

COURT OF APPEALS, SECOND APPELLATE DISTRICT OF TEXAS AT FORT WORTH

Estate of Samantha Skaggs; Robbin Skaggs, Individually and as Personal Representative of the Estate of Samantha Skaggs; and Walter Skaggs Sr. v. Peternett, Inc. d/b/a Showdown; Richard P. Hartnett; John Hartnett; and Heather Marquez

No. 02-25-00257-CV · No. 02-25-00257-CV · Decided March 26, 2026

SUMMARY

The Texas Court of Appeals for the Second District affirmed a no-evidence summary judgment in favor of Showdown in a wrongful-death and Texas Dram Shop Act case. The court held that the appellants’ failure to conduct discovery for approximately two years did not require the trial court to enter or modify a Level 3 discovery-control plan or grant a continuance. Because the appellants did not challenge the order striking all of their summary-judgment evidence, the court upheld the no-evidence judgment.

CASE DETAILS

COURT	Court of Appeals, Second Appellate District of Texas at Fort Worth
WRITING FOR THE COURT	Dabney Bassel; Sudderth, C.J.; Bassel, J.; Walker, J.
JURISDICTION	Texas Court of Appeals, Second Appellate District, Fort Worth
DECIDED	March 26, 2026
DOCKET	02-25-00257-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from orders granting a protective order that quashed untimely discovery and closed discovery, denying motions for discovery and continuance, and granting Showdown's no-evidence motion for summary judgment.
STANDARD OF REVIEW	Discovery rulings are reviewed for abuse of discretion. Denial of a continuance to conduct discovery is reviewed for clear abuse of discretion. A no-evidence summary judgment is reviewed in the light most favorable to the nonmovant, indulging every reasonable inference and resolving doubts against the motion.

PRECEDENTIAL VALUE	Published memorandum opinion; precedential status identified as published in the supplied metadata.
PARTIES	Estate of Samantha Skaggs, Robbin Skaggs, individually and as personal representative of the Estate of Samantha Skaggs, Walter Skaggs Sr. v. Peternett, Inc. d/b/a Showdown, Richard P. Hartnett, John Hartnett, Heather Marquez

TOPICS

discovery dispute summary judgment civil procedure standard of review appellate procedure

PRACTICE AREAS

civil procedure appellate procedure summary judgment discovery torts

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by refusing to permit Appellants to conduct additional discovery or enter a Level 3 discovery-control plan after Appellants failed to conduct discovery during the applicable period.
2. Whether the trial court properly granted Showdown's no-evidence motion for summary judgment when Appellants did not challenge the order sustaining objections to all of their summary-judgment evidence.

HOLDINGS

1. The trial court acted within its discretion in refusing to modify or reopen the discovery period and in declining to enter a Level 3 discovery-control order because Appellants did not timely seek such an order, conducted no discovery for two years, and did not demonstrate circumstances requiring additional discovery in the interest of justice.
2. The trial court properly granted no-evidence summary judgment because Appellants did not challenge the order sustaining Showdown's objections to all of their summary-judgment evidence, leaving no evidence to raise a genuine issue of material fact.

KEY QUOTATIONS

“Because Appellants’ discovery woes are a problem of their own creation and not the result of the trial court’s failure to sign a sua sponte discovery-control-plan order, we conclude that the trial court did not abuse its discretion by declining to sign a Level 3 discovery order.” (at 1)

“But just as in Brescia, we cannot say that the trial court abused its discretion by determining that the circumstances did not compel modifying the discovery deadlines, which would have amounted to “reopening discovery since the deadline for discovery had expired a year before Showdown filed its no-evidence summary-judgment motion.”” (at 16)

“Because the only evidence that Appellants produced in response to Showdown’s no-evidence motion for summary judgment was struck by the trial court, there was no summary-judgment evidence for the trial court

to consider, and without any responsive evidence to consider, the trial court was required to grant Showdown's no-evidence summary-judgment motion." (at 18)

FACTUAL BACKGROUND

In April 2021, Samantha Skaggs visited Showdown, consumed alcoholic beverages, and was later involved in a fatal automobile accident. In April 2023, her estate and parents filed a wrongful-death action that ultimately proceeded against Showdown only on a Texas Dram Shop Act claim. Appellants conducted no discovery for approximately two years and never obtained a Level 3 discovery-control order, although their petition stated an intention to proceed under Level 3. After the Level 2 discovery period had closed and Showdown filed a no-evidence summary-judgment motion, Appellants sought expanded discovery and continuances.

PROCEDURAL HISTORY

Appellants filed a wrongful-death action after Samantha Skaggs died in an automobile accident following her visit to Showdown. The claims against all defendants other than Showdown were dismissed or nonsuited, and the claims against Showdown other than the Texas Dram Shop Act claim were dismissed under Texas Rule of Civil Procedure 91a. Appellants conducted no discovery during the applicable discovery period, then sought expanded discovery and continuances after Showdown filed a no-evidence summary-judgment motion. The trial court quashed the untimely discovery, denied the requested relief, sustained Showdown's objections to all of Appellants' summary-judgment evidence, and granted summary judgment for Showdown.

DISPOSITION

affirmed

CASES CITED

- Ford Motor Co. v. Castillo, 279 S.W.3d 656, 661 (Tex. 2009)
- Joe v. Two Thirty Nine Joint Venture, 145 S.W.3d 150, 161 (Tex. 2004)
- Est. of Grogan, 595 S.W.3d 807, 825 (Tex. App.—Texarkana 2020, no pet.)
- Brescia v. Slack & Davis, L.L.P., No. 03-08-00042-CV, 2010 WL 4670322, at *3–4 (Tex. App.—Austin Nov. 19, 2010, pet. denied) (mem. op.)
- Timpte Indus., Inc. v. Gish, 286 S.W.3d 306, 310 (Tex. 2009)
- B.C. v. Steak N Shake Operations, Inc., 598 S.W.3d 256, 259 (Tex. 2020)
- Sudan v. Sudan, 199 S.W.3d 291, 292 (Tex. 2006)
- Brown v. Hensley, 515 S.W.3d 442, 446–47 (Tex. App.—Houston [14th Dist.] 2017, no pet.)
- Aleman v. Standard Cas. Co., No. 01-23-00572-CV, 2025 WL 2445991, at *14 (Tex. App.—Houston [1st Dist.] Aug. 26, 2025, no pet.) (mem. op.)
- McCollum v. The Bank of N.Y. Mellon Tr. Co., 481 S.W.3d 352, 361–62 (Tex. App.—El Paso 2015, no pet.)
- Blackard v. Fairview Farms Land Co., 346 S.W.3d 861, 869 (Tex. App.—Dallas 2011, no pet.)
- Kuzmin v. Schiller, No. 05-13-01394-CV, 2015 WL 150206, at *5–6 (Tex. App.—Dallas Jan. 8, 2015, no pet.) (mem. op.)

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