that it would be unreasonable and inefficient to require the condemning authority to revise the larger project development plans to ensure consistency with a proposed cure that may

never come to fruition. The Court noted that when the condemning authority gave reasonable assurances that the larger project development plan could and would be amended to ensure consistency, the Court considered such assurances to be both adequate and binding on the authority. Thus, a lack of consistency between the project development plan and the proposal to cure is not fatal to the expert testimony offered to support the cost to cure.

Expert Testimony—Evidentiary Basis for Exclusion

With this ruling, the Florida Supreme Court established that the failure by an expert witness to value cure-impacted property separately does not constitute a per se basis for excluding the expert's testimony. Because this objection goes to the testimony's weight, and not its admissibility, an opponent should raise this issue during cross-examination. Thus, the jury is left to decide whether the devaluation of cure-impacted property has been accounted for adequately within the expert's cost estimates.

Justice Lewis' dissent explained his concern that this ruling would eviscerate the long-standing rule "that specifically excludes expert testimony when it contravenes established law." *Id.* at 290 (Lewis & Wells, JJ. and Shaw, Sr. J., dissenting). He explained the often unduly heightened influence that expert witnesses have upon jurors and concluded that "it is difficult to conceive of evidence fraught with more potential to mislead fact[-]finders than legally erroneous expert testimony." *Id.* at 291. At issue in the dissent was whether the majority's ruling would, in fact, extend to legally erroneous expert testimony. If so, a court would effectively abrogate its gatekeeper role with regard to expert testimony, and would require the jury to invade the province of the bench. While it is doubtful that the majority in this case contemplated its opinion to endorse such an extension, Justice Lewis' dissent found support for his concern in the majority's disapproval of *Byrd*.

In *Byrd*, the First District Court of Appeal held that the circuit court properly excluded the State appraiser's testimony supporting his cost estimates because it was "clearly based on [the witness'] misconception of the law of severance damages." 254 So. 2d at 837. Thus, the Florida Supreme Court's disapproval of *Byrd* within *Armadillo Partners* implies that it would allow the jury to hear the State appraiser's questionable testimony in *Byrd*, and not exclude it as a matter of law. Allowing the jury to hear such expert testimony would cloak the questionable legal interpreta-

tions within the seeming authority of expertise. This reading of *Armadillo Partners*, in effect, implies a reduced evidentiary standard of review for allowing expert testimony. If true, it offers strong support for Justice Lewis' concern for "the harm that may ensue should such a rule leach out into other bodies of law." *Armadillo Partners*, 849 So. 2d at 293 (Lewis & Wells, JJ. and Shaw, Sr. J., dissenting).

SIGNIFICANCE

In partial-taking proceedings, expert witnesses are no longer required to value separately the portion of remaining property negatively impacted by a reconstruction cure separately, as if it constituted an additional taking. Moreover, when expert witness testimony fails to consider one factor of many that contribute to an opinion of value, a court shall not exclude the expert's testimony. Instead, the opponent may cross-examine the witness so that the trier of fact may assess the weight accorded the expert's testimony.

RESEARCH REFERENCES

- Robert I. Scanlan & Brian P. Patchen, *Florida Eminent Domain Practice and Procedure* ch. 9, § 9.34–9.45 (Fla. B. 2003).
- 21 Fla. Jur. 2d *Eminent Domain* § 157 (2003).
- 24A Fla. Jur. 2d *Evidence and Witnesses* § 1129 (2003).

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