Water Law Review

Volume 9 | Issue 2 Article 66

1-1-2006

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Julie M. Schmidt, Court Report, Hyde v. Ray, 181 S.W.3d 835 (Tex. App. 2005), 9 U. Denv. Water L. Rev. 671 (2006).

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RHODE ISLAND

Horseshoe Falls Pres., Inc. v. Flynn, No. W.C. 98-384, 2006 R.I. Super. Lexis 6 (R.I. Super. Ct. 2006) (holding Flynn owned the mill property and therefore owned the water rights for all water flowing to the mill consistent with the original grantor's intent).

Horseshoe Falls Preservation ("Preservation") requested that the Superior Court of Rhode Island remove a cloud on title from its parcel of an old mill property, and argued that Flynn slandered the title by claiming ownership of Preservation's water rights. The mill company initially owned all of the land involved but subsequently divided the land such that both parties held title to portions of the property. Ultimately, the parties sought to determine who owned the water rights associated with the different parcels of the mill property.

The owner of the original mill divided the property into three parcels retaining all of the water rights with the property containing the actual mill, as the waterway powered the mill. Over time, subsequent conveyances further divided the property, each time dividing it differently. The inconsistency in divisions led to the present dispute. Preservation has title to a portion of the property, and they claim to own the water rights associated with that property. The court held, although Preservation's deed seemingly conveys water rights based upon the previous conveyances, it was the original grantor's intent to retain all water rights with the mill itself. Therefore, because Flynn owns title to the mill property he owns the water rights for the water flowing to the mill. Furthermore, Flynn did not commit slander against Preservation because he did not falsely lay claim to any property because he is the rightful owner to the water rights.

Diane O'Neil

TEXAS

Hyde v. Ray, 181 S.W.3d 835 (Tex. App. 2005) (holding the airport that provided sewer service for compensation was a retail public utility, that disputes about service fell under the exclusive jurisdiction of the Texas Commission on Environmental Quality, and that the trial court lacked jurisdiction to issue an injunction compelling restoration of water service).

Jimmy Ray purchased a hangar in 1991 at the Northwest Regional Airport in Roanoke, Texas, which Charles Hyde and his companies, including Aviation Utilities Services, Inc ("AUSI") owned and operated. Ray constructed an apartment in the hangar and occupied it as his permanent residence. Ray used water from an AUSI-operated well

for all purposes except drinking. In 2002, Hyde advised Ray that the water service Hyde had been providing was entirely within the town of Northlake's authorized water service area. The Texas Commission on Environmental Quality ("TCEQ") had warned it was illegal for AUSI to provide water service within Northlake's authorized service area, and that airport property owners must make arrangements with Northlake for water service. Hyde subsequently informed Ray he would cut off water service to Ray's property.

Ray filed suit against Hyde requesting declaratory judgment establishing Hyde was responsible for providing water, requesting Hyde be enjoined from terminating the water supply, claiming Hyde was liable for breach of contract, and requesting a temporary restraining order and temporary injunction preventing Hyde from terminating water service. The 393rd District Court of Denton County granted the temporary injunction the same day Ray filed suit.

Hyde pled the action was within the jurisdiction of the TCEQ and therefore beyond the subject matter jurisdiction of the district court. After the temporary injunction lapsed, Hyde discontinued water service to Ray. The district court held it had jurisdiction over the case and issued a new temporary injunction compelling Hyde to restore, reconnect, and maintain a continued supply of water and water service to Ray's airport property. Hyde appealed the district court's order to the Court of Appeals of Texas, Second District, Fort Worth.

The court reviewed only whether the district court abused its discretion in granting the temporary injunction. The court first considered whether the trial court lacked subject matter jurisdiction to grant the temporary injunction. Under the exclusive jurisdiction doctrine, an administrative agency has sole authority to make initial determination of a dispute. If an agency has exclusive jurisdiction, the exhaustion doctrine applies and the trial court lacks subject matter jurisdiction for claims within the administrative agency's exclusive jurisdiction. The Texas Water Code provides that the TCEQ has exclusive original jurisdiction over water and sewer rates and service of retail public utilities. Retail public utilities provide potable water service or sewer service for compensation. To determine whether AUSI was a retail public utility, the court determined first that, despite the fact that the water was not potable, AUSI did provide sewer service to Ray. The court next determined AUSI provided service for compensation because Ray had made payments to AUSI for tap fees and repair fees. Thus, the court found AUSI qualified as a retail public utility, and TCEQ would have exclusive jurisdiction if the disputed issue was water or utility rates, operations, or services. Because the temporary injunction ordered actions directly related to water service, such as restoring, reconnecting, and maintaining a continued supply of water and water service, the court held the temporary injunction invaded the exclusive jurisdiction of the TCEQ. The court further held the trial court lacked jurisdiction

and abused its discretion by ordering the temporary injunction. The court held the temporary injunction void and remanded the case.

Julie M. Schmidt

Bexar Metro. Water Dist. v. Texas Comm'n on Envtl. Quality, No. 03-04-00574-CV, 2005 Tex. App. LEXIS 8743 (Tex. Ct. App. Oct. 20, 2005), *vacated by* 185 S.W.3d 546 (Tex. Ct. App. 2006) (holding that the Texas Commission on Environmental Quality had discretion to grant certification for water utility services where the city met certification requirements by contract and interlocal agreements).

The Court of Appeals of Texas, Third District, considered whether a municipality may meet the certification requirements of the Texas Commission on Environmental Quality ("Commission") and the Texas Water Code through contracting and interlocal agreements where the municipality does not have adequate capabilities on its own. The Commission granted certification to Bulverde, a new city north of San Antonio, based on a contractual arrangement to provide water services. Bexar Metropolitan Water District ("Bexar"), a legislatively created water conservation district that serves nearby regions, contested the Bulverde certification and applied to amend its own certification to include the Bulverde service area. The District Court of Travis County, 250th Judicial District, affirmed the Commission's grant of certification to Bulverde. Bexar appealed.

The court reviewed the Commission's grant by considering whether the record demonstrated a reasonable basis for the Commission's decision. First the court considered the Commission's statutory authority under Texas Water Code § 13.241, which states that "[i]n determining whether to grant a certificate . . . the commission shall ensure an applicant (i) possesses the financial, managerial, and technical capability to provide continuous and adequate service, (ii) is capable of providing drinking water that meets specified statutory requirements, and (iii) has access to an adequate supply of water." Looking at the plain language of the statute, the court held that § 13.241 allowed broad discretion to the Commission. Further, while the legislature required that the applicant "possess" the adequate capabilities to supply water, it did not require that the applicant "own" the facilities. The court affirmed both the Commission and the trial court's reasoning that the statute did not bar the municipality from contracting to acquire the requisite capabilities.

The court then considered the "continuous and adequate service" requirement for certification. Here, Bulverde's contractual relationship with Guadalupe-Blanco River Authority ("GBRA"), an experienced company which successfully operated five treatment plants and had access to a reliable water supply, coupled with Bulverde's adequate liquid assets, provided substantial evidence that this relationship could