

Reeves v. Hooton: Texas Right to Farm Act Inapplicable

The Tyler Court of Appeals issued an opinion last week that dealt with the Texas Right to Farm Act.

John Reeves leased farmland from Nan Miller in Anderson County Texas. When deer and hogs began damaging his crops, Mr. Reeves began using a propane cannon in the field both night and day during the growing season in order to scare away the deer and hogs. Mr. Hooton, who owns the neighboring property, complained that the noise from the cannon interfered with his use and enjoyment of his own property. Upon receiving that complaint, Mr. Reeves moved the cannon to a different area that was farther from Mr. Hooton's home. Mr. Hooton claimed that he was still able to hear the cannon and that it made it impossible for him to sleep.

The Case

At that point, Mr. Hooton filed a lawsuit against Mr. Reeves and Ms. Miller ("the Defendants") alleging that the cannon was a nuisance. The Defendants argued that the lawsuit was barred by the Texas Right to Farm Act. The case was tried to a jury, which found in favor of Mr. Hooton. Specifically, the jury found that the conditions or circumstances constituting the nuisance action had not existed substantially unchanged since the established date of operation, which rendered the Right to Farm Act inapplicable. Based upon this verdict, the trial court issued an injunction prohibiting the firing of a propane cannon on the property. The Defendants appealed.

The Texas Right to Farm Act prevents nuisance suits against an agricultural operation that has been lawfully in operation for one year or more prior to the date on which the action has commenced so long as the conditions or circumstances that created the basis of the nuisance action existed substantially unchanged since the established date of operation. The main issue in this case was whether the use of the propane cannon had existed substantially unchanged since the established date of operation.

On appeal, the Tyler Court of Appeals considered whether there was factual support for the jury's conclusion that Mr. Reeves did not use the propane cannon in substantially the same manner for a year before the lawsuit was filed. There was conflicting testimony regarding when Mr. Reeves began using the cannon, how often the cannon was fired, and where the cannon was located prior to the lawsuit being filed. In light of this, the appellate court was unable to conclude that the jury's finding was against the weight of the evidence or manifestly unjust. The court found that there was factual support for the jury's finding that the cannon had not been used substantially unchanged since the date of operation and, therefore, the Right to Farm Act did not apply.

Further, Mr. Reeves challenged the scope of the injunction issued by the trial court, which prohibited the use of the cannon anywhere on the property. In determining whether the injunction was proper, the court considered numerous facts and attempted to balance the facts,

circumstances, and the parties' interests. Mr. Reeves claimed that the injunction was overly broad and should have only applied to the portion of the property near the Hooton house. The court considered the testimony, including Mr. Hooton's testimony that he could hear the cannon even after Mr. Reeves moved it farther away, evidence that the cannon was ineffective in preventing crop damage by deer and hogs, and evidence that Mr. Reeves did not appear to care that the cannon was a nuisance to his neighbors and, instead, was adamant that he could do what he wished with the property.

Lessons Learned

This case outlines a major limitation of the Texas Right to Farm Act—that requiring that the activity complained of has to have existed substantially unchanged since its established date of operation. This can limit an agricultural producer's ability to modify his farming practices if he wishes to remain protected by the Right to Farm Act.

Further, the case emphasizes the need to keep detailed and accurate records of when various equipment is purchased, when it is used, and how it is used. Mr. Reeves did not have this type of information and the inconsistent testimony in this regard likely led to the jury finding against him.

Finally, the case also highlights the importance of treating neighbors with respect. In evaluating the injunction, the court considered the hardships and conveniences for all of the parties and, in doing so, noted that Mr. Reeves did not act neighborly in this situation. The court states that Mr. Reeves "made it clear that he did not care that the propane cannon was a nuisance to his neighbors." The court also noted that Mr. Reeves was "adamant that he lease the property and could do what he wanted on it." Not only is acting neighborly toward others potentially beneficial if the case does end up before a court, but it will likely also allow a producer to resolve the conflict and avoid litigation altogether.