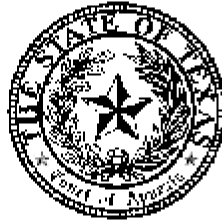
Reversed and Rendered and Opinion filed November 9, 2000.



In The

Fourteenth Court of Appeals

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NO. 14-99-00125-CV

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THE STATE OF TEXAS, THE GENERAL LAND OFFICE OF THE STATE OF TEXAS, AND THE SCHOOL LAND BOARD OF THE STATE OF TEXAS, Appellants

V.

BRAZOS RIVER HARBOR NAVIGATION DISTRICT, Appellee

On Appeal from the 23rd District Court
Brazoria County, Texas
Trial Court Cause No. 85-C-2830

O P I N I O N

The issue in this appeal is whether the last call in the Caldwell Patent is a boundary line or a meander line. We find that the law of the case governs this appeal, reverse the summary judgment below and render judgment that the last call in the Caldwell Patent is a boundary line.

BACKGROUND

Appellants, the State of Texas, the General Land Office, and the School Land Board ("the State"), appeal a summary judgment granted in favor of appellee, Brazos River Harbor Navigation District (the "District"). The State's appeal comes to us following a reversal and remand from the Corpus Christi Court of Appeals, which set aside an earlier summary judgment in favor of the District regarding a title dispute over the Caldwell Patent. *See State v. Brazos River Harbor Navigation District*, 831 S.W.2d 539 (Tex. App.—Corpus Christi 1992, writ denied).[1] In reversing and remanding, the Corpus Christi appeals court held that (1) the last call in the Caldwell Patent was a boundary line and not a meander line; (2) the "strip and gore" doctrine was not an available defense to the District; (3) the State's inconsistent statements in prior pleadings were not judicial admissions and could not contradict the terms of the unambiguous Caldwell Patent; and (4) the State was not equitably estopped from challenging the District's title to the property.

Following remand to the trial court, the District again filed for summary judgment, setting out the same issues it raised in the earlier summary judgment proceeding: whether the Caldwell Patent last call is a meander line or a boundary line. The State also filed a motion for summary judgment alleging, among other things, that the law of the case applied and that the Corpus Christi Court of Appeals opinion disposed of the issues. The trial court again granted summary judgment in favor of the District; the State appealed both the granting of the District's motion for summary judgment and the denial of its motion for summary judgment. As the law of the case from the Corpus Christi appeal governs disposition of this appeal, we hold that the Caldwell Patent last call is a boundary line.

STANDARD OF REVIEW

Where, as here, both parties file a motion for summary judgment, and one is granted and one is denied, this Court must "review the summary judgment evidence presented by both sides and determine all questions presented and render such judgment as the trial court should have rendered."

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[1] The first appeal was transferred from our court to the Corpus Christi Court of Appeals for docket equalization purposes. The case has been returned to our court for this second appeal.

Commissioners Court v. Agan, 940 S.W.2d 77, 80 (Tex. 1997); W. Wendall Hall, *Standards of Review in Texas*, 29 ST. MARY'S L.J. 351, 418 (1998).

LAW OF THE CASE DOCTRINE

The doctrine of "law of the case" arises when questions of law, decided on appeal to a court of last resort, govern disposition of the case throughout its subsequent stages. *See Hudson v. Wakefield*, 711 S.W.2d 628, 629 (Tex. 1986); *J.O. Lockridge Gen. Contractors, Inc. v. Morgan*, 848 S.W.2d 248, 250-51 (Tex. App.—Dallas 1993, writ denied). Because public policy favors an end to litigation, the law of the case narrows the issues in successive stages of litigation to achieve uniformity of decisions, judicial economy and efficiency. *See Hudson*, 711 S.W.2d at 630; *Morgan*, 848 S.W.2d at 250. The doctrine applies only to questions of law, and the issues involved in the second case must be substantially the same as those involved in the first case. *See Hudson*, 711 S.W.2d at 630; *Morgan*, 848 S.W.2d at 250. Although the facts in the second case also must be substantially the same as those in the first case, so as to not materially affect the legal issues in the second case, they need not be identical. *Hudson* at 630; *Morgan* at 250.

The doctrine has no application, however, where a party amends his pleadings and adds a new cause of action following reversal and remand from the first proceeding. *See Berryman v. El Paso Natural Gas Co.*, 838 S.W.2d 610, 614 (Tex. App.—Corpus Christi, 1992), rev'd on other grounds, 858 S.W.2d 362 (Tex. 1993); *Kropp v. Prather*, 526 S.W.2d 283, 286 (Tex. Civ. App.—Tyler 1975, writ ref'd n.r.e.). If the first appeal were from the granting of summary judgment, the doctrine will not apply if the parties or causes of action are different under the subsequent proceeding, or if the summary judgment evidence offered in support of the second motion materially differs from that offered in support of the first motion. *See Hudson*, 711 S.W.2d at 631; *Kropp*, 526 S.W.2d at 286. The party asserting that the evidence in the second proceeding materially differs from that of the first has the burden of proving his contention, and in the absence of such proof, the court will presume that the evidence was materially the same in both proceedings. *See id*.

The record in this appeal shows that the District argued the same issues and law in the first

summary judgment proceeding as it did in the second, and that the issues raised in this appeal are substantially the same as those raised in the first appeal. The facts and arguments presented in both summary judgment proceedings were materially the same, or so nearly the same as to not materially affect the legal issues involved in the second proceeding. Although the District amended its petition following remand, it asserted no new claims against the State. We find that disposition of this appeal is controlled by the disposition in the first appeal as the law of the case. *See Leake v. Half Price Books, Records, Magazines, Inc.* 918 S.W.2d 559 (Tex. App.—Dallas 1996, no writ).

PAROL EVIDENCE IN THE DISTRICT'S SECOND MOTION

The District contends, however, that the law of the case does not apply as its second motion for summary judgment included new evidence to support its claim that the last call is a meander line. Specifically, the District points out that it cited additional case law, relied on additional affidavits, and attached a new deposition, a survey and corrected survey to the second motion; these latter two documents, says the District, prove that the last call is a meander line. The State argues, as it did below, that the survey and corrected survey constitute nothing more than inadmissible parol evidence as against the underlying patent deed.

The construction of a deed, including the question of whether a deed is ambiguous, is a question of law. *See Terrill v. Tuckness*, 985 S.W.2d 97, 101 (Tex. App.—San Antonio 1998, no writ). Parol evidence is inadmissible to explain or vary the terms of a deed, unless the deed is found to be ambiguous. *See Massey v. Massey*, 807 S.W.2d 391, 405 (Tex. App.—Houston [1st Dist.] 1991), *writ denied*, 867 S.W.2d 766 (Tex. 1993).

Ambiguity, however, is an affirmative defense that must be specifically pleaded. *See Terrill*, 985 S.W.2d at 101. In the absence of a pleading of ambiguity, the meaning of a deed and the parties' intent must be ascertained from within the four corners of the deed, without resort to parol or extrinsic evidence. *See Rutherford v. Randal*, 593 S.W.2d 949, 953 (Tex. 1980). Where, as here, the facts are undisputed concerning the location of a boundary call, it becomes a question of law for the court to

determine whether the boundary call is a meander line or a boundary line. *See Ulbricht v. Friedsam*, 159 Tex. 607, 325 S.W.2d 669, 672 (1959). As neither party raised ambiguity below, parol evidence is not admissible to explain or vary the terms of the underlying deed. Thus, the survey and corrected survey could not be considered to explain or vary the terms of the Caldwell Patent deed, and these documents do not constitute new facts or claims to negate application of the law of the case.

CONCLUSION

To summarize, we conclude that the rulings by the Corpus Christi Court of Appeals are the law of the case and control disposition of this appeal. Accordingly, we reverse the judgment of the trial court granting the District's second motion for summary judgment, and render judgment on the State's motion for summary judgment that the law of the case applies and that the last call in the Caldwell Patent is a boundary line.

/s/ Wanda McKee Fowler
Justice

Judgment Reversed and Rendered and Opinion filed November 9, 2000.

Panel consists of Justices Fowler, Edelman and Frost.

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