

STATE OF SOUTH CAROLINA )  
COUNTY OF Horry )

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
CIVIL ACTION NO.: 2012-CP-26-01358

BETSY JOHNSON AHNERT )  
Plaintiff, )

DEC 19 2013

v. )

Horry County, Payne W. )  
Skipper, Sr. and Jessica S. )  
Skipper, )  
Defendants. )

**ORDER**

13 NOV 22 PM 2:21  
CLERK OF COURT  
Appeals

In this case, the plaintiff seeks closure of a portion of a public road running through her property pursuant to Code of Laws of South Carolina 1976 §§ 57-9-10, et seq. This case came to trial on November 5, 2013. Plaintiff appeared, represented by her attorney, David Popowski of Popowski Law Firm, LLC. Appearing as attorney for the Defendant Horry County was Sanford C. Graves of the Horry County Attorney's Office and appearing on behalf of Defendants Payne W. Skipper, Sr., and Jessica S. Skipper was attorney L. Morgan Martin of the Law Offices of L. Morgan Martin, P.A.

In her case-in-chief, the Plaintiff introduced the testimony of herself and her husband, Douglas Ahnert, along with a number of exhibits. At the end of the Plaintiff's case, the Defendants moved for Involuntary Dismissal, pursuant to Rule 41(b), *South Carolina Rules of Civil Procedure*, on the grounds that upon the facts and the law the Plaintiff has shown no right to relief. After considering the evidence presented, argument of counsel, relevant law, and fully reviewing the matter and record as a whole, the Court

finds that Defendants' motion should be granted, and that the Plaintiff's action herein be dismissed with prejudice.<sup>1</sup>

The Plaintiff commenced this action in February of 2012, seeking closure of a portion of a public road known as "Deertrack Lane." Deertrack Lane is a loop that connects to Pee Dee Road at both ends. A portion of Deertrack Lane runs through the plaintiff's property and connects to the properties of the two defendants, Payne W. Skipper, Sr. and Jessica S. Skipper. The Plaintiff alleges that the use of that portion of Deertrack Lane running through her property is not necessary for anyone else other than herself. She argues that the other property owners along Deertrack Lane have an alternate route to the main thoroughfare of Pee Dee Road.

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At trial, the Plaintiff presented evidence, including video, in support of her claim that commercial vehicles use that portion of Deertrack Road running through her property when traveling to and from a landscaping business operating on Deertrack Lane, that vehicular traffic often travels along the road in excess of the speed limit and, that traffic often trespasses onto the plaintiff's property. As a result, the public use of that portion of Deertrack Road running through the plaintiff's property causes noise and safety issues for the Plaintiff. The Plaintiff concedes that Deertrack Lane is a County maintained road, used by the public and by school busses. No other resident along Deertrack Lane supports closing the portion of Deertrack Lane running through the plaintiff's property.

All parties recognize that the law applicable to the Court's determination in this matter is that set forth in Code § 57-9-20 which provides that, "If the court shall determine that it is to be the best interest *of all concerned* that such street, road or

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<sup>1</sup> While the Court's decision is based upon the lack of necessary proof, it declines to grant Horry County's Motion to the extent it is based upon the alternative ground of lack of proper notice under Section 57-9-10 of the South Carolina Code.

highway be abandoned or closed, the court shall then determine in whom the title thereto shall be vested and issue an appropriate order.” (emphasis added). Therefore, in order for the Plaintiff to prevail in this action, the Court must find that it is in the best interest of “all concerned” that the road be closed. The Plaintiff bears the burden of proof.

The Plaintiff argues that she has met her burden in that she is requesting only a portion of Deertrack Lane closed; that which passes through her property. Plaintiff argues that she is the only one negatively affected by traffic along that portion of the road, she is the only one “concerned” as referenced in the statute, and her best interest lies in closure of that segment of roadway. The Court disagrees with that interpretation of Code § 57-9-20. Such an interpretation would mean that anyone who is bothered by traffic passing on a public road running through his or her property could petition successfully for closure of such segment of roadway, a result acknowledged by the Plaintiff. “In construing a statute, [the] Court will reject an interpretation when such interpretation leads to an absurd result that could not have been intended by the legislature.” Pollack v. Southern Wine & Spirits of America, 405 S.C. 9, 15, 747 S.E.2d 430, 433 (2013) (citing Lancaster County Bar Ass’n v. S.C. Comm’n on Indigent Defense, 380 S.C. 219, 222, 670 S.E.2d 371, 373 (2008)).

The language of Code § 57-9-20 is plain and unambiguous, and conveys a clear and definite meaning that contemplates closure of streets, roads or highways, not separate and individual segments based upon property ownership, as the Plaintiff argues. In addition, the statute contemplates that “all concerned” include other neighboring properties, and the public as a whole. (See Code § 57-9-10, requiring notice of a road closure action to be given to all abutting property owners, be published in the newspaper,

and that the road be posted.) As a result, the Court is bound to apply such meaning as was intended by the Legislature. "The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature." Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). "When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning." Id.

Having considered the evidence presented in light of relevant law, and having reviewed the record in its entirety, the Court finds that the Plaintiff has shown no right to relief, as she has failed to put forth any evidence that closure of Deertrack Lane, including that portion running through her property, is in the best interest of "all concerned." The most Plaintiff has shown to this Court is that road closure may be in her best interest alone, which is insufficient to enable the Court to grant the relief sought.

NOW, THEREFORE, based upon the above findings of fact and conclusions of law, it is hereby

ORDERED, that the Defendants' Motion for Involuntary Dismissal is GRANTED, and the Plaintiff's action herein is hereby DISMISSED, WITH PREJUDICE.

AND IT IS SO ORDERED.

DATED this 21<sup>st</sup> day of November, 2013.

  
HONORABLE BENJAMIN H. CULBERTSON  
PRESIDING JUDGE

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY  
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-26-1358

Betsy Johnson Ahnert  
PLAINTIFF(S)

Horry County, et al.  
DEFENDANT(S)

Submitted by: Benjamin H. Culbertson, Presiding Judge	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other  
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

FILED  
HORRY COUNTY  
13 SEP -6 PM 12:53  
CLERK OF COURT

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

*Defendants' Motion to Disallow Trial By Jury is GRANTED. The court finds this action to be one in equity. However, that portion of the county's motion seeking referral to the Master-In-Equity is DENIED as this case is not one for foreclosure, default nor referred with consent of the parties. (See Rule 53, SCRPC).*

RECEIVED

*This case is to be transferred to the non-jury roster and scheduled for trial in its priority according to the date on which this lawsuit was filed.* DEC 19 2013

ORDER INFORMATION

This order  ends  does not end the case.  
Additional Information for the Clerk :

SC Court of Appeals

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	\$ N/A
If applicable, describe the property, including tax map information and address, referenced in the order:		

22

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Benjamin H. Culbertson  
Benjamin H. Culbertson, Circuit Court Judge

2148  
Judge Code

August 29, 2013  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

David Popowski

L. Morgan Martin  
Sanford Cox Graves

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Keshia Reed

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

In this case, the plaintiff seeks closure of a road pursuant to S.C. Code Annotated §57-9-10, et seq., and title to the underlying property. Plaintiff alleges that the road closure is "in the best interest of all concerned."

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FORM 4

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COUNTY OF HORRY  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

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Betsy Johnson Ahnert  
PLAINTIFF(S)

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Submitted by: Benjamin H. Culbertson, Presiding Judge	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

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 Affirmed;  Reversed;  Remanded;  Other  
 NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

2013 DEC 19 PM 10:41

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

**Plaintiff's Motion for New Trial or Amendment of Judgment is DENIED.**  
(This motion is decided without oral arguments.)

RECEIVED

DEC 19 2013

SC Court of Appeals

ORDER INFORMATION

This order  ends  does not end the case.  
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
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*Benjamin H. Culbertson*  
Benjamin H. Culbertson, Circuit Court Judge  
SCRPC Form 4C (03/2013)

2148  
Judge Code

Dec. 18, 2013  
Date

