

203 Va 653
Record No. 5423

**In the
Supreme Court of Appeals of Virginia
at Richmond**

WILLIAM K. WILLIAMSON, ET AL.

v.

**HOPEWELL REDEVELOPMENT AND
HOUSING AUTHORITY**

FROM THE CIRCUIT COURT OF THE CITY OF HOPEWELL

RULE 5:12—BRIEFS

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 5423

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 11th day of October, 1961.

WILLIAM K. WILLIAMSON, ET AL., Appellants,
against

HOPEWELL REDEVELOPMENT AND HOUSING
AUTHORITY, Appellee.

From the Circuit Court of the City of Hopewell

Upon the petition of William K. Williamson and Geneva M. Williamson an appeal is awarded them from a decree entered by the Circuit Court of the City of Hopewell on the 25th day of January, 1961, in a certain chancery cause then therein depending wherein Hopewell Redevelopment and Housing Authority was plaintiff and the petitioners were defendants; upon the petitioners, or some one for them, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

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PETITION.

To the Honorable Judge of said Court:

Your petitioner, Hopewell Redevelopment and Housing Authority, respectfully represents:

1. That it is a political subdivision of the Commonwealth of Virginia and as such is authorized and empowered by the laws of the State to condemn land or any interest or estate therein necessary for its use so as to provide accommodations for persons of low income.

2. That William K. Williamson and Geneva M. Williamson are the owners of Lots 11, 12 and 13, Block 5, Hopewell Park Subdivision.

3. That your petitioner proposes to construct on the site of said lots certain modern, safe, sanitary low cost housing units and therefore has need of the fee simple title to said premises for said purpose.

4. That the said lots are unimproved and that the petitioner has made a *bona fide* but ineffectual effort to acquire said lots from the owners thereof by purchase.

5. That there is also filed in said Clerk's office a plat showing a survey of the land or estate in the land which is sought to be condemned, which plat is duly of record in the Clerk's office of this Court in Plat Book 5 at Page 49. A plat has not been filed with this petition showing a profile because your petitioner does not contemplate making any permanent cuts or fills and will build no trestles or bridges on said property. Plat of survey attached.

WHEREFORE, your petitioner prays for the appointment of Commissioners, as provided by law, to ascertain what will be a just compensation for the land or the interest in land proposed to be condemned for its uses and to award the damages, if any, resulting to the adjacent or other property of the

owner or owners or to the property of any other
page 3 } person beyond the peculiar benefits that will accrue
to such properties respectively from the construction of your petitioner's works.

HOPEWELL REDEVELOPMENT &
HOUSING AUTHORITY, A POLITICAL
SUBDIVISION OF THE COMMONWEALTH OF VIRGINIA
By ERNEST J. CONNELLY
Executive Director.

J. E. CUDDIHY, p. q.
State Planters Bank Building
Hopewell, Virginia.

State of Virginia,
City of Hopewell, to-wit:

This day personally appeared before me, Stina P. Peach, a Notary Public in and for the City and State aforesaid, ERNEST CONNELLY, and made oath that he is the Executive Director of the Hopewell Redevelopment and Housing Authority, whose name is signed to the above petition, and that the matters and things stated in the foregoing petition are true.

My commission expires October 20, 1963.
Given under my hand this 9th day of November, 1960.

STINA P. PEACH
Notary Public.

Filed in the Clerk's Office the 14 day of November, 1960.

Teste:

J. H. H., Clerk.

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PROOF OF SERVICE.

Returns shall be made hereon, showing service of Subpoena in Chancery issued 11/14, 1960, with copy of Bill of Complaint filed 11/14, 1960, attached:

Executed on the 15 day of November, 1960, in the City of Hopewell, Virginia, by delivering a true copy of the above mentioned papers attached to each other, to Geneva M. Williamson in person.

.....
Sergeant, City of Hopewell, Va.
By, Deputy Sergeant.

William K. Williamson could not be found at his place of abode on the 15 day of Nov., 1960 so the within subpoena in chancery with copy of bill of complaint was executed on the 15 day of Nov., 1960 within the City of Hopewell by delivering a true copy of the same in writing and giving information of its purport to Geneva M. Williamson who was found at her usual place of abode and who is a member of his family and above the age of 16 yrs.

R. E. EGERTON, City Sgt.
By....., Deputy City Sgt.

Returned and filed the 15th day of November, 1960.

J. H. H., Clerk.

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* * * * *

NOTICE.

To: William K. Williamson and Geneva M. Williamson, 223 S. 9th Street, Hopewell, Virginia:

You are hereby notified that the Hopewell Redevelopment and Housing Authority, a political subdivision of the Commonwealth of Virginia, will at 10 o'clock A. M. on the 5th day of December, 1960, or as soon thereafter as counsel may be heard, apply to the Circuit Court of the City of Hopewell, Virginia at the Courthouse thereof in the City of Hopewell, Virginia, for the appointment of Commissioners to ascertain what will be a just compensation for the land or for the interest or estate therein proposed to be condemned for the use

of the Hopewell Redevelopment and Housing Authority in the serving of the public, and to award the damages, if any, resulting to the adjacent or other property owned by you or the property of any other person beyond the peculiar benefits that will accrue to you respectively from the construction and maintenance of the work or improvement proposed to be done or made by the Hopewell Redevelopment and Housing Authority upon, over and across those certain lots or parcels of land described in the petition filed in said Court, to which reference is hereby made, the said lots being as follows:

Lots 11, 12 and 13, Block 5

according to a plat and survey of Hopewell Park Subdivision of the City of Hopewell, made by L. Douglas Pritchard and of record in the Clerk's office of this Court in Plat Book 5 at Page 49, reference to which is hereby made.

The ownership, location and description of the said property and the peculiar nature of the work will more fully appear by reference to said petition filed in the office of the Clerk of this Court.

HOPEWELL REDEVELOPMENT &
HOUSING AUTHORITY
JAMES E. CUDDIHY
By Counsel.

Filed in Clerk's Office 15 day Nov., 1960.

J. H. H., Clerk.

* * * * *

(on back)

Executed on the 15 day of Nov., 1960, within the city of Hopewell Va., by delivering a true copy of the within notice for condemnation of land in writing to Geneva M. Williamson in person.

R. E. EGERTON
City Sergeant.

By
Deputy City Sergeant.

William K. Williamson could not be found at his place of abode on the 15 day of Nov. 1960 so the within notice for con-

demnation of land was executed on the 15 day of Nov. 1960 within the city of Hopewell by delivering a true copy of the same in writing and giving information of its purport to Geneva M. Williamson who was found at his usual place of abode and who is a member of his family and above the age of 16 yrs.

R. E. EGERTON, City Sgt.
By Deputy City Sgt.

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* * * * *

ORDER.

It appearing to the Court that Hopewell Redevelopment and Housing Authority, a political subdivision of the Commonwealth, sometimes hereinafter called "Authority," pursuant to the provisions of the Code of Virginia, heretofore filed its petition against the said defendants, sometimes hereinafter called "Owners" in the Office of the Clerk of this Court; and it further appearing that due notice has been duly executed on all of the defendants, as shown by the returns filed in this cause, of the intention of the Authority to apply to the Circuit Court of the City of Hopewell, Virginia, for the appointment of five disinterested freeholders of the City of Hopewell, Virginia, who, or any three or more of whom, shall ascertain a just compensation to the owners for the fee simple title in and to

Lots 11, 12 and 13 Block 5 of "Hopewell Park," a subdivision of said City of Hopewell, according to a plat and survey of the land or estate in the land which is sought to be condemned, which plat is duly of record in the Clerk's office of this Court in Plat Book 5 at Page 49, and award the damages, if any, resulting to the adjacent or other property of the owner or owners or to the property of any other person beyond the peculiar benefits that will accrue to such properties respectively from the construction and operation of the Authority's works.

And it further appearig to the Court that the property proposed to be taken is necessary for the uses and purposes of said Authority, and that the Authority, through its officers and agents has made a *bona fide* but ineffectual effort to acquire the said property by purchase from the said owners; but that said effort has failed because the Authority and the said owners have been unable to agree upon the price

of the same. NOW THEREFORE, the Court doth adjudge and order that this cause be and it is docketed and doth hereby appoint Norwood Wilson, J. Weldon Lamb, James page 8 } J. Vergara, R. C. King and W. R. McCann, five disinterested freeholders, residing in the City of Hopewell, Virginia, who, or any three or more of whom shall meet at the Courthouse in the City of Hopewell, Virginia, at 10 o'clock A. M. on the 12th day of December, 1960, and who being first duly sworn as required by law, shall then view the said property to be condemned and the adjacent or other property, if any, of the said owners or tenants and the property of any other person or persons affected by the proposed condemnation, and, after hearing proper evidence, if any be offered by any parties in interest shall ascertain a just compensation to the said owners for the property so proposed to be taken by the said Authority, and to assess damages, if any, resulting to the adjacent or other property of the owners and to the property of any other person or persons beyond the peculiar benefits that will accrue to such property from the construction and operation of the Authority's works and make report thereof as required by law.

Any one or more of the Commissioners attending at the hour, date and place designated may adjourn the Commissioners from time to time until the business shall be finished, and the Commissioners having viewed the land may from time to time adjourn to such place or places in the City of Hopewell, Virginia, as they may deem expedient for the purpose of hearing evidence and arguments and conferring about and formulating their report.

Enter this Dec. 5, 1960.

J. J. TEMPLE, Judge.

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REPORT OF COMMISSIONERS.

We, Norwood Wilson, James J. Vergara, R. E. King, J. Weldon Lamb & W. R. McCann, Commissioners appointed by the Circuit Court of the City of Hopewell, Virginia, to ascertain what will be a just compensation for the land of the freehold and improvements thereon, whereof William K.

Williamson, *et ux* are tenants and for such other property as proposed to be taken by the Hopewell Redevelopment & Housing Authority, and to assess the damages, if any, resulting to the adjacent or other property of such tenants or owners, or to the property of any other person beyond the peculiar benefits that will accrue from the construction and operation of the Authority's works, do certify that on the 12th day of December, 1960, the day assigned in the order, we met together on the said land, the limits which were then and there described to us as follows, to-wit: Lots 11, 12 and 13, Block 5, HOPEWELL PARK, a subdivision of the City of Hopewell, Virginia; that after being duly sworn, upon a view of the property aforesaid, and of the adjacent and other property of such owners and of the property of other persons who will be damaged in their property by the construction and operation of the works of the said Authority and upon such evidence as was before us, we are of the opinion and do ascertain that for such property so to be taken \$750.00 will be a just compensation, and that the damage to the adjacent and other property of such tenants or owners and to the property of other persons by reason of the construction and operation of such Authority's works beyond the peculiar benefits that will accrue to such property from the construction and operation of such works, are nothing.

Given under our hands this 13th day of December, 1960.

NORWOOD WILSON
JAMES J. VERGARA
R. E. KING
J. WELDON LAMB
W. R. McCANN

Filed in Clerk's Office 13 day Dec. 1960.

J. H. H., Clerk.

page 15 } State of Virginia,
 City of Hopewell, to-wit:

I, J. HAMILTON HENING, Clerk of the Circuit Court in and for the City and State aforesaid, do certify that Norwood Wilson, J. Weldon Lamb, James J. Vergara, R. E. King, and W. R. McCann have this day made oath before me that they will faithfully and impartially ascertain what will be a just compensation for such land of the freehold whereof WILLIAM K. WILLIAMSON and GENEVA M. WILLIAM-

SON are tenants, and for such other property, if any, as is proposed to be taken by the Hopewell Redevelopment and Housing Authority for its purposes and award the damages, if any, resulting to the adjacent and other property of such tenants or owners and to the property of any other person beyond the peculiar benefits that will accrue to such properties respectively from the construction and operation of the Authority's works, and will truly certify the same.

Given under my hand this 12 day of December, 1960.

J. HAMILTON HENING, Clerk.

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December 22, 1960.

J. E. Cuddihy, Esquire
State Planters Bank Building
Hopewell, Virginia

Dear Mr. Cuddihy:

I enclose my grounds of defense in the condemnation suit against Garrett and Williamson with an order allowing their filing, which I ask you to endorse.

I have not yet gotten enough information to present an intelligible demand by way of settlement but expect to have one ready by the first of the year.

Kindest personal regards and my best wishes for a happy holiday season.

Sincerely yours,

PENDLETON, CONNELLY &
HALL
By LEWIS S. PENDLETON, JR.

LSP,Jr.:cc

Enclosures

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GROUNDS OF DEFENSE.

To the Honorable Judge of said court:

Come now the defendants, William K. Williamson and Geneva M. Williamson, by counsel, and for their grounds of defense to the petition of the Hopewell Redevelopment and Housing Authority exhibited by Ernest J. Connelly, Executive Director, said Housing Development being a political subdivision of the Commonwealth of Virginia, answer and say as follows:

1. The defendants deny that the petitioner has made a *bona fide* effort to purchase the property of the defendants, in that the petitioner has wholly refused to consider the damage to the residue of defendants property, which damage will be substantial and will be solely and directly caused by the petitioner.

2. And for the reasons aforesaid, defendants state that the petitioners offer to purchase was arbitrary and had no relationship to the fair and actual value of defendants property herein sought to be condemned.

page 20 } 3. Otherwise the defendants admit paragraphs 1, 2, 3, 4 and 5 of the bill of complaint exhibited against them and unite in the prayer of the petitioner for the appointment of Commissioners, as provided by law, to ascertain what will be a just compensation for the land or the interest in land proposed to be condemned for its uses and to award damages, resulting to the adjacent property of these defendants.

WILLIAM K. AND GENEVA M.
WILLIAMSON
By LEWIS S. PENDLETON, JR.
Of Counsel.

Tendered 12/27/60.

J. J. T.

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ORDER.

This day came the defendants, by their counsel, and tendered their grounds of defense and moved that it be received and filed. It appearing to the Court proper so to do, it is ordered that such grounds of defense be filed among the papers in this suit.

I ask for the entry of this order:

LEWIS S. PENDLETON, JR.

Of counsel for the defendants.

I have seen this order and object to its entry:

JAMES E. CUDDIHY

Of counsel for the complainant.

Refused 12/27, 1960.

J. J. T.

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EXCEPTIONS TO REPORT OF COMMISSIONERS.

To the Honorable J. J. Temple, Judge of said Court:

Exceptions are hereby tendered and filed to the report of the Commissioners in the above styled matter upon the ground that no hearing was held by the Commissioners appointed, and no notice of meeting, or opportunity to be heard was afforded the defendants for the presentation of evidence relative to the value of this land sought to be taken and the damages to the adjacent property. And upon further grounds that the award for the value of the land taken and the dam-

ages to the adjacent property are contrary to the law and the evidence and are grossly inadequate.

WILLIAM K. WILLIAMSON
and
GENEVA M. WILLIAMSON
By LEWIS S. PENDLETON, JR.

Filed in Clerk's Office 11th day of January 1961.

J. H. HENING, Clerk.

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MOTION TO VACATE AND DISMISS.

To the Honorable J. J. Temple, Judge of said court:

The undersigned defendants, William K. Williamson and Geneva M. Williamson, respectfully move this Honorable Court to vacate and set aside the order entered herein on December 5, 1960, whereby commissioners were appointed; and to dismiss the proceedings as to them for the following reasons, to-wit:—

1. These defendants had no notice of the day or time designated by the Court for the meeting of commissioners as required by §25-31 of the Code of Virginia of 1950, as amended.

2. These defendants had no knowledge of the entry of an order appointing December 12, 1960 as the time for the meeting of the commissioners.

3. The petitioner has proceeded against these defendants by Petition, and Subpoena in Chancery dated November 14, 1960, but has not allowed the expiration of twenty-one days from the date of service before applying for the appointment of commissioners on December 1, 1960.

4. The requirements of notice and an opportunity to be heard are essential to due process, and the failure of the petitioner to provide notice and an opportunity to be heard will render any subsequent taking unconstitutional and void in that these defendants will be

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deprived of their property without due process of law in violation of §11 of the Constitution of Virginia.

WILLIAM K. WILLIAMSON
and
GENEVA M. WILLIAMSON
By LEWIS S. PENDLETON, JR.
Of Counsel.

Filed 1/18/60.

J. J. T.

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ORDER.

On the 18th day of January, 1961 came the defendants, William K. Williamson and Geneva M. Williamson, by counsel, and moved the Court to vacate and set aside the order appointing commissioners, entered herein on December 5, 1960; and to dismiss the proceedings as to these defendants on the grounds set forth in his written motion.

And the Court having heard the arguments of counsel on said motion doth over-rule said motion to which ruling of the Court, the defendants, by counsel, object and except.

And the Court having heard the arguments of counsel on the exceptions filed January 11, 1961, of the defendants to the Reports of the Commissioners, which was filed on December 13, 1960, the Court doth over-rule the said exceptions, to which said ruling the defendants, by counsel, object and except.

And this cause, came on this day to be heard on the papers formerly read, upon the report of the Commissioners filed on the 13th day of December, 1960, and was argued by counsel.

ON CONSIDERATION WHEREOF, it appearing to the Court that exceptions were duly filed and over-ruled to said report; that more than thirty (30) days have elapsed since the filing of the said report; and that the Hopewell Redevelopment and Housing Authority has paid to J. Hamilton Hening, Clerk of this Court, the sum of \$750.00 as ascertained by the said Commissioners in said report, which payment is evidenced by receipt of said Clerk filed in the papers of this cause, and that the title to the property hereinafter described

is necessary for the use of the said Hopewell Redevelopment and Housing Authority for its purposes, therefore, the Court doth approve, ratify, and confirm said report in all respects and doth confirm unto the said Hopewell Redevelopment and Housing Authority as provided by statute, the fee simple title in and to the property hereinafter described, page 26 } to-wit:

Lots 11, 12 and 13, Block 5, Hopewell Park Subdivision, Hopewell, Virginia

And the Court doth adjudge, order and decree that the Clerk of this Court record the report of the said Commissioners, together with a copy of this order and index the same in the name of Hopewell Redevelopment and Housing Authority as Grantee, and in the names of William K. Williamson and Geneva M. Williamson as Grantors, in the current deed book in his office.

AND IT FURTHER APPEARING to the Court that R. C. King, W. R. McCann, James J. Vergara, Norwood Wilson and J. Weldon Lamb, the five (5) Commissioners who were appointed by order entered in this cause on the 5th day of December, 1960, were engaged in and about their duties for a period of two (2) days; and it further appearing to the Court that in accordance with Section 25-27 of the Code of Virginia, as amended, the Court should fix the compensation of said Commissioners for their services, which compensation should be paid by the Clerk of this Court and taxed against the Condemnor as part of the cost of this proceeding. It is ordered that each of the five aforesaid Commissioners be allowed compensation for his services in the amount of \$2.25, which amount shall be paid to each of them by the Clerk of this Court and shall be taxed against the Condemnor as part of the cost of this proceeding.

I ask for this:

JAMES E. CUDDIHY
Attorney for Petitioner.

Seen but objected to:

LEWIS S. PENDLETON, JR.
Attorney for Defendants.

Enter this Jan. 25, 1961.

J. J. TEMPLE, Judge.

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

To the Clerk of the Circuit Court of the City of Hopewell:

I hereby give notice that I shall apply to the Supreme Court of Appeals of Virginia for a writ of error from the judgment entered in this case on the 25th day of January, 1961.

The following errors are assigned:

(1) That the Court erred in refusing to grant the defendant's motion to vacate and dismiss among the grounds assigned in the defendant's said motion.

(2) The Court erred in overruling the exceptions filed on behalf of these defendant's on January 11, 1961, to the report of the Commissioners filed on December 13, 1960.

LEWIS S. PENDLETON, JR.
Counsel for Defendants.

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A Copy—Teste:

H. G. TURNER, Clerk.

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