IN THE SUPREME COURT OF MISSISSIPPI

ROBERT D. ADCOCK
SHIRLEY DEAN ADCOCK **APPELLANTS**

V. **CASE NO. 2007-CA-00078**

MISSISSIPPI TRANSPORTATION COMMISSION **APPELLEE**

ON APPEAL FROM THE SPECIAL COURT OF EMINENT DOMAIN FOR WINSTON COUNTY, MISSISSIPPI

BRIEF OF THE APPELLEE

ORAL ARGUMENT NOT REQUESTED

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Robert D. Adcock, Apellant
2. Shirley Dean Adcock, Appellant
3. Mississippi Transportation Commission, Appellee
4. Attorney General, James Hood
5. James C. Mayo, Attorney for Appellant
6. Alan M. Purdie, Attorney for Appellee
7. Josh Freeman, Attorney for Appellee
8. Honorable Joseph H. Loper, Jr., Trial Court Judge

So certified this, 28th day of August, 2007.

By: _____
Josh Freeman, MSB #[redacted]
Attorney of Record for Appellee,
Mississippi Transportation Commission

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENT OF THE ISSUES

I. WHETHER THE TRIAL COURT ERRED WHEN IT DENIED THE ADCOCKS' MOTION FOR A NEW TRIAL AND J.N.O.V.

II. WHETHER THE TESTIMONY OF APPRAISER, TOMMY MADISON, SHOULD HAVE BEEN DISALLOWED.

STATEMENT OF THE CASE

I. COURSE OF THE PROCEEDINGS AND DISPOSITION IN THE COURT BELOW:

The Mississippi Transportation Commission (hereinafter "MTC") filed a Complaint for Special Court of Eminent Domain on July 22, 1998 to condemn the real property owned by Robert D. Adcock and Shirley Dean Adcock. R:4-18.

On April 6, 2005, MTC filed its Amended Statement of Values showing (1) the fair market value of the property to be condemned, as of the date of the filing of the complaint was $13,900.00; (2) the damage to the remainder was $4,000.00 for the cost to cure fence; and (3) the total compensation and damage due to Robert D. Adcock and Shirley Dean Adcock was $17,900.00. R:163. On April 26, 2006, Robert D. Adcock and Shirley Dean Adcock filed Defendants' Amended Statement of Values, showing a total amount due of $66,460.00. R:199-200.

The case went to trial on May 4, 2006. After opening statements, hearing the testimony of various witnesses, and closing statements, the jury returned a verdict awarding Robert D. Adcock and Shirley Dean Adcock $17,900.00 for the taking of their land. R:230, T:178. The Court entered Judgment on the jury's verdict on July 17, 2006. R:233-237. The appellants filed their Motion for a New Trial; or in the alternative a Judgment Not Withstanding the Verdict; or in the alternative an Additur on July 18, 2006. R:241-247. On December 17, 2006, the trial Court entered an Order denying the Adcocks' Motion for a New Trial; or in the alternative a Judgment Not Withstanding the Verdict; or in the alternative an Additur. R:258-262. Robert D. Adcock and Shirley Dean Adcock filed their Notice of Appeal on January 10, 2007. R:263-264.

II. STATEMENT OF THE FACTS

MTC was in the process of widening and relocating State Highway 25 from the interchange of State Highway 19 and State Highway 25 to the Attala County Line, and to reconstruct the interchange of State Highway 19 and State Highway 25. R:10, T:50. As a result, MTC found it necessary to condemn 4.65 acres owned by Robert D. Adcock and Shirley Dean Adcock. R:10, T:51.

MTC relied on its expert, Tommy Madison, to establish just compensation. Mr. Madison had been working for the Mississippi Department of Transportation for 29 years, and was employed as a review appraiser. T:68-69. Mr. Madison was licensed by the State of Mississippi as a general certified appraiser, the highest level. T:70. In other words, there was no limit as to what and how much Mr. Madison could appraise. *Id.* Mr. Madison estimated that he had done approximately 1,500 appraisals for MDOT, and had testified in between 80 to 100 eminent domain cases. T:70-71. After a voir dire examination by the appellants, Mr. Madison was qualified by the Court as an expert in the area of real estate appraisal. T:75-78.

Mr. Madison considered all three approaches to valuation before using comparable sales in arriving at his before and after values, with modified cost to account for the improvements on the house. T:84-85. Mr. Madison looked at many sales, but found three comparables. T:86. Mr. Madison clearly explained all three of the comparables, and how they were comparable to the appellants' property. T:87-90. Further, Mr. Madison explained on more than one occasion how he arrived at an estimate of no damages to the appellants' property for their loss of frontage. T:77, 95, 103-105. Mr. Madison determined the highest and best use of the property to be agricultural. T:83. Mr. Madison explained that the key in agricultural properties was access, not

frontage. *Id.* Also, Mr. Madison testified that mere inconvenience is not a compensable damage item. T:105. The Adcocks still had access to their land from State Highway 19. T:94-95. The total before, 117.35 acres at $1,350.00 an acre, the improvements, and the timber, arrived at a before value of $276,830.00. R:93. The after, 117.35 acres, the improvements, and the cost to cure fencing, arrived at an after value of $258,930.00. R:93-94. Subtracting the after value from the before gave a total compensation in the amount of $17,900.00. R:94.

The appellants called Robert D. Adcock, one of the landowners, to testify. Mr. Adcock testified that he still had access to his property from Highway 19. T:113-116. Mr. Adcock further testified that it was simply inconvenient to use the access to Highway 19. T:126.

Next, the appellants called Larry Caraway and tendered him as their expert appraiser. T:135. Mr. Caraway utilized the sales comparison approach to value the Adcocks' property. T:137. Mr. Caraway determined the highest and best use of the property to be agricultural, with a small portion deemed residential. T:139. Mr. Caraway arrived at a before value of $301,750.00. T:141. The after value determined by Mr. Caraway was $239,290.00. T:144. Therefore, Mr. Caraway's opinion of just compensation due to the Adcocks was $62,460.00. *Id.* However, Mr. Caraway could not provide any basis for his assessment of damages. T:152-155.

After hearing the testimony and the arguments of counsel, the jury returned a verdict in the amount of $17,900.00. R:230, T:178. This amount was exactly the same as the amount arrived at by Mr. Madison, MTC's appraiser. R:163, T:94.

SUMMARY OF THE ARGUMENT

MTC was not required to address damages for the loss of frontage and access to Highway 25. MTC's appraiser testified he found no damage for the loss of frontage and access to Highway 25, while the appellants' appraiser disagreed. After hearing the testimony, the question of whether damages should be awarded was properly decided by the jury. There is no requirement that the condemnor must address damages if none are found.

The testimony of MTC's appraiser, Tommy Madison, was properly allowed by the Court. Mr. Madison was qualified as an expert in the field of real estate appraisal by the trial Court. Further, Mr. Madison used the sales comparison approach, which is a textbook approach under real estate appraisal guidelines, to value the appellants' property and improvements. Again, Mr. Madison was not required to address damage for the loss of frontage and access to Highway 25 because he found none. As Mr. Madison repeatedly explained, the key in agricultural property is access, not frontage. The appellants still had access to State Highway 19 from their property. Thus, MTC established a prima facie case of the fair market value of the Adcocks' property and improvements through the testimony of its' appraiser, Tommy Madison.

ARGUMENT

I. THE TRIAL COURT DID NOT ERR WHEN IT DENIED THE ADCOCKS' MOTION FOR A NEW TRIAL AND J.N.O.V. SINCE THE MISSISSIPPI TRANSPORTATION COMMISSION OFFERED SUFFICIENT EVIDENCE TO ESTABLISH ITS POSITION THAT NO DIMINUTION IN VALUE RESULTED WHEN THE MISSISSIPPI TRANSPORTATION COMMISSION TOOK THE ADCOCKS' FRONTAGE

Due compensation has two components: the value of the property taken and the damage, if any, to the remainder. *Mississippi State Highway Commission v. McArn*, 246 So.2d 512, 514 (Miss. 1971). The burden of proving the value of condemned property is on the Mississippi Transportation Commission. *Ellis v. Mississippi State Highway Commission*, 487 So.2d 1339, 1342 (Miss. 1986). The appellants charge that the Mississippi Transportation Commission's (hereinafter "MTC") appraiser, Mr. Madison, failed to account for the damages to the Adcocks' loss of access and frontage to Highway 25 in his appraisal. Further, the appellants claim that "[t]he case at bar, however, is distinguishable from the facts of *LeFlore*...." Appellants' Brief at 11. Presumably, the appellants are referring to *LeFlore v. Mississippi State Highway Commission*, 390 So.2d 284 (Miss. 1980). In *LeFlore*, the appraiser for the Highway Commission determined there were no severance damages to the remainder of the condemned property and, therefore, he did not include severance damages in his valuation. *Id.* at 286. The court found no reversible error since the LeFlores presented evidence of the existence of severance damages, stating:

> Thus the jury was allowed to consider all the evidence concerning possible severance damages. Also, a jury instruction was given which properly stated the law as to severance damages and properly informed the jury that they could consider this as part of the just compensation. It was the prerogative and province of the

> jury, after viewing the property and hearing the testimony from both sides, to return a verdict excluding severance damages.

Id. The present case is on point with *LeFlore*. As in *LeFlore*, the jury heard testimony from Mr. Madison, MTC's appraiser, finding no damage for the loss of access and frontage to Highway 25. T:95, 103-104. The jury also heard testimony from Mr. Caraway, the appellants' appraiser, finding damage for the loss of access and frontage to Highway 25. T:144, 155. The jury was also properly instructed by the Court that they could compensate the landowner for damage to the remainder. R:214-215, T:161. Further, the jury viewed the property. T:68. Just as the Supreme Court found no reversible damage in *LeFlore*, there can be no reversible damage in the present case for MTC's lack of assessing damage for the loss of access and frontage to Highway 25. *See also*, *Carlton v. Mississippi Transportation Commission*, 749 So.2d 170, 174 (Miss.Ct.App. 1999).

With respect to a jury view in eminent domain actions, "[c]ourts should be particularly loathe to disturb a jury's eminent domain award where, as here, the jury has personally viewed the premises." *Mississippi State Highway Commission v. Viverette*, 529 So. 2d 896, 900 (Miss. 1988)(citing *State Highway Commission of Mississippi v. Havard*, 508 So.2d 1099, 1105 (Miss. 1987); *Mississippi State Highway Commission v. Terry*, 288 So.2d 465, 466 (Miss. 1974)).

The Court further remarked, "We have gone so far as to suggest that, where the jury has viewed the property being taken, any substantial evidence in the record supporting the jury's damage assessment will preclude reversal." *Id.* (citing *Mississippi State Highway Commission v. Franklin County Timber Co., Inc.*, 488 So.2d 782, 787 (Miss.1986)).

In the present case, the jury did personally view the premises. There was substantial

evidence in the record, from Mr. Madison, to support the jury's damage assessment.

> Q: All right. And so because – are you saying because he still had access to his house you didn't damage the remainder of the property on the west side of the highway; is that right?
>
> A: I could see no reason to damage it. Because like I said, I have been all over Winston County. I can find houses in very remote areas, as a matter of fact, very nice houses. So I think the market would be the same.
>
> Q: All right.
>
> A: I see no reason why it would diminish in value just because you travel a different route.

T:95.

> Q: Now I want you to show me in this after value wherein you gave Mr. and Mrs. Adcock any adjustment for total loss of every inch of their frontage on Highway 25.
>
> A: I thought I just explained that because they don't have the frontage, they still have the access. With this being agricultural property, access is the main point, not frontage. I own agricultural property myself. I don't necessarily have frontage to anything.

T:103. Applying *LeFlore*, there is no error. The jury heard the testimony of both appraisers and obviously gave more credence to Mr. Madison than Mr. Caraway. "The jury in the trial of a case of this kind is not required to accept the opinion evidence of an expert witness who testifies for the land owner or county. The jury may disregard the testimony of a witness whose testimony the jury has reasonable grounds to believe is worthless." *Warren County v. Harris*, 50 So.2d 918, 920 (Miss. 1951). Here, the jury acted with their "prerogative and province" in excluding severance damages. *LeFlore*, 390 So.2d at 286. Further, the verdict reached by the jury, $17,900, is the exact amount as that of MTC's appraisal. R:230; T:94, 178.

The appellants cite *Howell v. State Highway Commission*, 573 So.2d 754 (Miss. 1990), for the proposition that just compensation is "the value of the part taken plus all the damages which the residue of the property suffers, including a diminution in the remainder.... Anything less than the foregoing would encroach upon the constitutional guarantee of just compensation." *Id.* at 757. In *Howell*, the right-of-way came to within four (4) feet of a building on the remainder. 573 So.2d at 756. A city ordinance required a setback of thirty-five (35) feet from the right-of-way, and the landowners claimed there was no way to alter or reconstruct the building because of the ordinance. *Id.* The Mississippi Supreme Court found that the take was so close that it undeniably affected the value of the remainder property because the landowners were in clear violation of the zoning ordinance. *Id.* at 757. In the instant case, the Adcocks' land and improvements were not in violation of any zoning ordinances after the take, and thus, *Howell* is not analogous. In fact, the appellants ignored part of *Howell* that actually supports MTC's appraisal. "...[L]oss of frontage **does not** always adversely affect the value of property." *Id.* (emphasis added).

Another case relied upon by the appellants, *Simmons v. Mississippi Transportation Commission*, 717 So.2d 300 (Miss. 1998) also supports MTC's appraisal. The appellants claim that case says that "the State must compensate a defendant, if the State limits a defendant's right of access to his property, as the result of a taking." Appellants' Brief at 11. What *Simmons* actually says is, "This Court recognizes that persons owning property abutting streets have a right to reasonable access to their property from the street and that altering the access to property from the street **may** damage the property....Where alteration of access **diminishes the value of the property** the owner is entitled to compensation." 717 So.2d at 301 (citation omitted)(emphasis

added). There is no absolute contained in *Simmons* regarding compensation for limited access. Regardless, the Adcocks still have access to their property from a county road. T:95. As noted, *supra*, Mr. Madison testified the value of the property was not diminished because the Adcocks still had reasonable access to their land. T:95

The appellants contend that the present case "actually, more closely resembles the circumstances present in" *Sanderson Farms v. State Highway Commission*, 324 So.2d 243 (Miss. 1975) than *LeFlore*. Appellant's Brief at 11. However, *Sanderson Farms* is clearly distinguishable from the case at bar. *Sanderson Farms* involved land that was zoned industrial, and included in the part taken by the Highway Commission was fifteen thousand square feet of Sanderson Farms' parking lot. *Id.* at 244. The take caused Sanderson Farms to have to relocate the parking lot. *Id.* On the other hand, *LeFlore* involved 20.16 acres of flat delta land devoted primarily to agriculture. 390 So.2d at 285. In the present case, the take was 4.65 acres. T:51. Further, both appraisers, Mr. Madison and Mr. Caraway, testified that the land's primary use was agricultural. T:83, 139. The Adcocks' land had no industrial purpose, and they were not required to relocate any parking lot or structure as a result of the take. *LeFlore* is firmly on point with the present case, while *Sanderson Farms* is not even close.

Further, the Adcocks' land is not "useless" as the appellants contend. Appellants' Brief at 12. As MTC's appraiser, Mr. Madison, pointed out several times, the chief concern with agricultural property is access, not frontage. T:77, 95, 103. The Adcocks still had reasonable access to their land after the take. T:95. The appellants also opine that "it defies logic to assert that property that was once set back from the road is worth the same as property that is now a stone's throw away from oncoming traffic." Appellants' Brief at 12. However, in *Blanton v.*

Board of Supervisors of Copiah County, 720 So.2d 190 (Miss. 1998), a proposed widening of the road brought the new right-of-way within 11 feet from the porch of the appellants' residence. *Id.* at 192. The appellants offered no proof of damages and the court found for the Board of Supervisors. *Id.* at 194. In the instant case, MTC's appraiser, Mr. Madison, found no damage for the loss of access and frontage to Highway 25. In fact, MTC's engineer, Mr. Reeves, testified that the Adcocks' house was no closer to the right-of-way than it was before the take. T:58-59. That distance was about 300 feet, more than a "stone's throw away." T:97-98. As such, the jury considered the testimony from both sides and also found no damage for the loss of access and frontage to Highway 25. Again, applying *LeFlore*, there is no error here.

The last case relied upon by the appellants is *Mississippi State Highway Commission v. Colonial Inn, Inc.*, 149 So.2d 851 (Miss. 1963). In *Colonial Inn*, the landowners also faced increased proximity, to which the Court responded, "Compensation for such injury is allowed, not as a distinct element of damages, but **only** as affecting the market value of the property. Moreover, the injury must be special, and not such as is common to all the property in the neighborhood." 149 So.2d at 855 (emphasis added). Nothing contained in this case or any of the other cases relied upon by the appellants contradicts *LeFlore*.

The appellants note that the verdict reached by the jury is "totally devoid of common since [sic] and is based on a valuation method contrary to precedent." Appellants' Brief at 12. It is interesting to note that the appellants' own appraiser, Mr. Caraway, could not provide a substantial basis for his own assessment of damages.

> Q: ....Then you just damaged the property $15,000. Where did you get that? You damaged the house $15,000; is that right?

A: Oh, yeah.

Q: Where did you get that?

A: Based on appraisal principles.

Q: What appraisal principles?

A: Accepted appraisal principles.

Q: Well, what are they? I mean –

A: I mean, I can't explain them. But what I had – a house that has better – a house that has good frontage sells for more than a house with bad frontage. A house that has a good roof sells better than a house with a bad roof. A house with good paint sells better than one with bad paint.

Q: Okay. All right. And so you just decided that this one was different from some, some, some of them out there in the world.

A: That's a principle.

T:152-153. It is ironic that the appellants dispute the damage assessment of MTC's appraiser when their own appraiser, Mr. Caraway, could not explain where his own damage estimates came from. Compare Mr. Caraway's answer with that of Mr. Madison's, when asked about his assessment of damages:

A: Well, to show damage, you got to prove it. I looked at sales all over the county, not just the three I used. And I could determine no difference in the unit value of properties that were sold that were in areas, which I would call very remote because they're agricultural properties. And agricultural – the main point in agricultural property is having access to get your crops, cows, corn, whatever, in and out to market. If it's commercial property that would be a totally different story. Then I would have to say there were damage.

T:77.

In the present case, the jury heard testimony from MTC's appraiser who found no damage for the loss of access and frontage to Highway 25, and from the appellants' appraiser, who did find damage for the loss of access and frontage to Highway 25. The jury was properly instructed by the trial court that they could find damage to the remainder. After personally viewing the property and weighing the evidence, the jury agreed with MTC's appraiser in finding no damage for the loss of access and frontage to Highway 25. In fact, the jury awarded the Adcocks the exact amount of just compensation as provided by MTC's appraiser. Applying *LeFlore*, there is no error. Finally, the appellants did not present clear evidence of damage to the Adcocks' property. In summation, MTC was not required to address damages for the loss of access and frontage to Highway 25 on the Adcocks' property.

II. THE TESTIMONY OF MTC'S APPRAISER, TOMMY MADISON, WAS PROPERLY ALLOWED.

Rule 702 of the Mississippi Rules of Evidence addresses the admissibility of expert testimony.

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

Miss. R. Evid. 702. In *Mississippi Transportation Commission v. McLemore* 863 So.2d 31 (Miss. 2003), the Mississippi Supreme Court adopted the standard initially laid out by the United States Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and later

modified in *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999). *McLemore*, 863 So.2d at 35, 39. That standard is a two-pronged test. For expert testimony to be admissible, it must be both relevant and reliable. *Id.* at 38. The party offering the testimony must show that the expert based his opinion not on opinions or speculation, but rather on scientific methods and procedures. *Id.* at 36. The trial judge enjoys a role as a gatekeeper in assessing the value of the testimony. *Id.* at 39. To be relevant and reliable, the testimony must be scientifically valid and capable of being applied to the facts at issue. *Id.* at 36. *See also, Poole ex rel. Poole v. Avara*, 908 So.2d 716, 721-725 (Miss. 2005).

The appellants charge that the testimony of MTC's appraiser, Mr. Madison, should have been disallowed "because it is purely speculative and not grounded by any reasonable basis." Appellants' Brief at 15. This assertion is completely without merit. Mr. Madison utilized accepted and established appraisal methodologies in arriving at the fair market value of the appellants' property and the just compensation due to the appellants. Further, MTC established a prima facie case of the fair market value of the Adcocks' property.

"Fair market value is an opinion best formed by competent persons pursuing not just one, but three separate and distinct but nevertheless interrelated, approaches to value: the cost approach, the market data or sales comparison approach, and the income approach." *Potters II v. State Highway Commission*, 608 So.2d 1227, 1231 (Miss. 1992).

"Transactions regarding properties similar to that being taken are thought highly relevant to the question of the fair market value of the property being taken. It is an accepted and established appraisal practice to rely on such transactions commonly called comparable sales." *Franklin County Timber Co.*, 488 So.2d at 785. "In order to be admissible to support an

appraisal, a sale must relate to land similar to and of like quality to that involved in the case and not be remote in time." *Mississippi Transportation Commission v. Fires*, 693 So.2d 917, 923 (Miss. 1997)(citations omitted). However, in using comparable sales as a method of valuation, the comparable sales need not be identical in every respect. *Franklin County Timber Co.*, 488 So.2d at 785.

In the instant case, MTC's appraiser, Mr. Madison, had been with the Mississippi Department of Transportation for 29 years, and was employed as a review appraiser. T:68-69. Mr. Madison was licensed by the State of Mississippi as a general certified appraiser, the highest level. T:70. In other words, there was no limit as to what and how much Mr. Madison could appraise. *Id.* Mr. Madison estimated that he had done approximately 1,500 appraisals for MDOT, and had testified in between 80 to 100 eminent domain cases. T:70-71. After a voir dire examination by the appellants, Mr. Madison was qualified by the Court as an expert in the area of real estate appraisal. T:75-78. Mr. Madison considered all three approaches to valuation before using comparable sales in arriving at his before and after values, with modified cost to account for the improvements on the house. T:84-85. Mr. Madison looked at many sales, but found three comparables. T:86. Mr. Madison clearly explained all three of the comparables, and how they were comparable to the appellants' property. T:87-90. Mr. Madison gave his before and after value, and explained exactly how he arrived at those figures. T:90-94. Further, Mr. Madison explained on more than one occasion how he arrived at an estimate of no damages to the appellants' property for their loss of frontage. T:77, 95, 103-105.

According to *Franklin County Timber Co.*, *supra*, comparable sales is "an accepted and established appraisal practice." 488 So.2d at 785. This is exactly the method that Mr. Madison

used in his appraisal. Further, Mr. Madison correctly applied these methods to his valuation of the property in question. It defies logic as to how the appellants could possibly view this as "purely speculative and not grounded by any reasonable basis." Appellants' Brief at 15. Further, Mr. Madison's testimony meets the two-pronged inquiry set out in *McLemore*. 863 So.2d at 38. Mr. Madison utilized an accepted appraisal practice, and he correctly applied it to his valuation. It should be noted that the appellants' own appraiser, Mr. Caraway, also used comparable sales in his valuation of the appellants' property. T:137. The trial court found no issues with Mr. Madison's qualifications as an expert, even when the appellants raised the same issue in their Motion for a New Trial. R:260. In regards to Mr. Madison's valuation of damages, as discussed, *supra*, he was not required to address damages to the appellants' property for the loss of access and frontage to Highway 25. Mr. Madison clearly explained his reasons for doing so. In contrast, Mr. Caraway could not explain where his own damage valuation came from. T:152-153.

MTC established a prima facie case of the fair market value of the appellants' property. Mr. Madison was properly qualified as an expert. The jury listened to both experts, and obviously gave more weight to Mr. Madison than Mr. Caraway. This fact is evidenced in that the jury's verdict of $17,900 is exactly the same amount arrived at by Mr. Madison in his valuation. R:230, T:94. Mr. Madison is a general certified appraiser who relied on the approaches to value mentioned in *Potters II, supra*, to reach his opinion of the fair market value of the Adcocks' property and improvements. Mr. Madison clearly explained the methods he used and how he arrived at the value of the Adcocks' property. The methods used by Mr. Madison were not "purely speculative and not grounded by any reasonable basis." Appellants' Brief at 15. In fact, Mr. Madison's methods were in accordance with established appraisal principles and guidelines

that produced a reasonable value for the Adcocks' land and improvements.

CONCLUSION

MTC established a prima facie case of the fair market value of the Adcocks' property. MTC was not required to address damages to the Adcocks' property for their loss of access and frontage to Highway 25. MTC's appraiser, Tommy Madison, was properly qualified as an expert in the field of real estate appraisal. Mr. Madison's testimony was properly allowed. The jury heard the testimony, and based on the evidence presented to them, returned an award based on credible evidence.

Appellee, Mississippi Transportation Commission, respectfully requests that this Court affirm the decision of the lower court.

This, the 28th day of August, 2007.

Respectfully Submitted,

MISSISSIPPI TRANSPORTATION COMMISSION

By: 

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CERTIFICATE OF SERVICE

I, Josh Freeman, certify that I have this day served, by United States Mail, postage prepaid, a true and correct copy of the foregoing Brief of the Appellee upon the following:

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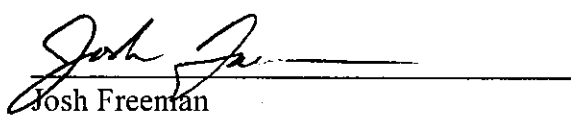
Post Office Box 509
Louisville, Mississippi 39339

Honorable Joseph H. Loper, Jr.
Winston County Circuit Judge
Post Office Box 616
Ackerman, Mississippi 39735

This, the 28th day of August, 2007.



Josh Freeman