

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1539**

County of Hennepin,
Respondent,

vs.

Sandip C. Bhakta, et al.,
Appellants.

**Filed December 26, 2017
Appeal dismissed in part
Cleary, Chief Judge**

Hennepin County District Court
File No. 27-CV-14-20893

Michael O. Freeman, Hennepin County Attorney, Louis K. Robards, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Ryan R. Simatic, Dan Biersdorf, Biersdorf & Associates, P.A., Minneapolis, Minnesota (for appellants)

Considered and decided by Cleary, Chief Judge; Hooten, Judge; and Smith, Tracy M., Judge.

S Y L L A B U S

Pretrial evidentiary rulings must be assigned as error in a motion for a new trial or amended findings to properly preserve objections for appellate review.

S P E C I A L T E R M O P I N I O N

CLEARY, Chief Judge

In this appeal from a judgment determining damages in an eminent domain proceeding, appellants Sandip C. Bhakta, et al., seek to raise evidentiary issues pertaining

to the denial of three of appellants' motions in limine, and an additional issue relating to the district court's offset against the damages award for unpaid real estate taxes. Appellants did not move for a new trial.

The general rule is that to preserve issues for appellate review that arise during the course of trial, counsel—in addition to taking other requisite steps, including making timely objections—must move the district court for a new trial pursuant to Minn. R. Civ. P. 59.01. *Sauter v. Wasemiller*, 389 N.W.2d 200, 201 (Minn. 1986). Because the *Sauter* rule applies to pretrial evidentiary rulings, we dismiss the part of this appeal raising evidentiary issues that do not involve a substantive question of law.

In May 2012, respondent County of Hennepin filed a condemnation petition to acquire appellants' motel property as part of a project to upgrade a county road. In August 2012, respondent made a quick-take payment to appellants in the amount of \$765,443 for the property. The district court granted title and possession of the property to respondent and appointed three commissioners to determine the amount of just compensation owing to appellants. In October 2014, the commissioners awarded the amount of \$760,000 to appellants for the taking.

Appellants filed a notice of appeal in district court challenging the commissioners' award under Minn. Stat. § 117.145 (2016). Appellants requested a jury trial. In March 2017, appellants filed five motions in limine, including motions seeking to exclude respondent's minimum compensation report and the testimony of two of respondent's planned witnesses. Before the jury trial began on April 4, 2017, the district court denied appellants' motions in limine on the record.

On April 10, 2017, the jury returned its special verdict awarding damages for the taking in the amount of \$810,000. Respondent moved to offset the amount remaining on the damages award by the amounts that respondent paid for delinquent real estate taxes and water charges on the property.

In a June 2, 2017 judgment, the district court awarded damages in the amount of \$44,567 to appellants, which was the difference between the damages awarded by the jury verdict and the amount of quick-take payments. In a July 28, 2017 order, the district court granted respondent's motion to offset the delinquent property taxes that respondent had paid against the damage award and judgment. Because the amount of the property tax payment exceeded the judgment amount of \$44,567, the district court directed that the judgment entered on June 2, 2017, be vacated. On August 2, 2017, final judgment was entered pursuant to the July 28, 2017 order. Appellants did not file any posttrial motions, but instead filed this appeal from the August 2, 2017 final judgment.

In view of appellants' failure to raise their proposed evidentiary issues in a motion for a new trial, we questioned whether the evidentiary issues are subject to appellate review. The parties filed informal memoranda.

D E C I S I O N

On appeal from a judgment, the appellate court "may review any order involving the merits or affecting the judgment." Minn. R. Civ. App. P. 103.04. But the scope of review afforded "may be affected by whether proper steps have been taken to preserve issues for review on appeal, including the existence of timely and proper post-trial motions." *Id.*

When no motion for a new trial has been made, the appellate court's review of the underlying judgment is limited to "substantive questions of law." *Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 311 (Minn. 2003). A party asserting a claim that the district court made an erroneous evidentiary ruling in a bench trial may preserve the claim for appeal by moving for amended findings. *Jacobson v. \$55,900 in U.S. Currency*, 728 N.W.2d 510, 524 (Minn. 2007).

The purpose of requiring litigants to move for a new trial is to give the district court the opportunity to consider the context of the objection and the effect that the alleged error may have had on the outcome of the case. *Alpha Real Estate*, 664 N.W.2d at 310. "This permits the court to more fully develop the record for appellate review or to correct its own mistake and alleviate the need for appellate review." *Id.*

Appellants argue that the *Sauter* rule only applies to evidentiary objections made during the trial, not to pretrial orders on evidentiary issues. In *Alpha Real Estate*, the court noted that when objections are made during the course of trial, the court must make quick, on-the-spot decisions. *Alpha Real Estate*, 664 N.W.2d at 310. Appellants contend that the rationale for requiring a motion for a new trial to allow the district court to reconsider an "on-the-spot" evidentiary ruling made during trial does not apply to a district court's pretrial order ruling on an evidentiary matter raised in a motion in limine.

In a case involving a pretrial order denying appellants' motion for a jury trial, the supreme court framed the threshold issue as whether the *Sauter* rule barred appellate review of the jury issue because it was never assigned as error in a new trial motion. *Tyroll v. Private Label Chems. Inc.*, 505 N.W.2d 54, 57 (Minn. 1993). Notably, in *Tyroll*, the

supreme court did not hold that the *Sauter* rule was inapplicable because the order denying appellants' motion for a jury trial was made before, rather than during, the trial. Instead, the court held that the *Sauter* rule did not apply because a ruling on the right to a jury trial is more than a procedural matter, defining the basic nature of the decision-making process itself. *Id.*

A motion in limine is used to preclude irrelevant, prejudicial, or inadmissible evidence before it is presented to the jury. *Hebrink v. Farm Bureau Life Ins. Co.*, 664 N.W.2d 414, 418 (Minn. App. 2003). In this case, appellants were not required to object to the challenged evidence during the trial due to the prior rulings on the motions in limine.

Although the district court has more time to consider an evidentiary issue raised in a pretrial motion in limine, we conclude that the general policy reasons for the *Sauter* rule still apply. Requiring a motion for a new trial may eliminate the need for appellate review or, if appellate review is sought, a motion for a new trial facilitates development of critical aspects of the record. *Sauter*, 389 N.W.2d at 201. Whether the district court rules on an evidentiary issue before or during trial, a motion for a new trial gives the district court the opportunity to reconsider the ruling in the context of the entire trial and the effect that the ruling might have had on the outcome of the litigation. Application of the *Sauter* rule to the district court's discretionary pretrial evidentiary rulings results in a better-developed district court decision and more effective appellate review.

The *Sauter* rule does not apply to substantive questions of law that were raised properly during trial. *Alpha Real Estate*, 664 N.W.2d at 310. Appellants argue that a

motion for a new trial was not required to preserve their proposed evidentiary issues because they involved substantive questions of law.

Appellants' motions in limine to exclude the minimum compensation report and the testimony of the assessor of the City of Brooklyn Park were based on respondent's alleged noncompliance with Minn. R. Civ. P. 26 and 37. Because appellants' objections to the minimum compensation report and the testimony of the city assessor were procedural, rather than substantive, the *Sauter* rule precludes appellate consideration of these issues.

In the motion in limine, appellants moved to exclude the testimony of a relocation specialist on the ground that the specialist's experience in finding relocation properties was irrelevant, arguing that Minn. Stat. § 117.187 (2016) was not designed to provide a replacement property, but only a monetary remedy. Appellants contend that the district court's denial of their motion to exclude the testimony of the relocation specialist involved the substantive interpretation of Minn. Stat. § 117.187. Accordingly, before the district court can decide whether a witness is qualified to testify as to minimum compensation, the court must address the substantive issue on what the statute is designed to do.

The panel to be assigned to consider this appeal on the merits will be in the best position to determine whether appellants' challenge to the admission of the testimony of the relocation specialist involves a substantive issue of law that is exempt from the *Sauter* rule. We defer to the merits panel the question of whether appellants' challenge to the admission of the relocation specialist's testimony is within our scope of review.

Because the *Sauter* rule applies to the district court's discretionary pretrial rulings on evidentiary issues, we dismiss the part of this appeal challenging the district court's

denial of appellants' motions to exclude the minimum compensation report and the testimony of the city assessor. To preserve these discretionary evidentiary rulings for appellate review, appellants were required to assign them as error in a motion for a new trial.

Appeal dismissed in part.