

SUPREME COURT OF ARKANSAS

No. 10-1161

LOIS MARIE COMBS REVOCABLE
TRUST,

APPELLANT,

VS.

CITY OF RUSSELLVILLE,

APPELLEE,

Opinion Delivered April 28, 2011

APPEAL FROM THE POPE COUNTY
CIRCUIT COURT,
NO. CV-2008-666,
HON. KENNETH DAVID COKER JR.,
JUDGE,

AFFIRMED.

KAREN R. BAKER, Associate Justice

Appellant Lois Marie Combs Revocable Trust appeals from the order of the Pope County Circuit Court denying appellant's motion for mandatory attorney's fees pursuant to Ark. Code Ann. § 18-15-605(b) (Repl. 2003). Appellant asserts that under this court's decision in *City of Fort Smith v. Carter*, 364 Ark. 100, 216 S.W.3d 594 (2005) (*Carter I*), appellee City of Russellville triggered the application of Ark. Code Ann. § 18-15-605(b) when it condemned certain real property with a stated public purpose of expanding and improving a public roadway and improving drainage and flood control in the area surrounding the public roadway. This case involves our interpretation of section 18-15-605(b), which provides for attorney's fees in certain condemnation actions. Our jurisdiction is pursuant to Ark. Sup. Ct. R. 1-2(b)(6) (2010). We affirm.

Appellee filed a complaint on November 20, 2008, seeking to condemn certain real property owned by appellant for the public purpose of expanding and improving Jimmy Lile

Road and improving drainage and flood control in the area surrounding the public roadway. Appellee stated in the complaint that it pursued the action “under its power of eminent domain grant[ed] in Ark. Code Ann. §§ 18-15-301 et seq., Ark. Code Ann. §§ 18-15-201 et seq., and Ark. Code Ann. § 14-54-601.” Appellee deposited \$768.40 with the Pope County Circuit Court registry as compensation to appellant for the condemnation. The circuit court issued an order of possession on December 29, 2008, allowing appellee to commence the proposed improvements. A jury trial on June 4, 2010, resulted in a verdict awarding appellant compensation for the taking in the amount of \$14,636. The circuit court entered its order upon the jury verdict on June 23, 2010. On June 24, 2010, appellant filed a motion for mandatory attorney’s fees pursuant to Ark. Code Ann. § 18-15-605(b), which the circuit court denied. In its July 22, 2010 order, the circuit court found that appellee brought the condemnation pursuant to Ark. Code Ann. § 18-15-201 (Repl. 2003), using the procedures set forth in Ark. Code Ann. §§ 18-15-301 to -307. The court also found that appellee did not bring the action pursuant to the procedures set forth in Ark. Code Ann. §§ 18-15-401 to -410; therefore, attorney’s fees were not appropriate under Ark. Code Ann. § 18-15-605(b). Appellant timely brings this appeal of the order denying attorney’s fees.

The decision to grant or deny attorney’s fees lies within the sound discretion of the trial court, and we will not reverse the decision of the trial court absent a showing of an abuse of that discretion. *Harris v. City of Fort Smith*, 366 Ark. 277, 234 S.W.3d 875 (2006). Generally, in Arkansas, an award of attorney’s fees is not allowed, unless an award of fees is specifically permitted by statute. *See id.*

This court's review of the circuit court's denial of appellant's motion for attorney's fees involves statutory interpretation. *Carter I*, 364 Ark. at 108, 216 S.W.3d at 599. We review issues of statutory interpretation de novo, as it is for this court to decide what a statute means. *Arkansas Dep't of Parks & Tourism v. Jeske*, 365 Ark. 279, 229 S.W.3d 23 (2006). While we are not bound by the circuit court's interpretation, in the absence of a showing that the circuit court erred, we will accept its interpretation as correct on appeal. *Id.*

In interpreting a statute, we give the words in the statute their ordinary meaning and common usage. *Burcham v. City of Van Buren*, 330 Ark. 451, 954 S.W.2d 266 (1997). When a statute is clear, this court will give the statute its plain meaning. *Carter I*, 364 Ark. at 108, 216 S.W.3d at 599. Additionally, in construing any statute, we will place the statute beside other statutes relevant to the subject matter in question, giving it meaning and effect derived from the combined whole. *Vanderpool v. Fidelity & Cas. Ins. Co.*, 327 Ark. 407, 939 S.W.2d 280 (1997). Eminent-domain statutes are construed in favor of the landowner. *Carter I*, 364 Ark. at 109, 216 S.W.3d at 600.

The circuit court found that appellee's authority to exercise its power of eminent domain was derived from Ark. Code Ann. § 18-15-201 (Repl. 2003), which grants the right to municipal corporations to condemn for boulevards. *See* Ark. Code Ann. § 18-15-201(a)(1). The procedures for exercising the power granted under Ark. Code Ann. § 18-15-201 are found at Ark. Code Ann. §§ 18-15-301 to -307 (Repl. 2003). *See* Ark. Code Ann. § 18-15-201(c).

Appellee claims that the action was brought under the authority of Ark. Code Ann. §§ 18-15-201 to -202 and this authority to condemn was exercised only under subchapter 3, and not under subchapter 4. The public purpose of the condemnation was “to expand and improve Jimmy Lile Road [a public roadway] and to improve drainage and flood control in the area surrounding the public roadway[.]” Section 18-15-605(b) provides for an award of attorney’s fees in cases when a jury determines that the condemning municipality deposited an amount that is less than the reasonable value of the land. *City of Fort Smith v. Carter*, 372 Ark. 93, 270 S.W.3d 822 (2008) (*Carter II*). However, in order for Ark. Code Ann. § 18-15-605(b) to apply, appellee must have based its underlying condemnation action upon the use of the city’s power of eminent domain to expand its water-supply facilities advanced under subchapter 4. See Ark. Code Ann. § 18-15-401(c); see also *Carter II*, 372 Ark. at 96, 270 S.W.3d at 824. The issue then is 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.

Appellee’s expert, Mr. Joel Vaughn, submitted an appraisal report in which he outlined the proposed project as follows: “The City of Russellville is proposing to renovate and improve an existing street (Jimmy Lile Road). . . . The renovation is to consist of the re-surfacing of the current street and to improve drainage along both sides of the road its’ [*sic*] entire distance. . . . 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.” Clearly, one of the goals was to improve drainage. However, we cannot conclude that improvement of drainage ancillary to improvement of a public road involves a municipal corporation’s exercise of the power of eminent domain relating to waterworks.¹

We conclude that the improvement of drainage and flood control was in conjunction with the improvement of Jimmy Lile Road, and such power is derived from Ark. Code Ann. §§ 18-15-201 to -202, as well as Ark. Code Ann. § 18-15-309. Therefore, this exercise of eminent domain was through the procedures set forth in Ark. Code Ann. §§ 18-15-301 to -307 and not pursuant to the procedures set forth in Ark. Code Ann. §§ 18-15-401 to -410. While Ark. Code Ann. § 18-15-309 provides that certain cities may exercise the power of eminent domain for the purpose of flood-control improvements, this statute expressly states that this power may be exercised in accordance with the procedures set forth in Ark. Code Ann. §§ 18-15-303 to -307 or in Ark. Code Ann. §§ 18-15-401 to -410. *See* Ark. Code Ann. § 18-15-309(b) (Repl. 2003). The “or” disjunctive that the legislature included in Ark. Code Ann. § 18-15-309 clearly demonstrates that the power may be exercised under either

¹“Waterworks” is not defined under title 18 of the Code; however, the right of a municipal corporation to acquire property for operation of a municipal waterworks system is recognized in Ark. Code Ann. § 14-234-215 (Repl. 1998), which states that a municipal corporation shall have the right as provided in Ark. Code Ann. §§ 18-15-301 to -303. “Waterworks system” is defined in this subchapter as including “a waterworks system in its entirety, or any integral part thereof, including mains, hydrants, meters, valves, standpipes, storage tanks, pumping tanks, intakes, wells, impounding reservoirs, or purification plants.” Ark. Code Ann. § 14-234-201.

subchapter, and here, appellee exercised its power of eminent domain pursuant to subchapter 3.

The case is distinguishable from *Carter I, supra*, the case upon which appellant places its primary reliance. In *Carter I*, the City of Fort Smith sought to condemn real property involved in the Lake Fort Smith Expansion Project, which consisted of a plan to improve an existing dam and construct a larger dam on Lake Fort Smith in order to create a large reservoir that would provide public water to certain communities. *Carter I*, 364 Ark. at 104, 216 S.W.3d at 596. The City of Fort Smith asserted that it exercised its power of eminent domain under Ark. Code Ann. §§ 18-15-401 to -410, rendering Ark. Code Ann. § 18-15-605(b) inapplicable. We disagreed and concluded that the requirements of subchapter 4 include, and are subject to, the requirements of subchapter 6. *Id.* We examined the grant of eminent domain, for the purpose of the operation of waterworks and associated operations, that is found in subchapters 3, 4, and 6 of title 18, chapter 15 of the Arkansas Code. Unlike *Carter I*, the instant case does not involve a municipal corporation that is condemning real property related to municipal waterworks. The work that appellee proposed to Jimmy Lile Road was an improvement of the public road, which included improving drainage and flood control in the area surrounding the road. We cannot construe the scope of this work to include any common or statutory definition of “waterworks” or a “water project.”

Even construing these eminent-domain statutes in favor of the landowner, neither subchapter 4 nor subchapter 6 is applicable because this case does not involve municipal

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waterworks or a water project. We hold that the circuit court correctly denied appellant's motion for attorney's fees.

Affirmed.