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STATE OF SOUTH CAROLINA

SC Court of Appeals

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

CIVIL ACTION# 2018-CP-26-05361

South Carolina Electric & Gas Company,

Condemnor,

v.

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

Wendell Norris,

Landowner.

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").<sup>1</sup> 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,

<sup>1</sup> Norris served these motions, but did not file them.

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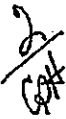
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Norris demanded a jury and objected to the non-jury mode of trial. The Court denied his request for a jury trial and proceeded with the trial that day.

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

 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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