DOCKET # 2007-CA-00078
IN THE SUPREME COURT OF MISSISSIPPI

ROBERT D. ADCOCK and wife, SHIRLEY DEAN ADCOCK	)	
APPELLANTS,	)	
V.	)	
MISSISSIPPI TRANSPORTATION COMMISSION	)	CIVIL ACTION NO.
	)	CV 2007-00078
APPELLEE	)	

REPLY BRIEF OF APPELLANTS
ROBERT D. ADCOCK and wife, SHIRLEY DEAN ADCOCK,
ON APPEAL FROM THE SPECIAL COURT OF EMINENT DOMAIN
WINSTON COUNTY, MISSISSIPPI

ORAL ARGUMENT REQUESTED

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ISSUE ONE:

THE TRIAL COURT ERRED WHEN IT DENIED THE ADCOCKS' MOTION FOR NEW TRIAL AND J.N.O.V., SINCE THE STATE FILED TO OFFER EVIDENCE SUFFICIENT TO ESTABLISH ITS POSITION THAT NO DIMINUTION IN VALUE RESULTED WHEN THE STATE TOOK ALL OF THE ADCOCKS' FRONTAGE.

The Appellee is incorrect in his contention that *Leflore v. Mississippi State Highway Commission,* 390 So.2d 284, (Miss., 1980), is analogous to the case at bar. Contrary to the case at bar, in *Leflore*, the jury could have reasonably found that there was no severance damages to the remainder, since the condemnor's expert testified that the condemnee would have access to the newly widened highway, following the take. 390 So.2d,, *284, 286.* This position was presumably supported by the evidence.[1] In the case at bar, the State's appraiser simply had no basis upon which to state that the Adcock's property lost no value following the State's take of ALL (emphasis added) of the Adcocks' frontage. Appraiser failed to offer any evidence of sales of similar property, following a total deprivation fo the property's frontage. Instead Mr. Madison, State's appraiser, simply offered his anecdotal conclusion that access is more important than frontage, when dealing with agricultural property. Such a bald assertion does not qualify as probative evidence. As such, to the extent that the Jury's verdict relied on Mr. Madison's failure to award compensation for the diminution of the Adcocks' frontage, it is erroneous.

Accordingly, *Leflore* is distinguishable from the case at bar and should not be considered by this Honorable Court.

The Adcocks do not disagree with the holding in *Mississippi State Highway Commission*

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[1] The Mississippi Supreme Court actually provide no analysis of the basis of the condemnee's findings.

v. Terry, 288 So.2d 465, (Miss. 1974), in so far as it stands for the proposition that "where a jury has viewed the property being taken, any ***substantial evidence*** (emphasis added) in the record supporting the jury's damage assessment will preclude reversal." However, in the case at bar, there is no ***substantial evidence*** (emphasis added) supporting the jury's position that the Adcocks' were not entitled to compensation, when the State deprived them of all of their frontage. The jury's verdict was based on the poorly reasoned opinion of Mr. Madson, State's appraiser, which hardly qualifies as ***substantial evidence*** (emphasis added) . The entire exchange cited by the State, in its response brief, comes far short of raising the level of ***substantial evidence*** (emphasis added). Indeed, at its core, the exchange really just shows Mr. Madison relaying his unsupported opinion that access is more important than frontage, when dealing with agricultural property. *See Appellee's Response Brief at 8.* While it may be true that the jury may disregard testimony that it deems to be worthless, it may not accept as true testimony, such as that of Mr. Madison, which has no evidentiary or factual basis.

The Appellee's interpretation is far too narrow reading of the holding in *Howell v. State Highway Commission,* 573 So.2d 754 (Miss.1990). In *Howell*, like in the case at bar, the State was able to find an appraiser who refused to consider in his damage estimate the fact that the State's take resulted in a total loss of the condemnee's frontage and access to the highway 573 So2d 754, 756 (Miss.1990). The Mississippi Supreme Court found that the appraiser's opinion was not supported by the evidence and, as a result, could not properly have been relied upon by the jury. The essence of the holding in *Howell* is the proposition that an appraiser's opinion that the remainder is not affected may not be relied on by a jury, when "the take undeniably affects the value of the remainder." *Id.* at 758. In the case at bar, the Defendants' lost all of their

frontage and access to the highway. As in *Howell*, the Adcocks lost ALL (emphasis added) of their frontage. Such a loss, given the facts of the case at bar, "undeniably affects the value of the remainder."

Contrary to the Appellee's assertion, the holding in *Sanderson Farms v. State Highway Commission,* 324 So.2d 243, (Miss. 1975), like *Howell, supra,* is relevant to the case at bar. While the facts in *Sanderson Farms* may be distinguishable from those of the case at bar, the overall principle announced by the Supreme Court is controlling. Specifically, *Sanderson Farms* stands for the proposition that a jury's verdict will be disturbed on appeal, when it appears that the verdict was based on an unsubstantiated appraisal. 324 So.2d 243, 244 (Miss.1975).

The appraisal, in the case at bar, was simply a product of Mr. Madison's unsubstantiated belief that access is the only variable that matters, when determining the before and after value of agricultural property. To withstand appeal, a jury's verdict must be based on probative and credible evidence. *Sanderson Farms* simply provides an apt illustration of an instance where the jury reached the wrong verdict, based on the inappropriate testimony of the State's expert. The Appellant simply believes that the same thing occurred in the case at bar.

About the only thing that the Appellee correctly surmised from *Blanton v. Board of Sup'rs of Copiah County,* 720 So.2d 190 (Miss.1998) is the fact that the condemnee's home was eleven feet from the road, following the State's take. 720 so.2d 190, 192 (Miss.1998). A correct reading of *Blanton* reveals that it is clearly distinguishable from the case at bar. In *Blanton*, the condemnee's appraiser included ni his evaluation fo the condemned property his calculation of what it would cost to move the condemnee's residence back from the roadway. *Id.* at 194. The trial court found that the condemnee's appraiser's approach violated the before and after rule, in

that it treated the cost of moving the condemnee's house as a distinct element of damages. *Id* at 193. As such, the trial court deemed such evidence inadmissible. The proper approach, according to the Mississippi Supreme Court, would have been for the appraiser to have offered into evidence the value of the residence prior to the take, as compared to the value following the take. *Id.* at 194. The Mississippi Supreme Court passed no judgment on whether the taking, in fact, reduced the value of the condemnee's home. Instead, the Supreme Court simply found that the condemnee failed to offer the appropriate evidence of such diminution in value. *Id.* at 194.

It is impossible to know how the jury, in *Blanton,* would have ruled, had the condemnee properly placed before it the value of the condemnee's residence before and after the take, as required by law. In the case at bar, the Adcocks' appraiser complied with before and after ruld, taking into account the value fo the Adcocks' property prior to the take and after the take. Accordingly, *Blanton* is not on point and should not be considered by this Honorable Court.

ISSUE TWO

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

If the testimony was insufficient to make the state's prima facie case, it obviously failed to satisfy the *Daubert* criteria. *Daubert v. Merrill Dow Pharm., Inc., 509 U.S. 579, 589 (1993).*

CONCLUSION

Mississippi Transportation Commission condemned **ALL** (emphasis added) of Mr. and Mrs. Adcock's frontage and access on each side of Mississippi State Highway 25, leaving approximately seven (7) acres landlocked on East side and totally eliminating their driveway from the family residence to the highway on the West side of Mississippi State Highway 25, without compensation to remainder of tract as constitutionally required.

The testimony of the State's appraiser was insufficient and irresponsible to make the State's prima facie case, it obviously, and so noted by the trial judge, was without merit and failed to satisfy the *daubert criteria.*

> "THE COURT: Mr. Madison, are you going to sit here with a straight face and tell me and the jury that that property is worth as much today as it was when they could have on any stretch of that property, 1,500 feet on each side of the highway, could have entered that highway at anyplace they wanted to and now you are going to say that wouldn't reduce the value of it any?
>
> .....
>
> THE COURT: Yeah, I would. I mean if you are going to be an expert, I would like to know how an expert would have been able to arrive at a conclusion that seem illogical to the Court and something that I think any individual off the street could come in and recognize that there would have been some damage."
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> TR 76, 77, RE 43, 44.

Accordingly, the judgments of the Special Court of Eminent Domain should be reversed and the cause remanded to fairly and constitutionally compensate the landowners for ALL (emphasis added) damages, including the taking of **ALL FRONTAGE AND ACCESS** (emphasis added) on Mississippi State Highway 25.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have mailed a copy of the above and foregoing document upon all counsel of record in this cause, U. S. Mail, postage prepaid, to their proper office address, as shown below, on September 6, 2007.

Judge Joseph H. Loper, Jr.
Circuit Court Judge
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Ackerman, MS 39735

Honorable Alan M. Purdie
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