

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.

APPELLANT'S REPLY BRIEF

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I. THE CIRCUIT COURT ERRED: ATTORNEYS' FEES AND COSTS WERE NOT AVAILABLE UNDER S.C. CODE ANN. § 28-2-510(A) BECAUSE THE COURT NEVER DETERMINED THAT THE COUNTY WAS NOT ENTITLED TO TAKE THE LAND; INSTEAD IT ORDERED A RE-EVALUATION LEAVING THE POSSIBILITY OF TAKING OPEN.

In this condemnation challenge action, the Circuit Court *could* have conducted a hearing, reviewed the facts and law, and concluded that Fairfield County had no right to take all or part of Medlin's and Schofield's property. The court *could* have enjoined Fairfield County from condemning the property. The Circuit Court *could* have stopped the condemnation actions cold on that very day by a single order. The Circuit Court *could* have done those things; but it did not. Instead, the Circuit Court made a detailed analysis of the condemnation challenge under *Southern Development Land and Golf Company, Ltd. v. South Carolina Public Service Authority*, 305 S.C. 507, 409 S.E.2d 428 (Ct. App. 1991) *aff'd in part and rev'd in part* 311 S.C. 29, 426 S.E.2d 748 (1993), and concluded, "Therefore, the Defendant shall re-evaluate the proposed condemnation by utilizing the above factors, as well as factors it deems appropriate. AND IT IS SO ORDERED." (Order at 3; R. _____).

Instead of enjoining the condemnation as the Circuit Court *could* have done,¹ it followed the lead, rationale, and identical language of *Southern Dev.* and, instructed the condemning authority to "re-evaluate its proposed route." *Southern Dev.*, 305 S.C. at 516, 409 S.E.2d at 434. The *Southern Dev.* Court explained:

By this opinion we do not imply that any route previously considered is eliminated from the consideration process or that any new route cannot be considered. We simply hold that a condemning authority must exercise its discretion by

¹ A condemnation challenge action is an equitable action for an injunction. *Southern Dev.*, 305 S.C. at 509, 409 S.E.2d at 429.

a rational decision making process which is supported by facts.

Id., 305 S.C. at 516-17, 409 S.E.2d at 434.

Neither the *Southern Dev.* Court nor the Circuit Court below entered a permanent injunction; neither court determined the condemnation could not proceed; neither court ordered that the land at issue be eliminated from consideration; and neither court determined that the condemning authority **has no right to take** the property at issue.² Instead, just as the *Southern Dev.* court had done, it ordered a re-evaluation of the proposed route; and just like *Southern Dev.*, the court did not even imply that the route previously considered is eliminated from consideration. Thus, the court could *not* have determined that Fairfield County had no right to take. As a result, the prerequisites of S.C. Code § 28-2-510(A) were not met and attorney's fees should not have been awarded.

The Circuit Court's decision awarding fees was an abuse of discretion. It was based upon errors of law and must be reversed.

II. THE CIRCUIT COURT ERRED: EVEN IF S.C. CODE ANN. § 28-2-510(A) WAS AVAILABLE, THE COURT WAS REQUIRED TO ADDRESS THE FACTORS IN *JACKSON v. SPEED* BUT DID NOT.

Respondents argue that the Circuit Court "had enough information" to address the factors required by *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997). Respondents further make the incredible leap that "[t]he Circuit Court relied on documents in the

² Indeed, such a conclusion would have been inappropriate in either case because, as the Supreme Court has made clear, "unless the landowner can show that acquisition of this land is not reasonably necessary *and* is an abuse of discretion, the Court will not interfere." *Timmons v. S.C. Tricentennial Comm'n*, 254 S.C. 378, 389, 175 S.E.2d 805, 811 (1970) (emphasis added). The Circuit Court did not make any finding about whether the acquisition was "reasonably necessary."

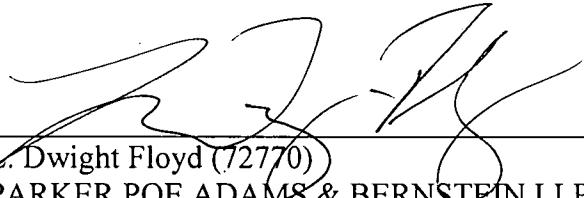
Court record to determine the reasonableness of the attorney [sic] fees awarded to Respondents.” Brief of Respondents at 7. Notably, though, Respondents do not cite to a single line in the Record on Appeal to support this statement. In fact, the Circuit Court never gave *any* indication that it relied on anything other than the conclusions of Respondents’ affidavit. Furthermore, the Circuit Court never gave any indication that it considered the factors required by the Supreme Court. The failure by the Circuit Court to consider or even acknowledge these issues is even more remarkable in light of Fairfield County’s multiple attempts to argue against the award (Transcript of June 7, 2012 hearing at 5-6; R. ____; Motion to Alter or Amend at 4; R. ____).

The Circuit Court’s decision awarding fees was an abuse of discretion. It was based upon errors of law and must be reversed.

CONCLUSION

For the reasons set forth above and as set forth in the Brief of Appellant, Fairfield County respectfully requests that this Court review the matters raised herein and reverse the judgment of the Circuit Court awarding fees and costs under S.C. Code Ann. § 28-2-510(A) because the prerequisite of that section has not been met and is not available: the Court has not determined that the County “has no right to take” all or part of the property. Therefore, a fee award is improper. In addition, the Circuit Court has not addressed the reasonableness factors required by the Supreme Court on awarding attorney’s fees under a statute. In either case, the Circuit Court’s order and judgment should be reversed.

Respectfully submitted,



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