

EASEMENTS!



COUNSEL'S CORNER

Easements are not sexy. But they are a necessity when there is no direct access to a publicly-dedicated street or road.

Dawson-Conway Ranch, Ltd. owns 26,000 + acres north of Abilene in Shackelford County, Texas. The DC Ranch has its own facebook page: <http://www.facebook.com/pages/Dawson-Conway-Ranch-Deer-Lease/198022160276484>. Access is through Texas County Road 167, which ends at the NW quadrant of the ranch. Access through the remainder of the ranch is across the Clear Fork of the Brazos River. The Clear Fork also separates the Mark Harrington ranch from the DC Ranch.

Deposition testimony was that the river crossing (no bridge) is frequently impassable and always undependable, although the water is generally only one or two feet deep.

There was additional evidence that there were rough roads in the SW quadrant of the DC Ranch which were used to drill and access oil and gas wells.

Mark Harrington's predecessors began leasing land on the Harrington ranch for mineral production in 1918. Guests and invitees of both ranches used whichever roads they could access, without interference, for many years. Since the properties were adjacent, it seems no one paid much attention to the owner of the property they were crossing.

The access to Mark Harrington's property stopped in December 2007, when Harrington had enough of DC's hunters throwing trash on his land, shooting his deer, and driving too fast on his roads. Or perhaps it was when a hunter shot a dog belonging to one of his managers. Either way, enough was enough.

So Harrington locked the gates. And DC sued Mark Harrington for access.

The trial court granted DC's motion for summary judgment, holding that DC had established a '*prescriptive*' easement across Harrington's property. Harrington appealed.

In Texas, to obtain a prescriptive easement the use must be open, notorious, continuous, exclusive and adverse for at least 10 years. There is no exclusivity when a landowner and land-claimant both use the same road. A shared use is not adverse.

Perhaps sensing that DC would lose that argument, DC also claimed that it had an *'implied easement by necessity by grant.'* Texas cases involving this type of easement require a "strict necessity" test, which means there is no other means of access. Although inconvenient and perhaps requiring a rowboat or at least sturdy waders and high-water pants, access to the DC Ranch could be maintained through Texas CR 167 and also across the pond.

Therefore, the judgment of the trial court was reversed and rendered for Mark Harrington that Dawson-Conway has no easement by prescription or necessity across the Harrington Ranch. Mere inconvenience and huge expense (such as bridge construction) do not, by themselves, grant legal access across a neighbor's property in Texas.

See *Harrington v. Dawson-County Ranch, Ltd.*; No. 11-10-00124-CV; Texas 11th Court of Appeals; June 4, 2012.

Lessons learned:

1. Easements are critically important. Not only in ranchland, but also office, warehouse, shopping center, retail, and multi-family properties. Yes it is possible to sell / buy or lease land-locked property in our state. Unusual, but not impossible.
2. Don't assume that a property has access to roads. Check a title commitment and survey, then read each easement document.
3. When easements are vital, get easement insurance from the title company. Usually there is no additional charge if the easement description is merely added to Schedule A of the title commitment and owner policy. And remember – title insurance is available not only in purchase and finance transactions, but leases too.

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