

Conditionally Granted and Opinion Filed November 14, 2018



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-18-00686-CV

IN RE STATE OF TEXAS, Relator

**Original Proceeding from the County Court at Law No. 6
Collin County, Texas
Trial Court Cause No. 006-00545-2016**

MEMORANDUM OPINION

Before Justices Lang, Myers, and Whitehill
Opinion by Justice Whitehill

The underlying proceeding involves a condemnation matter between the State of Texas and various defendants, including the real party in interest Energy Transfer Fuel, L.P. (“ETF”). This original proceeding arose following the trial court’s entry of final judgment on May 12, 2017 and subsequent entry of two modifications of that judgment. In this original proceeding, the State maintains that the May 12, 2017 judgment was final and all subsequent orders and judgments are void because they were signed outside of the trial court’s plenary power. The State seeks a writ of mandamus vacating the subsequent orders and judgments and reinstating the May 12, 2017 judgment. We requested a response, which ETF filed. After reviewing the petition, the response, and the mandamus record, we conclude the State is entitled to the relief requested and conditionally grant the writ of mandamus.

The underlying dispute arose from two condemnation proceedings related to a Texas Department of Transportation (“TxDOT”) road-widening project near U.S. Highway 75 in Collin

County. ETF owns a natural gas pipeline easement that runs perpendicular to U.S. Highway 75. The State condemned part of ETF's easement for the TxDOT project. The property acquired by the State was in several parts but was cumulatively referred to as Parcel 18 and Parcel 20. The resulting litigation proceeded under two separate cause numbers in County Court at Law Number 6, both styled *State v. Viola Lordsmeer, L.P., et al.* The value of Parcel 18 was litigated in cause number 06-00545-2016, and the value of Parcel 20 was litigated in cause number 006-00600-2016.

ETF and TxDOT executed a joint use agreement and, on April 3, 2017, the State nonsuited its claims against ETF and moved for an order dismissing ETF from the lawsuit in both underlying proceedings. A joint jury trial of both condemnation suits began on May 1, 2017 regarding the values of Parcel 18 and Parcel 20. A jury returned a verdict on May 5, 2017, and the trial court signed a final judgment in each condemnation suit on May 12, 2017. Over the following nine months, the trial court modified the May 12, 2017 judgments twice.

In this original proceeding, the State argues that all orders and judgments signed after May 12, 2017 are void because they were signed outside of the trial court's plenary period. The State has filed a separate mandamus petition challenging the judgment issued in cause number 006-00600-2016. That original proceeding is docketed in this Court as cause number 05-18-00685-CV, *In re the State of Texas*. This Court treats the original proceedings as separate proceedings because the State has filed separate petitions for writ of mandamus, and the trial court issued separate judgments for each cause number below.

The State asserts the same material facts and raises the same issues in this proceeding as it does in cause number 05-18-00685-CV, which we decline to reiterate here. For the same reasons explained in our November 14, 2018 opinion in cause number 05-18-00685-CV, we conclude that the State is also entitled to the relief requested in this proceeding. Accordingly, we conditionally grant the petition for writ of mandamus and direct the trial court to issue written orders vacating

all orders and judgments signed after August 7, 2017 in trial court cause number 006-00545-2016 and reinstating the May 12, 2017 judgment in trial court cause number 006-00545-2016. We are confident the trial court will comply with this opinion and accompanying order. A writ will issue if the trial court does not so comply.

/Bill Whitehill/
BILL WHITEHILL
JUSTICE

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