THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Master in Equity

Mikell R. Scarborough

Case No. 2010-CP-10-1602

Commissioners of Public Works of the Town of Mt. Pleasant, South Carolina . . . . . Respondent

v.

Henry Swinton, Jr., Leroy Swinton, Earsilee Nesbit, Jack Swinton, Charles Swinton, Nathaniel Swinton and James Swinton . . . . . Appellant

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FINAL REPLY BRIEF OF APPELLANT

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I. Appellant did not need to object to Mr. Pruitt's qualifications nor move to strike his testimony.

Respondent sets forth two arguments to support the Master's finding. First, respondent argues procedural errors for failing to object to Mr. Pruitt's qualifications and failing to move to strike Mr. Pruitt's testimony. The court should note appellant does not challenge Mr. Pruitt's qualifications. Mr. Pruitt clearly possessed the necessary education and experience to qualify as an expert in land valuation. Therefore, appellant lacked any grounds to disqualify Pruitt as an expert.

The second portion of respondent's argument is that appellant failed to move to strike any of Mr. Pruitt's testimony. Because of the statutory procedure in a condemnation case, the condemning authority must procure an appraisal prior the filing the pleadings. S.C. Code §28-2-70. Therefore, in order to comply with S.C. Code §28-2-440, the appraiser must update his/her appraisal to the date of filing or in this case February 26, 2010. Here Mr. Pruitt prepared his initial appraisal on May 12, 2008, (R. p. 72), and explained the basis for his opinions. Appellant need not move to strike the testimony since appellant accepted Pruitt's value of the property on May 12, 2008. A motion to strike testimony is appropriate to preserve an issue for appeal when a witness gives objectionable testimony and the objection is sustained. State v. Wingo, 304 S.C. 173, 403 S.E.2d 322 (Ct. App.1991) *(when witness gives objectionable testimony and objection is sustained, issue not preserved unless objecting party makes motion to strike testimony).* In short, appellant does not object to any of Pruitt's testimony and moved for a directed verdict based on the lack of testimony regarding land value as of February 26, 2010. One can't move to strike testimony that wasn't provided. Therefore, appellant does not need to demonstrate any

abuse of discretion.

II. Respondent failed to provide testimony regarding the value on the date of taking.

Respondent next argues the Court adopted landowner's value thus eliminating any abuse of discretion by the Master or prejudice to the landowner. Here, respondent improperly focuses on the standards regarding admission or exclusion of testimony rather than the standards applicable to motions for a directed verdict.

The Supreme Court in State v. Gracely stated, "When reviewing the denial of a motion for directed verdict, this Court employs the same standard as the trial court by viewing the evidence and all reasonable inferences in the light most favorable to the non-moving party. Steinke v. S.C. Dep't of Labor, Licensing and Regulation, 336 S.C. 373, 386, 520 S.E.2d 142, 148 (S.C. 1999). The trial court will only be reversed when there is no evidence to support the ruling below. Creech v. S.C. Wildlife & Marine Res. Dep't, 328 S.C. 24, 29, 491 S.E.2d 571, 573 (1997) *in* State v. Gracely, 731 S.E.2d 880 (S.C. 2012).

A condemnation case is different than typical cases in that the initiating party does not possess the burden of proof. In addition, the finder of fact is limited to issue an award which falls within the range of the high and low amounts of compensation presented by the parties. South Carolina Dept. of Highways and Public Trans. v. Manning, 323 SE 2d 775 (S.C. 1984). In the instant case, appellant testified he believed the acquisition equaled $18,800.00 as of February 26, 2010. (R. p. 57, l. 16-25). Thus, the high was established. Respondent failed to provide any evidence regarding a value on February 26, 2010 and therefore failed to establish a low in terms of value. Accordingly, no range in value existed on the date of take.

When looking at the evidence in light most favorable to respondent - the only testimony on the land value came from the landowner. Therefore the Court was required to accept that value. Furthermore, no evidence differentiated the fee simple value of property near the rear of the property as a opposed to the front of the property. Thus, the Court improperly reduced the value of the land to $85,000 per acre.[1] The court also found the property suffered 40% diminution in value. Again, no range existed on the date of take. In addition, Pruitt's testimony is completely speculative. When asked by respondent's counsel about the percentage he used, Pruitt stated, "Since this was in the rear of the property and, actually – but that's the reason I used 15. It was – I can't offer any much more explanation than that. No way I can prove it but – its what I've used in the past." (R. p. 26, l.18-22). Viewing the evidence in the light most favorable to the respondent, the Court improperly considered speculative evidence on the property almost two years prior to the date of filing.

CONCLUSION

The law clearly requires the parties to value the acquisition on the date of filing. S.C. Code § 28-2-440. Pruitt clearly testified he could not value the acquisition was of the February 26, 2010 date of filing. (R. p. 34, l. 1-7). Pruitt also testified that property values are always changing due to any number of factors. (R. p. 33, l. 13-25). Therefore, the court was limited to issue an award consistent with the landowner's testimony of $18,800.00 rather than Pruitt's speculative and dated testimony.

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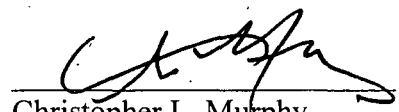
[1] Pruitt did testify that the diminution in value caused by an easement could be 20% if in front of the property or 15% if the easement was in the back, but he did not discuss fee simple value of property in the front as opposed to the back. (R. p. 26, l. 11-22)

Respectfully submitted,



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November 8, 2012

Charleston, South Carolina

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CERTIFICATE OF COUNSEL

The undersigned certified this brief complies with Rule 211(b), SCACR.

November 8, 2012

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PROOF OF SERVICE

I CERTIFY that I have served the Final Reply Brief of Appellant on counsel of record for Respondent by delivering a copy via U.S. Mail First-Class postage prepaid on the 14th day of November, 2012, addressed as follows:

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