

Opinion issued November 17, 2011.



**In The
Court of Appeals
For The
First District of Texas**

NO. 01-10-00707-CV

**ANGLETON SAND COMPANY, Appellant
V.
COUNTY OF BRAZORIA, Appellee**

**On Appeal from the 239th District Court
Brazoria County, Texas
Trial Court Case No. 48548**

MEMORANDUM OPINION

This case involves a dispute as to Brazoria County's authority to require Angleton Sand Company to obtain "heavy haul" permits for sixteen of its vehicles traveling on county roads. The trial court granted summary judgment in favor of

the County and against Angleton Sand on its claim for declaratory relief. In four issues on appeal, Angleton Sand contends the trial court erred in granting summary judgment because the County's permit and route requirements are contrary to law and an issue of fact exists as to the weight of Angleton Sand's vehicles. Concluding that the County's permit and route requirements are lawful but a fact issue exists as to whether three of Angleton Sand's vehicles were overweight, we affirm in part and reverse and remand in part.

Background

Angleton Sand received a contract to provide sand for construction at the Brazoria County Juvenile Detention Center. To perform its obligations, Angleton Sand planned to load trucks at its sandpit on County Road 44 and drive them to the construction site on County Road 171. According to Robert Peterson, a "principal" for Angleton Sand, the company owns, or has access to, only two trucks. Both trucks have permits issued by the Texas Department of Transportation for hauling loads weighing up to 48,000 pounds, and both trucks have an additional State permit for excess hauling over short distances.

Because it could not satisfy its contractual obligations with only two trucks, Angleton Sand contacted a service company to arrange for additional trucks to haul

sand.¹ Peterson stated that these additional trucks were “licensed to haul 24 tons” but, unlike the two trucks operated by Angleton Sand, did not have a “statewide permit.”

The County has an ordinance establishing weight and size limits for vehicles traveling on county roads and providing a permitting system. *See Brazoria County, Tx., Order Adopting Procedures and Regulations Governing Heavy Load Permits and Bonding Requirements, § 5 (April 13, 2004).* In pertinent part, the ordinance requires that “[e]very commercial vehicle” traveling on county roads, which does not already have a permit issued by the State, be covered by a permit issued by the County if the vehicle has:

- (1) “a tandem axle weight heavier than 34,000 pounds, including all enforcement tolerances;” or

¹ At the outset, we note several inconsistencies with respect to evidence of the number of vehicles at issue in this appeal. Paragraph eleven of Peterson’s affidavit may be read two ways: (1) to put at issue a total of thirteen trucks, two of which were owned or operated by Angleton Sand and eleven of which were hired through a service company, or (2) to put at issue a total of eighteen trucks, two of which were owned or operated by Angleton Sand and sixteen of which were hired through a service company. As discussed below, however, the “load description” sheets attached to Angleton Sand’s county permit application, and included in the County’s summary judgment evidence, described sixteen trucks, without any designation of whether or not those trucks included the two that were owned or operated by Angleton Sand. The County’s other summary judgment evidence suggests a different number still. The deputy who discovered Angleton Sand was operating without county permits testified by affidavit that he initially stopped one truck and then stopped an additional “ten (10) to twelve (12) trucks,” putting eleven to thirteen trucks at issue. Yet in its summary judgment motion and on appeal, the County takes the position that a total of sixteen trucks are involved in this appeal, i.e., the two operated by Angleton Sand and having the state permits alleged by Peterson and fourteen other trucks not having permits.

(2) “an overall gross weight on a group of two or more consecutive axles heavier than the weight computed using the following formula and rounding the result to the nearest 500 pounds:

$$W = 500 ((LN/(N - 1)) + 12N + 36)$$

where:

“W” is maximum overall gross weight on the group;

“L” is distance in feet between the axles of the group that are the farthest apart; and

“N” is number of axles in the group.”

Id. § 5.1.b–c. The parties refer to this formula as the “bridge formula.”

On the morning of July 21, 2008, a license and weights deputy with the Brazoria County Sheriff’s Department stopped between eleven and thirteen trucks hauling for Angleton Sand on County Road 171. When the deputy asked each driver whether he had a state or county permit for “heavy hauls” on county roads, each driver admitted to not having a permit. The deputy notified the County’s Engineering Department, i.e., the department charged with issuing “heavy haul” permits, that the Angleton Sand trucks were not appropriately permitted.

That same day, although Angleton Sand questioned whether any permit was required because none of its trucks weighed more than the limit posted for travel on County Roads 44 and 171 (48,000 pounds), the company obtained a county “heavy haul” permit for sixteen trucks. The “load description sheet” attached to Angleton Sand’s permit application indicated that all of the trucks had tandem

axles. Although the load description sheet included space to designate each truck's "gross vehicle weight" and "tandem axle weight," complete information was given for only thirteen of the sixteen trucks. The "load description sheet" omitted the "tandem axle weight" for three trucks, and, for two of those three trucks, the "gross vehicle weight" also was not listed.

Angleton Sand filed suit against the County, seeking a judgment declaring that "no permit is required to travel on the state highways, and designated routes within the county and city." Both parties moved for summary judgment. Angleton Sand filed a combined traditional and no-evidence motion, arguing that (1) all of the trucks used by the company were properly permitted and weighed less than the limits posted for travel on the county roads it used to deliver sand and (2) the County had no evidence the company had violated any state regulation.

By its competing traditional motion, the County, relying on certain provisions of the Transportation Code, asked the trial court to declare that:

- A state permit under section 623.011^[2] is required on every vehicle meeting the specifications of section 621.101^[3] of the Texas Transportation Code, not one permit for each company;

² Chapter 623 of the Transportation Code establishes a statewide permitting system for vehicles that exceed the maximum weight limit for operation over public roads. *See* TEX. TRANSP. CODE ANN. §§ 623.001–.310 (West 2011). Section 623.011 states the requirements for obtaining a permit from the Texas Department of Transportation authorizing the operation of an oversize or overweight motor vehicle. *See id.* § 623.011.

- If a vehicle meeting the specifications of section 621.101 does not have a state permit, a county permit is required;
- Angleton Sand Company's Load Description sheet identified sixteen dump trucks were being utilized for the job on county road 171;
- Every vehicle listed on Angleton Sand Company's Load Description sheet in July 2008 met the specifications of section 621.101;
- Angleton Sand Company only had two state permits to be operating the dump trucks on County roads on July 21, 2008;
- Angleton Sand Company did not have appropriate state permits to be operating fourteen of the dump trucks identified in the Load Description sheet on county roads on July 21, 2008; and
- Angleton Sand Company did not have the necessary Brazoria County Heavy Haul Permits to be operating on Brazoria County roads on July 21, 2008.

Angleton Sand responded to the County's motion with a request that the trial court make the following declarations instead:

- Brazoria County may require vehicles over 24 tons that do not have a statewide permit to obtain a county permit;
- Angleton Sand operates two trucks that are licensed for 24 tons;

³ Section 621.101 defines the weight at which vehicles may not be operated on public highways or at a port-of-entry to the State from Mexico. *See* TEX. TRANSP. CODE ANN. § 621.101 (West 2011). The maximum weights authorized by section 621.101 and relevant to this appeal are the same as the weights authorized by the Brazoria County ordinance. *Compare id.* § 621.101(a)(2)–(3), *with* Brazoria County, Tx., Order Adopting Procedures and Regulations Governing Heavy Load Permits and Bonding Requirements, § 5.1.b–c.

- Angleton Sand's trucks have statewide permits;
- So long as Angleton Sand's trucks have a valid statewide permit, the County may not require permits for their travel upon the county's roads;
- No truck employed by Angleton Sand on July 21 and 22 exceeded 24 tons of actual weight;
- No route taken by Angleton Sand on July 21 and 22 was signed to restrict vehicles of less than 24 tons;
- All trucks that do not exceed 24 tons, or the legally signed lesser weight limit, may travel the county's road without an additional permit from the County;
- Disgorgement of all illegally collected fees and costs incurred in compliance; and
- An injunction against all further illegal attempts to coerce Angleton Sand to obtain county permits that are not required under the Texas Transportation Code.

Without making any specific declarations, the trial court granted the County's motion for summary judgment and denied Angleton Sand's motion. Angleton Sand appealed.

Summary Judgment

A. Standard of Review

Both parties requested that the trial court determine their rights pursuant to Angleton Sand's declaratory judgment action. Declaratory judgments are reviewed under the same standards as other judgments. *See* TEX. CIV. PRAC. &

REM. CODE ANN. § 37.010 (West 2011); *City of Galveston v. Tex. Gen. Land Office*, 196 S.W.3d 218, 221 (Tex. App.—Houston [1st Dist.] 2006, pet. denied). We determine the standard of review on appeal by looking to the procedure the trial court used to resolve the issue. *City of Galveston*, 196 S.W.3d at 221. Because the trial court resolved this case on competing motions for summary judgment, we review the propriety of the declaratory judgment under the same standards that we apply in reviewing a summary judgment. *Id.*

Our review of a summary judgment is de novo. *See Tex. Mun. Power Agency v. Pub. Util. Comm'n of Tex.*, 253 S.W.3d 184, 192 (Tex. 2008); *City of Galveston*, 196 S.W.3d at 221. Under the traditional summary judgment standard, the movant must show that no genuine issue of material fact exists and that judgment should be rendered as a matter of law. TEX. R. CIV. P. 166a(c); *City of Galveston*, 196 S.W.3d at 221. In contrast, a party is entitled to a “no-evidence” summary judgment if, after adequate time for discovery, there is no evidence of one or more essential elements of a claim or defense on which an adverse party would have the burden of proof at trial. TEX. R. CIV. P. 166a(i). We view all evidence in a light favorable to the nonmovant and indulge every reasonable inference in the nonmovant’s favor. *City of Galveston*, 196 S.W.3d at 221. When, as here, both parties move for summary judgment and the trial court grants one motion and denies the other, we consider both motions, their evidence, and their

issues, and we may render the judgment that the trial court should have rendered. *Id.* But we will neither affirm nor reverse a summary judgment on grounds not expressly presented to the trial court. *See Sci. Spectrum, Inc. v. Martinez*, 941 S.W.2d 910, 912 (Tex. 1997) (“A motion for summary judgment must itself expressly present the grounds upon which it is made, and must stand or fall on these grounds alone.”).

B. Scope of the County’s Authority

Both Angleton Sand’s third and fourth issues challenge the scope of the County’s authority to restrict the operation of overweight vehicles on its roads, so we consider them together. In its third issue, Angleton Sand argues that the County was not entitled to summary judgment because its permitting system is incongruent with Texas’s regulatory scheme. Angleton Sand asserts that the County had no authority to require “heavy haul” permits for trucks not weighing more than the load limits posted for travel on the county roads. Because the load limit posted for County Roads 44 and 171 was 48,000 pounds, Angleton Sand asked the trial court to declare that the County had authority to issue a “heavy haul” permit only for vehicles weighing more than 48,000 pounds and not already having a permit issued by the Texas Department of Transportation. In its fourth issue, Angleton Sand argues that the County further deviated from the State’s

regulatory scheme by requiring trucks to travel a route other than the shortest route to their destination. We conclude that these arguments fail.

The Transportation Code confers the Department of Transportation with authority to regulate the weight and size of vehicles that operate on public highways. *See* TEX. TRANSP. CODE ANN. §§ 621.001–623.310 (West 2011). With certain limitations, the Transportation Code likewise authorizes counties, such as Brazoria, to regulate the operation of overweight and oversize vehicles upon county roads. *See Brazoria Cnty. v. Basin Credit Consultants, Inc.*, No. 07-01-0304-CV, 2002 WL 31084700, at *3 (Tex. App.—Amarillo Sept. 18, 2002, no pet.) (citing TEX. TRANSP. CODE ANN. § 623.018(a) (West 2011)). Section 623.018 gives express authority to the commissioners court of a county to issue a permit for “the operation over a highway of that county other than a state highway or public road in the territory of a municipality of . . . vehicles or combinations of vehicles that exceed the weights authorized under Subchapter B, Chapter 621, or Section 621.301.” TEX. TRANSP. CODE ANN. § 623.018(a)(2)(B). If a vehicle has already received a “heavy haul” permit from the Department of Transportation, a county may not require an additional permit for the vehicle to operate on county roads. *Id.* § 623.018(d).

The County presented summary judgment evidence that, pursuant to section 623.018, it passed an ordinance establishing weight and size limits for vehicles

traveling on its roads and providing a permitting system. Because the weights at which the County determined a “heavy haul” permit was required are consistent with the maximum weights authorized “under Subchapter B, Chapter 621” for the operation of vehicles on public highways, we conclude the County’s permitting system is congruent with the regulatory scheme established in the Transportation Code. *Compare* Brazoria County, Tx., Order Adopting Procedures and Regulations Governing Heavy Load Permits and Bonding Requirements, § 5.1.b–c., *with* TEX. TRANSP. CODE ANN. § 621.101(a)(2), (3). In the provisions pertinent to this appeal, both the Brazoria County ordinance and the Transportation Code prohibit the operation of non-permitted vehicles having “a tandem axle weight greater than 34,000 pounds, including all enforcement tolerances;” or “an overall gross weight on a group of two or more consecutive axles heavier than the weight computed using” the “bridge formula.” TEX. TRANSP. CODE ANN. § 621.101(a)(2)–(3) (providing weight limits); *see id.* § 623.011(a) (providing permitting requirements); *accord* Brazoria County, Tx., Order Adopting Procedures and Regulations Governing Heavy Load Permits and Bonding Requirements, § 5.1.b.–c. The County was therefore entitled to summary judgment on the lawfulness of its permitting system, and we overrule Angleton Sand’s third issue. Whether the County conclusively established that it properly applied its permitting system is a different matter, which we discuss below.

Angleton Sand's fourth issue, asserting that the County unlawfully required Angleton Sand's trucks to travel a certain route, is not preserved for our review. None of the various motions for summary judgment or responses asked the trial court to make a declaration with respect to the lawfulness of the route the County designated for Angleton Sand's trucks. Neither did Angleton Sand include a challenge to the County's routing requirements in its declaratory judgment pleading. We will not reverse the summary judgment on a ground not presented to the trial court. *See Sci. Spectrum*, 941 S.W.2d at 912. For this reason, we also overrule Angleton Sand's fourth issue.

C. Evidence of Overweight Vehicles

In its first issue, Angleton Sand argues that the County was not entitled to summary judgment because a fact issue exists as to whether Angleton Sand's trucks exceeded the maximum weight authorized for travel on the County's roads and thus required a permit. Relying on the "bridge formula" to determine the "overall gross weight" of a vehicle, Angleton Sand asserts that none of its trucks was overweight. *See Brazoria County, Tx., Order Adopting Procedures and Regulations Governing Heavy Load Permits and Bonding Requirements*, § 5.1.c.; *accord* TEX. TRANSP. CODE ANN. § 621.101(a)(3).

The County disagrees that the "bridge formula" should be used to determine whether Angleton Sand was required to obtain a "heavy haul" permit. Instead, the

County asserts that, because the summary judgment evidence established that each of Angleton Sand's trucks had a tandem axle weight between 36,000 and 38,000 pounds, a permit was required pursuant to that part of the County's ordinance prohibiting operation of vehicles with a tandem axle weight greater than 34,000 pounds. *See* Brazoria County, Tx., Order Adopting Procedures and Regulations Governing Heavy Load Permits and Bonding Requirements, § 5.1.b.; *accord* TEX. TRANSP. CODE ANN. § 621.101(a)(2). Because only two of the sixteen trucks operated by Angleton Sand had permits issued by the Department of Transportation, the County argues Angleton Sand did not have all "necessary permits to be traveling on Brazoria County roads."

Neither party asks us to determine Angleton Sand's responsibility for obtaining permits for trucks owned or operated by another person or entity. Assuming the County is correct in that at least fourteen of the trucks hauling for Angleton Sand did not have a permit issued by the Department of Transportation, the primary dispute in this case becomes whether those trucks were required to have a county permit because they were overweight. The "load description sheets" were the only evidence presented by the County of either the gross vehicle weight or the tandem axle weight of the Angleton Sand trucks. As shown in the blank form below, the "load description sheets" included a place for designating both the gross weight and the tandem axle weight of a vehicle, with the "gross vehicle

weight” being listed in the upper right corner of the form and the tandem axle weight being the sum of the numbers listed as the “weights” in the columns marked “2” and “3” (representing the vehicle’s tandem axles).

Load Description:														
Maximum Width		Maximum Height			Maximum Length					Gross Vehicle Weight				
	1	2	3	4	5	6	7	8	9	10	11	12	13	14
Axle Spacing														
Weights (X 1000)														
Number of Tires														
Tire Size														

A separate “load description” was given for each of the sixteen trucks for which Angleton Sand sought to obtain a county permit.

We reject the County’s assertion that the “load description sheets” established that all of Angleton Sand’s trucks “had tandem axle weights between 36,000 and 38,000 pounds thus triggering” the permitting requirements in the Transportation Code and the County Ordinance. The “load description sheets” did not provide any information about the tandem axle weight of the following three vehicles:

Load Description:														
Dirt M.R. Trucking 100 [#]														
Maximum Width		Maximum Height			Maximum Length					Gross Vehicle Weight				
	1	2	3	4	5	6	7	8	9	10	11	12	13	14
Axle Spacing														
Weights (X 1000)														
Number of Tires														
Tire Size														

Load Description:														
Dirt M.R. Trucking 102 nd														
Maximum Width 8'			Maximum Height 10'6"			Maximum Length 24'			Gross Vehicle Weight					
	1	2	3	4	5	6	7	8	9	10	11	12	13	14
Axle Spacing		13'1"	4'4"											
Weights (X 1000)														
Number of Tires		2	4	4										
Tire Size														

Load Description:														
J. Belman 13 [#]														
Maximum Width			Maximum Height 10'8"			Maximum Length 24'8"			Gross Vehicle Weight 48					
	1	2	3	4	5	6	7	8	9	10	11	12	13	14
Axle Spacing		13'7"	4'4"											
Weights (X 1000)														
Number of Tires		2	4	4										
Tire Size		11 x 24.5												

None of the summary judgment evidence presented by Angleton Sand supplies the information omitted for these three vehicles. Without evidence of the tandem axle weight of three trucks, the County could not conclusively establish that Angleton Sand was required to obtain a county permit for fourteen vehicles because they exceeded the maximum tandem axle weight authorized by both the Transportation Code and the County Ordinance. The load descriptions for only thirteen of the trucks included the tandem axle weight.

There is another fact issue. The "load description" sheets do not include the vehicle information number for any of the sixteen trucks. Neither does the permit actually issued by the County include any identifying information on the vehicles it covers. Thus, the record does not establish whether the two trucks for which the

County concedes Angleton Sand had a permit issued by the Department of Transportation were among the sixteen trucks described in the “load description” sheets and permitted by the County. Given the confusion in the record about the number of trucks at issue, we cannot determine whether, as Angleton Sand suggests, the County required it to obtain a permit for vehicles already having permits issued by the Texas Department of Transportation.

We sustain Angleton Sand’s first issue only to the extent it complains about the grant of summary judgment in the County’s favor. We do not hold that Angleton Sand was entitled to summary judgment on its competing motion. The “load descriptions” for two of the three vehicles discussed above also omit the “gross vehicle weight.” Without knowing their “gross vehicle weights,” we cannot determine whether, as argued by Angleton Sand, these trucks were under the weight at which a permit was required using the “bridge formula.” *See* TEX. TRANSP. CODE ANN. § 621.101(a)(3); Brazoria County, Tx., Order Adopting Procedures and Regulations Governing Heavy Load Permits and Bonding Requirements, § 5.1.c.

We do not consider Angleton Sand’s second issue, alleging a dispute about the proper application of the “bridge formula,” because our decisions on the remainder of its issues dispose of this appeal.

Conclusion

We hold that the trial court did not err in granting summary judgment for the County on the lawfulness of its permitting requirements. But, because the County did not conclusively establish that it properly required Angleton Sand to obtain permits for fourteen of its vehicles, the trial court erred in finding that the County properly applied its permitting system in this case. Accordingly, we affirm the summary judgment in part and remand in part for further proceedings consistent with this opinion.

Harvey Brown
Justice

Panel consists of Justices Jennings, Sharp, and Brown.