

THE ARKANSAS SUPREME COURT HOLDS THAT ARKANSAS  
CODE ANNOTATED, SECTION 18-15-605(B) DOES NOT APPLY TO  
EMINENT-DOMAIN ACTIONS WHERE THE IMPROVEMENT OF  
MUNICIPAL WATERWORKS ARE ONLY ANCILLARY TO A  
PRINCIPAL PURPOSE OF ROAD IMPROVEMENT

In *Lois Marie Combs Revocable Trust v. City of Russellville*,<sup>1</sup> the Arkansas Supreme Court held that Arkansas Code Annotated section 18-15-605(b) is only applicable when real property is condemned by a municipality for the primary purpose of improving water supply facilities and inapplicable when improvements to municipal waterworks are only ancillary to some other primary purpose.<sup>2</sup>

Late in 2008, the City of Russellville (“City”) commenced condemnation proceedings against real property owned by the Lois Marie Combs Revocable Trust (“Trust”) for the purpose of expanding and improving a road adjacent to that property.<sup>3</sup> As part of the expansion, the City also planned to “improv[e] drainage and flood control in the area surrounding the public roadway.”<sup>4</sup> After depositing compensation for the condemnation with the county registry, the circuit court issued an order of possession, allowing the City to begin construction.<sup>5</sup> In mid-2010, a jury trial on this matter “resulted in a verdict awarding [the Trust] for the taking.”<sup>6</sup> Immediately thereafter, the Trust filed a motion for attorney’s fees pursuant to section 18-15-605(b) that the circuit court denied.<sup>7</sup> It is from this denial that the Trust appeals.<sup>8</sup>

On appeal, the Arkansas Supreme Court only decided the issue of “whether improving drainage and flood control in conjunction with expanding and improving a public road invokes the cumulative eminent-domain authority granted to a municipal waterworks system.”<sup>9</sup> The Court held that improvement of municipal waterworks in conjunction with the improvement of a road is made through an exercise of eminent-domain through power granted by sections 18-15-201, 18-15-202, and 18-15-309.<sup>10</sup> That power is

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1. 2011 Ark. 186, 2011 WL 1631122.

2. See *Lois Marie Combs Revocable Trust*, 2011 Ark. 186, at 6, 2011 WL 1631122, at \*3.

3. *Id.* at 1-2, 2011 WL 1631122, at \*1.

4. *Id.* at 2, 2011 WL 1631122, at \*1.

5. *Id.*, 2011 WL 1631122, at \*1.

6. *Id.*, 2011 WL 1631122, at \*1.

7. *Id.*, 2011 WL 1631122, at \*1.

8. *Lois Marie Combs Revocable Trust*, 2011 Ark. 186, at 2, 2011 WL 1631122, at \*1.

9. *Id.* at 4, 2011 WL 1631122, at \*3.

10. *Id.* at 5, 2011 WL 1631122, at \*3.

exercised by procedures set forth in sections 18-15-301 through 18-15-307.<sup>11</sup> Although section 18-15-309 permits the exercise of eminent domain for flood control improvements, it may be exercised through the previously mentioned procedures or through procedures outlined in sections 18-15-401 through 18-15-410.<sup>12</sup> Only if the procedures outlined in subchapter four are used may attorney's fees be recovered pursuant to section 18-15-605(b).<sup>13</sup>

Although the grant or denial of attorney's fees is reviewed by an abuse of discretion standard, in the instant case, the issue is more accurately one of statutory interpretation, which is reviewed de novo.<sup>14</sup> The circuit court determined that the City appropriately exercised its eminent-domain authority, granted by section 18-15-201 of the Arkansas Code,<sup>15</sup> through procedures under sections 18-15-301 through 18-15-307.<sup>16</sup>

The Trust's main argument rested on *City of Fort Smith v. Carter*,<sup>17</sup> an earlier Arkansas Supreme Court opinion that discussed a condemnation of real property for the purpose of creating a large reservoir for public usage.<sup>18</sup> In *Carter*, the court held that the requirements of subchapter four of title eighteen, chapter 15 of the Arkansas Code are subject to the requirements of subchapter six.<sup>19</sup>

The City claims that its authority to condemn is granted by sections 18-15-201 and 18-15-202 and that its primary purpose for condemnation was to improve a road.<sup>20</sup> To support its position, City's expert submitted a report that outlined the project.<sup>21</sup> This outline stated that the "overall goal of the project is to provide a new surface with better access, improved drainage, and improve the area not only for the immediate residents but for the good of the community."<sup>22</sup>

Although the City's stated goals included drainage improvement, the court agreed with the City's position that the principal reason for the project was road improvement and that the drainage was only ancillary to that main

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11. *Id.*, 2011 WL 1631122, at \*3

12. *Id.*, 2011 WL 1631122, at \*3

13. *See id.* at 5-6, 2011 WL 1631122, at \*3.

14. *Lois Marie Combs Revocable Trust*, 2011 Ark. 186, at 2-3, 2011 WL 1631122, at \*1.

15. ARK. CODE ANN. § 18-15-201 (Repl. 2003).

16. ARK. CODE ANN. §§ 18-15-301 to 18-15-307 (Repl.2003).

17. 364 Ark. 100, 104, 216 S.W.3d 594, 596 (2005).

18. *Lois Marie Combs Revocable Trust*, 2011 Ark. 186, at 1, 6, 2011 WL 1631122, at \*1,\*3.

19. *Id.* at 6, 2011 WL 1631122, at \*3 (citing *Carter*, 364 Ark. 100, 109-10, 110 S.W.3d 594, 600 (2005)).

20. *Lois Marie Combs Revocable Trust*, 2011 Ark. 186, at 4, 2011 WL 1631122, at \*2.

21. *Id.*, 2011 WL 1631122, at \*2.

22. *Id.* at 4-5, 2011 WL 1631122, at \*2.

purpose.<sup>23</sup> Furthermore, the court quickly distinguished the instant case from *Carter*.<sup>24</sup> In *Carter*, the purpose of improvement clearly involved municipal water supply, whereas the instant case has no such purpose.<sup>25</sup>

When municipalities invoke their eminent-domain power, they must do so pursuant to some statutory authority. Until this decision, it appeared as if the Arkansas Supreme Court had not addressed situations where real property is being condemned for multiple purposes. The court's opinion clarifies the law by stating that if drainage is being improved in conjunction with a road, so long as the municipality's condemnation power is exercised pursuant to sections 18-15-301 through 18-15-307 of the Arkansas Code, attorney's fees granted under section 18-15-605(b) are not available.

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23. *See id.*, 2011 WL 1631122, at \*3.

24. *Id.* at 6, 2011 WL 1631122, at \*3.

25. *Id.* at 6-7, 2011 WL 1631122, at \*3.