

**THE SUPREME COURT OF MISSISSIPPI**

**CASE NO. 2010-CC-0158**

**MISSISSIPPI TRANSPORTATION COMMISSION**

**Appellant**

**VERSUS**

**REENA KAY HELMS BUCHANAN**

**Appellee**

**ON APPEAL FROM THE SPECIAL COURT OF EMINENT DOMAIN OF  
PONTOTOC COUNTY, MISSISSIPPI**

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**REPLY BRIEF OF APPELLANT**

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**ORAL ARGUMENT IS NOT REQUESTED**

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## REBUTTAL

Contrary to the assertions of Helms and Buchanan in their brief, the questions before the Court of Appeals is not one of the weight and credibility of evidence. It is likewise, not a question of whether or not the outcome was correct. The issue before this Court is whether evidence which should have been excluded was permitted to be presented and considered by the jury. As a general rule, exclusion of expert testimony is within the discretion of the trial court and will not be reversed unless there has been an abuse of discretion. *Miss. Transp. Comm'n v. Fires*, 693 So.2d 917, 920 (Miss. 1997). "However, where a court has exercised its discretionary authority in such a way that it misperceives the correct legal standard for admitting the evidence, the deference customarily afforded trial courts in decisions concerning the admission of evidence is precluded, because the error has become one of law." *Trowbridge Partners, L.P. v. Miss. Transp. Comm'n*, 954 So.2d 935, 938 (Miss. 2007). "Evidentiary objections which concern the appropriate legal standard to apply when determining the value of property in eminent domain proceedings are questions of law. *Id.* The legal standards for admission of expert testimony are well settled and have been fully discussed in MTC's initial brief so it is unnecessary to repeat them here. (Br. of Appellant at 8-18). It is sufficient to say that the methods employed by Mr. Neelly in arriving at his opinions of valuation did not meet the reliability requirement established by Rule 702 of the Mississippi Rules of Evidence or *Miss. Transp. Comm'n v. McLemore*. Therefore, his testimony should have been excluded as a matter of law.

Additionally, certain assertions are made in Helms' and Buchanan's brief which must be addressed. First, MTC is not requesting a review of this case because of the disparity in Mr. Milton's and Mr. Neelly's opinions. It is not the disparity that is of concern but the methods

used by Mr. Neelly in arriving at his valuations. Mr. Neelly testified that he looked at the sales of thirteen other properties to develop his valuations. (Test. of Edwin Neelly Tr. at 188). He stated “[w]hat we try to do is to locate similar sales that have occurred in the immediate area.” (Test. of Edwin Neelly Tr. at 188). He admitted that “[i]f you ride up and down Jagers and Anderson Road and the surrounding area, you ha[ve] a mix . . . of a lot of agricultural as well as developed property.” (Test. of Edwin Neelly Tr. at 188). At the time of trial, the subject property consisted of 121.827 acres of undeveloped land that was being used only for agricultural purposes. (Test. of Edwin Neelly Tr. at 217-218; Exhibit S-1). However, at trial, Mr. Neelly only presented three comparable sales to the jury. The three sales he presented were for three, fully developed, residential lots. Despite his admission that not all of Helms and Buchanan land was not suitable for development, he failed to present any testimony regarding comparable sales of anything but developed property. A “valuation is discredited if the evidence shows that the comparables are entirely different from the property being taken.” *Adcock v. Miss. Transp. Comm’n*, 981 So.2d 942, 948 (Miss. 2008).

Besides presenting non-comparable property to the jury, Mr. Neelly did not provide the jury with any explanation as to how he utilized those residential valuations to come up with the values he attributed to Buchanans’ and Helms’ undeveloped, agricultural property. Nor did he provide the jury with any basis as to how he arrived at his estimate of damages to the remaining property or his estimated value of the remaining property after the taking. A party offering expert testimony “must show that the expert has based his testimony on the methods and procedures of science, not merely his subjective beliefs or unsupported speculation.” *Gulf South Pipeline Co., LP v. Pitre*, 35 So.3d 519, 521 (Miss. 2010). Therefore, these valuations were not only baseless

and unsubstantiated but appear also to be arbitrary. Add to this Mr. Neelly's contradictory testimony and his impermissible method of averaging values for different land uses (all of which is fully argued in MTC's initial brief) and there can be no question that his testimony should have been excluded first, from the jury's hearing and alternatively from their consideration.

Despite Helms' and Buchanan's efforts to discredit the testimony of the Mississippi Transportation Commission's expert, William Milton, the methods, findings and valuations of Mr. Milton, are not at issue in this appeal. Therefore, the portion of Helms' and Buchanan's brief spent debating Mr. Milton's findings is irrelevant and has no bearing on the question before the Court. Also irrelevant is any discussion regarding the court appointed appraiser's report as that information was not presented to the jury. The issue is whether or not Mr. Neelly's testimony met the minimum requirements set by the Mississippi Rules of Evidence and settled case law to be considered admissible in this matter. His testimony did not meet those requirements and should have been excluded by the trial court as a matter of law.

The other assertion made by Helms and Buchanan which must be addressed concerns the testimony given at trial by both Helms and Buchanan. In its initial brief, MTC argued that the testimony of Helms and Buchanan regarding the value of their property should have been excluded because it was based upon legally irrelevant offers of purchase and non-comparable property. (Br. of Appellant at 18-21). In their brief, Helms and Buchanan cite *Miss. State Highway Comm'n v. Robertson* which, by their own admission, stands for the proposition that offers or options to purchase property are not competent evidence to establish fair market value. *Miss. State Highway Comm'n v. Robertson*, 350 So.2d 1348 (Miss. 1977); (Br. of Appellee at 13-14). Therefore, it seems quite clear that Helms' and Buchanan's testimony that they believed

their property to be worth \$10,000.00 per acre because someone once offered to purchase an acre at that price should have been excluded from the jury's consideration. (Test. of Hershel Helms Tr. at 271, 273; Test. of Reena Kay Buchanan Tr. 287). However, Helms' and Buchanan's brief goes on to assert that *Robertson* prevents appeal of this issue because "MTC made no objection to Buchanan or Helms Testifying concerning offers to purchase the property." (Br. of Appellee at 14). This statement is factually incorrect. At trial, MTC made four separate objections to the testimony of Hershel Helms and one objection to the testimony of Reena Kay Buchanan. (Test. of Hershel Helms Tr. at 271-274; Test. of Reena Kay Buchanan Tr. 287). The ground for all five objections was that the landowners could not provide any legally relevant basis for their opinion of value. Therefore, the valuation testimony of both Helms and Buchanan should have been excluded and the trial court erred by not doing so.

### CONCLUSION

Admittedly, valuations of any kind can be somewhat subjective. What takes at least some of the subjectivity out of the decision is having a similar item with which to compare the item being valued. If one wants to know the value of a used car, he can go online and supply the make, model, mileage and condition of the car and find out what others are willing to pay for a car of the same make, model, mileage and condition. The key is that the two cars must be similar or the valuation is no good. One cannot review the price of a 2011 Mercedes-Benz E-Class to determine the value of a 2007 Toyota Corolla. Neither can it be concluded that because a 2011 Mercedes is worth \$50,000.00 and a 2007 Toyota Corolla is worth \$6,000.00 that considered together, the value of each car is \$28,000.00. Common sense indicates that such valuations are wholly unreliable. Although this example is somewhat simplified, these are the methods used by

Edwin Neelly to value the property of Helms and Buchanan. Clearly, these methods are unreliable and unlikely to lead to a legitimate valuation. Therefore, based on the foregoing, the Mississippi Transportation Commission respectfully requests that this Court find that errors where committed by the trial court in the admission of incompetent, irrelevant and speculative evidence and that as a result, the Judgment in this matter be reversed and the case be remanded for a new trial on the merits.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Tara B. Scruggs, Attorney at Law, Oxford, Mississippi, do hereby certify that I have this date mailed by United States Mail, postage prepaid, a copy of the above and foregoing Appellants

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THIS, the 18<sup>th</sup> day of July, 2011.

  
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