

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

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

R. Scott Sprouse, Circuit Court Judge

RECEIVED
AUG 30 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 MurdockAppellant.

v.

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

INITIAL REPLY BRIEF

PRUITT & PRUITT



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ARGUMENT

This case remains about the benefits of closing George Brock Road for the best interests of all concerned. Murdock admitted at trial and on brief that road closure benefits his private interests. Indeed, altruistic considerations aside, Murdock may not have brought this case if it did not benefit his interests. But, as South Carolina law explains and Murdock admits, the benefits to Murdock as landowner must be evaluated as part of the best interests to all concerned. Respondent has failed to address how the admitted benefit to Murdock vitiates all other concerns in favor of the only proffered reason to maintain the roadway at issue: the hypothetical use in future emergency situations. 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 failed to adequately address the benefits to Murdock as part of the best interests of all concerned.

In evaluating road closure, the Trial Court failed to consider the public value of Murdock's private business interests. As previously argued, 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. _____. In arguing to the contrary, Respondent merely points out what Murdock admits: he favors road closure and it would be in his personal best interests. In failing to consider Murdock's professed reasons as part weighing the competing concerns at issue, the Trial Court erred.

Murdock’s business interests, and the safety of his employees are, and both public benefits served through closure of George Brock Road. While Respondent is correct that these interests are different than the safety concerns for children raised in *First Baptist Church of Mauldin v. City of Mauldin*, the principle remains the same.¹ Murdock testified about his fears in placing employees, particularly younger employees, in portions of his property. R. _____. Similarly, both Murdock and his other witnesses testified not merely that he was engaged in commerce on his property but that his research had demonstrated opportunity for substantial economic activity in the area. R. _____. The parties agree that those stated benefits of road closure must be weighed against competing concerns. However, both the Trial Court and Respondent emphasize the hypothetical use of George Brock Road in emergency situations despite only identifying a single instance in which George Brock Road had ever been utilized by the local fire department or County EMS service. R. _____.² Furthermore, in this case as in Mauldin it is undisputed that George Brock Road is poorly maintained which undercuts its continuing utility as part of the admitted necessity of weighing competing concerns.

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.”³ In this case, Murdock’s benefit is a benefit to the public at large.

1 308 S.C. 226, 417 S.E.2d 592 (1992).

2 Indeed, the Trial Court specifically noted the “possibility” that George Brock Road may be the best route for emergency services. R. _____.

3 *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)).

The private benefit of road closure to a landowner may well be outweighed by countervailing benefits to the public of continued use of a particular roadway in an appropriate case. But that is not that case. Here, the Court should consider the actual harm to Murdock and the community appropriately outweighs the hypothetical uses of George Brock Broad.

2. The Trial Court failed to appropriate consider the value of alternate routes.

While the Trial Court concluded that there were alternate routes of travel available in the event George Brock Road were closed, that court failed to consider the relative value of alternative routes in light of the testimony presented. More specifically, in light of multiple alternative routes that are either shorter, faster, or both, the Trial Court erred in considering the necessity of continued use of George Brock Road.⁴

This case is again similar to *First Baptist Church of Mauldin v. City of Mauldin* as both substantially considered the potential use of the subject roadway and available alternate routes.⁵ While Respondent is correct that the roadway in Mauldin was urban as opposed to the rural nature of George Brock Road, that position does not address either the undisputed testimony regarding alternate routes of travel or the limited value of a single identified use of George Brock Road for emergency purposes at the heart of the Trial Court's decision. Similarly, Respondent has failed to address how the possible uses of a roadway and witnesses' professed desire with regard to "leaving all options open" squares with application of the road closure statute. R. _____. It remains difficult to imagine

⁴ Indeed, Respondent's witness did not dispute testimony for Appellant's expert about availability of alternate routes or measured distances of such routes. R. _____.

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

any roadway, or litigation seeking road closure, would ever meet the high threshold of proving that a particular roadway lacked any potential value.⁶ Finally, to the extent the trial court referenced alternate routes the court below still erred in adopting speculative testimony regarding relative utility in specifically concluding that possible uses of the roadway tipped the balance of evidence. R. _____. 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 weighing lay testimony from the local fire chief as tantamount to expert testimony.

At trial, Respondent offered the testimony of Jamie Hanks, the local fire chief. Mr. Hanks was neither offered nor qualified as an expert witness. Respondent correctly points out that Murdock did not object to certain aspects of Hank’s testimony. However, that argument misses the point. The Trial Court’s abuse of discretion here was in treating such testimony as tantamount to expert testimony to reach the conclusion that George Brock Road was the “quickest and best” way to provide emergency services. Murdock did not object as Hanks was never offered as an expert witness nor asked to render an opinion on this point.⁷ Rather, the error became apparent when the Trial Court issued its decision and Murdock timely filed his post-trial motion to address the issue. R. _____.

⁶ Hanks testimony 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 and he was candid in admitting he favored keeping all roads open. R. _____.

⁷ Respondent is correct in distinguishing Fowler on this limited point. *Fowler v. Nationwide Mut. Fire Ins. Co.*, 410 S.C. 403, 764 S.E.2d 249, (Ct.App., 2014). In *Fowler*, the parties did argue extensively pre-trial at during trial about the proposed expertise of the fire chief. *Id.* However, that distinction merely highlights that the fire chief here was neither called nor qualified as an expert- which goes to the heart of Murdock’s objection to the Trial Court’s treatment of such testimony.

Second, the Trial Court erred to the extent it considered any testimony by Hanks about response times. While Respondent here states that Hanks testified at other times about the need for rapid response, that position misses two key points at the heart of Murdock's position. First, Hanks was qualified to render opinions based on insurance-proffered testimony to which Murdock properly objected. R. _____. Second, it is axiomatic that emergency services by their very nature necessitate rapid response. Murdock's position here merely reflects that Hanks' unobjectionable testimony does not support the conclusions offered by the Trial Court regarding response times given the lack of evidence as to that key point.

Finally, Murdock admits- as suggested- that a witness such as a fire chief may testify as to observations and inferences under Rule 701, SCRE. However, that did not occur here. Hanks testified about routes of travel and his opinion about keeping all options open. R. _____. The necessity of a particular road for the particular purposes suggested, together with the Trial Court's conclusion regarding the necessity of such roadway, was beyond the competency of Hanks. Indeed, it was beyond the scope of his testimony, as addressed in Murdock's post-trial motion. R. _____.⁸ In affording such testimony great weight to reach its conclusions, the Trial Court erred.

CONCLUSION


The Trial Court erred in considering the appropriate standard for this road closure case to discount Murdock's interests as part of the best interests of all concerned.

Furthermore, the Trial Court discounted reliable testimony about alternative routes to

⁸ Hanks's testimony does not directly reflect that keeping the subject roadway open was necessary for emergency services. Rather, he addressed response times, keeping all options open, and a single use of George Brock Road from his experience.

weight the relative merit of the particular route at issue. Finally, the Trial Court erred in treating witness testimony from the local fire chief as tantamount to expert testimony on the key issue at trial and on appeal: the public necessity of continued use of George Brock Road. This Court should REVERSE the decision of the Trial Court, order George Brock road closed, and remand the case to the trial court to effectuate transfer of title.

Respectfully Submitted,



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August 27, 2019

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PROOF OF SERVICE

I certify that I have served the **Appellant's Initial Reply Brief** by depositing a copy of it in the United States Mail, postage prepaid, August 27, 2019, addressed as follows:


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Dear Ms. Kitchings:

Please find enclosed herewith our original Appellant's Initial Reply Brief, together with Proof of Service for same.

Should you need anything further please let me know.

Sincerely,



Joshua B. Raffini

Enclosures

Cc: Leon C. Harmon (w/ Enclosure)
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