

Court Advisory

Fourth Court of Appeals
Cadena-Reeves Justice Center
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FOR IMMEDIATE RELEASE
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Fourth Court of Appeals to Hear Oral Argument

The Fourth Court of Appeals will hear oral argument in an appeal on Monday, June 23, 2025, beginning at 10:30 a.m., before the following panel of justices: Justice Lori I. Valenzuela, Justice Adrian A. Spears II, and Justice Velia J. Meza.

The following appeal will be presented:

San Miguel Electric Cooperative, Inc. v. Lee Franklin Lively, Arthur Wayne Swaim, Robert Murray Swaim, Bobbie Swaim, Rodney and Bobbie Swaim Family Limited Partnership & Shorty Investments, Ltd.—This permissive appeal concerns the construction of a 1931 Partition Deed. After the death of both R. S. Franklin and Minerva Franklin, a partition deed was filed with the McMullen County Clerk’s office on June 9, 1931. This 1931 Partition Deed purported to partition the Franklins’ ranch so that the Franklins’ twelve heirs obtained equitably partitioned plots of land. The 1931 Partition Deed also reserved “all coal and kaolin or clay products on or under said lands . . . to be held and owned by” the Franklins’ twelve heirs “in common and in undivided interest.”

Lee Franklin Lively, Arthur Wayne Swaim, Robert Murray Swaim, Bobbie Swaim, Rodney and Bobbie Swaim Family Limited Partnership & Shorty Investments, Ltd. (collectively, the “Livelys”), own interests in the historical Franklin Ranch. The Livelys initiated suit after San Miguel Electric Cooperative, Inc. (hereinafter, “SMEC”) sought to mine lignite from their properties based on its ownership interest of the 1931 Partition Deed’s coal reservation. In their motion for summary judgment, SMEC argued that the 1931 Partition Deed’s use of the term “all coal” included a reservation of lignite. The Livelys, in their own motion for summary judgment, argued that since lignite was not expressly reserved in the 1931 Partition Deed the reservation did not include lignite and the ownership thereof remained with the surface estate.

Following the summary judgment proceedings, the trial court ruled that the 1931 Partition Deed’s reservation did not reserve lignite. In this permissive appeal, San Miguel Electric Cooperative, Inc. asks whether the 1931 Partition Deed’s reservation of “all coal” included a reservation of lignite.

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The argument can also be accessed using the following link:

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