

COURT OF APPEALS OF TEXAS, FOURTEENTH DISTRICT

Adolph R. Kazmir and Ruth S. Kazmir v. Ruben A. Benavides and Sylvia Benavides

Kazmir v. Benavides · No. No. 14-08-00034-CV · Decided June 23, 2009

SUMMARY

The Texas Fourteenth Court of Appeals affirmed a bench-trial judgment awarding Ruben A. Benavides and Sylvia Benavides title to an approximately four-foot-wide strip of land through adverse possession. The court held that possession under a contract for deed could satisfy the exclusivity requirement and that the evidence established continuous, hostile, open, and visible use of the disputed area for more than ten years. The court also upheld the legal sufficiency of the evidence regarding continuity of occupancy and the appellees' intent to claim the property.

CASE DETAILS

COURT	Court of Appeals of Texas, Fourteenth District
WRITING FOR THE COURT	John S. Anderson; Chief Justice Hedges; Justice Anderson; Justice Hudson
JURISDICTION	Texas
DECIDED	June 23, 2009
DOCKET	No. 14-08-00034-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appellants appealed after a bench trial in which the trial court awarded appellees title to and possession of an approximately four-foot-wide disputed strip of land by adverse possession and awarded attorney's fees.
STANDARD OF REVIEW	Findings of fact in a bench trial are reviewed under the same legal- and factual-sufficiency standards applicable to jury findings when a complete reporter's record exists. The trial court is the sole judge of witness credibility and evidentiary weight, and findings will not be disturbed if supported by evidence of probative force. Legal sufficiency is reviewed in the light most favorable to the challenged finding, crediting favorable evidence that a reasonable factfinder could believe and disregarding contrary evidence unless a reasonable factfinder could not. Conclusions of law are reviewed de novo and will

	be upheld if the judgment is sustainable under any supported legal theory.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Adolph R. Kazmir, Ruth S. Kazmir v. Ruben A. Benavides, Sylvia Benavides

TOPICS

adverse possession title disputes real estate appellate procedure standard of review

PRACTICE AREAS

real estate property law adverse possession appellate procedure civil procedure

QUESTIONS PRESENTED

1. Whether the evidence was legally sufficient to establish continuity of the Benavideses' possession while Lot 13 was rented to successive tenants.
2. Whether possession under a contract for deed supplied the exclusive possession and sufficient property interest necessary for the Benavideses to commence adverse possession of the disputed area for themselves.
3. Whether the evidence was legally sufficient to establish the Benavideses' intent to claim the disputed area and their visible appropriation of it.
4. Whether the trial court's judgment awarding title and possession to the Benavideses should be affirmed.

HOLDINGS

1. The Benavideses' testimony that they continuously leased Lot 13 from 1978 through trial and that their tenants used the property in the same manner was legally sufficient evidence of continuous possession.
2. A contract for deed passed sufficient interest in Lot 13 to give the Benavideses exclusive possession of Lot 13 and the disputed area and allowed them to commence adverse possession for their own benefit.
3. The evidence was legally sufficient to establish the Benavideses' hostile intent to possess and visible appropriation of the disputed area.
4. The evidence supported the conclusion that the Benavideses established adverse possession of the disputed area under Texas's ten-year limitations statute.

KEY QUOTATIONS

“To prevail on a claim of adverse possession under section 16.026(a), the elements to prove by a preponderance of the evidence are: (1) actual and visible possession of the disputed property; (2) that is adverse and hostile to the claim of the owner of record title; (3) that is open and notorious; (4) that is peaceable; (5) that is exclusive; and (6) involves continuous cultivation, use, or enjoyment for ten years.”

“We hold the contract for deed passed sufficient interest in Lot 13 for appellees to have exclusive possession of Lot 13 and the Disputed Area and commence adverse possession of the Disputed Area for their own benefit.”

FACTUAL BACKGROUND

A chain-link fence had been placed approximately four feet inside the true boundary of Lot 12, creating the disputed area between Lots 12 and 13. The Benavideses purchased Lot 13 under a contract for deed in 1973, took possession, used and maintained the entire yard within the fences, and later rented the property continuously while their tenants used the area in the same manner. In 2004, a survey disclosed the fence encroachment, after which the Kazmirs removed the fence and improvements and installed a new fence; the Benavideses then sued to establish adverse possession.

PROCEDURAL HISTORY

Appellees sued under Texas Civil Practice and Remedies Code sections 16.026 and 16.027, alleging adverse possession of the disputed area between Lots 12 and 13. Appellants counterclaimed for declaratory judgment. Following a bench trial, the 270th District Court of Harris County entered judgment for appellees and awarded attorney's fees; the Fourteenth Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Sterling v. Tarvin, 456 S.W.2d 529, 533 (Tex. Civ. App.—Fort Worth 1970, writ ref'd n.r.e.)
- Terrill v. Tuckness, 985 S.W.2d 97, 107-108 (Tex. App.—San Antonio 1998, no pet.)
- Rhodes v. Cahill, 802 S.W.2d 643, 645 (Tex. 1990)
- Mohnke v. Greenwood, 915 S.W.2d 585, 593 (Tex. App.—Houston [14th Dist.] 1996, no writ)
- Vaughan v. Anderson, 495 S.W.2d 327, 332 (Tex. Civ. App.—Texarkana 1973, writ ref'd n.r.e.)
- Fuentes v. Garcia, 696 S.W.2d 484, 485 (Tex. App.—San Antonio 1985, writ ref'd n.r.e.)
- Bywaters v. Gannon, 686 S.W.2d 593, 595 (Tex. 1985)
- Glover v. Union Pac. R.R. Co., 187 S.W.3d 201, 213 (Tex. App.—Texarkana 2006, pet. denied)
- Natural Gas Pipeline Co. v. Pool, 124 S.W.3d 188, 193-194 (Tex. 2003)
- Waddy v. City of Houston, 834 S.W.2d 97, 103 (Tex. App.—Houston [1st Dist.] 1992, writ denied)
- City of Clute v. City of Lake Jackson, 559 S.W.2d 391, 395 (Tex. App.—Houston [14th Dist.] 1977, writ ref'd n.r.e.)
- Material Partnerships, Inc. v. Ventura, 102 S.W.3d 252, 257 (Tex. App.—Houston [14th Dist.] 2003, pet. denied)
- Barrientos v. Nava, 94 S.W.3d 270, 288 (Tex. App.—Houston [14th Dist.] 2002, no pet.)
- Catalina v. Blasdel, 881 S.W.2d 295, 297 (Tex. 1994)

- Price Pfister, Inc. v. Moore & Kimmer, Inc., 48 S.W.3d 341, 347 (Tex. App.—Houston [14th Dist.] 2001, pet. denied)
- City of Keller v. Wilson, 168 S.W.3d 802, 810, 819-820, 822, 827 (Tex. 2005)
- Smith v. Smith, 22 S.W.3d 140, 143-144 (Tex. App.—Houston [14th Dist.] 2000, no pet.)
- Quick v. City of Austin, 7 S.W.3d 109, 116 (Tex. 1999)
- Waggoner v. Morrow, 932 S.W.2d 627, 631 (Tex. App.—Houston [14th Dist.] 1996, no writ)
- McShan v. Pitts, 554 S.W.2d 759, 760-763 (Tex. App.—San Antonio 1977, no writ)
- Graves v. Diehl, 958 S.W.2d 468, 470, 472 (Tex. App.—Houston [14th Dist.] 1997, no pet.)
- City of Austin v. Capitol Livestock Auction Co., 453 S.W.2d 461, 464 (Tex. 1970)
- Tran v. Macha, 213 S.W.3d 913, 915 (Tex. 2006)
- Calfee v. Duke, 544 S.W.2d 640, 642 (Tex. 1976)
- Julien v. Baker, 758 S.W.2d 873, 877 (Tex. App.—Houston [14th Dist.] 1988, pet. denied)
- Ramirez v. Wood, 577 S.W.2d 278, 287 (Tex. Civ. App.—Corpus Christi 1978, no writ)