

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

South Carolina Electric & Gas Company,

Condemnor,

v.

Wendell Norris,

Landowner.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION# 2018-CP-26-05361

ORDER DENYING LANDOWNER'S
MOTION FOR RECONSIDERATION OF
NON-JURY TRIAL AND MOTION FOR
STAY OF MASTER-IN-EQUITY ORDER
DATED DECEMBER 7, 2020

This matter came before the Court at an in-person hearing on March 24, 2021, concerning the "Motion for Reconsideration of Non-Jury Trial" and the "Motion for Stay of Master-in-Equity Order Dated December 7, 2020", of Landowner Wendell Norris ("Norris").¹ Sean M. Foerster, Esquire, appeared at the hearing on behalf of Condemnor South Carolina Electric & Gas Company n/k/a Dominion Energy South Carolina, Inc. ("DESC"). Norris appeared *pro se* at the hearing. For the reasons set forth herein, the Court denies Norris's motions.

Relevant Facts and Procedural History

This is a condemnation action involving DESC's taking of a utility easement for a gas pipe line through property owned by Norris.

By Order of Reference entered on October 21, 2019, the Circuit Court referred this condemnation proceeding to the undersigned Master in Equity for Horry County. On November 8, 2019, DESC served a filed copy of the Order of Reference on Norris. Norris does not dispute being served with the Order of Reference at that time.

Although Norris filed a "Response to the Motion for Order of Reference and Order of Reference" that opposed the reference of the case, he never filed a motion pursuant to Rule 59(e), SCRCF, with respect to the Order of Reference and never appealed from the Order of Reference.

On November 12, 2020, the Court held a trial on the issue of the amount of just compensation to be paid by DESC to Norris for the taking at issue in this proceeding. At the trial,

¹ Norris served these motions, but did not file them.

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CPH

Norris demanded a jury and objected to the non-jury mode of trial. The Court denied his request for a jury trial and proceeded with the trial that day.

On December 8, 2020, the Court entered an Order ("Trial Order") setting the amount of just compensation to be paid by DESC to Norris for the taking, ordering DESC to deposit those sums with the Clerk of Court, and ordering the Clerk of Court to annotate and then record the Amended Condemnation Notice and Tender of Payment in Office of the Horry County Register of Deeds. DESC has already deposited the full amount of just compensation required by the Trial Order with the Clerk of Court, and the Clerk of Court has already annotated and recorded the Amended Condemnation Notice and Tender of Payment in Office of the Horry County Register of Deeds in Book 4377 at Page 2500.

On December 21, 2020, Norris served a Motion for Reconsideration of Non-Jury Trial asking the Court to grant him a new trial by jury. On December 28, 2020, Norris served a Motion for Stay of Master-in-Equity Order Dated December 7, 2020, asking the Court to stay the Trial Order.

Conclusions of Law

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COT The Court denies Norris's Motion for Reconsideration of Non-Jury Trial because he failed to appeal from the Order of Reference and, therefore, the Court did not err in proceeding with a non-jury trial.

"[T]he denial of a party's right to a particular mode of trial is immediately appealable as a substantial right under Section 14-3-330(2)." *Hagood v. Sommerville*, 362 S.C. 191, 196, 607 S.E.2d 707, 709 (2005). An order referring a case to a Master in Equity affects the mode of trial, a substantial right, and a party waives his objection to the reference and his right to a jury trial by failing to immediately appeal the order. *Creed v. Stokes*, 285 S.C. 542, 542, 331 S.E.2d 351, 352 (1985). The order of reference becomes the law of the case once a party fails to timely appeal from it. *Id.* at 543, 331 S.E.2d at 352.

When Norris failed to immediately appeal from the Order of Reference within 30 days after receipt of written notice of its entry, Norris waived his right to a jury trial and the order became the law of the case. Therefore, the Court did not err in proceeding with a non-jury trial on November 12, 2020.

To the extent that Norris's motion attempts to raise other issues for the first time, those issues are not timely raised and are not appropriate grounds for a motion for reconsideration.

Johnson v. Sonoco Prods. Co., 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009) (“An issue may not be raised for the first time in a motion to reconsider.”).

The Court also denies Norris’s Motion for Stay of Master-in-Equity Order Dated December 7, 2020. Having denied Norris’s motion to reconsider the Trial Order, the Court finds no reason to stay the Trial Order. Further, because DESC has already deposited the condemnation funds required by the Trial Order with the Clerk of Court and because the Amended Condemnation Notice and Tender of Payment has already been recorded in the Office of the Horry County Register of Deeds, all of the acts required by the Trial Order have already been carried out. Therefore, Norris’s motion to stay the order is moot. *Holden v. Cribb*, 349 S.C. 132, 137, 561 S.E.2d 634, 637 (Ct. App. 2002) (“A case becomes moot when judgment, if rendered, will have no practical effect upon [an] existing controversy.”).

IT IS THEREFORE ORDERED THAT:

1. The Motion for Reconsideration of Non-Jury Trial of Landowner Wendell Norris is DENIED; and
2. The Motion for Stay of Master-in-Equity Order Dated December 7, 2020, of Landowner Wendell Norris is DENIED.

AND IT IS SO ORDERED.

[Court’s signature page to follow]

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018-CP-26-05361

South Carolina Electric & Gas Company

Wendell Norris

CONDEMNOR(S)

LANDOWNER(S)

Submitted by:
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Attorney for : Condemnor Landowner
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (format order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk

INFORMATION FOR THE JUDGMENT INDEX
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


3073
4/20/2021
 Master in Equity Judge Code Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Sean M. Foerster, Esquire
 Rogers Townsend LLC
 Post Office Box 100200
 Columbia, South Carolina 29202-3200
 ATTORNEY(S) FOR THE CONDEMNOR(S)

 ATTORNEY(S) FOR THE LANDOWNER(S)

 CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.