

IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

THE STATE OF ALABAMA

Plaintiff,

vs.

CALVIN E. HYER, et al.

Defendants.



CASE NO. CV2000-943

ORDER OF CONDEMNATION

This cause was commenced by the filing of a Complaint for Condemnation in the Probate Court of Shelby County, Alabama, on the 19th day of April, 2000, to condemn the property hereinafter described under and pursuant to Section 23 of the Constitution of Alabama, Section 18-1A-1 et seq. and Section 23-1-45, Code of Alabama, 1975, as amended. The case came on for trial in this Court on the 13th day of January, 2004, on appeal by the Defendant from the Order of Condemnation made and entered in the Probate Court of Shelby County on the 24th day of August, 2000. The parties to these proceedings came into open Court in their own persons and by their attorneys of record and entered an unqualified appearance and all parties announced ready for trial. The Court is of the opinion and finds that it has jurisdiction of the cause and of the parties.

All of the parties to this cause stipulated and agreed in open Court that:

1. The owners and parties in interest of the property condemned herein are Calvin E. Hyer and Stephanie Hyer Rubens.
2. An Order of Condemnation may be entered in this cause granting the Application for an Order to Condemn the property hereinafter described and

the only issue to be decided by the jury is the amount of compensation to be awarded to the property owner.

3. The Court would make the determination and calculations relating to interest due the landowner, if any.

Thereupon, a jury having been demanded to assess the damages and compensation to which the owner of said lands is entitled, the Court proceeded to have a jury assess the damages and compensation for the condemnation of said land and on the 14th day of January, 2004, came a jury of twelve (12) good and lawful persons, who being duly impaneled and sworn according to law, assessed damages and compensation in the amount of One Hundred Ninety Thousand and 00/100 Dollars (\$190,000.00).

Now comes the Plaintiff, State of Alabama and shows unto the Court that is has heretofore, deposited with the Judge of Probate of Shelby County, Alabama the total sum of \$146,533.50 on the 20th day of September, 2000, which amount represented the damages and compensation awarded by the Probate Court to the condemnation of said land in the amount of \$144,812.00; Commissioner's fees in the amount of \$1,500.00; and Probate Court costs in the amount of \$221.50. Thereafter, on the 14th day of November, 2000, the Clerk of the Probate Court of Shelby County, Alabama, deposited the sum of \$147,615.44 with Mary Harris, Circuit Clerk of Shelby County, Alabama. The total sum deposited with the Circuit Clerk on November 14, 2000, was \$147,615.44 including accrued interest in the amount of \$1,081.94. Pursuant to Court's Order dated November 29, 2000 granting the State of Alabama's Motion for Order to Allow Defendants/Appellants to Withdraw Funds and for Order to Invest Remaining Funds, Defendants/Appellants withdrew \$100,900.00 from the Circuit Clerk of Shelby County,

Alabama, on December 1, 2000. Pursuant to the stipulation of the parties, the Court has calculated the interest due the property owner to be the sum of \$22,578.09. The Court's calculation of the interest is as follows:

For the period between the date of valuation, April 19, 2000, and September 20, 2000, the date of deposit of the Probate award into the Probate Court is computed in the following manner: Multiply \$190,000.00, the amount of compensation awarded by the jury, by 6% and then divide that amount by 365; the result of that calculation is then to be multiplied by 155, the number of days between the date of valuation and the date of deposit of the \$144,812.00 into the Probate Court.

$$\begin{aligned} &(\$190,000.00 \times .06) / \\ &(365 \times 155) = \$4,841.09 \end{aligned}$$

For the period between September 20, 2000, the date of deposit of the \$144,812.00 into the Probate Court and January 14, 2004, the date of the verdict awarding compensation to Defendants is computed in this manner: Subtract the \$100,900.00 the amount withdrawn from the Probate Court from \$190,000.00, the amount of compensation awarded by the jury and then multiply that amount by 6% and then divide that amount by 365 and the result of that computation is multiplied by 1211, the number of days between the date of deposit and the date of this Order.

$$\begin{aligned} &\$190,000.00 - \$100,900.00 \times \\ &.06 / 365 \times 1211 = \$17,737.00 \end{aligned}$$

Total \$22,578.09

The Court further finds that the total sum owed to the property owners is \$212,578.09 which includes interest. The Plaintiff, State of Alabama, has heretofore paid into this Court the sum of \$144,812.00, of which defendants have withdrawn \$100,900.00 leaving a balance of \$46,715.44 which is presently in the custody of Mary Harris, Circuit Clerk, plus accrued interest.

Now, therefore, it is, ORDERED, ADJUDGED and DECREED by the Court that the Plaintiff pay to the Clerk of this Court on behalf of the property owners the additional

sum of \$64,962.65, which represents the balance of damages and compensation to which the property owners are entitled in this cause.

It is further ORDERED, ADJUDGED and DECREED by the Court that upon payment of the additional sum of \$64,962.65 the Clerk of this Court is ordered and directed to pay forthwith to the Defendants, property owners, the sum of \$111,678.09, including interest, which represents the balance of the total damages and compensation to which the property owners are entitled in this cause.

It is further ORDERED, ADJUDGED and DECREED by that Court that the Circuit Clerk pay to the Probate Court its costs as heretofore assessed in the amount of \$221.50 and Commissioners fees in the amount of \$1,500.00 and that all accrued interest held by the Circuit Clerk, less court costs, be paid to the Plaintiff, State of Alabama.

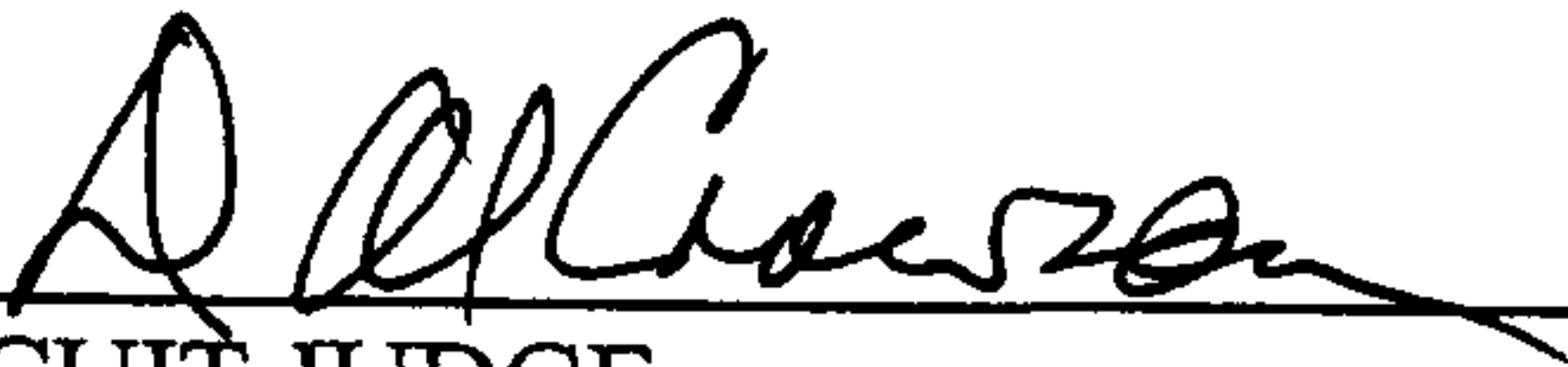
It is further ORDERED, ADJUDGED and DECREED by the Court that the Complaint for condemnation of lands herein described be, and the same is hereby granted and the Plaintiff, State of Alabama, is awarded the interest in said lands sought to be acquired in said Complaint and said lands are hereby condemned for the uses and purposes stated and sought in the Complaint for Order of Condemnation as filed herein.

It is further ORDERED, ADJUDGED and DECREED by the Court that the interest and right-of-way condemned and awarded to the Plaintiff, the State of Alabama, is in, over, across and under the following land of Defendant, to wit:

See Exhibit "A" attached hereto

It is further ORDERED, ADJUDGED and DECREED by this Court that the costs of this cause are hereby taxed against the Plaintiff, State of Alabama, for which let execution issue.

DONE and ORDERED this 5th day of March, 2004.


CIRCUIT JUDGE

Robert A. Jones, Jr.
Jones, Davis & Berry, P.C.
1205 North 19th Street
Birmingham, Alabama 35234

Ann Traylor-Sadberry
6509 E. J. Oliver Blvd.
Fairfield, Alabama 35064

Hewitt Conwill
P. O. Box 557
Columbiana, Alabama 35051

Annette D. Skinner
Shelby County Tax Collector
P. O. Box 1298
Columbiana, Alabama 35051

First National Bank of Columbiana
c/o William Justice
P. O. Box 977
Columbiana, Alabama 35051

EXHIBIT "A"

And as shown on the right of way map of Project No. STPAA-458(1) of record in the Alabama Department of Transportation, a copy of which is also deposited in the Office of the Judge of Probate of Shelby County, Alabama as an aid to persons and entities interested therein and as shown on the property plat attached hereto and made a part hereof:

A part of the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$, Section 11, Township 21 South, Range 3 West, identified as Tract No. 37, Project No. STPAA-458(1), Shelby County, Alabama, and being more fully described as follows:

Commence at the southeast corner of said NE $\frac{1}{4}$ of NW $\frac{1}{4}$; thence north along the east line of said NE $\frac{1}{4}$ of NW $\frac{1}{4}$, a distance of 917 feet, more or less, to a point on a line which extends from a point that is 80 feet easterly of and at right angles to the centerline of said project at Station 515+60.54, to a point that is 151 feet easterly of and at right angles to said centerline at Station 519+18; thence southwesterly along said line which, if extended, would intersect said point that is 80 feet easterly of and at right angles to the centerline of said project at Station 515+60.54, a distance of 227 feet, more or less, to the north property line and the point of beginning of the property herein to be conveyed; thence continue southwesterly along the last described course a distance of 130 feet, more or less, to said point that is 80 feet easterly of and at right angles to the centerline of said project at Station 515+60.54; thence southwesterly a distance of 125 feet, more or less, to a point on the present northeast right of way line of CSX Railroad that is 65 feet southeasterly of and at right angles to said centerline; thence northwesterly along said right of way line a distance of 160 feet, more or less, to a point that is 75 feet northwesterly of and at right angles to said centerline; thence northeasterly, parallel with said centerline, a distance of 45 feet, more or less, to a point that is 75 feet westerly of and at right angles to the centerline of said project at Station 515+60.54; thence northerly, parallel with said centerline, along a curve to the northerly, parallel with said centerline, along a curve to the left, a distance of 193 feet, more or less, to the northernmost property line; thence easterly along said northernmost property line a distance of 16 feet, more or less, to the east property line; thence south along said east line a distance of 110 feet, more or less, to the north property line; thence east along said north property line a distance of 142 feet, more or less, to the point of beginning. Containing 0.72 acre, more or less.