

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM ANDERSON COUNTY
Court of Common Pleas**

R. Scott Sprouse, Circuit Court Judge

**Case No. 2017-CP-04-02296
Appellate Case No. 2019-000557**

RECEIVED

JUN 07 2019


SC Court of Appeals

Brent Murdock, individually and as agent for Charles Bruce MurdockAppellant.
v.

Anderson County, Diamond W. Farm, LLC and Wallace B. Wood.....Respondent.

INITIAL BRIEF OF APPELLANT

PRUITT & PRUITT



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STATEMENT OF ISSUES ON APPEAL

1. Did the Trial Court err in applying the appropriate standard to road closures pursuant to SC Code S.C. Code § 57-9-10, et. seq. by discounting the harm to area landowners and publicly important business interests merely because it also served the private interests of landowners?
2. Did the Trial Court fail to exercise its discretion in considering the applicability of multiple alternative routes of travel that better served the public than the roadway proposed for closure?
3. Did the Trial Court abuse its discretion in affording great weight to the lay testimony of the local Fire Chief based on his speculation about travel times and the needs of emergency services such that the Trial Court regarded such testimony as tantamount to expert opinion testimony?

STATEMENT OF THE CASE

The Plaintiff initiated this road closure action on November 2, 2017 by filing his Summons and Complaint seeking judicial closure of Anderson County Road C-17-0051 commonly referred to as George Brock Road (“George Brock Road”). Plaintiff operates a business that abuts George Brock Road and has effective control of the majority of property along George Brock Road by virtue of familial relationship and previously provided power of attorney. R. _____. Anderson County previously provided statutory notices, as required, concerning road closure but ultimately expressed opposition to closure and took no further action. R. _____. Named Defendants were Anderson County, the political subdivision responsible for maintaining George Brock Road, Diamond W Farm, LLC, and Wallace B. Wood. Defendant Diamond W Farm, LLC is owned by Wallace B. Wood and is the titled owner of the only other parcel of property along George Brock Road (Defendants Diamond W Farm, LLC and Wallace B. Wood hereinafter collectively “Wood”). Defendant Anderson County filed its Answer opposing road closure and asserting that such closure would impact emergency services and vehicular traffic. Defendant Wood did not file any responsive pleadings but testified in support of Plaintiff. R. _____.

The matter proceeded to a non-jury trial before the Honorable R. Scott Sprouse on January 8, 2019. R. _____. Following a day-long trial, the trial court took the matter under advisement. R. _____. On January 22, 2019, the Court issued its Form 4 Order indicating judgment in favor of the Defendant and that a formal order would follow. On January 30, 2019, Plaintiff through his trial counsel filed a Motion to Alter or Amend,

seeking to have the Court issue its formal order. On February 15, 2019, the Trial Court issued its formal order providing its Findings of Fact and Conclusions of Law. R. _____. On February 25, 2019, Plaintiff filed his Motion to Reconsider, Alter, or Amend directed at various aspects of the Trial Court's formal Order. R. _____. The Trial Court denied Plaintiff's Motion by written Order on March 4, 2019. R. _____. Plaintiff's counsel received notice of the entry of the Order denying post-trial motions on March 4, 2019, and this appeal followed on April 1, 2019.

STANDARD OF REVIEW

In road closure cases, the trial court has discretion to order road closure based on the statutorily prescribed “interests of all concerned” standard. Accordingly, the primary issue on appeal is subject to an abuse of discretion standard. See *First Baptist Church of Mauldin v. City of Mauldin*, 308 S.C. 226, 417 S.E.2d 592 (1992) (reciting abuse of discretion in evaluating merits of road closure pursuant to statute).¹

It is well settled that “[t]he admission of evidence is within the [circuit] court's discretion.” *Fowler v. Nationwide Mut. Fire Ins. Co.*, 410 S.C. 403, 408, 764 S.E.2d 249 (Ct.App., 2014) (additional citations omitted). “The [circuit] court's ruling to admit or exclude evidence will only be reversed if it constitutes an abuse of discretion amounting to an error of law.” *Id.* “To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof.” *Id.* (citing *Fields v. Reg'l Med. Ctr. Orangeburg*, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005)).

¹ However, while the trial court has discretion in evaluating the merits of road closure, to the extent the Court misapplied the statutory standard such error concerns statutory interpretation and should be treated as an error of law subject to de novo review. See *Consumer Advocate for the State of South Carolina v. South Carolina Dep't of Ins.* (Ct.App., 2012) (“Statutory interpretation is a question of law.” Citing *Hopper v. Terry Hunt Constr.*, 373 S.C. 475, 479, 646 S.E.2d 162, 165 (Ct. App. 2007). This court is free to decide matters of law with no particular deference to the lower court. *Id.* (citing *Pressley v. REA Constr. Co.*, 374 S.C. 283, 287, 648 S.E.2d 301, 303 (Ct. App. 2007)).

STATEMENT OF FACTS

Appellant Brent Murdock, individually and as agent for Charles Bruce Murdock (hereinafter "Murdock") owns a business and controls property along George Brock Road. R. _____. Murdock instituted this action seeking judicial closure of George Brock Road after encountering multiple instances of theft, vandalism, and other property damages at the location of his business. R. _____. Murdock recounted specific instances of damage to his business and equipment, the presence of various types of refuse material, and in at least one case a burned out vehicle all in close proximity to George Brock Road. R. _____. Indeed, the problems at the property were so bad that Murdock was compelled to sleep in fields at his property so that he could monitor these activities, protect his family, and protect business interests. R. _____. Murdock presented testimony from additional witnesses detailing use of George Brock Road as a cut through road, R. p. _____, rare usage of the road, R. p. _____, and the overall poor maintenance of the road. R. _____. In addition, Murdock presented testimony from multiple witnesses about the value of his business interests to the community and to the larger economy. Based on the testimony of the only expert witness called by any party at trial, Murdock also established the availability of multiple other routes to locations in the vicinity of George Brock Road that were either shorter, quicker, or both than the subject roadway. R. _____. Murdock and Wood, the only other property owner along George Brock Road, also testified that if granted title to the property along which the road was situated they would maintain the same as a private driveway. R. _____.

In contrast, Anderson County presented minimal evidence that George Brock Road could be used by emergency services. Jamie Hanks, a local fire chief, testified to a single incident where he used George Brock Road for emergency services that occurred after the date of filing in this case. R. _____. Mr. Hanks additionally sought to establish through internet driving directions that response times would increase were George Brock Road closed. R. _____. However, he later admitted that he did not check all available routes, that alternate routes were available, and that he could still access George Brock Road if it was maintained as a private drive. R. _____. John Ashley, another area resident, also admitted that shorter routes of travel were available to him than George Brock Road. R. _____. Finally, Holt Hopkins, an employee of Anderson County familiar with the road, admitted his previous concession that Anderson County did not need George Brock Road. R. _____. It was undisputed, based on the testimony of multiple witnesses, that county maintenance of George Brock Road was minimal and that the road was in poor condition.

ARGUMENT

The parties agree: the best interests of all concerned govern this road closure case. However, the trial court erred in discounting the actual harm to landowners and business interests concerned in favor of the potential use of the subject roadway for emergency services. Furthermore, the Trial Court failed to appropriately consider the impact of road closure in light of multiple other roadways that service the local area. Finally, the Trial Court failed to appropriately exercise its discretion in admitting testimony from a local Fire Chief, and affording such testimony great weight regarding the necessity of George Brock Road for emergency services. This Court should REVERSE the Trial Court, order George Brock Road closed, and remand the case for entry of an order transferring title to the property beneath the roadway to adjoining landowners.

1. The Trial Court erred in applying the appropriate standard to road closures by discounting the harm to area landowners and publicly important business interests merely because it also served the private interests of landowners.

Murdock operates a farm in the vicinity of George Brock Road. His farming operation involves substantially more than the mere harvesting of crops. Instead, Murdock is engaged in genetic research using proprietary technology that has attracted international interest. R. _____. At trial, his work was described as “vital to the economy.” R. _____. Furthermore, Murdock’s specific business requires sensitive attention and specific techniques to protect his watermelon crop. R. _____. Murdock previously employed numerous individuals but is concerned about continuing to do so in light of safety issues at his property. R. _____. Murdock’s testimony reflects that the same concerns that lead him to file his road closure action threaten not merely the private

enjoyment of his property but the substantial public and private benefit from continued and increased business activity. R. _____. Continued use of George Brock Road admittedly threatens Murdock's private interests but also substantially endangers the public benefit of his business- locally and internationally.

In evaluating road closure, the Trial Court failed to consider the public value of Murdock's private business interests. While admitting sympathy for Murdock, the Court concluded that his private concerns were outweighed by the "well-being of the community at large" citing availability of emergency services. R. _____. The Trial Court failed to consider the impact of investment on the community, employment of members of the community, or direct value of Murdock's research itself on the local community and beyond- all conspicuously absent from the Court's Order. R. _____. Furthermore, in balancing the interests of all concerned the Court gave greater weight to the potential uses of George Brock Road than the actual harms to Murdock.

The South Carolina Supreme Court has previously addressed closure of roads used as shortcuts for purposes of expanding or protecting private interests important to the community. In *First Baptist Church of Mauldin v. City of Mauldin*, the Court considered the needs of the private church in seeking to expand daycare operations.² In that case, the Court referenced the danger of traffic along the subject roadway to children at the daycare facility.³ Furthermore, in affirming closure the Supreme Court discounted the opinion of the local city council that opposed road closure and was unmoved by purported concerns

² 308 S.C. 226, 417 S.E.2d 592 (1992).

³ 308 at 228.

about increased traffic along other roadways.⁴ The Supreme Court found, as had the trial court, that stated concerns regarding road closure had been adequately addressed.⁵ The same principle applies here.

As the *Mauldin* Court explained, "...the mere fact that the vacation [of the road] was at the instigation of an individual who owns abutting property does not invalidate the vacation or constitute abuse of discretion, nor does the fact that some private interest may be served incidentally."⁶ In this case, closure of George Brock Road benefits Murdock. Closure of George Brock Road benefits Wood. Of greater importance however, and overlooked by the Trial Court, closure of George Brock Road also benefits the community through maintenance and expansion of Murdock's' business operations similar to expansion of the daycare business in *Mauldin*. Furthermore, as will become clear below, the Court discounted the public value of closure in favor of the potential value of maintaining George Brock Road.⁷

2. The Trial Court failed to exercise its discretion in considering the applicability of multiple alternative routes of travel that better served the public than the roadway proposed for closure.

At trial, the parties devoted substantial time to consideration of other routes of travel in the vicinity of George Brock Road. Murdock offered testimony from

⁴ *Id.*

⁵ 308 S.C. at 229.

⁶ *Id.* See also *Town of Kingstree v. Chapman*, 405 S.C. 282, 747 S.E.2d 494 (Ct.App. 2013) ("Under [s]ection 57-9-20, the court is empowered to close roads on a finding that it is in the best interest of all concerned. A public street may not be vacated for the sole purpose of benefiting an abutting owner. (additional citations omitted)).

⁷ In this case, in contrast to *Mauldin*, the Court elevated these hypothetical concerns as opposed to the admitted traffic concerns present in the *Mauldin* case. In candor, the parties in *Mauldin* conceded the public value of the church operation at issue. 308 S.C. at 229. No such concession appears in the Record in this case; however, nothing in the Record casts any doubt on the value of Murdock's business operation either.

the area. R. _____.¹⁰ Hanks testimony did not address all possible routes. Hanks later admitted that he did not dispute previous testimony from Dunn concerning his measured distances along alternate routes. R. _____. Hanks also admitted that he would still have access to George Brock Road if it were maintained as a private drive as offered by both Murdock and Wood. R. _____.

In failing to consider the availability of shorter, faster routes in the area apart from George Brock Road, the Trial Court abused its discretion. This case is again similar to *First Baptist Church of Mauldin v. City of Mauldin*.¹¹ In *Mauldin*, the Court concluded that the dangers of continued use of the roadway proposed for closure outweighed the “minor inconveniences” to those that would otherwise use the road.¹² In this case, the record lends even greater support to closure in that alternate routes were both quicker and shorter than the route proposed for closure. R. _____. Furthermore, assuming without admitting that emergency services benefited from use of George Brock Road, any concerns about emergency access were adequately addressed through testimony that the roadway would be maintained by private owners.

While Murdock candidly admits that George Murdock Road is used, and could potentially be used by emergency services, two important considerations were overlooked by the trial court. First, nothing in the road closure statute requires an interested party to demonstrate that the roadway proposed for closure has no value. Otherwise, it is difficult

10 R. _____ (Defendant’s Exhibit #3). Murdock’s trial counsel objected to admission of hearsay from Mr. Hank’s research.

11 308 S.C. 226, 417 S.E.2d 592 (1992).

12 308 S.C. at 229.

to imagine any roadway would ever meet that high threshold.¹³ Second, the Trial Court discounted the reliable testimony about alternative routes in the area to adopt the speculative testimony of Mr. Hanks concerning his preferred route. That error is only compounded when considering that Hanks professed concern for emergency use was addressed through the proposed alternative of private maintenance. Regardless, in failing to appropriately consider availability of alternate routes and any concerns with such routes, the Trial Court abused its discretion.

3. The Trial Court abuse its discretion in affording great weight to the lay testimony of the local Fire Chief based on his speculation about travel times and the needs of emergency services such that the Trial Court regarded his testimony as tantamount to expert opinion testimony.

Anderson County offered the testimony of Jamie Hanks, a local fire chief, to address the needs of the fire department and emergency services in the vicinity of George Brock Road. Mr. Hanks was neither offered nor qualified as an expert witness. Nevertheless, Hanks did attempt to testify about several matters beyond the scope of his competency as a lay witness. First, Hanks suggested that one alternative travel route was shorter based on his internet research. R. _____. Second, Hanks attempted to testify to the impact of response distances to insurance rates. R. _____.¹⁴ Finally, Hanks testified that in the course of his duties as fire chief that the quickest route was always the best, and

¹³ Indeed, Jamie Hanks seemed to endorse such a standard in his testimony that “leaving all options open is the best thing.” R. _____. Hanks later conceded that use of George Brock Road would remain an option if maintained as a private driveway. R. _____. Regarding the necessity of George Brock Road, Hanks could only identify a single instance in which he had utilized such road and only then due to fallen trees in the area. R. _____.

¹⁴ Hanks attempted to address this point several times and was met with objections from Murdock’s trial counsel on the basis of hearsay and speculation, respectively. R. _____.

further suggested that George Brock Road provided the quickest route to some locations.

R. _____.¹⁵

First, the Trial Court erred in allowing Hanks to testify about distances of alternative routes based on his internet research.¹⁶ Hanks admitted that he did not dispute engineering studies completed by Barry Dunn that addressed measured distances in the same area. R. _____. Hanks also conceded that his preferred route of travel for emergency vehicles, along George Brock Road, would remain available as a private driveway. R. _____. While he did not go so far as to concede that his concerns about alternate routes were addressed by allowing George Brock Road to remain as a private driveway, the upshot is apparent.

Second, the Trial Court erred to the extent it considered any testimony by Hanks about emergency service response times. Hanks attempted to testify to insurance rates, routes that other departments used, and the necessity of George Brock Road.¹⁷ In his testimony, Hanks only identified one instance where he has utilized George Brock road for emergency services based on fallen trees. R. _____. In that one instance where Hanks actually used George Brock Road, his own testimony reflects that a) it was not the initial route selected to reach his destination, b) he only utilized the road due to fallen trees, c) he did not save any time as he admittedly had to "backtrack." R. _____. To the extent the Trial Court allowed or considered testimony about insurance rates or speculation about

15 Hanks testimony on this point is contradicted by the evaluation of routes that Hanks did not evaluate (R. p. _____) and Hanks own admission that continued access to George Brock Road would address this concern.

16 The Court abused its discretion both in admitted Hanks testimony based on this unscientific research and the exhibit itself. R. _____. (Defendant's Exhibit #3)

17 Murdock's trial counsel objected to any testimony about insurance rates (R. _____) and what other departments would do beyond his own experience. R. _____.

routes utilized by other departments, the Court abused its discretion. Similarly, to the extent the Court allowed Hanks to offer an opinion about the necessity of George Brock Road to emergency services based on a single instance where such road was neither selected as the fastest route nor saved the department any time in responding, the Trial Court abused its discretion.

Finally, the Court erred in placing great weight on the testimony of Hanks, making findings about the effect that closure of George Brock Road would have on emergency services based on such testimony, and concluding that George Brock road provided the best route to area locations. First, the Court abused its discretion in placing “greater weight” on the effect that closure would have on emergency services to area residents. In this balancing analysis, the Court failed to give any weight to the value of Murdock’s business to the community. R. _____. Furthermore, even assuming that the Court was within its discretion to credit the testimony of Hanks to the exclusion of other witnesses and further assuming that Hanks testimony was proper in the first instance, the Court’s conclusions are not supported by Hanks’ testimony. Instead, Hanks merely stated his preference for leaving all options open (R. _____) and that George Brock Road was the best route for traveling to some locations that Hanks neither specified nor detailing using as his first option in the past. R. _____. Second here, the Court erred in concluding that “[t]he possibility that George Brock Road, however poorly-maintained it is, would be the quickest and best way to provide fire and/or emergency services to the residents of the area below Rube Ashley Road is enough to tip the balance of evidence to the Defendant.” R. _____. The only location actually identified by Hanks that he could arrive to more

quickly using George Brock Road was a tenant house owned by Wood and currently occupied by a Ms. Hershberger. R. _____. Wood's testimony reflects that the road would remain as a private drive for emergency services and would presumably remain- and necessarily so- for access to property on George Brock Road. R. _____. Hank's own testimony does not support that George Brock Road is the best way to provide fire or emergency services to the area, or that such road had ever been the first choice in providing such services. Finally here, the Court abused its discretion in concluding that George Brock Road would impact provision of emergency services based on the possibility that such road was the quickest of best way to access any location. Rather, the only identified necessity for George Brock Road would be to access properties along the road itself. In concluding that road closure would adversely impact the provision of emergency services, despite the relative lack of testimony on that point and a single incident of speculation when the roadway was actually used, the Trial Court abused its discretion.

Finally, the Trial Court erred in admitting and affording great weight to the testimony of the local Fire Chief and treating such testimony as tantamount to expert testimony about the necessity of George Brock Road for providing emergency services.¹⁸ The Court of Appeals recently considered the issue of improper opinion testimony from a local fire chief in *Fowler v. Nationwide Mut. Ins. Co.*¹⁹ In that case, the trial court allowed the fire chief to testify as a lay witness but also allowed him to testify to his conclusions

¹⁸ Appellant focuses here on the testimony of Jamie Hanks. Defendants also offered some testimony from retired firefighter Ronnie Madison. R. _____. Mr. Madison used George Brock Road for personal reasons and testified that he would hypothetically use George Brock Road to get to residences on Wood's property. R. _____. However, his testimony does not reflect the same improper opinions as Mr. Hank's testimony and is referenced here only because the Court below did not specify the source of its opinion about emergency services.

¹⁹ 410 S.C. 403, 764 S.E.2d 249 (Ct. App., 2014).

about the cause of the fire at issue in the matter and his report detailing the same.²⁰ The Court of Appeals found admission of portions of the fire chief's testimony were improper, and more specifically his testimony that extended beyond his mere observations to draw conclusions about the origin of the fire based on those observations.²¹ Similarly, the *Fowler* Court found that admission of the chief's "truck report" listing his conclusions- as opposed to merely his personal observations- delved into improper opinion testimony and reversed the trial court accordingly.²² The same principle applies in this case. Mr. Hank's testimony was clearly admissible regarding his experience responding to fires in the vicinity of George Brock Road. His testimony about routes he traveled was similarly admissible. To the extent Mr. Hanks based his testimony about distances and times on his own experience, rather than internet research, such testimony was also unproblematic. However, to the extent the Trial Court allowed Hanks to testify as to the necessity of various routes of travel to provide adequate emergency services in the area, the Trial Court allowed improper opinion testimony.²³ That abuse of discretion in admitting improper testimony was compounded when the Trial Court afforded great weight to the conclusions following such testimony that were not properly support even if Hank's testimony had been entirely admissible. In admitting such testimony and concluding to the contrary, the Court below abused its discretion.

²⁰ 410 S.C. 409.

²¹ *Id.*


²² 410 S.C. 411.

²³ Murdock addressed this improper testimony in his Motion to Reconsider, Alter, or Amend. Murdock's trial counsel objected at various points to improper opinion, speculation, and hearsay. In this case, the Court below abused its discretion in admitting the improper testimony and in relying on such testimony for the unsupported conclusions regarding the necessity of George Brock Road.

CONCLUSION

In this road closure case, the Trial Court discounted the public value of private business interests that would be further by road closure. In improperly evaluating such evidence and applying the appropriate standard, the Court abused its discretion. The Trial Court improperly discounted testimony concerning other routes of travel in the vicinity to such an extent that it constitutes an abuse of discretion. Finally, the Trial Court abused its discretion in affording great weight to the lay testimony of the local fire chief while treating such testimony as tantamount to expert testimony regarding the impact of closure on emergency services. For these reasons, this Court should REVERSE the Trial Court, order George Brock Road closed, and remand the case to the trial court to transfer to the property to landowners abutting the roadway.

Respectfully Submitted,



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
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Brent Murdock, individually and as agent for Charles Bruce MurdockAppellant.

v.

Anderson County, Diamond W. Farm, LLC and Wallace B. WoodRespondent.

PROOF OF SERVICE

I certify that I have served the **Appellant's Initial Brief and Appellant's Designation of Matter to be Included in the Record on Appeal** by depositing a copy of it in the United States Mail, postage prepaid, June 4, 2019, addressed as follows:


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Case No. 2017-CP-04-02296
Appellate Case No. 2019-000557

Dear Ms. Kitchings:

Please find enclosed herewith our original Appellant's Initial Brief and Appellant's Designation of Matter to be Included in the Record on Appeal, together with Proof of Service for same.

Should you need anything further please let me know.

Sincerely,



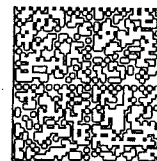
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Enclosures

Cc: Leon C. Harmon (w/ Enclosure)
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