

**NO. 12-14-00034-CV**

**IN THE COURT OF APPEALS**

**TWELFTH COURT OF APPEALS DISTRICT**

**TYLER, TEXAS**

*JOHN ALLEN AND ANGELA ALLEN,  
APPELLANTS*

§ *APPEAL FROM THE*

*V.*

§ *COUNTY COURT AT LAW*

*ENBRIDGE G & P (EAST TEXAS)  
L.P., APPELLEE*

§ *NACOGDOCHES COUNTY, TEXAS*

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***MEMORANDUM OPINION***

John Allen and Angela Allen appeal the trial court's condemnation judgment awarding Enbridge G & P (East Texas) L.P. an easement to construct a natural gas pipeline. In two issues, Appellants argue that the trial court erred in overruling their motion for new trial and that this court should reform the trial court's judgment to comport with its summary judgment order. We modify the judgment and affirm as modified.

**BACKGROUND**

Pursuant to Texas Property Code, Chapter 21, Enbridge brought a condemnation action against Appellants. By its suit, Enbridge sought a fifty foot wide permanent easement and right-of-way across Appellants' land to construct a natural gas pipeline. Enbridge further sought to secure an additional twenty-five foot adjoining easement to be used as a temporary work space. The legal description of the easements as well as their underlying terms were attached to Enbridge's petition as exhibits.

The special commissioners conducted a hearing, after which Enbridge was awarded the easements. Appellants objected to the award, and the administrative proceeding was converted into a judicial proceeding.

In its original and first amended petitions, Enbridge identified itself as a “gas utility” as defined by Texas Utility Code, Section 101.003 and alleged that it was engaged in the business of constructing, maintaining, and operating pipeline facilities “to transport, measure and control the flow of *natural gas, its constituents and associated products.*” (emphasis added). Enbridge further alleged that, pursuant to a resolution passed April 29, 2010, it determined that (1) the public convenience and necessity required it to acquire an easement for the public purpose of construction and operation of one twenty-inch natural gas pipeline and appurtenant facilities and (2) it was necessary and essential to acquire the subject easement to construct, maintain, and operate a pipeline “to transport natural gas, its constituents and associated products or by-products.”

Appellants did not contest that Enbridge was a “gas utility” with the right to condemn their land for the limited purpose of constructing a pipeline to transport natural gas for public use. Instead, they argued that the inclusion of the phrase “constituents, associated products, or by-products” would allow the transportation of products separate from natural gas, thereby exceeding the scope of the statutory and condemning authority set forth in Texas Utilities Code.<sup>1</sup>

Enbridge sought summary judgment on its entitlement to the requested easements. After the hearing on its motion, Enbridge amended its petition to change “natural gas, its constituents and associated products” to “natural gas and its constituent elements.” Thereafter, the trial court rendered a summary judgment order stating, in part, that (1) Enbridge had filed its Second Amended Statement and Petition for Condemnation (Second Amended Petition) to reduce its taking to the rights defined and authorized under Texas Utilities Code, Section 121.001, (2) Enbridge had met and complied with the requirements enumerated in Texas Property Code, Section 21.012, (3) Enbridge had the right to assign the easement to an assignee that qualifies as a transporter of natural gas as defined in Texas Utilities Code, Section 121.001(a), and (4) the only issues remaining for trial are the fair market value of the property to be condemned and damages to the remainder.

The case proceeded to a jury trial. The court’s charge to the jury characterized the easement as a “permanent conveyable easement for a natural gas pipeline.” The term “natural

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<sup>1</sup> A gas corporation has the right and power to enter on, condemn, and appropriate the land, right-of-way, easement, or other property of any person or corporation. See TEX. UTIL. CODE § 181.004 (West 2007). Sections 101.003(7) and 121.001(a)(1) and (3) define the term “gas utility.” See TEX. UTIL. CODE ANN. §§ 101.003(7), 121.001 (West 2007 & Supp. 2015).

gas” was not defined in the charge. The charge also included an instruction that Enbridge was acquiring a nonexclusive permanent easement in order to construct, operate, and maintain a twenty-inch O.D. pipeline and appurtenant facilities in, over, through, across, under, and along land owned by Appellants. The instruction contained verbatim Paragraphs I–XI of the Terms of the Permanent Easement, which was attached as Exhibit B to Enbridge’s Second Amended Petition.

After the jury returned its award, the trial court rendered a judgment that included the following pertinent language:

The foregoing easement, surface site[,] and temporary construction easement are identified in the Second Amended Statement and Petition for Condemnation attached hereto as Exhibit 1, further described in the Exhibits to the petition, all of which are attached hereto and made a part hereof for all purposes, and such easements and rights-of-way for use by and for the 20-inch natural gas pipeline together with rights of ingress and egress thereto and therefrom, in, along, and within said easement for the foregoing purposes be and are hereby VESTED in Defendant, ENBRIDGE G & P (EAST TEXAS) L.P. with the temporary construction easement having terminated and reverted to Plaintiffs after completion of construction[.]

Attached to and incorporated by reference into the judgment was a copy of Enbridge’s Second Amended Petition and its exhibits. Exhibit A consisted of plats, surveys, and a legal description of the easements. Exhibit B comprised the terms of the permanent easement. Exhibit C set forth the terms of the temporary easement.

Appellants filed a motion to set aside the judgment, in which they objected to the addition of the phrase “and its constituent elements” contained in Enbridge’s Second Amended Petition. The trial court rendered an amended judgment, which was identical to the original judgment, but for its inclusion of a handwritten footnote, which stated that “Condemnor is granted and is entitled to the right to transport only natural gas, which may include various constituent elements from the well, which comprise and/or are a part of the natural gas.”

Thereafter, Appellants filed a motion for new trial, requesting that the trial court grant a new trial on damages or, alternatively, reformation of the amended judgment to (1) delete any reference to or incorporation of Enbridge’s Second Amended Petition and (2) include language consistent with the trial court’s summary judgment order limiting any future assignment of the easement to “a transporter of natural gas” as defined in Texas Utilities Code, Section 121.001. The court denied Appellants’ motion, and this appeal followed.

### **PRODUCT TO BE TRANSPORTED**

In their first issue, Appellants argue that the amended judgment is inconsistent with and materially altered the trial court's summary judgment order by expanding what products could be transported through the completed pipeline. Thus, they argue that the trial court erred in denying their motion for new trial.

#### **Standard of Review and Applicable Law**

We review a trial court's ruling on a motion for new trial for an abuse of discretion. *See Dir., State Emp. Workers' Comp. Div. v. Evans*, 889 S.W.2d 266, 268 (Tex. 1994); *Cliff v. Huggins*, 724 S.W.2d 778, 778–79 (Tex. 1987). A trial court abuses its discretion when it acts without reference to any guiding rules or principles, not when it exercises that discretion in a manner different than a reviewing appellate court might. *See Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241–42 (Tex. 1985). The burden of proving an abuse of discretion is on the party assailing the trial court's ruling or action. *Lutheran Soc. Servs., Inc., v. Meyers*, 460 S.W.2d 887, 889 (Tex. 1970); *Green v. Kaposta*, 152 S.W.3d 839, 843 (Tex. App.–Dallas 2005, no pet.).

A judgment is the official announcement of the resolution of the issues in the lawsuit. *Comet Aluminum Co., Inc. v. Dibrell*, 450 S.W.2d 56, 58–59 (Tex. 1970). A judgment is a judicial act, the primary objective of which is to conclude controversies with the highest possible degree of exact justice. *See Jackson v. Slaughter*, 185 S.W.2d 759, 761 (Tex. Civ. App.–Texarkana 1944, writ ref'd w.o.m.) When a judgment is attacked, we indulge all presumptions consistent with reason to uphold its binding effect. *See id.*

In determining the validity of a judgment, the substance of the judgment controls, rather than its form, and no particular wording or phraseology is required. *See Gen. Elec. Capital Auto Fin. Leasing Servs. v. Stanfield*, 71 S.W.3d 351, 355 (Tex. App.–Tyler 2001, pet. denied). Moreover, a judgment may incorporate into its terms by reference an earlier judgment or order in the same judicial proceedings. *See Azbill v. Dallas Cty. Child Protective Servs. Unit of Tex. Dep't of Human & Regulatory Servs.*, 860 S.W.2d 133, 136 (Tex. App.–Dallas 1993, no writ).

Further still, a judgment must be sufficiently definite and certain to define and protect the rights of the litigants. *Stewart v. USA Custom Paint & Body Shop, Inc.*, 870 S.W.2d 18, 20 (Tex. 1994); *see also Roberts v. Brittain*, 659 S.W.2d 750, 751 (Tex. App.–Tyler 1983, no writ)

(judgment should provide definite means of ascertaining such rights to the end that ministerial officers can carry judgment into execution without ascertainment of facts not therein stated).

Texas courts generally construe judgments under the same rules of interpretation as those applied to other written instruments. *Lone Star Cement Corp. v. Fair*, 467 S.W.2d 402, 404–05 (Tex. 1971). First, we are mindful that whether a judgment is ambiguous is a question of law. *See Cross Timbers Oil Co. v. Exxon Corp.*, 22 S.W.3d 24, 26 (Tex. App.–Amarillo 2000, no pet.). Thus, we need not defer to any interpretation afforded by the trial court. *Id.* Second, when interpreting an instrument, we strive to give effect to its intent. *Id.* That intent is garnered from the language of the instrument, which is considered in its entirety. *See id.* That is, we peruse the complete document to understand, harmonize, and effectuate all its provisions. *See id.* In so doing, we afford the words contained in the instrument their plain, ordinary, and generally accepted meaning, unless doing so would defeat the intent of the drafter. *See id.*; *cf. DeWitt Cty. Elec. Coop., Inc. v. Parks*, 1 S.W.3d 96, 101 (Tex. 1999).

### **Construing the Amended Judgment**

Appellants argue that the amended judgment is contrary to the trial court’s summary judgment order. More specifically, they contend that incorporating Enbridge’s Second Amended Petition and its exhibits into the amended judgment permits a greater number of products to be transported through the completed pipeline than was permitted by the summary judgment order. Consequently, they conclude, the inclusion of “natural gas and its constituent elements” implies that Enbridge could transport the constituent elements of natural gas individually through the pipeline.

We begin by considering the ordinary meaning of the relevant terms. “Natural gas” is defined as “gas issuing from the earth’s crust through natural openings or bored wells; [especially] a combustible mixture of methane and other hydrocarbons[.]” MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 826 (11th ed. 2011); *accord* H. WILLIAMS & C. MEYERS, OIL AND GAS LAW, MANUAL OF OIL AND GAS TERMS 634 (15th ed. 2012) (“natural gas” defined as “hydrocarbons, which at atmospheric conditions of temperature and pressure are in a gaseous phase”).

The common law is in accord with the aforementioned plain meaning, but offers more specificity, which is germane to our analysis of the issue. *See Lone Star Gas Co. v. Harris*, 45 S.W.2d 664, 667 (Tex. Civ. App.–Eastland 1931, writ ref’d) (“The legal effect of the deed was to

convey ‘all natural gas,’ and by the term ‘natural gas’ is meant all the constituent elements composing the same.”). More recently, the Texas Supreme Court addressed the meaning of the term “natural gas,” stating, in pertinent part, as follows:

Natural gas from a well can be composed of both hydrocarbons, which are combustible, and nonhydrocarbons, which are inert . . . Hydrocarbons can vary in chemical makeup, from simple methane to the very complex octane, and in form, from a pure gaseous state to condensate. The nonhydrocarbon makeup of natural gas can include gases such as helium, Sulphur, and nitrogen.

***Bowden v. Phillips Petroleum Co.***, 247 S.W.3d 690, 704 n.9 (Tex. 2008).

“Constituent” means “serving to form, compose, or make up a unit or whole.” WEBSTER’S COLLEGIATE DICTIONARY 267 (11th ed. 2011). And an “element” is “any of the fundamental substances that consists of atoms of only one kind and that singly or in combination constitute all matter.” *Id.* at 402. Thus, as used in the instant case, the term “constituent elements” means the fundamental substances of matter that make up natural gas.

Based on the plain meanings of the relevant terms, we conclude that “natural gas” is a substance, which necessarily includes a variety of hydrocarbons. Therefore, the use of that term alone is sufficient to describe the substance as including a varying combination of elements. Thus, the phrase “and its constituent elements” is redundant and unnecessary to describe the product to be transported.

### **Ambiguity**

Whether a judgment is ambiguous is a question of law. *Shanks v. Treadway*, 110 S.W.3d 444, 447 (Tex. 2003). A judgment should be construed as a whole to harmonize and give effect to the entire instrument. *Id.* If the judgment is unambiguous, the court must give effect to the literal language used. *Id.*

We have examined the amended judgment as a whole in light of the description of the product transportable through the completed pipeline. In so doing, we remain mindful of the trial court’s handwritten footnote, which states that “Condemnor is granted and is entitled to the right to transport only natural gas, which may include various constituent elements from the well, which comprise and/or are a part of the natural gas.” This footnote is consistent with the ordinary meaning of the term “natural gas” and indicates that the only product that can be transported through the completed pipeline is the combination of elements that, in various forms and quantities, constitute natural gas. Any confusion potentially created by the inclusion of the

additional phrase “and its constituent elements” is clarified by this footnote. Thus, we conclude that the description of “natural gas” as including “its constituent elements,” when considered in light of the trial court’s handwritten footnote, is not ambiguous. Therefore, we hold that the trial court did not abuse its discretion in overruling Appellants’ motion for new trial on this ground. Appellants’ first issue is overruled.

#### **ASSIGNABILITY OF THE PERMANENT EASEMENT**

In their second issue, Appellants argue that the amended judgment awarded Enbridge an unrestricted right to assign the easement in contravention of the trial court’s summary judgment order and the law. As set forth above, Exhibit B to Enbridge’s Second Amended Petition contains the terms of the permanent easement. Paragraph X of Exhibit B states as follows:

BENEFITS AND BURDENS. The benefits and burdens of this Permanent Easement shall be binding upon and shall enure to the benefit of Plaintiff and Defendants, and to their respective successors and assigns.

Appellants contend that the breadth of Paragraph X’s language provides Enbridge with an unqualified right to assign the easement to a private party for private use, rather than for public use alone. Specifically, they argue that (1) Paragraph X is contrary to the constitutional prohibition against private use taking, (2) it undermines the jurisdiction conferred on the Texas Railroad Commission to regulate common carriers and public utilities, and (3) the summary judgment order allowed assignment of the easement only to an assignee that qualifies as a “transporter of natural gas” as defined in Texas Utilities Code, Section 121.001(a).

Enbridge responds that Appellants waived their right to complain of any discrepancy in the summary judgment order and amended judgment by their failure to object to the court’s charge, which included Paragraph X as an instruction. Enbridge further contends that the trial court properly could change its pretrial summary judgment order to remove any assignment restrictions contained therein.

#### **Applicable Law**

An easement is a nonpossessory interest authorizing its holder to use the property only for particular purposes. See *Marcus Cable Assocs., L.P. v. Krohn*, 90 S.W.3d 697, 700 (Tex. 2002) (citing RESTATEMENT (THIRD) OF PROPERTY (SERVITUDES) § 1.2 cmt. d)). Therefore, an

easement's express terms, interpreted according to their generally accepted meaning, delineate the purposes for which the easement holder may use the property. See *Coleman v. Forester*, 514 S.W.2d 899, 903 (Tex. 1974). An easement does not transfer rights by implication, except what is reasonably necessary to fairly enjoy the rights expressly granted. See *id.* Rights are made specifically assignable by stating in the instrument that the terms shall be binding on "successors and assigns." *Strauch v. Coastal States Crude Gathering Co.*, 424 S.W.2d 677, 683 (Tex. Civ. App.—Corpus Christi 1969, writ dismissed).

Pipeline easements are assignable in Texas. See *Valero Eastex Pipeline Co. v. Jarvis*, 990 S.W.2d 852, 855 (Tex. App.—Tyler 1999, pet. denied) (citing *Orange Cty., Inc. v. Citgo Pipeline Co.*, 934 S.W.2d 472, 475 (Tex. App.—Beaumont 1996, writ denied)). The fact that the pipeline easement has been condemned does not prohibit assignment. See *Jarvis*, 990 S.W.2d at 855–56. At a minimum, an easement for a pipeline obtained by a common carrier in an eminent domain proceeding can be transferred, sold, or conveyed to another common carrier to operate a pipeline as a common carrier without an explicit request for such a right in the condemnation proceedings. See *Hubenak v. San Jacinto Gas Transmission Co.*, 141 S.W.3d 172, 191 (Tex. 2004). A transfer or conveyance of a condemned easement to carriers operating pipelines should be anticipated as long as the pipeline is operated in a manner the condemnation contemplated. *Id.*

Yet, while certain easements may be assigned to a third party, that third party's use cannot exceed the rights expressly conveyed to the original easement holder. See *Cantu v. Cent. Power & Light Co.*, 38 S.W.2d 876, 877 (Tex. Civ. App.—San Antonio 1931, writ refused); see also *Carrithers v. Terramar Beach Cmty. Improvement Assoc.*, 645 S.W.2d 772, 774 (Tex. 1983) ("[A]n easement may not create a right or interest in a grantee's favor which the grantor himself did not possess.").

Moreover, the Texas Constitution provides that "[no] person's property shall be taken, damaged, or destroyed for or applied to public use without adequate compensation." TEX. CONST. ANN. art. I, § 17(a). If a particular purpose is not provided for in the grant, a use pursuing that purpose is not allowed. See *Marcus Cable*, 90 S.W.3d at 701. Companies possessing the right to condemn private property for a public use cannot do what they please with the land condemned, but only what is reasonably necessary to carry out the purpose for which the land is taken. See *Aycock v. Houston Lighting & Power Co.*, 175 S.W.2d 710, 714



(Tex. Civ. App.–Galveston 1943, writ ref'd w.o.m.). Anything beyond this is not the taking of private property for public use, but the taking of private property for private use. *Id.*

### **Preservation of Error**

Enbridge argues that Appellants failed to preserve error, if any, concerning the trial court's failure to include its summary judgment ruling in the amended judgment because they failed to object to the court's charge. We disagree. The trial court, in its discretion, could have incorporated the limited assignability portion of its summary judgment order either by reference or direct recital after the jury returned its verdict on damages. *See, e.g., Azbill*, 860 S.W.2d at 136. Accordingly, the discrepancy between the summary judgment order and the amended judgment did not become apparent until the court rendered the amended judgment. *See Guillory v. Boykins*, 442 S.W.3d 682, 689 (Tex. App.–Houston [1st Dist.] 2014, no pet.) (“To be considered timely, the request, objection, or motion generally must be made at the earliest possible opportunity, thereby allowing the trial court an opportunity to cure the error.”); *Lake v. Premier Transp.*, 246 S.W.3d 167, 174 (Tex. App.–Tyler 2007, no pet.) (“To be considered timely, an objection must be specific enough to enable the trial court to understand the precise nature of the error alleged and interposed at such a point in the proceedings so as to enable the trial court the opportunity to cure the error alleged, if any.”). Thus, we conclude that Appellants preserved error by raising the issue in their motion for new trial.

### **Assignability Restrictions**

In its summary judgment order, the trial court ruled that Enbridge could assign the permanent easement only to an assignee that was a “transporter of natural gas” as defined in Texas Utilities Code, Section 121.001(a). The trial court did not render any subsequent pretrial order in which it deleted or modified this ruling. And the record does not otherwise indicate that the trial court contemplated changing the ruling.

At trial, the jury was instructed that it could award damages for a permanent, conveyable easement for a natural gas pipeline easement and that Enbridge was acquiring a nonexclusive permanent easement. Because the amended judgment incorporates Paragraph X, it makes the easement assignable without limitation. *See Strauch*, 424 S.W.2d at 683. Thus, the summary judgment order and amended judgment are inconsistent with regard to the permanent easement's future assignability.

The same rules of interpretation apply in construing the meaning of court orders as in ascertaining the meaning of other written instruments. See *Lone Star Cement Corp.*, 467 S.W.2d at 404–05. A judgment should be construed as a whole toward the end of harmonizing and giving effect to all the court has written. *Point Lookout West, Inc. v. Whorton*, 742 S.W.2d 277, 278 (Tex. 1987) (per curiam); *Constance v. Constance*, 544 S.W.2d 659, 660 (Tex. 1976). In so doing, the entire content of the written instrument and the record should be considered. See *Lone Star Cement Corp.*, 467 S.W.2d at 405.

If the language of the judgment is susceptible to more than one interpretation, the one that renders the judgment more reasonable, effective, and conclusive, and which harmonizes it with facts and the law of the case, should be adopted. See *State Farm Lloyds, Inc. v. Williams*, 791 S.W.2d 542, 546 (Tex. App.–Dallas 1990, writ denied) (citing *Duff v. Collins*, 225 S.W.2d 213, 215 (Tex. Civ. App.–Austin 1949, writ ref’d n.r.e.)). A purported judgment that leaves undecided a question or an issue essential to the determination of the controversy between the parties is void for vagueness and uncertainty. *In re R.J.A.H.*, 101 S.W.3d 762, 763 (Tex. App.–Houston [1st Dist.] 2003, no pet.). And a trial court has no discretion in determining what the law is or applying the law to the facts. See *In re D. Wilson Constr. Co.*, 196 S.W.3d 774, 781 (Tex. 2003) (orig. proceeding).

As set forth above, the plain meaning of Paragraph X permitted Enbridge to assign the easement without restriction. This provision, on its face, is contrary to Texas law because it does not limit the assignment of the condemned pipeline easement to continued public use. See, e.g., *Aycock*, 175 S.W.2d at 714.

But upon consideration of the record as a whole, the trial court’s intent concerning the easement’s assignability is made apparent. During the hearing on Appellants’ motion for new trial, the trial court stated that (1) it had not changed its ruling with regard to limited assignability of the easement as set forth in the summary judgment order and (2) Enbridge did not have the right to do anything but transport natural gas or assign the pipeline to some other entity to transport natural gas. Therefore, we conclude that the trial court did not intend to change its summary judgment ruling with regard to Enbridge’s restricted assignment rights. Appellants’ second issue is sustained.

### REMEDY

An action of a court that is contrary to a statute, constitutional provision, or rule of civil or appellate procedure is erroneous and voidable, subject to correction through the ordinary appellate process or other proper proceedings. *Reiss v. Reiss*, 118 S.W.3d 439, 443 (Tex. 2003) (citing *Mapco, Inc. v. Forrest*, 795 S.W.2d 700, 703 (Tex. 1990); *Wallingford v. Trinity Universal Ins. Co.*, 253 S.W.3d 720, 724 (Tex. App.–Amarillo 2007, no pet.)). The court of appeals may modify the trial court’s judgment when the necessary information is available to do so. See TEX. R. APP. P. 43.2(b); *Shamoun v. Shough*, 377 S.W.3d 63, 78 (Tex. App.–Dallas 2012, pet. denied).

The record in the instant case reflects the trial court did not intend to change its summary judgment ruling that any assignment of the pipeline could be made only to an assignee that is a “transporter of natural gas” as defined in Texas Utilities Code, Section 121.001(a). The most efficient means of reflecting the trial court’s ruling on this issue is to modify the amended judgment.

### CONCLUSION

We have overruled Appellants’ first issue and sustained their second issue. Accordingly, we *modify* the trial court’s amended judgment by adding the following language at the end of Paragraph III, B: “Notwithstanding any language or provision to the contrary in this judgment or in any attachments or exhibits incorporated therein, the easements can be assigned only to an assignee that qualifies as ‘a transporter of natural gas’ as defined in Texas Utilities Code, Section 121.001(a).” We *affirm* the trial court’s amended judgment as *modified*.

GREG NEELEY  
Justice

Opinion delivered January 29, 2016.  
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

(PUBLISH)



## COURT OF APPEALS

### TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

#### JUDGMENT

JANUARY 29, 2016

NO. 12-14-00034-CV

**JOHN ALLEN AND ANGELA ALLEN,**  
Appellants  
V.  
**ENBRIDGE G & P (EAST TEXAS) L.P.,**  
Appellee

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Appeal from the County Court at Law  
of Nacogdoches County, Texas (Tr.Ct.No. CV1012363)

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THIS CAUSE came on to be heard on the appellate record and the briefs filed herein; and the same being inspected, it is the opinion of the Court that the trial court's judgment below should be **modified and, as modified, affirmed**.

It is therefore ORDERED, ADJUDGED and DECREED that the trial court's amended judgment below be **modified** by adding additional language at the end of Paragraph III, B as follows "Notwithstanding any language or provision to the contrary in this judgment or in any attachments or exhibits incorporated therein, the easements can be assigned only to an assignee that qualifies as 'a transporter of natural gas' as defined in Texas Utilities Code, Section 121.001(a)." and **as modified**, the trial court's judgment is **affirmed**; and that this decision be certified to the trial court below for observance.

Greg Neeley, Justice.

*Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.*