

Bond Case Briefs

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EMINENT DOMAIN - KANSAS

Pener v. King

Supreme Court of Kansas - March 24, 2017 - P.3d - 2017 WL 1101390

Department of Transportation initiated eminent domain proceeding seeking partial taking of property for highway improvement project.

Following a bench trial, the District Court awarded damages to owner of condemned property. Owner appealed.

The Supreme Court of Kansas held that:

- Owner was not entitled to replacement value of fence, but was instead only entitled to amount loss of fence diminished post-taking value;
- Evidence supported compensation award of \$295,702 as difference in value before and after taking;
- Owner was not entitled to attorneys fees under state regulation; and
- Owner was not entitled to attorney fees under trial court's inherent authority.

Owner of condemned property was not entitled to \$65,720 replacement value of fence on tract's post-taking property line, but rather was only entitled to \$11,000 as amount loss of fence diminished tract's post-taking value, under statute providing that replacement cost could be considered to extent it affect value rather than as separate item of damages, in eminent domain proceedings initiated by Department of Transportation for partial taking of property for highway improvement project.

Evidence supported compensation award of \$295,702, as difference in value of property before and after taking, in eminent domain proceedings initiated by Department of Transportation for partial taking of property for highway improvement project, though property owner asserted that trial court in bench trial failed to give sufficient consideration to a particular comparable sale. Owner, owner's retained expert appraiser, and Department's retained expert appraiser all testified as to property's value immediately before and immediately after taking, trial court' determined the damages amount to be between amounts opined to by retained appraisers, and trial court described its decision as a compromise position that, in large part, adopted approach set out by Department's expert.

Owner of property condemned by Department of Transportation was not entitled to attorneys fees and expenses under state regulation implementing state law authorizing compliance with federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which stated that federal regulations, including federal regulation providing owner of real property litigation expenses in limited circumstances, applied to "all transactions". federal regulation required reimbursement of attorney fees only when a taking or in inverse condemnation cases, applying that regulation without that limitation to "all acquisitions" would obliterate the limitation, and state regulation applied to administrative claims process, not eminent domain litigation.

Owner of property condemned by Department of Transportation was not entitled to attorney fees

and expenses under trial court's inherent power to do so, though owner asserted that Department engaged in pre-litigation bad faith conduct by making "low-ball" offer, basing offer on appraisal that did not comply with accepted appraisal practices, failing to respond to owner's attempts to negotiate proper valuation amount, and failing to timely update initial appraisal after receiving owner's response to Department's initial offer. There was no indication that sanctions were necessary to compel Department's obedience to applicable law or that Department utilized condemnation process to harass, delay, or achieve other improper ends, and Department supplied evidence tending to disprove "low-ball" claim.