

ARKANSAS STATE HIGHWAY COMMISSION
v. O. A. ALLEN, ET UX

73-149

501 S.W. 2d 243

Opinion delivered November 26, 1973

1. EMINENT DOMAIN—EVIDENCE OF COMPARABLE SALES—ADMISSIBILITY.—Asserted error of the trial court in refusing to rule as to the admissibility of alleged comparable sales testified to by landowner and his expert *held* without merit where the record failed to demonstrate the sales used were not comparable.
2. EMINENT DOMAIN—EVIDENCE OF COMPARABLE SALES—NECESSITY OF RULING PRIOR TO ADMISSION.—It is not necessary for the court to rule on the comparability of sales before a witness testifies relative to the sales.
3. EMINENT DOMAIN—EVIDENCE OF COMPARABLE SALES—ADMISSIBILITY.—Contention that a comparable sale used by the expert was inadmissible because it was subsequently used for a commercial purpose *held* without merit where landowner's expert testified the highest and best use of the subject property was for commercial and residential purposes.

Appeal from White Circuit Court, *Elmo Taylor*, Judge; affirmed.

Thomas B. Keys and *Philip N. Gowan*, for appellant.

Joe T. Gunter and Hugh L. Brown, for appellees.

CONLEY BYRD, Justice. This is the second appearance of this eminent domain action. In *Arkansas State Highway Commission v. Allen*, 253 Ark. 46, 484 S.W. 2d 331 (1972), we reversed a \$27,000 judgment upon a jury verdict. On retrial the jury awarded damages in the amount of \$23,750. For reversal of the judgment entered thereon the Commission raises the two points hereinafter discussed.

POINT No. 1. The Commission here contends that the trial court erred in refusing to rule as to the admissibility of alleged comparable sales testified to by the landowner and his expert witness. We find no merit in the contention. The record shows that both the landowner and his expert used some comparable sales, but the record does not demonstrate that such sales were not comparable. Neither can we find any merit in the suggestion that the trial court committed error in refusing to rule on the comparability of such sales before the witness had testified relative to the sales.

POINT NO. 2. The landowner's expert testified that the highest and best use of the subject property was for commercial and residential uses. The Commission now contends that the Patton to Fisher comparable sale used by the expert should have been struck because it was subsequently used for a commercial or industrial use. We find no merit in the contention.

Affirmed.