

STATEMENT OF LEGAL ISSUES

I. DID THE RUPERTS SUBMIT SUFFICIENT EVIDENCE ON THE MOTIONS FOR SUMMARY JUDGMENT TO PROVE EACH ELEMENT ON INVERSE CONDEMNATION?

The trial court held that the Ruperts were entitled to partial summary judgment on inverse condemnation liability and denied the City's Motion for Summary Judgment on inverse condemnation. S.D. Const., Article VI, Section 13. *Darnall v. State*, 79 S.D. 59, 108 N.W.2d 201 (1961); *Hurley v. State*, 82 S.D. 156, 143 N.W.2d 722 (1966); *City of Brookings v. Mills*, 412 N.W.2d 497 (S.D. 1987); and *Krier v. Dell Rapids Township*, 2006 S.D. 10, 709 N.W.2d 841.

II. IS THE PROPER MEASURE OF DAMAGES IN AN INVERSE CONDEMNATION CLAIM THE DIFFERENCE IN THE FAIR MARKET VALUE OF THE PROPERTY BEFORE AND AFTER THE INJURY?

The trial court held in the negative and ruled that the proper measure of damages was the cost of replacement of the damaged trees, loss of shade, ornamental value of the trees, and loss of aesthetics. S.D. Const. Article VI, Section 13. *Mills, supra*.

III. IS THE FAIR MARKET VALUE OF THE RUPERTS' PROPERTY RELEVANT AND ADMISSIBLE EVIDENCE ON THE ISSUE OF THE RUPERTS' DAMAGES?

The trial court held in the negative. *St. John v. Peterson*, 2011 S.D. 58, 804 N.W.2d 71; and *Supreme Pork, Inc. v. Master Blaster, Inc.*, 2009 S.D. 20, 764 N.W.2d 474.

IV. SHOULD THE TESTIMONY OF PLAINTIFFS' EXPERT, JACK WILLSON, BEEN EXCLUDED FROM THE JURY?

The trial court held in the negative. *State v. Guthrie*, 2001 S.D. 61, 627 N.W.2d 401; *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786 (1993); *State v. Hofer*, 512 N.W.2d 482 (S.D. 1994); and *Mills, supra*.

- V. SHOULD THE JURY HAVE BEEN INSTRUCTED ON THE DIFFERENCE IN THE FAIR MARKET VALUE OF THE RUPERTS' PROPERTY BEFORE AND AFTER THE INJURY AS A PROPER MEASURE OF DAMAGES AND WAS IT ERROR TO INSTRUCT THE JURY THAT DAMAGES COULD BE AWARDED FOR COST OF CLEAN UP, COST OF REPLACEMENT AND FOR THE LOSS OF SHADE, ORNAMENTAL VALUE, AESTHETIC VALUE AND ENJOYMENT?**

The trial court held in the negative. S.D. Const. Article VI, Section 13; *Mills, supra*; and *Ryken v. Blummer*, 307 N.W.2d 865 (S.D. 1981).

- VI. SHOULD EVIDENCE HAVE BEEN EXCLUDED FROM THE JURY REGARDING THE FACT THAT DR. BERT CREGG WAS ONE OF THE CITY'S CONSULTING EXPERTS?**

The trial court held in the negative. *Rapid City v. Baron*, 88 S.D. 693, 227 N.W.2d 617 (1975).

- VII. IS THE CITY PROTECTED BY SOVEREIGN IMMUNITY AGAINST TORT PROPERTY DAMAGE CLAIMS NOT COVERED BY INSURANCE?**

The trial court held in the negative. *Cromwell v. Rapid City Police Department*, 2001 S.D. 100, 632 N.W.2d 20.