

6089

SHELBY COUNTY, ALABAMA,) IN THE CIRCUIT COURT OF
a political subdivision of)
the State of Alabama,) SHELBY COUNTY, ALABAMA

Petitioner) NO. 4
(Appellant),)

vs.

J. O. POWELL, W. C. LLOYD,
et al,)

Respondents)
(Appellees).

ORDER OF CONDEMNATION

THIS CAUSE was heard and tried in this court on November 5, 1956, and, following jury verdict, a final order of condemnation was entered on November 7, 1956. The respondents filed motion for a new trial which was denied by this court on February 1, 1957. On February 11, 1957, the respondents filed notice of appeal to the Supreme Court of Alabama and security for costs of appeal from the verdict, judgment and order of condemnation entered on November 7, 1956, and from the order of the trial court entered on February 1, 1957, overruling the respondents' motion for a new trial. This cause was then submitted to and considered by the Supreme Court of Alabama on appeal in Powell v. Shelby County, 272 Ala. 287, 130 So.2d 170. The decision of the Supreme Court of Alabama was rendered on November 17, 1960, and rehearing was denied by order dated May 25, 1961. The cause was reversed by the Supreme Court and remanded to this court for further proceedings.

This cause now comes on for trial following said remandment order of the Supreme Court of Alabama and has been set for trial on July 30, 1962, on appeal from the order of condemnation made and entered in the Probate Court of this

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County on April 24, 1956, and on remandment from the Supreme Court of Alabama. All parties to this proceeding are in open court and have entered an unqualified appearance. The court is of the opinion and finds that it has jurisdiction of the cause and of the parties. The parties, through their respective attorneys, have informed and advised the court that they have settled this cause, by agreement between the parties and with the consent and approval of the court. All parties, in open court, and with the consent of the court, withdraw the demands for jury trial and consent to the determination of all issues by the court. THEREUPON, the court proceeds to hear the allegations of the application for petition for order of condemnation, as amended, and, upon consideration of said application and the testimony introduced in support thereof, and with the consent of the parties and for good cause shown, it is the opinion and judgment of the court that the allegations of said petition are true, and that it is necessary that the property hereinafter described be condemned for the uses and purposes stated in said petitioner, as amended, and that the said application of the petitioner for order of condemnation, as amended, should be granted. It is, therefore, ORDERED, ADJUDGED and DECREED by the court, and it is the judgment of the court, that the application or petition for the condemnation of an easement or right-of-way in, over, on and upon the hereinafter described lands, together with the right to remove all improvements, trees, undergrowth and other obstructions situated on said lands, the right to prevent any persons from placing or maintaining any obstruction on said lands, and also the right to enter upon said lands for the purpose of constructing, maintaining and repairing the public improvements constructed

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or installed thereon or thereover, together with all existing, future and potential easements of access between the right-of-way of the public way described in said petition, as amended, and all the real property of the respondents remaining after the appropriation of said easement and right-of-way described in the petition, be, and the same hereby is, granted and allowed.

THEREUPON, by agreement and consent of the parties, the court proceeds to the assessment of the damages and compensation to which the respondents are entitled for the condemnation of the property hereinafter set out and described. By consent and agreement of the parties and for good cause shown, it is the opinion and judgment of the court that the respondents are entitled to receive and that the respondents should be paid the sum of \$20,000.00 as damages and compensation to which the respondents are entitled for the condemnation of the property hereinafter described.

And now comes the petitioner, by its attorney, and shows unto the court that it has heretofore deposited with the Judge of the Probate Court of Shelby County, Alabama, the sum of \$35,125.00 as damages and compensation for the condemnation of the lands and interests in lands hereinafter described, which said sum has been transferred and delivered by the Judge of the Probate Court of Shelby County, Alabama, to the Clerk of this court, who now has possession of said fund.

It is hereby ORDERED, ADJUDGED and DECREED by the court that the Clerk of this court hereby is authorized and directed to pay to the respondents the sum of \$20,000.00, which is the amount of the award in this cause, and that the balance

in the amount of \$15,125.00, presently being held by the Clerk, less the costs of court, in this cause, which are hereby taxed against the petitioner, be refunded and repaid by the Clerk to the petitioner.

Said award having been paid by the petitioner in this cause, the hereinafter described lands and interest in lands hereby are condemned and awarded to the petitioner.

It is further ORDERED, ADJUDGED and DECREED by the court that the petitioner, Shelby County, Alabama, a political subdivision of the State of Alabama, be, and it hereby is, given and awarded a right-of-way and easement in, over, on and upon the hereinafter described lands, together with the right to remove all improvements, trees, undergrowth and other obstructions situated on said lands and the right to prevent any persons from placing or maintaining any obstructions on or upon said lands and also the right to enter upon said lands for the purpose of constructing, maintaining and repairing the public road, street, avenue or highway for which said land is sought to be and hereby is condemned, and for the uses and purposes sought in the petition or application, together with all existing, future and potential easements of access between the said right-of-way of the public way hereinafter described and all of the real property of the respondents remaining after appropriation of said easement and right-of-way herein described.

It is further ORDERED, ADJUDGED and DECREED that title to the property hereinafter described be, and the same hereby is, divested out of the respondents and hereby is vested in the petitioner, Shelby County, Alabama, a political subdivision of the State of Alabama, said property being particularly described as follows:

CS 174 272 RM

A tract of land as shown by right of way map of Project S-375-C as recorded in the office of the Probate Judge, Shelby County, Alabama, and in the Highway Department of the State of Alabama, more particularly described as follows:

Starting at the NE corner of the NE 1/4 of NE 1/4, Section 35, Township 18 South, Range 2 West; thence Westerly along the north line of said NE 1/4 of NE 1/4 a distance of 352 feet; more or less, to a point located 150 feet Northeastern of and at right angles to survey centerline of Project S-376-C, the point of beginning; thence continue Westerly along said north line, crossing said survey centerline at Station 19+55, which station is located 613.8 feet Westerly of the Northeast corner of said NE 1/4 of NE 1/4, a distance of 525 feet, more or less, to a point on the present Northeastern right of way line of Alabama Highway No. 91; thence run Southeastern along the said present right of way line a distance of 1080 feet, more or less, to the East line of said NE 1/4 of NE 1/4; thence run Northerly along said East line of NE 1/4 of NE 1/4, a distance of 348 feet, more or less, to a point located 150 feet Northeastern of and at right angles to said survey centerline; thence run Northwesterly parallel to and 150 feet from said survey centerline on a curve to the left (concave Southwesterly) having a radius of 5879.65 feet, a distance of 450 feet, more or less, to the point of beginning. Said strip of land lying in NE 1/4 of NE 1/4, Section 35, Township 18 South, Range 2 West, and containing 5.73 acres, more or less.

All of the right, title, claim and interest in and to a right-of-way and easement on, over and upon the above described property hereby is vested in the Petitioner, Shelby County, Alabama and divested out of the respondents, J.O. Popwell, Mrs. J. O. Popwell, G. E. Belcher, W. C. Lloyd, L. C. Abbott, as Tax Collector of Shelby County, Alabama, Alabama Department of Revenue, Income Tax Division, Eugene Wells, as Director of the Alabama Department of Industrial Relations and the United States of America. Jurisdiction of this cause hereby is expressly retained to distribute or apportion the award (the sum of \$20,000.00) among the parties respondent under and pursuant to the provisions of Title 19, § 26, 1958 Recompiled

Coda of Alabama.

STATE OF ALA. SHELBY CO.

I CERTIFY THIS INSTRUMENT

WAS FILED ON 9-6-62

9-6-62

RECORDED & \$ 5.00 MTG. TAX

& \$ 5.00 DEED TAX HAS BEEN

PD. ON THIS INSTRUMENT.

Conrad M. Fowler
JUDGE OF PROBATE

ALL DONE AND ORDERED this the 14th day of August, 1962.

A. F. Henderson
Circuit Judge