

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
FIFTH DIVISION

CENTRAL ARKANSAS WATER

PLAINTIFF

v.

No. CV04-5428

FILED 08/14/2007 14:53:00
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

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

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. Petitioners are wrong. By statute, title to the subject property never vested in Central Arkansas Water ("CAW"). Longstanding precedent confirms that CAW could, and did, seek dismissal of the case at the stage it did. Therefore, this Court's Order of Dismissal complied with Arkansas law, and, even if Petitioners are permitted to intervene in this matter, the instant motion should be denied.

DISCUSSION

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 requiring CAW 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. The Petitioners' motion to set aside the dismissal order is without merit and must be denied.

I. TITLE NEVER VESTED IN CAW PURSUANT TO ARK. CODE ANN. § 18-15-404.

Subchapter 4 of the eminent domain statutes contains a statute governing when title vests in condemnations for waterworks purposes. Ark. Code Ann. § 18-15-404 provides, in relevant part:

§ 18-15-404. Damages; assessment and payment

(a) At the trial of the cause, a jury shall assess the amount of damages the applicant shall pay for the property taken in the proceedings.

(b) Thereafter, a judgment shall be entered stating that title to the property shall vest in the applicant upon payment to the clerk of the court of the amount of damages so assessed.

Thus, the plain language of the statute provides that title does not vest in the condemning authority 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. In *City of Bryant v. Springhill Water & Sewer Services, Inc.*, the Supreme Court of Arkansas, relying on the statute, confirmed that a condemnation for waterworks purposes can be dismissed at any time prior to the vesting point as set forth in the statute—notwithstanding the fact that the condemning authority in that case had made a deposit with the court, secured an order of possession, and had taken possession and control of the condemned utility since the case was filed. 295 Ark. 333, 749 S.W.2d 295 (1988).

Under the statute and *City of Bryant*, CAW was authorized to settle with the landowners and dismiss the lawsuit because title to the property had not yet vested in CAW. The cases Petitioners cite are inapposite. The primary authority Petitioners rely upon, *Board of*

Commissioners of Little Rock Municipal Water Works v. Rollins, 57 Ark. App. 241, 945 S.W.2d 384 (1997), involved the issue of the “date of taking” for the purposes of valuation of condemned property and the interest due the landowners. The case had nothing to do with the issue here—whether the condemning authority may dismiss voluntarily a condemnation action prior to the assessment of damages by a jury and the entry and payment of judgment thereon. *Newgass v. St. Louis, A. & T. Railway Co.*, 54 Ark. 140, 15 S.W. 188 (1891) involved the same issue and is inapplicable. Finally, *Rowley v. Arkansas State Highway Commission*, 242 Ark. 419, 413 S.W.2d 876 (1967), involved a specific statute which governed the vesting of title in condemnations for highway construction purposes. Here, a different statute applies, Ark. Code Ann. § 18-15-404, which provides that title to the subject property never vested in CAW in this case. The Order of Dismissal was thus proper, and the Petitioners’ motion to set it aside should be denied.

II. TITLE DID NOT VEST IN CAW UNDER SUBCHAPTER 6, EITHER.

Subchapter 6 does not contain a specific statute that governs the vesting of title in actions under that subchapter. Instead, Ark. Code Ann. § 18-15-605 provides that “further proceedings in the matter of assessment of damages and the making of deposits to secure the owner shall be the same as is now prescribed by law in reference to condemnation proceedings by railroad, telegraph, and telephone corporations” The statute applicable in eminent domain actions by railroad, telegraph, and telephone companies, Ark. Code Ann. § 18-15-1207, states that, “[i]n all cases in which the company shall not pay or deposit the amount of damages *assessed* within thirty (30) days after the assessment, the company shall forfeit all rights in the premises.” In *Selle v. City of Fayetteville*, 207 Ark. 966, 184 S.W.2d 58 (1944), the Supreme Court of Arkansas interpreted this statute as essentially providing the condemning authority with an

“option to buy” and held that the city had the right to abandon a condemnation action even after a jury trial was held assessing damages, because the city had not yet paid the judgment.

Thus, under these authorities, as well, CAW was authorized to dismiss the condemnation proceedings. No damages were ever assessed against or paid by CAW, so the Order of Dismissal was proper.

CONCLUSION

The Court should deny Petitioners’ Motion to Set Aside Order of Dismissal With Prejudice. Title never vested in CAW and, thus, its settlement and dismissal of this case was proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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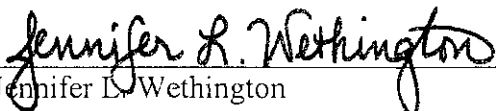
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