

COURT OF APPEALS FOR THE FIRST DISTRICT OF TEXAS

Robert Gulledge and Diana Gulledge v. Warren Wester and Theodore Sullivan

No. 01-17-00488-CV · No. No. 01-17-00488-CV · Decided August 28, 2018

SUMMARY

In this concurring opinion, Justice Higley addresses whether a landowner's obstruction of neighboring landowners' view can support a private nuisance claim under Texas law. The opinion concludes that aesthetic complaints and blocked views are not actionable nuisances, relying on longstanding Texas authority and distinguishing the Texas Supreme Court's clarification of nuisance law in *Crosstex*. Justice Higley concurs in the judgment without reaching the sufficiency of the evidence.

CASE DETAILS

COURT	Court of Appeals for the First District of Texas
WRITING FOR THE COURT	Laura Carter Higley; Justice Higley; Justice Brown; Justice Caughey
JURISDICTION	Texas
DECIDED	August 28, 2018
DOCKET	No. 01-17-00488-CV
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from a jury verdict in a private-nuisance action. The appellants challenged the legal sufficiency of the evidence supporting the appellees' negligent-nuisance claims.
STANDARD OF REVIEW	Legal-sufficiency review of the evidence supporting the jury's negligent-nuisance finding.
PRECEDENTIAL VALUE	Published concurring opinion; the concurrence's proposed blocked-view nuisance rule is not binding because it was not the majority's stated basis for judgment.
PARTIES	Robert Gulledge, Diana Gulledge v. Warren Wester, Theodore Sullivan

TOPICS

negligence torts real estate appellate procedure standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the evidence was legally sufficient to support the jury's finding of negligent nuisance.
2. Whether, as a matter of law, a neighboring landowner's obstruction of another landowner's view is an actionable nuisance.
3. Whether *Crosstex N. Tex. Pipeline, L.P. v. Gardiner* overruled or displaced Texas precedent rejecting nuisance claims based on aesthetics or blocked views.

HOLDINGS

1. Justice Higley would hold that blocking a view of another landowner is not actionable under Texas nuisance law, including when the complaint is framed as an objection to a desirable or economically beneficial view.
2. Justice Higley would reject the argument that *Crosstex* overruled the Texas cases excluding aesthetic and blocked-view complaints from nuisance law.
3. A negligent-nuisance claim is governed by ordinary negligence principles and requires proof of duty, breach, damages proximately caused by the breach, and negligent conduct causing a nuisance that results in damages.

KEY QUOTATIONS

"I would hold that blocking a view of another landowner is not actionable under nuisance law." (at 1)

"Even if Wester and Sullivan were correct that their claims were not based on aesthetics, however, it is unquestionable that their complaints were based on their views being blocked. This is not actionable." (at 5)

"Because I would hold that, as a matter of law, Wester's and Sullivan's claims are not actionable, I express no opinion on whether there is sufficient evidence to support such claims." (at 7)

FACTUAL BACKGROUND

The Gulledges planned to construct a boathouse on their property. Wester and Sullivan claimed that, if completed, the boathouse would significantly impair their views of the water, diminish the desirability and economic benefit of those views, and cause them damage. They also argued at trial that the boathouse was out of character with the neighborhood. The jury found negligent nuisance but not intentional nuisance.

PROCEDURAL HISTORY

Wester and Sullivan sued the Gulledges, alleging that a proposed boathouse would impair their views of the water and cause damage. The jury found only negligent nuisance. The Gulledges appealed, arguing that the evidence supporting the negligent-nuisance claims was legally insufficient. The majority concluded that the evidence was legally insufficient; Justice Higley concurred in the judgment but would have held that blocking a neighboring landowner's view is not actionable as a nuisance as a matter of law.

DISPOSITION

other

CASES CITED

- Crosstex N. Tex. Pipeline, L.P. v. Gardiner, 505 S.W.3d 580, 588, 591, 593-612 (Tex. 2016)
- Holubec v. Brandenberger, 111 S.W.3d 32, 37 (Tex. 2003)
- Serafine v. Blunt, No. 03-16-00131-CV, 2017 WL 2224528, at *5 (Tex. App.—Austin May 19, 2017, pet. denied) (mem. op.)
- Jeansonne v. T-Mobile W. Corp., No. 01-13-00069-CV, 2014 WL 4374118, at *8, *12 (Tex. App.—Houston [1st Dist.] Sept. 4, 2014, no pet.) (mem. op.)
- Rankin v. FPL Energy, LLC, 266 S.W.3d 506, 509, 512-13 (Tex. App.—Eastland 2008, pet. denied)
- Jones v. Highland Memorial Park, 242 S.W.2d 250, 253 (Tex. Civ. App.—San Antonio 1951, no writ)
- Shamburger v. Scheurrer, 198 S.W. 1069, 1071 (Tex. Civ. App.—Fort Worth 1917, no writ)
- Ladd v. Silver Star I Power Partners, LLC, No. 11-11-00188-CV, 2013 WL 3377290, at *3 (Tex. App.—Eastland 2013, pet. denied)
- Payne v. Edmonson, No. 01-96-00792-CV, 1999 WL 350928, at *4 (Tex. App.—Houston [1st Dist.] June 3, 1999, pet. denied) (mem. op.; not designated for publication)
- Boys Town, Inc. v. Garrett, 283 S.W.2d 416, 420-21 (Tex. Civ. App.—Waco 1955, writ ref'd n.r.e.)
- Dall. Land & Loan Co. v. Garrett, 276 S.W. 471, 474 (Tex. Civ. App.—Dallas 1925, no writ)
- Harrison v. Langlinais, 312 S.W.2d 286, 288 (Tex. Civ. App.—San Antonio 1958, no writ)
- Scharlack v. Gulf Oil Corp., 368 S.W.2d 705, 707 (Tex. Civ. App.—San Antonio 1963, no writ)
- Champion Forest Baptist Church v. Rowe, No. 01-86-00654-CV, 1987 WL 5188, at *2 (Tex. App.—Houston [1st Dist.] Jan. 8, 1987, no writ) (mem. op.; not designated for publication)