

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

May 21, 2012

No. 07-20409

Lyle W. Cayce
Clerk

CAROL SEVERANCE

Plaintiff-Appellant

v.

JERRY PATTERSON, Commissioner of the Texas General Land Office;
GREG ABBOTT, Attorney General for the State of Texas;
KURT SISTRUNK, District Attorney for the County of Galveston, Texas

Defendants-Appellees

Appeal from the United States District Court
for the Southern District of Texas

Before JONES, Chief Judge, and WIENER and CLEMENT, Circuit Judges.

Per Curiam:

The Texas Supreme Court answered our certified questions in this case, *see Severance v. Patterson*, 566 F.3d 490, 503-04 (5th Cir. 2009), by declaring that Texas law does not recognize a “rolling easement” created by avulsive events affecting the dry beach of Galveston's West Beach. *Severance v. Patterson*, No. 09-0387, Tex S.Ct. April 19, 2012, op. on reh. For the panel majority, this answer reifies the claim of appellant Severance to an “unreasonable” seizure violative of the Fourth Amendment in the State's assertion of an easement (and related regulatory violations) on her beachfront

No. 07-20409

property following Hurricane Rita. (Judge Wiener continues to dissent on this portion of the prior and present dispositions.)

Because the potential existence of this constitutional claim is now confirmed, the district court's judgment against Severance predicated on FED. R. CIV. P. 12(b)(1) and (6) must be reversed.

Based on submissions from both parties following the state Supreme Court's ruling and its remission of the case to this court, we are unpersuaded that the case is likely moot. At the same time, what issues must now be determined, aside from attorneys' fees accruing to the appellant, is unclear. Therefore, the case is REVERSED and REMANDED for further proceedings in connection with Severance's Fourth Amendment claim.