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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Michael G. Nettles, Circuit Court Judge

Case No. 20-CP-22-00600
Case No. 20-CP-22-00601
Appellate Case No. 2022-000291

Sunset Lodge, LLC, and Franklin D. Beattie, as trustee of The Franklin D. Beattie Preservation Trust, and M. Baron Stanton, Plaintiffs,

v.

Town of Pawleys Island, Defendant,

Of which Sunset Lodge, LLC and Franklin D. Beattie, as trustee of the Franklin D. Beattie Preservation Trust are the ....Appellants,

and

Town of Pawleys Island is the.. Respondent.

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

Table of Authorities ii

Statement of Issues on Appeal 1

Statement of the Case 1

Standard of Review 3

Arguments 5

1. The circuit court applied the proper legal framework for analysis of a "reasonable" attorney fee award under S.C. Code § 28-2-510(A) 7

2. The circuit court did not abuse its discretion in applying the factors set forth in Jackson v. Speed for determination of a reasonable attorney fee 10

   a. Application of the Jackson factors 11

      1) The nature, extent and difficulty of the case 11

      2) The time necessarily devoted to the case 12

      3) Professional standing of counsel 14

      4) Contingency of compensation 14

      5) Beneficial results obtained 15

      6) Customary legal fees for similar services 21

   b. Determination of Reasonable Attorney Hours and Application of the Lodestar Analysis 21

3. The circuit court did not err in considering Respondent's supporting attorney affidavits 22

   a. Affidavit of David G. Pagliarini 22

   b. Affidavit of William C. Dillard, Jr. 25

4. The circuit court statement referencing consolidation does not require correction 27

Conclusion 28

TABLE OF AUTHORITIES

CASES

Baron Data Sys., Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989) 15

Biery v. United States, 818 F.3d 704, 712 (Fed. Cir. 2016)...16

Blumberg v. Nealco, Inc., 310 S.C. 492, 427 S.E.2d 659 (1993) 8

City of N. Charleston v. Claxton, 315 S.C. 56, 431 S.E.2d 610 (Ct. App. 1993).................10, 13

Est. of Borst v. O'Brien, 979 F.2d 511 (7th Cir. 1992) 16

Georgia Dep't of Transp. v. Jasper Cnty., 355 S.C. 631, 586 S.E.2d 853 (2003).......................22

Getzen v. L. Offs. of James M. Russ, P.A., 323 S.C. 377, 475 S.E.2d 743 (1996)................10, 13

Gurrobat v. HTH Corp., 346 P.3d 197 (Haw. 2015)..13

Hardaway Concrete Co. v. Hall Contracting Corp., 374 S.C. 216, 647
S.E.2d 488 (Ct. App. 2007)...20

Hensley v. Eckerhart, 461 U.S. 424 (1983) 12, 16, 17

Horton v. Jasper Cnty. Sch. Dist., 423 S.C. 325, 815 S.E.2d 442 (2018) 4

Hueble v. S.C. Dep't of Nat. Res., 416 S.C. 220, 785 S.E.2d 461 (2016) 17

Jackson v. Speed, 326 S.C. 289, S.E.2d 750 (1997) 4, 7, 9, 10, 14, 15, 21, 22

Johnson v. City of Aiken, 278 F.3d 333 (4th Cir. 2002) 17

Layman v. State, 376 S.C. 434, 658 S.E.2d 320 (2008)...4, 5, 8, 9, 17, 22

O'Shields v. Columbia Auto., LLC, 435 S.C. 319, 867 S.E.2d 446 (Ct. App. 2021)...................17

Popham v. City of Kennesaw, 820 F.2d 1570 (11th Cir. 1987) 16

Rice v. Multimedia, Inc., 318 S.C. 95, 456 S.E.2d 381 (1995)..15

S.C. Dep't of Transp. v. Revels, 411 S.C. 1, 766 S.E.2d 700 (2014) 3, 4, 5, 7

Sunrise Sav. & Loan Ass'n v. Mariner's Cay Dev. Corp., 295 S.C. 208,
367 S.E.2d 696 (1988) 10, 13

Taylor v. Medenica, 331 S.C. 575, 503 S.E.2d 458 (1998) 8, 28

Timmons v. S.C. Tricentennial Comm'n, 254 S.C. 378, 175 S.E.2d 805(1970) 11, 18

Vialpando v. Johanns, 619 F. Supp. 2d 1107 (D. Colo. 2008) ……………………………16, 17

STATUTES

S.C. Code Ann. § 15-77-300..5

S.C. Code Ann. § 28-2-30(14)..7, 9

S.C. Code Ann. § 28-2-50..11

S.C. Code Ann. § 28-2-510(A)...7, 9, 10

S.C. Code Ann. § 28-2-510(B)(1)..5

OTHER AUTHORITIES

Rule 222, SCACR...28

Rule 56(a), SCRCP...11

STATEMENT OF ISSUES ON APPEAL

I. Whether the circuit court applied the proper legal framework for analysis of a "reasonable" attorney fee award under S.C. Code § 28-2-510(A).

II. Whether the circuit court properly exercised its discretion in applying the factors set forth in Jackson v. Speed for determination of a reasonable attorney fee.

III. Whether the circuit court erred in considering Respondent's supporting attorney affidavits.

IV. Whether the circuit court statement referencing consolidation requires correction.

STATEMENT OF THE CASE

This appeal arises from attorney fee awards in two related condemnation challenge actions involving properties owned separately by the two Appellants. A third related case, which is not part of this appeal, involves property owned by counsel for the Appellants, M. Baron Stanton. Stanton represented both Appellants and himself at the trial court level. On October 15, 2021, the three cases were consolidated by consent of the parties. (R. pp. 98).

In or around June 2020, Respondent Town of Pawleys Island ("the Town") served on both Appellants and Stanton a Condemnation Notice through which it sought to acquire beach renourishment easements. (R. p. 269, Amended Complaint, ¶ 150, et seq.). On July 21, 2020, Appellants and Stanton each filed separate challenge actions objecting to the condemnations on various procedural and substantive grounds. (Franklin D. Beattie v. Town of Pawleys Island, Civil Action No. 2020-CP-22-0601; Sunset Lodge, LLC v. Town of Pawleys Island, Civil Action No. 2020-CP-22-0600; and M. Baron Stanton v. Town of Pawleys Island, Civil Action No. 2020-CP-22-0602). On July 31, 2020, Appellants and Stanton filed Amended Complaints. (R. p. 216). After

the Town's motion to dismiss was denied, it filed its Answer to the Amended Complaint in each case on September 18, 2020. (R. pp. 277).

In the meantime, approximately 31 days after filing the initial Complaints, Appellants and Stanton filed motions for summary judgment on August 21, 2020. (R p.429). The summary judgment motions were argued before the Honorable Michael G. Nettles at a virtual hearing on December 4, 2020. On January 20, 2021, Judge Nettles entered orders granting summary judgment on certain of the grounds raised by Appellants and Stanton. (R. pp.13). On April 5, 2021, Judge Nettles entered amended summary judgment orders making certain modifications to the language used. (R. pp. 60).

Previously, shortly after the original summary judgment orders were entered, the Appellants had on January 25, 2021, filed motions for attorney fees and supporting attorney affidavits. (R. pp. 921). In the motions and affidavits, each Appellant requested an award of $43,875.05 in attorney fees, or $87,750.09 total for both Appellants, plus costs. Appellants asserted that this represented 2/3 of total fees of $131,625.14, with Stanton not requesting an award of his 1/3 share. Appellants' submission did not include any itemized fee statements documenting the claimed attorney time. On February 3, 2021, undersigned counsel for the Town entered an appearance in the cases. The next day, February 4, 2021, Appellants filed amended fee affidavits requesting attorney fees of $49,533.00 each, or $99,066.00 total. (R. pp. 989). Two days later, on February 5, 2021, the Town filed its *Initial Reply in Opposition to Plaintiff's Motion for Expenses*. (R. pp. 997), in which it requested copies of Appellants' itemized attorney fee statements and a scheduling order providing an opportunity to review and respond to Appellants' fee claims.

Counsel for the parties subsequently fell into disagreement over whether, and in what manner, the Appellants would produce copies of redacted fee statements.[1] On April 5, 2021, Judge Nettles entered an order directing counsel for Appellants to produce redacted fee statements to counsel for the Town and unredacted copies to the court for in camera review. (R. pp.86). On April 22, 2021, Appellants filed additional amended fee affidavits requesting attorney fees of $56,417.33 each, or $112,834.66 total. (R. pp.1126). On June 30, 2021, after reviewing and amending Appellants' proposed redactions, Judge Nettles entered an order requiring Appellants to produce revised redacted fee statements to counsel for the Town. (R. pp.94). Subsequently, Appellants filed final amended fee affidavits on September 10, 2021, requesting fees of $60,198.33 each, or $120,396.66 total (2/3 of a total of $180,595.00 for the three consolidated cases). (R. pp.1154).

The fee petitions were argued before Judge Nettles on October 6, 2021. On November 23, 2021, Judge Nettles entered orders awarding each Appellant attorney fees in the amount of $8,000.00 ($16,000.00 total for both Appellants), plus costs. (R. pp. 102). Appellants' motions to reconsider were denied on January 28, 2022, (R. pp. 116), and on the same day Appellants' counsel filed satisfactions of judgment acknowledging that the awarded fees had been paid. This appeal was initiated by the filing of a Notice of Appeal on February 28, 2022.[2]

STANDARD OF REVIEW

"The decision to award or deny attorneys' fees under a state statute will not be disturbed on appeal absent an abuse of discretion." S.C. Dep't of Transp. v. Revels, 411 S.C. 1, 8, 766 S.E.2d

[1] The Town's recounting of the course and resolution of the fee statement production dispute is provided in detail in the September 20, 2021, Affidavit of William C. Dillard, Jr. (R.p.1240, ¶8-13).

[2] The Town does not stipulate to the accuracy of what is presented in Appellants' brief as the "Extended Statement of Uncontested Facts." (App. Brief p.6, et seq.). The Town further notes that the separate civil actions referenced by Appellants as the "Challenge II cases" have no relevance to the issues on appeal here.

700, 703 (2014). “An abuse of discretion occurs when the conclusions of the trial court are either controlled by an error of law or are based on unsupported factual conclusions.” Id. “Similarly, the specific amount of attorneys' fees awarded pursuant to a statute authorizing reasonable attorneys' fees is left to the discretion of the trial judge and will not be disturbed absent an abuse of discretion.” Id.

As the S.C. Supreme Court has explained, “[d]ecisions as to the amount of attorneys' fees should ordinarily be made by trial courts. When a trial court's decision is made on a sound evidentiary basis and is adequately explained with specific findings—as the law requires—we defer to the trial court's discretion.” Horton v. Jasper Cnty. Sch. Dist., 423 S.C. 325, 331, 815 S.E.2d 442, 445 (2018). The Supreme Court has also expressed that, where there is conflicting evidence in the record but insufficient factual findings by the trial court, the preferred procedure is not to make an appellate fee award but instead to “remand [the] case to the circuit court to allow the court to reconsider its decision and provide specific findings that support the award amount.” Id. Where analysis of the six factors identified under Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750 (1997), applies, “an award for attorney's fees will be affirmed so long as sufficient evidence in the record supports each factor.” Id. at 308, 486 S.E.2d at 760.

On the other hand, “where the issue of the amount of attorneys' fees awarded depends on the Court's interpretation of ‘reasonable’ attorneys' fees as contained in the [Eminent Domain Procedure] Act, the interpretation of the statute is a question of law that the Court reviews de novo.” Revels at 8, 766 S.E.2d at 704 (citing Layman v. State, 376 S.C. 434, 444, 658 S.E.2d 320, 325 (2008). However, this does not mean that every appeal of whether a fee award was “reasonable” gives rise to a de novo evidentiary review. Instead, the de novo standard applies to determination of whether, as a matter of law, the circuit court applied the appropriate legal

framework in exercising its discretion to weigh the evidence of a "reasonable" fee as provided for under a specific statute.

Accordingly, the question for de novo review is whether the circuit court properly interpreted the meaning of "reasonable" in the fee statute, and not whether the appellate court necessarily agrees with the circuit court's ensuing factual determination of what constitutes a reasonable fee award. For example, in Revels, the S.C. Supreme Court applied a de novo standard of review to specify the appropriate legal framework for determination of a "reasonable" attorney fee award under the eminent domain "prevailing landowner" statute, S.C. Code Ann. § 28-2-510(B)(1), and held that, among other things, that subsection required submission of an itemized fee statement and could not be based solely on a contingency fee agreement. Revels at 15, 766 S.E.2d at 707. Similarly, in Layman, the S.C. Supreme Court applied a de novo review to interpret the meaning of a "reasonable" fee under the state action statute, S.C. Code Ann. § 15-77-300, holding that the statute should be applied using a "lodestar" analysis instead of a percentage-of-the-recovery method. Layman at 457, 658 S.E.2d at 332.

ARGUMENTS

The Appellants' brief asserts that the circuit court engaged in "dead-end observations . . . and seemingly pointless statements of some legal principles" (p.31), and expresses concern that "[t]he various additional errors and sub-errors of the Circuit Judge are too numerous to discuss in the space allowed." (p.41). Appellants certainly demonstrate strong disagreement with the circuit court's conclusions. They have not, however, presented any basis for a finding that it committed an abuse of discretion. The Town acknowledges that the Appellants did not set out to have easements acquired on their properties, and also of course recognizes that the circuit court found deficiencies in the procedure used to initiate the condemnations. Nothing, however, entitles the

Appellants to a fee award beyond what is generally reasonable and, of equal importance, appropriate in light of the results obtained.

Appellants' counsel stated that he had or would work **1000.5** hours, or more, in connection with the three consolidated cases. (R. pp. 1169-1175, 9/10/21 Aff. Stanton ¶ 60-65). The fee claim was calculated specifically based on **950.5** hours of previously tallied claimed attorney time. (R. p. 1272, supra). When factoring back in the proportionate amount of time for the third consolidated matter (i.e., the Stanton case), the underlying premise of the Appellants' claim is that **$180,595** worth of legal time was reasonably devoted to simultaneous work on the three essentially identical matters.[3].

For context, the Appellants' first five fee statements, presenting attorney time up through five days before entry of the January 20, 2021, summary judgment order, reflect **an average of 4.2 hours every weekday**, including holidays, over a six-and-a-half month period (600.7[4] hours over 143 weekdays). (R. Supp. pp. 93-122, Fee Statements; R. p.1241, Aff. Dillard 1st ¶ 6). The sixth fee statement, presenting additional attorney time up through the March 3, 2021, hearing on production of billing statements, reflects **an average of 5.1 hours every weekday**, including holidays, over a seven-week period (173.6 hours over 34 weekdays). (supra). The Appellants also claimed an additional 176.2 hours since March 3, 2021. (R. pp. 1171-1174, 9/10/21 Aff. Stanton ¶ 61-62). The fee statements reflect that in July 2020, the first month of the case, Appellants' counsel worked 27 of the 31 days of the month for a total of 162.8 hours, an average of just over six hours per each of the 27 days worked. (R. Supp. p.99, Fee Statements; R. p. 1214, Aff. Pagliarini ¶ 19). These numbers would represent an unreasonable expenditure of time even if the Appellants had obtained the

[3] As conceded in the affidavit of Appellants' counsel, the three cases were handled in tandem and involved essentially identical filings (R. pp. 1176-1177, 9/10/21 Stanton Aff. ¶ 72).

[4] 600.7 hours is the total the Appellants' claimed from these invoices after deduction of what Appellants' counsel attributes as time related to the separate "Challenge Action II" cases.

permanent relief they were truly seeking.[5]

As detailed below, the circuit court applied the appropriate legal test of reasonable attorney fees, properly exercised its discretion, and did so on the basis of valid evidence in the record.

1.) **The circuit court applied the proper legal framework for analysis of a "reasonable" attorney fee award under S.C. Code § 28-2-510(A).**

Determination of the appropriate award is governed by the fee-shifting provision of the S.C. Eminent Domain Procedure Act ("the Act"). Specifically, the Act includes the following provision for an award of attorney fees to a successful challenge action plaintiff:

> If, in the action challenging the condemnor's right to take, the court determines that the condemnor has no right to take all or part of any landowner's property, the landowner's **reasonable costs and litigation expenses** incurred therein must be awarded to the landowner. . . .

S.C. Code Ann. § 28-2-510(A) (emphasis added). Under the Act, "'[l]itigation expenses' means the **reasonable fees**, charges, disbursements, and expenses **necessarily incurred** from and after service of the Condemnation Notice, including, but not limited to, **reasonable attorney's fees**, appraisal fees, engineering fees, deposition costs, and other expert witness fees necessary for preparation or participation in condemnation actions . . . ." § 28-2-30(14) (emphasis added).

When determining the reasonableness of attorney fees, the fee arrangement between the party and its attorney does not control. As recognized in Revels, 411 S.C. at 13, 766 S.E.2d at 706, a Court applying fee shifting provisions under the Act has discretion to apply the factors identified in Jackson. Specifically, the Court may consider "(1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services."

[5] At the hearing, Counsel for the Town did not concede that the hours had actually been worked, but noted at the start of his arguments that the Town was not affirmatively claiming that the hours had not been worked. (Transcript p.33:8-14).

Id. at 308, 486 S.E.2d at 760 (citing Blumberg v. Nealco, Inc., 310 S.C. 492, 427 S.E.2d 659 (1993)). "Consideration should be given to all six factors; none of the factors is controlling." Taylor v. Medenica, 331 S.C. 575, 580, 503 S.E.2d 458, 461 (1998).

The S.C. Supreme Court has applied the Jackson factors to fee-shifting statutes in the context of a "lodestar" analysis. Layman at 457, 658 S.E.2d at 332. "A lodestar figure is designed to reflect the reasonable time and effort involved in litigating a case, and is calculated by multiplying a reasonable hourly rate by the reasonable time expended." Id. The six Jackson factors are applied to determine "the reasonable time expended and a reasonable hourly rate for purposes of calculating attorneys' fees." Id. at 458, 658 S.E.2d at 333. Although not included in the circuit court's analysis in this case, after initial determination of the lodestar, "a court may consider other factors justifying an enhancement of the lodestar figure with a 'multiplier' before arriving at a final amount." Id at 457, 658 S.E.2d at 332 (applying a 1.25 multiplier to enhance the lodestar based on the exceptional circumstances and success in the case).

Appellants incorrectly argue that the proper legal analysis required the circuit court to first arrive at a lodestar number by "determining all hours actually expended on the litigation as supplied by records of the prevailing party" (App. Brief p.33), and that only after a lodestar was determined on that basis should the court consider "any enhancement by applying further considerations under Blumberg which stand out as extraordinary." (App. Brief p.34). Appellants argue that the circuit court put "the cart before the horse" by "erroneously jump[ing] straight into using . . . the Blumberg factors of 'the nature of the case' and 'the beneficial results obtained'" instead of starting from a presumptive acceptance of the "actual hours" claimed in the Appellant's fee affidavit. (App. Brief p.34). Appellants further argue, without legal citation, that "the initial

adjustment of actual time spent is ordinarily done only in special circumstances." (App. Brief p.35-36).

In fact, however, Layman explicitly states that a lodestar figure should be determined based on consideration of the Jackson factors. Layman at 458, 658 S.E.2d at 333 ("In determining the reasonable time expended and a reasonable hourly rate for purposes of calculating attorneys' fees, South Carolina courts have historically relied on six common law factors of reasonableness . . . [listing Jackson factors]"). It was not error for the circuit court to do so here. Furthermore, the law does not require, as Appellant seems to argue, that the circuit court start from a presumption that the "actual hours" claimed were reasonable and necessary and then only deduct from those claimed hours based on findings that specific time entries were excessive. The potential for such an undertaking to be monumental, if not impossible, is well illustrated in this case, in which the Appellants presented a claim of nearly 1,000 hours and fee statements in a non-itemized, "block billing" format. Of this total, 176.2 of the hours were not supported by submission of any fee statements at all and instead only by assertions that the hours had been worked on certain days or were expected to be worked moving forward. (R. pp. 1171-1174, 9/10/21 Aff. Stanton ¶ 61-62).

Under South Carolina law, an award of attorney fees does not turn on determination of the "actual hours" worked. Instead, as detailed in Jackson and Layman, the circuit court must endeavor to determine a reasonable attorney fee based on consideration of, among other things, the "time necessarily devoted to the case." (emphasis added). This is particularly important here, where the relevant fee shifting statute specifically provides for an award of only the "reasonable costs and litigation expenses incurred", S.C. Code Ann. § 28-2-510(A) (emphasis added), and goes on to define litigation expenses as, in relevant part, "the reasonable fees . . . necessarily incurred[.]" § 28-2-30(14) (emphasis added).

The party claiming fees bears the burden to support its claim and is certainly not entitled to any presumption that the claimed attorney time was reasonable. *See, e.g.*, Sunrise Sav. & Loan Ass'n v. Mariner's Cay Dev. Corp., 295 S.C. 208, 211, 367 S.E.2d 696, 698 (1988) ("The circuit court had before it only an affidavit from [petitioner]'s counsel stating, in conclusory fashion, that the fees were reasonable. Based upon this record, we conclude that the award is unsupported by the evidence.). The circuit court may reduce a fee award where it finds that the claimed time represents "excessive and duplicitous work," Getzen v. L. Offs. of James M. Russ, P.A., 323 S.C. 377, 382, 475 S.E.2d 743, 746 (1996), or "an unreasonable duplication of efforts." City of N. Charleston v. Claxton, 315 S.C. 56, 63, 431 S.E.2d 610, 614 (Ct. App. 1993).

Here, the circuit court found that "the [Appellant]s' fee claim is disproportionate and unreasonable in relation to the nature, extent, and difficulty of the litigation", that "the fee statements and fee affidavits did not include itemization to shed light on the massive amount of attorney time presented", and that "the reasonableness and necessity of the claimed attorney time is unsupported by the evidence." (R. pp.105, 107, Order, p.4, 6). Additional discussion of the record and factual findings are included below. At this stage of the analysis, however, the relevant point is that the legal framework governing determination of a "reasonable" attorney fee provides a trial court with discretion to arrive at such conclusions after reviewing the evidence. The circuit court did not commit a legal error by determining that it could conclude the claimed "actual hours" were unreasonable and instead consider evidence provided in Town's attorney affidavit.

2.) The circuit court did not abuse its discretion in applying the factors set forth in *Jackson v. Speed* for determination of a reasonable attorney fee.

Appellants' fee petition sought an award that was plainly far in excess of "the landowner's reasonable costs and litigation expenses incurred [herein]." § 28-2-510(A). As set forth below, the circuit court properly exercised its discretion in considering the Jackson factors and making a

determination of a reasonable fee award. The relevant standard of review applicable to the factual determinations in the fee award, that of an "abuse of discretion", does not burden the appellate court with any need to repeat the circuit court's extensive efforts in weighing the relevant evidence.

a. Application of the Jackson factors

(1) The nature, extent, and difficulty of the case

As set forth in the Order and supported in the record, the circuit court made specific findings in support of its conclusion that "the [Appellant]s' fee claim is disproportionate and unreasonable in relation to the nature, extent, and difficulty of the litigation." (R. p. 105, Order p.4-5). The underlying claims in this challenge action were not particularly complex or difficult, either legally or factually. Appellants' arguments to the contrary are belied by the fact that they filed for summary judgment at the beginning of the case on literally the first day they were permitted to do so under Rule 56(a), SCRCP. (R. p. 159, Complaint; R. p.429, M. Sum. Judg.). In any condemnation challenge action there are only a limited number of grounds for the challenge – fraud, bad faith, or abuse of discretion – and the limited relevant South Carolina case law makes it clear that governmental bodies are entitled to substantial deference in determining public use and necessity. E.g., Timmons v. S.C. Tricentennial Comm'n, 254 S.C. 378, 396 (1970). Admittedly, Appellants' arguments regarding the "necessity" of an easement required by the Army Corps of Engineers for a long-term federal beach renourishment program present a scenario that does not come up in run-of-the-mill highway condemnation matters. However, there is nothing particularly complicated about the relevant facts or law. See, e.g., S.C. Code Ann. § 28-2-50 ("A condemnor may comply with any federal statute, regulation, or policy prescribing a condition precedent to the availability or payment of federal financial assistance for any program or project for which the condemnor is authorized to exercise the power of eminent domain.").

Likewise, factual review of what Town Council considered and discussed at one or even a

handful of meetings at which relevant decisions may have been made does not present a demanding task. The Appellants did not identify any expert witnesses and, although Appellants' counsel deposed the appraiser for the Town, no testimony from the deposition was referenced in the summary judgment order. Particularly with regard to the limited scope of procedural claims on which the Appellants actually prevailed, the case by no means involved complex or difficult issues.

As set forth in the Affidavit of David Pagliarini, this was a case of "limited complexity and scope". (R. p.1217, Aff. Pagliarini, ¶ 31). As Mr. Pagliarini explained in more detail, "[c]hallenge actions are limited in scope and relevant case law is also limited. This is evident in Mr. Stanton's pleadings wherein he essentially pled two causes of action: a) fraud and bad faith in the context of public necessity; and 2) South Carolina Eminent Domain Procedure Act violations. . . . The scope of the pleadings, discovery and motions in this case are limited and the volume of work claimed is overwhelmingly unnecessary and unreasonable. . . . [C]hallenge actions of this nature with limited discovery and no trial can be successfully managed in one-tenth of the time claimed here." (R. p.1216, Aff. Pagliarini, ¶ 27-29).

(2) The time necessarily devoted to the case

As set forth in the Order, the circuit court made specific findings in support of its conclusions that "the reasonableness and necessity of the claimed attorney time is unsupported by the evidence" and "[t]he claimed hours are excessive in light of the actual needs of the case, even factoring in reasonable time spent on motions that the Town lost or withdrew." (R. p.106-107, Order p. 5-6). These findings were amply supported by the record.

"[T]he fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended . . . The applicant should exercise 'billing judgment' with respect to hours worked[.]" Hensley v. Eckerhart, 461 U.S. 424, 437 (1983). "Block billing

is problematic because it makes it more difficult for the party requesting fees to demonstrate the reasonableness of the billed hours; a party requesting attorneys' fees block bills at its own risk." Gurrobat v. HTH Corp., 346 P.3d 197, 204 (Haw. 2015).

Appellants' claim is excessive in light of the actual needs of the case, even factoring in reasonable time spent on motions that the Town lost or withdrew. As set forth in the Affidavit of N. David Durant, Sr., although the Town did push for early dismissal of the case and sought a requirement for posting bond, it certainly did not pursue a "scorched earth" litigation strategy as Appellants' counsel claimed. (R. pp. 1235-1237, ¶ 5-13). Similarly, the Affidavit of Brian Henry, Mayor of the Town of Pawleys Island, rebuts the claim that an email attached to the Appellants' fee affidavit constituted approval of "stop-at-nothing" litigation measures. (R. pp. 1238-1239, ¶ 3-8). Even if the Town had hypothetically pursued an exceptionally aggressive approach to the litigation, which it demonstrably did not do, it is difficult to imagine how this would have resulted in a need for Appellants' counsel to work nearly a thousand hours over what was in effect a period of a few months.

The Appellants presented only non-itemized, "block billed" fee statements, and in fact declined to provide any fee statements or time descriptions at all for the 176.2 hours claimed since March 5, 2021 (R. pp. 1171-1174, 9/10/21 Stanton Aff. ¶ 61-62). The Appellants bear the burden to support their claim and are not entitled to a presumption that the claimed attorney time was reasonable. Sunrise Sav. & Loan Ass'n, 295 S.C. at 211, 367 S.E.2d at 698, and particularly not where the claimed time is clearly excessive. Getzen, 323 S.C. at 382, 475 S.E.2d at 746; Claxton, 315 S.C. at 63, 431 S.E.2d at 614.

As opined in the Pagliarini affidavit and adopted by the circuit court, a more appropriate estimate of the total time reasonably and necessarily devoted in tandem to the three consolidated cases was approximately 125 hours. (R. p. 1217, Aff. Pagliarini, ¶ 31; R. p. 110, Order p.9). As the circuit

court explained, "[t]he Pagliarini affidavit accounts for reasonable efforts necessary to assert not only the procedural claims on which the plaintiffs prevailed, but also the other claims for fraud, bad faith, and lack of necessity that were not addressed in the summary judgment orders." (R.p.110, Order p.9). In other words, the Pagliarini estimate does not exclude time for the claims and relief on which, as discussed in more detail below, the Appellants did not prevail. The 125-hour estimate was based on a breakdown of reasonable hours for nine different categories of case tasks ("Drafting Pleadings", "Written Discovery", etc.). (R.p.1217, Aff. Pagliarini ¶32). The "Proposed Reductions" table attached to the Dillard affidavit, which allots reasonable amounts of time (127 hours total) to the actual tasks described in the Appellants' specific fee statement time entries, (R. p.1258, Exh. A p.12), reinforces the conclusion that 125 hours is an appropriate estimate of time necessarily devoted to the case.[6]

(3) Professional standing of counsel

The circuit court found that Appellants' counsel has commendable professional standing and a wide latitude of experience. (R. p. 107, Order p.6). As Respondent pointed out at the trial court level, it is worth noting that Appellants' counsel, while admittedly having been in practice for many years, does not appear to have significant, ongoing experience or practice emphasis in what he describes as the "specialized area of law" involved in this case. (R. p. 1179, 9/10/21 Stanton Aff. ¶ 81).

(4) Contingency of compensation

The circuit court found that this factor is not applicable under the circumstances of this case. (R. p. 108, Order p.7).

[6] Town also notes its argument that Appellants are not entitled to what their fee affidavit characterizes as 56.9 hours of "deferred time" from the August - November 2020 statements (See R. p. 1169, 9/10/21 Aff. Stanton, p. 16 fn.4), which were actually listed as "no charge" entries in the invoices. Fees that were not considered appropriate for inclusion in billing to a client are not properly included in a later fee request. "The award of attorney's fees is made to the party, not his lawyer." Jackson v. Speed, 326 S.C. 289, 307, 486 S.E.2d 750, 759 (1997).

(5) Beneficial results obtained

As set forth in the order and supported in the record, the circuit court made specific findings in support of its conclusions that "a significant amount of the time and effort of [Appellant]s' counsel was devoted to the theories of fraud, bad faith, and lack of necessity, along with the associated claim for permanent prohibitive relief" and that "the relief obtained by [Appellants] can fairly be characterized as limited and temporary in relation to the full scope of what they sought." (R. pp. 108-109, Order p.7-8). Appellants did obtain an order that will require the Town to initiate a new condemnation action if it still desires to pursue the beach renourishment easements. However, they did not achieve the real relief sought when the lawsuit was filed: a permanent bar on condemnation of the easements based on theories of alleged fraud, bad faith, and lack of necessity. Although the circuit court did not specifically deduct time from the 125-hour figure based on this factor, its findings do further support the fee award.

The S.C. Supreme Court has recognized that it is appropriate to reduce a statutory attorney fee award to a plaintiff that has prevailed only in part. In Rice v. Multimedia, Inc., 318 S.C. 95, 456 S.E.2d 381 (1995), the Court held that, although "Rice petitioned the trial court for attorney fees in the amount of $64,000[,] [t]he trial court limited the amount of attorney's fees to $32,100 since Rice prevailed only in part." Id. at 100 (where claimant prevailed on claims on just 4 of 7 contracts) (emphasis added). The Court explained that "the trial court thoroughly addressed each of the *Baron* factors in determining the award of attorney's fees. We find no abuse of discretion." Id. (citing Baron Data Sys., Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989)). Clearly implicit in the Court's reasoning was that it is appropriate to reduce the fees awarded to a partially prevailing party based upon, among other things, the Jackson factor of "beneficial results obtained." This approach is well developed under closely analogous case law governing federal

claims for civil rights violations, which often involve multiple alleged bases for challenging government conduct and result in varying degrees of success among the different theories.

As the U.S. Supreme Court established in Hensley v. Eckerhart, 461 U.S. 424 (1983), in civil rights cases "where the plaintiff achieved only limited success, the district court should award only that amount of fees that is reasonable in relation to the results obtained." Id. at 440. As the Court explained, "[t]he product of reasonable hours times a reasonable rate does not end the inquiry. There remain other considerations that may lead the district court to adjust the fee upward or downward, including the important factor of the 'results obtained.' This factor is particularly crucial where a plaintiff is deemed 'prevailing' even though he succeeded on only some of his claims for relief." Id. at 434.

> Litigants in good faith may raise alternative legal grounds for a desired outcome, and the court's rejection of or failure to reach certain grounds is not a sufficient reason for reducing a fee. The result is what matters. If, on the other hand, a plaintiff has achieved **only partial or limited success, the product of hours reasonably expended on the litigation as a whole times a reasonable hourly rate may be an excessive amount**. . . . Again, **the most critical factor is the degree of success obtained**.

Id. at 435–36 (emphasis added). "There is no precise rule or formula for making these determinations. The district court may attempt to identify specific hours that should be eliminated, or it may simply reduce the award to account for the limited success." Id. at 436-37. "A reduced fee award is appropriate if the relief, however significant, is limited in comparison to the scope of the litigation as a whole." Id. at 439.

Other courts around the country have applied the Hensley analysis to appropriately reduce attorney fee awards to only partially prevailing plaintiffs. *E.g.*, Biery v. United States, 818 F.3d 704, 712 (Fed. Cir. 2016); Est. of Borst v. O'Brien, 979 F.2d 511, 516 (7th Cir. 1992); Popham v. City of Kennesaw, 820 F.2d 1570, 1578–81 (11th Cir. 1987); Vialpando v. Johanns, 619 F. Supp. 2d 1107, 1128-29 (D. Colo. 2008). The Vialpando court, noting that "the bulk of the time spent by

the plaintiff's counsel was in the development and presentation of factual issues," emphasized that "the facts underlying the [successful] claim were simple and straightforward, whereas [the unsuccessful] claims . . . were far more complex." Id. at 1128-29.

The Supreme Court of South Carolina has relied on Hensley in general review of statutory fee awards on more than one occasion. Hueble v. S.C. Dep't of Nat. Res., 416 S.C. 220, 234, 785 S.E.2d 461, 468 (2016) (review of fee award under 42 U.S.C.A. § 1988); Layman v. State, 376 S.C. 434, 461, 658 S.E.2d 320, 334 (2008) (review of fee award under the "state action" statute, S.C. Code Ann. § 15-77-300). The S.C. Court of Appeals also recently applied the Hensley "beneficial results" analysis, along with the Fourth Circuit Court of Appeals' discussion of the same, to a fee award under North Carolina law. O'Shields v. Columbia Auto., LLC, 435 S.C. 319, 339, 867 S.E.2d 446, 457 (Ct. App. 2021), reh'g denied (Oct. 26, 2021), cert. granted (Sept. 7, 2022) (citing Johnson v. City of Aiken, 278 F.3d 333 (4th Cir. 2002)).

Here, the Appellants obtained what was essentially temporary procedural relief based upon their stated position that "noncompliance with procedural rules must first be cured before any contemplated condemnation may proceed[.]" (R. p. 226, Amended Complaint p.11). They did not, however, obtain the permanent prohibitive relief that they actually filed these actions to obtain. In granting summary judgment to Appellants, the circuit court quashed the Town's condemnation notices and associated condemnation actions based upon findings that there were deficiencies in the procedure used to initiate and pursue the actions.[7] However, Appellants did not obtain any

[7] Specifically, the circuit court found that Town Council's authorization ordinance did not include the specific details of the easement language and did not explicitly identify fact-based decision-making criteria, (R. pp. 73-74, Am. S.J. Order pp.14-15); the Town's pre-condemnation appraisal did not account for the specific details and burdens of the easement language reflected in the Condemnation Notice (R. pp. 81-83, Am. S.J. Order pp.22-24); and, prior to and separate from service of the Condemnation Notice, the Town did not provide Plaintiff a copy of the appraisal

permanent prohibitive relief or a declaration that the Town lacks authority to pursue the beach renourishment easements in the future. The circuit court stated that it "[did] not find it appropriate to address [Appellants'] claims that the Town acted in fraud, bad faith, or related claims." (R. p. 72, Am. S.J. Order p.13, fn.5). The summary judgment order further specified that the ruling quashing the condemnation notices was "without prejudice to another attempt and attendant defenses if applicable." (R. p.73, p.84, Am. S.J. Order pp.14, 25). If the Appellants' desire to challenge any future condemnation attempt by the Town based upon theories of fraud, bad faith, or lack of necessity, they will still bear the burden to prove those claims.[8]

Significantly, the summary judgment order did not provide the permanent, prohibitive relief that the Appellants so exhaustively pleaded and sought based on theories of fraud, bad faith, and lack of necessity. Those non-prevailing claims are clearly what occupied the vast majority of Appellant counsel's time and attention in the litigation. As reflected in the table of contents of the 61-page Amended Complaint, which includes 179 numbered paragraphs and an 8-page unnumbered "preliminary statement," the allegations on which the Plaintiff has actually prevailed are essentially limited to a portion of what is included on pages 54 – 55 (¶ 150 – 152) (R. pp. 269-270) and pages 57 – 59 (¶ 163 – 172). (R. pp. 272-274).

The focus of the Plaintiff's claims was instead its sweeping allegations of fraud, bad faith, and lack of necessity, all asserted in an effort to prevent not just the subject condemnation attempt but also any future attempt to condemn a similar easement, regardless of the procedure used to do

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report and formally offer to purchase the easement based on the appraised value ($0.00). (R. pp. 81-83, Am. S.J. Order pp.22-24).

[8] *See, e.g.*, Timmons v. S.C. Tricentennial Comm'n, 254 S.C. 378, 396, 175 S.E.2d 805, 814 (1970) ("The burden would be upon the landowner to show that the public use is a sham and a fraud . . . [that] there is no necessity for the use or the condemnation proceeding's purpose is to cloak some sinister scheme[.]").

so. (See, e.g., R. p. 72, Am. S.J. Order, p. 13 (reciting Plaintiff's claims); R. pp. 430-431, Motion for Summary Judgment, p. 2-3 (providing additional description of the Appellants' sweeping fraud and bad faith claims)). Appellants specifically sought an order permanently prohibiting condemnation of the easements.[9] None of these claims challenging the Town's fundamental right to ever condemn the easements were addressed in the summary judgment order. The order specifically stated that it "[did] not find it appropriate to address Plaintiff's claims that the Town acted in fraud, bad faith, or related claims." (R. p. 72, Am. S.J. Order p.13, fn.5). The plain language of the order contradicts Appellants' inaccurate claims that these issues were tied up in the procedural rulings. (See App. Brief p.48-49).

While procedural protections for landowners under the Eminent Domain Procedure Act are serious and important, it is also true that, in this particular case, the relief obtained by the Appellants can be fairly characterized as limited and temporary in relation to what the action actually sought to achieve. Accordingly, the circuit court had clear discretion to grant an award of attorney fees reflecting the limited nature of the "beneficial results obtained" and, among other things, accounting for time spent on claims and motions on which the Appellants did not prevail.

The "Proposed Reductions" table attached to the Dillard affidavit provided evidence that, of an estimated total of 127 hours reasonably devoted to the actual tasks listed in the fee statements, at least 26.3 hours (i.e., 21% of the total) would be clearly and reasonably attributable to the fraud, bad

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[9] See R. p. 271, Am. Complaint ¶ 158 ("[T]he Town of Pawley's Island's attempt to condemn an overbroad easement after the fact for an already completed and no longer proposed or prospective project should be disallowed and permanently restrained."); R. p. 272, Am. Complaint ¶ 162 ("In the alternative that an actual, bona fide, proposed additional project were to materialize, the easement sought has been sought through knowing, intentional misrepresentation, lack of honesty in fact, spite, caprice, arbitrariness, and illegality . . . In that these facts constitute 'fraud, bad faith or abuse of discretion,' the Town's contemplated condemnation action, currently stayed by this action, should be disallowed with prejudice.").

faith, and lack of necessity claims on which the Appellants did not prevail. (R. p. 1258, Exh.A p.12). This would have justified the circuit court in further reducing the 125 hours by 20% to 100 hours, and most certainly provides additional justification for the reasonableness of the 125 hours itself. Furthermore, of the 950.5 hours claimed, it is clear from the substance of Appellants' filings that much more than 20% of that excessive time is attributable to the non-prevailing theories - the excessive 950.5 hours were even more heavily weighted toward those unsuccessful claims. For example, of the 61-page Amended Complaint, only a handful of pages relate to the procedural claims on which the Appellants prevailed. It is clear that a substantial majority of the claimed 950.5 hours related exclusively to the non-prevailing claims. Again, this amply justifies an award based on the 125 hours provided for in the Pagliarini affidavit for the full scope of claims.

Additionally, even where a party's success on the merits triggers statutory recovery of attorney fees, the party is not entitled to fees associated with motions on which it was not successful. Hardaway Concrete Co. v. Hall Contracting Corp., 374 S.C. 216, 232–33, 647 S.E.2d 488, 496 (Ct. App. 2007) ("[B]ecause Hardaway lost the motion . . . the fees were not recoverable. . . . The attorney's fees award shall be reduced by that amount."). The Appellants are not entitled to recover fees associated with opposition to production of fee statements or the Town's request for protection from efforts to depose the Town Administrator after summary judgment.

The circuit court specifically found that "the [Appellants] were unsuccessful in their dispute with the Town over production and redaction of attorney fee statements and [took] that factor into account in consideration of the reasonable attorney time devoted to the matter." (R. p. 109, Order p.8). As the circuit court explained, "[t]he Town was granted its request for in camera review of all redactions, and certain redactions were removed. . . . the claimed attorney time associated with that dispute is excessive in relation to the reasonable amount of time necessary to address any concerns

about confidentiality and redaction." (R. p. 109, Order p.8). A detailed recounting of the redaction dispute, over which Judge Nettles presided and had extensive first-hand knowledge, is provided in the September 20, 2021, Affidavit of William C. Dillard, Jr. (R. pp. 1241-1246, ¶ 8-13).

(6) Customary legal fees for similar services

The circuit court found that "counsel's hourly rate of $190 in this matter is reasonable based upon his professional standing and experience." (R. p. 109, Order p.8). The court further found that "[t]he circumstances of the consolidated cases, in which the essentially identical claims of three plaintiffs were pursued jointly, made it reasonable and in line with customary billing practices for the total fees to be divided and billed in thirds to each of the three plaintiffs." (R. pp. 109-110, Order p.8-9). Appellants' counsel affirmed to the circuit court that the actual billing was handled in this manner. (R. p. 1177, 9/10/21 Aff. Stanton ¶ 73). Accordingly, the circuit court found that "it is reasonable that the attorney fee award be handled in the same way, with both claiming [Appellants] being entitled to one-third of the total reasonable fee for the combined litigation." (R. p. 110, Order p.9).[10]

b. Determination of Reasonable Attorney Hours and Application of the Lodestar Analysis

Based on review of the Appellants' redacted fee statements, the case records, the submissions and oral arguments of the parties, the six factors identified under Jackson, and other applicable law, the circuit court found that the reasonable amount of attorney time necessary for the plaintiffs in the three cases in this consolidated action, including pursuit of the fee award, was **125 hours**. (R. p.110, Order p.9). The circuit court did not ultimately specifically deduct additional attorney time devoted to the non-prevailing claims for permanent prohibitive relief. However, the court did find that "[t]he fact that the beneficial results achieved in the cases were more limited

[10] Appellants' brief also presents speculative, inaccurate arguments about the Town's attorney fees. No such information is in the record.

than that full requested scope of relief reinforces the Court's conclusion that 125 hours is an appropriate calculation of the time reasonably devoted to the cases on behalf of the plaintiffs."

To determine the fee award, consistent with Jackson and Layman, the circuit court multiplied the reasonable attorney hours by the hourly rate of Appellants' counsel ($190), and then divided the rounded total ($24,000) by three to arrive at reasonable fee awards of $8,000 to each Appellant.

3.) The circuit court did not err in considering Respondent's supporting attorney affidavits.

As discussed below, the circuit court properly considered the evidence submitted by the Town including the affidavits of David G. Pagliarini and William C. Dillard, Jr.

a. Affidavit of David G. Pagliarini

The circuit court did not abuse its discretion in considering the Affidavit of David G. Pagliarini. The affidavit was not submitted for the purpose of providing any legal opinions to the circuit court, and the Order did not cite to it for that purpose. Instead, the affidavit simply presented Mr. Pagliarini's opinion, based on his review of the case materials and his own considerable experience as an eminent domain practitioner,[11] as to the nature of the litigation, the reasonableness of Appellants' fee claims, and his own determination of a reasonable attorney fee in the matter. The validity of an inherently factual determination of reasonable attorney fees turns on whether "sufficient evidence in the record supports each [Jackson] factor." Jackson at 308, 486 S.E.2d at

[11] Notwithstanding the assertions in Appellants' brief that Mr. Pagliarini lacks familiarity with relevant litigation matters, his affidavit demonstrates what is in fact his extensive experience, including multiple statutory challenge actions. Condemnation projects in which he has been involved include, among many others, the Cooper River Bridge, the I-26 Port Access Road, and the Georgetown County Airport. (R. pp. 1221-1222, Aff. Pagliarini Exh.A). He is also identified as counsel of record in the significant reported challenge action Georgia Dep't of Transp. v. Jasper Cnty., 355 S.C. 631, 586 S.E.2d 853 (2003).

760. Consideration of an attorney fee affidavit, even that of an attorney who is not counsel of record in the case, is customary and is not contrary to any rule of evidence or procedure.

Such consideration was frankly probably a necessity in this case, given the massive amount of attorney time claimed and the length of the Appellants' submissions. The Order demonstrates that Judge Nettles found Mr. Pagliarini's affidavit to be helpful and credible. There is no basis for Appellants' assertion that "[t]he Judge was remiss in not reviewing the file for himself." (App. Brief p.26 fn.10). Judge Nettles reviewed "the plaintiffs' redacted fee statements, the case records, [and] the submissions and oral arguments of the parties," (R. p.110, Order p.9), and personally presided over the summary judgment and fee statement production phases of the case. The Order demonstrates that all of this background informed the circuit court's consideration and agreement with the Pagliarini analysis.

There was nothing inappropriate in Mr. Pagliarini consulting with case summary documents prepared by Respondent's undersigned counsel. While there is presumably no "standard" method for a consulting outside attorney's review of reasonable attorney fees, it was inherently reasonable for him to refer to case summary documents prepared by counsel of record. As discussed below, the case summaries provided to Mr. Pagliarini are accurate. As also discussed below, Pagliarini did not rely on or review the separate "Proposed Reductions" table included in the Dillard affidavit.

Pagliarini did not misstate the number of hearings or motions involved in the case. (See App. Brief p.30 fn.11). Pagliarini accurately stated that the cases "were largely litigated between July 2020 (the filing of the respective Complaints) and January 2021 when Orders granting summary judgment in favor of the three plaintiffs were filed", and then immediately after in the same paragraph, noted that "[t]he major case events include . . . two motion hearings." (R. p.1213,

Aff. Pagliarini ¶ 15). As verified in the Dillard case events summary and clear in the context of the Pagliarini affidavit, this was an accurate statement that motions were heard at two hearings, on September 11, 2020 (in person), and December 4, 2020 (virtual), during that chief portion of the litigation through January 2021. (R. pp. 1402-1403, Aff. Dillard 2nd Exh.A p.1-2).

Mr. Pagliarini did not claim that there were no further hearings after that time, and in fact the three additional hearings through April 2021 were also referenced in the case events summary attached to his affidavit. Judge Nettles was certainly aware of those additional hearings, as he presided over two of the three. The March 3, 2021, virtual hearing before Judge Nettles concerned the procedure for production of Appellants' redacted fee statements. No travel time was required, and reasonable attorney time for pursuit of the fee claim is accounted for in both the Pagliarini affidavit and the Order (R. p.1217, Aff. Pagliarini ¶ 32, 34; R. pp. 109-110, Order p.8-9). The March 19, 2021, virtual hearing before Judge Nettles was on the Town's motion to alter or amend the summary judgment orders. (R. p.1405, Aff. Dillard 2nd Exh.A p.4). That hearing did not require travel time and the motion is specifically acknowledged in the Pagliarini affidavit. (R. p. 1213, Aff. Pagliarini ¶ 15). The April 1, 2021, in-person motion hearing before Judge Culbertson was on the Town's motion for protection from the Appellants' attempts to depose the Town Administrator even after the grant of summary judgment. (R. p. 1405, Aff. Dillard 2nd Exh.A p.4). The court granted the Town's motion. (R. p. 51, 4/1/21 Form 4 Order of Protection).

Regarding the number of motions, Pagliarini accurately provided a non-exclusive list of several types of motions that were filed in the three cases. (R.p.1213, Aff. Pagliarini ¶15). This was obviously provided as a general description, and the actual individual motions are referenced in the Public Index printout and case events summary attached to the affidavit. (R.p.1223-34, Aff. Pagliarini Exh.B, C). Pagliarini certainly acknowledges that the Appellants were forced to deal

with motions filed by the Town. (R.p.1217, Aff. Pagl. ¶30-31). He also acknowledges, however, that throughout the litigation the three cases were effectively treated as one, with the parties handling identical motions in all three cases. (R.p.1211, 1213, Aff. Pagliarini ¶8, 16). Some of the motions never actually came up for hearings. (R.p.1231-34, See Aff. Pagliarini Exh.C). Appellants ignore all of this context in arguing that Pagliarini only allowed an average of 1.33 hours for each of what Appellants describe as "the actual fifteen (15) or more motions." (App. Brief p.30 fn.11).

b. Affidavit of William C. Dillard, Jr.

The circuit court also properly accepted the two Affidavits of William C. Dillard, Jr. and did not abuse its discretion in considering the affidavits. The affidavits did not purport to offer any legal opinions. The September 20, 2021, affidavit confirmed the accuracy of the case events table attached to the Pagliarini affidavit (R. pp. 1240-1241, Aff. Dillard 1st ¶ 5), provided calculations of daily averages of Appellants' claimed attorney time over certain periods (R. p.1241, supra ¶ 6), provided a table specifically analyzing Appellants' claimed time entries and proposing specific reductions (R. p. 1241, 1247 supra ¶ 7, Exh.A), and provided a detailed timeline of the dispute over production of Appellants' redacted fee statements (R. pp. 1241-1246, supra ¶ 8-13).

The "Proposed Reductions" table attached to the affidavit was prepared in order to aid the circuit court in consideration of specific reductions to Appellants' claimed time entries. The court instead agreed with the approach used in the Pagliarini affidavit. However, the table does provide additional evidence in the record in support of the circuit court's conclusions. In summary, the table identifies specific reductions to Stanton's time entries that were excessive or otherwise objectionable, leaving 127 total hours for work on all claims. The table then identifies additional specific reductions, totaling 26.3 hours, based on work on the substantive "fraud/bad faith" claims on which the Appellants did not prevail. Again, the circuit court specifically noted that the 125 hours in the

Pagliarini affidavit accounted for reasonable time related to those non-prevailing claims. (R. p. 110, Order p.9).

The record demonstrates that Pagliarini, in developing his opinions, did not rely on the Dillard "Proposed Reductions" table. To the contrary, the Dillard affidavit acknowledges that the table, although it represents Dillard's opinion, was prepared after "consideration of the analysis and conclusions set forth in the *Affidavit of David Pagliarini*." (R. p. 1241, Aff. Dillard 1st ¶ 7). As Dillard explained to the circuit court at the fee petition hearing,

> In preparing that table, I did look at Mr. Pagliarini's affidavit; I want to be clear about that. We didn't magically come to similar numbers. He didn't look at mine; I looked at his and agreed with his general framework. Generally, I applied that for case tasks to the fee statements that Mr. Stanton presented. Ultimately, it is my opinion of what is reasonable as appearing in my affidavit, and that also includes reasonable time for the fee petition.

(R. p.327, Transcript p.44:7-14). The "Proposed Reductions" table was not provided to Pagliarini at all. (R. p. 326, Transcript p.43:3-9). There is no basis whatsoever for the Appellants' contention that the table was provided to Pagliarini as a "target figure". (App. Brief p.28). Furthermore, Dillard's fully acknowledged consideration of the Pagliarini analysis does not affect the validity of the Dillard affidavit.

The second Dillard affidavit, dated October 5, 2021, was filed in response to Appellants' arguments that the "Case Events" table attached to the Pagliarini affidavit was not attached to the affidavit of Dillard, who had prepared it. This affidavit attached a copy of the Case Events table and reiterated Dillard's prior sworn statement that, "[t]o the best of my knowledge, the table accurately sets forth the timing and nature of the relevant case events." (R. p. 1401, Aff. Dillard 2nd ¶ 2). There is no basis for Appellants' contention that the table was "unsworn."

Appellants repeatedly claim there are errors in the "Case Events" and "Proposed Reductions" tables prepared by Dillard, but do not provide examples of any legitimate errors. The Proposed

Reductions table does not assert that Appellants' counsel spent 17.3 deposing an appraiser; the table specifically references that this time entry included local travel and communications and provided a reduced time period sufficient for all reasonable work during that time period. (R. p. 1249, Aff. Dillard 1st Exh.A p.3). The 17.3 hours itself came directly from Appellants' fee statements, (R. Supp. p.112-113, 11/18/20 Fee Statement p.3-4 (10/16 entry – 10/28 first entry), and Appellants' had the opportunity to attempt to demonstrate that the full amount of time was reasonable and necessary. Pagliarini's affidavit does not reference the 17.3 hours, but instead states, accurately, that the deposition took place "over a period of many hours over two separate days". (R. p. 1215, Aff. Pagliarini ¶ 24) (Appellants state that the deposition lasted 8 hours. App. Brief p.28 fn.10)).

Appellants argue that the Dillard "Case Events" table omits information, but do not specify what information was purportedly omitted or why it was important. The table provides a framework of the major events in the case based entirely on information that appeared in the circuit court record, and it was obviously not intended as a comprehensive list of every event that ever occurred in the case. As stated in the Dillard affidavit, the table provided "a chronological timeline of the case filings, hearings, orders, and other significant events appearing on the record from the initiation of the case through the plaintiff's April 22, 2021, amended fee affidavit." (R. p. 1401, Aff. Dillard 2nd ¶ 2). The table did not continue past that time frame because all subsequent case events related only to the fee petition. The table was filed with the Pagliarini affidavit 15 days before the fee petition hearing, and Appellants had ample opportunity to identify any relevant omissions and argue to the circuit court why any such omissions were material. In short, the table was a valid, accurate frame of reference for Pagliarini and the circuit court.

4.) The circuit court statement referencing consolidation does not require correction.

Appellants assert that the circuit court erred by stating that the cases "were once three separate cases." (App. Brief p.50). Appellants do not cite to the record and this phrase does not

appear in the Order. It appears that Appellants are referring to the circuit court's description of the grant of summary judgment "on January 20, 2021, in what were at the time three separate condemnation challenge actions." (R. p. 102, Order p.1). Nothing in the Order states or implies that the cases were merged. In the prior sentence the court states that it had agreed to "consolidate the three related cases." The Order later refers to "[t]hese consolidated actions." (R. p. 111, Order p.10 ¶ 5). In any event, the issue is moot because the Order also served to dismiss the consolidated actions, and that dismissal has not been appealed. While the Town fully acknowledges that the actions were consolidated, and not merged, there is no basis or reason for the Order to be corrected.

CONCLUSION

For the reasons set forth herein, this Court should (1) affirm the order of the circuit court. The Court should also deny Appellants' request to invoke Rule 222, SCACR, for recovery of additional statutory attorney fees, as Rule 222 is not a proper mechanism for such relief. *See* Taylor v. Medenica, 332 S.C. 324, 326, 504 S.E.2d 590, 591 (1998).

Respectfully submitted,

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TOWN OF PAWLEYS ISLAND

September 13, 2023