

Affirmed and Opinion filed January 17, 2002.



In The
Fourteenth Court of Appeals

NO. 14-00-00888-CV

JOHN E. FIALA and PATRICIA S. FIALA, Appellants

V.

NORTHWEST AIRPORT MANAGEMENT, INC., Appellee

**On Appeal from the 11th District Court
Harris County, Texas
Trial Court Cause No. 98-21723**

OPINION

In this deed restriction case, John E. and Patricia S. Fiala (collectively, the “Fialas”) appeal pro se a summary judgment in favor of Northwest Airport Management, Inc. (“Northwest”), asserting thirty-one points of error, on the grounds that the trial court erred by granting Northwest’s partial summary judgment, special exceptions, motion to strike the Fialas’ counterclaim with prejudice, and final summary judgment; and by denying their motion for summary judgment. We affirm.

Background

Northwest owns and operates a private airport, the David Wayne Hooks Memorial Airport (the “airport”). The Fialas own a tract of land (the “property”) located in a subdivision (the “subdivision”) adjacent to the airport which was established to allow private ownership of lots on which to house private aircraft. Northwest and the Fialas filed an action and counterclaim, respectively, seeking declaratory and injunctive relief with regard to the subdivision’s deed restrictions (the “restrictions”).¹ The trial court: (1) granted Northwest’s two motions for summary judgment; (2) denied the Fialas’ motion for summary judgment; (3) granted Northwest’s special exceptions to the Fialas’ first amended counterclaim and application for permanent injunction; (4) struck the Fialas’ counterclaim with prejudice after the Fialas failed to comply with the court’s instruction to amend it; (5) denied the Fialas’ application for permanent injunction; and (6) permanently enjoined the Fialas from violating the restrictions.²

¹ Northwest relies on the following portions of the restrictions: (1) “The Tract shall be used for the purpose of hangaring, keeping, maintaining, and operating aircraft”; (2) “[i]t is expressly understood and agreed that Grantee by this conveyance has no right or privilege, either express or implied, of access to or use of the [airport]”; (3) “No part of The Tract shall ever be used for the storage or sale of automotive gasoline or related petroleum products, aviation gasoline, diesel fuel, jet fuel, lubricating oil, or other petroleum products which in any manner would constitute any form of competition with the normal business operation of the [airport]”; and (4) “Vehicular access to and from The Tract by means of the easement and right-of-way hereinabove granted and conveyed for such purpose shall be limited to normal and reasonable automobile and light-duty truck traffic (and, if, when, and where appropriate, normal and reasonable aircraft ground traffic on the aforesaid taxiway system only), with the sole exception that during periods of construction of improvements upon The Tract reasonable and necessary heavy-duty truck and construction equipment traffic shall also be allowed to use said easement and right-of-way.”

² The trial court’s final summary judgment provides that without the express written permission of Northwest: (1) the restrictions prohibit the Fialas from using the airport facilities which consist of the runways, taxi-ways, roadways, offices, terminal building and other improvements located within the boundaries of it; (2) the easements and rights-of-way appurtenant to the Fialas’ property are restricted to the use of passenger automobiles and light duty trucks (trucks having a manufacturer’s gross vehicle weight rating of 6,000 pounds or less) only and do not permit the operation or movement of aircraft; (3) the restrictions prohibit the Fialas from keeping or storing on their property automotive, aviation, diesel, or jet gasoline/fuel, or any other petroleum products which would constitute any form of competition with the airport; (4) the Fialas are permanently enjoined and

Standards of Review

A summary judgment may be granted if the motion and summary judgment evidence show that, except as to the amount of damages, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law on the issues expressly set out in the motion or response. TEX. R. CIV. P. 166a(c). In reviewing a summary judgment, we take as true all evidence favorable to the non-movant and make all reasonable inferences in the non-movant's favor. *KPMG Peat Marwick v. Harrison County Hous. Fin. Corp.*, 988 S.W.2d 746, 748 (Tex. 1999).

A trial court's issuance of injunctive relief is reviewed for abuse of discretion. *Operation Rescue-Nat'l v. Planned Parenthood of Houston*, 975 S.W.2d 546, 560 (Tex. 1998). Ordinarily, injunctive relief is proper where the applicant demonstrates: (1) the existence of a wrongful act; (2) the threat of imminent harm; (3) the existence of irreparable injury; and (4) the absence of an adequate remedy at law.³ However, an injunction may be obtained to enforce a deed restriction or restrictive covenant where only a substantial breach of the restriction or covenant is shown.⁴

prohibited from: (a) utilizing the airport facilities, (b) utilizing the easements and rights-of-way appurtenant to their property, for any purpose other than ingress and egress to and from it by automobiles and light duty trucks, (c) bringing onto the airport petroleum products by any means, other than within the fuel tanks of a motion vehicle actually consuming such fuel, provided however, that the Fialas are not prohibited from keeping on hand a stock of lubricating oil, grease and/or hydraulic fluid for use in their own aircraft and not for sale; and (5) the Fialas shall remove and are hereby ordered to remove from their property all diesel fuel within 30 days following the date of this judgment.

³ *GTE Mobilnet of S. Tex. Ltd. P'ship v. Pascouet*, No. 14-99-00869-CV, 2001 WL 1047011, at *15 (Tex. App.—Houston [14th Dist.] Sept. 13, 2001, no pet.); *see also* TEX. CIV. PRAC. & REM. CODE ANN. § 65.011 (Vernon 1997).

⁴ *Jim Rutherford Invs., Inc. v. Terramar Beach Cmty. Ass'n*, 25 S.W.3d 845, 849 (Tex. App.—Houston [14th Dist.] 2000, pet. denied); *Guajardo v. Neece*, 758 S.W.2d 696, 698 (Tex. App.—Fort Worth 1988, no writ); *DeNina v. Bammel Forest Civic Club, Inc.*, 712 S.W.2d 195, 199 (Tex. App.—Houston [14th Dist.] 1986, no writ). *See generally*, David A. Johnson, *One Step Forward, Two Steps Back: Construction of Restrictive Covenants After the Implementation of Section 202.003 of the Texas Property Code*, 32 TEX. TECH L. REV. 355, 360 (2001) (“Generally, a mere breach of the covenant is grounds for the imposition of an injunction.”); Michael S.

With regard to the Fialas' points of error, we begin by noting that none contain adequate citation to supporting legal authority or portions of the record to be sustained. TEX. R. APP. P. 38.1(h). In addition, many of the assertions made in the Fialas' points of error and supporting discussions are incomprehensible. To the extent we can comprehend the Fialas' assertions, more specific reasons that their respective points cannot be sustained are set out below.

Granting of Northwest's Motions for Summary Judgment

Northwest argued and presented evidence that declaratory and injunctive relief were warranted because: (1) the Fialas had asserted that they would continue to use the airport easements, rights-of-way, and facilities without a license or permission unless legally restrained from doing so; (2) the Fialas had an aircraft in the hangar on their property which was flown or trucked there, either of which would have violated the restrictions; (3) the Fialas had a tanker deliver over 1000 gallons of diesel fuel to their hanger and refused to remove it; (4) failing to enforce the fuel storage prohibition could threaten fuel sales at the airport and thus its economic viability; and (5) the fuel stored by the Fialas presented an increased risk of explosion or fire to surrounding properties.

The Fialas' first through tenth and twentieth through thirty-first points of error complain that the trial court erred by granting Northwest's motions for summary judgment. The first point of error argues that Northwest possessed no justiciable interest because: (1) Northwest did not have standing to file the declaratory judgment action in that it was not personally aggrieved by the Fialas' actions; (2) suspicion of such aggrievement without due diligence on Northwest's part to confirm it, does not constitute aggrievement; (3) Northwest relies solely on the fact that an aircraft existed within the Fialas' garage, disregarding the many ways that this aircraft could have arrived there by lawful means; (4) Northwest's

Goodrich, *Private Land Restrictions in Texas: A Need for Greater Legislative Control*, 15 ST. MARY'S L.J. 575, 582 (1984) ("It is also generally held that a restriction will be enforced by injunction simply by showing that a violation is threatened.").

failure to timely object or respond to admissions propounded by the Fialas caused the admissions to be admitted as a matter of law; and (5) Northwest is barred from asserting any evidence touching on matters in interrogatories propounded by the Fialas to which Northwest failed to respond.

However, the Fialas do not explain why Northwest was not aggrieved by their violations of the restrictions, how the airplane could have been brought onto their property without violating the restrictions, what facts were established or precluded by Northwest's alleged failure to respond to discovery, or how those facts bear on the issues underlying the summary judgment or injunction.

The Fialas' second point of error argues that the trial court erred by considering evidence submitted by Northwest in support of its motion for partial summary judgment because Northwest "failed to comply with a discovery request without showing just cause in a timely manner for failure to comply." However, the Fialas do not indicate to what evidence or discovery request they are referring or how they are relevant to the court's summary judgment determination.

The Fialas' third point of error argues that Northwest provided no evidence in support of its motion for partial summary judgment because: (1) "[t]he deed restrictions make no prohibition of access to the airport, only a specific statement that the deed made no conveyance of privilege of access to the airport"; and (2) "for the Court to confirm that the deed restrictions were validly constituted and in full force or waived would require the weighing of facts, a process not permitted by summary judgment. T.R.C.P. 166a(c)." However, the Fialas do not explain of what facts Northwest failed to provide evidence, to which provision(s) of the restrictions they are referring, or what is even meant by their latter contention, which we are unable to comprehend.

The Fialas' fourth point of error argues that the trial court's order makes a modification to the restrictions rather than a clarification. However, the Fialas do not explain

which restrictions the trial court's order modifies, how it does so, or how the purported modification bears on the summary judgment determination.

The Fialas' fifth point of error argues that the trial court "deprived [them] of rights to contract provided under the Constitution of the United States of America without due process" because: (1) "[a]s per Texas law, the only operations regarding restrictive covenants that a court may be engaged in are either the finding of facts with regard to enforcement or to authenticate the failure/voiding due selective enforcement or lack thereof"; (2) "[a]ny modification to restrictive covenants must be considered by all parties burdened under said restrictive covenants and approved by either 75% majority or by unanimous vote depending upon application"; and (3) all affected parties must have been joined in advance to modify the restrictions.

However, the Fialas do not explain which determination(s) by the trial court deprived them of due process or why, to what Texas law or purported modifications of the restrictions they are referring, or which other affected parties should have been joined or why.

The Fialas' sixth point of error argues that: (1) Northwest failed to join all affected parties before commencement of the declaratory judgment action; and (2) Northwest "of [its] own volition, [has] sought certain property tax consideration in exchange for which all properties considered under such are required by law to be reclassified as 'Public Access Airport Property' under Texas Property Tax Code 23.91⁵" However, the Fialas do not explain what other affected parties Northwest should have joined or why or how section 23.91 affects the determinations made by the trial court.

The Fialas' seventh point of error contends that the trial court erred "in denying [them] any access to [the] airport in that the Court did not consider that portions of the airport are classified by law as Public Access Airport Property under T.P.T.C. 23.91" because: (1)

⁵ See TEX. TAX CODE ANN. § 23.91(2) (Vernon 1992) (defining "public access airport property" as privately owned airport property that is regularly used by the public for or regularly provides services to the public in connection with airport purposes)

“Appellants have not asserted that either the General Warranty Deed, the deed restrictions or restrictive covenants have conveyed privileges to access the airport”; and (2) the “Federal Aviation Administration funds and operates facilities of this airport. These funds and operations are provided to serve the general public.” However, the Fialas do not explain how classification as Public Access Property or any of these other assertions bears on any of the determinations made by the trial court.

The Fialas’ eighth point of error contends that the trial court erred “in denying [them] access to airport in that the Court did not consider that the airport operation is under Federal guidelines and certain funding. Discrimination by restricting public access is a violation of Federal law by [Northwest] and cannot be made legal by a court order.” The Fialas further contend that: (1) they paid a jury fee; (2) they denied all accusations in Northwest’s petition; (3) Northwest has not provided any evidence of ill-behavior warranting an injunction; and (4) the trial court’s “granting an injunction bypasses the requirement of showing irreparable injury to [Northwest] for which it has no adequate remedy at law.”

However, the Fialas do not explain what Federal guidelines have relevance to their access to the airport or how; how their payment of a jury fee or denial of the unspecified accusations in Northwest’s petition affects whether the summary judgment was proper; of what facts they allege Northwest failed to provide evidence; or how the trial court’s granting of an injunction “bypasses the requirement of showing irreparable injury to [Northwest] for which it has no adequate remedy at law.”

The Fialas’ ninth point of error argues that the court “deprived [them] of rights to have the ‘issues of fact’ heard and weighed by a jury” in that twenty issues of fact were raised in their response to Northwest’s partial motion for summary judgment. However, the Fialas do not explain what those fact issues were or what evidence they provided to raise them.

The Fialas’ tenth point of error argues that: (1) “issues of fact are raised on two separate occasions in attached Defendants’ Affidavit reference paragraphs 3 and 4”; and (2) written discovery was propounded to Northwest and Northwest failed to timely object or

respond. However, the Fialas do not explain what evidence in Defendants' Affidavit raised what issues of fact or what relevance the unspecified written discovery has on any relevant issues.

The Fialas' twentieth point of error contends that their "right to have the issues of fact heard by a jury was denied in violation of the U.S. Constitution Article 3, Section 2, Clause 3." It further contends that "issues of fact are raised on forty-two (42) separate occasions as identified in 'Defendants' Response to Plaintiffs' Motion for Final Summary Judgment.'" However, the Fialas do not explain what fact issues were raised or how their summary judgment response raised those fact issues, and the balance of their arguments under this point of error are incomprehensible.

The Fialas' twenty-first point of error argues that the trial court "modifies deed restrictions, as a matter of law in violation of the parties contractual rights, instead of clarifying them" because: (1) statements within Jag Gill's affidavit are contradictory to each other and to the restrictions; (2) the "deed restrictions have been an instrument of selective enforcement for many years, utilized by the airport owners as a tool for collecting license fees and waiving deed restrictions"; and (3) another property owner, William Hill, stores "more highly flammable aviation gas than all of the almost non-flammable farm grade diesel fuel stored in [the Fialas'] garage." However, the Fialas do not explain which restrictions they contend were modified, how those restrictions were modified, what relevance the purported modifications or affidavit statements have to the trial court's determinations, or what evidence supports the allegation of fuel storage on Hill's property.

The Fialas' twenty-second point of error argues that they had "no opportunity to respond to the perjury of William F. Hill's and Jagjit [sic] Singh Gill's statements in the affidavit provided as supporting evidence for [Northwest's] Motion for Final Summary Judgment in violation of the Due Process Clause of the Texas and U.S. [sic] Constitutions." The Fialas argue that Mr. Gill "fails to acknowledge that he has had personal knowledge of this to the contrary, not limited to but including the Affidavit attached to 'Defendants' [the

Fialas’] Response to Plaintiffs’ Motion for Final Summary Judgment.” However, the Fialas do not explain how they were denied an opportunity to respond to the alleged perjury contained in affidavits, how the alleged perjury has any bearing on the court’s granting summary judgment, or how the United States Constitution applies to the determinations made by the trial court.

The Fialas’ twenty-third point of error contends that they “raised issues of fact requiring a jury trial in the affidavit of [Northwest] Jagjig [sic] Singh Gill, also President of [Northwest].” The Fialas also argue that fact issues exist in their second-amended answer. However, the Fialas do not explain to what fact issues they are referring, how their answer raises them, or how the issues would be relevant to the trial court’s determinations.

The Fialas’ twenty-fourth point of error argues that their “Second-Amended Answer raised issues of fact on all points of [Northwest’s] Third-Amended Petition for Declaratory Judgment and Application for Permanent Injunction and Plaintiffs’ Motion for Final Summary Judgment.” The Fialas argue that: (1) Northwest “of their own volition, have sought certain property tax considerations in exchange for which all properties considered under such are required by law to be reclassified as ‘Public Access Airport Property’ To state that [the Fialas] are ‘prohibited’ from access would violate any privileges provided under T.P.T.C. 23.91”; and (2) the “Federal Aviation Administration funds and operates certain facilities of this airport. These Federal funds and operations are provided to serve the general public.”

However, the Fialas do not explain to what fact issues they are referring, how their answer raised those fact issues, what relevance property tax considerations or the Federal Aviation Administration funds have on the summary judgment determination.

The Fialas’ twenty-fifth point of error contends that the “deed restrictions do not prohibit access privileges granted by State or Federal law or other lawful means.” The Fialas contend that Northwest’s “Motion for Final Summary Judgment was not a motion seeking clarification of the deed restrictions but a motion that modified them. This is in violation of

[the Fialas'] right under the Constitution for the United States of America as the deed restrictions are contractual by nature.” However, the Fialas do not explain why the restrictions do not prohibit access privileges, to what access privileges they are referring, or what State or Federal law grants them access privileges.

The Fialas' twenty-sixth point of error argues that “access defined by contract to the deeded easements provide for aircraft access on the taxiway system, said contractual rights are taken away by Final Summary Judgment violation of Art. 1 § 10 U.S. Constitution” in that: (1) “In Exhibit ‘A’ of Plaintiffs’ Motion for Final Summary Judgment, the General Warranty Deed, page 3, paragraph 3, the statement of allowing “light duty truck traffic” contradicts the language on page 2 paragraph 2, of the Order granting Final Judgment which changes the wording significantly”; and (2) “The deed being a contractual issue requiring the participation of both parties to make or change stipulations of a contract, rendering that a controversy and an issue of fact still exists as [Northwest has] no documentation from [the Fialas] agreeing to the aforementioned changes.” However, the Fialas do not explain how any contract rights were taken away, or how the statement allowing light duty truck traffic contradicts the summary judgment order or changes the wording.

The Fialas' twenty-seventh point of error argues that the trial court erred “in that changing the definition of the term ‘light truck’ is a contractual issue.” The Fialas argue that (1) Northwest failed to join the other parties that would be affected by any change in the restrictions; (2) language in the General Warranty Deed contradicts language in the trial court’s order granting summary judgment; and (3) “[a]ny modification to restrictive covenants must be considered by all parties burdened under said restrictive covenants and approved by either 75% majority or by unanimous vote depending upon application.” The Fialas do not explain, however, what other parties should have been joined or why, how the language in the General Warranty Deed contradicts the summary judgment order, or how the trial court changed the definition of light truck.

The Fialas' twenty-eighth point of error argues that "the deed restriction cannot be changed on an individual basis, this would constitute selective enforcement an illegal operation that cannot be made legal by court order." The Fialas further contend that the final judgment "prohibits the storage of diesel contrary . . . to the deed restrictions . . . which only address any storage or sale that would constitute a form of competition with the airport." However, the Fialas do not explain how the trial court changed the restrictions with regard to fuel storage on an individual basis or otherwise.

The Fialas' twenty-ninth point of error argues that "the deed restrictions regarding fuel and petroleum products directly address any form of competition against the airport only. The Final Summary Judgment constitutes a change of the restrictions, which preclude personal use, an operation not within the authority of the court." The Fialas argue that they raised affirmative defenses in their second-amended answer. However, the Fialas do not explain how the summary judgment order changed the restrictions from prohibiting competition against the airport to prohibiting personal use or what relevance their alleged affirmative defenses have on the trial court's determinations.

The Fialas' thirtieth point of error argues that "affirmative defenses raised in Defendants' Second-Amended Answer are ignored and never negated so as to leave only an issue of law for the Court's sole consideration." The Fialas argue that "Jag Gill is either disqualified from testifying, or not responding truthfully, which in either case technically disqualifies him from testifying. Jag Gill is evading testimony that could prove to be negative or embarrassing and technically disqualified from testifying. Never-the-less, neither the written Affidavits of Jag Gill or the conflicting oral sworn testimony of Jag Gill are revised in compliance with T.R.C.P. 193.5 as is the responsibility of all parties." However, the Fialas do not explain how the trial court "ignored" their affirmative defenses, how Jag Gill is disqualified from testifying, how he is not responding truthfully, or how any of this affected the summary judgment determination.

The Fialas' thirty-first point of error argues, without more, that "the testimony of Jag Gill is inadmissible as evidence." However, the Fialas do not explain what statements of Mr. Gill's testimony are inadmissible or why.

Denial of the Fialas' Motion for Summary Judgment

The Fialas' eleventh and twelfth points of error complain that the trial court should have granted their motion for summary judgment because: (1) "written discovery had been properly propounded, and [Northwest] failed to timely respond or object to written discovery"; (2) Northwest "is barred from asserting any matter, evidence or testimony by way of affidavit touching on matters requested in said Interrogatories"; (3) the discovery on which [the Fialas' motion for summary judgment] is based is properly propounded"; (4) "[e]ven if a possible misnomer was made, it is evident that by the receipt of discovery by the attorney for the Plaintiffs with the definitions defining only the Corporate Plaintiffs and only Plaintiffs' related parties and officers, it is reasonable to assume that unless opposing party was attempting to evade discovery, *an objection* should have been made to discovery or a request for clarification made by [Northwest]"; (5) in Northwest's special exceptions to the first-amended counterclaim and application for permanent injunction, "[Northwest] make[s] a point that of [the Fialas'] arguments regarding 'Public Access Airport Property' so defined voluntary by [Northwest] because an article or document does not convey a privilege that there must automatically be no other way to secure the same privilege"; and (7) "because of [the Fialas] inquiry regarding the burden of responsibility of [Northwest] to allow the public access to the airport, [Northwest makes] attempt to side step the issue of Public Access by a point of the prohibition of the deed restrictions for the purpose of obtaining a judgment that encompasses the State and Federal issues of access, so as to preclude [the Fialas] from being able to exercise any privileges of access at all."

However, the Fialas do not explain how Northwest's alleged failure to respond to their discovery supports their motion for summary judgment, and we cannot comprehend the remainder of the contentions in their eleventh and twelfth points of error.

Granting of Northwest's Special Exceptions

The Fialas' thirteenth through sixteenth points of error complain about the trial court's granting of Northwest's special exceptions. A trial court's order sustaining special exceptions is reviewed for abuse of discretion. *Melendez v. Exxon Corp.*, 998 S.W.2d 266, 272 (Tex. App.—Houston [14th Dist.] 1999, no pet.).

The Fialas' thirteenth point of error argues that the trial court erred “in that the issue of public access to the airport is ripe for determination” because: (1) they are currently suffering injury and damage from this fact issue not being resolved by the jury; and (2) “[i]n paragraph #2 of [Northwest's] Motion for Special Exceptions to the First-Amended Counterclaim and Application for Permanent Injunction, [Northwest] refer[s] to statements by [the Fialas] pertinent to this case; these are not a Motion for Sanctions as stated by [Northwest].” However, the Fialas do not explain what fact issue is relevant to the trial court's granting of Northwest's special exceptions, how the other contentions pertain to the granting of the special exceptions, or what allegations were stricken that did not fail to state a cause of action.

The Fialas' fourteenth point of error argues that “paragraphs I, II, & V are background and not allegations for sanctions as surmised by [Northwest] in the Motion for Special Exceptions.” The Fialas further assert that “[Northwest] except[s] to references made to the failed deed restrictions being an issue ‘not ripe for determination because there is no justiciable controversy.’ Having them stricken, then [Northwest] open[s] these very same issues” However, the Fialas do not explain how these assertions relate to granting of the special exceptions.

The Fialas' fifteenth point of error argues that “certain deed restrictions void through process of law asserted in [Northwest's] Motion for Special Exceptions to the First-Amended Counterclaim and Application for Permanent Injunction are critical issues of fact that [Northwest] raise[s] in [its] Motion for Final Summary Judgment.” The Fialas further contend that “[Northwest] has enforced the deed restrictions with a discretionary hand, to

wit: those that pay him a license fee . . . he ignores . . . those who don't pay a license fee he seeks to enforce the deed restrictions against them.” However, the Fialas do not explain how Northwest only enforcing the restrictions against those who refuse to pay a license fee is unlawful, to what “critical issues of fact” they are referring, or how these issues relate to the court’s granting of Northwest’s special exceptions.

The Fialas’ sixteenth point of error argues that “the issues of fact excepted to, [the Fialas] can prove are essential to both [the Fialas’] defense case and [the Fialas’] Counterclaim.” The Fialas further contend that: (1) [their] deeded easements of ingress and egress are currently being blocked during certain hours of the day and the single best access for emergency equipment to access [the Fialas’] residence are being barricaded from allowing [them] access”; and (2) Northwest is “violating [their] rights; however, because of Special Exceptions and Summary judgments these issues of fact cannot be heard.” However, the Fialas do not cite any evidence showing that Northwest is interfering with their emergency access or explain how the alleged barricades are relevant to the court’s granting of Northwest’s special exceptions.

Northwest’s Motion to Strike The Fialas’ Counterclaims

The Fialas’ seventeenth through nineteenth points of error complain that the trial court erred by striking the Fialas’ counterclaims. The Fialas’ seventeenth point of error contends that the court erred because “issues concerning relief sought from infringement and deprivation of easement rights and matters of safety both public and private with regard to human life and property were not allowed to be heard.” The Fialas’ eighteenth point of error contends that “issues of fact are raised on all points concerning [Northwest’s] Third-Amended Petition and Motion for Final Summary Judgment are [sic] jury issues.” The Fialas further assert that: (1) “[i]n the Defendants’ Second-Amended Counterclaim and Defendants’ Second-Amended Answer, [the Fialas] raise issues of fact regarding the deed restrictions and issues of fact regarding the easements”; (2) “issues of fact that should have never been excepted to were removed, critical issues of fact. Instead of clarification being required and

more facts pled, the Court struck critical issues of fact from the case”; and (3) “[p]arties have a right to justice and not to have matters washed away through procedural machinery without the facts being heard. No forum now exists for the matters pertaining to life and liberty raised honestly and faithfully in response by [the Fialas] in this matter.”

The Fialas’ nineteenth point of error argues that the “issues concerning relief sought from infringement and deprivation of easement rights and matters of safety with regard to human life and property would now be illegally barred from ever being heard.” However, the Fialas do not explain in any of these points of error how the trial court erred in concluding that their counterclaim failed to state a cause of action or in striking the counterclaim if it was not amended to state a cause of action.

Accordingly, the Fialas’ thirty-one points of error are overruled, and the judgment of the trial court is affirmed.

/s/ Richard H. Edelman
 Justice

Judgment rendered and Opinion filed January 17, 2002.

Panel consists of Justices Yates, Edelman, and Wittig.⁶

Do Not Publish — TEX. R. APP. P. 47.3(b).

⁶ Senior Justice Don Wittig sitting by assignment.