

WAITING FOR THE VERDICT - Coalgate attorney Trae Gray, center, sits outside the Coal County courthouse with his clients, Del Juan Foreman, left, and Chuck Loudermilk, as they wait for a jury to return a verdict in their civil case concerning a dispute over an access road.



Photo by Wanda Utterback

Jury Trial Settles Dispute Over an Access Road

A Coal County jury last week settled a four-and-a-half-year battle involving landowners and an access road dispute. The plaintiff in the civil lawsuit was Robert Jackman, personal representative of his late mother's estate, the Estate of Mary Etta Jackman. The defendants were Charles "Chuck" Loudermilk and Del Juan Foreman. In essence, Jackman wanted to build an access road across the defendants' property to the estate property; the defendants were against the road being built.

In December 2004, attorney Charles Davis of Norman filed a Petition for Condemnation of Easement for Jackman against C-Bar Ranch, Loudermilk and Foreman. In June 2006, Jackman filed a brief for a bifurcated trial. The court appointed appraisers, after which all parties filed various objections. The Report of Appraisers assessment was for \$1,600, which the defendants filed an objection to. Jackman filed a response and objection to the report stating that the \$1,600 was high, excessive and unreasonable.

In March 2007, Coalgate trial lawyer Trae Gray filed an entry of appearance in the case. The following month, he filed a Brief on the Requirement of Addressing the "Necessity" Issue Prior to Invoking the Condemnation Statutes or Constitutional Provisions. Jackman again moved the court for a bifurcated trial.

In November 2007, after all parties agreed to a non-jury trial on the issue of necessity, Associate District Judge Neal Merriott entered an order regarding the non-jury trial. The court found that for many years, Mr. Jackman, the plaintiff's predecessors, hunters, and loggers had accessed the Jackman property through Vernon Moore's property in Atoka County, but Jackman was unable to secure an easement from Mr. Moore. For those reasons, the court found it proper to rule that a necessity for an easement existed.

In April 2008, Jackman dismissed C-Bar Ranch and shortly thereafter filed an amended petition for condemnation of easement against Loudermilk and Foreman. Loudermilk and Foreman responded by demanding a jury trial. Gray filed a motion for a pre-trial conference, demand for jury trial, and a motion for an order assessing the appraisers' award. The parties agreed to a jury trial on the first available date in 2009.

The trial was held on April 15 with Judge Merriott presiding.

Jackman was the first to take the witness stand. His testimony showed that he initially tried to get the county commissioners to open the road. His testimony was that he did not believe the defendants were entitled to any compensation because his proposed road would increase their property values.

On cross examination by Gray, Jackman admitted that he had stated at one time that the road would increase his property value by \$2,700 per acre, but that market conditions were different now than from when he made that statement. Gray calculated the price to be in excess of \$200,000, which Jackman acknowledged.

Loudermilk and Foreman both testified that they did not want to sell their land. They believed their property would be diminished in value because they used it primarily for recreational and hunting purposes. Initially, they did not want to place a value on that nor the easement.

When pressed by Gray, they both stated they believed the price to be in excess of \$50,000. Their expert witness was Coal County realtor and auctioneer Kevin Haney. Haney believed the diminution in value to the defendants' property, coupled with the value of the taking, to be in excess of \$50,000.

During Davis' closing arguments, he told the jury that testimony of \$50,000 for an acre-and-a-half of land was unreliable and asked the jury to find actual damages in the \$1,000 range.

Gray argued that when people have no choice, valuation is different than when they have a willing seller. He told the jury that no one would sell one acre out of the middle of their property for that amount of money. He believed a proper assessment would consider the taking of the land, plus any diminution in value to the remaining 280 acres from the road.

Gray asked the jury to return a verdict of \$40,000. This type of case is not as exciting as a criminal case, he said, but it was very important “because it deals with what our liberties are,” and their decision would affect all citizens. Everyone has a constitutional right to have twelve of their peers determine what the taking and devaluation is, and no one should be made to feel guilty for working hard to protect their American dream, he said.

After less than an hour of deliberation, the jury returned a verdict of \$30,000 in actual damages to Loudermilk and Foreman.

In response to the verdict, Jackman stated that the road “will be built sometime in the future.”

“I believe justice was served in this matter,” Gray said. “It was a long drawn-out process and my clients were entitled to the meaningful remedy given from this jury.

“While I did not agree with the legal position or opinion taken by Mr. Jackman, I have to say that he and his attorney, Mr. Davis, were complete gentlemen throughout the entire proceeding. They should be commended for that.

“As always, I would like to thank all the folks at the courthouse, the ladies and gentleman of the jury for their time, and my clients for trusting me to try this case.”