

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

Rosemary W. Jones,
Plaintiff,
vs.

C.A. No.: 2019-CP-04-02738

Anderson County, South Carolina,
Defendants.

**ORDER DENYING MOTION TO
RECONSIDER ORDER OF DISMISSAL**

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SC Court of Appeals

Plaintiff, Rosemary W. Jones, instituted the above captioned action by filing a Summons and Complaint on December 23, 2019 and properly serving the Defendant, Anderson County, South Carolina. On January 16, 2020, the Defendant timely filed its Answer and also filed a Motion to Dismiss the Complaint as untimely filed pursuant to S.C. Code Section 28-2-470. A hearing was held on the Defendant’s Motion to Dismiss on Wednesday, April 9. The hearing was held via teleconference via Webex as prescribed by Order of the Supreme Court of South Carolina entitled Operation of Trial Courts During the Coronavirus Emergency (Order No.: 2020-000447).

The sole issues before the Court was the Defendant, Anderson County’s, Motion to Dismiss the Complaint filed by the Plaintiff due to the fact that it was not timely filed and whether or not such Complaint was filed in good faith.

On April 10, 2020, the Honorable R. Lawton McIntosh filed a Form 4 Order granting the Defendant, Anderson County, South Carolina’s, Motion to Dismiss this matter because the Complaint was not timely filed pursuant to the controlling statutes. On April 16, 2020, a formal Order Dismissing the above captioned matter was executed and filed by the Honorable R. Lawton McIntosh.

Prior to the entry of the formal Order on April 16, 2020, on April 15, 2020, the Plaintiff, Rosemary W. Jones, by and through its counsel, Daniel Draisen, Esq., filed a Motion to Reconsider, Alter, or Amend. The Motion to Reconsider, Alter, or Amend was filed within ten (10) days from the date of the filing of the Form 4 Order and formal Order of Dismissal referenced hereinabove. Further, Plaintiff’s Counsel served the Honorable R. Lawton McIntosh with its Motion to Reconsider, Alter, or Amend.

On April 17, 2020, the Honorable R. Lawton McIntosh filed a Form 4 Order denying Plaintiff's Motion for Reconsideration without the necessity of a hearing on the motion.

Plaintiff raised the following points in its Motion to Reconsider, Alter, or Amend:

That the Court erred by failing to follow the rules of statutory construction and to apply the Eminent Domain Procedure Act in this matter. The Plaintiff's argument fails to take into consideration the Affidavits of Westley P. Cox, Esq., Attorney for Anderson County, South Carolina, filed in the separate condemnation actions bearing Anderson County Civil Action Nos.: 2019-CP-04-02407 and 2019-CP-04-02409 which this challenge action was filed. Those Affidavits state that a negotiated resolution of the easement and condemnation were attempted prior to the institution of each individual condemnation action.

Those Affidavits are evidence of attempted negotiations prior to the institution of each individual condemnation action.

It is undisputed that Anderson County served a Notice of Condemnation and Tender of Payment on the Plaintiff, Rosemary W. Jones, along with the other landowners of record of the two subject real properties, on August 8, 2019. The Notice of Condemnation and Tender of Payment were signed for, and therefore properly served, on August 9, 2019. It is also undisputed that Anderson County served a Revised Notice of Condemnation and Tender of Payment on the Plaintiff, Rosemary W. Jones, along with the other landowners of record of the two subject real properties, on October 2, 2019. The Revised Notice of Condemnation and Tender of Payment were signed for, and therefore properly served on October 4, 2019.

The Plaintiff, in his previous filings and at the hearing, argued that such Notices and Revised Notices did not begin the action and therefore, begin the running of the time to file a challenge action pursuant to S.C. Code Section 28-2-470 (1976, as amended). However, in his Motion to Reconsider, Alter or Amend the Order, the Plaintiff seeks to revise his argument and state that Plaintiff was improperly served with the Notice of Condemnation in violation of the applicable Act. I disagree. Anderson County properly initiated the two separate condemnation actions by serving the Plaintiff with the Revised Notices of Condemnation and Tenders of Payment.

Further, Plaintiff argues that because Anderson County included the appraisal and revised appraisals in its service of its Notice of Condemnations and Revised Notices of Condemnation, that those were not provided to the Plaintiff prior to the institution of the separate condemnation

actions. Plaintiff relies on S.C. Code Section 28-2-70 (a) in its argument. I find this argument without merit. The Plaintiff's argument fails to take into consideration that the landowners had a copy of the original appraisal on at least August 9, 2019 when they were served with the original Notice of Condemnation and that negotiations with the landowners had taken place prior to the service of the original Notice of Condemnation. The Plaintiff has admitted that service of the original Notices of Condemnation and Revised Notices of Condemnation was proper. Plaintiff's argument fails to address why proper service should not begin the running of the time limitation set forth in S.C. Code Section 28-2-470.

The sole issues before the Court were the Defendant, Anderson County's, Motion to Dismiss the Complaint filed by the Plaintiff due to the fact that it was not timely filed and whether or not such Complaint was filed in good faith.

Nothing in Plaintiff's Motion to Reconsider, Alter, or Amend addresses the failure of the Plaintiff to timely file its challenge action nor does it bring to light reason to reconsider my original ruling.

I, therefore, conclude that the Plaintiff's Motion to Reconsider, Alter, or Amend the Order of Dismissal filed by this Court shall be denied. I conclude that Anderson County followed the procedures set forth in the Eminent Domain Procedures Act. The Court incorporates its findings entered in all previous orders of this Court in this matter in this Order Denying Plaintiff's Motion to Reconsider.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

- (1) Plaintiff's Motion to Reconsider, Alter of Amend the Order of Dismissal filed on April 16, 2020 is denied without the necessity of a hearing;
- (2) This action be dismissed with prejudice to the Plaintiff.

AND IT IS SO ORDERED.

April ____, 2020
Anderson, South Carolina

**SEE ELECTRONIC SIGNATURE OF
JUDGE ATTACHED
HERETO**

The Honorable R. Lawton McIntosh
Circuit Court Judge, Anderson County



Anderson Common Pleas

Case Caption: Rosemary W Jones VS Anderson County, South Carolina

Case Number: 2019CP0402738

Type: Order/Dismissal

S/R. LAWTON McINTOSH

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