By Stephen Gibson

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***Will Interpretation May Be Based on Surrounding Circumstances* when the will was drafted.**

When and how "surrounding circumstances" can be employed to inform the interpretation of contracts has been the subject of substantial attention in recent Texas Supreme Court opinions. Generally, the court has confined the use of this interpretive instrument to resolution of ambiguities and uncertainties while declaring out of bounds allowing it to make an agreement say something it does not. The objective, after all, is to ascertain what the parties must have intended when the agreement is viewed *objectively*.

Conoco Phillips Co. et al v. Ramirez, et al. involves the extension of these principles to the interpretation of real property references in a will. The difference of context is obvious. Only one person's intent matters: the decedent whose will it is. There is no other party whose objective understanding must be considered. Nevertheless, the court in a unanimous opinion authored by Chief Justice Hecht adheres to and applies the surrounding circumstances rules for contract interpretation to the interpretation of a will.

In *Ramirez*, the testatrix devised a life estate in "all of [her] right, title and interest in and to Ranch 'Las Piedras' to her son … with the remainder to his living children in equal shares." "Las Piedras" was not defined by metes and bounds or even generally described. The larger tract of which "Las Piedras" must have been part was not contiguous. The will also did not specify whether the interest devised was limited to the surface or included the mineral interests. All these matters played into the dispute over who owned valuable mineral rights for these tracts.

Having to description in the will itself, the court looked to the circumstances that existed when the will was drafted to ascertain what the deceased must have intended by her bequest. Without delving into the complexities of the particularities concerning this property, it is sufficient for purposes of this summary to point out that the court looked to the fact that there had been a previous partition agreements that identified a particular tract as the "Las Piedras Pasture" or "Las Piedras Ranch." These agreements were in the testatrix's chain of title. Indeed, she had been a party to an instrument that referred to a collection of tracts that it described as "Las Piedras Ranch." Thus, the court ruled that these existing circumstances clarified what the testatrix meant by "Las Piedras Ranch" when she drafted her will.

Both of these agreements also removed all doubt that the decedent did not intent to include the mineral interests. These had already been separately conveyed. The mineral interests had been treated as jointly owned by all family members, and not owned by individual family members. This was consistent with the will bequeathing surface rights in the "Las Piedras Ranch" separately from the mineral interests. She had granted her son a life estate in the surface while granting an undivided equal share of mineral interests in the property bearing the same description to all three of her children. From the surrounding circumstances, the court ruled the testatrix could have and in fact only intended to convey the surface estate, not the mineral interests, when she devised "Las Piedras Ranch."