



**IN THE  
TENTH COURT OF APPEALS**

**No. 10-09-00131-CV**

**SUSAN HARRINGTON  
AND KATHLEEN KILGORE,**

**Appellants**

**v.**

**MAGELLAN PIPELINE COMPANY, L.P.,**

**Appellee**

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**From the 13th District Court  
Navarro County, Texas  
Trial Court No. 07-15890-CV**

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**MEMORANDUM OPINION**

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Susan Harrington and Kathleen Kilgore filed suit against Magellan Pipeline Company seeking a declaratory judgment and alleging that Magellan committed trespass by laying pipelines on property in which they owned an interest. Magellan filed a counterclaim for declaratory judgment seeking a declaration that an easement granted in 1919 gave Magellan the right to lay the pipelines. Magellan filed a motion for summary judgment, and Harrington and Kilgore filed a cross motion for summary judgment. The trial court granted Magellan's motion for summary judgment and

denied Harrington and Kilgore's motion. Harrington and Kilgore appeal. We reverse and remand.

### **Background Facts**

H.P. Ross, Harrington and Kilgore's great-grandfather, owned a 100 acre tract of land in Navarro County. In 1919, Ross granted an easement to the trustees of Magnolia Petroleum Company. The 1919 Easement granted "the right of way, or easement and privilege, to lay, repair, maintain, operate and remove pipelines for the transportation of oil or any of its products or other fluids or substances." The location of the easement was described as "over and through my lands." Mobil Pipe Line Company succeeded Magnolia in its interest in the 1919 Easement.

In 1997, Mobil executed a partial assignment to Texaco Pipeline, Inc. The partial assignment granted "... all of [Mobil's] right, title and interest in and to the right-of way agreements, easements, permits and grants which in any way relate to and accommodate Grantor's crude oil pipeline system commonly known as the Telescope pipeline..." Texaco's successor conveyed its interest to Magellan. In 1999, Magellan's predecessor in interest installed additional pipelines on the property, and in 2005, Magellan installed additional pipelines on the property.

Harrington and Kilgore each owned a 4 percent undivided interest in the property. They filed the declaratory cause of action in 2007 alleging trespass. After suit was filed, Magellan purchased the remaining 92 percent interest in the property. Magellan filed a First Amended Original Answer and Counterclaim for Partition. The

trial court entered a final judgment partitioning the land, and this Court affirmed the trial court's judgment in Cause No. 10-07-00372-CV.

### **Standard of Review**

We review the grant or denial of a traditional motion for summary judgment de novo. *See Creditwatch, Inc. v. Jackson*, 157 S.W.3d 814, 816 n.7 (Tex. 2005). To be entitled to summary judgment, the movant must demonstrate that no genuine issues of material fact exist and that he is entitled to judgment as a matter of law. *See* TEX. R. CIV. P. 166a(c). To determine if a fact issue exists, we must consider whether reasonable and fair-minded jurors could differ in their conclusions in light of all the evidence presented. *Goodyear Tire & Rubber Co. v. Mayes*, 236 S.W.3d 754, 755 (Tex. 2007). We must consider all the evidence in the light most favorable to the nonmovant, indulging all reasonable inferences in favor of the nonmovant. *Nixon v. Mr. Property Management Co.*, 690 S.W.2d 546 (Tex. 1985).

When competing motions for summary judgment are filed and one is granted and the other is denied, the general rule is that an appellate court should determine all questions presented and render the judgment the trial court should have rendered. *Texas Worker' Compensation Commission v. Patient Advocates of Texas*, 136 S.W.3d 643, 648 (Tex. 2004). However, an appellate court may reverse and remand if resolution of the pertinent issues rests in disputed facts or if the parties' motions are premised on different grounds. *See Sarandos v. Blanton*, 25 S.W.3d 811, 814 & n.5 (Tex. App.—Waco 2000, pet. den'd).

## Joinder of Parties

In the first issue, Harrington and Kilgore argue that the trial court erred in granting summary judgment without joining the assignor of the 1997 Partial Assignment as a party to the lawsuit. They raised the issue in a special exception and plea in abatement, but failed to obtain a ruling. The first issue is not preserved for appellate review. *See* TEX. R. APP. P. 33.1(a); *see also Wheeler v. Greene*, 194 S.W.3d 1, 7 (Tex. App.—Tyler 2006, no pet.).

## 1919 Easement

In the third issue, Harrington and Kilgore argue that the 1919 Easement does not allow Magellan an unlimited right to install pipelines in any location and in any direction within the 100 acre tract of property. The 1919 Easement granted Magellan's predecessor in interest "the right of way, or easement and privilege to lay, repair, maintain, operate and remove pipe lines." The easement was a blanket easement that defined the location of the easement as "over and through my lands."

A grant of a right of way set out in general terms without specifying the exact place for its location becomes fixed and certain when the pipeline is laid. *Houston Pipe Line Company v. Dwyer*, 374 S.W.2d 662, 666 (Tex. 1964); *Boland v. Natural Gas Company*, 816 S.W.2d 843, 845 (Tex. App.—Fort Worth 1991, no pet.); *Elliot v. Elliot*, 597 S.W.2d 795, 802 (Tex. App.—Corpus Christi 1980, no writ.). Harrington and Kilgore argue that the 1919 Easement granted a single right of way and that the location of the easement was defined when Magellan's predecessor in interest placed the first pipeline on the property.

The grant in *Houston Pipe Line* only gave the company a right of way to “lay, maintain, operate, repair and remove a Pipe Line for the transportation of gas.” *Houston Pipe Line Company v. Dwyer*, 374 S.W.2d at 663. The grant did not allow for the placement of additional pipelines. The 1919 Easement allowed Magellan’s predecessor in interest to lay multiple pipelines and provided additional compensation for any additional pipelines. Because the 1919 Easement grants a single right of way but allows for multiple pipelines, it is ambiguous whether the original grantor intended to burden his land by allowing additional pipelines to be laid in any location on the property.

If the written instrument is so worded that it can be given a certain or definite legal meaning or interpretation, then it is not ambiguous and the court will construe the contract as a matter of law. *Coker v. Coker*, 650 S.W.2d 391, 393 (Tex. 1983). A contract, however, is ambiguous when its meaning is uncertain and doubtful or it is reasonably susceptible to more than one meaning. *Id.* Whether a contract is ambiguous is a question of law for the court to decide by looking at the contract as a whole in light of the circumstances present when the contract was entered. *Coker v. Coker*, 650 S.W.2d at 394. When a contract contains an ambiguity, the granting of a motion for summary judgment is improper because the interpretation of the instrument becomes a fact issue. *Id.* We find that the 1919 Easement is ambiguous. The trial court erred in granting Magellan’s motion for summary judgment. We sustain Harrington and Kilgore’s third issue.

## 1997 Partial Assignment

In the fourth issue, Harrington and Kilgore argue that the trial court erred in constructing the language of the 1997 Partial Assignment to grant Magellan the right to lay additional pipelines. The 1997 Partial Assignment provides in pertinent part:

[Assignor] grants, sells, conveys, transfers, and assigns ... all of Assignor's right, title and interest in and to the right-of-way agreements, easements, permits and grants which in any way relate to and accommodate Grantor's crude oil pipeline system commonly known as the Telescope pipeline, together with all prescriptive rights, if any, owned therein by Assignor as such prescriptive rights apply to said Assignee's pipeline.

...

Assignor owns, and will retain ownership of, two pipelines of various sizes situated adjacent to and parallel with Assignee's Telescope pipeline and that all pipelines are primarily maintained pursuant to said right-of-way agreements, easements, permits and grants.

Assignor retains for itself, its successors and assigns, all of its interest in and to said right-of-way agreements, easements, permits and grants which in any way relate to and accommodate Assignor's pipelines. It is understood and agreed that the rights and interest herein conveyed are for one pipeline only.

Because of the close proximity of Assignor's pipelines to Assignee's Telescope pipeline, a separation of Assignor's and Assignee's rights-of-way by legal description is virtually impossible; but it is the intent of the parties to have their respective interests divided. Therefore, it is understood that neither party will have any interest whatsoever in the right-of-way agreements, easements, permits or grants as each pertains to the other party's pipelines.

It is the intention of both Assignor and Assignee that each shall have the full use and enjoyment of all of the rights conveyed by said right-of-way agreements, easements, permits and grants, insofar as such rights pertain to each party's respective pipelines.

Harrington and Kilgore contend that the language in the 1997 Partial Assignment "which in any way relate to and accommodate" the Telescope pipeline make it clear

that the assignment was only for the rights to the Telescope pipeline and that all other rights were retained by the assignor. The 1997 Assignment states that the rights and interests conveyed are for one pipeline only. They argue that the 1997 Assignment gave only the rights for the one Telescope pipeline and did not allow Magellan to lay the additional pipelines.

The 1997 Partial Assignment refers to the “right, title and interest in and to the right-of-way agreements, easements, permits and grants” in relation to both the Telescope pipeline conveyed to Assignee and the two pipelines retained by Assignor. Magellan contends that because the 1997 Partial Assignment uses the language “which in any way relate to and accommodate” such rights when referring to both the Telescope pipeline conveyed to Assignee and the two pipelines retained by assignor, the parties intended that each of them would have the same broad easement rights under the 1919 Easement, which would include the right to lay multiple or additional pipelines. Magellan further construes the 1997 Partial Assignment to convey the right to construct additional pipelines because the Assignment conveyed only a single pipeline, but in two separate places refers to each party’s pipelines.

Because the 1997 Assignment is capable of more than one meaning, it is ambiguous and the trial court erred in granting summary judgment. *Coker v. Coker*, 650 S.W.2d at 394. We sustain Harrington and Kilgore’s fourth issue. Because of our disposition of the third and fourth issues, we need not address the remaining issues. TEX. R. APP. P. 47.1.

We reverse the trial court's judgment granting Magellan's motion for summary judgment, and remand the cause for further proceedings consistent with this opinion.

AL SCOGGINS  
Justice

Before Chief Justice Gray,  
Justice Davis, and  
Justice Scoggins  
Reversed and remanded  
Opinion delivered and filed December 14, 2011  
[CV06]