

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

CITY OF CINCINNATI,	:	APPEAL NOS. C-180421
		C-180422
Plaintiff-Appellee/Cross-Appellant,	:	TRIAL NO. A-1604975
	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
	:	
GREENACRES FOUNDATION,	:	
	:	
Defendant-Appellant/Cross-Appellee.	:	

We consider these appeals on the accelerated calendar, and this judgment entry is not an opinion of the court. See Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

In order to comply with orders of this court, see *State ex rel. Greenacres Found. v. City of Cincinnati*, 2015-Ohio-5479, 56 N.E.3d 335 (1st Dist.), and the trial court, plaintiff-appellee/cross-appellant the city of Cincinnati (“the city”) filed an appropriation complaint to determine the just compensation owed to defendant-appellant/cross-appellee Greenacres Foundation for the temporary, regulatory taking of a 2.85 acre parcel of land (“the property”). Following a jury trial, the trial court entered a total award of \$180,020 in favor of Greenacres: \$53,436 as compensation for the temporary taking of the property and \$127,557 in residual damages to the roughly 18 acres of land adjacent to and surrounding the property (“the residual property”). The trial court also awarded Greenacres interest on the total award as well as \$32,074.75 in attorney fees, costs and expenses.

Greenacres appealed the trial court’s judgment, challenging the award of attorney fees, and the city cross-appealed, challenging the award of damages for the diminished

value of the residual property during the taking. For the following reasons, we vacate the award of damages with respect to the residual property. We affirm the trial court's judgment in all other respects, including the award of attorney fees.

In its appeal, Greenacres raises a single assignment of error, challenging the award of attorney fees, arguing that the trial court improperly based the award on R.C. 163.21(C)(1). Determining the statutory basis for an attorney-fee award is a legal question, which we review de novo. *See Castlebrook Ltd. v. Dayton Prop. Ltd. Partnership*, 78 Ohio App.3d 340, 346, 604 N.E.2d 808 (2d Dist.1992).

R.C. 163.21(C) and 163.09(G) each provide a statutory basis for awarding attorney fees in eminent domain or condemnation cases. Both sections allow for an award of attorney fees that the property owner actually incurred, but fees awarded under R.C. 163.21(C)(1) are subject to the cap set forth in R.C. 163.21(C)(4), which limits the award of fees to “[25%] of the amount by which the final award of compensation exceeds the agency's initial good faith offer or revised offer or \* \* \* the last written offer made.” R.C. 163.09(G) is not subject to the cap, *see* R.C. 163.21(C)(5), and that is the section that Greenacres argues the trial court should have applied in awarding attorney fees.

R.C. 163.21(C)(1) provides for an award of attorney fees to the property owner “when an agency appropriates property and the final award of compensation is greater than [125%] of the agency's good faith offer for the property.” R.C. 163.09(G) authorizes an award of attorney fees where the property owner contests the agency's taking of the property, and the trial court determines “the matter in favor of the owner as to the necessity of the appropriation.”

After a review of the record, we are unpersuaded by Greenacres's argument that R.C. 163.09(G) is the proper statutory basis for an attorney-fee award in this case. Here, the trial court did not make any finding as to the necessity of the city's appropriation of the property owned by Greenacres. The reason why the trial court did not make any such finding is that the only issue before the trial court was the “just compensation” owed to Greenacres for the city's temporary taking of the property. We note that in an

earlier, separate case between these parties Greenacres did contest the city's taking of the property and the trial court had made a determination as to whether the taking was necessary, but those issues are currently not before us. *See State ex rel. Greenacres Found. v. Cincinnati*, 2015-Ohio-5479, 56 N.E.3d 335 (1st Dist.) (affirming, inter alia, the trial court's determination that the city had unnecessarily taken Greenacres's property). Thus, while R.C. 163.09(G) may have been the proper statutory basis to award attorney fees in the prior case, it is not the proper statutory basis in this case where the only dispute between the parties is the amount of compensation owed to Greenacres. Accordingly, Greenacres's single assignment of error is overruled.

In the city's appeal, it raises seven assignments of error all dealing with the award of residual damages. However, we only address the third assignment of error, as it is dispositive of the city's appeal. In that assignment, the city essentially argues that there was insufficient evidence for the jury to award Greenacres damages for the diminished value of the residual property because Greenacres did not have an ownership interest in the residual property. We review the sufficiency of the evidence to support a judgment de novo. *Lehigh Gas-Ohio L.L.C. v. Cincy Oil Queen City, L.L.C.*, 1st Dist. Hamilton No. C-130127, 2014-Ohio-2799, ¶ 43, citing *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 11.

It is undisputed that although Greenacres had owned the residual property at one time, it had transferred the residual property to a limited liability company, Greenacres Westwood, LLC ("Westwood"), prior to the city's compensable taking of the 2.85 acre parcel of land. (The 2.85 acre parcel remained in Greenacres's name.) It is also undisputed that Greenacres is the sole member of Westwood. But under Ohio law property owned by a limited liability company is property of the company and not property of the members of the company. R.C. 1705.34; *Whittaker v. Groves Venture, LLC*, 538 B.R. 391 (Bankr.S.D. Ohio 2015), citing *Ogle v. Hocking Cty.*, 4th Dist. Hocking No. 14CA3, 2014-Ohio-5422. In *Ogle*, a married couple owned property, which they transferred to a limited liability company of which they were the only members. The

Ogles initiated a trespass action regarding the property with them named as the plaintiffs. The court examined the ownership issue, and held that because the company owned the property, the company was the real party in interest even though the Ogles were the only members of the company. *Ogle* at ¶ 25. Accordingly, the appellate court affirmed the trial court's dismissal of the trespass action.

Because Westwood is the legal entity that owns the residual property, Greenacres is not the real party in interest even though it is the only member of Westwood. *See* R.C. 1705.03(A) (a limited liability company is a legal entity capable of suing and being sued). Consequently, Greenacres was not entitled to a damage award for the diminished value of the residual property. Therefore, we sustain the city's third assignment of error and vacate the award of damages for \$127,557. Because we have vacated the award of damages as to the residual property, the amount of interest that the trial court ordered the city to pay Greenacres on the total jury award must be recalculated. Accordingly, we remand this case to the trial court for the limited purpose of determining the amount of interest now due on the remaining portion of the award to Greenacres. The city's remaining assignments of error are now moot.

In conclusion, we vacate the award of damages as to the residual property, but affirm the trial court's judgment in all other respects, including the award of attorney fees. A limited remand is ordered for the trial court to recalculate the interest due to Greenacres on the remaining portion of the judgment.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**MOCK, P.J., ZAYAS and BERGERON, JJ.**

To the clerk:

Enter upon the journal of the court on February 26, 2020,  
per order of the court\_\_\_\_\_.

Presiding Judge