



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

NO. 02-15-00392-CV

LINDEMANN PROPERTIES, LTD.

APPELLANT

V.

WARD A. CAMPBELL

APPELLEE

FROM THE 97TH DISTRICT COURT OF ARCHER COUNTY
TRIAL COURT NO. 2013-0050A-CV

DISSENTING OPINION

I. Introduction

By its express terms, the easement at issue here (Easement), authorized the installation of a single radio transmission tower and terminated if “said radio transmission tower” was “abandoned and/or removed.” Because the Easement here is susceptible to only one reasonable, definite interpretation after applying

established rules of contract construction, and because the pertinent facts that a second bigger, taller, and wider radio transmission tower was installed on the dominant estate and that the original “said radio transmission tower” was dismantled and destroyed are conclusively established, I would construe the Easement as a matter of law. In accordance with that construction, I would reverse the trial court’s judgment for Appellee Ward A. Campbell declaring that the Easement had not terminated and render judgment for Appellant Lindemann Properties, Ltd. declaring that the easement did terminate. The Majority reaches a different conclusion, so I am compelled to dissent.

II. The Easement

In 1977, Lindemann’s predecessor-in-title to the servient estate granted the Easement to Campbell’s predecessor-in-title to the dominant estate. The Easement was granted “for and in consideration of TEN AND NO/100 (\$10.00) Dollars.” It was not a general-purpose easement, but was limited to granting:

[A]n easement or right for the installation of a radio transmission tower, consisting of the tower itself and guy wires as necessary to support the same.

Said radio transmission tower will be located on a tract 500 feet by 500 feet, the center of which to be determined by the actual location when installed on the following tract of land

. . . .

Together with the right of ingress and egress over my adjacent lands to or from said easement for the purpose of inspecting, maintaining, constructing and removing said radio transmission tower and appurtenances.

TO HAVE AND TO HOLD the above described easement and rights unto the said A. O. Campbell, Jr., his successors and assigns, perpetually, *until said radio transmission tower shall be abandoned and/or removed.* [Emphasis added.]

In accordance with the Easement, in 1977 a 400-foot tall, 18-inch wide radio transmission tower was built on what became the center point of the 500 foot by 500 foot easement.

In 2011, to facilitate a lucrative lease with LKCM Radio Group, L.P. for placement of F.M. radio broadcasting equipment, Campbell built a new, bigger, taller, and wider radio transmission tower on the Easement. The new radio tower was constructed out of larger metal tubing and was at least 20 feet taller and 3 feet wider than the old radio tower. After the new radio tower was built 18 feet from the old one, Campbell tore down the old radio tower.

III. The Lawsuit

Lindemann sued Campbell, seeking a declaration that the Easement had terminated. Following a bench trial, the trial court ruled for Campbell, made findings of fact and conclusions of law,¹ and signed a judgment against Lindemann declaring that the Easement had not terminated. Lindemann perfected this appeal.

¹A copy of the trial court's findings of fact and conclusions of law is attached hereto as Appendix A.

The pertinent facts of this appeal are not in dispute.² The relief sought by Lindemann, however, pivots on the legal correctness of the trial court's conclusions of law.

IV. The Law Concerning Easements

A property owner's right to exclude others from his or her property is recognized as "one of the most essential sticks in the bundle of rights that are commonly characterized as property." *Marcus Cable Assocs., L.P. v. Krohn*, 90 S.W.3d 697, 700 (Tex. 2002) (quoting *Dolan v. City of Tigard*, 512 U.S. 374, 384, 114 S. Ct. 2309, 2316 (1994)). A landowner may grant an easement that relinquishes a portion of this right to exclude others, but such a relinquishment is limited in nature. *Id.* An easement is a nonpossessory interest that authorizes its holder to use the property for only particular purposes. *Id.*; see also *Severance v. Patterson*, 370 S.W.3d 705, 721 (Tex. 2012) (recognizing easement allows another to use property for a specific purpose).

When the terms used in the grant of an easement are not specifically defined, they should be given their plain, ordinary, and generally accepted meaning. *Krohn*, 90 S.W.3d at 701. An easement's express terms provide the purpose for which the easement holder may use the property. *Id.*; see also

²The Majority Opinion addresses Findings of Fact 21–24 and Conclusions of Law 7–9 and 11–15. But Findings of Fact 21–24 are actually conclusions of law. See *Seasha Pools, Inc. v. Hardister*, 391 S.W.3d 635, 637 (Tex. App.—Austin 2012, no pet.) (“[A] trial court’s designation of items as findings of fact or conclusions of law is not controlling on appeal, and we may treat the court’s ruling as a factual finding or legal conclusion regardless of the label used.”).

Canyon Reg'l Water Auth. v. Guadalupe-Blanco River Auth., 258 S.W.3d 613, 616 (Tex. 2008) (“The express terms of the easement determine the scope of the easement holder’s rights.”). Only what is necessary to “fairly enjoy the rights expressly granted” passes by implication because those who grant easements should be assured that their conveyances will not be construed to undermine their private-property rights—like the rights to “exclude others” or to “obtain a profit”—any more than what was intended in the grant. *Krohn*, 90 S.W.3d at 701–02 (quoting *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 436, 102 S. Ct. 3164, 3176 (1982)). That is, in construing an easement, “[i]t is not necessary for [the easement grantor] to make any reservation to protect his interests in the land, for what he does not convey, he still retains.” *Id.* (quoting *City of Pasadena v. Calif.-Mich. Land & Water Co.*, 110 P.2d 983, 985 (Cal. 1941)).

V. Standards of Review

We review a trial court’s conclusions of law de novo to determine whether the trial court drew the correct legal conclusions from the facts. *State v. Heal*, 917 S.W.2d 6, 9 (Tex. 1996). We are not bound by the trial court’s conclusions of law and will review them independently to determine their legal correctness. *Am. Flood Research, Inc. v. Jones*, 192 S.W.3d 581, 583 (Tex. 2006).

We likewise review the trial court’s interpretation of the easement de novo. See *DeWitt Cty. Elec. Co-op., Inc. v. Parks*, 1 S.W.3d 96, 101 (Tex. 1999); *Eddins Enters., Inc. v. Town of Addison*, 280 S.W.3d 544, 548 (Tex. App.—

Dallas 2009, no pet.). The rules of contract construction and interpretation apply to an express easement agreement. *N. Tex. Mun. Water Dist. v. Ball*, 466 S.W.3d 314, 319 (Tex. App.—Dallas 2015, no pet.) (citing *Parks*, 1 S.W.3d at 100)).

VI. Analysis

A. The Easement’s Limited Grant of the Right to Install a Single Radio Transmission Tower

The scope of Campbell’s rights is determined by the express terms of the Easement’s grant. *Parks*, 1 S.W.3d at 103 (“[T]he scope of the easement holder’s rights must be determined by the terms of the grant”). Here, the Easement granted only a “right for the installation of a radio transmission tower” “[t]ogether with the right of ingress and egress over [Lindemann’s] adjacent lands to or from said easement for the purpose of inspecting, maintaining, constructing and removing *said* radio transmission tower and appurtenances.” [Emphasis added.] Thus, the express terms of the Easement grant a limited, specific use of the dominant estate for the installation and construction of a (singular) radio transmission tower and provide for a limited right of ingress and egress over the servient estate for maintenance and removal of *said* (singular) radio transmission tower. See *Kearney & Son v. Fancher*, 401 S.W.2d 897, 905 (Tex. Civ. App.—Fort Worth 1966, writ ref’d n.r.e.) (recognizing that where easement specifically states the use or purpose for which it is created, easement is limited to such uses and cannot be enlarged).

The Easement could have granted a perpetual right to construct or to reconstruct successive radio transmission towers; but it did not. *Cf. Boland v. Nat. Gas Pipeline Co. of Am.*, 816 S.W.2d 843, 844 (Tex. App.—Fort Worth 1991, no writ) (explaining easement granted to “construct thereon and to reconstruct, operate, maintain, repair, alter, replace, move and remove an initial pipeline, and any additional pipeline described by Grantee, for the transportation of gas, oil, or other substances transportable by pipeline, at route or routes selected by Grantee” was perpetual right-of-way easement) (emphasis removed); *Harris v. Phillips Pipe Line Co.*, 517 S.W.2d 361, 364 (Tex. Civ. App.—Austin 1974, writ ref’d n.r.e.) (discussing landowner’s grant to Shell Oil as “patently . . . very broad” and including “the right to ‘construct, reconstruct, replace, renew, maintain, repair, change the size of and remove pipes and pipe lines’”); *Edgcomb v. Lower Valley Power & Light, Inc.*, 922 P.2d 850, 853 (Wyo. 1996) (explaining easement was perpetual and granted right to “construct, reconstruct, rephase, repair, operate and maintain on the above-described lands and/or in or upon all streets, roads or highways abutting said lands, an electric transmission and/or distribution line or system”). Nowhere do the terms of the Easement grant the right to engage in a second construction project to install a second radio transmission tower on the dominant estate. Nowhere do the terms of the Easement grant the right to build on the dominant estate a new radio transmission tower, that is bigger, taller, and wider and in a different spot than the original tower. Contrary to the applicable rules of construction, the trial court

construed the intentionally narrow, limited grant conveyed by the Easement's use of the singular indefinite article "a" and the Easement's use of the adjective "said"—both describing the single, original radio transmission tower—as including a grant of the right to build and install successive, new, bigger, taller, and wider radio transmission towers anytime lessees of space on the tower request such accommodations. *But see Pipe Line Co. v. Dwyer*, 374 S.W.2d 662, 665–66 (Tex. 1964) (rejecting defendant's contention that gas pipeline easement granted thirty years earlier for \$32 authorized an increase in the size of the pipeline every time an increased demand for gas made such enlargement necessary).

I would hold that as a matter of law that the express terms of the limited, narrow grant provided in the Easement do not include a grant of the right to build an entirely new, bigger, taller, and wider radio transmission tower. *See id.* at 666 ("Defendant was not authorized to remove this 18-inch line initially constructed and replace it with a line of substantially greater size."). I would therefore hold that the trial court erred in its conclusions of law to the contrary.

**B. The Easement's Habendum Clause Mandates Termination
of the Easement When the Original Tower is Removed;
the Easement is Determinable**

An easement that terminates upon the happening of a particular event or contingency is a "determinable easement." *See, e.g., Thompson v. Clayton*, 346 S.W.3d 650, 655 (Tex. App.—El Paso 2009, no pet.). The Easement's habendum clause provides that the Easement is perpetual "*until **said** radio*

transmission tower shall be abandoned and/or removed.” [Italics and bold added.] Thus, the Easement here is a determinable easement. See *id.* And under the plain language of the Easement’s habendum clause, when “said” (i.e., the original) radio transmission tower is removed, the Easement automatically terminates. To construe the Easement as continuing even after removal of “said” radio transmission tower eviscerates the habendum clause and its specific language making the Easement determinable and rewrites the Easement to make it perpetual. See *ETC Tex. Pipeline, Ltd v. Payne*, No. 10-11-00137-CV, 2011 WL 3850043, at *7 (Tex. App.—Waco Aug. 31, 2011, no pet.) (mem. op.) (declining to adopt ETC’s interpretation of easement because its interpretation would make the easement perpetual and “eviscerate the eighteen-month non-use termination clause”); *Kearney & Son*, 401 S.W.2d at 905 (“To hold that a permanent easement of access across appellant’s property exists by virtue of the grant in the deed violates the express language and terms of the grant and enlarges the use of the appellant’s property from that stated in the express grant.”); see also *Scott v. Walden*, 165 S.W.2d 449, 451 (Tex. 1942) (holding habendum clause providing that easement “shall continue so long as the same may be necessary and required for ingress and egress” could not be ignored because it manifested parties’ intent that easement not be perpetual and evidence presented raised fact issue on whether easement remained necessary). Such an interpretation of the Easement violates one of the most basic rules of contract construction: it fails to give effect to an entire clause, the

habendum clause. See, e.g., *Heritage Res., Inc. v. NationsBank*, 939 S.W.2d 118, 121 (Tex. 1996) (recognizing presumption that parties to a contract intend every clause to have effect); *Coker v. Coker*, 650 S.W.2d 391, 393 (Tex. 1983) (recognizing rule of construction that entire contract will be harmonized to give effect to all provisions of the contract so that none will be rendered meaningless). We presume that the parties to the Easement intended every clause to have some effect.

The evidence conclusively established that Campbell “abandoned and/or removed,” “said radio transmission tower,” that is, the original radio transmission tower. Consequently, by its own express terms, the Easement terminated. I would therefore hold that the trial court erred in its conclusions of law to the contrary.

**C. Construction of an Entirely New Radio Transmission Tower
Does Not Constitute Maintenance of the Old Tower**

In addition to the granting clause and the habendum clause, the Easement contains a clause authorizing ingress and egress over the servient estate for “the purpose of inspecting, maintaining, constructing and removing said radio transmission tower and appurtenances.” The trial court, and now the Majority, construe this ingress-egress clause as authorizing Campbell to build an entirely new, bigger, taller, and wider radio transmission tower in a spot 18 feet from the old tower under the guise of “maintaining” the old tower.

Because the term “maintenance” is not defined in the Easement, it is to be given its ordinary and common meaning. See *Heritage Res.*, 939 S.W.2d at 121 (explaining that if a term in a conveyance is not specifically defined then that term is given its plain, ordinary, and generally accepted meaning). No definition of “maintenance” exists that includes the destruction of the thing being maintained. Maintenance performed on a radio transmission tower does not include tearing down and dismantling that radio transmission tower. The fact that a new, bigger, taller, and wider radio transmission tower was built 18 feet away before the old radio transmission tower was demolished does not somehow transform its demolition into its maintenance. See, e.g., *Parks*, 1 S.W.3d at 103 (reversing court of appeals’s construction of easement because the terms “obstruction,” “cut,” and “cut down,” were unambiguous and court of appeals’s construction failed to give terms their common meanings).

The Majority relies on *Dwyer* for the proposition that destruction falls within the definition of maintenance. 374 S.W.2d 662. But *Dwyer* actually supports the opposite conclusion. In *Dwyer*, the easement granted was a general right-of-way easement for a gas pipeline. *Id.* at 666 (“The purpose or object of the easement in this case is stated in general terms—transportation of gas by pipeline.”). The supreme court noted that the granting clause of the easement authorized the defendant to “lay, construct, maintain, operate (and) repair” a pipeline which the defendant did by laying an 18-inch pipeline. *Id.* at 664. But despite the granting clause in *Dwyer* authorizing the laying, constructing, maintaining, operating, and

repairing the gas pipeline, the supreme court held that the defendant was prohibited from replacing its 18-inch pipeline with a 30-inch high-pressure pipeline under the guise of maintenance. *Id.* at 666. The supreme court agreed, however, that by giving the terms “maintain” and “operate” in the granting clause their ordinary meaning, the grant included the right “to remove and replace the original pipe with pipe *of the same size when necessary.*” *Id.* at 664 (emphasis added). Thus, the supreme court in *Dwyer* expressly held that to qualify as “maintenance” any replacement of the original pipe must be with pipe of the same size. *Id.* (“We hold that the terms ‘operate’ and ‘maintain’ in the granting clause are at least broad enough to include the right to remove and replace the original pipe with pipe of the same size when necessary.”).³

The Easement here is narrower than the general right-of-way easement for a gas pipeline in *Dwyer*.⁴ The narrow, limited, express easement granted here

³The Majority Opinion’s reliance on *Harris v. Phillips Pipe Line Co.* is likewise misplaced. The court in *Harris* held that “[t]o require Phillips to cease use of the pipe line in order to replace it with a new line would deny Phillips a right expressly given by the grant” because “Phillips plainly had the right under its grant from Shell to substitute a new ten inch line for the old ten inch line.” 517 S.W.2d at 364. The grant in the Easement here does not plainly give Campbell the right to substitute a new radio transmission tower for the old one.

⁴The Majority Opinion adds language to the Easement that is not there; the Easement does not contain the word “operate” as set forth by the Majority. See Majority Op. at p. 25. Unlike the express terms of the general purpose oil and gas pipeline easement in *Dwyer*, the express terms of the Easement do not make it a general purpose easement. See, e.g., *Kearney & Son*, 401 S.W.2d at 903 (refusing to construe easement “to use the railroad switch track and grounds” as general purpose easement of access).

was for the installation of a radio transmission tower. And to the extent *Dwyer* may be construed as authorizing replacement under the guise of maintenance, the supreme court expressly held that granting language authorizing maintenance includes only the “right to remove and replace the original pipe with pipe of the same size when necessary.” *Id.* Here, the evidence conclusively establishes that Campbell did not remove and replace the original radio transmission tower with a tower of the same size. Instead, Campbell constructed a new, bigger, taller, and wider radio transmission tower—the very conduct prohibited in *Dwyer* as inconsistent with “maintenance.” *Id.* at 666 (“Defendant was not authorized to remove this 18-inch line initially constructed and replace it with a line of substantially greater size”).⁵ If the general right-of-way gas pipeline easement granted in *Dwyer*, once it became certain, prohibited the defendant from replacing the gas pipeline with a larger pipeline based on increased demand

⁵The Majority Opinion focuses on this “substantially greater size” language from the final, summary paragraph of the *Dwyer* opinion while overlooking the supreme court’s express holding that to qualify as “maintenance” a replacement is limited to a replacement of the “same size.” See *Dwyer*, 374 S.W.2d at 664 (holding the term maintenance may include “the right to remove and replace the original pipe with pipe of the same size when necessary”). By focusing on whether the new tower built by Campbell is of a “substantially greater size,” the Majority Opinion adopts a new, previously unrecognized test that contravenes established law concerning easements; the law is well settled that in construing an easement, “[i]t is not necessary for [the easement grantor] to make any reservation to protect his interests in the land, for what he does not convey, he still retains.” *Krohn*, 90 S.W.3d at 701–02 (internal citation omitted). That is, unless the granting clause of the Easement authorizes the construction and installation of a new radio transmission tower that is not the same size, that action falls outside the grant and is prohibited.

for gas, the narrower, more specific Easement here unquestionably prohibits Campbell from replacing the radio transmission tower with a new, bigger, taller, and wider radio transmission tower based on the needs of potential lessees like LKCM Radio Group, L.P. Just as the supreme court in *Dwyer* held that it did not follow from the easement's granting language that the grantor for \$32 in 1926 intended to burden the servient estate with an easement that might be enlarged over and over again as often as an increase in demands for gas might make it necessary, so I would hold that it does not follow from the Easement's narrow granting language that the grantor here for \$10 in 1977 intended to burden the servient estate with an easement that might be enlarged over and over again as often as an increase in tower size is demanded by potential lessees. See *id.* at 665–66.

The evidence conclusively establishes that Campbell did not simply replace pieces or portions of the existing radio transmission tower with same-sized pieces; nor did Campbell only replace the existing radio transmission tower with the same-sized tower. Instead, as prohibited by the supreme court in *Dwyer*, Campbell replaced the existing radio transmission tower with a larger tower positioned in a location different from the original tower. Accordingly, I would hold that the trial court's conclusions of law that the scope of the Easement was not violated, that the construction of the new radio transmission tower was maintenance of the old one, that the old tower was not abandoned, and that the Easement did not terminate, were erroneous as a matter of law.

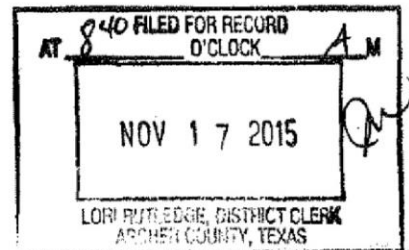
VII. Conclusion

For the reasons set forth above, I would sustain Lindemann's first three issues, reverse the trial court's judgment for Campbell—including the award of attorney's fees (mooting Lindemann's fifth issue)—render a judgment for Lindemann declaring that the Easement terminated, and remand the case to the trial court to address Lindemann's claim for injunctive relief (his fourth issue) and Lindemann's claim for attorney's fees. Because the Majority Opinion does not, I am compelled to dissent.

/s/ Sue Walker
SUE WALKER
JUSTICE

DELIVERED: December 8, 2016

APPENDIX A



NO. 2013-0050A-CV

LINDEMANN PROPERTIES, LTD.
Plaintiff,

V.

WARD A. CAMPBELL
Defendant.

§ IN THE DISTRICT COURT
§
§
§ 97TH JUDICIAL DISTRICT
§
§
§ OF ARCHER COUNTY, TEXAS

**FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

NOW COMES the Court, having heard the evidence and argument of counsel in this cause and makes the following findings of fact and conclusions of law listed below. To the extent any findings of fact are deemed to be conclusions of law, they are incorporated herein as conclusion of law. To the extent that any conclusions of law are deemed to be findings of fact, they are incorporated herein as findings of fact.

I.

Findings of Fact

1. On or about March 7, 1977, Howell E. Smith d/b/a Muleshoe Cattle Company granted an easement (the "Easement") to A.O. Campbell, Jr.

2. A true and correct copy of the instrument that created the Easement (the "Easement Instrument") referenced in Paragraph 1, above, was admitted into evidence during the trial of this cause on June 29, 2015, as Plaintiff's Exhibit 1, and is attached hereto as Exhibit A.

3. Defendant Ward A. Campbell ("Campbell" or "Defendant") is A.O. Campbell, Jr.'s son and succeeded to A.O. Campbell, Jr.'s interest in the Easement.

4. Defendant held a valid Easement on the Property for the purpose of installing a radio tower and guy wires necessary to support the same.

5. Lindemann Properties, Ltd. ("Lindemann" or "Plaintiff") acquired title to the Property (defined below in Paragraph 7) in 2009, subject to the Easement.

6. The Easement Instrument states that it granted "an easement or right for the installation of a radio transmission tower, consisting of the tower itself and guy wires as necessary to support the same."

7. The Easement Instrument states that "said radio transmission tower will be located on a tract 500 feet by 500 feet" (the "Tract") within a larger area described as "Lot No. One (1), Block No. Seventy-five (75) ATNC Subdivision, Archer County, Texas." Lot No. One (1), Block No. Seventy-five (75) ATNC Subdivision, Archer County, Texas," is referred to herein as the "Property."

8. The Easement Instrument granted "the right of ingress and egress over my adjacent lands to or from said easement for the purpose of inspecting, maintaining, constructing and removing said radio transmission tower and appurtenances."

9. The boundaries of the Tract would be determined by the location of the tower itself, with the center of the Tract being the site of the tower.

10. The Easement would remain in existence perpetually, until said radio transmission tower should be abandoned and/or removed.

11. A radio transmission tower (the "Original Tower") was constructed within the Tract in 1977.

12. The Original Tower was enclosed by a pipe fence since the 1970's.

13. The Original Tower remained standing until it was replaced and removed in 2012 due to evidence of structural instability.

14. The Original Tower was standing while a replacement tower (the "New Tower")

was constructed on the Tract.

15. The New Tower was constructed within the same pipe-fenced enclosure as the Original Tower.

16. Replacement of the Original Tower was necessary to maintain a functional tower in the Tract.

17. The Original Tower was removed after it was replaced by the New Tower.

18. The Original Tower was removed as soon as was practicable after all transmission equipment was relocated to the New Tower.

19. The Original Tower was removed only after it was no longer transmitting.

20. The New Tower does not increase the burden on the surface estate.

21. The New Tower does not exceed the scope of the Easement.

22. The building of the New Tower does not effect a termination of the Easement.

23. No actions of Defendant in connection with the maintenance of the Easement effected a termination of the Easement.

24. The Easement has not terminated and is still in existence.

25. \$51,763.75 is a reasonable fee for the necessary services performed by Defendant's attorneys through the trial court phase of this case.

26. Defendant incurred \$4,342.44 in reasonable and necessary expenses through the trial court phase of this case.

27. Exhibit 29 was offered by Plaintiff.

28. Exhibit 29 was Defendant's list of revenue received from both the Original and New Towers.

29. \$25,000 is a reasonable fee for the necessary services to be performed by

Defendant's attorneys if there is an appeal to the Court of Appeals.

30. \$10,000 is a reasonable fee for the necessary services to be performed by Defendant's attorneys if a Petition for Review is filed with the Texas Supreme Court.

31. \$20,000 is a reasonable fee for the necessary services to be performed by Defendant's attorneys if the Texas Supreme Court grants the Petition for Review.

II.

Conclusions of Law

1. The award of \$51,106.19 in attorney's fees to Defendant is equitable and just.

2. The award of \$4,342.44 in reasonable and necessary expenses to Defendant is equitable and just.

3. The award of \$25,000 in attorney's fees to Defendant if there is an appeal to the Court of Appeals is equitable and just.

4. The award of \$10,000 in attorney's fees to Defendant if a Petition for Review is filed with the Texas Supreme Court is equitable and just.

5. The award of \$20,000 in attorney's fees to Defendant if the Texas Supreme Court grants the Petition for Review is equitable and just.

6. Necessary legal services performed for Defendant on Lindemann's trespass claim are indistinguishable from necessary legal services performed for Defendant to create and sustain its arguments regarding the surface burden of the Original and New Towers.

7. The New Tower does not increase the burden on the surface estate.

8. The New Tower does not exceed the scope of the Easement.

9. The building of the New Tower does not effect a termination of the Easement.

10. Defendant's Easement included the right to maintain the radio transmission tower

on the Tract.

11. Defendant's right to maintain included his right to replace the Original Tower with the New Tower.

12. The removal of the Original Tower after replacement with the New Tower does not effect a termination of the Easement.

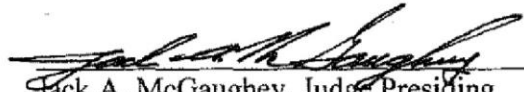
13. The Original Tower was not abandoned; it was replaced.

14. No actions of Campbell in connection with the maintenance of the Easement effected a termination of the Easement.

15. The Easement has not terminated and is still in existence.

16. Exhibit 29 as offered by Plaintiff at trial was not relevant to the issues before the Court.

Signed this 12 day of November, 2015.


Jack A. McGaughey, Judge Presiding