

ARKANSAS STATE HIGHWAY COMMISSION V.  
W. D. FREYALDENHOVEN ET UX

5-4889

439 S.W. 2d 791

Opinion Delivered April 21, 1969

[Rehearing denied May 19, 1969.]

1. **Eminent Domain—Severance Damages—Weight & Sufficiency of Evidence.**—Landowners' claim for severance damages held supported by substantial evidence where right-of-way cut landowners' farm in two and the underpass which condemnor constructed for landowners' cattle to use in traveling from one side of divided highway to the other was inadequate, and cattle could not be induced to use it, which required loading the livestock in trucks and transporting them to an overpass half a mile away.
2. **Eminent Domain—Verdict & Findings—Review.**—A jury's verdict upon conflicting testimony of experienced witnesses, all worthy of belief, is conclusive.

Appeal from Conway Circuit Court; *Russell C. Roberts*, Judge; affirmed.

*Thomas B. Keys* and *Kenneth R. Brock* for appellant.

*Gordon, Gordon & Eddy* for appellees.

GEORGE ROSE SMITH, Justice. In this eminent domain proceeding the appellant is condemning a right-of-way for Interstate 40 across the appellees' 300-acre farm, effectively cutting it in two. The jury fixed the landowners' compensation at \$20,000. The only argument for reversal is the Commission's contention that there is no substantial evidence to sustain the landowners' claim for severance damages, which necessarily made up the greater part of the jury's verdict.

The controversy narrows down to the adequacy of an underpass which the condemnor constructed for the landowners' cattle to use in traveling from one side of the divided highway to the other. There are pastures

on both sides. It is an undisputed fact that in the landowners' cattle-raising operation the animals must be transferred from one pasture to the other several times a year. If the cattle can be induced to use the underpass, then the severance damages will fall far short of the amount of the verdict. But if the landowners must load their livestock in trucks and transport them to an overpass half a mile away, then the verdict is not excessive.

We must uphold the verdict. The landowners requested an underpass ten feet high and ten feet wide, but the highway department engineers merely enlarged a proposed concrete drainage culvert to dimensions of five feet by five feet. This tunnel is 165 feet long and according to the proof is decidedly dark throughout much of its length. Witnesses for the landowners observed snakes and mud in the tunnel. Freyaldenhoven himself, an experienced cattle raiser, testified that his livestock refused to enter the underpass, which had been completed before the trial. He roped a gentle cow and attempted to pull her through the tunnel, but the animal balked. The jury was shown a photograph depicting that unsuccessful effort. Another cattleman, the witness Grisswood, testified that in his opinion it would not be possible to force cattle to use the underpass. Two real estate appraisers also expressed that opinion.

The highway department countered that testimony with the opinions of two other real estate appraisers who thought that the underpass would serve its intended purpose. The department also offered the testimony of a cattle raiser who had a similar tunnel on his property in Clark county. He testified that his cattle had readily learned to use the underpass, though the jury may have doubted his further statement that he had a 1,200-pound work horse that customarily went through the tunnel "even though he had to squat just a little." From what we have said it is evident that the decisive issue was that of weighing the conflicting testimony of

experienced witnesses, all of whom were worthy of belief. Upon such an issue the verdict is conclusive.

Affirmed.

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