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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 theAppellants,

and

Town of Pawleys Island is the..... Respondent.

RESPONDENT'S PETITION FOR REHEARING

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Attorneys for Respondent

Respondent Town of Pawleys Island (“Town”), pursuant to Rule 221(a), SCACR, respectfully submit this Petition for Rehearing. Rehearing is appropriate here because this Court’s decision overlooks and/or misapprehends multiple points of fact and law, proper consideration of which would have led to affirming the circuit court’s fee award. See Rule 221(a), SCACR.

ARGUMENT

1. Certain Statements Regarding the Town’s Easement Acquisition Efforts Are Not Supported by the Record and Are Outside the Scope of Review.

In modifying the attorney fee award, the Court makes a number of highly critical statements about the Town and its prior easement condemnation efforts. The Town respectfully contends that many of these statements are mistaken and are not supported by the record. The Town requests that, even if the Court declines to change its holding on the amount of the fee award, the opinion be modified to remove these statements. The Town still needs to acquire the subject easements in order to secure long-term federal funding for beach renourishment and other shore protection (as discussed below, the easement language sought to be condemned is in fact specifically required by the Army Corps). The former Town Administrator estimated that, if these three easements are acquired, the portion of future construction costs that would be the responsibility of the Army Corps, to the benefit of the Town and the public it serves, would be nearly **\$65,000,000** (R. p.672). Federal funding would also cover post-hurricane restoration to protect the nearly \$15,000,000 investment that the Town already made to renourish the beach (R. p.672-673).

Appellants will inevitably attempt to use the mistaken language in the Court’s opinion to further object to the Town’s future efforts to take necessary steps to secure this federal funding to protect the Pawleys Island shoreline for the public. The Town urges the Court to grant rehearing to avoid this unintended consequence of its fee review. At a fundamental level, the Court determined that, in order to review the reasonableness of Appellants’ attorney time, further

consideration should be given to how Appellants' allegations about the Town's conduct influenced the time spent on the litigation. The circuit court never determined the issues discussed below on the merits, and the litigation never proceeded past early summary judgment; the merits of these additional matters, sua sponte, are outside the scope of review for this appeal. However, all that is needed to address the Court's concern about factoring these issues into the fee review is to note that Appellants asserted these theories and allegations, survived a Rule 12(b)(6) motion to dismiss, and had the right to devote the reasonably necessary time to litigate the full scope of their claims.

a. Statements regarding necessity and Army Corps easement requirements

The opinion includes several statements to the effect that the relevant easement language is not required by the Army Corps and was not necessary. Specifically, the opinion states:

- i. (p.3) "In May 2020, the Town adopted a resolution authorizing condemnation of the remaining easements, ***erroneously claiming*** the Town's project with the Army Corps of Engineers could not proceed without them."
- ii. (p.7) "At the outset, the Town engaged in troubling conduct by seeking unreasonable easements exceeding the scope of those authorized by Town Council (***or required by the Army Corps of Engineers***).
- iii. (p.8, fn.2) ". . . ***[A]s recognized in the summary judgment order, apparently unnecessary*** – intrusions on their private property rights."

These statements are incorrect and not supported by the record. In fact, the Army Corps does require these easements and the full scope of the specific easement language included in the condemnation notices. The central factual premise underlying all of this litigation is that the Army Corps requires this easement language in order to move forward with a long-term shore protection project with the Town, and that the Appellants do not want to sign off on easements with the

language required by the Corps. In plain terms, the Town would have absolutely no reason to go to all this trouble if the Corps did not specifically require it.

Among other things, the Army Corps specifically requires this language regarding “the right of public use and access.” Federal law provides that funds for beach renourishment activities may not be used on private portions of the shoreline. Specifically, the Water Resources Development Act of 1986 requires that “[c]osts of constructing projects or measures for beach erosion control . . . shall be assigned to appropriate project purposes . . . except that all costs assigned to benefits to privately owned shores (where use of such shores is limited to private interests) or to prevention of losses of private lands shall be borne by non-Federal interests[.]” 33 U.S.C.S. § 2213(d)(1). See also § 2213(d)(2)(B) (regarding periodic renourishment funding).

Under these statutes, “the Army Corps has interpreted its responsibility to include requiring public access and use of Project areas funded by federal monies.” State v. N. Beach 1003, Ltd. Liab. Co., 166 A.3d 239, 256 (N.J. App. 2017). While the question of the specific requirements of the Army Corps was not addressed in the circuit court fee proceedings or raised as an issue on appeal, and the record was therefore not developed on this issue, reported opinions from other states recite essentially identical language in easements required for Army Corps renourishment projects. See, e.g., N. Beach 1003 at 256; Freudenberger v. Cty. of Suffolk, 2021 N.Y. Misc. LEXIS 77464, at *6 (N.Y. Sup. Ct. Apr. 5, 2021). This is standard *Perpetual Beach Storm Damage Reduction Easement* “estate” language that the Corps requires for all renourishment projects.

These federal requirements give rise to a determination of necessity under South Carolina law. “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.”

S.C. Code Ann. § 28-2-50. A determination of necessity is a legislative question and presumed valid. Timmons v. S.C. Tricentennial Comm'n, 254 S.C. 378, 396, 175 S.E.2d 805, 814 (1970).

The circuit court's summary judgment order did not include any finding that the Corps did not require the easements for participation in a long-term federal project. In fact, footnote 2 of the order specifically note the Town's position that it is pursuing a partnership with the Army Corps to be eligible for federal renourishment assistance over a period of decades. (R.p.69). The lower court simply did not address this issue on summary judgment. While the order noted that the Town performed the initial work without federal funds (or these three easements) (R.p.68-69), the purpose of pursuing the easements was and is to become eligible for long-term federal assistance.

The affidavit of former Town Administrator Ryan Fabbri states that "the easement sought and the proposed easement grant document are a requirement by the Corps The scope of the easement, pursuant to the requirements that were established by the Corps, is what has been determined to be necessary to achieve the public purpose of a 50-year beach renourishment undertaking." (R. p.613). As also detailed in the affidavit, the Town began moving forward with the initial renourishment work without federal participation in July 2019, and only moved forward with attempting to condemn the Corps-required easements after the Corps subsequently proposed an agreement for moving forward with a partnership project. (R. p.672-673, ¶6-10). While the summary judgment order found "[t]he Town rejected the easements [proposed by Appellants] after publicly determining easements were 'not necessary,'" the context of this as explained in the same section of the order was that the necessity determination related to the Town's decision to move forward on its own with the initial work (R. p.69, fn.2). It was only later that the Town moved forward with condemnation after the Corps partnership came back into the picture. (R. p.70).

The parties did not develop the record on the Corps's specific requirements because that

issue was not addressed by the circuit court or raised as an issue on appeal.¹ The record certainly does not provide support for the Court’s statements about the Corps’s requirements or the general necessity of the easements as drafted. Instead, the record demonstrates that, like other coastal communities facing the need for immensely costly shoreline protection, the Town pursued these easements and the easement language because the Army Corps required it. If there was evidence to the contrary and it was relevant to the fee award, the burden of proof was on the Appellants as the parties requesting fees to present it in the record.²

b. Statements regarding an “overly broad” scope of easements

The opinion also includes several statements to the effect that the easement language included in the condemnation notices is overly broad. Specifically, the opinion states:

- i. (p.2) “Initial easement proposals sought to subject an affected lot to **overly broad** public access and to grant the Town an apparently unfettered ability to remove undefined ‘obstructions’ from the proposed easements.”

¹ The summary judgment order does include, under the header “CLAIMS FOR RELIEF AND REASONS ADVANCED FOR SUMMARY JUDGMENT,” a summary list of the *arguments* that Appellants made regarding necessity and other issues, (R. p.72-73), but the circuit court did not rule on each of these items. As the circuit court stated more than once in its fee award, it did not grant summary judgment on the issue of necessity (R. p.108, 110).

² At oral argument, appellate counsel for the Town confirmed to the Court that the “public use” language was an Army Corps requirement, but was not able to confirm in the moment whether the full scope of the exact language used in this first set of condemnation notices was all required by the Corps. This hesitation was based on a desire to stick to what counsel knew with certainty or knew was in the record, as well as counsel’s general recollection that at least one attempt had been made to modify the language (as it turns out from review of the record, this was in connection with the second condemnation attempt (See “Challenge 2” R. p.269, fn.1)). From review of the Corps’s real estate requirements, counsel can now confirm that, yes, the easement language in the first set of condemnation notices precisely matches the Corps’s required “standard estate” language. Neither party to the appeal included that specific documentation on this unexpected issue in the record. However, it appears that the only applicable evidence in the record is the sworn statements of the former Town Administrator that the Town was only seeking the scope of the easement that was required by the Corps. (R. p.508, 613).

- ii. (p.3) “The proposed easements again subject the private lands affected to **wildly broad** ‘public use and access.’”
- iii. (p.7) “[T]he Town engaged in troubling conduct by seeking **unreasonable easements** . . .”
- iv. (p.7) “Indeed, a second set of faulty **and similarly overbroad** condemnation notices was swiftly withdrawn after Landowners (again) challenged them.”

Questions about whether, on the merits, the easements were overly broad or unreasonable were not addressed by the summary judgment order or raised as issues on appeal, and the record and briefing were not developed on this issue. However, as discussed above, the language in the easements was required by the Army Corps as a condition for federal funding. See S.C. Code Ann. § 28-2-50. More generally, some element of public use is always part of a proper exercise of eminent domain. Karesh v. City Council of Charleston, 271 S.C. 339, 342, 247 S.E.2d 342, 344 (1978). While the right of individual members of the public to literally, physically use property is not always part of a condemnation (as, for example, in the case of a sewer line easement), it very often is (as in the case of a road right-of-way, a public park, or a multi-use path). Inclusion of a public right to use and access does not render a condemnation overly broad, and condemning authorities instead have significant discretion to determine the scope and nature of property interests condemned. Eldridge v. City of Greenwood, 331 S.C. 398, 425, 503 S.E.2d 191, 205 (Ct. App. 1998). While the scope of a given easement can certainly increase the impact on the market value of the property, that is an entirely separate issue that must be determined not as the basis for a challenge, but instead in the just compensation phase of the condemnation proceedings, and compensation paid accordingly.

Again, this “overly broad” issue was not determined in the summary judgment order and, through no fault of the Town, the parties did not complete the litigation of this issue on the merits.

It would be one thing for the Court to state that the Appellants' *concerns* about the scope of the easements justified increased attorney time in the challenge litigation. It is a very different thing to state that the scope of the easements was overly broad and unreasonable when that question was not reached by the circuit court was not an issue on appeal before this Court.

c. Statements regarding rejection of easements signed by Appellants

The opinion also includes several statements that the Town had no reason to reject the easements signed by the Appellants. Specifically, the opinion states:

- i. (p.3) "The circuit court noted Landowners had executed easement deeds and provided them to the Town with terms allowing for renourishment activities, ***but the Town inexplicably rejected them.***"
- ii. (p.7) "The Town's rejection of the easements Landowners prepared and proposed – ***for reasons the Town cannot or will not explain*** – undoubtedly increased the difficulty (and costs) of the litigation."

The summary judgment order notes that the Town rejected the easements signed by Appellants, but it does not reach the issues of why the Town did so. The Town rejected the alternate easements because those documents did not satisfy the requirements of the Army Corps. See, e.g., Affidavit of Ryan Fabbri (R. p.613 ("Although the Town engaged in good faith negotiations with landowners (including the Plaintiff herein) regarding certain changes or adjustments to the documents, the Corps is the ultimate decision maker on the issue of the sufficiency thereof.")). The Town respectfully contends that the record does not support the Court's statements on this issue.

d. Statements regarding municipal overreach

Finally, the opinion includes several statements to the effect that the Town engaged in overreach or poor behavior. Specifically, the opinion states:

- i. (p.3) “Detailing the *Town’s inconsistent representations and providing other examples of its municipal overreach*, the circuit court granted Landowner’s motions for summary judgment[.]”
- ii. (p.7) “Yet, based upon the circumstances of these cases – *specifically the Town’s problematic behavior . . .*.”
- iii. (p.7, fn.2) “But it is difficult to discern the ‘chicken and the egg’ here in light of *the Town’s ongoing heavy-handed approach* to these three proposed easements.”
- iv. (p.8, fn.2) “This contention is accompanied by *the Town’s steadfast refusal to accept responsibility for its own problematic conduct*[.]”
- v. (p.8, fn.2) “Pagliarini’s affidavit understandably declines to reference *his client’s poor behavior*[.]”

The Town respectfully contends that this language unfairly castigates the Town and its officials for their efforts to move forward with a critical public project in the face of an incredibly difficult adversary. As discussed above, virtually all of the conduct of which the Court is critical – pursuit of easements with “public use and access” language and other language that the Court views as broad, and rejection of the Appellants’ alternate easements – was based entirely on the Town’s need to satisfy the requirements of the Army Corps. It is true that the easements did include rights of “public use and access,” that the appraisal report did not include the specific language of the easement, and that the appraisal report was inadvertently not provided prior to service of the condemnation notices (See R. p.664, fn.3 for Town Attorney’s explanation regarding delivery of the appraisal). However, the Town asks the Court to grant rehearing in order to reconsider whether the course of this matter truly warrants labelling the Town’s efforts as “problematic,” “poor” and “heavy-handed.” The long-term federal partnership the Town is seeking is not some questionable

municipal “vanity project” or an improvement intended for the benefit of a well-connected individual, but is instead an effort to protect the critically significant Pawleys Island shoreline and to prevent high tides from once again going under people’s homes.

The Town also respectfully submits that it has attempted to take appropriate responsibility for the outfall of the events surrounding its unsuccessful condemnation efforts. After summary judgment was finalized, the Town did not draw matters out by appealing the order, and it promptly withdrew the second set of condemnation notices in the “Challenge 2” (App. Case No. 2023-001272) cases to avoid burdening the parties with unnecessary additional time and expense. The Town vigorously contested the Appellants’ unreasonable fee claims, but then promptly paid the awards in both sets of cases. Facing an adversary that claimed an enormous fee award but refused to provide fee statements until ordered to do so, the Town worked diligently to provide the circuit court a discernable factual record on the fees and options for different ways to analyze the award.

While it may fall short of what the Court believes is warranted, the Town’s brief in this matter also “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.” (p.5). Likewise, the expert fee affidavit prepared for and filed by the Town noted that, “[i]n fairness to the plaintiffs, defense counsel filed unsuccessful motions that plaintiffs’ counsel was forced to deal with. Specifically, defendant filed a Motion to Disqualify Plaintiffs’ counsel and a Motion to Post Bond.” (R. p.1217). The Town has taken appropriate steps to move forward from the initial efforts in an appropriate, thoughtful manner.

2. Rehearing Should be Granted for Reconsideration of Modifications to the Fee Award.

a. There was no error of law or abuse of discretion in the circuit court fee analysis.

The Town respectfully asserts that the circuit court committed no error of law or abuse of discretion. “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. “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). Where analysis of the six factors identified under Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750 (1997), is applied, “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 question of whether some conduct on the part of the Town increased the difficulty of the litigation, the circuit court undeniably received conflicting evidence and had discretion to weigh it. The circuit court received Appellants’ affidavit materials on this issue, but also received the Town’s opposing materials including the affidavits of the Mayor and Town Attorney (R. p. 1235-1239). The court considered all this evidence and agreed with the Town. Even if this Court disagrees with the circuit court’s factual conclusion on the amount of the award, there is no deficiency in the order that justifies setting aside the required deference to the finder of fact or undertaking broad de novo factual review of what was reasonable.

Both the Pagliarini affidavit and the circuit court order acknowledged that Appellants litigated a full scope of issues, not just the issues on which summary judgment was granted, and accounted for reasonable attorney time in that context. (R. p.110; R. p.1217, ¶ 31). While the circuit

court ultimately agreed with Pagliarini, it did not rely solely on that affidavit. Instead, the court reviewed the case records, all of the affidavits filed by all parties, and the Appellants' fee statements (including detailed review as part of the redaction process). While the circuit court considered the factor of "beneficial results obtained" and cited relevant case law, it did not deduct any time for work on theories for which summary judgment was not granted. Instead, the trial court simply noted that the fact that the judgment was not obtained on the full scope of requested relief further reinforced that 125 hours was reasonable for the full scope of issues. (R. p.110).

The Town also contends that there are no "irreconcilable inconsistencies between the summary judgment order and findings in the fee affidavit." As mentioned above, the circuit court noted that Appellants obtained summary judgment on less than the full scope of issues pleaded, but did not deduct attorney time on this basis. It is reasonable to conclude that a disproportionate amount of the excessive attorney time claimed by Appellants was spent on the sprawling "bad faith" and "fraud" claims rather than on the more factually discrete theories for which summary judgment was granted. The opinion states that the Court is "perplexed as to how some of the fee order's findings could be reached in light of the discovery blocked by the Town before all of Landowners claims could properly be considered on the merits." While it is true that there was ultimately no determination on the merits of all of the claims, this was not the Town's fault and did not create any error in the circuit court's fee analysis. Appellants filed for summary judgment on all of its claims as early in the litigation as they were allowed to do so, and the summary judgment order ended the merits portion of the case (subject to the fee petition) without addressing the merits of all of the claims. (R. p.56, 84). Appellants did not request reconsideration or file an appeal of that result, and can only be said to have abandoned these remaining claims for purposes of this Challenge 1 litigation. Given that the remaining portion of the litigation was limited to

attorney fees, the Town appropriately moved for a protective order against a deposition of the Town Administrator – this deposition was not necessary given the nearly completed posture of the action and would have undeniably led only to an increase in excessive attorney time. (R. p.1039). The circuit court partially granted the motion, merely requiring that discovery be limited to the pending claim for attorney fees. (R. p.51). The Town did not block discovery; the circuit court appropriately exercised its discretion to limit discovery to relevant, pending matters.

Even if, hypothetically, the Appellants had been denied some discovery, that would not have had any bearing on their attorney’s ability to explain why he spent the time he did in the litigation, based on what the Appellants knew or alleged at the time that legal work was performed. The Appellants asserted a number of theories, survived a motion to dismiss, and accordingly had the right to proceed with their claims. The circuit court took this into account and did not deduct any time for the theories not reached on summary judgment. Appellants were given every possible opportunity to explain how and why attorney time had been spent, and had the burden to do so in a manner that persuaded the finder of fact. Sunrise Sav. & Loan Ass’n v. Mariner’s Cay Dev. Corp., 295 S.C. 208, 211, 367 S.E.2d 696, 698 (1988).

b. The record does not support an increase in the fee award.

Even if the circuit court had committed some abuse of discretion, the Court’s interpretation of the record does not support an increase in the fee award. As discussed above, the Town did not thwart the Appellants’ ability to obtain reasonable discovery. As also discussed, while the Court describes the scope of the easements as being “unreasonable”, the Town only ever sought what was required by the Army Corps. As it relates here, it is not clear how the scope of the proposed easements made the litigation more difficult, time-intensive, or costly – for consideration of a fee award, it is a given that the Appellants found the easement objectionable, and the question is whether their claimed attorney time seeking to prove their case was reasonable.

Similarly, it is not clear how the Town’s rejection of the alternative easements offered by Appellants prior to the litigation “undoubtedly increased the difficulty (and costs) of the litigation.” If the Town had been authorized by the Army Corps to accept those alternate easements, then presumably there would not have been any litigation at all. The mere fact that the parties could not agree on easement language, and therefore had a dispute, does not lead to the conclusion that one of the parties therefore had made the dispute more difficult and costly.

It is also true that the Town served a second set of condemnation notices in an attempt to address the procedural objections raised by Appellants, but that did not make the litigation in these Challenge 1 actions more costly. All parties have been clear from the outset that the Challenge 2 fees are being considered in that separate appeal. Similarly, positions taken by the Town regarding mootness and related matters in the Challenge 2 cases – in proceedings that occurred after the Challenge 1 grant of summary judgment – did not and could not have had any effect on the difficulty or cost of this Challenge 1 litigation. In any event, the Town’s relevant position in the Challenge 2 cases – that the Appellants’ challenge to the second set of condemnation notices was moot after the notices were abandoned, even though the Town still retains the governmental power to make a subsequent attempt – is at the very minimum a reasonable legal position, and not indicative of heavy-handedness or overreaching.³ The Town abandoned those second notices to avoid wasting the parties’ time and money on re-litigating the same issues in Challenge 1, and has not acted in bad faith by being candid about the fact that it still needs easements required by the Army Corps in order to pursue eligibility for millions in federal funds for a critical public project.

³ In rejecting Appellants’ appeal of an order of dismissal in the Challenge 2 cases, the Court of Appeals ruled that (1) the Town properly abandoned the notices, (2) the challenge actions to those notices were therefore moot (capable of repetition, but not evading review), and (3) Appellants’ claims for prospective relief regarding future attempts were not ripe for judicial review. See Appellate Case No. 2021-000757, Unpublished Op. No. 2023-UP-055 (filed February 8, 2023).

The Town also respectfully asserts that, even if the litigation or (prior dealings) had proceeded as characterized by the Court, this does not factually justify or support a fee award based on doubling the number of attorney hours from 125 to 250. Horton, 423 S.C. at 331, 815 S.E.2d at 445 (fee award must be “adequately explained” by the factual findings).

c. The Court’s calculation of a joint “combined” fee award based on 250 attorney hours is not supported by the record or any applicable law.

Finally, rehearing should be granted for reconsideration of how the fee award was calculated after the Court determined 250 hours was reasonable attorney time. The Appellants’ fee agreement provided for the fees to be split in equal thirds, and Stanton has represented that this is how the fees were actually handled. (R. p.109-110). In the circuit court proceedings Stanton unequivocally waived any claim to a fee award for 1/3 of the time worked. (R. p.287-289). Even if Stanton had not waived his fee claim, a pro se litigant is not entitled to recover fees for his own legal work. Calhoun v. Calhoun, 339 S.C. 96, 100, 529 S.E.2d 14, 17 (2000).

These were three separate challenge actions, and each Appellant had its own separate fee claim. The only fee claims at issue are in the Sunset Lodge and Beattie cases (by contrast, all three Appellants are requesting costs). Awarding 100% of fees based on the calculated reasonable hours (whether 125 or 250) when only two of the three Appellants have a fee claim means that the Town is being required to pay more than the reasonable fees actually incurred by those two parties. The fact that Stanton elected to represent himself in spite of the fact that he is unable to claim fees should not constitute a benefit to the other two Appellants⁴ or impose a requirement on the Town

⁴ The Town takes no pleasure in the fact that Appellants Sunset Lodge and Beattie may have paid (or be obligated to pay) for an excessive amount of legal time. However, the ownership of both of these Appellants includes experienced attorneys who filed affidavits stating they followed the litigation, approved of how it was handled, and found the fee request to be appropriate. (R. p.1313, 1316). By contrast, even after increasing the fee award, the Court’s opinion still reflects a determination that approximately 75% of the requested attorney hours were in fact excessive. To the extent that these sophisticated Appellants went along with this and then may have been charged

to pay them more than their reasonably incurred share of fees. The Appellants were not jointly *obligated* to pay the full hourly fees to Stanton, and so it cannot be said that the full fee was jointly “incurred” as required for an award pursuant to S.C. Code Ann. § 28-2-510(A).

The Town is not aware of any legal authority requiring or even permitting a joint award of 100% of the divided fee in these circumstances. An award of 1/3 to both of the Appellants with a fee claim is consistent with the reality of their agreement and the handling of “customary legal fees for similar services.” See Jackson at 308, 486 S.E.2d at 760. It is not clear how the circuit court’s 2/3 calculation was in any way an error of law or abuse of discretion, and there is therefore no basis to set aside deference to the finder of fact. Accordingly, whatever is determined to be the reasonable overall time and associated fee for the litigation should be divided into equal thirds, and the fee award should be limited to 1/3 each to the Beattie and Sunset Lodge appellants.

CONCLUSION

For the reasons set forth above, Respondent Town of Pawleys Island respectfully requests rehearing of the appeal and modification of the Court’s Opinion of June 3, 2026.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT
TOWN OF PAWLEYS ISLAND

June 18, 2026

and paid for more than a reasonable amount of attorney time, this should not create an obligation on the Town to pay them for more than they actually, reasonably incurred.

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PROOF OF SERVICE

I certify that I have served the *Respondent's Petition for Rehearing* by causing a copy to
be e-mailed on **June 18, 2026**, 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)