

FILED

07/25/2023

Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs May 1, 2023

**STATE OF TENNESSEE EX REL. COMMISSIONER OF THE
DEPARTMENT OF TRANSPORTATION v. PAGIDIPATI FAMILY
GENERAL PARTNERSHIP ET AL.**

**Appeal from the Circuit Court for Shelby County
No. CT-001635-14 Jerry Stokes, Judge**

No. W2022-00078-COA-R3-CV

This is an eminent domain case in which the Commissioner of the Tennessee Department of Transportation (“the State”) condemned two portions of the defendant’s eighteen-acre property in Shelby County. Prior to a jury trial to determine the fair market value of the condemned property, the State filed a motion *in limine* to exclude evidence of or reference to a prior sale of a portion of the defendant’s real property to a neighboring fireworks business. The State argued that the previous sale was not an arm’s-length transaction or a comparable sale. The trial court granted the State’s motion *in limine*, excluding the prior sale from the jury’s consideration. The defendant has appealed. Determining that the defendant has failed to properly cite to the record in its appellate brief or provide us with a sufficient record on appeal, we conclude that the defendant has waived its challenge to the trial court’s exclusion of evidence. We therefore affirm the trial court’s order.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Affirmed; Case Remanded**

THOMAS R. FRIERSON, II, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P.J., M.S., and ARNOLD B. GOLDIN, J., joined.

Shannon Jones and John Dolan, Memphis, Tennessee, for the appellant, Pagidipati Family General Partnership.

Jonathan Skrmetti, Attorney General and Reporter; Andrée S. Blumstein, Solicitor General; Kurt H. Garber, Senior Assistant Attorney General; and Christopher G. Covellis, Assistant Attorney General, for the appellee, Commissioner, Tennessee Department of Transportation.

OPINION

I. Factual and Procedural Background

On April 10, 2014, the State filed a petition for condemnation in the Shelby County Circuit Court (“trial court”), “for the purpose of acquiring by the exercise of eminent domain the right, title, and interest” of certain real property owned by the Pagidipati Family Limited Partnership (“Defendant”).¹ The State explained that Defendant’s property was necessary for the completion of a highway improvement project. The State further indicated that it had deposited \$537,675.00, the sum it deemed owed to Defendant, with the clerk of the court in accordance with Tennessee Code Annotated § 29-17-902. The property sought by the State consisted of one tract containing 1.491 acres and one tract of 1.735 acres for a total of 3.226 acres (collectively, “the subject property”).

On May 13, 2014, the trial court entered a “Consent Order of Condemnation and Appropriation.” The court’s order reflected that the State was entitled to immediate possession of the subject property and Defendant’s property rights by the exercise of eminent domain. The court granted the State possession of the subject property but retained jurisdiction “in order that all further and future proceedings, orders, and decrees may be made according to law, including without limitation a determination of value for the taking and damages to the remainder, if any.” Thereafter, the court entered an order, disbursing to Defendant the \$537,675.00 deposited with the clerk of the court by the State.

Defendant subsequently filed an answer to the State’s petition for condemnation, rejecting the State’s proposition that \$537,675.00 was “the appropriate value for the taking and the damage to the remainder of the land as a result of the taking.” Defendant requested that the trial court impanel a jury to determine the valuation of the subject property. The State later filed a request for a twelve-person jury.

Prior to trial, the State filed a motion *in limine*, seeking the exclusion of evidence concerning or reference to Defendant’s 2013 sale of a 0.67-acre portion of its land to Mark Loyd, an adjoining land owner (“the Loyd Sale”). The State posited that the trial court should not permit the jury to consider the Loyd Sale as a comparable sale in determining

¹ The State named David Lenoir, Trustee of Shelby County, Tennessee, and Pamela Walker, Treasurer of the City of Lakeland, Tennessee, as defendants to the extent that the subject property may have been encumbered by a lien in favor of Shelby County or the City of Lakeland for any applicable real estate taxes that could have been due and to determine what interest Shelby County or the City of Lakeland might have in the proceeds awarded to Defendant. The City of Lakeland filed a notice with this Court that it would not be filing an appellate brief, explaining that all applicable property taxes had been paid and that the City of Lakeland had not actively participated in the litigation. Although Shelby County did not file a similar notice, it did not file an appellate brief and likewise does not appear to have actively participated in the litigation. During trial, the parties stipulated that no taxes were owed on the subject property. Our focus, therefore, will remain on the narrow issue raised by Defendant.

the subject property's fair market value for the following reasons: (1) the Lloyd Sale was not an "arm's length" transaction, (2) neither the State's nor Defendant's expert real estate appraisers relied upon the Loyd Sale in formulating their respective valuation opinions, and (3) the Loyd Sale did not involve real property comparable to Defendant's eighteen-acre property.

As background for these arguments, the State provided the following factual averments:

In this eminent domain case, the State of Tennessee (hereinafter "State") condemned a portion of real property owned by Defendant the Pagidipati Family General Partnership (hereinafter "Defendant") for the construction of improvements to the interchange located at Interstate 40 and Canada Road in the City of Lakeland, Shelby County, Tennessee (hereinafter the "project"). Prior to the State's taking of a portion of Defendant's property, the property contained approximately 18.076 acres and was vacant except for a billboard located adjacent to the control of access right of way line of Interstate 40. The property was located within the southwest quadrant of the interchange with frontage along both Interstate 40 and Canada Road. While there was no formal or approved driveway connection to Defendant's property, informal access was available to the property from Canada Road.

On May 13, 2014, this Court entered a Consent Order of Condemnation and Appropriation granting possession of approximately 3.226 acres of land area to the State for construction of project related improvements to the interchange of Interstate 40 and Canada Road. The land area taken by the State consisted of two parts: a strip taking along Canada Road containing 1.735 acres and along Interstate 40 containing 1.491 acres. The initial tender amount was \$537,675.00. The project related improvements consisted, in part, of transforming the previous "diamond" designed interchange into a "single point urban" interchange design. In addition to this, Canada Road would be widened from two (2) to (4) lanes and additional turn lanes added along with two (2) dedicated lanes serving vehicles exiting Interstate 40 allowing for free flow traffic movements for eastbound vehicles exiting Interstate 40 traveling southbound on Canada Road and westbound vehicles exiting Interstate 40 travelling northbound on Canada Road. Additionally, control of access lines were established along Canada Road both north and south of the interchange, including along the entire Canada Road frontage of Defendant's property.

After the State's taking, Defendant's property consists of approximately 14.850 acres of land area. The property remains vacant except for the billboard sign. The property no longer has direct access to Canada

Road. Rather, as part of the project, a frontage road was constructed by the State which provides access from Canada Road to Defendant's remainder property as well as at least three other properties, including the adjoining property located directly at the corner of the off ramp for eastbound Interstate 40 at Canada Road, which was and continues to be owned by Mark Loyd. Mr. Loyd owns and operates a business engaged in the sale of fireworks to the general public commonly known as "Fireworks City[.]" As of the date of possession, Mr. Loyd's property contained approximately 1.584 acres per the Shelby County Property Assessor's website. Due to the location of the Loyd property, it was necessary for the State to acquire by condemnation a portion of Mr. Loyd's property for project construction.

Less than eight (8) months prior to the State filing the Petition in this condemnation case, as well as the Loyd condemnation case, Mr. Loyd was leasing approximately 0.5 to 0.6 acre of land area from Defendant for the purpose of providing an area for overflowing parking related to the fireworks business operated by Mr. Loyd. This area had been leased by Mr. Loyd for approximately twenty (20) years preceding the filing of condemnation actions. The land area was only leased seasonally by Mr. Loyd for approximately thirty (30) days each year to accommodate parking needs associated with the busiest seasons for fireworks sale, between Christmas and New Year's Day, and a few weeks prior to Independence Day. Rent was paid in the amount of \$1,000 per year for the thirty (30) days of use of Defendant's property for overflow parking. Additionally, the billboard on Defendant's property was, and continues to be, leased by Mr. Loyd for the amount of \$500 per month.

On September 23, 2013, Mr. Loyd purchased approximately 0.67 acre, which included the land area previously leased by Mr. Loyd for overflow parking, for the amount of \$528,876.00, or \$789,367.00/acre or \$18.12/square foot. Mr. Loyd purchased this 0.67-acre land area from Defendant only after learning that the State needed to acquire a portion of his property, including his parking area, for construction of the project. At no time prior to learning of the State's proposed acquisition did Mr. Loyd consider purchasing any land area from Defendant. Rather, Mr. Loyd only needed the land area leased from Defendant to allow for overflow parking associated with the seasonal demands of his fireworks business. It was only when the State's project was announced and project construction became imminent that Mr. Loyd then considered and began making inquiries about acquiring the leased area used for overflow parking from Defendant. There were no other available properties for Mr. Loyd to acquire to replace the land area the State needed for project construction as his property was adjacent to

public right of way on the north and east sides, and Defendant's property adjoined the Loyd property on the south and west sides.

(Internal citations to record omitted.) In support of its motion, the State cited two depositions: one by J. Walter Allen, Defendant's expert real estate appraiser, ("the Allen Deposition") and one by Kevin Bailey, the vice-president of Mr. Loyd's retail fireworks company ("the Bailey Deposition").

The State alleged that Mr. Allen had stated in his deposition that he did not consider the Loyd Sale in his appraisal of the subject property and acknowledged that the Loyd Sale was not an "arm's length sale." With respect to the Bailey Deposition, the State asserted that Mr. Bailey had explained that "the motivation to acquire a portion of Defendant's property was to replace the land area lost as a direct result of the State's taking of property from Loyd" and that "the State's taking from the Loyd property would result in the loss of a significant number of parking spaces located directly in front of the Fireworks City building adjacent to Canada Road." The State consequently requested that the trial court enter an order granting its motion *in limine* to exclude the Loyd Sale from "jury consideration" and prohibit Defendant, Defendant's counsel, and Defendant's witnesses from commenting on or eliciting any evidence related to the Loyd Sale.

Defendant did not submit a response to the State's motion but did file a motion *in limine* to admit as evidence the deed transferring the 0.67-acre parcel to Mr. Loyd ("the Loyd Deed"). Defendant desired to introduce as evidence the Loyd Deed to demonstrate to the jury how its original eighteen-acre property decreased by 0.67 acre. Although the parties filed several additional motions *in limine*, the two related to the Loyd Sale are the only motions relevant to the issue before this Court. Upon conducting a hearing, the trial court entered an order on July 26, 2021, granting the State's motion *in limine* to exclude the Loyd Sale from introduction as evidence. On the same day, the court denied Defendant's motion *in limine* to admit the Loyd Deed, finding specifically that the Loyd Deed had been "made under duress by the buyer and is not reflective of market value."

The trial court conducted a jury trial spanning July 26 through July 28, 2021. On August 10, 2021, the court entered a judgment and final decree, incorporating the jury's unanimous verdict that Defendant be awarded \$765,000.00 as compensation for the State's taking of the subject property and incidental damages. The court, subtracting the sum of \$537,675.00 previously paid by the State, directed the State to deposit \$227,325.00, with any interest accrued since May 13, 2014, into the registry of the clerk of the court for disbursement to Defendant.

On August 31, 2021, Defendant filed a motion for a new trial. Therein, Defendant argued that the trial court erred by granting the State's motion *in limine* to exclude evidence of the Loyd Sale. Defendant posited, *inter alia*, that the exclusion of the Loyd Sale evidence prevented the jury from fully or properly considering the true value of

Defendant's property, thereby depriving Defendant of a fair verdict. Defendant further argued that the jury's award of damages was insufficient and consequently warranted the court considering an additur. The State filed a response to Defendant's motion for a new trial, requesting that the court strike the motion or, alternatively, dismiss the motion. The State primarily contended that Defendant had failed to comply with the local rules of Shelby County by failing to set the motion for a hearing in a timely manner.

Upon conducting a hearing, the trial court entered an order on December 10, 2021, denying Defendant's motion for a new trial and request for an additur. The court determined that Defendant's motion was not well taken and that the \$765,000.00 judgment awarded by the jury was within the range of reasonableness. The court specifically reaffirmed its decision to grant the State's motion *in limine* excluding evidence of the Loyd Sale. In so doing, the court stated that the Loyd Sale was not an arm's-length sale. Defendant timely appealed.

II. Issues Presented

Defendant presents the following issues for this Court's review, which we have restated slightly as follows:

1. Whether the trial court erred by excluding evidence of the Loyd Sale from the jury's consideration.
2. Whether the trial court's exclusion of evidence constitutes plain error.

III. Standard of Review

The Tennessee Supreme Court has previously explained the standard of review applicable to a trial court's exclusion of evidence as follows:

Generally, the admissibility of evidence is within the sound discretion of the trial court. *Otis v. Cambridge Mut. Fire Ins. Co.*, 850 S.W.2d 439, 442 (Tenn. 1992). The trial court's decision to admit or exclude evidence will be overturned on appeal only where there is an abuse of discretion. *Id.* A trial court abuses its discretion "only when it 'applie[s] an incorrect legal standard, or reache[s] a decision which is against logic or reasoning that cause[s] an injustice to the party complaining.'" *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001) (quoting *State v. Shirley*, 6 S.W.3d 243, 247 (Tenn. 1999)).

Mercer v. Vanderbilt Univ., Inc., 134 S.W.3d 121, 131 (Tenn. 2004). With respect to condemnation proceedings, this Court has explained: "The trial court has broad discretion with regard to admitting valuation evidence in condemnation proceedings." *Giles Cnty. v.*

Wakefield, No. 01A01-9307-CV-00335, 1994 WL 312897, at *3 (Tenn. Ct. App. July 1, 1994).

IV. Waiver and Sufficiency of the Record

As a threshold matter, we consider, *sua sponte*, Defendant's failure to comply with the Tennessee Rules of Appellate Procedure and the rules of this Court. *See Beard v. Glass*, No. M2016-02395-COA-R3-CV, 2017 WL 2895937, at *2 (Tenn. Ct. App. July 7, 2017) (addressing *sua sponte* a party's failure to comply with Tennessee Rule of Appellate Procedure 27). Tennessee Rule of Appellate Procedure 27 states in pertinent part:

- (a) Brief of the Appellant. The brief of the appellant shall contain under appropriate headings and in the order here indicated:

* * *

- (7) An argument, which may be preceded by a summary of argument, setting forth:
 - (A) the contentions of the appellant with respect to the issues presented, and the reasons therefor, including the reasons why the contentions require appellate relief, with citations to the authorities and appropriate references to the record (which may be quoted verbatim) relied on[.]

Moreover, Tennessee Court of Appeals Rule 6(b) provides:

No complaint of or reliance upon action by the trial court will be considered on appeal unless the argument contains a specific reference to the page or pages of the record where such action is recorded. No assertion of fact will be considered on appeal unless the argument contains a reference to the page or pages of the record where evidence of such fact is recorded.

“Courts have routinely held that the failure to make appropriate references to the record and to cite relevant authority in the argument section of the brief as required by Rule 27(a)(7) constitutes a waiver of the issue.” *Bean v. Bean*, 40 S.W.3d 52, 55 (Tenn. Ct. App. 2000). This Court has previously admonished that “parties cannot expect this court to do its work for them” and that this Court is “under no duty to verify unsupported allegations in a party’s brief, or for that matter consider issues raised but not argued in the brief.” *Id.* at 56. In addition, our High Court has instructed:

It is not the role of the courts, trial or appellate, to research or construct a litigant's case or arguments for him or her, and where a party fails to develop an argument in support of his or her contention or merely constructs a skeletal argument, the issue is waived.

Sneed v. Bd. of Pro. Resp. of Sup. Ct., 301 S.W.3d 603, 615 (Tenn. 2010). Although we may suspend the requirements of Rule 27 for "good cause," "the Supreme Court has held that it will not find this Court in error for not considering a case on its merits where the plaintiff did not comply with the rules of this Court." *Bean*, 40 S.W.3d at 54-55 (citing *Crowe v. Birmingham & N.W. Ry. Co.*, 1 S.W.2d 781 (Tenn. 1928)).

In this case, Defendant presents one issue: whether the trial court erred by granting the State's motion *in limine* to exclude any evidence concerning or reference to the Loyd Sale during the jury trial. Although Defendant raises a second issue, whether the trial court committed plain error by excluding evidence of the Loyd Sale, we conclude that this is essentially the same issue as the first and that the plain error doctrine, pursuant to Tennessee Rule of Appellate Procedure 36(b), bears no relevancy to this appeal given that Defendant raised this evidentiary issue in its motion for a new trial. *See* Tenn. R. App. P. 36(b) ("When necessary to do substantial justice, an appellate court may consider an error that has affected the substantial rights of a party at any time, even though the error was not raised in the motion for a new trial or assigned as error on appeal."). Here, as the State notes, there is no need for us to consider this issue under the plain error framework because Defendant did not waive this issue by failing to raise it before the trial court.

Defendant argues on appeal that the Loyd Sale was an arm's-length transaction and comparable sale that the jury should have been permitted to consider. In presenting its arguments, Defendant sets forth several assertions without proper reference to evidence within the appellate record. Within Defendant's entire argument section of its appellate brief, it only references the State's motion *in limine* and the trial court's evidentiary order excluding the evidence. There is simply no citation or reference to evidence within the record.

As evinced by the Supreme Court's opinion in *Memphis Hous. Auth. v. Peabody Garage Co.*, 505 S.W.2d 719 (Tenn. 1974), whether a purportedly comparable sale is voluntary or compelled appears to be a fact-intensive inquiry. In *Peabody Garage Co.*, our High Court considered such evidence as, *inter alia*, the fact that the seller rather than the buyer was anxious to consummate the transaction, the buyer did not need the property, the buyer had "ample parking space" already, and the buyer had no immediate plans for the purchased property. *Id.* at 721-22. Based upon the evidence of these facts, our High Court determined that the comparable sale was made voluntarily and affirmed this Court's reversal of the trial court's exclusion of the sale as evidence. *Id.* at 722-23.

In the case at bar, we are presented only with assertions without citation to similar evidence as that presented in *Peabody Garage Co.* Although the parties asserted facts relevant to this inquiry in their pleadings, allegations and averments in evidentiary motions do not constitute evidence. *See Greer v. City of Memphis*, 356 S.W.3d 917, 923 (Tenn. Ct. App. 2010) (“It is well settled that allegations contained in pleadings are not evidence. Also, the arguments of counsel and the recitation of facts contained in a brief, or a similar pleading, are not evidence.”) (internal citations omitted).

Defendant’s lack of references to evidence within the record is likely due to the fact that the record, as prepared by Defendant, initially consisted only of two volumes of technical record containing pleadings and orders; five volumes of transcript from the jury trial, which lack reference to the Loyd Sale pursuant to the trial court’s evidentiary order; and forty-four trial exhibits, again lacking reference to the Loyd Sale. The record as prepared by Defendant did not include a transcript of the evidentiary hearing or the depositions upon which the State relied in support of its motion *in limine*.²

The State referred to this deficiency in the record in its appellate brief, noting that it had filed a motion to supplement the record in an attempt to cure the record’s deficiency concomitantly with the filing of its appellate brief. The State explained:

The deposition transcripts of Kevin Bailey and Walter Allen were not included as a part of the appellate record, but were filed with the trial court and, cited to and relied upon in support of the State’s motion in limine to exclude the Loyd Sale. Contemporaneously with the filing of its brief, the State has filed a motion to supplement the appellate record to include the deposition transcripts of J. Walter Allen and Kevin Bailey.

Defendant neither cited to nor referenced these depositions in its brief, nor attempted to supplement the record with the Allen Deposition or the Bailey Deposition despite these two depositions being two out of three items of evidence presented to the trial court relative to the motion *in limine*. The other piece of evidence presented to the trial court at the evidentiary hearing was the deposition of Dr. Deviah Pagidipati, the “landowner representative,” which is also absent from the record. Moreover, once the Allen and Bailey depositions were included in the record, Defendant did not supplement its brief with respective citations.

Despite the State’s attempt to provide a “fair, accurate and complete account of what transpired” with respect to the relevant issue on appeal, the Allen Deposition is incomplete. *See* Tenn. R. App. P. Rule 24(a). All of the State’s citations to the Allen Deposition, in both its motion *in limine* and appellate brief, are to pages 71, 77, and 133-140. However,

² Although the State supplemented the record with two relevant depositions, these were not included in the record when Defendant submitted its appellate brief and therefore are not cited to or referenced therein.

the Allen Deposition supplemented to the appellate record only contains pages 1-66. Ergo, much of the pertinent deposition testimony is not included in the copy of the Allen Deposition before us on appeal.

We emphasize this Court's previous instruction relative to an appellant's failure to provide a complete record:

It is well-settled that it is the appellant's duty to prepare a record for our review that includes everything contained in the trial court record that is necessary for our examination of the issues presented on appeal. To the extent that the absence of a full record precludes this Court from reviewing the appellant's issues, the trial court's ruling is presumed to be correct.

McAllister v. Rash, No. E2014-01283-COA-R3-CV, 2015 WL 3533679, at *8 (Tenn. Ct. App. June 5, 2015) (internal citation omitted).

Inasmuch as Defendant's brief consists almost entirely of assertions unsupported by specific references to evidence, we decline to review Defendant's issue on appeal, particularly given Defendant's initial failure to provide an adequate record for us to review. We emphasize, as we often have, that "[j]udges are not like pigs, hunting for truffles' that may be buried in the record, or, for that matter, in the parties' briefs on appeal." *Nunley v. Farrar*, No. M2020-00519-COA-R3-CV, 2021 WL 1811750, at *6 (Tenn. Ct. App. May 6, 2021). We conclude that Defendant has waived its issues on appeal by failing to properly provide citations to the record in its appellate brief. We therefore affirm the trial court's order granting the State's motion *in limine* and exclusion of evidence of the Loyd Sale during trial.

V. Conclusion

For the foregoing reasons, we affirm the trial court's order granting the State's motion *in limine*. Costs on appeal are assessed to the appellant, Pagidipati Family General Partnership. We remand this matter to the trial court for collection of costs assessed below.

s/ Thomas R. Frierson, II
THOMAS R. FRIERSON, II, JUDGE