

IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT JACKSON

**STATE OF TENNESSEE, ON
RELATION OF THE COMMISSIONER,
DEPARTMENT OF TRANSPORTATION,
FOR AND ON BEHALF OF SAID
DEPARTMENT,**

FROM THE HARDEMAN COUNTY
CIRCUIT COURT, No. 8557
THE HONORABLE JON KERRY
BLACKWOOD, JUDGE

Petitioner-Appellee,

AFFIRMED

Vs.

C.A. No. 02A01-9607-CV-00156

VISCEN AND LINDA MORROW,

Charles W. Burson, Attorney General
and Reporter; Michael E. Moore,
Solicitor General; Roger A. Page,
Assistant Attorney General
For Appellee

Defendants-Appellants.

Sheila B. Stevenson of Jackson
For Appellants

FILED

November 12, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

MEMORANDUM OPINION¹

CRAWFORD, J.

This is a condemnation case. The defendants, Viscen and Linda Morrow, appeal from the jury's award in a condemnation proceeding instituted by the State of Tennessee.

On September 22, 1994, the State of Tennessee Department of Transportation filed a Petition for Condemnation in the Circuit Court of Hardeman County, Tennessee, seeking to acquire a portion of the Morrow's property for improvement of Highway 64 in Hardeman County.² The property sought was 1.42 acres of a 2.27 acre tract owned by the Morrows. Upon filing the complaint, the State deposited with the clerk of the court the sum of \$64,400.00 as compensation for the taking.

¹Rule 10 (Court of Appeals). Memorandum Opinion. -- (b) The Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in a subsequent unrelated case.

² The Bolivar Electric Department was also named as a defendant in the petition by the State of Tennessee because it had liens on the real property of the Morrows. Later, the Bank of Bolivar was added to the petition because it also had a lien on the property. Both of these parties were paid through a Consent Order of Disbursement filed November 9, 1994 and were dismissed from the case. Neither party is involved in this appeal.

On October 4, 1994, the Morrows filed an answer which denied that the amount on deposit was sufficient compensation for the taking and requested a jury trial. The Morrows did not dispute the State's right to condemn the property, and on November 9, 1994, the trial court entered an Order of Condemnation and Appropriation that gave the State immediate legal possession of the property. On January 6, 1996, the case was tried before a jury to determine the sufficiency of the compensation.

Defendant, Viscen Morrow testified that the condemned real estate was improved with a small rental house and two mobile homes. The part of the property that was not taken contains the Morrow's permanent residence. Morrow testified that he is a real estate broker. He has a certificate in appraising real estate but is not a licensed appraiser. Morrow testified that the entire property, including the improvements, had a fair market value of \$115,095.00 before the taking, and that the property remaining after the taking had no value whatsoever. Morrow believed that his remaining property was valueless because 90% of it was a gully. He also testified that he felt he would have trouble selling the land because it was not in compliance with local zoning laws and because ingress and egress to the property are undesirable.

In addition to defendant Morrow's testimony, the parties introduced expert witnesses to testify as to the value of the land taken and incidental damages to the remainder. Needless to say, there was a sharp conflict in the testimony that was resolved by the jury.

The jury returned a verdict and awarded compensation for the land and improvements in the amount of \$30,000.00 and incidental damages in the amount of \$25,000.00, for a total award of \$55,000.00. The Morrows were unhappy with the amount of the compensation and have appealed the jury verdict. The Morrows present four issues for review which we have consolidated to two issues: 1) what constitutes incidental damages in a condemnation proceeding, and 2) whether T.C.A. § 29-16-114 (1980), governing damages in a condemnation proceeding, is unconstitutional on its face and in its application.

In their first issue, the Morrows argue that they suffered damages incidental to the taking for which they were not compensated. The parties agreed and settled on an amount of moving expenses, but the Morrows claim that there were other expenses that the jury did not consider. Before the trial, the State filed a Motion in Limine to prohibit proof of any moving expenses that

were not specifically set forth in T.C.A. § 29-16-114 (1980). The trial court ruled that attorneys' fees and the purchase price of replacement land could not be presented as moving expenses. As a result of the settlement and this ruling, the Morrows did not present any proof concerning moving expenses. The Morrows now claim that there are other incidental expenses that should have been considered. However, the Morrows did not file a Motion for New Trial. T.R.A.P. 3(e) provides in pertinent part:

[T]hat in all cases tried by a jury, no issue presented for review shall be predicated upon error in the admission or exclusion of evidence, jury instructions granted or refused, misconduct of jurors, parties or counsel, or other action committed or occurring during the trial of the case, or other ground upon which a new trial is sought, unless the same was specifically stated in a motion for a new trial; otherwise such issues will be treated as waived.

Since no motion for a new trial was filed, the first issue is waived.

In their second issue, the Morrows claim that T.C.A. § 29-16-114 (1980) is unconstitutional. From our review of the record, it does not appear that any constitutional challenge to the statute was raised in the trial court. The issue of constitutionality was raised for the first time on appeal. As a general rule, a party is not entitled to relief on an issue that is raised for the first time on appeal. *Lawrence v. Stanford*, 655 S.W.2d 927, 929 (Tenn. 1983); *Southland Express v. Scrap Metal Buyers of Tampa*, 895 S.W.2d 335, 341 (Tenn. App. 1994). It is well established that constitutional issues cannot be raised for the first time on appeal unless a statute is clearly and blatantly unconstitutional. *Lawrence*, 655 S.W.2d at 929. *Mallicoat v. Poynter*, 722 S.W.2d 681 (Tenn. App. 1986). If the constitutional challenge is not raised in the trial court, no opportunity is afforded for the introduction of evidence which may be pertinent in determining the validity of the statute. *Lawrence*, 655 S.W.2d at 929. We believe that the statute in question is not clearly and blatantly unconstitutional, and that it is inappropriate for this Court to consider the Morrow's challenge to the constitutionality of T.C.A. § 29-16-114 (1980).

Accordingly, the judgment of the trial court is affirmed. Costs are assessed against the appellants.

**W. FRANK CRAWFORD,
PRESIDING JUDGE, W.S.**

CONCUR:

ALAN E. HIGHERS, JUDGE

DAVID R. FARMER, JUDGE