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NO. COA11-1567
NORTH CAROLINA COURT OF APPEALS

Filed: 19 June 2012

TOWN OF FOREST CITY,
Plaintiff,

v.

Rutherford County
No. 07-CVS-22

RUTHERFORD RAILROAD DEVELOPMENT
CORPORATION, ET AL.,
Defendants.

Appeal by Plaintiff from order entered 16 June 2011 by
Judge Laura J. Bridges in Rutherford County Superior Court.
Heard in the Court of Appeals 24 April 2012.

David A. Lloyd for Plaintiff-appellant.

*Williams Mullen, by Gilbert C. Laite III and Kelly
Colquette Hanley, for Defendant-appellees.*

HUNTER, JR., Robert N., Judge.

The Town of Forest City ("the Town") appeals from the trial court's order granting Southeast Shortlines, Inc. d/b/a Thermal Belt Railway's ("Southeast") motion in the cause and ordering the Town to pay the costs incurred by Southeast in defending against the Town's 2007 condemnation action. We affirm.

I. Factual & Procedural Background

We incorporate by reference the facts of this controversy as set forth in a companion opinion, COA11-1569, filed contemporaneously with this opinion. Additional facts are provided as necessary below in addressing the Town's appeal.

II. Jurisdiction

The trial court's 16 June 2011 judgment and 16 June 2011 order constituted a final disposition of all of the parties' claims. We accordingly exercise jurisdiction over the Town's appeal in the instant case pursuant to N.C. Gen. Stat. § 7A-27(b) (2011) (providing for an appeal as a matter of right to this Court "[f]rom any final judgment of a superior court").

III. Analysis

The issue presented is whether the trial court erred in granting Southeast's motion in the cause for costs, including attorneys' fees, incurred in defending against the Town's 2007 condemnation action. "The general rule in North Carolina is that in the absence of contractual obligation or statutory authority, a successful litigant may not recover attorney's fees as damages or a part of the court costs." *Davis v. Kelly*, 147 N.C. App. 102, 105, 554 S.E.2d 402, 404 (2001). However, N.C. Gen. Stat. § 40A-8 provides specific authority for "Costs" in

the context of condemnation proceedings and provides, in pertinent part:

If a condemnor institutes a proceeding to acquire by condemnation any property and (i) if the final judgment in a resulting action is that the condemnor is not authorized to condemn the property, or (ii) if the condemnor abandons the action, the court with jurisdiction over the action shall after making appropriate findings of fact award each owner of the property sought to be condemned a sum that, in the opinion of the court based upon its findings of fact, will reimburse the owner for: his reasonable costs; disbursements; expenses (including reasonable attorney, appraisal and engineering fees)[.]

N.C. Gen. Stat. § 40A-8(b) (2011). We review the trial court's award of costs, including attorneys' fees, for abuse of discretion. See *Concrete Machinery Co., Inc. v. City of Hickory*, 134 N.C. App. 91, 100, 517 S.E.2d 155, 160 (1999). "Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.'" *State v. Trull*, 349 N.C. 428, 445, 509 S.E.2d 178, 190 (1998) (citation omitted).

The court below found that the Town "did not have the right or power to condemn the subject property," that the Town "dismissed and abandoned" the 2007 condemnation action, and that

Southeast "incurred reasonable costs, disbursements and expenses, including reasonable attorneys' fees, in the sum of \$29,455.23 in its defense of the underlying action and in its pursuit of the subject Motion in the Cause[.]" The trial court's findings that the Town was not authorized to condemn Southeast's property and, alternatively, that the Town had abandoned its condemnation proceedings by virtue of the parties' stipulation of dismissal provided two independent grounds for its order awarding costs pursuant to N.C. Gen. Stat. § 40A-8(b). The Town's sole contention is that Southeast was not entitled to recover costs unless the 2007 condemnation action was "wrongful," and, because Southeast held no interest in the Depot Lot, the Town's conduct in attempting to condemn the Depot Lot cannot be construed as wrongful. We have addressed and rejected the Town's argument that Southeast held no interest in the Depot Lot in the companion opinion, COA11-1569, and we likewise reject that argument here for the reasons stated therein. Because the Town predicates its appeal entirely upon this argument and offers no additional authority or reason in support of its position, we hold the Town has abandoned its challenge to the trial court's 16 June 2011 order in all other respects. See N.C. R. App. P. 28(b)(6) ("Issues not presented in a party's

brief, or in support of which no reason or argument is stated, will be taken as abandoned."). We accordingly hold the trial court did not abuse its discretion in ordering the Town to pay Southeast's costs incurred in defending against the 2007 condemnation action.

IV. Conclusion

For the foregoing reasons, the trial court's order is Affirmed.

Judges MCGEE and STEPHENS concur.

Report per Rule 30(e).