

15-0342

RECEIVED

MAR 25 2015

FILED

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

KANAWHA COUNTY COMMISSION,

2015 MAR 18 PM 2:19

Petitioner,

CATHY S. SAISON, CLERK
KANAWHA COUNTY CIRCUIT COURT

v.

Civil Action No. 13-P-327
Honorable James C. Stucky

LORETTA LYNN GOMEZ,

Respondent.

ORDER

On February 13, 2015, pursuant to this Court's Scheduling Order, the parties appeared by counsel for a Pretrial Hearing. The Petitioner appeared by counsel, H. F. Salsbery and the law firm of Bailey & Wyant, PLLC and the Respondent appeared by counsel, Shannon M. Bland and the law firm of Bland and Bland.

A number of motions were set for hearing most particularly the Petitioner's *in limine* motions. During the preparatory arguments, counsel for the Respondent opined that given the current state of the law and this Court's previous rulings, a trial would be "an exercise in futility." Counsel for the Petitioner agreed and asked, in sum and substance, if Respondent's counsel purpose in trying the case was nothing more than preserving the record so he could raise an issue or issues on appeal. Respondent's counsel agreed that was his purpose.

Following this colloquy, counsel for Petitioner renewed Petitioner's Motion for Summary Judgment. This Court, after considering the motion, and noting that counsel for the Respondent did not object other than to preserve Respondent's appellate rights, granted Petitioner's Motion for Summary Judgment and adopts the following findings of fact and conclusions of law:

1. The Respondent is the owner of a 1/3 interest through inheritance in the subject property.

2. Petitioner and Respondent took part in a Commissioner's Hearing resulting in an award of \$33,335 in just compensation to Respondent.

3. Respondent requested a jury trial on the taking asserting that the take was not for an appropriate public purpose and that the just compensation award was based on the value of the property at the time of the take not on the value of the property after the take.

4. This Court, over Respondent's objection, found that Petitioner had the lawful right to take the subject property for public purposes in its Order entered December 12, 2013.

5. This Court, again over Respondent's objection, found that fee simple title in Respondent's 1/3 interest to be vested in Petitioner.

6. This Court found in its Order dated November 25, 2014, that the only evidence of fair market value which would be permitted at trial would be the fair market value of the take at its highest and best use at the time of the take.

7. This Court, by Order dated January 9, 2015, declined to permit Respondent to reopen discovery or name a new expert appraiser.¹

8. The only evidence Respondent could have submitted at trial as to the value of the take at the time of the take would have been the testimony of Ms. Gomez. However, since Ms. Gomez intentionally failed to appear for scheduled and noticed deposition, it is unknown whether her testimony, if any, would have been allowed.

THEREFORE, this Court grants Petitioner's Motion for Summary Judgment based on the arguments contained in Petitioner's Memorandum of Law in Support of Petitioner Kanawha County Commission's Motion for Summary Judgment and noting the arguments contained in Respondent's

¹ This Court notes that Respondent did not timely present herself for her deposition and, in fact, failed to appear for her scheduled and noticed deposition within the discovery cutoff period. This Court further notes that Respondent's expert appraiser did not submit a report valuing the property at the time of the take. In fact, Respondent's appraiser did not timely submit a report valuing the property at all rather the report was merely a criticism of the report of Petitioner's appraiser, Jay Goldman.

Response to Petitioner's Motion for Summary Judgment, and the oral arguments advanced by counsel for Petitioner and counsel for Respondent.

The objections of the Respondent are noted and preserved.

This Court's Clerk is directed to send copies of this Order, once entered, to counsel of record.

All of the above is ORDERED.

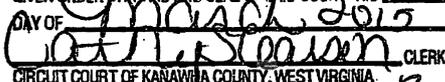
Dated this 12 ^{March} day of ~~February~~, 2015.


HONORABLE JAMES C. STUCKY

Prepared and submitted by:



Charles R. Bailey (WV Bar #0202)
H.F. Salsbery (WV Bar #3235)
Kelly C. Morgan (WV Bar #9519)
Daniel T. LeMasters (WV Bar #12021)
BAILEY & WYANT, PLLC
500 Virginia Street, East, Suite 600
Post Office Box 3710
Charleston, West Virginia 25337-3710
(304) 345-4222
Counsel for Kanawha County Commission

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 12
DAY OF March 2015
 CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA. 12

Reviewed by:

Shannon M. Bland (WV Bar #5693)
Bland & Bland
1550 Kanawha Blvd., E.
Charleston, WV 25311-2400
(304) 344-3691
Counsel for Loretta Lynn Gomez