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COMMISSIONER OF TRANSPORTATION *v.* TERESA CHUDY ET AL.
(AC 44764)

Prescott, Suarez and DiPentima, Js.

Syllabus

The defendants property owners filed an application in the trial court, pursuant to statute (§ 13a-76), challenging the assessment of damages filed by the plaintiff Commissioner of Transportation in connection with the partial taking by condemnation of certain of the defendants' real property. The defendants claimed that the damages assessed by the commissioner were inadequate because the taking included all access to the only public street serving their property, thereby rendering the property landlocked. The court rendered judgment reassessing the damages due to the defendants for the taking, and the defendants appealed to this court. *Held* that the trial court did not improperly decline to award severance damages to the defendants as of the date of the taking, as the court's determination that the defendants failed to prove that their property was landlocked on the date of the taking was not clearly erroneous: the court considered all of the evidence before it and credited the expert testimony of the commissioner's appraiser that access to the road from the defendants' property had not been restricted by the taking, and it did not credit the contrary expert testimony of the defendants' appraiser, which it determined to be inaccurate primarily as a result of the appraiser's failure to undertake a detailed review of the pertinent statute (§ 13a-73) and relevant documents relating to the construction project that prompted the partial taking.

Argued February 27—officially released May 9, 2023

Procedural History

Notice of condemnation of certain real property of the named defendant et al., brought to the Superior Court in the judicial district of Middlesex, where the named defendant et al. filed an application for the reassessment of damages; thereafter, the matter was tried to the court, *Hon. Barbara M. Quinn*, judge trial referee; judgment awarding certain damages to the named defendant et al., from which the named defendant et al. appealed to this court. *Affirmed*.

C. Scott Schwefel, with whom, on the brief, was *Mark S. Shipman*, for the appellants (named defendant et al.).

Cara C. Tonucci, assistant attorney general, with whom were *John Russo*, assistant attorney general, and, on the brief, *William Tong*, attorney general, for the appellee (plaintiff).

Opinion

PER CURIAM. The defendants Teresa Chudy and Michal Chudy appeal from the judgment of the trial court awarding them damages in the amount of $2000 for the taking by eminent domain of a portion of their real property (partial taking) by the plaintiff, the Commissioner of Transportation (commissioner).[1] On appeal, the defendants claim that the court erred by not awarding severance damages as of the date of the partial taking. We affirm the judgment of the trial court.

The following facts and procedural history are relevant to this appeal. The defendants own property located at 170 Coles Road in the town of Cromwell. The property consists of a vacant, wooded lot, 1.046 acres in size in a residential zone. On September 7, 2018, the commissioner filed a notice of condemnation and assessment of damages (notice of condemnation), pursuant to General Statutes § 13a-73 (b),[2] for the partial taking of a narrow strip of land along the entire frontage of the defendants' parcel, together with certain easements, in connection with a road widening and drainage improvement project in Cromwell, which involved the takings of narrow strips of roadside land from property owners abutting Coles Road. The partial taking of the defendants' property was for an area of land in fee of 620 square feet, a slope easement of 192 square feet for the purpose of sloping the property for the safety of the highway, and an easement to excavate a ditch within a 94 square feet area. In the notice of condemnation, the commissioner assessed damages in the amount of $3500.

The defendants filed an application in the Superior Court pursuant to General Statutes § 13a-76 for a reassessment of damages, claiming that the damages were inadequate because the commissioner took "access to the only public street serving their property," thereby rendering their property landlocked. The defendants argued that they were entitled to damages in the amount of $91,000, which allegedly represented the diminution in value of their property following the partial taking.

Hearings were held on the matter over the course of several days in September, 2020, and January and March, 2021,[3] at which the court heard testimony from various witnesses, including the commissioner's appraiser, Michael Aletta, and the defendants' appraiser, Marc Gottesdiener. In a memorandum of decision dated May 19, 2021, the court rendered judgment awarding the defendants damages in the amount of $2000. In making that determination, the court specifically credited the analysis and appraisal presented by Aletta, who provided expert testimony that the defendants' access to Coles Road from their property had not been restricted. Specifically, Aletta demonstrated, by use of a map showing the area of the taking and photographs, that the

defendants, either before or after the taking, could have applied to the town for a curb cut, which would have enabled them to secure access to the road. He also explained that, if the town had restricted access, the condemnation notice would have referenced subsection (f) of § 13a-73, rather than subsection (b). Aletta also testified concerning the appraised value of the defendants' property both before and after the condemnation, which resulted in his assessment of damages of $2000, and he specifically stated that the value of the remaining land was not affected by the condemnation.

Gottesdiener also provided expert testimony regarding the value of the property prior to and after the partial taking. He testified that, prior to the taking, the property had a value of $101,000.[4] He also testified that, after the taking, the defendants' property was landlocked with no right of access to a public road, as the commissioner's taking "took away all the frontage and access to Coles Road" from the defendants' parcel. That determination was based, in part, on his belief that guardrails along Coles Road ran across the entire length of the defendants' parcel and the fact that no easements or rights-of-way had been reserved to the defendants. As a result, he opined that the diminution in value to the defendants' property after the taking was $91,000, leaving the property with a value of $10,000 after the taking. The court, however, found that Gottesdiener's underlying assumption regarding the guardrails was inaccurate, as the guardrails, in fact, "intruded only a little distance, if at all, on the property frontage [of the defendants' parcel] on Coles Road . . . ."[5] Moreover, the court found that Gottesdiener never reviewed the taking statute referenced in the notice of condemnation. The court stated: "Had [Gottesdiener] reviewed the statute referenced in the condemnation notice and inquired further, the relevant details as well as the detailed construction maps, [a] memorandum of agreement [between the commissioner and] the town . . . and other documents would have been made available to him for his review. This detailed inquiry . . . the [defendants'] appraiser did not undertake. Those additional publicly available documents and facts would have led him to a different conclusion than the one he reached, and the court finds it cannot accept his ultimate conclusions as accurate."

The court also heard testimony from the engineer for the town of Cromwell, who testified about the defendants' access to Coles Road. That testimony was consistent with Aletta's testimony and was not contradicted by the defendants. The court, which expressly rejected the "drastic conclusions" of Gottesdiener, concluded that the defendants "had the right to obtain a curb cut for access to Coles Road both before and after the taking, dependent only upon the presentation of appropriate plans." Accordingly, the court found that the defendants had failed to meet their burden of proving

that their parcel was landlocked after the taking. Moreover, the court concluded that the defendants, who had planned to build a home on their property, "could still put their property to its highest and best use as a buildable residential lot with access to Coles Road." This appeal followed.

On appeal, the defendants claim that the court erred by not awarding severance damages as of the date of the taking. According to the defendants, on the date of the taking, the remaining portion of the premises was landlocked, which rendered their property essentially valueless. Thus, the defendants' challenge to the court's measure of damages is premised on their assertion that the court improperly rejected their claim that their parcel was landlocked at the time of the taking. Before addressing the defendants' claim, we set forth our standard of review and general principles that govern condemnation cases.

"In a condemnation matter, it is the condemnee's burden to show loss or damages in excess of the condemnor's figures." (Internal quotation marks omitted.) *Commissioner of Transportation* v. *Larobina*, 92 Conn. App. 15, 27, 882 A.2d 1265, cert. denied, 276 Conn. 931, 889 A.2d 816 (2005). "Damages recoverable for a partial taking are ordinarily measured by determining the difference between the market value of the whole tract as it lay before the taking and the market value of what remained of it thereafter, taking into consideration the changes contemplated in the improvement and those which are so possible of occurrence in the future that they may reasonably be held to affect market value." (Internal quotation marks omitted.) *Cappiello* v. *Commissioner of Transportation*, 203 Conn. 675, 679, 525 A.2d 1348 (1987). "When only a portion of a party's property is taken, the landowner is entitled not only to compensation for the value of the property taken, but also to severance damages for the diminution in the value of the landowner's remaining property that the severance of a portion of the property causes." (Internal quotation marks omitted.) *Commissioner of Transportation* v. *Larobina*, supra, 23.

"Valuation is a matter of fact to be determined by the trier's independent judgment. . . . In determining fair market value, the trier may select the method of valuation most appropriate to the case before it; *Laurel, Inc.* v. *Commissioner of Transportation*, 180 Conn. 11, 37–38, 428 A.2d 789 (1980); and has the right to accept so much of the testimony of the experts and the recognized appraisal methods which they employed as [the court] finds applicable; [the court's] determination is reviewable only if [it] misapplies, overlooks, or gives a wrong or improper effect to any test or consideration which it was [its] duty to regard." (Citation omitted; internal quotation marks omitted.) *Cappiello* v. *Commissioner of Transportation*, supra, 203 Conn. 679–80. On appeal,

this court must "determine whether the decision of the trial court is clearly erroneous." Id., 680. "A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." (Internal quotation marks omitted.) *New London* v. *Picinich*, 76 Conn. App. 678, 685, 821 A.2d 782, cert. denied, 266 Conn. 901, 832 A.2d 64 (2003).

In the present case, the court's determination that the defendants failed to meet their burden of proving that their parcel was landlocked for purposes of establishing their claimed entitlement to compensation in the amount of $91,000 was premised on the court's credibility assessment of the expert testimony provided. Specifically, the court did not accept the testimony of the defendants' appraiser and, instead, found "credible the analysis and appraisal presented by the commissioner's appraiser . . . ."

"[I]t is well settled that [t]he weight to be given the evidence and the credibility of the witnesses are within the sole province of the trial court. . . . The credibility and the weight of expert testimony is judged by the same standard, and the trial court is privileged to adopt whatever testimony [it] reasonably believes to be credible. . . . *United Technologies Corp.* v. *East Windsor*, 262 Conn. 11, 26, 807 A.2d 955 (2002). [T]he trial judge . . . is free to accept or reject, in whole or in part, the testimony offered by either party. . . . Because it is the trial court's function to weigh the evidence and determine credibility, we give great deference to its findings. . . . In reviewing factual findings, [w]e do not examine the record to determine whether the [court] could have reached a conclusion other than the one reached. . . . Instead, we make every reasonable presumption . . . in favor of the trial court's ruling. . . . Where the trial court rejects the testimony of a [party's] expert, there must be some basis in the record to support the conclusion that the evidence of the [expert witness] is unworthy of belief." (Citations omitted; internal quotation marks omitted.) *Cavanagh* v. *Richichi*, 212 Conn. App. 402, 424–25, 275 A.3d 701 (2022); see also *Gaughan* v. *Higgins*, 186 Conn. App. 618, 623, 200 A.3d 1161 (2018) (although "credibility determinations are beyond the reach of an appellate court . . . the trial court cannot arbitrarily disregard, disbelieve or reject an expert's testimony in the first instance" (citation omitted; internal quotation marks omitted)), cert. denied, 330 Conn. 968, 200 A.3d 188 (2019), and cert. denied, 330 Conn. 968, 200 A.3d 699 (2019).

On the basis of the record before us, we conclude that the court did not arbitrarily disregard the expert testimony of Gottesdiener. It is clear from the record that the court considered all of the evidence before it

but chose to credit the appraisal and analysis provided by Aletta, who testified that access to the road from the defendants' property had not been restricted, nor had there been any impact on the remaining land, as a result of the partial taking; it did not accept the conclusions to the contrary of Gottesdiener, which it found were inaccurate primarily as a result of his failure to undertake a detailed review of the condemnation statute and relevant documents relating to the construction project that prompted the partial taking. See *Arroyo* v. *University of Connecticut Health Center*, 175 Conn. App. 493, 518, 167 A.3d 1112 ("[w]here expert testimony conflicts, it becomes the function of the trier of fact to determine credibility and, in doing so, it could believe all, some or none of the testimony of either expert" (internal quotation marks omitted)), cert. denied, 327 Conn. 973, 174 A.3d 192 (2017). The court also specifically found, "from all of the credible evidence, that the [defendants] had the right to obtain a curb cut for access to Coles Road both *before and after* the taking . . . ." (Emphasis added.) It was within the exclusive province of the court, as the trier of fact, to make those credibility determinations, which we may not second-guess.[6] See *Abrams* v. *PH Architects, LLC*, 183 Conn. App. 777, 804, 193 A.3d 1230 ("it is outside the role of this court to second-guess the credibility determinations of the trier of fact"), cert. denied, 330 Conn. 925, 194 A.3d 290 (2018). Therefore, the trial court's determination that the defendants failed to prove that their property was landlocked on the date of the partial taking is not clearly erroneous, and the court did not improperly decline to award severance damages.

The judgment is affirmed.

[1] A notice of condemnation and assessment of damages filed by the commissioner also named AT&T, doing business as Frontier Communications, and the town of Cromwell as having an interest in the subject property by way of easements. No appearance has been filed on behalf of either of those additional parties. In this opinion, our references to the defendants are to Teresa Chudy and Michal Chudy.

[2] Although § 13a-73 (b) was the subject of a technical amendment in 2018; see Public Acts 2018, No. 18-62, § 1; that amendment has no bearing on the merits of this appeal. In the interest of simplicity, we refer to the current revision of the statute.

[3] Specifically, the court held a hearing on September 22, 2020, at the conclusion of which the parties rested. Thereafter, on January 7, 2021, the court issued an order requesting the parties to present argument regarding whether the matter should be opened for the purpose of taking evidence on the issue of a time limited taking of the subject property. Following argument on January 28, 2021, the court opened the evidence, and on March 29, 2021, the plaintiff presented testimony from two more witnesses.

[4] Although Gottesdiener valued the property prior to the taking at $101,000, during the hearing on September 22, 2020, the defendants' counsel stipulated to the $125,000 pretaking value of the property determined by Aletta.

[5] At oral argument before this court, counsel for the defendants conceded that there was evidence in the record supporting the court's finding regarding the guardrails and, thus, withdrew any claim that the court's finding was clearly erroneous.

[6] Although, on appeal, the defendants argue that the portion of their premises not taken was landlocked, in doing so they fail to address the credibility determinations made by the court. Instead, they focus their argument on their claim that this case is governed by *Laurel, Inc.* v. *Commissioner of Transportation*, supra, 180 Conn. 11, which the trial court found was factu-

ally distinguishable from the present case. We agree with the court's conclusion that *Laurel, Inc.*, does not apply to the present case, as the subject property in *Laurel, Inc.*, was taken for the improvement of a limited access highway, which "may be broadly described as a highway [that] motorists can enter and leave only at designated interchanges," and for which the right of direct access by abutting landowners is restricted; *State* v. *Lane*, 4 Conn. Cir. 368, 374, 232 A.2d 518 (1967); see also *Laurel, Inc.* v. *Commissioner of Transportation*, supra, 28 ("[t]here are no abutter's rights to a limited access highway"); whereas, in the present case, Coles Road is a public roadway, for which abutting landowners have a common-law right of access or egress over the roadway. See *State* v. *Lane*, supra, 374; see also *Cohen* v. *Hartford*, 244 Conn. 206, 209 n.8, 710 A.2d 746 (1998). Therefore, the defendants' reliance on *Laurel, Inc.*, is unavailing.