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Herrmann v. Lindsey, 136 S.W.3d 286 (Tex. App. 2004)

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dirt and debris left from the construction of the retaining wall. Three years later, Tramway began making improvements on its property. To prevent excessive erosion and vegetation loss, Tramway made cross-cuts, rolling dips, and hump swales across the road leading to its property. When heavy rains caused water and silt to run downhill and over the retaining wall towards First Lady, First Lady filed suit against Tramway claiming nuisance and requesting abatement of the nuisance. The Circuit Court of the Seventh Judicial Circuit entered judgment for First Lady and required Tramway to abate the nuisance. Tramway appealed to the South Dakota Supreme Court.

First Lady had to prove Tramway's acts constituted a nuisance. Furthermore, First Lady did not claim Tramway acted unlawfully. Instead, First Lady needed to prove Tramway failed to perform a duty. In order to determine whether Tramway failed to perform their legally required duties, the court began with an analysis of South Dakota's drainage law. Under South Dakota's civil law rule, property owners may drain water from their properties to natural or established watercourses and natural depressions. Under the reasonable use rule, a property owner may alter surface water flow so long as the alteration is reasonable. Although South Dakota codified the civil law rule with respect to water drainage, most courts apply the reasonable use rule when dealing with urban drainage of surface water. Because the trial court did not clearly state which drainage rule it applied when requiring Tramway to abate the nuisance, the court considered both the civil law rule and reasonable use rule.

The court previously stated that drainage under the civil law rule was conditioned upon accomplishing natural drainage without unreasonably injuring neighboring properties. Therefore, under both the civil law rule and under the reasonable use rule, Tramway could legally drain its property subject so long as its actions were reasonable. Because reasonableness was a question of fact and the trial court did not consider any findings of fact related to natural discharge or the reasonableness of Tramway's actions, the court reversed and remanded the trial court's decision to reconsider the evidence in light of the reasonable test.

Aimee Wagstaff

TEXAS

Herrmann v. Lindsey, 136 S.W.3d 286 (Tex. App. 2004) (holding: (1) the contract to sell land was illegal because it reserved to seller more than one-half the irrigation pumping rights in violation of state law, which required one-half the irrigation pumping rights remain with the land; (2) where seller of land who owned irrigation pumping rights entered into an illegal contract with purchaser of land, purchaser was entitled to deed reformation; and (3) affirmative contract defenses did not apply).

Ronald J. Herrmann and Karen H. Herrmann (“the Herrmanns”) owned a tract of land and the rights to an application for an irrigation water pumping permit associated with the land. Before arranging to sell the land, the Herrmanns transferred their permit application rights to a company they owned in two separate transactions, transferring one-half of the rights with each transaction. The Herrmanns then contracted to convey the land to Glenn Lindsey. Under the contract, the Herrmanns reserved the permit application rights by excluding them from the sale.

The Edwards Aquifer Authority Act (“the Act”) permitted the Herrmanns to sever from the land only one-half of the irrigation pumping rights. The Act referred to these rights as “unrestricted irrigation groundwater.” Under the Act, the Herrmanns could not sever from the land the other one-half of the irrigation pumping rights, referred to as “base irrigation groundwater.” The Herrmanns sued Lindsey in the District Court of Medina County, seeking a declaratory judgment that the transfer of the base irrigation groundwater was legal, and Lindsey countersued. Lindsey motioned the trial court for summary judgment, asserting land ownership entitled him to one-half the irrigation pumping rights. The trial court granted Lindsey’s motion and reformed his warranty deed to reserve to the Herrmanns one-half the permit application rights.

On appeal to the Court of Appeals of Texas, the Herrmanns argued that Lindsey did not possess a valid claim of title to the water rights, because Lindsey never obtained a valid title to the land since the parties did not agree to transfer any water rights. The court explained that the water reservation formed a material aspect of the conveyance, the issue turned on whether Lindsey was entitled to deed reformation to reflect a one-half pumping rights reservation. According to Texas law, where only part of an executed contract is illegal, courts refuse to enforce the illegal provisions but allow the remaining provisions “to stand as executed.” Here, the Act required that the base irrigation groundwater rights remain with the landowner, but the deed was an otherwise valid conveyance. Therefore, the court found Lindsey was entitled to reformation of the deed.

The Herrmanns raised two contract law affirmative defenses. The court explained that contract rules no longer applied, because the contract no longer existed; Lindsey paid the consideration and the Herrmanns delivered the deed. Additionally, the court explained that the Herrmanns could not raise contract defenses because a party to a fully-executed illegal contract cannot ask the court to enforce or set aside a transaction. Accordingly, the court affirmed the trial court’s decision.

Elizabeth Frost