

**Order Granting Attorneys' Fees and Costs  
to the Landowners (August 10, 2015)**

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Piedmont Natural Gas Company, )  
 )  
 Condemnor, )  
 )  
 vs. )  
 )  
 Richeous Smith, et al., )  
 )  
 Condemnees. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 CA No. 2012-CP-23-4064

ORDER REGARDING ATTORNEYS'  
 FEES AND COSTS  
**RECEIVED**

SEP 10 2015

SC Court of Appeals

FILED - CLERK OF COURT  
 GREENVILLE CO. S.C.  
 PAUL D. WICKENS/SMITH  
 2015 AUG 10 5 PM 1 00

This issue is before me on the Application for Litigation Expenses and Affidavit in Support of Claim for Attorney's Fees filed by David B. Ward, Esq., and the Application for Award of Costs and Litigation Expenses filed by Erin Culbertson, Esq., in this matter, pursuant to Section 28-2-510 of the South Carolina Code of Laws. At a hearing on the matter held before this Court on July 20, 2015<sup>1</sup>, Condemnor's attorney was given the opportunity to examine Mr. Ward and Ms. Culbertson under oath regarding their respective Applications and Affidavits. Both Mr. Ward and Ms. Culbertson submitted itemized statements of their time spent on this matter.

After a thorough review of the Applications and Affidavits submitted by Mr. Ward and Ms. Culbertson, as well as a hearing on the matter, I make the following findings of fact and conclusions of law:

- (1) Condemnees are entitled to an award of their reasonable litigation expenses in this matter, pursuant to S. C. Code Ann. § 28-2-510.
- (2) Mr. Ward and Ms. Culbertson submitted their applications for expenses in a timely manner, and the applications properly included a statement that the landowners had prevailed, a request for the amount sought, and an itemized accounting which included the

<sup>1</sup> The Court also conducted a conference call with all counsel of record on July 24, 2015, to further discuss and to announce its ruling on this matter.

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fee charged, the basis therefor, the actual time expended, and all actual expenses for which they sought recovery.

(3) I find that all time spent and expenses incurred by Mr. Ward and Ms. Culbertson were necessarily incurred.

(4) I find that Mr. Ward spent 119.6 hours and incurred expenses in the amount of \$6,831.59.

(5) I find that Ms. Culbertson spent 167.6 hours and incurred expenses in the amount of \$2,218.51.

(6) Although not required to do so under the holding in S.C. Dep't of Transportation v. Revels, 766 S.E.2d 700 (2014), I also considered the factors identified in Jackson v. Speed, 486 S.E.2d 750 (1997), as follows:

(a) The nature, extent, and difficulty of the case: this matter had in excess of a hundred parties, seventy of whom were represented by Mr. Ward and Ms. Culbertson. Further, there were novel issues of law involved.

(b) The time necessarily devoted to the case: Mr. Ward's itemized timesheet accounts for 119.6 hours and separate paralegal time of 62.1 hours. Ms. Culbertson's itemized timesheet accounts for 167.6 hours.

(c) Professional standing of counsel: both Mr. Ward and Ms. Culbertson are members in good standing of the Greenville Bar, are well-respected, and have appeared before this Court numerous times.

(d) Contingency of compensation: Mr. Ward and Ms. Culbertson represent their clients on a one-third contingency fee arrangement, according to their Affidavits.

(e) Beneficial results obtained: the Court's order of an award of \$414,752 is significantly higher than the proffer made by the Condemnor in the amount of \$172,200.



(f) Customary legal fees for similar services: Mr. Ward's hourly rate of \$400 and Ms. Culbertson's hourly rate of \$300 are well within the "customary" range.

(7) Having conducted a Revels analysis as well as a Jackson analysis, the Court finds that an award of costs and attorneys' fees is appropriate; however, due to the complexity of the legal issues, the existence of unique and novel legal arguments which were not solely created by the Condemnor, and the frequently changing number and names of Condemnees claiming an interest in the real property, I find that Mr. Ward and Ms. Culbertson should be awarded 85% of their requested fees.

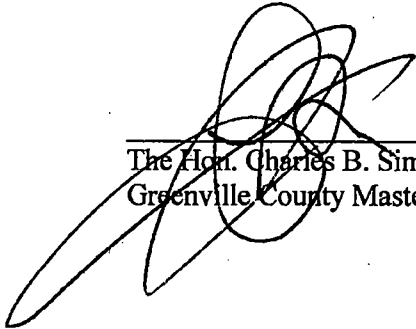
**NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:**

(A) Condemnor shall pay expenses in the amounts of \$6,831.59 to Mr. Ward and \$2,218.51 to Ms. Culbertson.

(B) Condemnor shall pay attorneys' fees in the amount of \$40,664.00<sup>2</sup> to Mr. Ward and \$42,738.00<sup>3</sup> to Ms. Culbertson.

(C) Pursuant to S.C. Code Ann. § 28-2-510(B)(1), the amounts described above shall become part of the judgment awarded to Condemnees and shall accrue interest at the statutory rate.

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
The Hon. Charles B. Simmons, Jr.  
Greenville County Master-In-Equity

Greenville, SC  
8/7, 2015

<sup>2</sup> 119.6 hours x \$400 = \$47,840.00 x 85% = \$40,664

<sup>3</sup> 167.6 hours x \$300 = \$50,280.00 x 85% = \$42,738

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF GREENVILLE

CASE NO: 2012CP2304064

IN THE COURT OF COMMON PLEAS

**Piedmont Natural Gas Company vs. Richeous Smith**

**CHECK ONE:**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**
  - Rule 12(b), SCRPC;
  - Rule 41(a), SCRPC (Vol. Nonsuit);
  - Rule 43(k), SCRPC (Settled);
  - Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**
  - Rule 40(j) SCRPC;
  - Bankruptcy;
  - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
  - Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
  - Affirmed;
  - Reversed;
  - Remanded;
  - Other: \_\_\_\_\_

IT IS ORDERED AND ADJUDGED:  See attached order;  Statement of Judgment by the Court:

**NOTICE**

This is a notice to you that an Order Regarding Attorney's Fees and Costs in this case has been filed in the Clerk of Court's Office. To obtain a certified copy, you may contact our office by phone (864) 467-8551 or email a request to [cnoblitt@greenvillecounty.org](mailto:cnoblitt@greenvillecounty.org). If you would like a copy via email, please provide a valid email address.

Dated at Greenville, South Carolina, this 10th day of August, 2015.

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PRESIDING JUDGE -

SEP 10 2015  
SC Court of Appeals

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- Clerk of Court

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMER  
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