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ARKANSAS COURT OF APPEALS

DIVISION II
No. CV-18-95

CITY OF BRYANT, ARKANSAS APPELLANT V. THE BOONE TRUST, DATED 12/22/1997 APPELLEE	**Opinion Delivered:** November 7, 2018 APPEAL FROM THE SALINE COUNTY CIRCUIT COURT [NO. 63CV-14-367] HONORABLE GRISHAM PHILLIPS, JUDGE AFFIRMED ON DIRECT APPEAL; AFFIRMED IN PART AND REVERSED IN PART ON CROSS-APPEAL

MIKE MURPHY, Judge

Appellant, City of Bryant (the "City"), appeals from an award to pay "appraisal fees" of $5,700 and "other costs" of $72.04 to appellee, the Boone Trust (the "Trust"), in a judgment arising from a condemnation proceeding. The Trust cross-appeals from the circuit court's reduction of the amount requested in "other costs" as well as the court's denial for pre- and postjudgment interest. We affirm on direct appeal and affirm in part and reverse in part on cross-appeal.

In June 2014, the City filed a complaint against the Trust pursuant to Arkansas Code Annotated sections 18-15-201 and 18-15-301 to -307 (Repl. 2015) to take real property owned by the Trust through eminent domain for the expansion of Alcoa Road. The City asserted in the complaint the real property in question was worth $116,100 and attempts to negotiate the purchase of the property had not been successful. The City deposited that

amount into the registry of the court and a trial ensued. Following a jury trial, the jury awarded the Trust $133,621.28 as just compensation for the taking of the property.[1] On July 20, 2016, the circuit court entered a judgment reflecting the jury's determination less a credit for $116,100 and vesting fee-simple title to the litigated real property in the City. The judgment ordered the City to deposit the $22,521.28 difference plus awarded interest from the date of the taking.

On July 29, 2016, pursuant to Arkansas Code Annotated section 18-15-307(c), the Trust filed a motion seeking costs of $13,009.62 and attorney's fees of $27,962. In September 2016, a motion hearing was conducted, and following arguments, the circuit court ruled that it would hold in abeyance a decision pending a ruling by the Arkansas Supreme Court in *City of Benton v. Teeter*, 2017 Ark. 80. In March 2017, the supreme court handed down its rulings in *Teeter* and in *City of Benton v. Alcoa Rd. Storage, Inc.*, 2017 Ark. 78, 513 S.W.3d 259. Both held that no statutory authority exists in Arkansas to award attorney's fees and expert-witness fees to a landowner in a condemnation action brought by a municipality. Under these cases, the circuit court issued an order denying the Trust's request for attorney's fees and costs.

On April 24, 2017, and following our decision in *Brown v. City of Bryant*, 2017 Ark. App. 239, 520 S.W.3d 287,[2] the Trust moved to modify the prior ruling denying attorney's fees and costs, moving now for its "appraisal fees" of $5,700 and "other costs" of $1,334.14.

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[1]The amount of compensation is not an issue in either the direct appeal or the cross-appeal.

[2]*Ioup v. City of Benton*, 2017 Ark. App. 274 was handed down the same day and had the same holdings.

These amounts were a part of its original motion for attorney's fees and costs. Following a hearing on the motion, the circuit court ordered the City to pay the $5,700 appraisal fee and $72.04 in other costs. The circuit court noted it was "being mindful that the jury verdict in this case represented a fraction of the total amount in that was sought in just compensation." In turn, the City filed a timely notice of appeal, and the Trust filed a timely notice of cross-appeal.

On appeal, we are asked to interpret Arkansas Code Annotated section 18-15-307. Issues of statutory construction are reviewed de novo, as it is for the appellate courts to decide what a statute means. *Brown*, 2017 Ark. App. 239, 520 S.W.3d 287. We are not bound by the circuit court's decision, but in the absence of a showing that the circuit court erred, its interpretation will be accepted as correct on appeal. *Id.*

Arkansas Code Annotated section 18-15-307(c) provides, "The costs occasioned by the assessment shall be paid by the corporation, and, as to the other costs which may arise, they shall be charged or taxed as the court may direct."

We first address the direct appeal. In *Brown*, we explained that per *Alcoa Road Storage* and *Teeter*, our supreme court has clearly determined that attorney's fees and expert-witness fees are not recoverable under section 18-15-307(c). However, regarding the appraisal cost, we explained:

> We reference again that part of section 18-15-307(c), to wit: "[T]he costs occasioned by the "assessment" shall be paid by the corporation." *The Oxford English Dictionary* defines "assessment," in pertinent part, as "[o]fficial valuation of property or income for the purposes of taxation; the value assigned to it." We are mindful that our supreme court held in *Alcoa Road Storage* that the legislature contemplated only costs that could be taxed in an ordinary action when it wrote this statutory provision. We are also mindful that our supreme court, in *Alcoa Road Storage*, specifically defined "assessment" as "the valuation procedure for property sought to be condemned,"

> 2017 Ark. 78, at 1, 513 S.W.3d 259. We hold the appraisal expenditure is a cost "occasioned by the assessment" that can be recovered.

Brown, 2017 Ark. App. 239, at 5, 520 S.W.3d at 290.

On appeal, the City asserts that the *Brown* holding conflicts with the *Alcoa Road Storage* holding that expert-witness fees are nonrecoverable. The City refers to the appraisal as an "out of court opinion" and questions why an out-of-court opinion of an expert witness is considered compensable when his in-court testimony is not. The City also asserts that *Brown* incorrectly assumed that the appraisal report was "specifically and necessarily" incurred because the landowner had a choice to hire an appraiser to contest the City's appraisal.

On the contrary, the Trust maintains that the *Brown* holding does not run afoul of *Teeter* and *Alcoa Road Storage* as *Alcoa Road Storage* did not explicitly address the cost of the landowner's appraisal fee as an itemized, compensable expense. The Trust clarifies that it is asking only for the money spent on the appraisal, which was $5,700, and that this amount does not include any expert-witness fees such as fees incurred through deposition, trial preparation, and trial attendance.

We hold that *Brown* is controlling precedent and that the instant facts do not warrant a break from such precedent. The Arkansas Supreme Court explained in *Chamberlin v. State Farm Mutual Automobile Insurance Co.*, 343 Ark. 392, 397–98, 36 S.W.3d 281, 284 (2001), that "[u]nder the doctrine of stare decisis, we are bound to follow prior case law." The policy of stare decisis is designed to lend predictability and stability to the law. *Id.* Accordingly, we affirm the circuit court's award of appraisal fees to the Trust.

We now turn to the cross-appeal. On cross-appeal, the Trust first asserts that the circuit court abused its discretion in reducing the amount awarded for "other costs." The circuit court awarded the Trust $72.04 of the $1,334.14 requested. The Trust is seeking compensation for the miscellaneous office expenses that it incurred in order to bring this matter to trial. The costs being sought do not include deposition-related expenses, such as court-reporter and expert-witness-litigation expenses, but rather costs that arose from enlarged copies of exhibits which were used at trial, copies, faxes, exhibit processing, mileage, and postage.

Rule 54(d) of the Arkansas Rules of Civil Procedure provides:

> (1) Costs shall be allowed to the prevailing party if the court so directs, unless a statute or rule makes an award mandatory.
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> (2) Costs taxable under this rule are limited to the following: filing fees and other fees charged by the clerk; fees for service of process and subpoenas; fees for the publication of warning orders and other notices; fees for interpreters appointed under Rule 43; witness fees and mileage allowances as provided in Rule 45; fees of a master appointed pursuant to Rule 53; fees of experts appointed by the court pursuant to Rule 706 of the Arkansas Rules of Evidence; fees of translators appointed by the court pursuant to Rule 1009 of the Arkansas Rules of Evidence; and expenses, excluding attorney's fees, specifically authorized by statute to be taxed as costs.

Subsection (d)(2) expressly provides that filing fees and other fees charged by the clerk are taxable as costs, but subsection (d)(1) makes an award of these costs discretionary with the circuit court unless mandatory pursuant to a statute or a rule. In *Brown*, we explained that "other costs" is not defined in section 18-15-307, but we held that the statute gives the circuit court leeway, stating that other costs that may arise shall be charged or taxed as the court may direct per Rule 54(d). *Brown*, 2017 Ark. App. 239, at 6–7, 520 S.W.3d at 291.

Here, in determining the amount to award, the circuit court awarded the percentage the Trust recovered above that which was offered by the City. In the order awarding costs, the court noted it was "being mindful that the jury verdict in this case represented a fraction of the total amount in that was sought in just compensation." On the record before us, we cannot say that the circuit court abused its discretion in reducing the amount of costs awarded.

Lastly, the Trust asserts on cross-appeal that it is entitled to pre- and postjudgment interest on the overall cost award. Prejudgment interest is intended to be compensation for recoverable damages wrongfully withheld from the time of the loss until judgment. *DWB, LLC v. D & T Pure Tr.*, 2018 Ark. App. 283, at 15, 550 S.W.3d 420, 430–31. The test for whether an award of prejudgment interest is proper is whether there is a method to determine the value of the property at the time of the injury. *Id.* Prejudgment interest "is only allowable if the amount of damages is definitely ascertainable by mathematical computation, or if the evidence furnishes data that make it possible to compute the amount without reliance on opinion or discretion." *See* Howard W. Brill, *Arkansas Law of Damages* § 10:3, at 175 (6th ed. 2014). If damages are not by their nature capable of exact determination, both in time and amount, prejudgment interest is not an item of recovery. *DWB*, 2018 Ark. App. 283, at 15, 550 S.W.3d at 431.

Regarding postjudgment interest, the relevant statute, Arkansas Code Annotated section 16-65-114, states as follows:

> (a)(1) Except as provided in subdivision (a)(2) of this section, interest on a judgment entered by a court shall bear interest:

(A) In an action on a contract at the rate provided by the contract or ten percent (10%) per annum, whichever is greater; and

(B) In any other action at ten percent (10%) per annum.

(2) Interest on a judgment shall not exceed the maximum rate permitted under Arkansas Constitution, Amendment 89.

(b) A judgment rendered or to be rendered against a county in the state on a county warrant or other evidence of county indebtedness shall not bear interest.

Here, we hold that the Trust is not entitled to prejudgment interest because the expenses were not reasonably ascertainable—it was unknown exactly what costs would be awarded, whether the court would exercise its discretion to award costs, and if it did award them, how much would it award. On the other hand, we reverse the circuit court's decision regarding postjudgment interest. Subsection 114 says that interest accrues on a "judgment" and Ark. Code Ann. § 16-65-103 provides, "In all judgments or decrees rendered by any court of justice for any debt, damages, *or cost*s, and on all executions issued thereon, the amount shall be computed, as near as may be, in dollars and cents, rejecting smaller fractions." (Emphasis added.) Accordingly, the costs awarded should be treated as a judgment. Therefore, we hold that the Trust is entitled to postjudgment interest dating back to the October 8, 2017 order.

Affirmed on direct appeal; affirmed in part and reversed in part on cross-appeal.

GRUBER, C.J., and GLOVER, J., agree.

Richard Chris Madison, for appellant.

The Boswell Law Firm, by: *John Andrew Ellis*, for appellee.