it was wet. I did have on my seat belt and I did have my lights on and when I got to a certain point—and I believe it was just about maybe near where the incline started to level out—my brakes weren't holding, I wasn't going to stop. I could see that I was not going to stop and the light was red and in order to avoid—traffic was coming southbound, and in order to try to avoid going out into the intersection and into the oncoming traffic, I turned my wheels to the right and had the accident ..." Defendant Diggs also testified that she had been paying attention prior to the accident and was very much surprised when she realized she was not going to be able to stop.

Plaintiff introduced evidence of an internal investigation by defendant Southern Bell which concluded that when defendant Diggs applied brakes to slow down the vehicle began to hydroplane, causing a loss of control and the collision. An employee of Southern Bell, who participated in the internal investigation of the collision, opined that defendant Diggs "was driving too fast, because the vehicle didn't stop and went into the intersection." However, this witness further testified that his opinion was predicated in part upon a police report and that "the police report stated that the speed limit was 35 miles an hour at where the accident occurred and the employee was allegedly driving 20 miles an hour." The testimony of defendant Diggs indicates that she was well trained and experienced in the operation of the company vehicles, was attentive to her driving prior to the collision, and had adjusted her driving in response to the rainy conditions. " '(I)t is common knowledge that an automobile may skid on a slippery highway without any negligence on the part of the operator.' [Cit.]" *Foy v. Edwards,* 118 Ga.App. 665, 666(1), 667, 165 S.E.2d 176. The evidence did not demand a verdict for plaintiff. The trial court erred in directing the verdict on the issue of liability in favor of plaintiff. *Id.*

[2] 2. Defendant Southern Bell also enumerates as error the admission of expert opinion testimony by Dr. Stiller, a physician who had treated plaintiff, which opinion was based on reports and tests, prepared by others, who did not testify at trial, and which were not admitted into evidence. "Generally, an expert's opinion cannot be stated upon facts or reports which are not admitted in evidence. OCGA § 24-9-67; *Dual S. Enterprises v. Webb,* 138 Ga.App. 810, 813 (227 SE2d 418). Thus, in the realm of expert medical testimony it is said: 'Opinion testimony based merely upon records and case history furnished the witness by other doctors and not a part of the evidence in the case is objectionable.' *Zurich Ins. Co. v. Zerfass,* 106 Ga.App. 714, 719 (128 SE2d 75)." *Andrews v. Major,* 180 Ga.App. 393, 394(2), 395, 349 S.E.2d 225. The trial court erred in admitting Dr. Stiller's opinions which were predicated in part on the opinions of other health care providers, which were not admitted into evidence. See *Stouffer Corp. v. Henkel,* 170 Ga.App. 383, 386(2), 317 S.E.2d 222; *Buffalo Cab Co. v. Gurley,* 134 Ga.App. 167, 168(1), 213 S.E.2d 545.

Judgment reversed.

SOGNIER, J., concurs.

CARLEY C.J., concurs in Division 1 and the judgment.

196 Ga.App. 495

CANN et al.

v.

METROPOLITAN ATLANTA RAPID TRANSIT AUTHORITY.

No. A90A0645.

Court of Appeals of Georgia.

July 3, 1990.

Rehearing Denied July 23, 1990.

Certiorari Denied Oct. 18, 1990.

Tenant of condemned land appealed in condemnation proceedings. The Fulton Su-

perior Court, Cooper, J., granted condemnor's motion in limine to exclude certain evidence and tenant filed interlocutory appeal. The Court of Appeals, Carley, C.J., held that: (1) 20-year lease renewal provision was unenforceable and created no compensable interest, and (2) proposed use of land to erect highrise building was so remote and speculative that evidence thereof had no probative value.

Affirmed.

1. Eminent Domain ⇐262(4)

Construction of lease for purpose of determining tenancy remaining on date of taking by condemnation was for trial court.

2. Eminent Domain ⇐85

Twenty-year renewal provision in lease was unenforceable due to lack of certainty, and thus tenants had no compensable interest when tenancy expired, where agreement left amount of rent for future ascertainment and provided no method by which rent would be ascertained.

3. Landlord and Tenant ⇐81½, 182

Lease must be certain and definite as to both duration and rent; if duration and rent are left for future ascertainment and no method is provided by which they are to be determined, contract is unenforceable for uncertainty.

4. Eminent Domain ⇐147

Correct measure of damages for loss of use of lease of condemned property is diminution in market value of leasehold during remainder of unexpired term of lease, less any rents to be paid by lessee.

5. Eminent Domain ⇐147

Jury determining damages for loss of use of lease of condemned property should be allowed to inquire as to all legitimate purposes, capabilities, and uses to which property might be adapted, provided such use is reasonable and probable and not remote or speculative.

6. Eminent Domain ⇐205

Proposed use of land to erect highrise commercial building was so remote and speculative that evidence thereof had no probative value in determining damages which resulted from condemnation of leased land, where tenant had nine months remaining on lease at taking and had made no efforts to determine feasibility of proposed use.

7. Eminent Domain ⇐255

Condemnees' failure to file exceptions to special master's award resulted in waiver of right to further litigate any nonvalue issues.

8. Eminent Domain ⇐203(4)

Evidence of rentals allegedly lost as result of threat of condemnation was inadmissible in condemnation proceeding.

9. Pretrial Procedure ⇐3

Expert witness who was precluded from testifying as to certain irrelevant and inadmissible testimony by grant of motion in limine remained free to give relevant testimony.

Wildman, Harrold, Allen, Dixon & Branch, Thomas B. Branch III, George G. Holden, Atlanta, for appellants.

Pursley, Howell, Lowery & Meeks, Charles N. Pursley, Jr., Atlanta, for appellee.

CARLEY, Chief Judge.

In 1981, appellee-Condemnor initiated condemnation proceedings pursuant to OCGA § 22-2-100 et seq. against property that was leased by appellant-Condemnees. An appeal was filed and, after discovery, Condemnor made a motion in limine to exclude certain evidence during the jury trial. The trial court granted Condemnor's motion, but certified its order for immediate review and Condemnees' application for an interlocutory appeal to this court was granted.

1. Under the terms of Condemnees' lease, their original tenancy was to have terminated in 1982, some nine months after the date of the taking. However, the lease also provided that, for four additional five-year terms, Condemnees "shall have the option of extending this lease ... upon the

same terms and conditions which were in effect during the original term, EXCEPT that ... the annual rent for the renewed term, ... if renewed, shall be *as may be agreed upon by the parties hereto, but in no event less than the annual rent during the last year of the preceding term.*" (Emphasis supplied.) In its motion in limine, Condemnor urged that Condemnees had only a nine month's tenancy remaining on the date of taking and sought limitation on the introduction of evidence as to the value of Condemnees' leasehold for any longer period. On appeal, Condemnees urge that it was error to grant the motion in limine because more than twenty years of their tenancy remained as of the date of taking and they are entitled to introduce evidence as to the value of that longer leasehold.

[1-3] The construction of the lease was for the trial court. See *Zuber Lumber Co. v. City of Atlanta,* 237 Ga. 358, 364, 227 S.E.2d 362 (1976). The trial court correctly held that Condemnees had only a nine month's tenancy remaining on the date of taking because the twenty-year renewal provision was unenforceable for a lack of certainty as to the amount of rent for that renewal period. "A provision for the renewal of a lease 'must specify the terms and conditions of the renewal ... with such definite terms and certainty that the court may determine what has been agreed upon, and if it falls short of this requirement it is not enforceable. It must be certain and definite both as to the time the lease is to extend and *the rent to be paid.*' [Cit.] ... '[I]f terms, such as duration and *rent,* are left for future ascertainment, and no method is provided by which they are to be determined, the contract is unenforceable for uncertainty....' [Cit.]" (Emphasis supplied.) *McCormick v. Brockett,* 167 Ga.App. 325-326, 306 S.E.2d 344 (1983). Condemnees' lease provided no method by which the specific amount of future rents was to be determined, but provided only that future rent would be in some unspecified amount at least as great as that which had previously been paid. Accordingly, insofar as the twenty-year extension of the lease is concerned, Condemnees "had no legally compensable interest in the property upon its ... condemnation. [Cit.] Since [Condemnor] was not obliged to compensate [Condemnees] for property in which [they] had no interest, the trial court [correctly] granted [the motion in limine]." *Norris v. Downtown LaGrange Dev. Auth.,* 151 Ga.App. 343, 344-345(2), 259 S.E.2d 729 (1979).

2. On the ground that the construction of a highrise commercial building would constitute a speculative alternative use of the property by Condemnees, the trial court granted the motion in limine precluding the introduction of evidence of any such use. Appellants urge that this evidentiary ruling is erroneous.

[4-6] " 'The correct measure of damages for the loss of use of leased property is the diminution in the market value of the leasehold during the remainder of the unexpired term of the lease, less any rents to be paid by the lessee. [Cits.]' [Cit.]" *Peek v. DOT,* 139 Ga.App. 780, 781(1), 229 S.E.2d 554 (1976). "In this regard, '(t)he jury (should be) allowed to inquire as to all legitimate purposes, capabilities and uses to which the property might be adapted, provided that such use (is) reasonable and probable and not remote or speculative.' [Cit.]" *Department of Transp. v. Kanavage,* 183 Ga.App. 143, 358 S.E.2d 464 (1987). Since Condemnees had only a nine-month tenancy remaining on the date of taking and had made no efforts whatsoever to determine the feasibility of erecting a highrise commercial building on the property, such a proposed use was so remote and speculative that evidence thereof would have "no probative value in the showing of suitability for [other] uses of the property...." *State Hwy. Dept. v. Howard,* 119 Ga.App. 298, 303(5), 167 S.E.2d 177 (1969). Accordingly, the trial court did not err in granting the motion in limine to exclude this evidence.

[7] 3. The trial court did not err in granting Condemnor's motion in limine to exclude evidence as to nonvalue issues. Condemnees had no right to raise nonvalue issues because they filed only a notice of appeal seeking a jury trial, and did not file any exceptions to the special master's

award. "[T]he failure of a party to file exceptions to the master's award for determination by the superior court results in a waiver of the party's right to further litigate any nonvalue issues." *Beck v. Cobb County,* 180 Ga.App. 808, 811, 350 S.E.2d 818 (1986).

[8] 4. The trial court did not err in granting the motion in limine to exclude evidence of rentals allegedly lost as the result of the threat of condemnation. *Housing Auth. of Decatur v. Schroeder,* 222 Ga. 417, 151 S.E.2d 226 (1966); *Collins v. MARTA,* 163 Ga.App. 168, 170(6), 291 S.E.2d 742 (1982).

[9] 5. Contrary to Condemnees' assertions on appeal, their expert witness has not been precluded from testifying at trial. The effect of the trial court's grant of the motion in limine was merely to preclude Condemnees' expert witness from giving such irrelevant and inadmissible testimony at trial as he had given during his pre-trial deposition. Condemnees remain free to call their expert witness and elicit *relevant* testimony for the jury's consideration. By granting the motion in limine, the trial court properly defined the relevant issues to be tried and, if Condemnees' expert is thereby precluded from testifying, it will only be because he has no admissible testimony to give.

Judgment affirmed.

McMURRAY, P.J., and SOGNIER, J., concur.

196 Ga.App. 637

SYNTHETIC INDUSTRIES et al.

v.

CAMP.

No. A90A0461.

Court of Appeals of Georgia.

July 5, 1990.

Rehearing Denied July 31, 1990.

Workers' compensation claimant appealed administrative determination. The Superior Court, Walker County, Tucker, J., reversed and remanded, and appeal was taken. The Court of Appeals, Pope, J., held that superior court lost jurisdiction of workers' compensation appeal 60 days after notice of appeal was filed, and any orders entered as result of hearing held after that date were a nullity.

Appeal dismissed.

Beasley, J., concurred in judgment only.

Deen, P.J., dissented and filed opinion.

Workers' Compensation ⚷1833

Regardless of fault or reason, superior court lost jurisdiction of workers' compensation appeal 60 days after notice of appeal was filed, and any orders entered as result of hearing held after that date were a nullity. O.C.G.A. § 34–9–105(b).

Savell & Williams, Benjamin H. Terry, Jennifer H. Chapin, Atlanta, for appellants.

Robert A. Wharton, Jr., Rossville, for appellee.

POPE, Judge.

In this workers' compensation case, the employer and insurer seek to appeal a decision of the superior court that reversed the decision of the full board and remanded the case to the board for a medical evaluation of the claimant by a named physician and a determination by the board on the requested change of physician. Claimant's notice of appeal to the superior court was filed with the board on March 28, 1989. The case was not transmitted to the court by the full board at that time "due to more litigation." The superior court did not enter any order until September 19, 1989. The order does not state the date on which the case was heard.

The proper procedure for transmitting a record to the superior court is set forth in