

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION**

COLUMBIA GAS TRANSMISSION
CORPORATION,

Plaintiff,

v.

AN EASEMENT TO CONSTRUCT, OPERATE,
AND MAINTAIN A 24-INCH GAS
TRANSMISSION PIPELINE ACROSS PROPERTIES
IN LOUISA COUNTY, VIRGINIA, OWNED BY
JAMES A. O'CONNOR, NINA J. O'CONNOR,
AND UNKNOWN PERSONS AND INTERESTED
PARTIES,

Defendants.

CIVIL NO. 3:07CV00028

MEMORANDUM OPINION

JUDGE NORMAN K. MOON

This matter is before the Court on Defendants James and Nina O'Connors' Motion to Alter Judgment (docket no. 174). For the reasons set forth below, the O'Connors' Motion will be denied in a separate Order to follow.

I. INTRODUCTION

On November 1, 2005, the Federal Energy Regulatory Commission issued Columbia a certificate of public convenience and necessity¹ permitting the construction of two twenty-four inch natural gas transmission pipelines across several properties in Greene County and Louisa County, Virginia, including the O'Connors' property in Louisa County. On June 4, 2007, after unsuccessful attempts to negotiate the terms of the easements with the various property owners, Columbia filed suit in this Court, seeking condemnation of the property interests necessary for the completion of its two new

¹ Under Section 7(h) of the Natural Gas Act, a pipeline company that holds a certificate of public convenience and necessity has the right to acquire property needed for its pipeline project by eminent domain if it cannot acquire the necessary land by contract with the landowner. *See* 15 U.S.C. § 717f(h).

pipelines. On July 20, 2007, I granted partial summary judgment in Columbia's favor on the issue of its authority to condemn the easements over the various properties and entered a preliminary injunction granting Columbia immediate access to and possession of the condemned easements, including those over the O'Connors' property. Columbia proceeded to exercise its condemnation authority by installing a portion of a pipeline (Line VM-109), a pig receiver, and other above-ground appurtenances on the O'Connors' property. Because Columbia and the O'Connors could not agree on the amount of just compensation owed for the condemnation, a jury trial on the issue was set for May 20, 2009.

On April 21, 2009, Columbia filed an amended complaint (docket no. 114) pursuant to Federal Rule of Civil Procedure 71.1(f), which permits a plaintiff to amend its complaint at any time before trial without leave of court as long as the amendment would not result in a dismissal inconsistent with Rule 71.1(i).² The amended complaint contained two significant differences from the original complaint: (1) it permitted the construction of roads over Line VM-109, so long as the construction complied with Columbia's "Minimum Guidelines" (the original complaint prohibited the construction of roads over the pipeline), and (2) it removed from the areas to be condemned the portion of Line VM-109 running "approximately parallel" to two other existing pipelines on the O'Connors' property. Columbia claimed that the second amendment reflected the parties'

² Rule 71.1(i)(1) permits a plaintiff to dismiss a condemnation action as to a piece of property in three different circumstances. First, Rule 71.1(i)(1)(A) permits a plaintiff to dismiss without a court order by filing a notice of dismissal, as long as the compensation hearing has not begun and the plaintiff has not acquired title or a lesser interest or taken possession. Second, Rule 71.1(i)(1)(B) permits dismissal of an action in whole or in part by joint stipulation of the parties. Finally, Rule 71.1(i)(1)(C) permits a court, after a motion and hearing, to dismiss a condemnation action as to a piece of property at any time before compensation has been determined and paid. "But if the plaintiff has already taken title, a lesser interest, or possession as to any part of it, the court must award compensation for the title, lesser interest, or possession taken." Fed. R. Civ. P. 71.1(i)(1)(C).

mutual understanding that Columbia already had the right to install additional pipelines “approximately parallel” to the two existing pipelines pursuant to a 1950 Right of Way Agreement and thus did not need to condemn for that right. At a pretrial hearing held on May 18, 2009, over the O’Connors’ objections, I permitted the amendment of the complaint.³

Just prior to the start of the jury trial, the parties submitted a proposed Integrated Pretrial Order (docket no. 140) identifying, among other things, the contested issues of law that required a ruling from the Court. After the pre-trial hearing, I issued an order on May 19, 2009 that clearly settled the contested legal issues so that the parties could properly frame their strategies and arguments concerning just compensation prior to the start of the jury trial (docket no. 143). The May 19, 2009 Order established, among other things, that:

1. The relevant date of the taking of the O’Connors’ property was June 4, 2007;
2. The 1950 Right of Way Agreement was binding on the O’Connors and Columbia;
3. The area of the newly-installed pipeline that crossed under the pre-existing pipelines on the O’Connors’ property was “approximately parallel” to the pre-existing lines, as defined in the 1950 Right of Way Agreement; and
4. Under the 1950 Right of Way Agreement, the O’Connors could not assert a claim for compensation in excess of \$275.00 for the installation of the new pipeline (excluding the installation of the pig receiver) but were entitled to any damages that arose from the construction, maintenance, operation, and removal of the new pipeline.

³ The O’Connors filed a Motion to Dismiss Columbia’s amended complaint, which I initially granted at the pretrial hearing for reasons stated from the bench and in a Memorandum Opinion issued after the trial on May 26, 2009 (docket no. 157). Despite initially granting the Motion to Dismiss, I did allow Columbia to amend its complaint prior to the jury trial, pursuant to Rule 71.1. The reasoning behind this decision is fully explained in the May 26, 2009 Memorandum Opinion.

After a two-day trial during which both parties presented evidence concerning the amount of just compensation owed to the O'Connors for the partial taking of their property, the jury rendered a verdict awarding the O'Connors \$24,400.00 (docket no. 154). The verdict included \$1,600.00 for the condemnation of any temporary easements, \$2,800.00 for the condemnation of any permanent easements, and \$20,000.00 for the damage to the value of the remainder of the O'Connors' property.

On June 23, 2009, after the jury trial, Columbia filed a Motion asking the Court to enter a final order of condemnation describing the exact easements condemned over the O'Connors' property and confirming the amount of compensation to be paid for the easements. On July 7th, the O'Connors filed a Motion for the Award of Compensation, arguing that they were entitled to an evidentiary hearing on the compensation owed for the rights taken and possessed by Columbia between July 20, 2007 (the date the Court granted Columbia's motion for partial summary judgment on the issue of its authority to condemn the easements and entered a preliminary injunction granting it immediate access to and possession of the condemned easements on the O'Connor property) and May 18, 2009 (the date the Court permitted the amendment of Columbia's complaint). After a hearing, I granted Columbia's Motion and denied the O'Connors' Motion in an Order and Memorandum Opinion dated July 30, 2009, holding that: (1) the Court's May 19, 2009 Order issued in advance of the jury trial provided that the O'Connors could seek damages for the installation of Line VM-109 and damages arising from the construction, maintenance, operation and removal of said line, and (2) that the O'Connors in fact presented such claims through their expert witnesses at trial. On August 13, 2009, the O'Connors timely filed the instant Motion, arguing that the Court erroneously prevented

them from recovering compensation for the rights taken by Columbia between July 20, 2007 and May 18, 2009. The O’Connors ask the Court to “amend its judgment to reflect that the O’Connors are permitted to present evidence as to the value of the rights not taken by Columbia Gas in the Amended Complaint, but nonetheless possessed by Columbia Gas for twenty-two months.”

II. APPLICABLE LAW

Federal Rule of Civil Procedure 59(e) preserves a district court’s right to alter or amend a judgment after the judgment is entered. Fed. R. Civ. P. 59(e). Although the Rule does not provide a standard under which a court may grant a motion to alter or amend judgment, the Fourth Circuit recognizes three potential grounds for amending an earlier judgment: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice. *Pac. Ins. Co. v. Am. Nat’l Fire Ins. Co.*, 149 F.3d 396, 402 (4th Cir. 1998). Accordingly, Rule 59(e) “may not be used to relitigate old matters” or to “raise arguments which could have been raised prior to the issuance of the judgment.” *Id.* at 403.

III. DISCUSSION

The O’Connors’ Motion offers nothing more than reiteration of its earlier arguments in support of its Motion for the Award of Compensation (docket no. 163), which the Court denied in its previous Memorandum Opinion. Because Rule 59(e) is not a vehicle for relitigating old matters and the O’Connors have failed to identify any of the grounds for altering or amending a judgment recognized by the Fourth Circuit, their Motion will be denied in a separate Order to follow.

The Clerk of the Court is hereby directed to send a certified copy of this
Memorandum Opinion and the accompanying Order to all counsel of record.

Entered this _____ day of September, 2009.



NORMAN K. MOON
UNITED STATES DISTRICT JUDGE

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ORDER

JUDGE NORMAN K. MOON

Defendants James and Nina O'Connors' Motion to Alter Judgment (docket no. 174). For the reasons stated in the accompanying Memorandum Opinion, the O'Connors' Motion is **DENIED**.

The Clerk of the Court is hereby directed to send a certified copy of this Order and the accompanying Memorandum Opinion to all counsel of record.

It is so **ORDERED**.

Entered this _____ day of September, 2009.



NORMAN K. MOON
UNITED STATES DISTRICT JUDGE