

RENDERED: MAY 17, 2019; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2014-CA-001882-MR

WILLIAM ROBERT HAGAN,  
JAMES S. HAGAN,  
DELBERTA A. HAGAN,  
RAYMOND E. DOBSON,  
BETTY JANE HAGAN DOBSON,  
JOHN W. HAGAN,  
LORETTA H. HAGAN,  
LARRY L. HAGAN,  
CATHERINE K. HAGAN,  
ROSE MARY GRAVELL,  
AND LILIA HAGAN

APPELLANTS

ON REMAND FROM THE KENTUCKY SUPREME COURT  
APPEAL FROM HARDIN CIRCUIT COURT  
v. HONORABLE KELLY MARK EASTON, JUDGE  
ACTION NO. 12-CI-02110

COMMONWEALTH OF KENTUCKY,  
TRANSPORTATION CABINET,  
DEPARTMENT OF HIGHWAYS

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CLAYTON, CHIEF JUDGE; ACREE AND NICKELL, JUDGES.

NICKELL, JUDGE: In this eminent domain condemnation action, William Robert Hagan, James S. Hagan, Delberta A. Hagan, Raymond Dobson, Betty Jane Hagan Dobson, John W. Hagan, Loretta H. Hagan, Larry L. Hagan, Catherine K. Hagan, Rose Mary Gravell, and Lilia Hagan (collectively “Appellants”) appeal from the October 21, 2014, final order and judgment of the Hardin Circuit Court condemning a portion of their property for highway purposes and setting appropriate compensation for the taking of the property. A panel of this Court dismissed the action for failure to name an indispensable party. On discretionary review, the Supreme Court of Kentucky reversed and remanded the matter for consideration of the merits. Following a careful review, we affirm.

On November 5, 2012, the Commonwealth of Kentucky, Transportation Cabinet, Department of Highways (“Cabinet”), filed a condemnation petition seeking to acquire 4.157 acres for roadway purposes out of a 20.978-acre tract. Appellants all own a fee simple undivided fractional interest in the land sought to be condemned. All defendants were served, admitted their interests in and to the subject property, participated in discovery, and took exception to the amount of compensation awarded by the commissioners for the property being condemned.

The matter proceeded to a jury trial for the sole purpose of determining the value of the property before and after the taking, and the

calculated condemnation value. On October 21, 2014, the trial court entered its final order and judgment conforming to the jury's determination. The judgment granted the Cabinet fee simple title to the subject property and set the amount of compensation due from the Cabinet for the taking. Appellants timely filed a notice of appeal challenging the compensation awarded by the jury.

On motion of the Cabinet, this Court dismissed the appeal for failure to name Edward Gravell, the husband of Rose Mary Gravell, as a party, reasoning his interest in the property would be impacted by any decision of this Court, thereby making him an indispensable party. Our Supreme Court granted discretionary review and held Edward Gravell, as the holder of a vested but inchoate right of curtesy, was not an indispensable party. The Supreme Court reversed and remanded the matter to this Court for further consideration. *Hagan v. Transportation Cabinet*, 559 S.W.3d 783 (Ky. 2018). Based on the Supreme Court's directive, we now address the merits of the issues raised on appeal.

Sections 13 and 242 of the Kentucky Constitution permit the public condemnation of private property, but only for a valid "public use," and only upon prior payment of "just compensation." Just compensation, under Kentucky law, "is the difference in market value of the tract before and after the taking." *Commonwealth, Department of Highways v. Sherrod*, 367 S.W.2d 844, 857 (Ky. 1963). Where the public authority condemns an entire tract, this measure translates simply as the market value of the tract immediately before the condemnation because, obviously, the landowner retains no part of it after the condemnation. Where only a portion of the tract

is condemned, the measure is the market value of the entire tract immediately before the condemnation less the market value of the remainder retained by the landowner immediately after the condemnation.

*Bianchi v. City of Harlan*, 274 S.W.3d 368, 372 (Ky. 2008). Here, it is uncontested the taking by the Cabinet was for a public purpose. The sole issue is whether the award of damages constitutes just compensation.

Appellants first contend the Cabinet's strategic decision to call only one of its two appraisers who had valued the subject property<sup>1</sup> was prejudicial to the Appellants' case. The Cabinet informed Appellants in a pretrial filing of its intent to call only William Cox as an expert appraiser at trial. In response, Appellants attempted to add the second appraiser to their witness list to which the Cabinet objected. The trial court reserved ruling on the matter until trial. Appellants did not call the second appraiser or otherwise raise the issue during trial. Further, Appellants admit the Cabinet—like any other litigant—has the right to control presentation of its own case, including which witnesses to call, but assert the failure to present the jury with testimony from both appraisers was contrary to the duty of the Cabinet to provide just compensation for property acquired by eminent domain. No authority is cited supportive of Appellants' argument.

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<sup>1</sup> It appears the appraiser who did not testify provided a higher valuation of the subject property than the appraiser who was called to testify.

Our courts have established that an alleged error may be deemed waived where an appellant fails to cite any authority in support of the issues and arguments advanced on appeal. *See Pierson v. Coffey*, 706 S.W.2d 409, 413 (Ky. App. 1986). “[W]ithout any argument or citation of authorities, [an appellate] [c]ourt has little or no indication of why the assignment represents an error.” *State v. Bay*, 529 So.2d 845, 851 (La. 1988). It is not our function as an appellate court to research and construct a party’s legal arguments, and we decline to do so here. *See, e.g., Doherty v. City of Chicago*, 75 F.3d 318, 324 (7th Cir.1996) (citations omitted); CR 76.12(4)(c)(v).

*Hadley v. Citizen Deposit Bank*, 186 S.W.3d 754, 759 (Ky. App. 2005).

Accordingly, Appellants are entitled to no relief based on this allegation of error.

Finally, Appellants challenge the trial court’s limitation of the cross-examination of Cox. During trial Appellants attempted to utilize appraisals performed by Cox of other parcels of nearby property to impeach his credibility. Appellants believed these other appraisals would reveal very large differences in valuations of damages for properties situated near the subject property. The trial court permitted Appellants to question Cox regarding the other appraisals, including inquiries about the values of the properties before and after a partial taking by the Cabinet, but would not permit Cox to testify as to the amount actually paid by the Cabinet for any taking. No other limitations on cross-examination appear in the record. Nevertheless, Appellants assert the limitation prejudiced the jury as evidenced by the relatively small amount of damages it awarded. We disagree.

The trial court consistently ruled throughout the proceedings that other appraisals could be used for impeachment purposes, but the prices paid for other parcels associated with this roadway project were inadmissible pursuant to *Stewart v. Commonwealth*, 337 S.W.2d 880 (Ky. 1960). Appellants were permitted to question Cox under this limited restriction. Appellants chose to inquire as to only a single appraisal regarding a neighboring parcel and elicited testimony of the values of the property before and after the Cabinet's taking. These values were substantially higher than those set for the subject property. However, no questions were posed regarding the reasoning for the elevated appraised value of the neighboring parcel.

Our review reveals the trial court properly relied on *Stewart* in concluding the prices paid by the Cabinet for similar properties does not constitute competent evidence. Any such testimony was correctly excluded. Further, the jury's award of damages was higher than that claimed by Cox, clearly evincing it weighed Cox's testimony and credibility in making its valuation decision. We discern no error.

For the foregoing reasons, the judgment of the Hardin Circuit Court is  
AFFIRMED.

ACREE, JUDGE, CONCURS.

CLAYTON, CHIEF JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANT:

John W. Wooldridge  
Shepherdsville, Kentucky

BRIEF FOR APPELLEE:

Geraldine M. Guerin  
Elizabethtown, Kentucky