

CITY of FORT SMITH, Arkansas *v.* Lee HACKLER,
Patricia Hackler, Judy W. Hartman
and Neil W. Hartman

04-1278

216 S.W.3d 603

Supreme Court of Arkansas
Opinion delivered November 10, 2005
[Rehearing denied December 15, 2005.*]

EMINENT DOMAIN — ARGUMENTS OFFERED BY APPELLANT WERE SAME ARGUMENTS COURT REJECTED IN *CARTER* CASE — BASED UPON REASONING SET FORTH IN COMPANION CASE SUPREME COURT HELD THAT CIRCUIT COURT DID NOT ERR IN AWARDING ATTORNEY'S FEES PURSUANT TO ARK. CODE ANN. § 18-15-605(b). — In *City of Fort Smith v. Carter*, 364 Ark. 100, 216 S.W.3d 594 (2005), a companion case to the present case, the circuit court denied the landowners' request for attorney's fees pursuant to Ark. Code Ann. § 18-15-605(b) (Repl. 2003), the landowners cross-appealed, and the supreme court reversed and remanded, ordering the circuit court to determine the amount of attorney's fees due the landowners pursuant to § 18-15-605(b); the supreme court held that the circuit court did not err in awarding attorney's fees pursuant to Ark. Code Ann. § 18-15-605(b); because the arguments offered by appellant in

* BROWN, J., would grant rehearing.

the instant case were the same arguments the court rejected in the *Carter* case, the court deemed it unnecessary to reiterate what had been stated in the companion case bearing upon these arguments; based upon the reasoning set forth in *City of Fort Smith v. Carter*, the supreme court held that the circuit court did not err in awarding attorney's fees pursuant to Ark. Code Ann. § 18-15-605(b).

Appeal from Crawford Circuit Court; *Michael Medlock*, Judge, affirmed.

Daily & Woods, P.L.L.C., by: *Robert R. Briggs*, for appellant.

Bagby Law Firm, P.A., by: *Philip A. Bagby*, for appellees.

JIM HANNAH, Chief Justice. The City of Fort Smith appeals the Crawford County Circuit Court's award of attorney's fees pursuant to Ark. Code Ann. § 18-15-605(b) (Repl. 2003) to landowners Lee and Patricia Hackler in an eminent-domain action. This is a companion case to *City of Fort Smith v. Carter*, 364 Ark. 100, 216 S.W.3d 594 (2005), which is also handed down today. In the *Carter* case, the circuit court denied the landowners' request for attorney's fees pursuant to § 18-15-605(b). The landowners cross-appealed, and we reversed and remanded, ordering the circuit court to determine the amount of attorney's fees due the landowners pursuant to § 18-15-605(b).

[1] The arguments offered by the City in the instant case are the same arguments we rejected in the *Carter* case. Accordingly, we deem it unnecessary to reiterate in the instant case what has been stated in the companion case bearing upon these arguments. Based upon our reasoning set forth in *City of Fort Smith v. Carter*, we hold that the circuit court did not err in awarding attorney's fees pursuant to Ark. Code Ann. § 18-15-605(b).

Affirmed.

BROWN, Justice, dissents. I would reverse for many of the reasons set forth in my dissent in *City of Fort Smith v. Carter*, 364 Ark. 100, 216 S.W.3d. 594 (2005).