

COA Opinion: Activities that go beyond the reasonable exercise of a use granted by an easement may constitute a trespass

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In *D'Andrea v. AT&T*, No. 288483, defendant AT&T possessed a six-foot “Easement for Public Utilities” at the back of plaintiffs’ lot. In the 1970s, AT&T installed a “crossbox cabinet” on the easement. In 2005, AT&T replaced that cabinet with a new one, and also added additional cabinets, both above and beneath the ground. The cabinets were placed on a concrete slab surrounded by bushes, and AT&T declined plaintiffs’ request to move the cabinets off of Plaintiffs’ property. All of these items were within the easement’s boundaries, but plaintiffs complained that the new cabinets materially increased the burden on their property, because the new cabinets were bigger, reduced plaintiffs’ useable backyard area by almost half, and diminished the market value of the property. The trial court granted summary disposition to AT&T.

The Court of Appeals reversed, holding that a fact finder could determine that AT&T’s activities went beyond the reasonable exercise of the use granted by the easement, even if those activities were confined entirely to the easement. In reaching that conclusion, the Court rejected AT&T’s argument that the Land Division Act was relevant to the inquiry, and also rejected AT&T’s reliance on the fact that the local city and county authorities issued building permits for the cabinets. The case was remanded for further proceedings.