

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

FINAL BRIEF OF APPELLANT

Christopher L. Murphy
123 Meeting Street
Charleston, SC 29401
(843) 577-9323

Attorney for Appellant

RECEIVED
NOV 19 2012
SC Court of Appeals

TABLE OF CONTENTS

Table of Authorities	ii
Statement of Issues on Appeal	1
Statement of the Case	1
Facts	1
Arguments	2
1. DID THE COURT ERR IN FAILING TO DIRECT A VERDICT IN FAVOR OF THE LANDOWNER?	2
Conclusion	3

TABLE OF AUTHORITIES

CASES

<u>Rice v. S.C. Dept of Hwys & Public Trans.</u> , 289 S.E.2d 645 (1982)	2
<u>South Carolina Power Co. v. Baker</u> 46 S.E.2d 278 (1948)	2
<u>South Carolina State Hwy. Dept v. Butterfield</u> , 58 S.E.2d 737 (1950)	2

STATUTES

S.C. Code § 28-2-440	2, 3
----------------------------	------

STATEMENT OF ISSUES ON APPEAL

Did the Court err in failing to direct a verdict in favor of landowner since condemnor failed to value the acquisition as of the date of condemnation?

STATEMENT OF THE CASE

The Commissioner of Public Works of the Town of Mt. Pleasant, (CPW), filed this condemnation action on February 26, 2010. The case was tried July 31, 2012 before the Honorable Mikell R. Scarborough, Master in Equity, who issued judgment in favor of the landowner in the amount of \$6,400.00. The Court issued an order dated August 8, 2012 which Appellant received on August 29, 2012. Appellant served the Notice of Appeal on September 5, 2012.

FACTS

This is a simple case where CPW filed a condemnation action to acquire an 8,185 square foot strip of property for a utility easement from landowners' property located off Canyon Lane near Highway 41 in Mt. Pleasant, South Carolina. The only issue at trial was the amount of *just compensation* to be paid to landowners.

At trial, CPW called one witness, appraiser Gary L. Pruitt who valued the property as of May 12, 2008 and opined that landowner should receive \$2,100.00 just compensation for the acquisition of landowners' property. (R. p. 3, ¶¶ 6 & 7, & p.72). Landowner, James Swinton was the sole witness for condemnees and testified that as of February 26, 2010, the acquired property equaled the value of the acquisition \$18,800.00. (R. p. 57, l. 16-24 & p. 65, l. 8-11). After hearing the testimony the court awarded landowners \$6,400.00 *just compensation*.

Landowners' moved for a direct verdict for judgment in their favor in the amount of \$18,800.00 which the court denied.

ARGUMENT

I. DID THE COURT ERR IN FAILING TO DIRECT A VERDICT IN FAVOR OF THE LANDOWNER?

In any condemnation case, the date of valuation is the date the pleadings were filed. S.C. Code § 28-2-440. In this case, CPW filed the pleadings on February 26, 2010 which established the valuation date pursuant to statute. Therefore, the only relevant evidence in this trial would be the property value as of February 26, 2010. In addition, the condemnees bear the burden of proof. Rice v. S.C. Dept of Hwys & Public Trans., 289 S.E.2d 645 (1982); South Carolina State Hwy. Dept v. Butterfield, 58 S.E.2d 737 (1950); South Carolina Power Co. v. Baker, 46 S.E.2d 278 (1948). Here James Swinton testified the value of the acquisition equaled \$18,800.00. (R. p. 57, l. 16-24).

In this case, CPW's expert valued the take as of May 12, 2008, (R. p. 3, ¶¶ 6 & 7, & p.72), rather than the valuation date of February 26, 2010. On cross examination, CPW's expert testified his appraisal is only good for the May 8, 2008 point in time. (R. p. 33, l. 7-12). He continued to state that property values can change for a number of reasons including crime, zoning, development, etc, (R. p. 33, l. 13-25), and that he did not know the value of the value of the property on 2010. (R. p. 34, l. 1-4). CPW's witness also stated he could not testify about the value of landowners' property on February 26, 2010. (R. p. 34, l. 1-7).

On the other hand, Landowner, James Swinton, testified about the problems this

easement will create and opined the acquired property equaled \$2.30 per square foot for a total payment of \$18,800.00. (R. p. 57, l. 4-18). Furthermore, he testified that the \$18,800.00 was the market value of the acquired property as of February 26, 2010. (R. p. 34, l. 20-25).

CPW only presented evidence of value as of May 12, 2008, not the February 26, 2010 date of filing. Since S.C. Code § 28-2-440 establishes the valuation date at February 26, 2010, CPW failed to present any relevant or admissible evidence as of the date of take. Therefore, the court improperly considered CPW's expert testimony. The condemnee, who bears the burden of proof, testified as to the value of the acquisition on the proper valuation date. Therefore, the landowners presented the only admissible evidence and the court should have directed a verdict in their favor in the amount of \$18,800.00.

CONCLUSION

In condemnation cases, the trier of fact must issue a judgment within the range of the values presented by each party. However, in this case, the condemnor failed to present any evidence of value on the February 26, 2010 date of value. Condemnor only presented evidence of value as of May 2008 which is almost two years prior to the date of filing. Therefore, the only admissible evidence came from landowners. For the reasons stated, this Court should reverse the judgment by the Master and remand with instructions to direct a verdict in favor of the landowners in the amount of \$18,800.00.

Respectfully submitted,



Christopher L. Murphy
123 Meeting Street
Charleston, SC 29401

(843) 577-9323
Attorney for Appellant

November 8, 2012

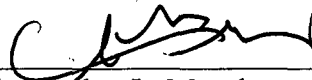
Charleston, South Carolina

G:\Swinton-MTCPW(11-3258)\Appeal\Pleadings\Final.text.11-6-12.wpd

CERTIFICATE OF COUNSEL

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

November 8, 2012



Christopher L. Murphy
123 Meeting Street
Charleston, SC 29401
(843) 577-9323

Attorney for Appellant

RECEIVED

NOV 19 2012

SC Court of Appeals

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

PROOF OF SERVICE

I CERTIFY that I have served the Final Brief of Appellant on counsel of record for Respondent by delivering a copy via U.S. Mail First-Class postage prepaid on the 15th day of November, 2012, addressed as follows:

Timothy J.W. Muller, Esquire
Rosen, Rosen & Hagood, LLC
151 Meeting St., Suite 400
Charleston, SC 29401

RECEIVED

NOV 19 2012

SC Court of Appeals

Sandra S. Garvin

SANDRA S. GARVIN