

Bond Case Briefs

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EMINENT DOMAIN - NEBRASKA

Russell v. Franklin County

Court of Appeals of Nebraska - October 15, 2019 - N.W.2d - 27 Neb.App. 684 - 2019 WL 5152150

Landowners brought inverse condemnation action against county arising out of county's removal of 67 trees from two locations on property covering 1.67 acres.

County moved to exclude landowners' experts and for summary judgment, and landowners moved to exclude county's expert. Following hearing, the District Court granted county's motions and denied landowners' motion. Landowners appealed.

The Court of Appeals held that correct measure of damages was fair market value of property before trees were removed less value of property after trees were removed.

Measure of damages in inverse condemnation action against county arising from removal of 67 trees on 1.67 acres of landowners' 164-acre property was fair market value of property before tree removal less fair market value of property after removal, rather than cost of restoring trees and vegetation on property; suit was not tort action for property damage, there was no evidence landowners intended to use property for residential or recreational purposes, cost of restoration exceeded predamaged fair market value of damaged property, and land could not be returned to prior condition by replacing trees since some were large and had naturally grown over many years.