Who Knows What Easement Lurks?

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Easements for electric lines and pipelines crisscross many miles of Texas land. Many of the easements exist without incident for decades. Sometimes, however, a change in circumstances leaves the easement owners and the landlords in dispute.

A mystery arises. Exactly what rights are included in the easement? How much "easement" is in the easement? Who knows? The court knows, or at least it is tasked with deciding. Three Texas cases illustrate how the courts solve these mysteries under Texas law.

The Takeaway

Courts will solve any mysteries or disputes about the terms of an express easement. However, many such disputes can be avoided by careful negotiation and drafting. If a court can ascertain the terms intended by the parties, it will give them effect.

Case of the Problematic Pipeline

The first episode features an easement granted by one Mrs. Ida Wolcott, who by a "Deed of Right of Way" granted an easement to South Plains Pipe Line Company in 1928. By the time the dispute arose, the land belonged to Richard Knox and the easement to Pioneer Natural Gas Company.

The deed granted the easement "for the purpose of constructing and placing on, in and under the surface of the ground a pipe line . . . and for . . . placing, constructing, erecting, and maintaining . . . private telegraph or telephone line." It gave the grantee the right to place poles, guy wires, and braces, as well as "to enter upon said lands at all times for the purpose of making additions to, improvements on, and repairs to [the lines] and to keep and maintain the same and to remove or replace the same." It provided that the pipelines and telephone and telegraph lines "shall be constructed in an approved manner and with as little damage to said premises as may be practical considering the nature of the construction." The grant did not define the location and width of the right of way.

In 1928, South Plains laid a pipeline using eight-inch and ten-inch pipe. In 1938, by agreement, Pioneer was allowed to remove part of the ten-inch line and replace it with a 15-inch low-pressure line. In 1955, Pioneer decided to replace both of the existing lines with a 12-inch

high-pressure line. When Knox refused, Pioneer moved ahead with the work, resulting in damage to the land. A lawsuit ensued.

Although the grant did not define the location and width, the grantee had located and cleared a 30-foot right of way and used it for 27 years. Knox contended that by doing so, the location and width had become fixed and definite and could not be expanded.

The court disagreed, noting that the deed allowed a right-of-way "of sufficient width" to permit the pipeline and the right to enter for the purpose of "making additions to, improvements on, and repairs to" the pipeline to "keep and maintain the same and to remove or replace the same."

The court noted that although the extent of an easement created by *prescription* is fixed by use, that is not so in the case of an *express* easement created by a conveyance. In the latter case, "the extent of the right depends on a proper construction of the grant." Unless the grant says otherwise, it is assumed that the parties contemplated changes in use. An easement carries with it the right to do whatever is reasonably necessary for the full enjoyment of the easement. The extent to which those rights may be exercised depends on the object and purpose of the grant and whether those rights are limited in the grant itself.

The court also opined that details that impose no greater burden on the land are immaterial unless they are specifically addressed by the granting instrument. Bottom line: The court held that Pioneer could replace the pipeline because the deed said it could. For the complete story, see *Knox v. Pioneer Natural Gas Co.*, 321 S.W.2d 596 (Tex. Civ. App.—El Paso 1959, writ ref'd n.r.e.).

Mystery of the General Terms

This next legal thriller takes place in 1964, when the court was asked to construe an easement granted to Houston Pipe Line Company in 1926. The agreement in question was on a printed form that had been modified by the parties to reflect their agreement. It had provided that the right-of-way was "to lay, maintain, operate, repair, and remove a pipeline for the transportation of gas." However, the words "and remove" had been struck from the agreement prior to signing. Additionally, a paragraph granting the right to construct additional pipelines was struck. Elsewhere in the document, removal of the pipeline was authorized, but only on termination of the easement. As in *Knox*, the size of the pipeline and the exact location and size of the easement were not defined.

The pipeline was built and it was a beaut—an 18-incher that served its purpose for 33 years. In 1959, though, the company was ready for bigger and better things. It ceased transporting gas for a few weeks, removed the old line, and replaced it with a much bigger 30-inch line. Enter Dwyer, who asserted that the removal of the original line terminated the easement completely. He further asserted that, even if the easement were not terminated, it only authorized one pipeline, and the pipeline company was not allowed to replace it with a larger pipeline.

The court held that the terms "operate" and "maintain" are "at least broad enough to include the right to remove and replace the original pipe *with pipe of the same size* when necessary" (emphasis added). Thus, stopping transportation of gas to replace the original pipe did not terminate the easement. This still left a crucial question unanswered: Was the company within its rights to replace the pipe with the larger pipe?

The pipeline company pointed to *Knox*, saying that as easement holder, it was entitled to the full enjoyment of the easement, and to employ whatever means may be reasonably necessary for its full enjoyment.

The court refused to follow *Knox*, distinguishing it by observing that in *Knox*, the instrument granted rights greater than those that were actually used. Specifically, the easement was to be "of sufficient width" to permit the pipeline, and included the right to enter for purposes of adding, improving, repairing, keeping, maintaining, removing, and replacing. In *Dwyer*, there was no such language. The grantee was permitted to lay, construct, maintain, operate, and repair a pipeline. Once it did so by laying the 18-inch line, it could not replace it with a substantially larger line that would place a substantially greater burden on the land that the original parties did not contemplate. A grant in general terms, the court held, becomes fixed and certain once the pipe is laid, and the grantee cannot change the easement. For the full program, see *Houston Pipe Line Co. v. Dwyer*, 374 S.W.2d 662 (Tex. 1964).

The Easement Grows Wider

The final installment is a recent one involving an electric transmission line.

Southwestern Gas & Electric Company acquired easements and built a transmission line on wooden poles. The easements, which were later acquired by Southwestern Electric Power Company (SWEPCO), defined a right-of-way but not a width. SWEPCO was granted the right to ingress and egress "for the purpose

of constructing, reconstructing, inspecting, patrolling, hanging new wires on, maintaining, and removing said line and appurtenances." The easements limited the number of poles, towers, and anchors permitted, but gave SWEPCO the option to increase them by giving additional compensation to the landowners. For decades, SWEPCO's use of the easement had been limited to a width of 30 feet.

In 2014, SWEPCO started a modernization project, which included replacing the wooden poles with steel poles. SWEPCO made offers to landowners to increase the width of the easement to 100 feet by giving them additional compensation, and some landowners accepted. Nevertheless, with respect to those landowners who did not, SWEPCO maintained that it had the right to modernize anyway, because the easements were general easements, giving it the right to use as much of the property as reasonably necessary for the specified purposes. The landowners, relying on *Dwyer*, contended that the width had become fixed by use at 30 feet. The dispute precipitated a lawsuit, once more involving the court to solve the mystery.

The court reasoned that this case was more similar to *Knox*. While the easement in *Dwyer* did not include broad, forward-looking language, the easements in *Knox* and *SWEPCO* did. The *SWEPCO* easement specifically allowed for reconstructing and hanging new wires on the transmission line. The court refused to fix the width of the easement by use to thirty feet, and instead recognized a general easement, which includes the right to "unlimited reasonable use such as is reasonably necessary and convenient and as little burdensome as possible to the [landowner]." The court looks at the express written terms of the document. If the court can tell what the terms are and the terms are unambiguous, the court gives them effect without supplying additional terms, such as the width of the easement. It observed that if parties want to write a fixed width into the agreement, they may do so. However, the parties in *SWEPCO* did not.

The court emphasized that even such a general easement is not unlimited. The holder of the easement must use the land in a reasonable manner and only to the extent reasonably necessary. If the holder uses the easements in a way that is unreasonable or not reasonably necessary, or in a way that violates express terms, the landowner may sue. This exciting episode is found in *Southwestern Electric Power Co. v. Lynch*, 595 S.W.3d 678 (Tex. 2019).

When negotiating or drafting an easement agreement, parties have an opportunity to be clear on specific terms. Neglecting that opportunity is a weed that bears bitter fruit. Who knows what easement lurks?

Nothing in this publication should be considered legal advice. For advice on a particular situation, consult an attorney.

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