

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN)

SECOND JUDICIAL CIRCUIT

Canadian River Farms, Ltd., Colt Farms, Inc.,
B C Farms, Inc. n/k/a B C Farms of South
Carolina, Inc., and Outback Farms, Ltd.
Plaintiffs,

CASE NO.: 2016-CP-02-00511

Vs.)

ORDER

Beck J. Gonshorowski, The South Carolina
Department of Transportation and Aiken
County, South Carolina, a body politic and
political subdivision of the State of South
Carolina

Defendants,

FILED 6-27-16
Dei. Godard
J.C.C.P. & G.S.
Christa Unrapp 35
Deputy Clerk

Hearing Date: May 31, 2016
Plaintiff Attorney: Mary O. Guynn
Aiken County Attorney: James M. Holly
S. C. DOT Attorney: Natalie More
Court Reporter: Valerie McFarland

Procedure

1. The original Summons and Complaint was filed on March 10, 2016.
2. Pursuant to 57-9-10 S.C. Code Annotated, the plaintiff published the Notice of Filing Petition of Abandonment three times in the Aiken Standard. A Notice was also mailed to the abutting landowners. Finally, a Notice was posted pursuant to the statute on the property.
3. A letter of protest was filed by Robert E. Barrett and Carolyn Barrett on March 15, 2016.
4. A petition was filed objecting to the road closing on March 21, 2016.
5. Aiken County accepted service on March 10, 2016. It filed an answer on April 19, 2016 and did not object to the road closing.
6. South Carolina Department of Transportation was served on March 14, 2016 and the South Carolina Attorney General was served on March 15, 2016. A general answer was filed on April 20, 2016. In the second defense, this defendant denies it has any interest in the roads and had no objection to the road closure action.

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7. Becky Gonshorowski was served on March 12, 2016. She filed a letter/answer on April 12, 2016.
8. An Order of Reference was filed on May 12, 2016.
9. The hearing was held on May 31, 2016. Brandon Woody and the Plaintiff's attorney, Mary O. Guynn were present on behalf of the plaintiffs. Aiken County was represented by its attorney, James M. Holly. No appearance was made by South Carolina Department of Transportation or Becky Gonshorowski.
10. The plaintiff informed the court that an agreement had been reached with Becky Gonshorowski, an abutting landowner.
11. The Court inquired as to any members of the public who wished to testify based on the advertisement and/or public notice. Carolyn Garrett, Vickie Long and Michael Cave advised the court they wished to testify.

Statement of Facts

1. The plaintiffs and Becky Gonshorowski are abutting property owners whose property would be affected by the abandonment and closure of the road(s).
2. The following is a description of the roads maintained by Aiken County that plaintiff seeks to close:

ALL that certain portion of an unpaved county roadway known as Oak Ridge Club Road (C-800) located between Charleston Highway (US Highway 78) and Cedar Branch road (S-576) being 10,576 linear feet, more or less, TOGETHER WITH ALL that certain portion of an unpaved county roadway known as Old Bell Road (C-774) located between Oak Ridge Club Road (C-800) and Weyerhaeuser Road (C-776) being 6,034 linear feet, more or less

The aforesaid portions of the unpaved county roadways that are proposed to be closed are also shown on that certain plat prepared for Candian River Farms LLC by All Surveying Co., Inc. Dated February 11, 2015 and recorded February 17, 2015 in Plat Book 58, Pages 359-360, Aiken County Records.

Tax Map Parcel Numbers: 207-00-01-003
207-00-05-001

3. The plaintiff presented the testimony of Tyler Stone. Mr. Stone is a contractor who worked for the plaintiffs. He is familiar with the roads. He used the roads three to four days a week when he was doing work on the property. When he started work in the area, the unpaved roads were surrounded by heavily wooded areas. Visibility was limited in some areas. As part

of the process of creating working farms, the wooded areas around the roads were cleared. After this, he noticed an increase in the speed of the vehicles traveling on those roads. He believes travel on the roads is unsafe at times due to the speed of the vehicles. Since the plaintiffs own property on both sides of the road, farm equipment cross and use the roads, which creates dangerous situations. He testified about a specific incident where one worker walking around some equipment was almost struck by a passing car.

The roads are unpaved and are slick when wet. The Aiken County Sheriff's Department was notified but that did not help with the speed of vehicles on the road. There are no signs to regulate the speed of vehicles on the roads. He testified that trash has been dumped on different areas of the property. There have also been episodes of vandalism where unknown parties drive through the fields. A fire was also started on the property near one of the roads. Tires have been dumped off of Oak Ridge Club Road. Finally, there was some damage to the sign posted about the road closing. A mailbox was dumped in one of the fields. The plaintiff introduced several police reports that have been filed.

The witness said the plaintiffs were concerned about installing wells, transformers and irrigation systems due to the vandalism. Some improvements were not completed due to this concern. He believes the vandalism would be hindered if the roads are closed. There are still paved roads that would serve the area. He had a meeting with representatives of Aiken County and was aware of the Aiken County Resolution that it had no objections to the abandonment of the roads. Aiken County does maintain the roads. Closing Oak Ridge Club Road does not prevent any owners from having access to Highway 78 or other paved roads. He has the same opinion in regards to Old Bell Road.

The plaintiffs then presented the testimony of Brandon Woody. His family owns the real estate. He drives and observes the roads five to six days each week. The area around the roads were heavily wooded when the real estate was purchased. He did not notice vehicles traveling at excessive speeds at that time. After the trees were removed, he noticed that traffic on the roads and the speed of those vehicles traveled has increased. He agreed that visibility was better but he feels many vehicles travel at unsafe speeds on the roads. The sheriff department presence has helped but that department cannot stay in the area.

Since the property is a working farm, equipment is moved across the road. His concern is that there are hills and areas on the roads where it is difficult to see traffic approaching. He is

worried that the increased speed and the limited visibility in the same areas lead to an unsafe condition.

Mr. Woody reviewed the photographs that were previously introduced into evidence. The photographs showed fields and crops damaged when someone drove a vehicle through the fields on those roads. The photographs also showed other vandalism where unknown parties dumped tires on the property, damaged a sign, dumped a mailbox in the field. The vandalism started about one year ago and he believes some incident occurs almost every week.

If the roads are abandoned and closed, the plaintiff will install gates or dirt berms. He believes this would end the vandalism and the vehicles traveling at unsafe speeds. Although Aiken County has maintained the roads, the deeded owners actually own the real estate. Becky Gonshorowski is the only other owner with real estate abutting the road(s). No owner would be land locked if the roads are closed. There is still access to paved roads in the area. Mr. Woody also offered testimony about not planting some fields and the economic impact to the plaintiffs and the suppliers for the farms.

Aiken County offered no testimony and is not opposed to the court granting the plaintiff's action to abandon and close the roads. Ms. Gonshorowski did not appear at the trial and appears to have reached an agreement with the plaintiffs. The South Carolina Department of Transportation stated that it has no interest in the roads and has not opposed the plaintiffs being granted the requested relief.

Although numerous citizens appeared for the hearing, only three wished to testify. The plaintiffs objected to these individuals offering testimony since they are not named parties and no named party called them as witnesses. The court allowed the testimony. The statute requires public posting and three weeks of advertisement. The court must also determine if closing the road is in the best interest of all concerned. This process indicates that the court should allow members of the public to offer testimony about their concern of the road(s) being closed.

Carolyn Barrett is concerned about the response time of emergency vehicles in the area. The Windsor Fire Station serves the area. In responding to any emergency, it is 5.1 miles if the unpaved roads are used that the plaintiffs wish to close. It is 7.5 miles if the other paved roads are used. She believes this difference puts the public safety at risk. She does admit that vehicles may be able to travel at a higher rate of speed on the paved roads.

She believes a survey establishes that the plaintiffs wanted the roads closed when they purchased the property. In his rebuttal testimony, Mr. Woody testified that the owners had asked the county about relocating the roads. However, he testified that would not correct the safety issues or the vandalism. He is not willing to re-locate the roads and there is no testimony the county has ever agreed to that action.

Mrs. Barrett has not observed any vehicles traveling at a high rate of speed other than suppliers vehicles that are performing work for the plaintiffs. She also pointed out that the notice listed Old Bell Road as C-744, instead of the correct Road C-774. The posted signs provide a telephone number and notify the public of a pending road closure. The advertisement also included the names of the road.

She lives on Old Bell Road and would not be landlocked if the portion of the road was closed as requested by the plaintiffs.

Dr. Vickie Long owns property in the area, but outside of the area map introduced at the hearing. She testified about her concerns of 911 emergency response times without the use of Oak Ridge Club Road and Old Bell Road. She did agree that emergency vehicles would still be able to use U. S. Highway 78 and other paved roads in the area.

Michael Cave lives on Old Bell Road. He has a difficult time making a left hand turn into his property due to the traffic. He believes the biggest contributor to this problem is contractors and suppliers working for the plaintiffs. He has experienced significant problems with dust on his home and vehicle. He was not aware of any police reports about vandalism. However, the plaintiffs did introduce some police reports.

Conclusion of Law

1. The Court has jurisdiction of this matter. All parties were properly served.
2. The parties were properly notified of the hearing date.
3. The plaintiffs complied with the S. C. Code Ann. § 57-9-10 (2012) by filing the Notice by publication, mailing the Notice to all abutting property owners, and posting the correct signage as required by the statute.
4. Aiken County does not contest the plaintiffs request for relief.
5. South Carolina Department of Transportation did not attend the hearing. The answer filed states that the agency has no interest in the roads that are the subject of this action.

6. Becky Gonshorowski filed an answer but did not attend the hearing. The plaintiff advised the court that the plaintiffs had reached an agreement with this defendant.

7. S. C. Code Ann. § 57-9-20 states that the court shall determine if it is in the best interest of all concerned whether a road should be abandoned or closed.

8. Title to the property is already in the name of the private owner. Aiken County did not contest this testimony.

9. No defendant opposed closing the following section of Oak Ridge Club Road and Old Bell Road.

10. The specific legal description of the proposed road closing is:

ALL that certain portion of an unpaved county roadway known as Oak Ridge Club Road (C-800) located between Charleston Highway (US Highway 78) and Cedar Branch road (S-576) being 10,576 linear feet, more or less, TOGETHER WITH ALL that certain portion of an unpaved county roadway known as Old Bell Road (C-774) located between Oak Ridge Club Road (C-800) and Weyerhaeuser Road (C-776) being 6,034 linear feet, more or less

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Tax Map Parcel Numbers: 207-00-01-003
207-00-05-001

11. Carolyn Barrett and Dr. Vickie Long presented testimony about their concern of emergency vehicles having to travel further to respond to a call. However, it is not disputed that the roads at issue are not paved. The alternate routes are paved and no owner is land locked if the roads are closed.

12. Michael Cave issues appear to be primarily caused by more traffic on the road. If the road is closed, the traffic on that road should decrease.

13. The plaintiffs introduced evidence through testimony and exhibits about a safety issue due to the increased speed of vehicles on the road combined with the equipment used by the plaintiffs on the roads and crossing the roads. In addition, a fire was set on the plaintiffs property, trash has been dumped in the fields and vehicles have driven off of the roads and into the fields owned by the plaintiffs. The plaintiffs entered some police reports about these issues and photographs to substantiate the problems.

14. None of the defendants contest the roads being closed. All of the parties who testified agreed that owners would still have access to public paved roads. While interested parties filed documents prior to the trial only three testified about their opposition to the proposed closing of the roads as described above. While the distance for emergency vehicles may be longer there is still access over public roads. The routes that remain are paved roads. There was also no testimony from anyone with emergency services that any service use the unpaved roads.

15. The court finds the testimony about the financial impact to the plaintiffs is not relevant to the roads being closed.

16. Under S. C. Code Ann. § 57-9-20, the court may close road(s) if it is in the best interest of all concerned. Based on the testimony of the contractor and one of the owners, there are concerns for public safety considering the flow of traffic and the work being performed in the area. The plaintiff also established the vandalism, litter and arson on portions of the roads to be closed through testimony, photographs and reports. The other abutting landowner did not contest the relief requested by the plaintiffs. Aiken County has passed a resolution to support closing the road and presented no testimony. The three interested parties raised legitimate concerns but there is no dispute that emergency vehicles will be able to use the paved roads.


17. The court finds it is in the best interest of all concerned that the roads described on page 2 paragraph 2 be closed. However, the plaintiffs will take no action to close the roads until forty days after this order is filed. Based on the testimony, the property is already titled in the private owners.

ITS IS THEREFORE ORDERED.

The areas of Oak Ridge Club Road and Old Bell Road described in page 2, paragraph 2 are to be closed forty days from the date of this order. The plaintiff will not make any changes until after forty days from the date of this order.

ITS SO ORDERED

June 27, 2016



M. Anderson Griffith
Master-in-Equity for Aiken County

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2016CP0200511

Canadian River Farms Ltd Outback Farms Ltd	Colt Farms Inc B C Farms Of South Carolina Inc	Becky J Gonshorowski Aiken County South Carolina	Department Of Transportation South Carolina
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PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Mary O. Guynn	Attorney for: <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <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: _____

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

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

ORDER INFORMATION

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

FILED
 6/27/16
 Res. Gaddard
 10/27/16
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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)
		See Order

If applicable, describe the property, including tax map information and address, referenced in the order:

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.

M.A. Griffith 3076 6/27/2016
 M. Anderson Griffith, Master-in-Equity Judge Code Date

For Clerk of Court Office Use Only

This judgment was entered on 06/27/2016, and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

6/27/16

Mary Olivia Guynn 210 Colony Pkwy Aiken, SC
29803-7468

James M. Holly PO Box 5925 Aiken, SC 29804
Natalie Jean Moore PO Box 191 Columbia, SC 29202

MJE

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

[Handwritten signature]

Court Reporter

- Clerk of Court

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.

