

## GOVERNMENT PROPERTY

### Government Property: Fee Titles & Easements

*City of Orlando v. MSD-Mattie, L.L.C.*,  
895 So. 2d 1127 (Fla. 5th Dist. App. 2005)

When the language creating an easement is unambiguous, the rights held by the dominant estate are limited to those articulated in the conveyance. The fact that an asserted right will not burden the servient estate cannot be used to expand the scope of the easement.

#### FACTS AND PROCEDURAL HISTORY

In the early 1980s, the predecessor of Tampa Electric Company (TECO) obtained an easement in gross for electric transmission lines from the previous owner of property held by MSD-Mattie, L.L.C. (MSD). The scope of the easement specified that TECO, the dominant estate, was entitled to “establishment, use, operation and maintenance of . . . overhead electric transmission lines.” *MSD-Mattie, L.L.C.*, 895 So. 2d at 1129. In 1998, TECO replaced the existing copper shield wires with fiber optic cables, creating excess capacity for communication uses in the lines. This upgrade was undisputedly within the scope of the easement.

TECO argued that the installation of fiber optic cables created more capacity in the communication lines than MSD needed and thus TECO sought a declaratory judgment for its entitlement to lease the excess capacity for telecommunications to third parties. TECO further argued that this use should be permitted because it would not increase the physical burden on the servient estate. MSD argued that the easement did not provide for general communication use and thus such use would be beyond the scope of the easement.

The trial court found for MSD, holding that the proposed use would be beyond the scope of the easement. TECO appealed.

#### ANALYSIS

The issue on appeal was whether an easement holder is entitled to rights, not explicitly granted in the easement, that do not burden the servient estate. TECO relied on *Nerbonne, N.V. v.*

*Florida Power Corp.*, which upheld a dominant estate's right to place a power line over a highway to which it had a right of way. 692 So. 2d 928, 930 (Fla. 5th Dist. App. 1997). The *Nerbonne* court relied heavily on the fact that road rights-of-way have historically been used to transmit power and communications, and therefore; the right to place a power line over the road was implicit in the easement. *Id.* at 929. Such historical evidence was not present in this case.

TECO also relied upon *Davis v. MCI Telecommunications Corp.*, 606 So. 2d 734, 739 (Fla. 1st Dist. App. 1992), in which the court permitted a dominant estate to bury fiber optic cable along a railroad easement. The Fifth District Court of Appeal found the *MCI* precedent was inapplicable because a statute permitted the proposed use in that case, whereas no such statute was relevant to the facts at hand.

Finally, TECO argued that public policy encouraged the proposed use of the easement, in that this use would allow TECO to reduce rates to its customers, which would increase competition. The Fifth District also rejected this argument. In coming to its decision, the court interpreted the scope of an easement narrowly, holding that the grantee is only entitled to the rights specifically granted in the conveyance. The fact that a proposed right does not increase the burden on the servient estate is immaterial, and cannot be used to increase the scope of the easement. As long as the language is unambiguous, it is to be strictly construed. Therefore, because the proposed use was not included in the original language of the easement, TECO did not have a right to such a use. Thus, the lower court's decision was affirmed.

#### SIGNIFICANCE

This Florida case of first impression clarifies the way in which an easement is to be construed. The case stands for strict construction, and Florida courts will likely decline to expand the scope of an unambiguous easement, unless demanded by historical custom and usage or permitted by statute. Public policy will not necessarily expand the scope. In sum, the rights of a dominant estate will be limited to those specifically granted in the easement.

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## RESEARCH REFERENCE

- 20 Fla. Jur. 2d *Easements and Licenses in Real Property* §§ 45–47 (2005).

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