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## City of Saginaw v. Carter, 996 S.W.2d 1 (Tex. Ct. App. 1999)

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State's survey. The court instead relied on the Landowners' survey, which comported with the gradient boundary methodology, to serve as the correct marker.

In addressing attorney's fees, the court rejected the Landowners' characterization that the suit was a boundary dispute and a declaratory judgment action. Instead, the court held the legislative resolution authorizing the suit did not entitle Landowners' recovery of attorney's fees. Finally, the court found the Frivolous Claims Act did not apply. Because the State's defense to the boundary dispute demonstrated an arguable basis for the claim, the court found it was not frivolous.

*M. Elizabeth Lokey*

**City of Saginaw v. Carter, 996 S.W.2d 1 (Tex. Ct. App. 1999)** (holding that the City of Saginaw cannot claim sovereign immunity to deny jurisdiction to a claimant pleading an intentional taking and intentional nuisance by the City's operation of street and storm sewers resulting in intentional flooding of claimant's property).

An increased volume and velocity of diverted surface water allegedly caused by the City of Saginaw's ("City") operations resulted in erosion, destruction, and endangerment to human lives on the Carter property. The Carters alleged the City caused intentional flooding of the property by their operation, control, and maintenance of street and storm sewers. The Carters asserted two claims: (1) intentional taking under Article I, § 17 of the Texas Constitution; and (2) intentional nuisance.

The City filed a plea arguing the trial court lacked subject matter jurisdiction due to sovereign immunity. The trial court denied the City's plea. The City brought an interlocutory appeal alleging erroneous denial.

The court affirmed the trial court's denial of the plea. A governmental entity cannot use sovereign immunity to end a suit on jurisdictional grounds without a showing of fraudulent pleading to confer jurisdiction by the plaintiff. The City did not show fraudulent pleading by Carter. The pleading alleged intentional acts and, therefore, did not lack jurisdiction due to sovereign immunity, as it would if it were a claim for negligent performance of governmental functions. The court also reported summary judgment was the proper avenue if the City believed Carter did not tender sufficient facts to show intentional acts.

*Tiffany Turner*