THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Mikell R. Scarborough, Master-In-Equity

Case No. 2010-CP-10-1602

Commissioner of Public Works of the Town of Mount Pleasant, South Carolina,

Respondent,

-v-

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

Appellants.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

Whether Appellants' appeal of the Order of Judge Scarborough should be dismissed or denied since Judge Scarborough adopted the valuation of the Landowner, not Respondent's expert witness, and the evidence presented at trial supported Judge Scarborough's determination of just compensation for the sewer and water easement taken by Respondent along the property line of a tract of property owned by the Appellants.

STATEMENT OF THE CASE

The Commissioner of Public Works of the Town of Mount Pleasant ("Respondent") served the Appellants, who are the owners of a certain piece of real property in Mount Pleasant, South Carolina, with a Condemnation Notice and tender of payment on December 8, 2009. See (R. p. 14). The Condemnation Notice attached a plat that showed the landowners that Respondent was taking an easement of 8,185 square feet down the boundary line of a tract of property owned by the Appellants. See (R. pp. 9-13). The Appellants made no timely objection to the taking of the easement. On February 26, 2010, Respondent initiated condemnation proceedings in the Court of Common Pleas for Charleston County and deposited Two Thousand One Hundred and no/100 Dollars ($2,100) with the Clerk of Court to compensate the landowners for the property rights taken by the easement. The tender was not accepted by the Appellants and the condemnation proceedings moved forward to determine just compensation. Pursuant to the Order of Judge Dennis, issued on September 9, 2010, the case was referred to the Honorable Mikell R. Scarborough, Master-in-Equity for Charleston County. See (R. pp. 7-8). This matter was initially scheduled to be heard by Judge Scarborough on June 30, 2011, but was continued for a date certain on August 12, 2011. However, the matter was again rescheduled by the Court and ultimately heard on July 31, 2012 for a final decision and judgment.

On July 31, 2012, Judge Scarborough held a short trial to determine only the amount of just compensation for the easement taken by Respondent. Both parties called one witness to present their case. Respondent called Gary Pruitt, MAI ("Pruitt"), a professional appraiser, who was qualified as an expert in land valuation at trial and provided expert testimony concerning his valuation process and estimated value of the taken easement. See (R. p. 19, l. 18 – p. 27, l. 8; p. 47, l. 4 – p. 51, l. 4). At trial, Appellants raised no objection to qualifying Mr. Pruitt as an expert and never sought to strike any portion of his testimony. See (R. p. 20, l. 19 – 23; p. 50, l. 24 – p. 51 l. 4). The professional appraisal created by Pruitt was likewise discussed and properly incorporated as part of the record. See (R. p. 19, l. 2 – p. 27, l. 8); see also (R. pp. 71-99). Appellants then offered the testimony of Landowner James Swinton ("Landowner"), who provided trial testimony related to his opinion on valuation of the easement. See (R. p. 55, l. 17 – p. 56, l. 9). The landowner testified that his valuation of the easement was based on what other landowners had told him and performed no independent research concerning sale prices in the area. See (R. p. 59, l. 4 – 25; p. 62, l. 3 – 10).

After hearing and considering the testimony of both parties, Judge Scarborough issued an Order on August 8, 2012, finding that Six Thousand Four Hundred and no/100 Dollars ($6,400) was just compensation for the easement taken by Respondent. (R. pp. 1 – 6). The Appellants filed their Notice of Appeal on September 7, 2012.

STATEMENT OF THE FACTS

The Appellants are owners of certain real property in Mount Pleasant, South Carolina. Respondent is in the business of providing water and sewer service to residences and businesses in the Mount Pleasant, South Carolina, area. Pursuant to its statutorily granted powers of eminent domain, Respondent sought to take an easement across an 8,185 square feet portion of a tract of property owned by the Appellants to provide sewer and water services to adjacent tracts of land. See (R. pp. 9 – 13). The relevant easement is situated at the very rear of the parent tract of land and does not interfere with access to the parent tract. See (R. p. 22, l. 13 – 24). Respondent had the property professionally appraised and notified the appellants of their intent to take an easement and to pay them $2,100 as just compensation. See (R. p. 20, l. 24 – p. 21, l. 24); (R. p. 14). At the time of the taking, the Appellants property was zoned for residential purposes. (R. p. 22, l. 6 – 12). Appellants refused the offered amount of compensation for the easement and the trial determining the amount of just compensation for the easement was heard as a result.

STANDARD OF REVIEW

An action for condemnation to determine just compensation for the taking of property is an action at law. South Carolina Public Service Authority v. Peagler, 287 S.C. 584, 586, 340 S.E.2d 535, 537 (1986). On appeal of an action at law, tried without a jury, the appellate court standard of review extends only to the correction of errors of law. Okatie River, L.L.C. v. Southeastern Site Prep, L.L.C., 353 S.C. 327, 334, 577 S.E.2d 468, 472 (Ct. App. 2003). In such a case, "the findings of fact of the judge will not be disturbed . . . unless found to be without evidence which reasonably supports the judge's finding." Townes Associates, LTD. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976) (citing Chapman v. Allstate Ins. Co.,

263 S.C. 565, 211 S.E.2d 876 (1974)). The judge's findings are equivalent to a jury's findings in a law action. Id.

ARGUMENT

I. THE ORDER OF JUDGE SCARBOROUGH SHOULD BE AFFIRMED BECAUSE THE DETERMINATION OF JUST COMPENSATION FOR THE EASEMENT WAS BASED ON THE LANDOWNER'S VALUATION AND THE EVIDENCE AT TRIAL REASONABLY SUPPORTED JUDGE SCARBOROUGH'S FINDINGS.

Appellants' initial brief asserts that the trial court erred in failing to direct a verdict in favor of the Appellants at trial. See Initial Brief of Appellant (dated Sept. 19, 2012, received Sept. 21, 2012). The essence of Appellants' appeal is that Judge Scarborough's Order determining the amount of just compensation for the relevant easement in this matter should be discarded because the valuation and appraisal of Respondent's expert witness was performed prior to the filing of the condemnation proceedings. See id. Appellants make a conclusory leap that because of such timing, the entire testimony of Respondent's expert witness, Pruitt, should be deemed inadmissible and the trial court bound to consider only the testimony of the Landowner as a result. See id. Appellants cite to S.C. Code of Laws § 28-2-440 but offer no supporting authority for such a proposition.[1] See id. Appellants' argument is without merit, particularly where Appellants raised no objection to qualifying Pruitt as an expert and never sought to strike any portion of his testimony at trial. (R. p. 20, l. 19 – 23; p. 50, l. 24 – p. 51 l. 4).

The following passage from the Supreme Court of South Carolina is relevant to the issue of admission or exclusion of Respondent's expert witness and his testimony:

> Qualification of an expert and the admission or exclusion of his

[1] In their Initial Brief, Appellants' reference S.C. Code Ann. § 28-2-440, but cite no authority for the argument that relevant evidence concerning valuation prior to the date of the taking results in the automatic exclusion of such testimony or evidence.

> testimony is a matter within the sound discretion of the trial court. Similarly, the admission or exclusion of evidence in general is within the sound discretion of the trial court. In both instances, the trial court's decision will not be disturbed on appeal absent an abuse of discretion. An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion that is without evidentiary support. A trial court's ruling on the admissibility of an expert's testimony constitutes an abuse of discretion when the ruling is manifestly arbitrary, unreasonable, or unfair.

Fields v. Reg'l Med. Ctr. Orangeburg, 363 S.C. 19, 25-26, 609 S.E.2d 506, 509 (2005). In addition to Appellants' failure to timely object to the qualification and testimony of Pruitt at trial, Appellants likewise failed to demonstrate any abuse of discretion committed by the trial court in its appeal as none were committed. As such, Appellants' argument is without merit and Judge Scarborough properly considered the testimony of both parties' witnesses at trial.

Nevertheless, the underlying basis for Appellants' appeal is simply irrelevant given that Judge Scarborough specifically adopted the Landowner's valuation of the condemned property – and not that of Respondent's expert witness. See (R. p. 55, l. 17 – p. 56, l. 6; p. 68, l. 22 – p. 69, l. 25). A cursory review of Appellants' initial brief gives the impression that the valuation of Respondent's expert witness value was adopted. See Initial Brief of Appellant (dated Sept. 19, 2012, received Sept. 21, 2012). However, in determining the amount of just compensation, Judge Scarborough specifically held:

> In determining the just compensation for the easement herein, this Court accepts the Landowner's valuation of the parent tract of land of $100,000.00 per acre but finds that this value must be reduced to $85,000.00 per acre based on the fact that the Landowners' property is situated in the rear of a subdivided tract of land and has no frontage along Canyon Lane. This Court therefore accepts the amount of $1.95 per square foot as the market value for the parent tract of land. In determining the just compensation for the easement, this Court finds that the Landowner is entitled to 40% of the market value of the easement reflective of the total bundle of property rights and rights eventually lost.

(R. pp. 1 – 6). Consistent with Judge Scarborough's Order, the Landowner testified under

direct examination that he believed the fair market value of the parent tract of land where the easement is located to be valued at $100,000 per acre. (R. p. 55, l. 17 – p. 56, l. 6). The landowner performed no independent research concerning sale prices in the area but instead simply based his opinion on what others had told him. (R. p. 59, l. 4 – 25; p. 62, l. 3 – 10). Despite this admission, Judge Scarborough incorporated the Landowner's valuation as the controlling amount when issuing his ruling.

Judge Scarborough then found that certain additional calculations must be incorporated into the determination of just compensation in accordance with the evidence presented at trial. Because the easement was situated in the rear of a subdivided tract and had no road frontage along Canyon Lane, Judge Scarborough held that the market value for the parent tract of land must be reduced to $1.95 per square foot. (R. p. 5); see also (R. p. 22, l. 13 – 24; p. 60, l. 3 – p. 61, l. 21). The testimony of both Pruitt and the Landowner confirmed these facts and supported Judge Scarborough's findings. See (R. p. 22, l. 13 – 24; p. 60, l. 3 – p. 61, l. 21). Finally, Judge Scarborough found that the Landowner was entitled to 40% as opposed to 100% of the market value of the easement because the easement taken was not fee simple and the Landowner retains property rights in the affected land. See (R. p. 5). The landowner testified only to the fee simple value of the easement and therefore a further reduction was necessary where the easement taken was not fee simple in nature, a fact which was acknowledged by both parties at trial. See (R. p. 57, l. 16 – 22; p. 66, lines 12 – 25). Thus, Judge Scarborough's findings concerning the easement and its valuation were supported by the evidence presented at trial.

In contrast, Judge Scarborough chose not to adopt the value provided by Respondent's expert witness at trial. Pruitt testified that he valued the parent tract of land at $74,000 an acre or $1.70 per square foot. (R. p. 24, l. 23 – p. 25, l. 3). He further testified that the Landowner

should only be entitled to 15% of the market value of the easement based on the Landowner's continued property rights. (R. p. 25, l. 7 – 19). None of these values offered by Pruitt and generated from his appraisal prepared for Respondent were incorporated into Judge Scarborough's Order. Therefore, the underlying basis for Appellants' appeal – that the valuation of Respondent's expert witness is inadmissible – is simply irrelevant and cannot possibly be deemed an abuse of discretion where the resulting Order in fact completely rejected Pruitt's testimony and conclusions.

Accordingly, the evidence presented at trial supported Judge Scarborough's findings related to his determination of just compensation for the easement and Appellants' appeal of the Order is without merit. Appellant cannot cite to controlling authority for their argument that Pruitt's testimony must be deemed inadmissible and likewise failed to timely object to Pruitt's qualification and testimony at trial. Furthermore, Appellants' have not established any abuse of discretion committed by Judge Scarborough and cannot demonstrate how the admission of Pruitt's testimony was in any way manifestly arbitrary, unreasonable, or unfair. Therefore, the arguments presented in Appellants' appeal are not a basis to alter the Order of Judge Scarborough and Appellants' appeal should be dismissed or denied.

CONCLUSION

For the aforementioned reasons, the Court should affirm the decision of Judge Scarborough and dismiss or deny Appellants' appeal.

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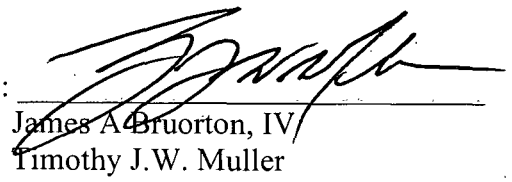
By: 

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November 27, 2012

CERTIFICATE OF COUNSEL

The undersigned certifies that Respondent's Final Brief complies with Rule 211(b), SCACR.

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PROOF OF SERVICE

I certify that on November 28, 2012, I have served a copy of the Respondent's Final on the Appellants by causing a copy of the same to be deposited in the U.S. Mail with adequate first-class postage affixed thereto and addressed to Appellants' attorney of record as follows:

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