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Whether properties, the subject of other sales, are sufficiently similar to the property condemned to have some bearing on the value under consideration, and to be of aid to the jury, must necessarily rest largely in the sound discretion of the trial court. *Wear v. State of Nebraska, supra*, citing *Langfeld v. Department of Roads*, 213 Neb. 15, 328 N.W.2d 452 (1982).

Okoruwa's opinions lacked sufficient foundation, and the district court abused its discretion in admitting Okoruwa's testimony. Except for Lot 1, which had an additional 50-foot easement, the permanent easements were 20 to 25 feet in width on each lot and totaled 1.486 acres. The temporary construction easements were 20 to 30 feet in width and totaled an additional 1.654 acres. Okoruwa's conclusion that the easements changed the highest and best use of the property from residential to recreational was without sufficient foundation. His testimony as to Liberty's damages was therefore speculative and conjectural.

VII. CONCLUSION

The order of the Court of Appeals that dismissed the appeal is reversed. The trial court erred in admitting Okoruwa's testimony. We therefore reverse the judgment and remand the cause for a new trial. Liberty's motion for attorney fees is denied, and its cross-appeal is dismissed.

REVERSED AND REMANDED FOR A NEW TRIAL.

STATE OF NEBRASKA, APPELLEE AND CROSS-APPELLANT, V.
JOHN C. EPTING, SR., APPELLANT AND CROSS-APPELLEE.
751 N.W.2d 166

Filed July 3, 2008. No. S-07-886.

1. **Statutes: Appeal and Error.** Statutory interpretation presents a question of law, and an appellate court resolves such issues independently of the lower court's conclusions.

Appeal from the District Court for Lincoln County: JOHN P. MURPHY, Judge. Reversed and remanded for further proceedings.

Patrick B. Hays, Lincoln County Public Defender, for appellant.

Jon Bruning, Attorney General, and George R. Love for appellee.

HEAVICAN, C.J., WRIGHT, CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

WRIGHT, J.

NATURE OF CASE

This case is before the court styled as a new direct appeal arising from a motion for postconviction relief. Without conducting an evidentiary hearing, the district court for Lincoln County entered an order granting John C. Epting, Sr., a new direct appeal. We conclude that the district court erred in ordering postconviction relief.

SCOPE OF REVIEW

[1] The dispositive procedural issues presented by the State's cross-appeal arise under the Nebraska Postconviction Act, Neb. Rev. Stat. §§ 29-3001 to 29-3004 (Reissue 1995). Statutory interpretation presents a question of law, and an appellate court resolves such issues independently of the lower court's conclusions. *State v. Jim*, 275 Neb. 481, 747 N.W.2d 410 (2008).

FACTS

On December 19, 2005, an information was filed in the district court for Lincoln County, charging Epting with second degree murder and use of a deadly weapon to commit a felony. Epting subsequently entered a plea of no contest to an amended information charging him with manslaughter and first degree assault. The court sentenced Epting to a term of imprisonment of 15 to 20 years for his manslaughter conviction and a term of 10 to 20 years for his first degree assault conviction.

Epting, acting pro se, filed a verified motion for postconviction relief, alleging that his "trial counsel did not file a notice of appeal nor advise his client that an appeal could be taken form [sic] the pleading proceeding and conviction." On July 17, 2007, the district court, without conducting an evidentiary

hearing, entered an order finding that "based on the allegations contained in the motion[,] there may have been a denial of the right to counsel on a direct appeal." It granted Epting relief in the form of a new direct appeal. Epting subsequently filed this appeal on August 15.

The State filed a praecipe for a bill of exceptions and a transcript for any proceedings or filings on or after July 9, 2007, the date Epting filed his motion for postconviction relief. The court reporter certified that no record of any proceedings or filings was made on the dates specified, other than Epting's July 9 motion and the district court's July 17 order.

ASSIGNMENTS OF ERROR

Epting proceeds as if he were before this court on a direct appeal. On cross-appeal, the State claims the district court erred in granting postconviction relief without first conducting an evidentiary hearing and making findings of fact and conclusions of law.

ANALYSIS

The issue is whether a district court may grant postconviction relief without first conducting a hearing. We have previously determined this issue in *State v. Jim, supra*, where we set forth the procedural requirements that the parties and the court must follow under the Nebraska Postconviction Act. "Unless the motion and the files and records of the case show . . . that the prisoner is entitled to no relief, the court shall . . . grant a prompt hearing thereon, determine the issues[,] and make findings of fact and conclusions of law with respect thereto." § 29-3001. See *State v. Jim, supra*.

The record includes the bill of exceptions from Epting's trial but none from an evidentiary hearing before the district court regarding postconviction. We have only Epting's verified motion for postconviction relief and the district court's order in the postconviction record granting a new direct appeal. Because there was no evidentiary hearing as required, we cannot conduct a meaningful review of the postconviction proceedings before the district court.

If the district court grants an evidentiary hearing in a postconviction proceeding, it is obligated to determine the issues

and make findings of fact and conclusions of law with respect thereto. *State v. Jim*, 275 Neb. 481, 747 N.W.2d 410 (2008).

CONCLUSION

The district court erred in granting Epting a new direct appeal without holding an evidentiary hearing. This is not permitted by the Nebraska Postconviction Act and constitutes reversible error. Thus, we reverse the judgment of the district court and remand the cause for further proceedings.

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.

DANIEL J. NIEMOLLER, APPELLANT, V. CITY OF PAPILLION, APPELLEE.

752 N.W.2d 132

Filed July 3, 2008. No. S-07-893.

1. **Statutes: Appeal and Error.** Statutory interpretation is a question of law, which an appellate court resolves independently of the trial court.
2. **Statutes.** Statutory language is to be given its plain and ordinary meaning.
3. **Statutes: Appeal and Error.** An appellate court will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous.
4. **Statutes.** A court must attempt to give effect to all parts of a statute, and if it can be avoided, no word, clause, or sentence will be rejected as superfluous or meaningless.
5. **Constitutional Law: Appeal and Error.** A constitutional issue not presented to or passed upon by the trial court is not appropriate for consideration on appeal.

Appeal from the District Court for Sarpy County: WILLIAM B. ZASTERA, Judge. Affirmed.

Leanne A. Gifford, of Scheldrup, Blades, Schrock, Sand & Aranza, P.C., for appellant.

Michaelle L. Baumert and Monica K. Hoppe, of Husch, Blackwell & Sanders, L.L.P., for appellee.

HEAVICAN, C.J., WRIGHT, CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.