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# LAW LETTER

**Property Rights**

## Obstruction of View, Light or Air

Boundary disputes between adjoining neighbors are inevitable. While the controversies may not lead to a lawsuit, they create ill will. According to Texas case law, one boundary dispute centers on the obstruction of view, light or air by a neighbor's fence, building or billboard. Basically, does a landowner have the unrestricted right to a particular view either to or from the property, the unrestricted right to receive sunlight on the property or the unrestricted right to receive a breeze across the property?

Most case law examining the issue involves spite fences and billboards. Spite fences are solid structures built purely to spite a neighbor and not necessarily to benefit the owner. One general rule, however, recited repeatedly by the Texas courts, is useful. An owner of real estate may, in the absence of building restrictions or other regulations, erect a building, wall, fence or other structure on the property, even if it obstructs a neighbor's vision, light or air and even if it depreciates the neighbor's land. Motives for erecting the structures are irrelevant. However, owners can not use their property in a way that constitutes a nuisance.

In one case, the plaintiff sought a permanent injunction to prevent the erection of a spite fence (*Harrison v. Langlinais,* 312 S.W. 2d 286). The fence was completed before trial. Consequently, the plaintiff then asked for a mandatory injunction to remove the fence, or alternatively, to recover for damages to the property caused by the fence.

The defendant-neighbor built a masonry wall 143 feet long, ranging from 3 to 5 1/2 feet high, inside the defendant's boundary line. The plaintiff's residence was only 6 feet from the wall. A boundary dispute prompted the structure.

The trial court and appellate court denied the injunction, citing the rule about unrestricted, lawful use of property. On the issue of damages, the court concluded, "It is a rule of long standing that in the absence of nuisance, or negligence, or physical harm there is ordinarily no liability for diminution in adjoining land values resulting from the lawful use of one's own land." In this instance, the plaintiff alleged no nuisance.

Exactly what is a nuisance, and how is it applied to these cases? A nuisance is a condition brought about by a property use so unusual that it causes injury or inconvenience to another's use of property. Sometimes it is defined as a condition that substantially interferes with another's use and enjoyment of land.

In *Scharlock v. Gulf Oil Co.,* 368 S.W. 2d 707, the court attempted to apply this rule. The facts involve one billboard shielding a second billboard from view. The plaintiff filed suit to recover damages and for a mandatory injunction requiring the defendant to remove the billboard. The plaintiff alleged the placement and design of the billboard constituted a nuisance.

To support the case, the plaintiffs cited the earlier Texas case of *Rogers v. Scaling,* 298 S.W. 2d 877. The plaintiff and defendant in that case owned adjoining buildings with a common party wall. Both buildings were flush with the property line. A one-way street ran next to the buildings.

Both parties placed signs on the common wall to attract customers. However, the defendant's sign (the first one along the one-way street) was enormous. It extended far out over the public sidewalk with bright flashing lights. The jury and appellate court found that, because of the size and location, the sign constituted an unreasonable interference with any sign that the plaintiff could erect.

While the court in *Rogers* prohibited the maintenance of the existing sign in its present location, it did not prohibit the same sign in a different location. Alternatively, the defendant could use the same location for a different sign.

**Note.** The *Rogers* case is a bit unusual. It is the **only** Texas appellate case the author has found that holds a blocked view to be a nuisance. The court in *Rogers,* did not cite any Texas case for its authority, but cases from Nebraska and Alabama, stating, "While we find no Texas case particularly in point, our judgment finds some support in *World Realty Co. v. City of Omaha,* 131 Neb. 396, 203 N.W. 574, 40 A.L.R. 1313, and *Klaber*

*v. Lakenan,* 8 Cir., 64 F. 2d 86, 90 A.L.R. 783."

The *Scharlock* court, after examining the *Rogers* decision, distinguished the two cases. First, the plaintiff's sign was completely blocked from view in the *Rogers* case. Here, the second sign covered a substantial part of the first sign. Second, the *Rogers* court ordered the same sign be placed in another location or a different sign be placed in the original location. Here, a complete removal of the sign is sought.

**Note.** In the author's opinion, the trespass of the sign above the public sidewalk is another significant distinction in the *Rogers* case.

The *Scharlock* court denied the plaintiff's petition for an injunction, stating, "Under the rule recognized in this state, a building or structure cannot be complained of as a nuisance merely because it obstructs the view of neighboring property."

Another noteworthy case involves walls (*Boys Town v. Garrett,* 283 S.W. 2d 416). The defendants erected a wall 18 feet high by 48 feet long along the property line to protect the defendant's parking space for customers. The wall was built after the plaintiffs (the adjacent property owner) acquired their property. The plaintiffs then built a store next to the wall on their side of the property. They sued to have the wall removed and for reduced value of their land.

The plaintiffs alleged, among other things, that the wall completely blocked the customers' and the traveling publics' view of the east display windows. Also, the wall substantially impaired the customers' and traveling publics' view of the south display windows. Likewise, the wall impeded customer access to the building.

The court denied the plaintiffs' request by reciting from *Klein v. Gehrung,* 25 Tex. Supp. 232: "Nothing, as has been said, can be more certain than that every one has a right to use his own as he pleases, provided he does not thereby injure others; and it is inconceivable that, upon any principle, one can acquire a right or interest in that which is another's merely by the manner in which he uses his own."

*Future lawsuits may be over wind rights for electric-generating windmills. Currently, no governmental agency regulates windmill spacing.*

The issue of receiving sunlight on property has not been addressed by any recent Texas cases. It is mentioned incidentally with cases involving spite fences and billboards. A brief history provides necessary background.

When Texas won its independence in 1836, it adopted the community property laws. Four years later, it adopted the common law. Texas is only one of eight states to adopt both.

Under the common law (sometimes referred to as the *English Rule*), landowners had the continued right to receive sunlight on their property. This is sometimes called the "Ancient Lights Doctrine." It is still followed in a majority of the states. In 1860, however, the Texas Supreme Court rejected this doctrine in *Klein v. Gehrun,* 25 Tex. Supp. 232. Because the issue was settled a mere 20 years after Texas adopted the common law, it has not surfaced again for the past 135 years.

No appellate cases have been brought strictly for the loss of breeze, but that may change. Currently, California and Texas utilities are leasing "wind rights" for the installation of electric-generating windmills in Texas. The machines stand about 180 feet high and need an average sustained wind of 16 to 18 miles per hour. A wind farm generally requires a minimum of 2,500 acres.

The leasing activity is primarily in the Panhandle and West Texas. Ken Starcher, a spokesman for the Alternative Energy Institute at West Texas A&M University in Canyon, has said, "We're the Saudi Arabia of wind power. In the Panhandle of Texas, basically from Lubbock north, we estimate that there's 100,000 megawatts of power potential." Of course, the areas around Marathon, Alpine and Fort Stockton have similar potential.

Future lawsuits may be over spacing the windmills. Currently, no governmental agency regulates windmill spacing. If one mill is placed too close to another on adjacent property and blocks the wind, a lawsuit could erupt over air rights or wind rights.

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