

Reversed and Remanded and Majority and Dissenting Opinions filed October 29, 2009.



In The

Fourteenth Court of Appeals

NO. 14-08-00193-CV

GREGORY R. MATTOX AND BARBARA WILKERSON, Appellants

V.

GRIMES COUNTY COMMISSIONERS COURT, BETTY SHIFLETT, GRIMES COUNTY JUDGE, JOHN BERTLING, COUNTY COMMISSIONER PRECINCT 1, AND PAM FINKE, COUNTY COMMISSIONER PRECINCT 4, Appellees

**On Appeal from the 506th District Court
Grimes County, Texas
Trial Court Cause No. 30919**

DISSENTING OPINION

This case involves the interpretation of section 232.008 of the Texas Local Government Code, which governs cancellation of all or part of a subdivision located outside of any municipality. Two landowners, invoking this statute, applied to a county commissioners court for cancellation of part of a dedicated roadway. The court denied the application, and the landowners brought suit in the district court below seeking a writ of mandamus commanding the commissioners court to grant the requested cancellation. The

district court denied the landowners' motion for summary judgment and granted the motion for summary judgment filed by the commissioners-court defendants. Because the landowners sought a cancellation not afforded under section 232.008, the district court did not err in denying the landowners' motion for summary judgment. Because the summary-judgment evidence did not prove as a matter of law that the commissioners-court defendants were entitled to summary judgment under the ground asserted in their motion for summary judgment, the district court erred in granting the defendants' motion. The district court's judgment should be reversed and the case should be remanded for further proceedings consistent with this analysis. Because this court reverses and remands based on a different analysis, I respectfully dissent.

Factual Background

In May 2005, appellants Gregory R. Mattox and Barbara Wilkerson (collectively referred to hereinafter as the "Mattox Parties") purchased lots 35 and 36 in the Hill Forest Manor Subdivision (hereinafter the "Subdivision"). These lots are in the southwest corner of the Subdivision, and lot 36 borders undivided acreage to the west that is currently owned by Clifford and Eleanor Jackson (collectively "the Jacksons"). A dedicated road, known as Hill Forest Lane, runs along the southern border of the Subdivision. According to the plat for the Subdivision, the western end of Hill Forest Lane stops at the Jacksons' property and forms the southern border of lots 35 and 36. There is no road on the Jacksons' property leading up to this corner of their land that the plat reflects borders on Hill Forrest Lane.

The Mattox Parties assert that, when they purchased their land, most of what the plat shows as the part of Hill Forrest Lane south of their property was not being maintained as a road. The Mattox Parties claim that they believed that this area was part of the land that they bought and was not part of Hill Forrest Lane. The Mattox Parties cleaned out the weeds, brush, and debris that were in this area. However, the Mattox Parties learned that some people in the Subdivision contended that this land was part of Hill Forest Lane, which is a county road.

Procedural History

According to the Mattox Parties' pleading in the district court below, the Mattox Parties first filed an application with the Grimes County Commissioners Court ("Commissioners Court") asking the court to abandon or vacate that part of Hill Forrest Lane, but the court denied the application in July 2006. *See* TEX. TRANSP. CODE ANN. § 251.051 (Vernon 1999) (providing that commissioners courts have the authority to close, abandon, or vacate a public road). The Mattox Parties have asserted that this denial was proper because "there is not an actual road at that location for the County to abandon or vacate."

In April 2007, the Mattox Parties filed an "APPLICATION TO CANCEL DEDICATION" with the Commissioners Court. In this application, the Mattox Parties asked the court to "cancel the dedication of that portion of HILL FOREST LANE shown on the plat of HILL FORREST MANOR SUBDIVISION . . . beginning at the west side of our property and extending 134 feet toward the east and ending at the place where GRIMES COUNTY currently begins maintaining HILL FORREST LANE, which is the west terminating end of HILL FORREST LANE." In their application, the Mattox Parties relied on section 232.008 of the Texas Local Government Code¹ as the basis for the relief that they requested. *See* TEX. LOC. GOV'T CODE ANN. § 232.008 (Vernon 2005). On June 11, 2007, the Commissioners Court considered the Mattox Parties' application. After hearing argument from counsel for the Mattox Parties and counsel for the Jacksons, the Commissioners Court denied the application by a 3-2 vote.

The Mattox Parties then filed a petition for writ of mandamus in the district court below against the Commissioners Court, Grimes County Judge, Betty Shiflett, Grimes County Commissioner for Precinct 1, John Bertling, and Grimes County Commissioner for Precinct 4, Pam Finke (hereinafter collectively "Commissioners Court Parties"). The Mattox Parties asserted that the Commissioners Court Parties had no discretion to deny the Mattox

¹ Unless otherwise stated, all statutory references in this opinion are to the Texas Local Government Code.

Parties' section 232.008 application, and therefore, the Mattox Parties sought a writ of mandamus compelling the Commissioners Court Parties to grant this relief.

The Mattox Parties filed a motion for summary judgment asserting they were entitled to the relief they sought as a matter of law. The Commissioners Court Parties filed a motion for summary judgment asserting that, as a matter of law, the Commissioners Court had discretion to deny the application under subsection (h) of section 232.008. The district court denied the former motion and granted the latter motion. The propriety of both rulings is before this court on appeal.

The Statute

The first and third issues raise the question of the proper interpretation of section 232.008. This statute, entitled "Cancellation of Subdivision," contains the following language:

(b) A person owning real property in this state that has been subdivided into lots and blocks or into small subdivisions may apply to the commissioners court of the county in which the property is located for permission to cancel all or part of the subdivision, including a dedicated easement or roadway, to reestablish the property as acreage tracts as it existed before the subdivision. If, on the application, it is shown that the cancellation of all or part of the subdivision does not interfere with the established rights of any purchaser who owns any part of the subdivision, or it is shown that the purchaser agrees to the cancellation, the commissioners court by order shall authorize the owner of the subdivision to file an instrument canceling the subdivision in whole or in part. The instrument must describe the subdivision or the part of it that is canceled. The court shall enter the order in its minutes. After the cancellation instrument is filed and recorded in the deed records of the county, the county tax assessor-collector shall assess the property as if it had never been subdivided.

...

(d) If delinquent taxes are owed on the subdivided tract for any preceding year, and if the application to cancel the subdivision is granted as provided by this section, the owner of the tract may pay the delinquent taxes on an acreage basis as if the tract had not been subdivided. For the purpose of assessing the tract for a preceding year, the county tax assessor-collector shall back assess the tract on an acreage basis.

(e) On application for cancellation of a subdivision or any phase or identifiable part of a subdivision, including a dedicated easement or roadway, by the owners of 75 percent of the property included in the subdivision, phase, or identifiable part, the commissioners court by order shall authorize the cancellation in the manner and after notice and a hearing as provided by Subsections (b) and (c). However, if the owners of at least 10 percent of the property affected by the proposed cancellation file written objections to the cancellation with the court, the grant of an order of cancellation is at the discretion of the court.

...

(g) A person who appears before the commissioners court to protest the cancellation of all or part of a subdivision may maintain an action for damages against the person applying for the cancellation and may recover as damages an amount not to exceed the amount of the person's original purchase price for property in the canceled subdivision or part of the subdivision. The person must bring the action within one year after the date of the entry of the commissioners court's order granting the cancellation.

(h) The commissioners court may deny a cancellation under this section if the commissioners court determines the cancellation will prevent the proposed interconnection of infrastructure to pending or existing development.

TEX. LOC. GOV'T CODE ANN. § 232.008.

Standards of Review

This court reviews the district court's interpretation of applicable statutes de novo. *See Johnson v. City of Fort Worth*, 774 S.W.2d 653, 655–56 (Tex. 1989). In construing a statute, our objective is to determine and give effect to the legislature's intent. *See Nat'l Liab. & Fire Ins. Co. v. Allen*, 15 S.W.3d 525, 527 (Tex. 2000). If possible, this court must ascertain that intent from the language the legislature used in the statute and not look to extraneous matters for an intent the statute does not state. *Id.* If the meaning of the statutory language is unambiguous, this court adopts the interpretation supported by the plain meaning of the provision's words. *St. Luke's Episcopal Hosp. v. Agbor*, 952 S.W.2d 503, 505 (Tex. 1997). This court must not engage in forced or strained construction; instead, it must yield to the plain sense of the words the legislature chose. *See id.*

In a traditional motion for summary judgment, if the movant's motion and summary-judgment evidence facially establish its right to judgment as a matter of law, the burden shifts to the nonmovant to raise a genuine, material fact issue sufficient to defeat summary judgment. *M.D. Anderson Hosp. & Tumor Inst. v. Willrich*, 28 S.W.3d 22, 23 (Tex. 2000). In our de novo review of a trial court's summary judgment, this court considers all the evidence in the light most favorable to the nonmovant, crediting evidence favorable to the nonmovant if reasonable jurors could, and disregarding contrary evidence unless reasonable jurors could not. *Mack Trucks, Inc. v. Tamez*, 206 S.W.3d 572, 582 (Tex. 2006). The evidence raises a genuine issue of fact if reasonable and fair-minded jurors could differ in their conclusions in light of all of the summary-judgment evidence. *Goodyear Tire & Rubber Co. v. Mayes*, 236 S.W.3d 754, 756 (Tex. 2007).

The district court denied the motion for summary judgment filed by the Mattox Parties. In this motion, the Mattox Parties sought a final summary judgment; therefore, this court may review the district court's denial of the Mattox Parties' motion. *See CU Lloyd's of Texas v. Feldman*, 977 S.W.2d 568, 569 (Tex. 1998). When both sides move for summary judgment, each side must carry its own burden, and neither can prevail because of the failure of the other to discharge its burden. *INAC Corp. v. Underwriters at Lloyd's*, 56 S.W.3d 242, 247 (Tex. App.—Houston [14th Dist.] 2001, no pet.). Because parties on each side were movants, the burden for each was the same: to establish entitlement to a summary judgment by conclusively proving the independent grounds for summary judgment asserted in their respective motions. *See id.*

The Mattox Parties' Motion

In the Mattox Parties' traditional motion for summary judgment ("Mattox Parties' Motion"), they asserted that there were no genuine issues of material fact and that, as a matter of law, they were entitled to the mandamus relief requested in their petition. Specifically, they claimed that, as a matter of law, they were entitled to the relief they sought under section 232.008. In their first and third issues, the Mattox Parties assign as error the

trial court's denial of the Mattox Parties' Motion and the trial court's refusal to grant the mandamus relief that they sought as a matter of law. The Mattox Parties argue on appeal that they were entitled to mandamus as a matter of law because they satisfied every requirement of section 232.008 and thus the Commissioners Court Parties allegedly had a ministerial duty to grant the Mattox Parties' application. Therefore, the Mattox Parties have raised the issue of whether, in their application, they complied with section 232.008.

Research has revealed no cases addressing the scope of section 232.008 or the relief that may be granted under this statute. Under the unambiguous language of this statute, one owning real property that has been subdivided into lots and blocks or into small subdivisions may apply to the commissioners court of the county in which the property is located for permission to cancel all or part of the subdivision, and the applicant may include in this proposed cancellation, the cancellation of a dedicated easement or roadway. *See* TEX. LOC. GOV'T CODE ANN. § 232.008(b). However, in this statute, the Legislature states that the purpose of any requested cancellation must be "to reestablish the property [that is the subject of the cancellation] as acreage tracts as it existed before the subdivision." *Id.* If the cancellation is granted, the commissioners court shall authorize "the owner of the subdivision to file an instrument canceling the subdivision in whole or in part" and describing "the subdivision or the part of it that is canceled." *Id.* After this instrument is filed and recorded, "the county tax assessor-collector shall assess the property as if it had never been subdivided." *Id.* Section 232.008 also states that, if cancellation is granted, then the county tax assessor-collector shall "back assess the tract" on an acreage basis. *Id.* § 232.008(d). While an applicant could seek to reestablish as acreage tracts some of the lots in a subdivision as well as part of a dedicated easement or roadway, cancellation of only part of a dedicated roadway would not reestablish any property as acreage tracts as it existed before the subdivision. *See id.* Therefore, under the unambiguous language of section 232.008, the commissioners court is not authorized to cancel only a dedicated easement or roadway or a portion thereof. This statute speaks to the cancellation of a subdivision or part thereof but

not to the cancellation of only an easement or roadway (or some portion of an easement or roadway).² *See id.* The Mattox Parties sought relief that is not afforded under section 232.008. Accordingly, they did not prove as a matter of law that the Commissioners Court was required to grant their application under section 232.008, and the district court did not err in denying the Mattox Parties' Motion. For these reasons, the Mattox Parties' first and third issues should be overruled.³

The Commissioners Court Parties' Motion

In their traditional motion for summary judgment, the Commissioners Court Parties asserted that, as a matter of law, subsection (h) applied and gave the Commissioners Court discretion to deny the Mattox Parties' application for cancellation.⁴ Under the unambiguous language of subsection (h), if section 232.008 applied, the Commissioners Court had discretion to deny the Mattox Parties' application for cancellation if the Commissioners Court determined that such a cancellation "will prevent the proposed interconnection of infrastructure to pending or existing development."⁵ *See* TEX. LOC. GOV'T CODE ANN. § 232.008(h). As explained by the majority, the summary-judgment evidence did not prove as

² Other statutes give commissioners courts the authority to close, abandon, vacate, or alter public roads. *See* TEX. TRANSP. CODE ANN. § 251.051. Indeed, the Mattox Parties unsuccessfully sought such relief from the Commissioners Court in July 2006. The Mattox Parties have not sought mandamus relief regarding the Commissioners Court's denial of this relief, and they state in their live pleading in this case that the Commissioners Court correctly denied this application.

³ Another ground set forth in the Mattox Parties' Motion was that mandamus relief should be granted as a matter of law because the Commissioners Court Parties did not file a sufficient answer to the petition. This ground also lacks merit.

⁴ Though the applicability of section 232.008 is raised by the first and third issues, this issue is not raised by the fourth issue, because the Commissioners Court Parties did not raise this issue as a ground in their motion for summary judgment.

⁵ The Texas Legislature added subsection (h) to section 232.008 effective September 1, 1999, and subsection (h) applies only to land subdivided or a plat filed on or after September 1, 1999. *See* Act of May 5, 1999, 76th Leg., R.S., ch. 129, § 10, 1999 Tex. Gen. Laws 574, 578. Though this case does not involve land subdivided after this date or a plat filed after this date, the Mattox Parties did not raise this issue in the district court or on appeal. Therefore, for the purposes of this appeal, this court must presume that subsection (h) applies to this case.

a matter of law that there was pending or existing development on the Jacksons' property. *See ante* at p. 12. Therefore, the district court erred in granting the motion filed by the Commissioners Court Parties. This court should sustain the fourth issue and reverse the district court's summary judgment on this basis alone.⁶

Conclusion

This court correctly reverses the district court's judgment and remands for further proceedings; however, rather than relying on the analysis set forth in the majority opinion, this court should remand for further proceedings consistent with the analysis set forth above.

/s/ Kem Thompson Frost
Justice

Panel consists of Chief Justice Hedges and Justices Yates and Frost (Hedges, C.J., majority).

⁶ The court correctly overrules the fifth issue and concludes that this court need not address the second issue.