

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

CITY OF CINCINNATI,	:	APPEAL NO. C-140382
	:	TRIAL NO. A-1306288
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
ROBERT W. ROUSE,	:	
and	:	
GOPIKA S. ROUSE,	:	
Defendants-Appellants,	:	
and	:	
WESTWOOD HOMESTEAD SAVINGS	:	
BANK,	:	
CITIMORTGAGE, INC.,	:	
and	:	
THE HUNTINGTON NATIONAL	:	
BANK,	:	
Defendants.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. See S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Plaintiff-appellee city of Cincinnati instituted an appropriation proceeding pursuant to R.C. Chapter 163 against defendants-appellants Robert and Gopika Rouse. The Rouses owned an apartment building along Martin Luther King Drive, which was one of several buildings that were taken as part of a road construction project. The city's appraiser, Jack York, appraised the property at \$198,080. The Rouses' appraiser, Debi Wilcox, appraised the property at \$324,815. Wilcox used

comparable properties from other communities for the valuation, including the Hyde Park, Mt. Lookout, and Oakley neighborhoods of Cincinnati.

The case proceeded to a jury trial, during which the city introduced two appraisals of the apartment building next to the Rouse property (hereinafter “the Faroqui property”). One appraisal was done by Wilcox, and the other was done by another member of York’s firm. Both valuations of the Faroqui property used the same comparable properties and reached similar valuation results. But Wilcox valued the Faroqui property significantly lower than she valued the Rouse property, while the two York firm valuations were relatively consistent.

During the course of the trial, the jury was taken to view the area, during which it was instructed that the area had declined somewhat during the course of the road construction and litigation. The view did not include the interior of the property, which had suffered significant damage due to vandalism. At the conclusion of the trial, the jury awarded the Rouses \$200,000 in compensation. In three assignments of error, the Rouses now appeal.

The Rouses first argue that the trial court erred when it admitted the city’s appraisal of the Faroqui property because the appraisal report was hearsay. But they did not make that argument below. When the evidence was first introduced, they objected because the property was taken by eminent domain and “not a fair market value transaction.” This argument was essentially that the evidence was not relevant. At the conclusion of the trial, when the reports were being marked and accepted as exhibits, their counsel made a similar argument, contending that the report “bears no relevance to the value of my client’s property.”

It is well established that a party cannot raise new issues or legal theories for the first time on appeal. *Stores Realty Co. v. Cleveland*, 41 Ohio St.2d 41, 322 N.E.2d 629 (1975). Failure to raise this issue before the trial court operates as a

waiver of the Rouses' ability to assert it for the first time on appeal. *See State ex rel. Zollner v. Indus. Comm.*, 66 Ohio St.3d 276, 611 N.E.2d 830 (1993).

By failing to raise that issue below, the Rouses precluded the trial court from addressing the issue in the first instance, and left this court with nothing to review. Additionally, by failing to make the argument below, the Rouses also precluded the trial court from correcting the problem. For these reasons, and since the Rouses did not argue that the admission of the evidence was plain error, the Rouses cannot make this argument for the first time on appeal. We overrule their first assignment of error.

In their second assignment of error, the Rouses argue that the trial court erred when ordering a jury view of the property. In an appropriation proceeding, the trial court must order a jury view if a party requests it. *See* R.C. 163.12. The only reason for denying the request is if the view would show the property "in an unfair light." *Id.*

The Rouses claim that the view showed the property in an unfair light, because of the damage done by vandals to the interior. When the trial court ordered the jury view, it concluded that "it was appropriate for the jury to view the general area as well as the specific property of the landowner." The trial court said that the jury was "going to be instructed before they go on the jury view that the condition of the property has changed since the date of take and that they are to consider the values of the two sides of the case based on the date of the take as the last date and not any condition after that." Also, the court ordered that "there was not to be an internal view by the jury, just the external."

In light of the instructions given by the trial court, we cannot say that the jury view showed the property in an unfair light. The trial court was required to allow the jury view once it was requested, and did not err in doing so. We overrule the Rouses' second assignment of error.

Finally, the Rouses argue that the trial court erred when it admitted the appraisals of the Faroqui property. Relevance and admissibility of evidence are matters within the trial court's discretion. *State v. Sutorius*, 122 Ohio App.3d 1, 8, 701 N.E.2d 1 (1st Dist.1997). This court will not easily find that a trial court abused its discretion. An abuse of discretion “connotes more than an error of law or of judgment; it implies an unreasonable, arbitrary or unconscionable attitude on the part of the court.” *Pembaur v. Leis*, 1 Ohio St.3d 89, 91, 437 N.E.2d 1199 (1982).

The Rouses claim that the appraisals are not competent because “competent evidence of value means an actual sale on the open market. An appraiser’s opinion about a separate property does not fit that description.” But this court has said that “in determining the amount of compensation, or the market value of the property taken, each case must be considered in the light of its own facts, and every element that can fairly enter into the question of value, and which an ordinarily prudent business [person] would consider before forming [his] judgment in making a purchase, should be considered.” *City of Cincinnati v. Banks*, 143 Ohio App.3d 272, 757 N.E.2d 1205 (1st Dist.2001), quoting *Sowers v. Schaeffer*, 155 Ohio St. 454, 459, 99 N.E.2d 313 (1951). As the city argues, “a prudent prospective buyer considering the Rouses’ property would want to know the fair market value appraisals of the virtually identical property next door.”

When ruling on the objection to the admission of the reports, the trial court noted that both experts were allowed to talk about the appraisals and give their opinions on how comparable the properties and their values were. Wilcox testified that the Rouses’ property had been significantly improved as compared to the Faroqui property. The trial court also said that the attorneys were free to comment on the value of the reports.

As this court has noted, “[a] decision is unreasonable if there is no sound reasoning process that would support that decision. It is not enough that the

reviewing court, were it deciding the issue de novo, would not have found that reasoning process to be persuasive, perhaps in view of countervailing reasoning processes that would support a contrary result. An abuse of discretion implies that a decision is both without a reasonable basis and is clearly wrong.” (Citations omitted.) *In re E.A.*, 1st Dist. Hamilton No. C-130041, 2014-Ohio-280, ¶ 4, quoting *Aetna Better Health, Inc. v. Colbert*, 10th Dist. Franklin No. 12AP-720, 2012-Ohio-6206, ¶ 21.

In this record, it cannot be said that the admission of the evidence was without a reasonable basis or clearly wrong. We overrule the Rouses’ third assignment of error. And having considered and overruled all three assignments of error, we affirm the judgment of the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., MOCK and STAUTBERG, JJ.

To the clerk:

Enter upon the journal of the court on June 24, 2015,
per order of the court _____.
Presiding Judge