

# Denver Law Review

---

Volume 67  
Issue 4 *Tenth Circuit Surveys*

Article 35

---

February 2021

## Real Property

Denver University Law Review

Follow this and additional works at: <https://digitalcommons.du.edu/dlr>

---

### Recommended Citation

Denver University Law Review, Real Property, 67 Denv. U. L. Rev. 761 (1990).

This Article is brought to you for free and open access by the Denver Law Review at Digital Commons @ DU. It has been accepted for inclusion in Denver Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact [jennifer.cox@du.edu](mailto:jennifer.cox@du.edu), [dig-commons@du.edu](mailto:dig-commons@du.edu).

## REAL PROPERTY

*Doelle v. Mountain States Telephone & Telegraph*, 872 F.2d 942  
Per Curiam

Plaintiff, Doelle, brought a trespass action in district court against defendant, Mountain States Telephone & Telegraph (Mountain Bell), for construction of a substation on his property. Doelle appealed a judgment granting a permanent easement by condemnation. Doelle challenged the district court's findings of fact regarding the need for the substation and the valuation of his property, and failure to find that Mountain Bell intended to damage his property. The Tenth Circuit determined that the district court's findings were not clearly erroneous and upheld the findings pursuant to Fed. R. Civ. P. 52(a).

Doelle challenged the district court's ruling under Fed. R. Civ. P. 13, permitting Mountain Bell to counterclaim for condemnation. The Tenth Circuit held that federal law governs counterclaim procedures in federal diversity cases, and thus a Utah Supreme Court ruling that a defendant in a trespass action may not counterclaim for condemnation did not bar Mountain Bell's counterclaim in federal district court.

The court found the remainder of Doelle's contentions either unpersuasive or extraneous to the district court's determination that Mountain Bell was entitled to an easement by condemnation.

*Hill v. Department of the Air Force*, 884 F.2d 1318  
Per Curiam

Defendant, Britt, moved to quash a notice of *lis pendens* placed by plaintiff, Hill, on Britt's residence. The district court denied the motion and Britt appealed.

In reversing the district court order, the Tenth Circuit noted N.M. Stat. Ann. § 38-1-14 (1987), which states that a notice of *lis pendens* may be filed in actions affecting the title to real estate. Since Hill filed an action seeking damages against Britt and not an action including Britt's property, the court found his filing of a notice of *lis pendens* in anticipation of a money judgment impermissible under the New Mexico statute. The court remanded with instructions that the notice of *lis pendens* be quashed.

