

**Supreme Court of Texas**  
**January 29, 2016**

***Matthews v. Kountze Indep. Sch, Dist.***

No. 14-0453

Case Summary written by Frances Tubb, Staff Member.

JUSTICE DEVINE delivered the opinion of the Court.

Kountze Independent School District had a policy that prevented school cheerleaders from displaying religious messages on banners at school-sponsored events. The cheerleaders claimed this prohibition on religious messages violated their rights of freedom of speech and exercise of religion protected under the Texas Constitution. Parents sued on behalf of the school cheerleaders, seeking permanent relief to enjoin the school district from enforcing this policy. After the cheerleaders filed their suit, the school district changed its policy allowing for display of “fleeting expressions” with a religious origin, but the school district retained the ability to limit the content of banners. After changing the school policy, the school district argued the cheerleaders’ claim was moot.

*Issue:* Did the School District’s voluntary termination of the conduct at issue render the plaintiffs’ claims for future relief moot?

The district court denied the School District’s motion, and the court of appeals accepted an interlocutory appeal. The court of appeals held the cheerleaders’ action was moot due to the policy change. The Supreme Court of Texas accepted review to resolve a dispute between the appellate courts as to whether the School District needed to renounce its original policy in order for the claim to be moot. Mootness requires there to be a live case or controversy ready for adjudication. The termination of a policy in and of itself does not make a controversy moot because the School District has the ability to reinstate the policy at any time. A dismissal is only appropriate if the conduct is not capable of repetition, and that burden is difficult to meet. Although the School District’s new policy does not prevent the cheerleaders from displaying religious messages, there is nothing to prevent the School District from returning to its original policy in the future. Accordingly, the Supreme Court of Texas held the case was not moot, reversed the court of

appeals, and remanded the case to the court of appeals for further proceedings.

JUSTICE WILLETT filed a concurring opinion.

Justice Willett concurred fully with the majority opinion; however, he wrote separately to express his concern that the case would return to the Supreme Court of Texas at a later time with unresolved questions concerning religious freedom. He noted the trial court order did not resolve the question of whether the cheerleaders' speech was private or public. He also believed the trial court failed to clearly indicate which claims were waived and which claims were preserved. When the issue reappears at the trial court, Justice Willett urged the court not to shy away from the difficult question that guards religious freedom.

JUSTICE GUZMAN filed a concurring opinion.

Justice Guzman concurred that this controversy was not moot, but she wrote separately to express that religious freedom deserves respect in the balance of constitutional rights. Justice Guzman noted that religious freedom is protected in both the United States Constitution and the Texas Constitution. She recounted several cases where school districts infringed on First Amendment rights, attempting to prevent the expression of religious messages by students. She was concerned about the lack of clear guidance on when limitation of religious expression is acceptable.

***R.R. Comm'r of Tex. v. Gulf Energy Exploration Corp.***

No. 14-0534

Case Summary written by Petrus Wassdorf, Staff Member.

JUSTICE LEHRMANN delivered the opinion of the Court.

Chapter 89 of the Texas Natural Resources Code provides a defense to liability for “damages that may occur as a result of acts done or omitted to be done . . . in a good-faith effort to carry out” chapter 89. TEX. NAT. RES. CODE § 89.045. Gulf Energy entered into an oral agreement for the delay in the plugging of several wells by the Commission. Before the agreement was reduced to writing and signed by both parties, well 708S-5 was plugged as a result of an admitted clerical error by a Commission employee. Gulf Energy obtained permission of the legislature to sue the Commission. It brought

breach-of-contract and negligence claims against the Commission and its contractor, Superior. Superior settled during jury deliberations. The Commission objected to the failure to submit a question to the jury on formation of a binding contract and to the absence of a question of good faith. The trial court found the commission liable on both issues and awarded the maximum allowed by the legislature. The court of appeals affirmed, finding that the Commission waived its contract complaint at trial, and even if preserved, any error was harmless. The court of appeals also held that the Commission waived the issue of good faith. The Commission again appealed.

Issues: Is the Commission entitled to the good-faith defense under § 89.045 and if so did the trial court err in failing to submit that question to the jury? And was a binding oral contract formed as a matter of law before the well was plugged?

Gulf Energy initially argued that the legislative permission that they obtained precluded the good-faith defense. The Court found, however, that the resolution specifically did not waive any defense except for the Commission's immunity from suit. Gulf Energy further argued that the good-faith defense applied only to discretionary action of the Commission.

The Court found that the language in § 89.045 is broad foreclosing liability for "any damages" resulting from a good-faith effort to carry out chapter 89. Limiting the statute to discretionary acts would contravene the plain meaning of the statute and legislative intent. The Court found that good faith is a subjective standard relying on several dictionary definitions and the Courts own interpretation of good faith in unrelated cases. Further, the Court agreed with an argument by the Commission that applying an objective standard would duplicate the negligence standard, and rejected Gulf Energy's suggestion to import the good-faith element of the official immunity defense into this case. The good-faith question was not waived by the Commission when it failed to submit a definition along with their proposed jury question as there is no statutory definition and no case law providing explicit guidance. Further, charge error "is generally considered harmful" and not subject to harmless error. Accordingly the Court reversed the court of appeals, finding that a fact issue existed as to whether the acts or omissions by the Commission were conducted in good faith and the Commission was entitled to a jury question on this issue.

The second issue was when a binding contract was formed between the parties. The Commission argued that a contract was not formed until after the well was plugged. Finding that the Commission's objection to the contract question was similar in substance to its argument in the court of appeals, the Court determined that the Commission did not waive the contract formation question.

Relying on *Foreca, S.A. v. GRD Development Co.*, 758 S.W.2d 744 (Tex. 1988), the Court found that the formation of a contract depends on the intent of the parties, which is usually a question for the trier of fact. In this case there was conflicting evidence as to whether the parties intended to be bound by the oral agreement, and was therefore an issue that should have been presented to the jury. Further, the court of appeals erred in finding that a contract was formed as a matter of law. Finally, the Court found that the good-faith defense is not limited to tort liability and could be utilized on the contract claim. The judgment of the court of appeals was reversed and the case remanded for a new trial.

### ***Staley Family P'ship, LTD. v. Stiles***

No 14-0591

Case Summary written by Will Wassdorf, Staff Member.

JUSTICE JOHNSON delivered the opinion of the Court.

This case involved two properties located in Collin County: a 10.129-acre tract (Staley Tract), and a larger tract (Stiles Tract). Both properties were part of a single large tract the State of Texas granted to Thompson Helms in 1853. In 1866, a probate court partitioned Helms' tract among the six children. Three of the children's partitioned tracts were a part of this lawsuit: Axia Ann Helms, James Helms, and Frances Helms. The three properties, rectangular in shape, were stacked from north to south with their long axes running east and west. Axia owned the northernmost tract, Frances owned the southernmost tract, and James owned the middle tract.

In the 1870s, Frances conveyed all but the northwest corner of his property, the Staley Tract, to James—the last conveyance occurring in 1876. “The Staley Tract has at all relevant times been bounded on the east and south by an unnamed tributary of Honey Creek that separates the Staley Tract from the property Frances conveyed James in 1876, on

the north by property originally partitioned to James, and on the west and south by Honey Creek.” Honey Creek and its tributary run north and south through all three partitioned properties. They join and form a “V” on the southern party of the Staley Tract. The impassable creek and tributary made the Staley Tract landlocked.

The Staley Family Partnership acquired the Staley Tract in 2009. At that time, the land north of the Staley Tract between Honey Creek and its tributary, which had previously been owned by both Axia Ann and James, had been owned by the Stiles family. County Road 134 runs east and west along the northern boundary of the Stiles Tract.

Staley sued the Stiles family for an easement by either necessity, estoppel, or implication. Evidence introduced at trial illustrated that while roads in the vicinity of County Road 134 existed in the 1930s, there was no evidence that any roads north of the Stiles Tract existed before that time. The trial court held Staley was not entitled to an easement. Staley dropped all claims except easement by necessity on appeal. The court of appeals affirmed the trial court’s decision claiming Staley failed to show the easement for roadway access was necessary at the time the property was severed.

Issue: Must Staley prove an easement at the time of severance from the original tract would have resulted in access to a public roadway?

For an easement by necessity, the party must show: “(1) unity of ownership of the alleged dominant and servient estates before severance; (2) the claimed easement is a present necessity and not a mere convenience; and (3) the necessity of the easement existed when the two estates were severed.” To establish the necessity, the party must show that at the time of severance from the dominant estate the necessity arose for an easement.

The Court determined that the relevant severance occurred in 1866 when the Helms Tract was partitioned between the children. Staley showed no evidence that an easement for access to a public road was necessary at the time the land was partitioned in 1866. The evidence showed no roadways in existence north of the Staley Tract until the 1930s. Because Staley failed to show evidence that an easement was necessary for access to a public roadway at the time of severance, the Court affirmed the court of appeals’ judgment.

## ***Hysaw v. Dawkins***

No. 14-0984

04-13-00539-CV, 450 S.W.3d 147, 07-30-14

Case Summary written by Jana L. Simons, Staff Member.

JUSTICE GUZMAN delivered the opinion of the Court.

In 1947 Ethel Hysaw executed her will, dividing her land into three fee simple estates in her land and bequeathing one to each of her three children, Dorothy, Howard, and Inez. In her will, she disposed of the underlying mineral rights separately by stating “[t]hat each of my children shall have and hold an undivided one-third (1/3) of an undivided one-eighth (1/8) of all oil, gas or other minerals in or under or that may be produced from any of said lands, the same being a non-participating royalty interest . . . .” The resulting 1/24 presents what is known as the double fraction problem. Over half a century ago, when Ethel’s will was drafted, mineral contracts rarely departed from the standard one-eighth royalty agreement, but presently such provisions are more regularly adjusted. Therefore, a common issue becomes whether the royalty disbursement should be fixed or floating when subsequently interpreting the document.

In 2008, Inez’s descendants negotiated a one-fifth, rather than one-eighth, mineral lease on the 600 acres they owned in fee simple. As a result, a double fraction problem ensued regarding whether or not descendants of all three children should divide all royalties equally, even those greater than one-eighth, or whether Inez’s descendants should exclusively profit from the negotiated excess royalty. The families of Ethel’s children sued to settle the dispute over these lucrative mineral interests.

The family that owned the surface rights to the oil producing land argued that the other two families should receive one-third of one-eighth, known as a fixed or “fractional” royalty interest, as the plain language of the will reads, while the other two families argued that the distribution should float, or be a “fraction of” the royalty interests. For example, as in the present case, if a mineral contract is negotiated at one-fifth, then the families of the devisees should each receive one-third of one-fifth equally.

The trial court held that the minerals should be divided equally amongst the families, as a fraction of royalty interests, including the

additional, agreed-upon royalty amounts negotiated by the surface owner. The appellate court reversed the lower court and held for Inez by stating that descendants of Dorothy and Howard were merely entitled to the fraction of mineral interests of one-third of one-eighth as stated in Ethel's will. The excess amount negotiated would be designated for the owner of the surface rights.

Issue: Whether Ethel Hysaw's will intended for the bequeathed mineral estate to be divided equally (floating royalty) or if the additional royalties should go solely to the owner of the surface rights (fixed royalty).

While this area of oil and gas law is often litigated, the Court decided the case based heavily on the intent of the testatrix. The Court therefore ultimately refused to establish bright-line rules on the interpretation of fixed and floating royalties. The Court held that, despite the fact that the double fraction problem, in plain language, left 1/24 to each child, the descendants of each of the three children should benefit equally because the intent was to treat each of the children equally with respect to mineral rights.

The Court considered additional testamentary language such as: "unless there has been an inter vivos sale or conveyance of royalty on land willed to that child, in which case the children 'shall each receive one-third of the remainder of the unsold royalty.'" The Court concluded that when holistically considering the intent expressed within the will's four corners, the testatrix intended to divide the mineral estate equally. The court thus "favored a holistic and harmonizing approach and rejected mechanical rules of construction, such as giving priority to certain types of clauses over others or requiring the use of magic words." Therefore, the Court reversed the appellate court and determined the intent of the will was to divide the mineral interests equally, in a floating manner if necessary, to all of her children.