show Cochran's guilt, and the trial court did not err in failing to give the requested charge. Id.

Judgment affirmed.

SMITH, P.J., and PHIPPS, J., concur.

300 Ga.App. 104

DEPARTMENT OF TRANSPORTATION

v.

JORDAN et al.

No. A09A1843.

Court of Appeals of Georgia.

Reconsideration Denied Sept. 17, 2009.

Aug. 27, 2009.

Background: Condemnation proceeding was brought. The Superior Court, Fulton County, Baxter, J., awarded property owner $400,000 for the property. Department of Transportation appealed.

Holdings: The Court of Appeals, Andrews, P.J., held that:

(1) trial court did not abuse its discretion by permitting real estate appraiser to testify as to the value of the property if it were to be rezoned, and

(2) appraiser's testimony was not material.

Affirmed.

1. Eminent Domain ⚿262(3)

On appeal from a trial court's entry of judgment on a jury's verdict in a condemnation action, Court of Appeals is bound to construe the evidence with every inference and presumption being in favor of upholding the jury's verdict.

2. Eminent Domain ⚿262(5)

The rule that the erroneous admission of evidence in a condemnation action mandates reversal is itself subject to reasonable limitation; Court of Appeals does not reverse unless the erroneously admitted evidence was material.

3. Appeal and Error ⚿1050.1(1), 1056.1(1)

Minor errors in the admission or rejection of testimony do not warrant a reversal of the judgment sustaining the verdict of the jury; it is incumbent upon the reviewing court to determine if the mistake was of sufficient magnitude to require a new trial.

4. Appeal and Error ⚿1050.1(12)

A judgment entered upon a jury's verdict will not be reversed simply because improper opinion testimony relating to minor details in a case is admitted in evidence.

5. Eminent Domain ⚿134

Evidence ⚿547.5

Trial court did not abuse its discretion in condemnation proceeding by permitting real estate appraiser to testify as to the value of the property if it were to be rezoned, despite appraiser's testimony that the rezoning was merely "possible," rather than probable; rezoning was sufficiently likely to have an appreciable influence on the present market value of the property.

6. Eminent Domain ⚿262(5)

Real estate appraiser's testimony as to the possible value of condemned property if it were to be rezoned was not material in condemnation proceeding, and thus any error in admitting the testimony was harmless, where property owner's son testified without objection that property as currently zoned was worth more than appraiser's estimate for the property's value after rezoning. West's Ga.Code Ann. § 24–9–66.

7. Appeal and Error ⚿1004(13)

A trial court's approval of a jury's verdict as to damages creates a presumption of correctness that cannot be disturbed on appeal absent compelling evidence, and a reviewing court is powerless to interfere unless it is clear from the record that the verdict of the jury was prejudiced or biased or was procured by corrupt means.

Weiner, Yancey, Dempsey & Diggs, Thomas C. Dempsey, Atlanta, Neil M. Monroe, for appellant.

Pursley, Lowery & Meeks, Charles N. Pursley, Jr., Christian F. Torgrimson, Atlanta, for appellees.

ANDREWS, Presiding Judge.

On appeal from the judgment entered on a jury's condemnation award of $400,000 to property owner Nora Ann Jordan, the Georgia Department of Transportation (DOT) argues that the trial court erred when it admitted evidence of value in light of a possible rezoning of Jordan's property and when it charged the jury on the subject. We disagree and affirm.

[1–4] On appeal from a trial court's entry of judgment on a jury's verdict in a condemnation action, "this court is bound to construe the evidence with every inference and presumption being in favor of upholding the jury's verdict." (Punctuation omitted.) *Dept. of Transp. v. Petkas*, 189 Ga.App. 633, 641(9), 377 S.E.2d 166 (1988). The *Petkas* court also noted, however, that

> this principle has no application in the consideration of enumerations wherein the trial court's evidentiary rulings are asserted to be erroneous. Resolution of questions of fact by the jury does not insulate the trial court's legal rulings on the admissibility of evidence from appellate scrutiny. If the jury was allowed to find facts based upon evidence which was erroneously admitted or in the absence of evidence which was erroneously excluded, the judgment entered on that verdict must be reversed.

Id. But the rule that the erroneous admission of evidence mandates reversal is itself subject to reasonable limitation: we do not reverse unless the erroneously admitted evidence was *material.*

> [M]inor errors in the admission or rejection of testimony do not warrant a reversal of the judgment sustaining the verdict of the jury. It is incumbent upon the reviewing court to determine if the mistake was of sufficient magnitude to require a new trial. Thus, a judgment entered upon a jury's verdict will not be reversed simply because improper opinion testimony relating to minor details in a case is admitted in evidence.

(Citations and punctuation omitted.) *Dual S. Enterprises v. Webb,* 138 Ga.App. 810, 812–813(3), 227 S.E.2d 418 (1976).

So viewed, the record shows that Jordan's family had owned the Sandy Springs residential lot at issue for more than 30 years before the initiation of this condemnation action. At the time of taking, Mrs. Jordan owned the property individually and as a trustee for herself and her heirs.

At trial, Jordan presented evidence concerning the property's value from two witnesses: Blan Jordan, the owner's son, and Dennis Carr, a real estate appraiser. Blan Jordan testified that according to his comparable sales analysis, and taking into account his familiarity with the neighborhood, the fair market value of the property as currently zoned was $480,000. DOT made no objection to this valuation testimony at trial, and fails to mention it on appeal.

Arguing that Carr's deposition testimony had improperly assumed that the property would be rezoned, DOT moved to bar Carr from testifying as to the property's rezoned value because the rezoning was not "probable." See *Unified Govt., etc. v. Watson,* 276 Ga. 276, 277, 577 S.E.2d 769 (2003) (for valuation testimony to be admissible, "the condemnee must show that a change in zoning to allow the usage is probable, not remote or speculative, and is so sufficiently likely as to have an appreciable influence on the present market value of the property"). The trial court denied the motion. Carr then testified that the highest and best use of the property had three forms: (i) as currently developed, with a value between $353,250 and $392,500; (ii) as cleared for redevelopment under current zoning, with a value of $399,422; and (iii) as redeveloped under a higher category of residential zoning, with a value of $535,400. Carr testified that rezoning was possible rather than probable, but declined to be more specific as to the likelihood of that

rezoning.[1] Carr also testified that based on these three possible outcomes, his best estimate of the value of the property was $400,000.

DOT moved to strike that portion of Carr's testimony concerning the value of the property as rezoned. The trial court denied the motion. DOT also asked to replace the pattern charge concerning the *possibility or probability* that the property may be rezoned in the future to permit the use in question,[2] which it considered "inapt," with its own charge authorizing evidence only as to probability. The trial court delivered the pattern charge over DOT's objection, and the jury returned a verdict of $400,000. The trial court entered judgment on the verdict and denied DOT's motion for new trial.

DOT's arguments amount to a single assertion that the admission of a property's value in light of a merely "possible" rezoning, first authorized by *Civils v. Fulton County,* 108 Ga.App. 793, 134 S.E.2d 453 (1963), is no longer viable in light of *Watson.* We disagree.

[5] *Watson* repeatedly quotes and cites *Civils* with approval, as when it states the "well-established" standard for determining "the admissibility of evidence of a *probable* change in zoning":

> Where there "is a *possibility or probability* that the zoning restrictions may in the near future be repealed or amended so as to permit the use in question, such likelihood may be considered if the prospect of such repeal or amendment is sufficiently likely as to have an appreciable influence upon present market value [provided] such possible change in zoning regulations must not be remote or speculative." [Cit.] *Civils,* supra, 108 Ga.App. at 797(2)(b), 134 S.E.2d 453. A trial court's decision to admit evidence regarding the likelihood of rezoning will not be disturbed in the absence of a manifest abuse of discretion. *Hall County v. Merritt,* 233 Ga.App. 526(1), 504 S.E.2d 754 (1998).

(Emphasis supplied.) *Watson,* 276 Ga. at 276–277, 577 S.E.2d 769. The rezoning at issue here was "sufficiently likely as to have an appreciable influence on the present market value of the property," id. at 277, 577 S.E.2d 769, even if Carr estimated that influence as adding less than $600 to the maximum estimated value under current zoning. And "the jury was not bound to accept the testimony" of any single witness concerning the value of the property, "but was at liberty to consider the evidence placed before it and exercise its own knowledge and ideas." *Dept. of Transp. v. Sconyers,* 151 Ga.App. 824, 825–826, 261 S.E.2d 728 (1979). It follows that the trial court did not abuse its discretion when it allowed Carr to testify concerning the possible rezoned value. See *Watson,* 276 Ga. at 277, 577 S.E.2d 769 (trial court "did not abuse its discretion in admitting evidence of a possible change in zoning").

[6] More important, any error was immaterial in light of the testimony by Blan Jordan that the property was worth $480,000 as currently zoned. DOT did not object to the introduction of this evidence, and any objection would have been meritless because a witness "need not be an expert or dealer" in real property, "but may testify as to its value if he has had an opportunity for forming a correct opinion." OCGA § 24–9–66; see also *Perry v. Perry,* 285 Ga.App. 892, 893–894(1), 648 S.E.2d 193 (2007) (reversing the trial court's grant of a motion for new trial as to damages when a witness was authorized to testify concerning his opinion of the value of the house he lived in for many years, even if that opinion was based on hearsay).

[7] Finally, a trial court's approval of a jury's verdict as to damages "creates a presumption of correctness that cannot be disturbed on appeal absent compelling evidence, and a reviewing court is powerless to interfere unless it is clear from the record that the verdict of the jury was prejudiced or biased or was procured by corrupt means." (Punctuation omitted.) *Dickey v. Clipper Petroleum,* 280 Ga.App. 475, 479–480(4), 634

1. DOT's construction of Carr's testimony on this point is belied by the record.

2. See Council of Superior Court Judges, Suggested Pattern Jury Instructions, Vol. 1 Civil Cases (5th ed.) § 14.270.

S.E.2d 425 (2006). The jury's award was well within the range of the undisputed and competent evidence before it. See *Ideal Leasing Svcs. v. Whitfield County,* 254 Ga. App. 397, 401, 562 S.E.2d 790 (2002).

Judgment affirmed.

SMITH, P.J., and PHIPPS, J., concur.

300 Ga.App. 112

TREFREN et al.

v.

FREEDOM BANK OF GEORGIA.

No. A09A1344.

Court of Appeals of Georgia.

Sept. 17, 2009.

Background: Mortgagee bank brought foreclosure action against mortgagor, based on loan of $924,446.84, and applied for confirmation of the foreclosure sale. The Superior Court, Hall County, Oliver, J., confirmed the sale, to the bank itself, for $570,000. Mortgagor appealed, challenging the court's valuation of the property.

Holding: The Court of Appeals, Doyle, J., held that expert testimony offered by mortgagee bank established true market value of property sold at foreclosure.

Affirmed.

1. Mortgages ⇨526(2)

A trial court cannot confirm a foreclosure sale unless it is satisfied that the property so sold brought its "true market value," the price that the property will bring when it is offered for sale by one who is not obligated, but has the desire to sell it, and is bought by one who wishes to buy it, but is not under a necessity to do so.

See publication Words and Phrases for other judicial constructions and definitions.

2. Mortgages ⇨526(6)

Expert testimony offered by mortgagee bank in proceeding to confirm foreclosure sale established true market value of property sold at foreclosure sale in conformity with statute, although he used the bulk-sale valuation method to reach his figure, which deducted carrying costs and expenses before reaching the value; the statute required no specific valuation method, and both parties' experts testified to calculating value by deducting various costs, and while mortgagor's expert testified to a higher true market value, the trial court gave explicit reasons why it found the bank's expert to be more credible. West's Ga.Code Ann. § 44–14–161(b).

Schreeder, Wheeler & Flint, Philip R. Green, Atlanta, for appellants.

Strickland, Chesnutt & Lindsay, Samuel L. Chesnutt, Winder, for appellee.

DOYLE, Judge.

This case arises from an application for confirmation of a foreclosure sale filed pursuant to OCGA § 44–14–161 by Freedom Bank of Georgia against Robert Trefren, Jennifer Trefren, and Skitts Mountain Development, LLC (collectively "Skitts Mountain"). Skitts Mountain appeals the trial court's final order confirming the sale in the amount of $570,000, challenging the trial court's valuation of the property. Finding no error, we affirm.

The record reveals that Freedom Bank loaned Skitts Mountain $924,446.84 in exchange for a deed to secure debt, conveying a first priority security interest to the Bank in a tract of land consisting of 19 lots in a 32–lot subdivision in Hall County, Georgia.[1] Skitts Mountain defaulted on the loan, and Freedom Bank elected to declare the outstanding debt immediately due and payable. Freedom Bank thereafter foreclosed on the property under a power of sale provision

1. The Trefrens also executed personal guaranties on the loan, upon which they later defaulted.