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58-CV-2019-000130.00
CIRCUIT COURT OF
SHELBY COUNTY, ALABAMA
MARY HARRIS, CLERK

IN THE CIRCUIT COURT OF SHELBY COUNTY,

SHELBY COUNTY, ALABAMA,

Plaintiff,

v.

CASE NO CV 2019-000130

JEANNENE P. O'BRIEN; GERALD D.
O'BRIEN; DONALD ARMSTRONG,
in his official capacity as Property Tax
Commissioner of Shelby County,
Alabama,

Defendants,

v.

WRIGHT BROTHERS
CONSTRUCTION, INC.,

Counterclaim Defendant.



20201119000530900 1/6 \$39.00
Shelby Cnty Judge of Probate, AL
11/19/2020 02:00:32 PM FILED/CERT

CONSENT JUDGMENT

The Plaintiff, Shelby County, Alabama ("Shelby County"); the Defendants, Jeannene P. O'Brien and Gerald D. O'Brien (the "O'Briens"), and Counterclaim Defendant Wright Brothers Construction, Inc. ("Wright Brothers"), having filed a Joint Motion for Consent Judgment, the Court finds that the motion is due to be granted. The Court hereby enters a Consent Judgment as follows:

1. This action involves separate appeals filed by Shelby County and the O'Briens of a condemnation proceeding initiated by Shelby County in the Probate Court of Shelby County, Alabama, Case No. PR-2018-000784. Shelby County seeks to condemn a portion of the O'Briens' real property for use in a highway and bridge project designated Project No. ACRZ59503-ATRP(012) (the "Project"), with the O'Brien parcel sought to be condemned in fee simple being referred to as Tract 5 of the Project and being described as follows:

Commencing at the Northwest Corner of the Southeast Quarter of Northeast Quarter Section 19, Township 20 South, Range 3 West; thence S 89 deg. 41 min. 53 sec. E a distance of 531.85 feet, more or less to a point on the grantor's property line; thence S 59 deg. 13 min. 16 sec. E along said grantor's property line a distance of 640.88 feet, more or less, to a point on the acquired R/W line being the POINT OF BEGINNING; thence N 39 deg. 24 min. 58 sec. E along said acquired R/W line a distance of 317.93 feet to a point on the acquired R/W line (said point is offset 95.00 feet left of and perpendicular to project centerline at P.C. station 122+11.27); thence N 57 deg. 35 min. 50 sec. E along said acquired R/W line a distance of 104.13 feet to a point on the acquired R/W line (said point is offset 70.00 feet left of and perpendicular to project centerline at station 123+00.00); thence along said acquired R/W line and along an arc 311.32 feet to the right, having a radius of 657.00 feet, the chord of which is N 66 deg. 24 min. 42 sec. E a distance of 308.41 feet to a point on the acquired R/W line (said point is offset 70.00 feet left of and perpendicular to project centerline at P.T. station 125+78.15); thence N 75 deg. 13 min. 33 sec. E along said acquired R/W line a distance of 271.85 feet to a point on the acquired R/W line (said point is offset 70.00 feet left of and perpendicular to project centerline at station 128+50.00); thence N 66 deg. 41 min. 43 sec. E along said acquired R/W line a distance of 101.12 feet to a point on the acquired R/W line (said point is offset 85.00 feet left of and perpendicular to project centerline at station 129+50.00); thence N 75 deg. 13 min. 33 sec. E along said acquired R/W line a distance of 50.00 feet to a point on the acquired R/W line (said point is offset 85.00 feet left of and perpendicular to project centerline at station 130+00.00); thence S 61 deg. 20 min. 07 sec. E along said acquired R/W line a distance of 68.86 feet to a point on the northerly present R/W line of Alabama County Road 52 (said point ties to present R/W line and is perpendicular to project centerline at station 130+50.00); thence S 75 deg. 30 min. 52 sec. W along said northerly present R/W line a distance of 133.40 feet to a point on the northerly present R/W line of Alabama County Road 52; thence along said northerly present R/W line and along an arc 763.53 feet to the left, having a radius of 1140.07 feet, the chord of which is S 57 deg. 27 min. 23 sec. W a distance of 749.34 feet to a point on the northerly present R/W line of Alabama County Road 52; thence S 39 deg. 12 min. 07 sec. W along said northerly present R/W line a distance of 224.30 feet to a point on the grantor's property line; thence N 59 deg. 13 min. 16 sec. W along said grantor's property line a distance of 143.09 feet to the POINT OF BEGINNING of the property herein described. Containing 2.40 acres, more or less.

2. The parties have agreed to modify both the nature and the description of the property being taken, so that a portion of the taking will be fee simple and a portion of the taking will be a temporary construction easement, and it is so ordered. As modified, the portion of Tract 5 being taken in fee simple is described as follows, and such description supersedes and replaces the description of the fee simple taking set forth in paragraph 1 above:

A part of the SE $\frac{1}{4}$ of NE $\frac{1}{4}$, Section 19, Township 20 South, Range 3 West, and also a part of the NW $\frac{1}{4}$ of NW $\frac{1}{4}$ and the SW $\frac{1}{4}$ of NW $\frac{1}{4}$, Section 20, Township 20 South, Range 3 West, identified as Tract No. 5 on Project No. ACRZ59503-ATRP(012) in Shelby County, Alabama and being more fully described as follows:



20201119000530900 2/6 \$39.00
Shelby Cnty Judge of Probate, AL
11/19/2020 02:00:32 PM FILED/CERT

Parcel 1 of 1:

Commencing at the Northwest Corner of the Southeast Quarter of Northeast Quarter Section 19, Township 20 South, Range 3 West; thence S 89 deg. 41 min. 53 sec. E a distance of 531.85 feet, more or less to a point on the grantor's property line; thence S 59 deg. 13 min. 16 sec. E along said grantor's property line a distance of 640.88 feet, more or less, to a point on the acquired R/W line being the POINT OF BEGINNING; thence N 39 deg. 24 min. 58 sec. E along said acquired R/W line a distance of 317.93 feet to a point on the acquired R/W line (said point is offset 95.00 feet left of and perpendicular to project centerline at P.C. station 122+11.27); thence N 57 deg. 35 min. 50 sec. E along said acquired R/W line a distance of 104.13 feet to a point on the acquired R/W line (said point is offset 70.00 feet left of and perpendicular to project centerline at station 123+00.00); thence S 41 deg. 55 min. 24 sec. E along said acquired R/W line a distance of 20.00 feet to a point on the acquired R/W line (said point is offset 50.00 feet left of and perpendicular to project centerline at station 123+00.00); thence along said acquired R/W line and along an arc 301.84 feet to the right, having a radius of 637.00 feet, the chord of which is N 61 deg. 39 min. 05 sec. E a distance of 299.02 feet to a point on the acquired R/W line (said point is offset 50.00 feet left of and perpendicular to project centerline at P.T. station 125+78.15); thence N 75 deg. 13 min. 33 sec. E along said acquired R/W line a distance of 91.85 feet to a point on the acquired R/W line (said point is offset 50.00 feet left of and perpendicular to project centerline at station 126+70.00); thence N 14 deg. 46 min. 27 sec. W along said acquired R/W line a distance of 20.00 feet to a point on the acquired R/W line (said point is offset 70.00 feet left of and perpendicular to project centerline at station 126+70.00); thence N 75 deg. 13 min. 33 sec. E along said acquired R/W line a distance of 180.00 feet to a point on the acquired R/W line (said point is offset 70.00 feet left of and perpendicular to project centerline at station 128+50.00); thence N 66 deg. 41 min. 43 sec. E along said acquired R/W line a distance of 101.12 feet to a point on the acquired R/W line (said point is offset 85.00 feet left of and perpendicular to project centerline at station 129+50.00); thence N 75 deg. 13 min. 33 sec. E along said acquired R/W line a distance of 50.00 feet to a point on the acquired R/W line (said point is offset 85.00 feet left of and perpendicular to project centerline at station 130+00.00); thence S 61 deg. 20 min. 07 sec. E along said acquired R/W line a distance of 68.86 feet to a point on the northerly present R/W line of Shelby County Road 52 (said point ties to present R/W line and is perpendicular to project centerline at station 130+50.00); thence S 75 deg. 30 min. 52 sec. W along said northerly present R/W line a distance of 133.40 feet to a point on the northerly present R/W line of Shelby County Road 52; thence along said northerly present R/W line and along an arc 763.53 feet to the left, having a radius of 1140.07 feet, the chord of which is S 57 deg. 27 min. 23 sec. W a distance of 749.34 feet to a point on the northerly present R/W line of Shelby County Road 52; thence S 39 deg. 12 min. 07 sec. W along said northerly present R/W line a distance of 224.26 feet to a point on the grantor's property line; thence N 59 deg. 13 min. 16 sec. W along said grantor's property line a distance of 143.32 feet to the POINT OF BEGINNING of the property herein described, containing 2.22 acres, more or less.

See Exhibit "A".


3. The parties have agreed that the other portion of the taking will be a temporary construction easement over the real property described as follows, and it is so ordered:

20201119000530900 3/6 \$39.00
Shelby Cnty Judge of Probate, AL
11/19/2020 02:00:32 PM FILED/CERT

A part of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ and the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 20, Township 20 South, Range 3 West, in Shelby County, Alabama, identified as Tract No. 5 on Project No. ACBRZ59503-ATRP(012) and being more fully described as follows:

Commencing at the Northwest Corner of the Southeast Quarter of Northeast Quarter Section 19, Township 20 South, Range 3 West; thence S 89 deg. 41 min. 53 sec. E a distance of 531.85 feet, more or less to a point on the grantor's property line; thence S 59 deg. 13 min. 16 sec. E along said grantor's property line a distance of 640.88 feet, more or less, to a point on the acquired R/W line; thence N 39 deg. 24 min. 58 sec. E along said acquired R/W line a distance of 317.93 feet to a point on the acquired R/W line; thence N 57 deg. 35 min. 50 sec. E along said acquired R/W line a distance of 104.13 feet to a point on the temporary construction easement line and the POINT OF BEGINNING (said point is offset 70.00 feet left of and perpendicular to project centerline at station 123+00.00); thence along an arc 311.32 feet to the right, having a radius of 657.00 feet, the chord of which is N 61 deg. 39 min. 05 sec. E a distance of 308.41 feet to a point on the temporary construction easement line (said point is offset 70 feet left of and perpendicular to project centerline at station 125+78.15); thence N 75 deg. 13 min. 33 sec. E along said temporary construction easement line a distance of 91.85 feet to a point on the temporary construction easement line (said point is offset 70.00 feet left of and perpendicular to project centerline at station 126+70.00); thence S 14 deg. 46 min. 27 sec. E along said temporary construction easement line a distance of 20.00 feet to a point on the temporary construction easement line (said point is offset 50.00 feet left of and perpendicular to project centerline at station 126+70.00); thence S 75 deg. 13 min. 33 sec. W along said temporary construction easement line a distance of 91.85 feet to a point on the temporary construction easement line (said point is offset 50.00 feet left of and perpendicular to project centerline at station 125+78.15); thence along said temporary construction easement line and along an arc 301.84 feet to the left, having a radius of 637.00 feet, the chord of which is N 61 deg. 39 min. 05 sec. W a distance of 299.02 feet to a point on the temporary construction easement line (said point is offset 50.00 feet left of and perpendicular to project centerline at station 123+00.00); thence N 41 deg. 55 min. 24 sec. W along said temporary construction easement line a distance of 20.00 feet to the POINT OF BEGINNING of the property herein described, containing 0.18 acres, more or less.

See Exhibit "B". The temporary construction easement is for the following purposes: to enter upon the above described easement area and grade, level, fill, drain, pave and build a road or highway, together with such bridges, culverts, ramps, and cuts as may be necessary to construct the Project for a period of three years or until the completion of the Project, whichever is later, at which time the temporary construction easement will terminate and revert to the O'Briens.


20201119000530900 4/6 \$39.00
Shelby Cnty Judge of Probate, AL
11/19/2020 02:00:32 PM FILED/CERT

4. The Probate Court awarded the O'Briens the sum of \$230,000.00 for damages for taking the property, which sum has previously been paid into court by Shelby County. Shelby County has agreed to pay the additional sum of \$20,000.00 for a total damages award of \$250,000.00. Such additional sum shall be paid into court within 60 days of the date of this order, at which time the fee simple taking and the temporary construction easement shall be condemned and title thereto transferred to Shelby County. The \$250,000.00 award, plus any interest accumulated on the deposit, shall be paid to the O'Briens as soon as possible.

5. The parties have further agreed to the following additional conditions in relation to the Project as it affects the O'Briens and their property, and it is so ordered:

- A. Wright Brothers will attempt to preserve any trees that do not have to be cut as part of the project. The O'Briens acknowledge that any trees left after the condemnation may have suffered root damage that could cause such trees to die in the future. As such, Wright Brothers shall not be responsible for any loss of trees or vegetation within the permanent taking or the Temporary Easement.
- B. Shelby County will allow Alabama Power Company to modify its poles and lines, as shown by the recent plan shared with Shelby County, so that the service line to the O'Brien house will have fewer poles and may be run underground. Any cost associated with underground service will be borne by the O'Briens.
- C. Shelby County will erect a six-foot chain-link fence (without barbed wire and without a gate) along a portion of the boundary (approximately 620 feet) as outlined in the attached Exhibit "B" (three pages). Shelby County will mark the location of this fence soon after the order granting this motion. The fence will be on the O'Brien side of the 20-foot temporary construction easement.
- D. Shelby County warrants that a silt fence will be erected along the entire length of the outer edge of the construction site, including the temporary construction easement, on the O'Brien side of the Project.
- E. Prior to commencing construction on the Project, Shelby County will share with the O'Briens a copy of the plans and specs, including the number of days scheduled for each portion of the Project, so that the O'Briens can see the estimated construction timeline and can have their engineer calculate the projected final grades after construction.
- F. Upon completion of the Project, Shelby County warrants that any disturbed area will be fine graded, seeded and covered in straw or mulch to help prevent any future erosion.

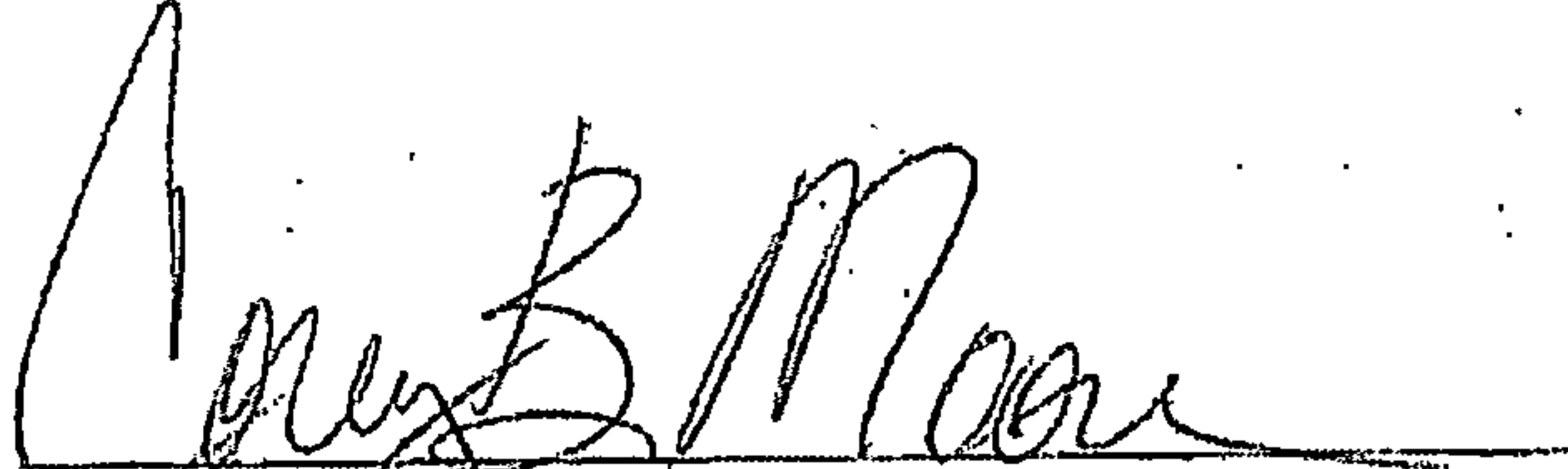
6. Costs of this action are to be taxed to Shelby County.



20201119000530900 5/6 \$39.00
Shelby Cnty Judge of Probate, AL
11/19/2020 02:00:32 PM FILED/CERT

7. A copy of this order may be recorded by Shelby County in the deed records in the Probate Office of Shelby County, Alabama, along with any subsequent order confirming that the damages awarded in Section 4 above have been paid into court.

This 2nd day of November, 2020.


Circuit Judge

Certified a true and correct copy

Date: 11-18-2020



Mary H. Harris, Circuit Clerk
Shelby County, Alabama



20201119000530900 6/6 \$39.00
Shelby Cnty Judge of Probate, AL
11/19/2020 02:00:32 PM FILED/CERT