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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

STATE OF ARIZONA, ex rel. ARIZONA STATE LAND DEPARTMENT, Plaintiff/Counterdefendant/Appellee, v. ROBINSON CATTLE, LLC, Defendant/Counterclaimant/Appellant.	)	2 CA-CV 2010-0222 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. C20086158

Honorable Stephen C. Villarreal, Judge

AFFIRMED

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B R A M M E R, Presiding Judge.

¶1 Robinson Cattle, LLC (Robinson) appeals from the trial court's grant of summary judgment in favor of the State of Arizona. Robinson argues summary judgment was inappropriate because there are disputed issues of material fact as to its claim of vested property rights, and the state's restrictions on rights Robinson asserts in the disputed property constitute a taking. It also argues the court erred in awarding the state its attorney fees. We affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to the party against whom summary judgment was entered, drawing all justifiable inferences in its favor. *Modular Mining Sys., Inc. v. Jigsaw Techs., Inc.*, 221 Ariz. 515, ¶ 2, 212 P.3d 853, 855 (App. 2009). The state filed an action to quiet title in it to a parcel of state trust lands for which the United States issued it a patent in 1991.[1] Robinson filed a counterclaim seeking to quiet title in it to the parcel, alleging a taking of its property, and asserting rights to improvements and water on the parcel, and grazing rights.

¶3 It is undisputed the United States held fee title to the parcel as of 1853, when it received the parcel among other lands pursuant to the Gadsden Treaty, and no competing private claims had been asserted under Mexican law. *See* arts. I, VI, U.S.-Mex., Dec. 30, 1853, 10 Stat. 1031. The parcel is part of what now is called the Santa Rita Experimental Range (SRER), which was withdrawn by the United States from the

[1]The legal description for the parcel is provided in the trial court's final judgment.

federal public domain in 1902 to become the Santa Rita Forest Reserve. Prior to its withdrawal from the public domain, Robinson's predecessors had entered the parcel and later began grazing cattle on it. One predecessor obtained title to a 160-acre homestead within the parcel.[2] Through subsequent transfers, the homestead and possessory rights to the parcel eventually were purchased by Robinson. Robinson, pursuant to cooperative agreements with the University of Arizona, which manages the SRER for research purposes, has continued to graze cattle on the parcel. The last cooperative agreement was not renewed and the University of Arizona sent Robinson a letter terminating its right to occupy land within the SRER.

¶4 The trial court determined the state owns fee title to the parcel, and quieted title to the parcel in the state. The court also determined Robinson had no authority to enter the parcel without the state's permission. The court dismissed Robinson's counterclaims with prejudice, except for its claims to water rights and rights to improvements, which it dismissed without prejudice so that Robinson could have those rights adjudicated in a proper forum. This appeal followed.

Discussion

¶5 Robinson argues the trial court erred in granting summary judgment against it and quieting title to the parcel in the state because there are facts at issue relevant to its takings claim and to its claim of ownership based on territorial law and local custom. Summary judgment is appropriate when "there is no genuine issue as to any material fact

[2]The homestead is excluded from the trial court's final judgment because there is no dispute Robinson owns it.

and . . . the moving party is entitled to a judgment as a matter of law." Ariz. R. Civ. P. 56(c)(1). A court should grant a motion for summary judgment only "if the facts produced in support of the claim or defense have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim or defense." *Orme Sch. v. Reeves*, 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990). "On appeal from a summary judgment, we must determine de novo whether there are any genuine issues of material fact and whether the trial court erred in applying the law." *Bothell v. Two Point Acres, Inc.*, 192 Ariz. 313, ¶ 8, 965 P.2d 47, 50 (App. 1998).

Fee Simple Ownership

¶6 Robinson alleges it is entitled to fee simple ownership of the parcel and, therefore, the trial court erred in quieting fee title to the parcel in the state. It argues that, under local law and custom and "pursuant to laws of Congress," Robinson's predecessors obtained fee title to the property. Robinson asserts its property rights vested before the parcel was reserved by the United States and much later transferred to the state.

¶7 Only Congress can authorize rights in public lands. U.S. Const. art. IV, § 3, cl. 2; *see also Colvin Cattle Co. v. United States*, 468 F.3d 803, 808 (Fed. Cir. 2006). Although the United States has allowed persons, sometimes called settlers, to graze livestock on the public domain, such permission only gave rise to an "implied license," which the government could revoke at any time, and conferred no vested right in those permitted to use the property for grazing. *Light v. United States*, 220 U.S. 523, 535 (1911). "[A] mere settlement on or occupancy of [public] lands confers no rights upon

such settlers as against the government or persons claiming by reason of a legal title issued by the United States government." *Ortiz v. Manning*, 52 Ariz. 425, 427, 82 P.2d 897, 898 (1938). Settlers were "merely tenants by sufferance" and at most could claim only a "right of actual occupancy as against other settlers." *Missionary Soc'y of Methodist Episcopal Church v. Dalles City*, 107 U.S. 336, 344 (1883).

¶8 Because only Congress can establish rights on federal land, the local laws and customs relied on by Robinson in support of the property rights it asserts can confer those rights only if authorized explicitly. Robinson contends this authorization derives from the Act of 1866, 43 U.S.C. 661, which states in relevant part:

> Whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed . . . .

¶9 The Act of 1866 acknowledges water rights and ditch rights-of-way created under state law; it does not create or recognize property rights in public lands arising from such beneficial use. *Hage v. United States*, 35 Fed. Cl. 147, 170 (1996). The Act of 1866 "cannot fairly be read to recognize private property rights in federal lands, regardless of whether proffered as a distinct right or as an inseparable component of a water right." *Diamond Bar Cattle Co. v. United States*, 168 F.3d 1209, 1215 (10th Cir. 1999); *see also United States v. Rio Grande Dam & Irrigation Co.*, 174 U.S. 690, 704

(1899) (1866 Act recognizes validity of local customs, laws, decisions of courts with respect to appropriation of water).

¶10 The United States granted the parcel to Arizona by patent in 1991, subject to listed reservations, none of which mentions Robinson or its predecessors.[3] No legal authority supports Robinson's position that it owns the parcel in fee simple, as there is no congressional authorization for the establishment of fee simple ownership in public lands based on historical use and local law and custom.[4] The Act of 1866 plainly is limited to acknowledging water rights and associated ditch rights-of-way.[5] Robinson cannot claim ownership of the parcel against the state, which holds legal title issued by the United States government. *See Ortiz*, 52 Ariz. at 427, 82 P.2d at 898 (settlement confers no

[3]Although a patentee takes title to property subject to existing rights-of-way, a federal land patent is "'the highest evidence of title.'" *State v. Crawford*, 7 Ariz. App. 551, 554-55, 441 P.2d 586, 589-90 (1968), *quoting United States v. Stone*, 69 U.S. 525, 535 (1864).

[4]Although Robinson asserts *Sunol v. Hepburn*, 1 Cal. 254 (1850), supports its position, that case is distinguishable. There, the California Supreme Court addressed the establishment of possessory rights between private individuals, none of whom held title to the property when the dispute arose. *Id.* at 259. *Sunol* does not answer the question here where Robinson seeks to establish rights against the government to a parcel for which the United States held title when Robinson's predecessors first entered it. Similarly, *Jennison v. Kirk*, 98 U.S. 453, 454 (1878), also cited by Robinson, is distinguishable because it too involved competing claims to property interests between private individuals.

[5]Robinson argues the legislative history of the Act of 1866 suggests Congress intended "to recognize fee interest rights in public lands for settlers constructing agricultural improvements." However, when a statute's language is unambiguous, "we give effect to it and do not employ other rules of statutory construction to determine [its] meaning." *Anderson v. Ariz. Game and Fish Dep't*, 226 Ariz. 39, ¶ 7, 243 P.3d 1021, 1023 (App. 2010). Moreover, the congressional statements it cites primarily refer to provisions of the Act of 1866 relating to the sale of mineral lands to miners and not the rights Robinson asserts.

rights against government or persons claiming by reason of legal title issued by government). Therefore, summary judgment declaring the state as fee owner of the parcel was proper.[6]

¶11 Contrary to Robinson's contention, United States Department of Agriculture (USDA) bulletins, allegedly acknowledging private ownership of the parcel by Robinson's predecessors, do not give rise to a genuine issue of material fact precluding summary judgment. *See* Ariz. R. Civ. P. 56(c)(1). Robinson asserts the bulletins are "evidence that local ranching customs allowed for establishment of a private ownership interest in the public lands." As stated above, local custom cannot create property interests in public lands without Congressional authorization. U.S. Const. art. IV, § 3, cl. 2; *see also Colvin Cattle Co.*, 468 F.3d at 808. And these bulletins, written by agriculturalists, have no legal effect. References in these publications to Robinson's predecessors as owners of the land at most acknowledged the state of the law at that time—early settlers who occupied public land had possessory rights as against other settlers, but not as against the United States government. *See Ortiz*, 52 Ariz. at 427, 82 P.2d at 898.

[6]Robinson also argues summary judgment was inappropriate because discovery had not been completed. It alleges the trial court's grant of a ninety-day extension for additional discovery was inadequate because of "the complexities and historical nature of the evidence," and, "[a]s a matter of procedural fairness," summary judgment should not be granted until discovery is concluded. Because the court was correct in its determination that use of the parcel by Robinson and its predecessors cannot establish the property rights Robinson asserts, granting additional time for further research "bearing on historical use and custom" would not have changed the outcome below or here.

¶12 Robinson also contends its predecessors never were required to obtain grazing permits, and that this disputed fact is evidence that "in the opinion of the United States, Robinson holds a property interest in [the parcel]." This assertion also fails to present a genuine issue of material fact precluding summary judgment. *See* Ariz. R. Civ. P. 56(c)(1). The trial court determined Robinson's predecessors entered into grazing permits with the USDA. Robinson asserts this finding was erroneous because the permits were for lands outside the parcel and not for lands within the SRER. Nevertheless, even if Robinson's predecessors never obtained grazing permits for the disputed parcel, it has cited no controlling authority indicating property rights could be obtained by grazing the parcel without a permit. Additionally, we are not persuaded this disputed fact, if true, would be evidence the United States considered Robinson to own the parcel, especially when it had issued a patent granting title to the parcel to the state.

Other Property Interests

¶13 Robinson also argues its predecessors established "ownership of grazing rights, water rights, range improvements and rights-of-way related thereto." It alleges factual disputes over the "extent and scope" of these rights cannot be resolved by summary judgment.

Water Rights and Rights to Improvements

¶14 The trial court did not determine whether Robinson had water rights or rights related to its improvements, but only that Robinson must address these rights "in an appropriate forum." The court, therefore, dismissed Robinson's counterclaim without prejudice as it relates to those rights. A dismissal without prejudice is not a final

judgment and is not appealable, *McMurray v. Dream Catcher USA, Inc.*, 220 Ariz. 71, ¶ 4, 202 P.3d 536, 539 (App. 2009), unless it "prevents judgment from which an appeal might be taken," A.R.S. § 12-2101(D). Consequently, we do not address the merits of Robinson's claims relating to water and improvement rights, but do address whether these rights may be determined in other proceedings.[7]

¶15 The state acknowledges Robinson may have rights to water or improvements on the parcel. But before Robinson can challenge any denial of those rights it must pursue and exhaust appropriate administrative remedies. *See Phelps Dodge Corp. v. Ariz. Elec. Power Coop., Inc.*, 207 Ariz. 95, ¶ 94, 83 P.3d 573, 596 (App. 2004) (decision ripe for judicial review when administrative agency formalizes decision and party affected by it). Robinson may apply to the Arizona Department of Water Resources for acknowledgement of its water rights under A.R.S. title 45.[8] In addition, Robinson may apply to the Arizona State Land Department for rights to water, improvements, and rights-of-way under A.R.S. title 37. If dissatisfied with the outcome of any of the above, Robinson may follow the administrative hearing and appeal process provided in A.R.S. title 41 and the judicial review process provided in title 12.

[7]Robinson argues its ownership of improvements is a disputed fact precluding summary judgment. Because this assertion goes to the merits of its counterclaim, we do not address it.

[8]And although "[n]othing in [A.R.S. title 45, chapter 1] shall impair vested rights to the use of water," the rights nevertheless must be adjudicated as provided in that chapter. A.R.S. § 45-171.

¶16 Moreover, as the state notes, the "nature, extent and relative priority" of Robinson's water rights are subject to the general stream adjudication procedures in A.R.S. §§ 45-251 through 45-264. *See also In re Gen. Adjudication of all Rights to use Water in the Gila River Sys. & Source*, 195 Ariz. 411, ¶ 2, 989 P.2d 739, 742 (1999) (Upper Santa Cruz watershed subject to consolidated comprehensive general stream adjudication). Therefore, because Robinson may pursue other avenues to assert its claim of rights to water and associated rights-of-way and improvements, and because its counterclaim regarding those interests was dismissed without prejudice, we do not address it further.

Grazing Rights

¶17 Robinson further argues it has a right to graze cattle on the parcel adjacent to its water rights. It alleges water rights and rights-of-way protected under the Act of 1866 may include, based on local law and custom, an implied right for livestock to graze adjacent to the water. The trial court determined "Robinson ha[d] presented no persuasive source establishing that the right to graze is included in or necessary for the enjoyment of a water right." We similarly conclude that no authority cited by Robinson can support this asserted right.

¶18 Robinson cites *Hage*, 35 Fed. Cl. at 175, which noted the scope of water rights recognized by the Act of 1866 is controlled by state law and, in some states, may include a right to graze adjacent to the alleged water rights. Robinson contends that, although other states such as New Mexico have determined neither state law nor territorial custom recognizes a land interest appurtenant to a water right, *see, e.g.*, *Walker*

v. United States, 162 P.3d 882, 892-94 (N.M. 2007), Arizona has "long acknowledged the necessity of recognizing other rights associated with existing water rights."

¶19 Robinson, however, has identified no Arizona authority recognizing that what it calls "a grazing easement" is created by virtue of a vested right to the beneficial use of surface water. To the contrary, the Arizona Supreme Court has observed that, although it may be "more convenient in approaching some watering place where appellant has vested rights that he be allowed to graze his sheep, . . . this is not necessary to the enjoyment of a water right." *Hancock v. State*, 31 Ariz. 389, 402, 254 P. 225, 229 (1927) (upholding constitutionality of a criminal statute controlling grazing). The cases Robinson cites are largely inapposite and do not support the existence of implied grazing easements. *E.g.*, *England v. Ally Ong Hing*, 105 Ariz. 65, 71-72, 459 P.2d 498, 504-05 (1969) (upholding easement by prescription derived from adverse use; rejecting suggestion water use constitutes notice of grazing use); *White River Sheep Co. v. Barkley*, 37 Ariz. 49, 55, 288 P. 1029, 1031 (1930) (measure of damages for destruction of pasture value to owner, which may be affected by proximity to water); *Verde Water & Power Co. v. Salt River Valley Water Users' Ass'n*, 22 Ariz. 305, 313-15, 197 P. 227, 229-30 (1921) (determining time of vesting for right to easement for reservoir, ditch, or canal); *Slosser v. Salt River Valley Canal Co.*, 7 Ariz. 376, 386-88, 65 P. 332, 335 (1901) (ownership or possession of land essential to acquisition of water right; local law controls disposition of water rights); *Oury v. Goodwin*, 3 Ariz. 255, 255, 270-71, 26 P. 376, 377, 381 (1891) (eminent domain available to acquire land for irrigation canal).

¶20 Other cases have held the Act of 1866 is limited to the water rights and rights-of-way explicit therein. *See, e.g., Hunter v. United States*, 388 F.2d 148, 154 (9th Cir. 1967) (rancher not entitled to easement to graze livestock, but entitled to right-of-way to divert water). We are persuaded the grazing right Robinson asserts "is contrary not only to the language of the Act [of 1866] itself, which simply recognizes rights to the use of water, but also to the well-settled body of law holding no private property right exists to graze public rangelands." *Diamond Bar Cattle Co.*, 168 F.3d at 1215. Therefore, the trial court did not err in determining Robinson could not establish grazing rights solely based on the existence of its water rights or related rights-of-way.

¶21 The trial court did not err in granting summary judgment in favor of the state and declaring Robinson had no authority to enter the parcel without the state's permission. No legal authority supports Robinson's claim that it owns the property, rather than the state which was issued a valid patent for the parcel. Nor does any legal authority suggest Robinson can access any water rights and improvements on the parcel it may have without the state's permission. Robinson may in fact have such rights, but those issues are not before us as there are administrative remedies it can pursue to determine them.

Fifth Amendment Takings Claim

¶22 Robinson argues the state committed a physical taking of its property under the Fifth Amendment by denying it access to the disputed parcel and asserting the state's ownership interest in it. We review questions of constitutional law de novo. *Duncan v. Scottsdale Med. Imaging, Ltd.*, 205 Ariz. 306, ¶ 2, 70 P.3d 435, 437 (2003). The Fifth

Amendment, as applied to the states through the Fourteenth Amendment, *see Chicago, B. & Q.R. Co. v. Chicago*, 166 U.S. 226, 239 (1897), provides: "[N]or shall private property be taken for public use, without just compensation." U.S. Const. amend. V. Where the government physically and permanently invades any portion of an owner's private property, it has effected a taking for which it must provide just compensation. *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 538 (2005). But one first must establish a property interest to establish a Fifth Amendment takings claim. *See id.* at 539 (takings analysis focuses on severity of burden government imposes upon private property rights); *see also Colvin Cattle Co.*, 468 F.3d at 806; *Hage*, 35 Fed. Cl. at 163; U.S. Const. amend. V (taking of "private property"). To the extent Robinson's claim is based either on its ownership of the parcel or grazing rights, we already have determined Robinson has neither; therefore its claim must fail.

¶23 Robinson also contends the state has effected a regulatory taking by "unreasonably refus[ing] to allow [it] . . . access to water rights and other property interests." Economic regulation of private property may constitute a taking. *Lingle*, 544 U.S. at 537. However, "a party challenging governmental action as an unconstitutional taking bears a substantial burden." *E. Enters. v. Apfel*, 524 U.S. 498, 523 (1998). Where government regulation completely deprives an owner of "*all* economically beneficial us[e]" of a property, it has effected a regulatory taking. *Lingle*, 544 U.S. at 538, *quoting Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1019 (1992). Where the property retains some beneficial use, courts determine whether a taking has occurred using factors set forth in *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104, 124 (1978),

assessing the severity of the governmental burden imposed upon private property rights. *Lingle*, 544 U.S. at 538-39.

¶24 The state sought to restrain Robinson from entering the land without its permission. In its motion for summary judgment, the state clarified that, to gain such permission, Robinson must "follow State procedures, obtain a permit if necessary, and pay the appropriate fees—for instance by entering into a Cooperative Agreement." Requiring Robinson to obtain a permit to access its rights does not constitute a taking. *See United States v. Riverside Bayview Homes, Inc.*, 474 U.S. 121, 127 (1985) ("A requirement that a person obtain a permit before engaging in a certain use of his or her property does not itself 'take' the property in any sense . . . ."); *Hage*, 35 Fed. Cl. at 164 (requiring special use permit from forest service not taking). Although Robinson may not be required to apply for a permit if the application procedure was unreasonable and so burdensome it "effectively deprive[d] the property of value," *see Hage*, 35 Fed. Cl. at 164, Robinson has advanced no such argument.[9] Although Robinson's counterclaim alleged the state's actions had denied it "all economically viable use" of the property, it has identified no state action beyond the permit requirement that may have impeded its access to any alleged water rights or improvements. Therefore, the trial court did not err in dismissing Robinson's counterclaim that its property had been taken unconstitutionally.

[9]To the extent Robinson seeks to challenge the denial of a particular permit or right-of-way, it first must seek a decision by the appropriate administrative agency. *Phelps Dodge Corp.*, 207 Ariz. 95, ¶ 94, 83 P.3d at 596.

Attorney Fee Award

¶25 Robinson also argues the trial court erred in awarding the state its attorney fees pursuant to A.R.S. § 12-1103(B) because the award was "inconsistent with the penal nature" of the statute and contrary to law concerning "legal tenders." We review a trial court's decision whether to award attorney fees for an abuse of discretion, *Rowland v. Great States Ins. Co.*, 199 Ariz. 577, ¶ 31, 20 P.3d 1158, 1168 (App. 2001), but review questions of law and the interpretation of statutes de novo, *Warner v. Sw. Desert Images, LLC*, 218 Ariz. 121, ¶ 49, 180 P.3d 986, 1001 (App. 2008).

¶26 Section 12-1103(B) provides:

> If a party, twenty days prior to bringing the action to quiet title to real property, requests the person . . . holding an apparent adverse interest or right therein to execute a quit claim deed thereto, and also tenders to him five dollars for execution and delivery of the deed, and if such person refuses or neglects to comply, . . . the court may allow plaintiff, in addition to the ordinary costs, an attorney's fee to be fixed by the court.

Both parties agree that, more than twenty days before bringing its quiet title action, the state sent Robinson a quit claim deed and five dollars, which Robinson neither executed nor returned. In the exercise of its discretion, the trial court awarded the state $20,000 in attorney fees pursuant to § 12-1103(B).

¶27 Robinson argues the state's tendered quit claim deed was invalid because it "required the forfeiture of all Robinson's rights" in the land, including rights to water and improvements, which exceeded the state's entitlement. It contends the trial court's attorney fee award was improper because "[a] flawed tender may not be relied on to

enforce legal rights or claims that are dependent on an appropriate tender." Assuming without deciding that the deed covered more property interests than appropriate, this court has determined that an award of attorney fees need not be vacated when a quit claim deed delivered pursuant to § 12-1103(B) describes more than the requesting party's legal entitlement. *Jones v. Burk*, 164 Ariz. 595, 597-98, 795 P.2d 238, 240-41 (App. 1990) (upholding award of partial fees to party successful in quieting title to half disputed property). To avoid liability, a party may "quit claim[] the lesser amount, the amount to which the other party is entitled." *Id.* at 598, 795 P.2d at 241. By failing to respond at all to the state's tender, Robinson "refuse[d] or neglect[ed] to comply" with its request, and the court did not err in awarding attorney fees.[10] *See* § 12-1103(B).

¶28 In a related argument, Robinson contends that, based on the legislative history of § 12-1103(B),[11] the statute is penal in nature and was intended as a sanction for failing to execute a properly tendered quit claim deed. It suggests the trial court should not have exercised its discretion to award fees because, for the reasons described above, the quit claim deed was not tendered properly. As we already have discussed, the scope

[10]Moreover, the purpose of § 12-1103(B) is to "avoid needless litigation and to mitigate the burden of the expenses of litigation." *Jones*, 164 Ariz. at 597, 795 P.2d at 240. Robinson continues to assert it has and is entitled to property interests in the land beyond rights to water or improvements, and nothing in the record suggests it would have executed any version of a quit claim deed that would have avoided the litigation expenses reflected in the court's award.

[11]We do not address the statute's legislative history because when a statute's language is unambiguous "we give effect to it and do not employ other rules of statutory construction to determine [its] meaning." *See Anderson*, 226 Ariz. 39, ¶ 7, 243 P.3d at 1023.

of the state's proffered quit claim deed did not prevent the court from exercising its discretionary powers under § 12-1103(B), and the court did not abuse its discretion in awarding the state its attorney fees.

Disposition

¶29 For the reasons stated, we affirm the trial court's grant of summary judgment in favor of the state. We also grant the state's request for an award of attorney fees pursuant to A.R.S. § 12-1103(B), pending its compliance with Rule 21, Ariz. R. Civ. App. P.

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Presiding Judge

CONCURRING:

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge