

DREY v. UNITED STATES

705 F.2d 965

83-1 USTC ¶9219

51 AFTR2d 83-769

*Affirming*

19 TTJ 183

535 F.Supp 287

82-2 USTC ¶9422

49 AFTR2d 82-1386

*Editors Summary*

*Key Topics*

**CHARITABLE CONTRIBUTIONS**

- Conservation easement
- value of retained property

**DAMAGE AWARDS**

- Severance

**VALUATION**

- Fair market value of timberland
- how determined

*Facts*

By Exchange Scenic Easement Deed, the taxpayers voluntarily conveyed to the United States an easement in a 300-foot strip of wooded riverfront land within the boundaries of the Ozark National Scenic Riverways. This strip, which was part of a larger parcel of property, consisted of 961.47 acres of mostly wooded land to which the taxpayer retained fee ownership. The taxpayers subsequently conveyed to a charitable foundation the fee ownership of the land, encumbered by the easement. On their 1974 tax return, the taxpayers claimed a charitable contribution of \$275,000 for this latter conveyance. The taxpayers based this amount on appraisals which found that the value of their remaining contiguous land had been reduced by \$275,000, resulting from such land's diminished access to the river. The appraisals concluded that the value of the fee interest conveyed was minimal.

This method of valuation which takes into account "severance damages", is appropriate in valuing the loss from condemnations. The government argued that severance damages cannot be taken into account when valuing a Charitable contribution. The government's expert appraised the fee interest on the basis of the timber contained on the fee, reducing this amount by 45 percent to account for restrictions on use of the 300-foot strip, including restrictions on the cutting of timber. This value, \$38,000, was increased by \$7,000, the value of a tract containing an old school house. No severance damages were included.

*District Court*

**HELD: For the Government.** Taxpayers are not entitled to severance damages and did not provide evidence to disprove the government's valuation of the easement. The Court held that the method of valuing a loss in condemnations is not applicable to charitable contributions. Thus, cases where the taxpayer contributed property under the threat of condemnation, not voluntarily, are distinguishable.

### *Court of Appeals*

**HELD: Affirmed.** Taxpayers' assertion that the rules for determining fair market value in income tax cases and condemnation cases are the same was rejected. The Court of Appeals agreed with the District Court's reasoning that the measure of compensation for property donated as a charitable contribution is statutory. The right to just compensation protected by the Fifth Amendment to the United States Constitution in condemnation cases does not bear on voluntary donations.

### *Case Text*

PER CURIAM: Taxpayers Leo A. Drey and his wife, Kay K. Drey, appeal from a final judgment entered in the District Court for the Eastern District of Missouri denying their claim against the United States for refund of additional tax and interest paid pursuant to an Internal Revenue Service (IRS) deficiency assessment. For reversal the taxpayers argue that the IRS undervalued certain real property donated by the taxpayers for purposes of a charitable contribution deduction with respect to their 1974 income tax. For the reasons discussed below, we affirm the judgment of the district court.

On June 28, 1974, the taxpayers executed and delivered to the L-A-D Foundation, Inc. a quit claim deed by which the taxpayers conveyed their interest in 961.47 acres of river front land subject to a scenic easement previously conveyed to the United States pursuant to an Exchange Scenic Easement Deed. The L-A-D Foundation, Inc. was then an organization organized exclusively (by the taxpayers) for public and charitable purposes within the terms of §170(c)(1) of the Internal Revenue Code. 26 U.S.C. § 170. The taxpayers claimed a charitable deduction of \$275,000.00 on their 1974 personal income tax return for the value of this property conveyed to L-A-D Foundation, Inc.

The taxpayers claimed that lands owned by them contiguous to the donated strip of river front land were best suited for recreational development. They also Claimed that their contiguous land was reduced in value by \$275,000.00 because of diminished access<sup>2</sup> to the river resulting from the charitable donation of the fee underlying the scenic easement. The Commissioner determined that the fair market value<sup>3</sup> of the property contributed to the L-A-D Foundation, Inc. was \$45,500.00.

The taxpayers asserted the rules for determining fair market value in income tax cases and condemnation cases are the same. The standard for valuing property taken for public use in an eminent domain proceeding "consists not only in an award of the value of lands which are taken, but also of any damage that may result to the portion of the tract which remains." *Sharp v. United*

*States*, 191 U.S. '341,351-52 (1903).

We agree with the 'district court's reasoning that the measure of compensation for property donated as a charitable contribution is statutory and not the same substantial, right protected, by the fifth amendment of the Constitution in condemnation cases. Condemnation proceedings usually require a "taking" which require a property owner to part with his property involuntarily. The same considerations are not present where a taxpayer makes a voluntary decision to donate property to charity. Therefore, the district court properly decided that the value of the taxpayers charitable contribution must be determined by the value: of the property donated and not by severance damages to the adjacent land.

Accordingly, the judgment of the district court is affirmed.

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1 The Honorable John F. Nangle, United states District Judge for the Eastern District of Missouri.

2 In fact; however, by the terms of the Scenic Easement Deed the owner of the donated fee is restricted from "[p]rohibiting ingress and egress over and across and use by the general public of any or all of the herein described lands." *Drey v. United States*, No. 81-521C(2), slip op. at 3 (E.D. Mo. Mar. 31,; 1982).

3 The Internal Revenue Code provides that "there shall be allowed, as a deduction any charitable contribution... payment of. which is made within the taxable year." 26 U.S.C. §170(a)(1). The Treasury regulations state that where, as here, "a charitable contribution is made in property other than money, the amount of the contribution is the fair market value of the property at the time of the contribution." Treas. Reg. §1.170A-I(c)(I)(1982). The phrase "fair market, value" is defined as the "price at which the property would .change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts." *Id.* ¶1.170A-(c)(2), acord, *Fitts' Estate v. Commissioner*. 237 F.2d 729 (8th Cir. 1956). It is evident that neither of the values relied upon by the parties permit the ready application of the willing seller/willing buyer test.