

**THE STATE OF SOUTH CAROLINA**

**In the Court of Appeals**

**APPEAL FROM THE ANDERSON COUNTY**

**Court of Common Pleas**

**R. Scott Sprouse, Circuit Court Judge**

**RECEIVED**

**AUG 15 2019**

**SC Court of Appeals**

**Case No. 2017-CP-04-02296**

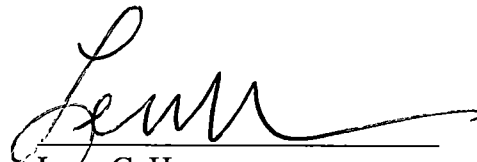
**Appellate Case No. 2019-000557**

Brent Murdock, individually and as agent for Charles Bruce Murdock .....Appellant,

v.

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

**INITIAL BRIEF OF RESPONDENT ANDERSON COUNTY**



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## STATEMENT OF ISSUES

1. Did the trial court err in applying the standard for road closure cases set forth in S.C. Code Ann. §57-9-20 (1976) that “it is to be in the best interest of all concerned that such street, road or highway be abandoned or closed”?
2. Did the trial court err in failing to exercise discretion in considering the applicability of alternative routes of travel if the road were closed?
3. Did the trial court abuse its discretion in giving weight to the testimony of the local fire chief?

## **STATEMENT OF THE CASE**

The Appellant, Brent Murdock, and as agent for Charles Bruce Murdock (hereinafter collectively referred to as “Murdock”) filed a petition on November 2, 2017 seeking to close George Brock Road, also identified as Anderson County Road C-17-0051. Anderson County was named as defendant in the matter. George Brock Road runs northwest from its intersection with Troy Murdock Road and Alewine Road to Highway SC-284. Murdock claims that he, along with Diamond W. Properties and Wallace B. Wood, own all of the properties abutting both sides of George Brock Road. Murdock further claims that traffic and persons trespassing on property under his control are damaging his plant genetic research and farming operation. It is the position of Anderson County that George Brock Road should remain open as a public county road.

The matter was tried non-jury before the Honorable R. Scott Sprouse on January 8, 2019. The Court took the case under advisement and issued a Form 4 Order on January 22, 2019, indicating judgment in favor of Anderson County. The Court issued a formal order on February 15, 2019. Subsequently, the Court denied Murdock’s Motion to Reconsider, Alter, or Amend on March 4, 2019. Murdock filed a notice of appeal on April 1, 2019.

## **STANDARD OF REVIEW**

The standard for closure of a street, road, or highway in South Carolina is the statutorially prescribed “in the best interests of all concerned” standard. S.C. Code Ann. §57-9-20 (1976). The South Carolina Supreme Court has evaluated the standard of closure of street, road, or highway under an abuse of discretion standard of review. *First Baptist Church of Mauldin v. City of Mauldin*, 308 S.C. 226, 229, 417 S.E. 2d 592, 593-94 (1992).

## STATEMENT OF FACTS

In this case, Brent Murdock, individually and as agent for Charles Murdock (collectively “Murdock”), seeks closure of George Brock Road. George Brock Road runs northwest from its intersection with Troy Murdock Road and Alewine Road for slightly less than one (1) mile to Highway SC-284, also known as Trail Road. (R.\_\_\_\_). George Brock Road is an Anderson County Road, also designated as County road C-17-51. (R.\_\_\_\_\_).

Brent Murdock does not live on George Brock Road and does not own property titled in his name on George Brock Road. (R.\_\_\_\_). Brent Murdock does utilize property on the Trail Road end of George Brock Road which is titled in his brother’s name and in his mother’s estate for conducting farming operations and plant genetic research, including research on seedless watermelons. (R.\_\_\_\_ ). From time to time, Murdock has experienced acts of vandalism and observed litter on the Murdock property. (R.\_\_\_\_\_). Murdock asserts that these conditions interfere with his genetic research. (R.\_\_\_\_). Murdock and other witnesses testified that his genetic research has the potential for foreign investment which is hampered by various acts of vandalism. (R.\_\_\_\_\_).

Murdock lives on Trail Road (Highway 284). (R.\_\_\_\_). He has a greenhouse complex near his home which complements his genetic research. (R.\_\_\_\_\_). Murdock testified that closure of George Brock Road would provide additional security for his research and farming operation by fencing off the Trail Road end of George Brock Road. (R.\_\_\_\_).

Anderson County received a petition regarding the proposed abandonment of George Brock Road. (R.\_\_\_\_). As a result of the petition, the County Roads and Bridges Department conducted an investigation of the road. (R.\_\_\_\_). The investigation revealed, among other things,

an average daily traffic count of 84 vehicles. (R.\_\_\_\_\_). The investigation led to the County Roads and Bridges Department not recommending closure of the road. (R.\_\_\_\_\_).

George Brock Road is a paved Anderson County road slightly less than once (1) mile in length that has been a public road for many years. (R.\_\_\_\_\_). At the time of trial, testimony indicated that the road had some potholes and drainage issues during heavy rainfall, but is relatively straight with wide shoulders. (R.\_\_\_\_\_). Anderson County maintains the road and a number of residents in the area utilize the road for various purposes, including access for farm equipment to farm property in the area. (R.\_\_\_\_\_).

The Ebenezer Fire Department provides fire service to the area of George Brock Road and the Anderson County EMS provides emergency services to the same area. (R.\_\_\_\_\_). Both the Ebenezer Fire Department and the County EMS utilize George Brock Road from time to time to provide fire protection and emergency services to residents in the area. (R.\_\_\_\_\_). George Brock Road provides more timely access to residents in the area, including Rube Ashley Road, Alewine Road, and Troy Murdock Road. (R.\_\_\_\_\_). George Brock Road also provides an alternative route to additional areas, particularly during storms which can limit access on roads due to downed trees and utility lines. (R.\_\_\_\_\_).

## ARGUMENT

The trial court properly applied the statutory standard of “in the best interests of all concerned” in this road closure case. There is evidence in the record, as discussed herein, to support the Trial Court’s decision that George Brock Road should not be closed. For the reasons stated herein, this Court should affirm the trial court in not closing George Brock Road and allowing it to remain a public county road.

### **I. The trial court appropriately applied the road closure standard in this case.**

The statutory standard to be applied to the closure of a street, road, or highway is the best interests of all concerned. S.C. Code Ann. § 57-9-20(1976); *First Baptist Church of Mauldin v. City of Mauldin*, 308 S.C. 226, 229, 417 S.E. 2d 592, 593-594 (1992); *Town of Kingstree v. Chapman*, 405 S.C. 282, 301, 747 S.E. 2d 494, 503-04 (Ct. App. 2013); *Hoogenboom v. City of Beaufort* 315 S.C. 306, 319, 433 S.E. 2d 875, 884 (Ct. App. 1992). The trial court clearly considered all of the interests brought forward during trial as evidenced by the Court’s Order and held that George Brock Road should not be closed and remain a public county road. This is precisely what the statute contemplates and is the overarching reasons why this Court should affirm the trial court.

Murdock relies upon *First Baptist Church of Mauldin* to support his argument for closing George Brock Road. In that case, the South Carolina Supreme Court upheld the closure of an unpaved road separating the church’s property on a “finding that it is in the best interest of all concerned.” *First Baptist Church of Mauldin*, 308 S.C. at 229, 417 S.E. 2d at 593-94. In reaching this conclusion, the Court reasoned as follows:

The danger this road posed to both the user of the road and the children at the church’s day care clearly outweighed any minor inconveniences to those who would use the road to avoid the traffic lights on the major roads designed to handle this traffic. The Court also considered the effect the closure would have on alternative routes.

*First Baptist Church of Mauldin*, 308 S.C. at 229, 417 S.E. 2d at 594. In reaching the conclusion regarding the danger to the user of the road, the Court noted that “[t]he road is narrow and it has a substantial curve with limited visibility.” *Id.*, 308 S.C. at 228, 417 S.E. 2d at 593.

The factors the Court considered in the *First Baptist Church of Mauldin* do not support the closure of George Brock Road. There was no testimony that George Brock Road is dangerous to the users of the road and residents who live on the road or that it solely serves as a “cut through” to avoid traffic lights. The testimony in this case is that George Brock Road is relatively straight with wide shoulders; is used by local residents to transport farm equipment; is used by the local fire department and the County EMS service to reach properties in the area in a timely fashion; and provides an alternate route to reach properties in the vicinity of the road during storm conditions when trees and utility lines may otherwise block access to those properties. (R.\_\_\_\_). Therefore, *First Baptist Church of Mauldin* does not support reversal of the trial court.

The arguments made by Murdock in his brief are solely for the purpose of benefitting the private interests of Murdock. While it may be true that acts of vandalism and littering have occurred, this does not elevate a private interest above the public interest in keeping a public road open that has been a public road for many years. Murdock and other witnesses testified to the economic benefit to Murdock from his genetic research and farming operation. (R.\_\_\_\_). However, the South Carolina case law is clear that a road may not be closed for the sole purpose of benefitting an abutting property owner. *Id.*, 308 S.C. at 229, 417 S.E. 2d at 594 (citing *City of Rock Hill v. Cothran*, 209 S.C. 357, 40 S.E. 2d 239 (1946)); *Town of Kingstree*, 405 S.C. at 301, 747 S.E. 2d at 503. Moreover, it must appear clearly that no consideration other than that of the public interest has prompted the action to close a road. *First Baptist Church of Mauldin*, 308 S.C. at 229, 417 S.E. 2d at 594; *Town of Kingstree*, 405, S.C. at 301, 747 S.E. 2d at 503-04. Murdock

attempts to bootstrap a public interest into his argument that his genetic research is in the public interest and that it is likely to attract investment into his businesses that would benefit the community. However, at the end of the day, Murdock's arguments are all about his private economic interest. For example, Murdock has recently contracted with Enza Zaden Research, USA, Inc., a multinational plant breeding company, to conduct research and grow various plants. (R.\_\_\_\_). Murdock testified that he could get a sizable retainer and "I've got to find a way to protect it if they're going to continue doing that." (R.\_\_\_\_). Murdock further testifies that the closure of George Brock Road "would allow me to use my whole farm as a research farm... and put to use this whole 100 acres for watermelon research...". (R.\_\_\_\_). Murdock was obviously referring to combining all of the properties under his control on the Trail Road end of George Brock Road for his own economic benefit. Even assuming for the sake of argument that he has demonstrated some public interest in plant genetic research, it does not outweigh the substantial public interest previously described herein and relied upon by the trial court in keeping George Brock Road open. Murdock's plant genetic research and farming operation can continue with George Brock open to the public and Murdock, as he has in the past, can work with local law enforcement to address the vandalism and litter problems of which he complains. (R.\_\_\_\_). Anderson County litter officer Sandy Hayes testified that he had investigated nine (9) complaints from 2014 through 2018 regarding littering and illegal dumping and that similar activity occurs in other areas of Anderson County. (R.\_\_\_\_). An Anderson County litter control officer has responded to investigated complaints when called by Murdock. (R.\_\_\_\_).

## **II. The Trial Court appropriately considered alternative routes of travel with regard to George Brock Road.**

Murdock asserts in his brief and asserted at trial that there are alternative routes of travel to areas in the vicinity of George Brock Road. He then resorts to *First Baptist Church of Mauldin*

to support his argument that the trial court abused its discretion by failing to consider what he terms as “shorter, faster, routes in the area apart from George Brock Road.” (R.\_\_\_\_\_).

In *First Baptist Church of Mauldin*, the road the Court closed was an unpaved road dissecting the church property which was dangerous to the children at the church’s day care because it was narrow with a substantial curve which limited visibility. *First Baptist Church of Mauldin*, 308 S.C. at 228-29; 417 S.E. 2d at 593-594. The users of the road in *First Baptist Church of Mauldin* used it for a “cut through” to avoid the traffic lights on the other streets in the area. *Id.* The First Baptist Church of Mauldin is located within the developed city limits of Mauldin. On the other hand, the George Brock Road area of Anderson County is in a rural area of the County. This difference is important when considering fire and other emergency services, especially when storm damage may block roads as testified to by the Ebenezer Fire Chief. (R.\_\_\_\_\_). Therefore, the *First Baptist Church of Mauldin* case does not support Murdock’s argument regarding alternative routes in this case as a reason to close George Brock Road. Moreover, the trial Court noted the availability of alternative travel routes in its Order. (R. Court Order, ¶ 6 of Findings of Fact). Finally, Murdock admits in his brief “that George Murdock Road is used, and could potentially be used by emergency services.” Apparently his reference to “George Murdock Road” is a reference to George Brock Road. Therefore, Murdock’s argument that the trial court abused its discretion in failing to consider the availability of alternative routes is not supported by the evidence in the case.

**III. The trial court did not abuse its discretion in giving weight to the testimony of the local fire chief.**

Murdock expends a substantial portion of his argument complaining about the testimony of the Ebenezer Fire Department Chief, Jamie Hanks. His arguments appear to include the following broad categories: (1) Hanks’ testimony about alternative routes of travel; (2) Hanks’

testimony about emergency service response times; and (3) Hanks' testimony about the effect of closure of George Brock Road on emergency services.

The admission or exclusion of evidence is within the sound discretion of the trial court, and "an appellate court may only disturb a ruling admitting or excluding evidence upon a showing of a 'manifest abuse of discretion accompanied by probable prejudice.'" *State v. Commander*, 396 S.C. 254, 262-63, 721 S.E. 2d 413, 417 (2011) (quoting *State v. Douglas*, 396 S.C. 424, 429, 632 S.E. 2d 845, 847-48 (2006)). "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 lack thereof." *Fields v. Reg'l Med. Ctr Orangeburg*, 363 S.C. 19, 26, 609 S.E. 2d 506, 509 (2005).

The Trial Court did not abuse its discretion in allowing Hanks to testify about alternative routes of travel to areas in the vicinity of George Brock Road. Murdock first complains about Hanks' testimony of travel times based upon internet research, Hank's concession that he did not dispute Barry Dunn's measured distances, and Hanks' concession that his preferred route of travel along George Brock Road would remain available as a private drive if the road were closed. There is significantly more testimony by Hanks in the record regarding alternative routes of travel for which no objection was raised. (R.\_\_\_\_). Hanks has been a fireman with the Ebenezer Fire Department for over thirty (30) years and served as fire chief for about fourteen (14) years. (R.\_\_\_\_). Hanks testified without objection that it would take longer to get to the residences on George Brock Road if that road were closed. (R.\_\_\_\_). He further testified without objection to the reason for why it is important to get to a site with a fire or a medical emergency as quickly as possible. (R.\_\_\_\_). And to the reason for keeping all access options open to travel during storm conditions. (R.\_\_\_\_). Murdock also suggests that it is apparent that allowing George

Brock Road to remain as a private driveway would address Hanks' concerns about alternate routes. This argument flies in the face of Murdock's own testimony that closure of George Brock Road would alleviate his problems with vandalism and littering, as well as allow him the full use of farmland over which he has control. (R.\_\_\_\_). It is clear from Murdock's own testimony that George Brock Road will not remain as a private drive at least through the property controlled by Murdock because he would fence off the end at the Trail Road intersection. (R.\_\_\_\_). There is ample unchallenged evidence in the record regarding the need to keep George Brock Road an open public road and the Trial Judge clearly did not err in allowing that testimony.

Next, Murdock seeks to exclude any testimony by Hanks about emergency service response times. Murdock complains about testimony regarding insurance rates and testimony regarding use of George Brock Road for emergency services. As discussed in the previous paragraph, no objections was raised to a significant amount of testimony by Hanks regarding alternative routes of travel. (R.\_\_\_\_). In addition, there was no objection to testimony by Hanks regarding the need for alternative routes during storm conditions. (R.\_\_\_\_). The testimony about insurance rates in relation to travel times was provided to further highlight the necessity for rapid response to fires in the area (R.\_\_\_\_). Even if it is objectionable, there is abundant testimony in the record without objection to the necessity for rapid response to emergency situations. (R.\_\_\_\_). Therefore, there is no abuse of discretion by the Trial Judge.

Finally, Murdock complains about the weight placed upon the testimony of Hanks. He asserts that the Court abused its discretion in placing "greater weight" on the effect that closure of George Brock Road would have on emergency services to the area residents; however, the Court was clearly within its discretion to evaluate the evidence in determining the best interest of all concerned and this does not constitute a manifest abuse of discretion accompanied by probable

prejudice. *State v. Commander*, 396 S.C. at 262-63, 721 S.E. 2d at 417. Moreover, credibility determinations regarding testimony are a matter for the fact finder who has the opportunity to observe the witnesses, and whose determination are entitled to great deference on appeal. *Okatie River, L.L.C. v. Southeastern Site Prep, L.L.C.*, 353 S.C. 327, 338, 577 S.E. 2d 468, 474 (Ct. App. 2003).

Murdock also complains that the Trial Court erred in treating the testimony of Hanks as tantamount to expert testimony regarding the necessity of George Brock Road for emergency services. He cites to the case of *Fowler v. Nationwide Mut, Ins. Co.*, 410 S.C. 403, 764 S.E. 2d 249 (Ct. App. 2014) to support his argument that Hanks' testimony was improper opinion testimony. However, there was no trial objection that Hanks was testifying as an expert without proper qualification as an expert. Therefore, there is no abuse of discretion regarding this testimony.

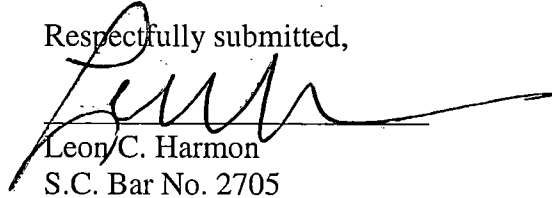
Assuming for the sake of argument that Murdock could raise the issue of improper expert testimony by Hanks, *Fowler* does not support Murdock's position. In *Fowler*, the defendant made a motion *in limine* to exclude testimony of the Fire Chief as to the cause and origin of the house fire at issue in the case. The defendant also objected at trial to the admission of a report containing the Fire Chief's opinion on the cause of the fire and the testimony of the Fire Chief in explaining his rationale for entries in the report. The Court of Appeal concluded in *Fowler* that the testimony of the Fire Chief was inadmissible opinion testimony from a lay witness. As mentioned in the previous paragraph, there was no objection to the testimony of Hanks regarding the necessity of keeping George Brock Road open for emergency services. Moreover, Rule 701, South Carolina Rules of Evidence, provides the circumstances under which a witness not testifying as an expert can offer testimony in the form of opinions and inferences. With regard to the provision of

emergency services in a rural area of the County, a long serving Fire Chief could certainly testify to the provision of emergency fire services because among other things and unlike the cause of a fire, this does not require special knowledge, skill, experience or training. Rule 701, SCRE. For all of the reason stated herein, *Fowler* does not support Murdock's position that Hanks offered improper opinion testimony.

**CONCLUSION**

For the reasons stated therein, the trial judge did not abuse his discretion in considering the evidence in the case and concluding that it was in the best interests of all concerned that George Brock Road remain an open public road. Therefore, this Court should affirm the trial court.

Respectfully submitted,



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PROOF OF SERVICE

I certify that I, Leon Harmon, attorney for Anderson County, have served the **Brief of Respondent Anderson County and Designation of Matter to be Included in the Record on Appeal** by depositing a copy of it in the United States Mail, postage prepaid, August 15, 2019 addressed as follows:

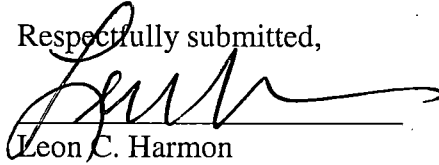
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[Signature page to follow]

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