

News

Anti-Abortion Protests Cost OB/GYN Clinic \$1.5M Verdict in Cobb County

Now-retired OB/GYN Daniel McBrayer and his clinic were deemed liable for the nuisance created by crowds of anti-abortion protesters from 2007 until it closed in 2015.

By **Greg Land** | September 23, 2019 at 03:29 PM

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Alexander LeVorse (left) and Noah Rosner. (Courtesy photos)

For a period of years an OB/GYN who provided abortion services saw his Marietta clinic targeted by crowds of sign-waving, chanting protesters, and in 2012 his office was even hit by arsonists.

The office park association housing Dr. Daniel McBrayer Sr.'s Alpha OB/GYN Group complained to him, but his hiring of off-duty police officers to provide security and installing a security camera didn't stop the protests, and in 2013 the association sued him, claiming he maintained a nuisance in violation of the association's covenants.

On Friday, McBrayer, who retired and shuttered his clinic in 2015, was hit with a nearly \$1.5 million judgment by a Cobb County jury, including more than \$311,000 in attorney fees and expenses.

Plaintiffs attorney Noah Rosner said he could not find any similar cases in Georgia or beyond, noting the matter likely raised issues that have never been addressed by Georgia's appellate



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courts.

“Our argument was that he’d violated the association’s covenants and created a nuisance” by operating a business that was “embarrassing, discomforting and offensive to his neighbors and the property owners,” said Rosner, who tried the case with fellow Atlanta solo Alexander LeVorse.

There was also fear that another arson attack—or worse—could kill or injure customers at neighboring businesses, he said.

“Their argument, of course, was that he’s running a legal business, he has an occupancy license, he has a right to perform abortions as long as they’re legal, and that he has no control over the protesters,” Rosner said.

“The law says anything that causes harm to another, regardless of whether it’s a legal activity, can be characterized as a nuisance,” said Rosner, terming the trial a “knock-down, drag-out fight.”

The Daily Report was unable to immediately reach McBrayer’s lawyer, A. Keith Logue of Marietta’s [Logue Law Firm](#), on Monday.

According to Rosner and court filings, McBreyer had already had plenty of experience with abortion opponents before setting up a full-time practice at the building he owned in Marietta’s Governor’s Ridge Office Park in 2007. Another of his clinics, in Sandy Springs, was bombed in 1997 by Centennial Olympic Park bomber Eric Robert Rudolph.

McBrayer’s clinic was soon the target of frequent, sometimes daily demonstrations.

“There’d be 150, 200 people at a time, waving signs, some of them saying things like ‘Governor’s Ridge Supports Abortion,’” Rosner said.

In 2009, the office park board convened a hearing over allegations that McBrayer and his practice had violated their covenants and demanded that he abate the nuisance, to which he responded by hiring the security guards and installing the camera.

That didn’t solve the problems, said Rosner, and the board eventually started levying daily fines,

which McBrayer did not pay.

In 2012, two men entered the office and started a fire in a third-floor room; they were never apprehended.

In 2013, the Governor's Ridge Office Park Association and four corporate co-plaintiffs [sued](#) McBrayer, Alpha and a family trust to which he had transferred ownership of the property in Cobb County Superior Court, saying the protests and harassment of neighboring businesses and individuals had cost them potential revenue, diminished their property values and made their tenants fearful for their safety.

The plaintiffs also sought an injunction to force McBrayer to stop performing abortions there. In 2015, he retired, so that demand was dropped.

Rosner said there were two or three mediations, all of which failed.

"They refused to offer one dollar," Rosner said.

In 2017, the Georgia Court of Appeals declined without comment an interlocutory appeal McBrayer filed, and the case went to trial Sept. 16 before Judge S. Lark Ingram.

Rosner said key evidence included McBrayer's deposition testimony, in which he had admitted that his actions had harmed the plaintiffs.

Expert testimony regarding the likely amounts of lost income for the landlord plaintiffs was provided by accountant Robert Taylor IV of Bennett Thrasher, while the defense relied Daniel branch with IAG Forensics & Valuation.

In closing, Rosner said he asked the jury for economic damages of roughly \$1.4 million, plus attorney fees.

"I gave them some numbers and told them to go ahead and make the determination," he said.

McBrayer's lawyer called for a straight defense verdict, he said.

On Friday, after at least about four hours of deliberations, the jury awarded a total verdict of \$1,491,333, including \$1,179,648 in damages and \$311,685 in fees and expenses.

The award includes \$550,000 of unpaid fines the association levied.

Rosner said he did not speak to the jury afterward.

Greg Land

Greg Land covers topics including verdicts and settlements and insurance-related litigation for the Daily Report in Atlanta.

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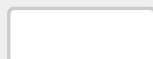
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