

Bond Case Briefs

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EMINENT DOMAIN - ARKANSAS

Cooper v. Circuit Court of Faulkner County

Supreme Court of Arkansas - October 3, 2013 - S.W.3d - 2013 Ark. 365

City initiated condemnation action against property owners. The circuit court granted owners' motion for continuance of trial, but ordered owners to pay, within five days, city's attorney fees and costs incurred in preparing for trial and court clerk's expenses in summoning jurors for jury selection, and prohibited owners from filing additional pleadings until such fees and costs were paid. Owners then petitioned for writ of prohibition or in alternative for writ of certiorari requiring Circuit Court to rescind order.

The Supreme Court of Arkansas held that:

- Writ of prohibition was not permissible remedy for rescission of order already issued, and
- Writ of certiorari would issue to require circuit court to rescind order that was clear, gross abuse of its discretion, in violation of owners' right of access to courts.

Although continuance was appealable, owners had no other remedy to challenge circuit court's jurisdiction to issue those conditions of continuance and prohibition against filing additional pleadings. Circuit court exceeded its jurisdiction and committed gross abuse by requiring payment of fees and costs as condition of filing additional pleadings, in violation of owners' constitutional right of access to courts.