

NO. 08-189-0277

FERN BLUFF MUNICIPAL UTILITY DISTRICT,

Plaintiff,

vs.

JEAN I. COCHRAN and THE CITY OF ROUND ROCK, TEXAS

Defendants.

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IN THE DISTRICT COURT OF

WILLIAMSON COUNTY, TEXAS

277 JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

Fern Bluff Municipal Utility District ("Fern Bluff MUD"), Plaintiff, under Section 37.001, et seq., seeks a declaration from the Court that a purported dedication of a right-of-way to the City of Round Rock, Texas and Williamson County, Texas, for extension of Creek Bend Boulevard, is void under both Section 49.226 of the Texas Water Code and Section 26.001 of the Texas Parks and Wildlife Code and constituted an ultra vires act by Defendant, Jean I. Cochran ("Cochran").

Discovery Control Plan

1. Fern Bluff MUD proposes that discovery in this case be conducted under Discovery Control Plan Level 2, Tex. R. Civ. P. 190.3.

Parties

- 2. Fern Bluff MUD is a political subdivision of the State of Texas.
- 3. Defendant Cochran is an individual residing in the State of Texas and may be served with process by service at 2603 Harborside Drive, Granbury, Texas 76048-2693.
- 4. The City of Round Rock, Texas ("Round Rock"), is a political subdivision in the State of Texas and may be served with process by service on its agent, Mayor Nyle Maxwell, 211 East Main Street, Round Rock, Texas 78664.

Venue and Jurisdiction

5. This Court has personal and subject matter jurisdiction over ~~all the parties~~ to this action, inasmuch as Defendants are either a political subdivision of the State of Texas or a

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Texas resident and the amount in controversy in this case exceeds the minimum jurisdictional limits of this Court.

6. Venue is proper in Williamson County, Texas, in that the property at issue in this case is located in Williamson County, Texas.

Factual Background

7. Fern Bluff MUD is the owner and holder of that certain tract of land in Williamson County, Texas, more particularly described as:

4.919 acres of land out of, and a part of the William Dugan Survey, Abstract No. 190, situated in Williamson County, Texas, being all of that certain 4.919 acre tract of land conveyed to Fern Bluff MUD by Special Warranty Deed recorded in Document No. 2002045938 of the Deed Records of Williamson County, Texas (the "Property").

8. Pursuant to the Special Warranty Deed described in paragraph 7 herein, the Property was designated as park and recreation area for public use, and the Property was used as such prior to the purported dedication of a portion of the Property as right-of-way.

9. From 1990 to February 2007, Defendant Cochran was President of the Fern Bluff MUD. On or about September 19, 2002, Cochran, without following Fern Bluff MUD rules and procedures, dedicated a right-of-way to the City of Round Rock and Williamson County, for extension of Creek Bend Boulevard (the "Right-of-Way"), in conjunction with the filing of a Final Plat of Fern Bluff Community Center. The dedication of the Right-of-Way constitutes a conveyance of an interest in property owned by Fern Bluff MUD.

10. The interest of land purportedly dedicated to the City of Round Rock and Williamson County has at no time been found by the Fern Bluff MUD to be surplus land, or land not needed by the district. Fern Bluff MUD did not receive anything in exchange for the conveyance of the Right-of-Way interest to the City of Round Rock or Williamson County, much less fair market value, and no vote by the Fern Bluff MUD Board was ever taken to approve this conveyance of an interest in land owned by the Fern Bluff MUD.

11. Under Section 49.226(a) of the Texas Water Code, an interest in land owned by a MUD, may only be sold under order of the board, either by public or private sale, upon the finding that the land is surplus or not needed by the district. Before a public sale of real property, the MUD is required to give notice of the intent to sell by posting notice once a week for two consecutive weeks in one or more newspapers with general circulation within the district. None of the actions required to convey a right-of-way interest of land owned by Fern Bluff MUD to the City of Round Rock or Williamson County have occurred. Defendant Cochran, as President of Fern Bluff MUD at the time the conveyance, did not have the authority to dedicate the Right-of-Way without providing notice to the public and without approval of the Fern Bluff MUD Board.

12. Under Section 26.001 of the Texas Parks and Wildlife Code, a MUD may not approve of any program or project requiring the use or taking of land designated and used as a park and recreation area unless it provides adequate notice and hearing under Section 26.002 of the Texas Parks and Wildlife Code. A MUD must also make a determination that no feasible and prudent alternative is available and harm to the land will be minimized. Fern Bluff MUD dedicated the Right-of Way over the public park and recreation area without proper notice and hearing and without determinations by the MUD regarding alternatives or impacts on the land.

Declaratory Relief

13. Paragraphs 1 through 12 are incorporated herein by reference for all purposes.

14. Fern Bluff MUD seeks a declaration by the Court that the purported dedication and conveyance of the right-of-way interest in the Fern Bluff MUD property is void. The purported conveyance was done in contravention of the statute governing conveyances of interests in land by municipal utility districts and, without following of the rules and procedures of the Fern Bluff MUD. The property interest conveyed by Cochran has not been determined to be surplus. Additionally, the purported conveyance was done in contravention of the notice and

hearing requirements of the Texas Parks and Wildlife Code for use of land designated and used as a public park and recreation area. For such reasons, Fern Bluff MUD is entitled to a declaratory judgment that the purported dedication of the Right-of-Way is void and it is the owner and holder of title to the property unencumbered by the Right-of-Way interest.

Attorney's Fees

- 15. Paragraphs 1 through 14 are incorporated herein by reference for all purposes.
- 16. In addition, under Section 37.009, Tex. Civ. Prac. & Rem. Code, Fern Bluff MUD requests that the Court award it costs and reasonable and necessary attorneys' fees as are equitable and just against Defendant Cochran.

Prayer

WHEREFORE, premises considered, Fern Bluff Municipal Utility District requests that after final trial hereof, the Court enter judgment declaring that the purported conveyance of an interest in land for extension of Creek Bend Boulevard is void and that such land remains property of Fern Bluff MUD unencumbered by the Right-of-Way interest.

Respectfully submitted,

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