

COURT OF APPEALS FOR THE THIRTEENTH DISTRICT OF TEXAS

Hestia Management, LLC, Hestia Investments, Ltd., and Troy Tucker
v. Bernard Klimist and Laura Stuart

No. 13-24-00431-CV · No. 13-24-00431-CV · Decided December 11, 2025

SUMMARY

The Thirteenth Court of Appeals of Texas held that appellants raised genuine issues of material fact on each element of their adverse-possession affirmative defense concerning a retaining-wall encroachment. The court reversed the trial court’s summary judgment in favor of the property owners and remanded for further proceedings.

CASE DETAILS

COURT	Court of Appeals for the Thirteenth District of Texas
WRITING FOR THE COURT	Justice Jon West; Chief Justice Tijerina; Justice West; Justice Cron
JURISDICTION	Court of Appeals for the Thirteenth District of Texas
DECIDED	December 11, 2025
DOCKET	13-24-00431-CV
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a final declaratory judgment and summary judgment entered by the 135th District Court of Calhoun County in favor of the property owners on trespass claims and against appellants' adverse-possession affirmative defense.
STANDARD OF REVIEW	De novo review of summary judgment. The court takes as true all evidence favorable to the nonmovant, indulges every reasonable inference in the nonmovant's favor, and resolves doubts in the nonmovant's favor. When a plaintiff moves for summary judgment against a defendant asserting an affirmative defense, summary judgment is proper only if the defendant fails to raise a genuine issue of material fact on each element of the defense.
PRECEDENTIAL VALUE	Published memorandum opinion; treated as published based on the supplied metadata.
PARTIES	Hestia Management, LLC, Hestia Investments Ltd., Troy Tucker v. Bernard Klimist, Laura Stuart

TOPICS

adverse possession

summary judgment

civil procedure

appellate procedure

PRACTICE AREAS

real estate

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether appellants raised a genuine issue of material fact on each element of their adverse-possession affirmative defense.
2. Whether the evidence concerning the retaining wall and its use raised fact issues as to actual and visible possession, hostile and adverse possession, open and notorious possession, peaceable possession, exclusive possession, and continuous use or enjoyment for ten years.
3. Whether the trial court erred by granting summary judgment on the Klimists' trespass claims and rejecting the adverse-possession defense as a matter of law.

HOLDINGS

1. Yes. Taking appellants' evidence as true and indulging reasonable inferences in their favor, the retaining wall, related residential improvements, and appellants' asserted use and maintenance of the disputed area raised a genuine issue of material fact on every element of their ten-year adverse-possession defense.
2. Yes. The evidence did not establish as a matter of law that the approximately nine-and-a-half-inch retaining-wall encroachment was insufficient to provide notice or demonstrate adverse possession.

KEY QUOTATIONS

“We find Tucker and Hestia raised a genuine issue of material fact as to each element of their adverse possession affirmative defense to the Klimists’ claims.” (at 17)

“To determine if a genuine issue of material fact exists, “we take as true all evidence favorable to the non-movant, indulge every reasonable inference in favor of the non-movant, and resolve any doubts in the non-movant’s favor.”” (at 4)

“To prevail under the ten-year limitations statute, a person must prove that his or his predecessor’s possession of the disputed property was actual and visible; adverse and hostile; open and notorious; peaceable; exclusive; and involved continuous cultivation, use, or enjoyment for ten years.” (at 7)

FACTUAL BACKGROUND

The Klimists owned a 0.727-acre waterfront lot in Port O'Connor, Texas, and Tucker, through his businesses, owned an adjoining 0.299-acre lot. Tucker attested that he built a stone retaining wall along the boundary in 2006 to prevent erosion, mark the boundary, and support his home's structural integrity, later replacing it with a concrete wall in 2020. Surveys showed that the wall encroached on the Klimists' property by as much as nine and a half inches. Tucker further attested that he and Hestia exclusively used and maintained the disputed area for more than ten years and that the Klimists did not challenge the use until 2020.

PROCEDURAL HISTORY

The Klimists sued Tucker and Hestia for trespass to real property and trespass to try title after surveys showed that a retaining wall encroached on the Klimists' lot. Tucker and Hestia asserted adverse possession as an affirmative defense. The trial court granted the Klimists' traditional motion for summary judgment, rejected the adverse-possession defense as a matter of law, adjudicated the boundary line, and later entered a final declaratory judgment finding trespass. The court of appeals reversed and remanded because appellants raised genuine issues of material fact on every element of adverse possession.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the trial court's judgment and remand for further proceedings.

CASES CITED

- First United Pentecostal Church of Beaumont v. Parker, 514 S.W.3d 214, 219 (Tex. 2017)
- Vaughn v. Vaughan, 710 S.W.3d 412, 418 (Tex. App.—Eastland 2025, pet. denied)
- Quick v. City of Austin, 7 S.W.3d 109, 116 (Tex. 1998)
- Fortitude Energy, LLC v. Sooner Pipe LLC, 564 S.W.3d 167, 180 (Tex. App.—Houston [1st Dist.] 2018, no pet.)
- Barrand, Inc. v. Whataburger, Inc., 214 S.W.3d 122, 143 (Tex. App.—Corpus Christi–Edinburg 2006, pet. denied)
- Bauer v. Jasso, 946 S.W.2d 552, 555 (Tex. App.—Corpus Christi–Edinburg 1997, no writ)
- G & H Towing Co. v. Magee, 347 S.W.3d 293, 298 (Tex. 2011)
- Bassett v. Am. Nat. Bank, 145 S.W.3d 692, 699 (Tex. App.—Fort Worth 2004, no pet.)
- City of Stephenville v. Belew, 692 S.W.3d 347, 361 (Tex. App.—Eastland 2024, pet. denied)
- Goodyear Tire & Rubber Co. v. Mayes, 236 S.W.3d 754, 755 (Tex. 2007)
- Seager v. Fry, 707 S.W.3d 452, 464, 469–70 (Tex. App.—Eastland 2025, no pet.)
- Keenan v. Robin, 709 S.W.3d 595, 600 (Tex. 2024)
- Environmental Processing Systems, L.C. v. FPL Farming Ltd., 457 S.W.3d 414, 419 (Tex. 2015)
- Rife v. Kerr, 513 S.W.3d 601, 616 (Tex. App.—San Antonio 2016, pet. denied)
- AIC Management v. Baker, No. 01-02-01074-CV, 2003 WL 22724629, at *1 (Tex. App.—Houston [1st Dist.] Nov. 20, 2003, pet. denied) (mem. op.)
- Griffin v. Watley, No. 07-99-0285-CV, 2001 WL 257801, at *2 (Tex. App.—Amarillo Mar. 15, 2001, no pet.) (mem. op.)
- Kazmir v. Benavides, 288 S.W.3d 557, 561, 564 (Tex. App.—Houston [14th Dist.] 2009, no pet.)
- Castillo v. Luna, 640 S.W.3d 256, 260, 262, 264–65 (Tex. App.—Houston [1st Dist.] 2021, pet. denied)
- NAC Tex Hotel Co. v. Greak, 481 S.W.3d 327, 331–32 (Tex. App.—Tyler 2015, no pet.)

- Kinder Morgan N. Tex. Pipeline, L.P. v. Justiss, 202 S.W.3d 427, 438 (Tex. App.—Texarkana 2006, no pet.)
- Estrada v. Cheshire, 470 S.W.3d 109, 123 (Tex. App.—Houston [1st Dist.] 2015, pet. denied)
- Bywaters v. Gannon, 686 S.W.2d 593, 594–95 (Tex. 1985)
- Villarreal v. Guerra, 446 S.W.3d 404, 413 (Tex. App.—San Antonio 2014, pet. denied)
- W. Harbour, LLC v. Orleans Harbour Homeowners Ass'n, No. 14-23-00249-CV, 2024 WL 4850326, at *10 (Tex. App.—Houston [14th Dist.] Nov. 21, 2024, pet. filed) (mem. op.)
- Ellis v. Jansing, 620 S.W.2d 569, 571 (Tex. 1981)
- Orsborn v. Deep Rock Oil Corp., 267 S.W.2d 781, 787 (Tex. 1954)
- Masonic Bldg. Ass'n of Houston, Inc. v. McWhorter, 177 S.W.3d 465, 472 (Tex. App.—Houston [1st Dist.] 2005, no pet.)
- Bernal v. Chavez, 198 S.W.3d 15, 19 (Tex. App.—El Paso 2006, no pet.)
- Cherokee Water Co. v. Freeman, 145 S.W.3d 809, 817 (Tex. App.—Texarkana 2004, pet. denied)
- McDonnold v. Weinacht, 465 S.W.2d 136, 142 (Tex. 1971)
- Rhodes v. Cahill, 802 S.W.2d 643, 645–46 (Tex. 1990)
- Julien v. Baker, 758 S.W.2d 873, 877 (Tex. App.—Houston [14th Dist.] 1988, writ denied)
- Hoffman v. Mena, No. 03-19-00409-CV, 2021 WL 2460637, at *4 (Tex. App.—Austin June 17, 2021, no pet.) (mem. op.)
- Kothmann ex rel. Kody Kothmann 1992 Irrevocable Trust v. Menzies, No. 04-21-00451-CV, 2022 WL 2960225, at *4 (Tex. App.—San Antonio July 27, 2022, no pet.) (mem. op.)
- KB Tex. Invs., LLC v. Spiller, No. 01-16-00068-CV, 2017 WL 372164, at *10 (Tex. App.—Houston [1st Dist.] Jan. 26, 2017, no pet.) (mem. op.)