

COURT OF APPEALS OF TEXAS, TWELFTH COURT OF APPEALS DISTRICT
AT TYLER

Mondee Stracener v. Doug Stracener, Bernice L. Stracener and Joey
Keith Stracener

No. 12-10-00270-CV · No. No. 12-10-00270-CV · Decided July 13, 2011

SUMMARY

The Texas Twelfth Court of Appeals affirmed a trial court judgment partitioning jointly owned real property in Upshur County and appointing commissioners. The court held that the trial court did not abuse its discretion by refusing to direct that an airstrip be awarded to Mondee Stracener, because conflicting testimony existed regarding who constructed and paid for the airstrip.

CASE DETAILS

COURT	Court of Appeals of Texas, Twelfth Court of Appeals District at Tyler
WRITING FOR THE COURT	James T. Worthen, Chief Justice; Griffith, Justice; Hoyle, Justice
JURISDICTION	Texas
DECIDED	July 13, 2011
DOCKET	No. 12-10-00270-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Mondee Stracener appealed the trial court's initial partition decree and appointment of commissioners, challenging the refusal to direct that an airstrip be set aside to him as part of his ownership interest.
STANDARD OF REVIEW	A ruling concerning equitable relief is reviewed for abuse of discretion and will not be disturbed unless it is arbitrary, unreasonable, and unsupported by guiding rules and principles. Implied findings in a nonjury trial are presumed in support of the judgment and may be challenged for legal and factual sufficiency when the record contains the reporter's and clerk's records. The appellate court defers to the fact finder on witness credibility, evidentiary conflicts, and reasonable inferences.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Mondee Stracener v. Doug Stracener, Bernice L. Stracener, Joey Keith Stracener

TOPICS

partition real estate equitable relief appellate procedure standard of review

PRACTICE AREAS

real estate partition appellate procedure equitable remedies

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by refusing to direct the partition commissioners to set aside the airstrip to Mondee as part of his ownership interest.
2. Whether conflicting testimony concerning the construction and improvement of the airstrip supported the trial court's decision not to award it to Mondee.

HOLDINGS

1. A trial court generally may allot an improved portion of partitioned property to the co-owner who made the improvements when doing so would not prejudice the other owners, but the court is not required to do so when the evidence concerning who made the improvements is disputed.
2. The trial court did not abuse its discretion by refusing to instruct the commissioners to set aside the airstrip to Mondee because reasonable evidence supported competing accounts of its construction and ownership.

KEY QUOTATIONS

“Because we must defer to the trial court as the sole judge of the credibility of the brothers’ testimony, the trial court did not abuse its discretion in refusing to instruct the commissioners to set aside the airstrip to Mondee as a portion of his ownership interest in the property being partitioned.” (Discussion)

“A partition case, unlike other proceedings, has two final judgments, and the first one is appealable as a final judgment.” (Partition)

FACTUAL BACKGROUND

The parties jointly owned real property in Upshur County, with Mondee holding a 68.75 percent interest and Doug and Bernice each holding a 15.625 percent interest. Mondee claimed that he alone built and paid for an airstrip on the property, while Doug and Bernice testified that they helped construct the original drag strip and that the construction materials had been donated. All three brothers used the airstrip. The trial court declined to award the airstrip solely to Mondee or direct that it be set aside as part of his share, instead ordering it partitioned with the other jointly owned property.

PROCEDURAL HISTORY

Mondee sued his brothers for partition of jointly owned real property in Upshur County, Texas. The parties stipulated to most partition issues, but presented conflicting evidence concerning ownership and construction of an airstrip. The trial court determined the parties' ownership interests, awarded Mondee a residence and one acre,

appointed commissioners, and ordered the airstrip partitioned with the remaining jointly owned property. The court of appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Edwards v. Mid-Continent Office Distributors, L.P., 252 S.W.3d 833, 836 (Tex. App.—Dallas 2008, pet. denied)
- Pharo v. Chambers Co., 922 S.W.2d 945, 948 (Tex. 1996)
- In re W.E.R., 669 S.W.2d 716, 717 (Tex. 1984)
- BMC Software Belgium, N.V. v. Marchand, 83 S.W.3d 789, 795 (Tex. 2002)
- Canal Ins. Co. v. Hopkins, 238 S.W.3d 549, 557 (Tex. App.—Tyler 2007, pet. denied)
- City of Keller v. Wilson, 168 S.W.3d 802, 819-20 (Tex. 2005)
- Griffin v. Wolfe, 610 S.W.2d 466, 466 (Tex. 1980)
- Ellis v. First City Nat'l Bank, 864 S.W.2d 555, 557 (Tex. App.—Tyler 1993, writ denied)
- Yturria v. Kimbro, 921 S.W.2d 338, 342 (Tex. App.—Corpus Christi 1996, no writ)
- Snow v. Donelson, 242 S.W.3d 570, 572 (Tex. App.—Waco 2007, no pet.)
- Price v. Price, 394 S.W.2d 855, 858 (Tex. Civ. App.—Tyler 1965, writ ref'd n.r.e.)

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