

NOTICE: THIS OPINION HAS NOT BEEN APPROVED FOR PUBLICATION IN THE PERMANENT LAW REPORTS.

Court of Appeals of Nebraska.

GRACELAND PARK CEMETERY COMPANY,
Appellant,
v.
STATE of Nebraska, Department of Roads,
Appellee.

No. A-90-021.

March 17, 1992.

Appeal from the District Court for Douglas County;
James M. Murphy, Judge.

John A. Rickerson, of Rickerson, Welch & Kruger,
for appellant.

Robert M. Spire, Attorney General, and [Gary R. Welch](#)
for appellee.

Before CONNOLLY, [HANNON](#) and [IRWIN](#), JJ.

[HANNON](#), Judge.

*1 The State of Nebraska, Department of Roads (State), through condemnation proceedings, acquired an undeveloped portion of Graceland Park Cemetery Company (Graceland Park) property for highway construction purposes. The appraised value of the land taken was \$9,931, which Graceland Park appealed in Douglas County District Court, alleging that the sum was inadequate. The district court directed a verdict in favor of the State and denied Graceland Park's motion for a new trial. Graceland Park now appeals.

Issues on appeal are whether the district court erred in finding that the plaintiff failed to make out a prima facie case and in directing a verdict in favor of the defendant, and whether the district court erred in denying the plaintiff's motion for a new trial.

On appeal from an order of the trial court dismissing an action at the close of plaintiff's evidence, the

appellate court must determine whether the cause of action was proved and must accept the plaintiff's evidence as true, together with reasonable inferences drawn from that evidence; if there is any evidence in favor of the party against whom the motion is made, the case may not be decided as a matter of law. [Bloomfield v. Nebraska State Bank](#), 237 Neb. 89, 465 N.W.2d 144 (1991).

The Nebraska Supreme Court, in [Graceland Park Cemetery Co. v. City of Omaha](#), 173 Neb. 608, 612, 114 N.W.2d 29, 32 (1962) (*Graceland Park I*), set forth the following formula for determining the value of cemetery property taken in condemnation proceedings:

An appropriate method for finding the value of land taken, which was being used for cemetery purposes, is to determine the value of the burial lots or grave sites taken by applying a unit value based on the average sales price per lot or grave site in the adjoining used section of the cemetery, less the reasonable cost of development, sales, maintenance, administration, perpetual care, and any other expense affecting its value. The unit value thus determined, multiplied by the number of lots or grave sites taken, less a reduction to present worth for the deferred realization over the selling period, will constitute a guide to the jury in determining the value of the property taken.

The cemetery company has the burden of establishing the value of the land taken. *Graceland Park I*. Graceland Park has failed to meet this burden under the above formula. Graceland Park did not arrive at the per unit price of the gravesites taken by determining average sales price of adjacent gravesites, but relied upon the testimony of its owner and manager, Allan Beavers, that gravesites were selling for an average of \$450 each at the time of condemnation.

The record shows that the only deduction Graceland Park made in arriving at the net unit value of the property was \$2,000 for platting the area, a "rough guess" by Beavers. No deductions were taken for sales expenses, maintenance, administrative costs, salaries, or other expenses affecting the value of the property, as directed by *Graceland Park I*. Graceland Park also made no deduction for the cost of tree and shrub removal, even though many trees and shrubs were seen in the photographs of the condemned property entered into evidence.

*2 Graceland Park calculated the number of gravesites taken by simply dividing the number of

square feet taken by 36 square feet, the number of square feet in a grave space, and determined that 267 gravesites were taken. No allowance was made for existing roadways, trees, and shrubs or for the fact that the space taken is not square and not easily divisible by the dimensions of a gravesite. It strains credibility for Graceland Park to, in effect, allege that every square foot of the property taken could be used as burial space. Finally, Graceland Park failed to reduce the value of the land taken to a present value, as required by the *Graceland Park I* formula.

Even accepting all the plaintiff's evidence as true, as we are required to do, it is apparent that Graceland Park failed to prove its cause of action under the formula of *Graceland Park I*. Graceland Park failed to establish a net unit price, as required by the formula, and failed to reduce the net unit price to present value. The evidence presented by Graceland Park was purely speculative and did not establish a prima facie case. Therefore, the State is entitled to a directed verdict. [Schroeder v. Bartlett, 129 Neb. 645, 262 N.W. 447 \(1935\).](#)

In its brief, Graceland Park did not discuss any error by the district court in overruling the plaintiff's motion for a new trial, and this error is therefore not considered. [Chadron Energy Corp. v. First Nat. Bank, 236 Neb. 173, 459 N.W.2d 718 \(1990\); Hiway 20 Terminal, Inc. v. Tri-County Agri- Supply, Inc., 235 Neb. 207, 454 N.W.2d 671 \(1990\).](#)

The judgment of the district court is affirmed.

AFFIRMED.

1992 WL 76118, 1 Neb.C.A. 46, 1992 WL 76118 (Neb.App.)

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