

SUPREME COURT OF TEXAS

George P. Bush, as the Land Commissioner of the Texas General
Land Office v. Lone Oak Club, LLC

Bush v. Lone Oak Club · No. 18-0264 · Decided April 24, 2020

SUMMARY

This document is a dissenting opinion in a Texas Supreme Court title dispute concerning ownership of submerged land beneath the tidally influenced Lone Oak Bayou. Justice Green, joined by Chief Justice Hecht, would hold that the State of Texas owns the disputed land below the line of mean high tide under the English common law and that the 1837 Navigable Stream Statute and the Small Bill do not apply to such land.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Justice Paul W. Green; Chief Justice Hecht
JURISDICTION	Texas
DECIDED	April 24, 2020
DOCKET	18-0264
DISPOSITION	other
PROCEDURAL POSTURE	Petition for review from the Court of Appeals for the First District of Texas; the dissent discusses the General Land Office's motion for summary judgment and argues that judgment should be rendered for the GLO.
PRECEDENTIAL VALUE	Published dissenting opinion; the dissent's reasoning is nonbinding.
PARTIES	George P. Bush, as the Land Commissioner of the Texas General Land Office v. Lone Oak Club, LLC

TOPICS

- title disputes
- real estate
- statutory interpretation
- legislative intent

PRACTICE AREAS

- real estate
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QUESTIONS PRESENTED

1. Whether the 1837 Navigable Stream Statute and the Small Bill apply to submerged land below the line of mean high tide.
2. Whether the State presumptively owns land submerged beneath tidally influenced waters and may relinquish that ownership only through an express legislative grant.
3. Whether the Governor's 1872 patent could validly convey the portion of Lone Oak Bayou below the line of mean high tide.
4. Whether the Small Bill validly relinquished the State's interest in the submerged bed of Lone Oak Bayou.

HOLDINGS

1. The dissent would hold that the 1837 Navigable Stream Statute and the Small Bill apply to navigable streams above the line of mean high tide, but do not apply to submerged land below that line under tidally influenced waters.
2. The dissent would hold that submerged land below the line of mean high tide is presumed to belong to the State, and only the Legislature may relinquish that title through clear and express language.
3. The dissent would hold that the portion of the Governor's 1872 patent purporting to convey land beneath tidally influenced Lone Oak Bayou was invalid, so Sophronia Barrow and her successors, including Lone Oak Club, never acquired valid title to that submerged land.

KEY QUOTATIONS

“The common law and the civil law work in harmony to provide a framework of rules governing ownership of the navigable streams in Texas: the 1837 Navigable Stream Statute and the Small Bill govern the ownership of navigable streams above the line of mean high tide, and the common law governs the ownership of the beds of all bodies of water below the line of mean high tide.” (at 5)

“Because there “is no presumption that the State has parted with title to lands covered by navigable waters,” such land cannot be relinquished or sold by an executive officer of the state, such as the Governor or the Land Commissioner.” (at 11)

“Long-standing principles of Texas property law establish . . . that the “soil covered by the bays, inlets, and arms of the Gulf of Mexico within tidewater limits belongs to the State, and constitutes public property that is held in trust for the use and benefit of all the people.”” (at 18)

“Because longstanding principles in Texas law demand separate treatment of submerged land below the line of mean high tide, I would conclude that the Navigable Stream Statute and the Small Bill do not apply to submerged land below the line of mean high tide.” (at 19)

FACTUAL BACKGROUND

The dispute involves ownership of portions of the bed of Lone Oak Bayou that lie below the line of mean high tide and are subject to tidal influence. The Governor's 1872 patent to Sophronia Barrow purported to include part of the bayou bed, and Lone Oak Club claimed title through that conveyance. The General Land Office contended

that the patent could not convey submerged land beneath tidally influenced waters because only the Legislature could expressly relinquish the State's public-trust interest in such land.

PROCEDURAL HISTORY

The case concerns a title dispute over portions of the bed of Lone Oak Bayou below the line of mean high tide. The General Land Office argued in the trial court and on review that the Governor's 1872 patent to Sophronia Barrow was ineffective to convey submerged land beneath tidally influenced waters because no express legislative grant relinquished the State's title. The case reached the Supreme Court of Texas on petition for review from the First District Court of Appeals. The supplied text is Justice Green's dissent and does not state the majority's actual disposition.

DISPOSITION

other

CASES CITED

- Manry v. Robison, 56 S.W.2d 438 (Tex. 1932)
- Rudder v. Ponder, 293 S.W.2d 736 (Tex. 1956)
- Motl v. Boyd, 286 S.W. 458 (Tex. 1926)
- Coastal Industrial Water Authority v. York, 532 S.W.2d 949 (Tex. 1976)
- State v. Balli, 190 S.W.2d 71 (Tex. 1944)
- City of Galveston v. Menard, 23 Tex. 349 (Tex. 1859)
- Lorino v. Crawford Packing Co., 175 S.W.2d 410 (Tex. 1943)
- State v. Bradford, 50 S.W.2d 1065 (Tex. 1932)
- Severance v. Patterson, 370 S.W.3d 705 (Tex. 2012)
- Crosstex Energy Servs. L.P. v. Pro Plus, Inc., 430 S.W.3d 384, 390 (Tex. 2014)
- Seabrook Land Co. v. Lipscomb, 331 S.W.2d 429 (Tex. App.—Houston 1960, writ dism'd by agr.)