NUMBER 13-14-00381-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

ENBRIDGE PIPELINES (EAST TEXAS) L.P., Appellant,

v.

SARATOGA TIMBER CO., LTD.,
BATSON CORRIDOR, L.P., AND
TIMBERVEST PARTNERS TEXAS, L.P., Appellees.

On appeal from the 88th District Court
of Hardin County, Texas.

MEMORANDUM OPINION[1]

Before Chief Justice Valdez and Justices Rodriguez and Benavides
Memorandum Opinion by Chief Justice Valdez

Appellant Enbridge Pipelines (East Texas), L.P. appeals from the trial court's grant of a plea to the jurisdiction in favor of appellees Saratoga Timber Co., Ltd. (Saratoga),

[1] This case is before the Court on transfer from the Ninth Court of Appeals in Beaumont pursuant to a docket equalization order issued by the Supreme Court of Texas. *See* TEX. GOV'T CODE ANN. § 73.001 (West, Westlaw through 2017 R.S.).

Batson Corridor, L.P. (Batson), and Timbervest Partners Texas, L.P. (Timbervest). By two issues, Enbridge contends that the trial court lacked jurisdiction to rule on Saratoga's and Batson's pleas to the jurisdiction. We dismiss this appeal as to Saratoga as moot, and we affirm the judgment.

I. Background

In 2006, Saratoga conveyed to Batson "an exclusive easement, right-of-way and surface uses corridor . . . for the construction, reconstruction, maintenance, repair, resizing use and operation of one or more pipelines." Batson recorded the pipeline easement in the public records of Hardin County, Texas in October 2006. In January 2007, Enbridge filed a statement and petition for condemnation in trial court cause number 47,333 in the 88th Judicial District Court of Hardin County, Texas seeking a permanent and a temporary easement on the same property where Batson's easement was located. The trial court appointed special commissioners "to assess the damages in accordance with the law." Saratoga did not appear at the hearing, and the special commissioners granted Enbridge a pipeline easement on the real property and awarded Saratoga $33,500 in damages.[2]

In March 2007, Saratoga filed a plea to the jurisdiction and objections to the decision and award of the commissioners.[3] In January 2008, Enbridge filed its alternative pleading adding Batson as a defendant in the condemnation proceeding. Batson filed a plea to the jurisdiction. The trial court granted both pleas. This appeal followed.

[2] Saratoga alleged that it was not properly served with the condemnation petition, which formed the basis of the trial court's granting Saratoga's plea to the jurisdiction.

[3] While trial was pending, Saratoga sold its interest in the property to Timbervest subject to this condemnation proceeding.

II. Applicable Law

The United States and Texas Constitutions prohibit the taking of any property without just compensation; thus, "[t]he owner of any legal right or interest in land must therefore be adequately compensated when the land is taken." *Zinsmeyer v. State*, 646 S.W.2d 626, 628 (Tex. App.—San Antonio 1983, no writ).

> In condemnation proceedings where the property sought is subject to a lease, the judge or jury first determines the market value of the entire property as though it belonged to one person. Then the fact finder apportions the market value as between the lessee and the owner of the fee.

Urban Renewal Agency v. Trammel, 407 S.W.2d 773, 774 (Tex. 1966). As an easement constitutes an interest in land, the easement owner is entitled to compensation if the easement is extinguished by a taking. *Zinsmeyer*, 646 S.W.2d at 628.

Condemnation of private property involves a two-part process. *Amason v. Nat. Gas Pipeline Co.*, 682 S.W.2d 240, 242 (Tex. 1984). During the first phase, the party seeking condemnation initiates an administrative proceeding by filing a petition for condemnation in the trial court. *Hubenak v. San Jacinto Gas Transmission Co.*, 141 S.W.3d 172, 179 (Tex. 2004); *Amason*, 682 S.W.2d at 242. Once a petition is filed, the trial court appoints three disinterested freeholders as special commissioners to assess the damages, and they "convene a hearing and determine the value of the property condemned and any damage to the remainder." *Hubenak*, 141 S.W.3d at 179.

Because trial courts do not have general jurisdiction of an eminent domain proceeding, after the commissioners make their findings, the trial court is statutorily limited to only rendering judgment on the commissioners' award. *In re State*, 85 S.W.3d 871, 874 (Tex. App.—Tyler 2002, orig. proceeding) (op. on reh'g); *In re Energy Transfer*

Fuel, LP, 250 S.W.3d 178, 180–81 (Tex. App.—Tyler 2008, orig. proceeding). However, if either party files objections to the award in the trial court, "'the trial court shall cite the adverse party and try the case in the same manner as other civil cases.'" *Hubenak*, 141 S.W.3d at 179 (quoting TEX. PROP. CODE ANN. § 21.018 (West, Westlaw through 2017 R.S.)). Filing the objections converts the administrative proceeding into a normal pending trial cause, the commissioners' award is vacated, and a trial de novo is conducted. *Hubenak*, 141 S.W.3d at 179. The objections "wip[e] out entirely the award of the commissioners and preven[t] any judgment from being entered based upon such an award." *In re State*, 85 S.W.3d at 877 (quoting *Culligan Soft Water Svc. v. State*, 385 S.W.2d 613, 615 (Tex. Civ. App.—San Antonio 1964, writ ref'd n.r.e.)).

III. SARATOGA'S INTEREST IN THE PROPERTY

By its first issue, Enbridge challenges the trial court's grant of Saratoga's plea to the jurisdiction. Enbridge argues Saratoga has no interest in this matter because it conveyed all of its interest in the subject property to Timbervest while the judicial proceeding was pending in the trial court. Saratoga responds that Timbervest did not have an interest in this cause because it purchased the property subject to Batson's easement. Saratoga does not explain how it maintained an interest in the property after the conveyance and instead, relies on its argument that Timbervest lacks an interest.

In the deed, Saratoga conveyed to Timbervest, "all standing and fallen timber, timber products, and by-products, all improvements located thereon and all of Grantor's [(Saratoga's)] rights, title, and interest in and to all easements, tenements, hereditaments, privileges and appurtenances in any way belonging thereto, including without limitation, . . . all easements, rights-of-ways, rights of ingress and/or egress and

reversionary interests . . .” to the property subject to Batson’s easement and subject to this condemnation lawsuit. Saratoga argues that because the deed contained the subject to language, Timbervest acquired no interest in the property encumbered by Batson’s easement. Saratoga does not argue that it reserved any interest in Batson’s easement.

> An instrument of conveyance which conveys land definitely described in such instrument, and then excepts from such conveyance a road, railroad right of way, canal right of way, etc., as such, occupying a mere easement on, over, or across the land conveyed, conveys the fee to the entire tract, and the exception only operates to render the conveyance or grant subject to the easement.

Lewis v. E. Tex. Fin. Co., 146 S.W.2d 977, 980 (Tex. 1941). Here, the deed conveyed the land, which was definitely described, and excepted from the conveyance Batson’s easement and this condemnation lawsuit. Thus, we conclude that Timbervest acquired the fee to the entire tract burdened by easement and this condemnation proceeding. *See id.*; *see also Teri Rd. Partners, Ltd. v. 4800 Freidrich Lane L.L.C.*, No. 03-13-00221-CV, 2014 WL 2568488, at *6 (Tex. App. —Austin June 4, 2014, pet. denied) (“Similarly, an exception that merely refers to an encroachment on the property, as opposed to specifically reserving the conveyance of title to the property underlying the encroachment, does no more than say that the property conveyed is burdened by the encroachment.”). And, Saratoga no longer has an interest in the property.

Under the mootness doctrine, a justiciable controversy exists between the parties at the time the case arose, but the live controversy ceases because of subsequent events. *Tex. Quarter Horse Ass’n v. Am. Legion Dep’t of Tex*., 496 S.W.3d 175, 179–80 (Tex. App.—Austin 2016, no pet.). “A case becomes moot when: (1) it appears that a party seeks to obtain a judgment upon some controversy, when in reality none exists; or (2) a party seeks a judgment upon some matter which cannot have any practical legal effect

upon a then existing controversy." *Robinson v. Alief Indep. Sch. Dist.*, 298 S.W.3d 321, 325 (Tex. App.—Houston [14th Dist.] 2009, pet. denied); *see also Williams v. Lara*, 52 S.W.3d 171, 184 (Tex. 2001) (explaining that a case is moot if "the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome"). "To constitute a justiciable controversy, there must exist a real and substantial controversy involving genuine conflict of tangible interests and not merely a theoretical dispute." *Bonham State Bank v. Beadle*, 907 S.W.2d 465, 467 (Tex. 1995).

Here, at a separate declaratory judgment proceeding to determine the rights of Saratoga, Batson, and Timbervest to the subject property, Saratoga asked to be dismissed acknowledging that it had sold all of its interest to Timbervest and had no further interest in the property. Saratoga sold its interest in the property prior to the trial court's ruling on Saratoga's plea to the jurisdiction. In addition, Enbridge acknowledges on appeal that Saratoga no longer has an interest in the property, yet, it continues to insist, without explaining why, that Saratoga should remain in this condemnation proceeding.

The parties continue to argue about whether Saratoga received proper service of the commissioners' hearing; however, that dispute is no longer embedded in any actual controversy about Saratoga's particular rights and is instead an abstract dispute about the law, which does not affect Saratoga. This is so because Saratoga would no longer be entitled to service of process in this condemnation proceeding, and Enbridge's condemnation of the property has no bearing on Saratoga's rights.

In its prayer for relief, Enbridge asks this Court to reverse the trial court's judgment and remand the case with "instructions to reinstate the condemnation matter as to all

parties, appoint special commissioners, and allow the parties to proceed with the condemnation[.]" However, even if we were to grant such relief, no live controversy would exist between Enbridge and Saratoga. We are of the opinion that no live controversy now exists between these parties based on the following sequence of events: first, Saratoga filed an objection to the special commissioners' $33,500 award, which had the legal effect of vacating that award and converting what had been an administrative condemnation proceeding into a de novo judicial condemnation proceeding, *see In re State*, 85 S.W.3d at 877, then, Saratoga sold to Timbervest all of its interest in the property sought to be condemned without reserving anything for itself—not even any proceeds from the judicial condemnation proceeding that was pending in the trial court at the time of the sale. Accordingly, we overrule Enbridge's first issue because we conclude that Enbridge's claim against Saratoga in this condemnation proceeding is no longer live.

IV. Batson's Interest in the Property

By its second issue, Enbridge contends that the trial court erred in granting Batson's plea to the jurisdiction, which dismissed Batson from the judicial condemnation proceeding. Enbridge concedes that the trial court lacked jurisdiction over Batson in this condemnation proceeding because Batson was never served or made a party to the administrative condemnation proceeding, as required by the condemnation statutes. *See Smith v. Gulf States Utilities Co.*, 616 S.W.2d 300, 302 (Tex. App. —Houston [14th Dist.] 1981, writ ref'd n.r.e.) ("The mere filing of the statement in condemnation does not determine jurisdiction. Notice to the land owner is required; and until he is properly served with notice in accordance with the statute, the court is without jurisdiction and the special commissioners have no authority to assess damages or perform any act which would

declare a condemnation of the property.”). Consequently, Enbridge does not dispute that a condemnation action, if any, as against Batson must first start at the administrative level before three disinterested special commissioners. Nevertheless, Enbridge contends that the trial court was “without judicial authority” to dismiss Batson from the judicial condemnation proceeding because Enbridge filed a petition for condemnation against Batson during the judicial condemnation proceeding, thereby triggering the trial court’s “statutory administrative duty” to appoint special commissioners. However, Enbridge provides no legal authority to support its position that the trial court’s authority was so limited, and we find none. We conclude that Enbridge’s second issue has not been adequately briefed.[4] TEX. R. APP. P. 38.1. We overrule Enbridge’s second issue.

V. CONCLUSION

Because Enbridge’s claim against Saratoga is moot, we dismiss this appeal as to Saratoga.[5] *See Heckman v. Williamson Cty.*, 369 S.W.3d 137, 162 (Tex. 2012) (“If a case is or becomes moot, the court must vacate any order or judgment previously issued and dismiss the case for want of jurisdiction.”). We affirm the trial court’s judgment as to Batson.

/s/ Rogelio Valdez
ROGELIO VALDEZ
Chief Justice

---

[4] Notwithstanding the fact that Enbridge provides no legal authority to support its position, it is not firmly supported by the record. The record shows that Enbridge filed a petition for condemnation against Batson only as “an alternative pleading in the event [Batson] establishe[d] and prove[d] that it possesse[d] a legal, identifiable interest in the [property sought to be condemned].” Enbridge points to no evidence that Batson established an interest in the property. Instead, Enbridge, both at trial and now on appeal, has assumed the exact opposite position—by continuing to claim that Batson does not hold an interest in the property, and by asserting that any judgment to the contrary will be appealed.

[5] We need not vacate the commissioners’ award of $33,500 to Saratoga because it was vacated when Saratoga filed its objections in the lower court. *See Hubenak v. San Jacinto Gas Transmission Co.*, 141 S.W.3d 172, 179 (Tex. 2004).

Delivered and filed the
29th day of June, 2017.