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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 Benjamin H. Culbertson, Circuit Court Judge

Case No. 20-CP-22-00930
Case No. 20-CP-22-00931
Case No. 20-CP-22-00932
Appellate Case No. 2023-001272

Sunset Lodge, LLC, ...Appellant,

v.

Town of Pawleys Island, ...Respondent,

and

Franklin D. Beattie, as trustee of the Franklin D. Beattie
Preservation Trust, ...Appellant,

v.

Town of Pawleys Island, ...Respondent,

and

M. Baron Stanton, ...Appellant,

v.

Town of Pawleys Island, ...Respondent.

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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(C).**

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 had subject matter jurisdiction over Appellants' untimely fee petition (alternate sustaining ground)**

V. **Whether Appellant Stanton was entitled to an award of attorney fees associated with his *pro se* representation (alternate sustaining ground)**

STATEMENT OF THE CASE

This appeal arises from the second of two related sets of condemnation challenge actions involving properties owned separately by the three Appellants. Counsel for the parties have sometimes referred to the two sets of cases as "Challenge I" and "Challenge II." Appellants herein have appealed what they deem to be an inadequate award of attorney fees in the Challenge II cases.

In or around June 2020, Respondent Town of Pawleys Island ("the Town") served on each Appellant a Condemnation Notice through which it sought to acquire a beach renourishment easement. (R. p.160, Amended Complaint, ¶ 81). On July 21, 2020, each Appellant separately filed challenge actions objecting to the condemnations on various procedural and substantive grounds (collectively, the "Challenge I" cases).[1] (R. p.173, Amended Complaint, ¶ 180, et seq.). Subsequently, in or around October 2020 and while the Challenge I cases were still pending, the

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[1] *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.

Town delivered to Appellants' counsel a set of three new Condemnation Notices through which it sought to acquire similar beach renourishment easements on Appellant's properties (referred to in the pleadings herein as the "New Notice[s]") (R. p.203, Amended Complaint, ¶ 352, et seq.).

On November 12, 2020, each Appellant separately filed a second challenge action objecting to the second set of condemnation notices (collectively, the "Challenge II" cases).[2] (R.p.72, Complaint). The Town filed Answers in the Challenge II cases on December 14, 2020, (R.p.145, Answer), and the Appellants then filed Amended Complaints on January 13, 2021 (R.p.149, Am. Complaint). Meanwhile, in the separate Challenge I cases, on January 20, 2021, Judge Michael Nettles issued summary judgment orders in favor of the Appellants, dismissing the first set of condemnation notices without prejudice based on what were determined to be certain procedural deficiencies. (R.p.12, Order p.2; R. p.731, Aff. Dillard ¶ 11; R. p.770, Aff. Durant ¶ 9).

On February 3, 2021, current appellate counsel for the Town entered an appearance in the Challenge II cases (R. p.731, Dillard Aff. ¶ 11). On February 5, 2021, counsel for the Town sent Appellants' counsel a letter requesting a pause in case activity and providing notice that the Town was considering abandonment of the second set of Condemnation Notices based on the potential impacts of the Challenge I summary judgment ruling. (R. p.732, Aff. Dillard ¶ 12 and Exh.B). As set forth in the affidavit of the Town Attorney, the Town recognized that "[t]he Challenge 1 summary judgment orders ruled in favor of the [Appellants] on at least some of the same procedural objections at issue in the Challenge 2 cases." (R. p.770, Aff. Durant ¶ 9)). Shortly thereafter, on February 10, 2021, the Town filed a Notice of Abandonment of Condemnation Action in all three Challenge II cases (R. [Appx.], N. Abandonment).

[2] *Franklin D. Beattie v. Town of Pawleys Island*, Civil Action No. 2020-CP-22-0931; *Sunset Lodge, LLC v. Town of Pawleys Island*, Civil Action No. 2020-CP-22-0932; and *M. Baron Stanton v. Town of Pawleys Island*, Civil Action No. 2020-CP-22-0930.

The Town filed its Answers to the Amended Complaints on March 3, 2021, with a copy of the Notice of Abandonment attached as an exhibit. (R. [Appx.] Ans. Am.Complaint). This pleading included a defense that, on the basis of the Notice of Abandonment, the Challenge II actions were now moot. (R. p.292, Ans. Am. Complaint ¶ 8). On March 5, 2021, with the Appellants having declined to consent to dismissal, (R. p.734, Aff. Dillard ¶ 29 fn.4), the Town filed its Motion to Dismiss and Motion for Protective Order relating to Appellants' ongoing attempt to pursue discovery notwithstanding the abandonment. (R. p. 365, M. Dismiss; R. p.351, M. Protection).

The Honorable Benjamin H. Culbertson, Circuit Court Judge, held a hearing on the Motion to Dismiss on April 1, 2021, and, on April 22, 2021, entered an Order of Dismissal without prejudice. (R. p. 11, O. Dismissal). The dismissal order provided that "[a]ny request for fees and/or costs should be presented by separate petition/motion in this action." (R. p. 20, O. Dismissal). The Appellants filed a Motion to Reconsider on April 28, 2021, (R. p.529, M. Reconsider). Judge Culbertson held a hearing on the motion to reconsider on June 3, 2021, and denied the motion in a Form 4 Order issued the same day (R. p. 24, 6/3/21 Form 4). With the consent of the parties, the June 3, 2021, order also consolidated the cases under a single civil action number. The Appellants filed a notice of appeal of the dismissal on July 2, 2021.[3] (R. [Appx.], 7/2/21 N. Appeal).

On October 21, 2022, more than 16 months after the circuit court's denial of Appellants' motion to reconsider dismissal of the Challenge II cases, Appellants filed a fee petition[4] and supporting attorney affidavit of Appellants' counsel M. Baron Stanton. (R. p. 595, Fee Petition). The 67-page, 223-paragraph fee affidavit requested combined fees of **$26,220** based on 138 hours

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[3] Two other motions seeking to correct collateral, clerical issues followed from the June 3, 2021, order denying reconsideration of the dismissal. Those motions are discussed below in Argument Section IV, p.24-25 *infra*., but Appellants did not seek an award of fees for the associated time.

[4] The petition was made pursuant to S.C. Code Ann. § 28-2-510(C), which provides for landowner recovery of reasonable attorney fees when the condemnor abandons a condemnation notice.

of claimed attorney time, comprising 64.9 hours for the case-in-chief and 79.3 hours for the fee petition itself. (R. p. 649, 10/21/22 Stanton Aff. ¶ 190). Appellants did not submit any fee agreements, legal invoices, or daily or itemized time descriptions.

On December 13, 2022, the Respondent filed a *Memorandum in Opposition* to the fee petition (10 pages, R. p.775, Mem. Opp.) and supporting affidavits of Town Attorney N. David Durant, Sr. (4 pages, R. p.768, Aff. Durant) and counsel of record William C. Dillard, Jr. (11 pages, R. p.729, Aff. Dillard) with exhibits. The Town materials included, as Exhibit C to the Dillard affidavit, a chronological "Case Events" table that identified significant case events alongside a listing of attorney hours the Appellants were claiming on specific days.[5] (R. p.748, Case Events Table). The Dillard affidavit opined that a combined reasonable attorney fee award would be $3,800 based on 20 hours of attorney time. (R. p.738, Aff. Dillard ¶ 33-34).

On March 8, 2023, Appellants filed a 39-page *Reply* memorandum and an amended fee affidavit. (R. p.793, Reply). The amended fee affidavit requested fees of **$36,214** based on 190.6 hours of attorney time. (R. p. 787, 3/8/23 Stanton Aff. ¶ 190). Judge Culbertson held a virtual hearing on the fee petition via Webex on April 14, 2023, and took the matter under advisement. On June 8, 2023, upon their own initiative and without request or leave from the circuit court, Appellants filed a second amended fee affidavit now requesting combined fees of **$53,694** based on 282.6 attorney hours, comprising 64.9 hours for the case-in-chief and 217.7 hours for the fee petition.[6] (R. p.887, 6/8/23 Stanton Aff. ¶ 190). The same day, June 8, 2023, Judge Culbertson

[5] This table was submitted to the circuit court, and is referenced here, in order to provide a hopefully useful tool for analysis of Appellants' non-itemized, unspecified fee claim.
[6] Respondent objects to any increase in the fee award based on this improper, untimely post-hearing affidavit. Rule 6(d), SCRCP.

issued an order awarding Appellants combined attorney fees of $12,445 based on 65.5 hours of attorney time (including 8 hours for pursuit of the fee petition), plus costs. (R. p. 52, Order).

Appellants filed a motion to reconsider the fee award on June 20, 2023, which Judge Culbertson denied on June 28, 2023. (R. p. 894, M. Reconsider; R. p. 65, 6/28/23 Form 4). On July 28, 2023, Appellants filed a notice of appeal. (R. p. 938, N. Appeal). The fees and costs as awarded have been paid and discharged as to each Appellant.[7] (R. p.943, Satisfaction).

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 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. "[T]he 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."

[7] The Town does not stipulate to the accuracy of what is presented in Appellants' *Statement of the Case* as 30 pages of "uncontested" facts. (App. Brief p.6-35).

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 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

Appellants demonstrate strong disagreement with the circuit court's conclusions but do not present any basis for a finding that it committed an abuse of discretion. The Town acknowledges that Appellants did not set out to be subject to condemnation attempts. Nothing, however, entitles them to a fee award beyond what is generally reasonable and appropriate in light of the limited scope, complexity, and duration of this litigation. 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. As additional sustaining grounds, both a lack of subject matter jurisdiction and the ineligibility of *pro se* Appellant Stanton to recover litigation expenses provide a basis to deny any increase in the award. Although perhaps not discernable from the Appellants' briefing, the key question on appeal is whether it was reasonable to incur a grossly disproportionate 217.7 hours of attorney time on the fee petition itself when a request for the claimed 64.9 hours of work in the case-in-chief should have been relatively straightforward.

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

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 the condemnor abandons or withdraws the condemnation action in the manner authorized by this chapter, the condemnee is entitled to **reasonable attorneys fees, litigation expenses, and costs** as determined by the court.

S.C. Code Ann. § 28-2-510(C) (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." 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 Jackson factors are applied to determine "the reasonable time expended and a reasonable hourly rate for purposes of calculating attorneys' fees." Id. at 458. 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 (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 "try[ing] to ascertain actual time, then make reasonable adjustments, if any, [and] then determine a fair hourly rate," and that only after a lodestar was determined on

that basis should the court consider "enhancements or other adjustments under factors set forth in [Jackson], [Blumberg], and the related line of cases." (App. Brief p.49). Appellants seem to argue that the analysis required the circuit court to start by making a "finding on actual hours".

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 Appellants 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 difficult, if not impossible, is well illustrated in this case, in which the Appellants presented a claim of nearly 300 hours and in a non-itemized, daily hour-total format without even generalized time descriptions. The claim is 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. (E.g., R. p. 649, 10/21/22 Aff. Stanton ¶ 190).

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 attorneys fees, litigation expenses, and costs as determined by the court", S.C. Code Ann. § 28-2-510(C) (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 fact that that § 28-2-510(C) ends with the phrase "as determined by the court" reinforces the point that the question is one of the court's view of reasonableness, regardless of hours claimed to be actually worked.

The party claiming fees bears the burden to support its claim and is certainly not entitled to a 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 applicant should exercise 'billing judgment' with respect to hours worked[.]" Hensley v. Eckerhart, 461 U.S. 424, 437 (1983). 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 (1996), or "an unreasonable duplication of efforts." City of N. Charleston v. Claxton, 315 S.C. 56, 63, 431 S.E.2d 610 (Ct. App. 1993).

In determining the fee award in this matter, the circuit court determined that the Appellants were entitled to an award of fees and costs pursuant to § 28-2-510(C) and then analyzed the reasonable time expended and a reasonable hourly rate based on consideration and factual findings regarding the factors set forth under Jackson (R. p.55, Order p.4-6). This was a straightforward, and correct, application of the proper legal framework for determination of the attorney fee award.

Appellants argue that the circuit erred by stating in the order that, under § 28-2-510, "a court is authorized to either award reasonable attorney's fees to a prevailing landowner or deny the award in its entirety depending on the circumstances surrounding the litigation." (R. p.55, Order p.4) (citing Revels). As a practical matter, the circuit court was simply quoting, in a general discussion of attorney fee awards in condemnation matters, one of the final paragraphs of the

Revels opinion. 411 S.C. at 15, 766 S.E.2d at 707. Admittedly, the fee provision specifically at issue in Revels was § 28-2-510(B), which applies when a landowner prevails in a just compensation trial and expressly states that the trial court can deny an award in certain circumstances. However, regardless of whether the circuit court has similar discretion to deny a fee award under § 28-2-510(C) following an abandonment,[8] the issue is entirely moot here. The circuit court recited the language of 28-2-510(C) and then, as requested by Appellants, specifically found that "the [Appellants] are entitled to an award of attorney fees and costs in this case." (R. p. 54, Order p.3-4).

In other words, the circuit court's analysis clearly was not "controlled by an error of law" in the manner asserted by Appellants because the court specifically held that they were entitled to an award of reasonable attorney fees. "Appellate courts recognize . . . an overriding rule of civil procedure which says: whatever doesn't make any difference, doesn't matter." McCall v. Finley, 294 S.C. 1, 4, 362 S.E.2d 26, 28 (Ct. App. 1987) (noting that appellant has the burden to show that an error was prejudicial). See also Rule 61, SCRCP (setting forth the "harmless error" rule). The amount of the award did not reflect a denial that Appellants were entitled to recover their reasonable attorney fees, but instead a conclusion that "the fees and costs sought by the [Appellants] are unreasonable in relation to the nature, extent, duration, and difficulty of the litigation." (R. p. 55, Order p.4). This was a straightforward "reasonableness" analysis, and the circuit court's determination was clearly within its discretion under § 28-2-510(C).

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[8] Respondent contends that the statement in § 28-2-510(C) that a landowner's fee recovery is "as determined by the court" following an abandonment does provide the court with broad discretion in reviewing the award, presumably including discretion to deny the award in its entirety. However, as discussed in the text accompanying this footnote, the issue is moot because the circuit court did in fact award what it deemed to be Appellants' reasonable fees.

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 their "reasonable attorney fees, litigation expenses, and costs." § 28-2-510(C). 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 efforts in weighing the relevant evidence. It is worth noting, however, the circuit court awarded more than what the Town argued was warranted, and the record would have also supported an award of a lesser amount than the court concluded was reasonable.

In reviewing the award, it is critical to note that the circuit court awarded **100% of the time claimed up to and including the date Respondent filed its Notice of Abandonment (i.e., 57.5 hours)**. (R. p. 55, Order p.4; R. p.748, Aff. Dillard Exh.C). Accordingly, the relevant issue on appeal is the circuit court's exercise of discretion in reviewing the claim for time spent after the date of abandonment. As the circuit court noted, attorney time after the date of abandonment "could only relate to work on the [attorney fee petition] or to matters arising from [Appellants'] unsuccessful opposition to the motion to dismiss." (R. p.56, Order p.5). While the Appellants' lengthy fee affidavit and amendments do not explain how this time was spent, the final fee affidavit does describe it as post-abandonment "fee-petition related matters." (R. p. 887, 6/8/23 Aff. Stanton ¶ 190). The Appellants' Brief also refers to "217.7 fee-for-fee hours". (App. Br. p.42). The central issue, therefore, is **whether the circuit court abused its discretion in awarding 8 hours for pursuit of the fee petition instead of the more than 200 hours** claimed by the Appellants.

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 found that "the fees and costs sought by the plaintiffs are unreasonable in relation to the nature, extent, duration, and difficulty of the litigation." (R. p. 55, Order p. 4). The circuit court also found that "the record does not support the plaintiffs' assertion that the Town's approach to the litigation created some need or justification for plaintiffs' counsel to work the claimed number of hours." (R. p. 56, Order p. 5; (R. p. 771, Aff. Durant ¶ 17-19). The circuit court provided a detailed discussion of the ways in which the case was of limited duration and complexity:

> The plaintiffs' prayer for relief in this case was for the Court to quash the condemnation notices and award the plaintiffs litigation costs *[R. p. 206, Amended Complaint ¶ 372]*. . . . Except for the plaintiffs' prayer for litigation costs, this case effectively ended with the filing of Notices of Abandonment on February 10, 2021, ninety-one days after the plaintiffs filed their original Complaint. During this time, the Complaint, the Answer, and the Amended Complaint were filed but, as documented in the affidavits of attorneys Durant and Dillard, little else occurred; no motions were filed, no depositions were taken, no subpoenas were issued, no discovery records were exchanged, and, other than a set of interrogatories and a deposition notice served by the Plaintiffs, no other discovery was conducted. Extensive discussion in the Plaintiffs' fee affidavit of motions, discovery, depositions, and document production actually relates to the first condemnation that was already subject to a fee petition and award *[R. p. 769, Aff. Durant ¶ 8-12; R. p. 732, Aff. Dillard ¶ 16-19]* . . . .

(R. p. 55, Order p. 4-5) (citations to record added).

As conceded in the Appellants' fee affidavit, the three cases were handled in tandem and the issues, theories, pleadings, and other filings were effectively identical other than being submitted under different case captions. (R.pp.620 et seq., 10/21/22 Stanton Aff. ¶66, ¶130 fn.25, ¶199). Furthermore, much of the Appellants' factual and legal position came directly from the separate "Challenge I" cases that were pending at the time these cases were filed. (R.p.56, Order

p.5; R.p.734, Aff.Dillard ¶25; R.p.636, 10/21/22 Stanton Aff. ¶140 (noting that the Amended Complaint incorporated allegations of the Challenge I pleadings)). Although the Appellants elected to file 59-page, 375-paragraph Amended Complaints, the theories and allegations reflected legal work that had already been performed in the separate Challenge I cases. "The Amended Complaints largely tracked the allegations of the 61-page Challenge 1 pleadings which . . . were attached to and incorporated by the original Complaints[.]" (R.p.770, Aff.Durant ¶14). Accordingly, the necessary work for Appellants' counsel in these relevant Challenge II cases, while including some new facts involving the second set of condemnation notices, was greatly reduced because of work that had already been performed in Challenge I. (R.734, Aff.Dillard ¶25).

Specifically regarding the fee petition phase of the litigation, the record also provides robust support for the circuit court's conclusion that the matter was of limited complexity, both generally and specifically as to the fee petition phase. The record reflects that, when Appellants began to prepare their fee petition, the claimed attorney time, totaling 64.9 hours, had occurred on just 16 days up to and including the Notice of Abandonment (11/22/20 – 2/5/21) and on just 4 days after that (2/7/21 – 3/12/21). (R. p.748, Aff. Dillard Exh.C; R. p. 649, 10/21/22 Aff. Stanton ¶ 190). Consistent with the language of the relevant fee statute, § 28-2-510(C), the April 22, 2021, Order of Dismissal recited the Town's stipulation that, for purposes of any fee petition, the Town had in fact initiated and then abandoned a condemnation action within the meaning of the Eminent Domain Procedures Act. (R. p. 20, O. Dismissal p. 10). The Town did not move to compel production of fee agreements or invoices or otherwise seek discovery on fees. Pursuit of a straightforward fee petition under these circumstances should not have been a difficult or time-consuming task.

(2) The time necessarily devoted to the case

As set forth in the Order, the circuit court made specific findings in support of its conclusion

that "the reasonableness and necessity of the claimed attorney time is unsupported by the evidence" and that the "claimed hours are excessive in light of the actual needs of this brief litigation, even factoring in reasonable time for the fee petition itself." (R. p. 56, Order p. 5). As discussed in detail below, the record supports the circuit court's finding that that reasonable time devoted to the fee petition was 8 hours. The record also supports the circuit court's finding that reasonable attorney time prior to the fee petition was 57.5 hours, and in fact would have supported an award based on a significantly lesser number of hours during this period.

The circuit court noted that while "the plaintiffs seek attorney fees for **282.6** hours of legal services… the daily time totals included in the final fee affidavit show that **221.3** hours are being claimed **subsequent** to February 10, 2021, when the Town abandoned it notice of condemnation." (R. p. 56, Order p. 5) (emphasis added). Despite the record of these cases having little activity before the Town willingly withdrew the condemnation notices, the 282.6 hours claimed by the Appellants would equate to approximately **seven weeks** of attorney time at 40 billed hours per week.

The Appellants' fee affidavits referenced specific monthly fee statements, but they did not submit any documentation, description, or itemized breakdown of how specific time was spent. Instead, Appellants presented only non-itemized, daily "block billed" time listings, and declined to provide any fee statements or time descriptions at all despite claiming to have at least 54 pages of such information. (R. p.655, 10/21/22 Aff. Stanton ¶ 204). It is impossible to determine from Appellants' submissions how they claim any given time entries were spent.[9]

(i) Time necessarily devoted to the fee petition

As discussed above, Appellants' fee petition was based on a claim of 64.9 attorney hours on

[9] "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).

20 days over the course of about three months. It should have been a straightforward task for Appellants' counsel to provide a very general description of how attorney time was used over those few days and to provide a basic explanation of why the claimed hours were reasonable within the context of the litigation.[10] Instead, the Appellants filed a 67-page fee affidavit that, while not providing any meaningful explanation of how the attorney time claimed in *this* litigation was spent,[11] did provide laboriously detailed discussion of discovery efforts in the separate Challenge I cases and other irrelevant matters. (R. p.734, Aff. Dillard ¶ 27).[12] Appellants seem to be claiming **86.1 hours** of attorney time for preparation of this initial fee petition and affidavit, significantly more time than the 64.9 hours claimed to have been worked prior to the fee petition in the first place. (R. p. 748, Aff. Dillard Exh.C; R. p. 887, 6/8/23 Aff. Stanton ¶ 190).

In response to the Respondent Town's December 12, 2022, affidavits and memorandum in opposition to the fee petition, the Appellants filed a 39-page reply brief and an amended fee affidavit on March 8, 2023. (R. p. 793, Reply). Appellants also filed previously clocked copies of two plaintiff affidavits from the Challenge I cases (R. p. 832, 835, Challenge I Affidavits). Appellants' final fee affidavit indicates that, between December 14, 2022, and March 8, 2023, **48.8 hours** of attorney time were spent preparing this response to the Town's opposition materials. (R. p.887, 6/8/23 Aff. Stanton ¶ 190) (presumably some of this time is also associated with preparation for the fee petition hearing originally scheduled for March 9, 2023).

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[10] This process would have been made even simpler by simply using the commonplace approach of providing copies of fee statement time entries with appropriate redaction of any truly privileged or otherwise sensitive information.

[11] See, e.g., R. p.661, 10/21/22 Aff. Stanton ¶ 222, merely asserting in a conclusory fashion that "[t]he fees sought by Plaintiff are reasonable because they are based on no more than the actual time and expenses required."

[12] See also R. p.607, et seq., 10/21/22 Aff. Stanton ¶ ¶ 31, 38, 100-117, 119-121, 123, 127-129, 131-134, 141, 143, 145-150, 153-159, 161-164, 167-168, 172-176, 178-179, 170* (p.50), 174* (p.51), 177-179* (p.51), 180-188, 210-212, 215, 217-218.

While Appellants' March 8, 2023 amended affidavit anticipated 25 hours of additional attorney time after March 6th to complete the matter, (R. p. 790, 3/8/23 Stanton Aff. ¶ 191), the final, post-hearing amended affidavit filed on June 8th lists **72.8 hours** from the 3/9/23 initial hearing date through the 4/14/23 hearing. (R. p. 887, 6/8/23 Stanton Aff. ¶ 190) The affidavits do not explain what work was performed during these claimed hours. No new materials were filed during this period, and the only known tasks would have been attending the brief virtual hearing on 3/9/23, updating hearing preparation and attending the rescheduled hearing on 4/14/23, and then preparing and submitting an updated proposed order on the same date. The post-hearing affidavit amendment also claims an additional **6.2 hours** following the date of the 4/14/23 hearing up through 6/2/23. (R. p. 790, 6/8/23 Stanton Aff. ¶ 191). The record is silent as to how this time was spent, except that presumably some or all of the time was associated with preparing the updated affidavit itself.

In summary, the best information available in the record indicates that the attorney time claimed for pursuit of the fee petition breaks down as follows:

86.1 hours	Preparation of the fee petition and affidavit	(9/15/22 – 10/21/22)
48.8 hours	Responding to Town opposition; hearing preparation	(12/14/22 – 3/8/23)
72.8 hours	Initial/rescheduled virtual hearings; update of proposed order	(3/9/23 – 4/14/23)
6.2 hours	Post-hearing affidavit	(4/28/23 – 6/2/23)
213.9 hours	Total	

The circuit court was well within its discretion to find that the Appellants did not meet their burden to prove that anything close to this amount of time was reasonable or necessary in order to assert a claim for 64.9 hours of prior attorney time over a course of approximately three months. Based on the Appellants' failure to provide the court with any explanation of how more than 200 hours could possibly have been spent on the fee petition, the court had no option but to consider the 9-hour estimate provided by the Town (R. p.738, Aff. Dillard ¶ 33) and the court's own view of what

was reasonable based on the limited complexity of the litigation and fee petition.

(ii) Time necessarily devoted to the litigation prior to abandonment

The circuit court found that the attorney fees reasonably, necessarily incurred prior to the fee petition in this matter were the "57.5 hours devoted to this case prior to the Town's abandonment of this condemnation." (R. p. 57, Order p. 6). This was equivalent to the 57.5 hours claimed by the Appellants' up to and including the date of abandonment. Far from being an abuse of discretion prejudicial to Appellants, this determination was in fact generous in relation to other evidence in the record that would have supported a lower award.

As discussed in the Dillard affidavit, prior to the fee petition, "the only tasks performed that were reasonably required for [Appellant] counsel's representation in this case were (a) researching and drafting the Complaint, (b) drafting interrogatories, [and] (c) engaging in miscellaneous review and communications as is incident to any representation," (R. p.732, Aff. Dillard ¶ 16), and a reasonable amount of attorney time for these tasks was **approximately 11 hours**. (R. p.738, Aff. Dillard ¶ 33. See also, R. p.769, Aff. Durant ¶ 8-12.). The Town Attorney and original counsel of record explained that "the amount of attorney time reasonably devoted simultaneously to these Challenge 2 actions . . . should not have exceeded a handful of hours. Other than drafting a complaint, reviewing the Town's answer, drafting discovery requests, and engaging in routine communications, there was simply nothing else that needed to be done." (R. p.771, Aff. Durant ¶ 16).

There was certainly no reasonable need for the Appellants to replace the original 11-page, 50-paragraph Complaints with the 59-page, 375-paragraph Amended Complaints. (R. p.770, Aff. Durant ¶ 13-14). The Amended Complaints were not "short and plain statements" of claims providing fair notice as contemplated by Rule 8, SCRCP,[13] but were instead excessively lengthy and far beyond

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[13] See also Watts v. Metro Sec. Agency, 346 S.C. 235, 240, 550 S.E.2d 869, 871 (Ct. App. 2001).

anything plausibly necessary to set forth even a detailed statement of the Appellants' allegations and theories. In any condemnation challenge action there are only a limited number of grounds for the challenge – fraud, bad faith, or abuse of discretion. See Atkinson v. Carolina Power & Light Co., 239 S.C. 150, 157, 121 S.E.2d 743, 746 (1961). Although Appellants provided no explanation of how time was spent, it appears from the record that the significant majority of the **48 hours** claimed between November 13, 2020 and January 14, 2021, would have been related to drafting the Amended Complaint. (See R.p.736, Aff. Dillard ¶30(b) and Exh.C). Even if, for the sake of argument, there had been some reasonable need to amend the pleadings, including to provide a discussion of facts leading to the first set of challenge actions, there was no reason for it to take multiple days of attorney time.

It does not appear that Appellants are claiming time for post-abandonment work and hearings involving the Town's motion to dismiss and motion for protection from discovery, (R. p.649, 661, 10/21/22 Stanton Aff. ¶ 190 fn.33, ¶220), and the circuit court properly held that they would not be entitled to recover fees for that work. (R. p. 57, Order p.6). Even where statutory recovery of attorney fees is triggered, a 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). More fundamentally, this work was performed after the abandonment, when the challenged condemnation notices were no longer in play, in an attempt by Appellants to continue litigating against the Town on some other, unspecified potential claims. (R. p. 373, 3/31/21 Mem. Opp. M. Dismiss, p.5-6). By the plain language of the eminent domain fee statute, this is clearly beyond the scope of recoverable fees.

Appellants assert in their brief that the circuit court erred by excluding 7.4 hours claimed for February and March 2022 following the date of abandonment. (App. Brief, p.48 fn.12). Appellants also claim without citation to the record that their late-filed, post-hearing amended

affidavit explained that these 7.4 hours were worked "in reasonable followup to the putative 'abandonment'". (App. Brief p.34). The claim that the affidavit offered this explanation is patently incorrect, as the relevant explanatory language, which appears in both amended affidavits, very clearly relates only to <u>mileage</u> for the motion to dismiss hearing and <u>filing fees</u> for the motion to reconsider dismissal. (See R. p.790, 3/8/23 Stanton Aff. ¶ 190 fn.3; R. p.890, 6/8/23 Stanton Aff. ¶ 190 fn.3). Prior to their brief in this appeal, Appellants never attempted to explain this claimed 7.4 post-abandonment hours, even after the Town squarely raised the issue of post-abandonment attorney time. (R. p. 734, Aff. Dillard ¶ 28). This issue was not preserved, and there is absolutely nothing in the record that a court could rely on to award fees associated with this time frame. Even assuming for the sake of argument that the Appellants could have reasonably claimed (and explained) some post-abandonment attorney time over and above the 0.4 hours awarded on the date of abandonment, the 57.5-hour fee award on the whole more than accounts for reasonable time devoted to this litigation.

(3) Professional standing of counsel

The circuit court found that Appellant counsel's hourly rate of $190 "is reasonable based upon his professional standing and experience. (R. p.57, Order p.6).

(4) Contingency of compensation

This factor was not at issue, as there was no claim by Appellants or other indication that compensation was based on a contingency arrangement.

(5) Beneficial results obtained

The circuit court found that "[t]he plaintiffs' prayer for relief in this case was for the court to quash the condemnation notices and award the plaintiffs litigation costs . . . [and] [t]he Town voluntarily withdrew the condemnation notices[.]". (R. p.55, Order p.4). The Town's abandonment

of the condemnation notices had the effect of providing the relief they sought. The abandonment had the effect of withdrawing the "New" condemnation notices which, although without prejudice to future attempts, was a beneficial result.

(6) Customary legal fees for similar services

The circuit court found that the claimed hourly rate of $190 was reasonable. (R. p.57, Order p.6), and application of a higher rate was not requested. The court also found that "[t]he circumstances of this case, involving the consolidation of three separate actions in which the essentially identical claims of three plaintiffs were pursued jointly, make it reasonable and in line with customary billing practices for the total fees to be divided in thirds to each of the three plaintiffs", and that it was reasonable for the award to be handled in the same way. (R. p.57, Order p.6). Appellants' fee affidavit requested that the fee award be handled in this manner. (R. p. 653, 10/21/22 Stanton Aff. ¶ 199-203).

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

Based on the above analysis, the circuit court found that the reasonable amount of attorney time necessary for the plaintiffs in the three cases in this consolidated action was 57.5 hours plus an additional 8 hours for pursuit of the fee award, for a total of **65.5 hours**. (R. p. 57, Order p.6). Applying this time to the claimed hourly rate of $190, the court determined reasonable attorney fees in the amount of $12,445. Appellants did not request, and there was no basis to award, application of any "enhancement" factor to the lodestar number. The circuit court properly declined to award costs associated with Appellants' opposition to the motion to dismiss and related post-abandonment efforts and instead awarded total costs of $572.70. The court then divided the total fees and costs of $13,017.70 by three for a total award of **$4,339.23** to each Appellant. (R. p. 58, Order p.7). The circuit court's conclusion reflected a proper exercise of its discretion within the correct legal framework.

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

The circuit court did not abuse its discretion in considering the Affidavit of William C. Dillard, Jr., counsel for Respondent. (R. p. 729, Aff. Dillard). 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 Dillard's analysis and opinions, based on his eventual participation in the Challenge I and II cases and his review of the prior case materials, 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 affidavit also served, in conjunction with the separate affidavit of original counsel of record David Durant, to provide a factual description of major case activities, to place the activities in the broader litigation outside of these Challenge II cases, and, importantly, to provide a chronological analysis of how Appellants' significant number of claimed attorney hours fit into the framework of actual events in the case.

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 760. Consideration of an attorney fee affidavit, even that of an attorney who was not counsel of record for the entirety of a case, is customary and not contrary to any rule of evidence or procedure. Such consideration was probably a necessity in this case, given the significant amount of attorney time claimed without any meaningful explanation and the length of the Appellants' submissions.

In any event, the circuit court did not adopt the proposed reasonable fees suggested in the Dillard affidavit and instead awarded fees in a higher amount. To the extent that the court relied on the affidavit for its discussion and summary of proceedings in the case, that information all appears elsewhere in the record. Appellants claim that there are errors in the affidavit but do not

provide examples of any legitimate errors. (App. Brief p.46, fn.11). To the extent that Appellants believed that the Respondent's attorney affidavits omitted any material case activity, they had ample opportunity to identify and articulate the same to the circuit court. The circuit court did not commit any abuse of discretion in considering the Dillard affidavit.

4.) The circuit court did not have subject matter jurisdiction over Appellant's untimely fee petition.

Appellants' fee petition was not timely submitted and, therefore, the circuit court lacked subject matter jurisdiction and should have denied it outright. While Respondent did not appeal the award and has already satisfied it, the lack of jurisdiction serves as an alternate ground warranting denial of this appellate request for a higher award. An appellate court has the power to affirm a lower court ruling based on alternate sustaining grounds appearing in the record. Rule 220(c), SCACR; I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 417, 526 S.E.2d 716, 722 (2000). Additionally, defects in subject matter jurisdiction may not be waived and can be raised even if not preserved or be invoked *sua sponte*. In re Bluffton Town Council Election, 385 S.C. 632, 637, 686 S.E.2d 683, 686 (2009).[14]

The Rules of Civil Procedure Provide that "[a] motion for costs, supported by an affidavit that the costs are correct and were necessarily incurred in the action, may be filed by the prevailing party within 10 days of the receipt of written notice of the entry of final judgment." SCRCP 54(d). Where an attorney fee statute does not provide for a period of time for submission of a fee petition, the petition is only timely and within the subject matter jurisdiction of the Court if it is filed within 10 days of notice of entry of judgment. Pitman v. Republic Leasing Co., 351 S.C. 429, 432, 570 S.E.2d 187, 189 (Ct. App. 2002) (citing Rule 59(e), SCRCP) (applying Frivolous Proceedings

[14] Respondent did in fact raise this argument in its opposition to the fee petition. (R. p. 780, Mem. Opp. p.6).

Sanctions Act fee provision). Fee requests are subject to the limitation that, pursuant to Rule 59, SCRCP, "a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed." Id at 433, 570 S.E.2d at 190. The implausible alternative, as noted by the Court in Pitman, would be that the trial court would retain, in perpetuity, unlimited jurisdiction to consider a fee petition, subject only to the defenses of laches and estoppel. Id. at 432, 570 S.E.2d at 189.

In this litigation, following the Town's abandonment of the subject condemnation notices, Judge Culbertson entered Orders of Dismissal confirming the abandonment on April 22, 2021, and subsequently denied Appellant's Motions to Reconsider on June 3, 2021. ((R. p. 24, 6/3/21 Form 4). Appellants filed a Notice of Appeal of those orders on July 2, 2021, (R. [Appx.], 7/2/21 N. Appeal), thereby necessarily taking the position that the orders were final, but they did not file their fee petition until more than a year later on October 21, 2022. The circuit court did not have subject matter jurisdiction over this late filed petition. Extension of time for post-trial motions generally cannot be granted by the circuit court, and even if a fee petition were arguably eligible for post-expiration extensions the Appellants cannot show any "good cause" for such an extension in this matter. Rule 6(b), SCRCP.

While it is true that another discrete motion was still pending at the time the petition was filed in late 2022, that motion had no bearing on the circuit court's jurisdiction over a fee request arising from the abandonment and dismissal the prior year. Specifically, the Form 4 order denying reconsideration of the 2021 dismissal included an erroneous statement that the Challenge I condemnation notices had also been "abandoned."[15] (R. p. 24, 6/3/21 Form 4). The Respondent Town, concerned that this could lead to confusion or other problems in any future proceedings, filed a motion to amend the error on June 14, 2021. (R. p. 580, 6/14/21 Clerical Motion). After the

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[15] Those prior notices were not abandoned, but were instead quashed on summary judgment.

motion was pending for some time, the circuit court denied it on July 12, 2022. (R. p. 28, 7/12/22 Form 4). Notably, the court explained that the denial was based on its determination that the pending appeal of the Order of Dismissal deprived it of jurisdiction to correct the clerical error.[16] Appellants then moved, on July 22, 2022, for reconsideration of that July 12, 2022, Form 4 order on the grounds that the court should not have checked the box indicating that the order "ends the case" when the Appellants had not yet been awarded (or applied for) costs. (R. p. 584, 7/22/22 Clerical Motion). This July 22, 2022, motion was still pending at the time Appellants filed their fee petition in October 2022.

However, the pendency of these two collateral motions did not have the effect of preserving subject matter jurisdiction over the fee petition. The abandonment and dismissal giving rise to Appellants' statutory fee claim pursuant to S.C. Code Ann. § 28-2-510(C) were confirmed with finality by the circuit court's June 3, 2021, denial of their motion for reconsideration. Appellants clearly agreed, as demonstrated by their July 2, 2021, filing of a notice of appeal, and they should be treated as estopped from now arguing otherwise. To the extent that the circuit court had jurisdiction over the post-dismissal clerical motions, it was based on the status of those motions as "matters not affected by the appeal." Rule 241(a), SCACR. Accordingly, these two collateral clerical motions did not toll the circuit court's jurisdiction to consider a fee petition for more than a year after the dismissal had been finalized and appealed.

Because Appellants' untimely fee petition did not give rise to subject matter jurisdiction in the circuit court or any other court, the Court of Appeals should deny Appellants' request that the fee award be increased or remanded for additional findings.

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[16] The Town's concerns with this error in the Form 4 order were addressed when, after the Town briefly initiated an appeal out of an abundance of caution, the parties entered a stipulation that the Challenge I condemnation notices had not been abandoned. ((R. p. 587, 9/7/22 Stipulation).

5.) <u>Appellant Stanton was not entitled to an award of purported "attorney fees" associated with his own *pro se* representation</u>.

Appellant Stanton represented himself *pro se* in this matter. (R. p.299, Transcript p.4:21-22). Under South Carolina law, a *pro se* litigant who is an attorney is not entitled to receive attorney fees under a statute providing for recovery of fees "incurred". <u>Calhoun v. Calhoun</u>, 339 S.C. 96, 100, 529 S.E.2d 14, 17 (2000) ("A *pro se* litigant, whether an attorney or layperson, does not become liable for or subject to fees charged by an attorney."). Under the Eminent Domain Procedures Act, recoverable litigation expenses must be "necessarily incurred". S.C. Code Ann. § 28-2-30(14). At the hearing on the fee petition in this matter, the Town argued that <u>Calhoun</u> precluded pro se Appellant Stanton from recovering litigation expenses. (R. p.327, Transcript p.32:14-33:8). Stanton conceded that while he (through his solo practice law firm) claims to have "sent" himself legal invoices, he had not actually paid himself back for those invoices. (R. p.310, Transcript p.15:21-17:14). Accordingly, and as an alternate sustaining ground, because Appellant Stanton was not entitled to any award of litigation expenses, the Court of Appeals should deny his request that his award of litigation expenses be increased or remanded for additional findings.

<u>CONCLUSION</u>

For the reasons set forth herein, this Court should affirm the order of the circuit court. In the event that the order of the circuit court is reversed in whole or in part, this 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* <u>Taylor v. Medenica</u>, 332 S.C. 324, 326, 504 S.E.2d 590, 591 (1998) ("Whether respondents are entitled to appellate attorneys' fees pursuant to this statute and if so, in what amount, are questions to be determined by the circuit court.").

Respectfully submitted,

s/ William C. Dillard, Jr.
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ATTORNEYS FOR RESPONDENT
TOWN OF PAWLEYS ISLAND

June 25, 2024

RECEIVED
Jun 25 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Benjamin H. Culbertson, Circuit Court Judge

Case No. 20-CP-22-00930
Case No. 20-CP-22-00931
Case No. 20-CP-22-00932
Appellate Case No. 2023-001272

Sunset Lodge, LLC, ...Appellant,

v.

Town of Pawleys Island, ...Respondent,

and

Franklin D. Beattie, as trustee of the Franklin D. Beattie
Preservation Trust, ...Appellant,

v.

Town of Pawleys Island, ...Respondent,

and

M. Baron Stanton, ...Appellant,

v.

Town of Pawleys Island, ...Respondent.

CERTIFICATE OF COUNSEL

I certify that this Final Brief of Respondent complies with Rule 211(b), SCACR.

June 25, 2024

s/ William C. Dillard, Jr.
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PROOF OF SERVICE

I certify that I have served the Final Brief of Respondent Town of Pawleys Island by causing a copy to be e-mailed on **June 25, 2024** to counsel of record as listed below:

M. Baron Stanton (bstanton@stantonlaw.com)

s/ William C. Dillard, Jr.
William C. Dillard, Jr. (S.C. Bar No.78986)

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June 25, 2024

Via email (*ctappfilings@sccourts.org*)
The Honorable Jenny Abbott Kitchings
Clerk of Court, S.C. Court of Appeals
Office Location:
1220 Senate Street
Columbia, South Carolina 29201

Re: Sunset Lodge, LLC v. Town of Pawleys Island (3)
Appellate Case No. 2023-001272

Dear Ms. Kitchings:

Please find enclosed for filing the Final Brief of Respondent Town of Pawleys Island in the above referenced matter. In preparing citations to the Record on Appeal, it came to my attention that certain materials designated by the Respondent for inclusion were apparently mistakenly left out of the Record prepared by Appellants. This afternoon I initiated communications with Appellants' counsel regarding the necessary steps to supplement the record with the designated materials, but the issue has of course not yet been resolved.

Accordingly, for purposes of citation in the Final Brief of Respondent, I have cited to the omitted materials with the designation "R. [Appx.]" in anticipation that an Appendix to the Record on Appeal will be filed in coming days. If the Court would prefer that this be handled in some other way, I would be grateful if you would please let me know what steps will be needed.

Thank you, and best regards.

Sincerely,

William C. Dillard, Jr.

Enclosures