

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Case Nos. 2011-CP-20-0298 and 2011-CP-20-0299
Appellate Case No. 2013-000076

RAWLEY E. SCHOFIELD.....Respondent,
v.
FAIRFIELD COUNTY, South Carolina, a political subdivision of
the State of South Carolina,Appellant.

MARY R. MEDLIN.....Respondent,
v.
FAIRFIELD COUNTY, South Carolina, a political subdivision of
the State of South Carolina,Appellant.

BRIEF OF RESPONDENTS

Creighton B. Coleman, Esquire (S.C. Bar #6521)
Coleman Tolen & Swearingen, LLC
120 W. Washington Street
Post Office Box 1006
Winnsboro, SC 29180
Phone: (803) 635-6884
Fax: (803)635-9228

Attorney for Respondents

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STATEMENT OF ISSUES ON APPEAL

1. DID THE CIRCUIT COURT ERR IN DETERMINING THAT COSTS AND LITIGATION EXPENSES WERE AVAILABLE UNDER S.C. CODE ANN. §28-2-510(A)?
2. IF NOT, DID THE CIRCUIT COURT ERR IN FINDING THE FEES REASONABLE WITHOUT ADDRESSING THE FACTORS REQUIRED BY THE SUPREME COURT IN *JACKSON V. SPEED*, 326 S.C. 289, 486 S.E.2d 750 (1997)?

STATEMENT OF THE CASE

Appellant Fairfield County served a Condemnation Notice and Tender of Payment for an easement across the properties of Schofield and Medlin, Respondents herein, on June 30, 2011. Appellant claimed the condemnation was necessary for the construction of wastewater infrastructure improvements to service a new industrial park. Respondents each filed a Complaint in the Court of Common Pleas, Sixth Judicial Circuit, challenging the condemnation action. Respondents argued that it was not necessary for Appellant to condemn their property, because Appellant owned property adjacent to Respondents that could be used for the infrastructure, and that Appellants did not utilize the factors enumerated in the case of *Southern Development Land and Golf Company, LTD v. South Carolina Public Service Authority*, 305 S.C. 507, 409 S.E. 2d 428 (1991), hereinafter referred to as *Southern Development*, for determining if condemnation was appropriate. Appellant answered the complaints, denying that the condemnations were improper and asserting that it had complied with the requirements of S.C. Code Ann. §28-2-10, *et seq.*, and that the condemnations were appropriate.

Both condemnation actions were consolidated and tried non-jury before the Honorable Paul M. Burch on February 3, 2012. After oral and written arguments were

presented, the Court issued an Order on April 11, 2012 finding that the Appellant failed to consider four of the six factors required by *Southern Development* to determine the best location for the water treatment line. Further, the Court found that one of the factors required to be considered, cost, was considered by Appellant, but that Appellants consideration was “flawed and lacks justification”. (Order at 3; R. p.4). The Court inserted a final paragraph into the Order stating “Therefore, the Defendant shall re-evaluate the proposed condemnation by utilizing the above factors, as well as factors it deems appropriate.” (Order at 3; R. p. 4).

On April 16, 2012, Respondents made a motion to be awarded attorneys fees and costs pursuant to S.C. Code Ann. §28-2-510(A). (Motion for Attorney’s Fees and Costs; R. p. 31). Filed along with the motion was an Affidavit of Respondents’ attorney, Creighton B. Coleman, attesting to his qualifications, experience, professional standing, time devoted to the case, and the reasonableness of his fees. (Affidavit of Creighton B. Coleman; R. p. 38, 33). This motion was heard before The Honorable Judge Paul M. Burch on June 7, 2012. Based on the arguments presented at the motions hearing, as well as other documents and memoranda submitted to the Court, the Court issued an Order on July 19, 2012 awarding fees and costs to the Respondents in the amount of \$39,880.39. (Order Awarding Attorney’s Fees and Costs; R. p. 5).

Appellants moved the Court to alter or amend the judgment on August 2, 2012. (Motion to Alter or Amend; R. p. 43). The Court denied Appellant’s motion to alter or amend by written order on December 6, 2012. In its denial of Appellant’s motion, the Court stated that the re-evaluated condemnation plan proposed by Appellant was not an issue before the court. (Order denying Motion to Alter or Amend; R. p. 9).

Appellants filed and served a written Notice of Appeal on both Respondents on January 4, 2013 (Notice of Appeal). Both cases (2013-000075 and 2013-000076) were consolidated by the Clerk of the South Carolina Court of Appeals into Appellate Case No. 2013-000076 on January 16, 2013.

ARGUMENT

I. STANDARD OF REVIEW

“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. State Dept. of Transportation v. Revels*, 399 S.C. 423, 427, 731 S.E.2d 897, 898-99 (Ct. App. 2012) (quoting *Kiriakides v. School Dist. Of Greenville Cnty.*, 382 E.C. 8, 20, 675 S.E.2d 439, 445 (2009)). “An abuse of discretion occurs when the conclusions of the [circuit] court are either controlled by an error of law or based on unsupported factual conclusions. Similarly, the specific amount of attorneys’ fees is left to the discretion of the trial judge and will not be disturbed absent an abuse of discretion.” *Id.* (citations omitted, alteration in original).

II. THE CIRCUIT COURT RULED THAT THE COUNTY WAS NOT ENTITLED TO TAKE THE LAND, AND THEREFORE PROPERLY AWARDED ATTORNEYS’ FEES AND COSTS UNDER S.C. CODE ANN. §28-2-510(A).

Section 28-2-510(A) of the South Carolina Code of Laws allows the award of costs and litigation expenses to the landowner if “the court determines that the condemnor has no right to take all or part of any landowner’s property”. S.C. Code Ann. §28-2-510(A). Appellant contends that the Circuit Court erred in awarding attorneys’ fees and costs because the Court never determined that the County was not entitled to

take the land. When reading the Order of the Court filed April 11, 2012 along with the Order Awarding Attorney's Fees and Costs filed July 19, 2012, and the Order Denying Defendant's Motion to Alter or Amend filed December 6, 2012, it is clear that the Court did in fact rule that Appellant had no right to condemn Respondents' properties.

In the Order issued by the Court on April 11, 2012, the Court states that the factors outlined in *Southern Development Land and Golf Company, LTD v. South Carolina Public Service Authority*, 305 S.C. 507, 409 S.E. 2d 428 (1991) were applied to the facts in this case, and the Court found that Appellants "did not perform the necessary due diligence as set forth in *Southern Development*." (Order at 2, 3; R. p. 4). The Court goes on to state in the Order that "Defendant has abused its discretion in selecting the proposed route through Plaintiffs' property." (Order at 3; R. p. 4).

Appellant contends that the final statement in the Court's Order, "Therefore, the Defendant shall re-evaluate the proposed condemnation by utilizing the above factors, as well as factors it deems appropriate" (Order at 3; R. p. 4), indicates that the Court was ordering a re-evaluation of the proposed condemnation be done before the Court would make a ruling on the right of the Appellant to condemn the properties. However, the preceding sentences indicate that the Court had already made its ruling that the Appellant had no right to condemn as originally proposed, which was the issue before the Court. This is confirmed by the Court later stating "This Court has indeed determined that the condemnor has no right to take all or part of the landowners' property. The county's condemnation was not reasonably necessary, and its methodology in selecting the condemnation route was an abuse of discretion." (Order Awarding Attorney's Fees and Costs at 3; R. p. 7). If the wording of the Court's original Order is unclear, this statement

clarifies the Court's intent and removes any ambiguity. In stating that the County would have to re-evaluate according to the *Southern Development* factors, the Court was instructing Appellant that if it still wished to condemn the property, it would have to begin the process again with a re-evaluation. The Court made it clear that the re-evaluation was not a factor in the Court's ruling when it said "Any matters relating to the sufficiency of the re-evaluated condemnation plan were not and are not before this Court." (Order Denying Motion to Alter or Amend at 1; R. p. 9).

It is clear from a reading of all three of the Court's Orders that the Court never intended to make a ruling based on the Appellant's re-evaluation. The Court's original Order of April 11, 2012 found that Appellant had no right to condemn Respondents' properties. The Court applied the *Southern Development* factors, and found that Appellant had not met those requirements. There was a factual basis for the Court's decision, and the Court correctly applied the law to the facts of the case. An award of costs and litigation expenses was proper based on the Court's ruling under S.C. Code Ann. §28-2-510(A). The Court did not abuse its discretion in awarding attorney's fees and costs to the Respondents.

III. THE CIRCUIT COURT PROPERLY AWARDED ATTORNEY FEES TO THE PLAINTIFFS BASED ON FACTS CONTAINED IN THE RECORD.

"The decision to award or deny attorneys' fees under a statute will not be disturbed on appeal absent an abuse of discretion." *Kiriakides v. School Dist. Of Greenville County*, 382 S.C. 8, 20, 675 S.E.2d 439, 445 (2009) (citing *Layman v. State*, 376 S.C. 434, 444, 658 S.E.2d 320, 328 (2008)). An abuse of discretion occurs when the conclusions of the [circuit] court are either controlled by an error of law or are based on

unsupported factual conclusions.” *Id.* “Where an attorney’s services and their value are determined by the trier of fact, an appeal will not prevail if the findings of fact are supported by any competent evidence.” *Baron Data Systems, Inc. v. Loter*, 297 S.C. 382, 384, 377 S.E.2d 296, 297 (1989).

Appellant contends that the court failed to apply the factors set forth in *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997) in determining the award of a reasonable attorney’s fee under S.C. Code Ann. §28-2-510(A). The *Jackson* factors are to be used “[w]hen determining the *reasonableness* [emphasis added] of attorney’s fees under a statute mandating the award of attorney fees”. *Id.* at 759. However, at the June 7, 2012 hearing, the Appellant raised only the issue of whether or not attorney fees should be awarded in this case, not the reasonableness of the fees requested by Respondents. (Transcript of June 7, 2012 hearing at 5-6; R. p. 53-54). Appellant did not object to the amount requested by Respondents for attorney fees and costs, or the reasonableness thereof, and has presented no argument that the amount of the fees and costs requested by Respondents are unreasonable.

Appellant has not objected to the number of hours spent by Attorney on the matter, the professional standing of Attorney, or the hourly rate of Attorney. Appellant objects to the awarding of attorney fees and costs on the grounds that the issue was not ripe when the Circuit Court made its ruling, based on a misinterpretation of the Court’s order which included language regarding re-evaluating the condemnation plan. The Court later made clear that it was not going to consider the re-evaluation, and that the Court had found for Respondents on the issue of condemnation, making the issue of

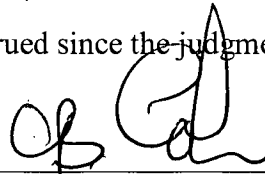
attorney fees and costs ripe. In light of the Court finding for Respondents, Appellant certainly cannot argue that Attorney did not obtain beneficial results.

The Circuit Court determined that attorney fees were appropriate “[a]fter hearing the arguments of counsel, reviewing the memoranda and other documents submitted to the Court, and the applicable authority”. (Order Awarding Attorney’s Fees and Costs at 1; R. p. 5). In *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997), the following factors were established for determining the reasonableness of attorney’s fees: (1) the nature, extent and difficulty of the case, (2) the time necessarily devoted to the case, (3) professional standing of counsel, (4) contingency of compensation, (5) beneficial results obtained, and (6) customary legal fees for similar services. *Id.* At 308, 486 S.E. 2d at 760. Creighton B. Coleman, Attorney for the Respondents, (“Attorney”) submitted an affidavit to the Circuit Court in support of his Motion for Attorney Fees and Costs. Included in this Affidavit was the Attorney’s testimony regarding (1) the time devoted by Attorney to the case, (2) Attorney’s professional standing, (3) Attorney’s hourly rate charged for his services in this case, rather than a contingency fee, and (4) that the hourly rate charged was reasonable in light of the issues involved in the litigation and Attorney’s experience. Attached to Attorney’s affidavit was an itemized statement detailing the fee charged, all time expended by Attorney in the matter, and all costs associated with the matter, as required by S.C. Code Ann. §28-2-510(B)(1). The Circuit Court relied on documents in the Court record to determine the reasonableness of the attorney fees awarded to Respondents. The Court had enough information from the arguments of the parties and the documents filed in the case to address the factors set forth in *Jackson* in order to award attorney fees and costs to Respondents. Therefore, the Court’s findings of

fact as to attorney fees are supported by competent evidence, conform to the law regarding the awarding of attorney fees and costs, and the Circuit Court did not abuse its discretion in awarding Respondents' attorney fees and costs.

CONCLUSION

For the reasons stated above, Respondents respectfully request that this Court uphold the judgment of the Circuit Court for attorney fees and costs pursuant to S.C. Code Ann. §28-2-510(A), because the Circuit Court found that Appellant had no right to take any or all of Respondents' property. As the prevailing party, Respondents are entitled to reasonable costs and expenses incurred in the litigation. The Circuit Court Judge considered the facts of the case and the documents submitted to the Court, and found Respondents' request for attorney fees and costs to be reasonable. Since the Circuit Court's findings as to attorney fees and costs are supported by competent evidence, the decision of the Circuit Court should be upheld, and the Respondents should be entitled to attorney fees and costs as awarded by the Court, along with any and all statutory judgment interest that has accrued since the judgment was entered.



Creighton B. Coleman, Esquire (S.C. Bar #6521)
COLEMAN TOLEN & SWEARINGEN, LLC
120 W. Washington Street
Post Office Box 1006
Winnsboro, SC 29180
Phone: (803) 635-6884
Fax: (803)635-9228

Attorney for Respondents

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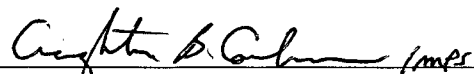
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CERTIFICATE OF COUNSEL

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The undersigned certified that this Final Brief complies with Rule 211(b) of the **South Carolina Court of Appeals**


CREIGHTON B. COLEMAN
120 Washington Street/P.O. Box 1006
Winnsboro, South Carolina 29180
(803) 635-6884
Attorney for Respondents Rawley E.
Schofield and R. Mary Medlin

July 17, 2013