

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
FIFTH DIVISION**

CENTRAL ARKANSAS WATER

PLAINTIFF

v.

No. CV04-5428

FILED 08/14/2007 14:53:44
Pat O'Brien Pulaski Circuit Clerk

**WATERVIEW ESTATES, LLC;
BIG BALD EAGLE LAND BARON COMPANY, LLC;
JAMES A. MATTHEWS and MELANIE G. MATTHEWS,
Husband and Wife; SCOTLAND FARMS, LLC;
WESTWOOD REAL ESTATE DEVELOPMENT
COMPANY, LLC; and BACK INVESTMENTS, LLC**

DEFENDANTS

**CITIZENS PROTECTING MAUMELLE WATERSHED,
An Unincorporated Association, by its Designated
Representative, KATE ALTHOFF; KATE ALTHOFF,
individually; BARRY HAAS; GLENN HOOKS;
CRAIG S. WOOD; and KATHY WELLS**

**PETITIONERS
FOR INTERVENTION**

**RESPONSE IN OPPOSITION TO
MOTION TO SET ASIDE ORDER OF DISMISSAL WITH PREJUDICE**

Defendants Waterview Estates, LLC, James A. and Melanie G. Matthews, husband and wife, and Back Investments, LLC (collectively, "Respondents"), for their Response in Opposition to the Motion to Set Aside Order of Dismissal With Prejudice filed by Citizens Protecting Maumelle Watershed, An Unincorporated Association, by its Designated Representative Kate Althoff, Kate Althoff, individually, Barry Haas, Glenn Hooks, Craig S. Wood, and Kathy Wells (collectively, "Petitioners"), state:

1. Petitioners seek to intervene at this late stage of the litigation for the purpose of moving this Court to set aside its July 17, 2007, Order of Dismissal With Prejudice on the ground that the Court did not have the authority to dismiss the condemnation action. The proposed intervention is untimely and should be denied and, in any event, Petitioners' arguments on the merits of their Motion to Set Aside Order of Dismissal With Prejudice fail as a matter of law.

2. CAW condemned the subject property pursuant to Ark. Code Ann. § 18-15-401 *et seq.* Compl. (May 12, 2004) ¶ 10. This Court later entered an order providing that CAW also had to comply with the applicable procedures in Ark. Code Ann. § 18-15-601 *et seq.* Under both subchapters, title to the subject property never vested in CAW, and thus CAW had every right to settle the case with the landowners and seek an Order of Dismissal from this Court.

3. Pursuant to Ark. Code Ann. § 18-15-404, title does not vest in condemnation actions for waterworks purposes until after all of the following have occurred: (1) a jury trial on damages, (2) the entry of a judgment stating that title shall vest in the applicant upon the payment of the judgment, and (3) the payment of the judgment. Thus, a condemnation action for waterworks purposes may be dismissed at any time prior to the vesting point as set forth in the statute. *City of Bryant v. Springhill Water & Sewer Services, Inc.*, 295 Ark. 333, 749 S.W.2d 295 (1988).

4. Similarly, CAW had the right to settle this condemnation action and dismiss the case under Subchapter 6 of the eminent domain statutes. Ark. Code Ann. § 18-15-605; Ark. Code Ann. § 18-15-1207; *Selle v. City of Fayetteville*, 207 Ark. 966, 184 S.W.2d 58 (1944).

5. No damages have ever been assessed against CAW by a jury or paid pursuant to a judgment and, therefore, title to the subject property never vested in CAW. This Court's Order of Dismissal With Prejudice was thus appropriate.

6. A Brief in Support is being filed with this Response and is incorporated herein by reference.

WHEREFORE, Waterview Estates, LLC, James A. and Melanie G. Matthews, husband and wife, and Back Investments, LLC pray that the Court deny Petitioners' Motion to Set Aside Order of Dismissal With Prejudice and for all other relief to which they may be entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On this 14th day of August, 2007, a copy of the foregoing was sent to the following via

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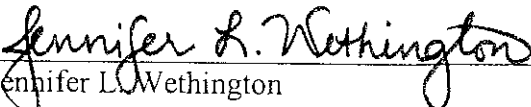
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