

COURT OF APPEALS OF TEXAS, THIRTEENTH DISTRICT, CORPUS
CHRISTI–EDINBURG

Martina D. Rodriguez v. Luis Antonio Pimentel and Petronila M.
Pimentel

No. 13-14-00273-CV (Tex. App.—Corpus Christi–Edinburg Nov. 20, 2014) · No. 13-14-00273-CV · Decided
November 20, 2014

SUMMARY

The Thirteenth Court of Appeals of Texas reversed a summary judgment in favor of the Pimentels in their suit to recover possession of land and clear title after Rodriguez erected a fence allegedly encroaching on their property. The court held that the Pimentels failed to present competent summary-judgment evidence establishing the fence’s location because the land survey was unauthenticated, and it remanded the case for further proceedings without reaching Rodriguez’s remaining issues concerning adverse possession and limitations.

CASE DETAILS

COURT	Court of Appeals of Texas, Thirteenth District, Corpus Christi–Edinburg
WRITING FOR THE COURT	Justice Nora Longoria; Chief Justice Valdez; Justice Garza; Justice Longoria
JURISDICTION	Texas
DECIDED	November 20, 2014
DOCKET	13-14-00273-CV
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Rodriguez appealed a traditional summary judgment in favor of the Pimentels in their action to recover possession of land and clear title. The trial court granted the Pimentels' motion and ordered Rodriguez to remove a fence allegedly encroaching on the Pimentels' property.
STANDARD OF REVIEW	Summary judgments are reviewed de novo. The reviewing court examines the entire record in the light most favorable to the nonmovant, indulging every reasonable inference and resolving doubts against the motion.
PRECEDENTIAL VALUE	Published memorandum opinion

PARTIES

Martina D. Rodriguez v. Luis Antonio Pimentel, Petronila M. Pimentel

TOPICS

summary judgment

authentication

adverse possession

title disputes

standard of review

PRACTICE AREAS

civil procedure

real estate

property litigation

appellate practice

QUESTIONS PRESENTED

1. Whether the Pimentels presented competent summary-judgment evidence establishing as a matter of law that the disputed fence was located on their property.
2. Whether the trial court applied the correct accrual date for Rodriguez's adverse-possession statute-of-limitations defense.
3. Whether Rodriguez's summary-judgment evidence raised a genuine issue of material fact on each element of her adverse-possession defense.

HOLDINGS

1. The Pimentels did not present competent summary-judgment evidence proving as a matter of law that the fence was located on their property because the land survey was unauthenticated.

KEY QUOTATIONS

“examine the entire record in the light most favorable to the nonmovant, indulging every reasonable inference and resolving any doubts against the motion.” (at 3)

“The absence of an affidavit verifying a copy of the instrument attached as summary judgment proof amounts to no proof.” (at 5)

“[A]n unauthenticated attachment accompanied . . . is a defect in substance and may be attacked for the first time on appeal.” (at 5)

FACTUAL BACKGROUND

The Pimentels purchased a parcel adjacent to Rodriguez's home and alleged that Rodriguez's fence encroached five feet onto their property. Their summary-judgment evidence included a general warranty deed, land survey, tax records, and a police report, but no supporting affidavit or other authentication for the survey. Rodriguez submitted an affidavit stating that the fence was on her property and that she had used, enclosed, and cultivated the disputed area since the 1980s.

PROCEDURAL HISTORY

The Pimentels sued Rodriguez after purchasing adjacent property and discovering that Rodriguez had erected a fence allegedly extending five feet onto their land. Rodriguez asserted adverse possession and the ten-year

statute of limitations. The trial court granted the Pimentels' traditional motion for summary judgment without addressing Rodriguez's evidentiary objection or affirmative defense. The court of appeals sustained Rodriguez's authentication challenge, reversed the judgment, and remanded without reaching her remaining issues.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The cause was remanded to the trial court for further proceedings consistent with the opinion.

CASES CITED

- Travelers Ins. Co. v. Joachim, 315 S.W.3d 860, 862 (Tex. 2010)
- City of Keller v. Wilson, 168 S.W.3d 802, 823 (Tex. 2005)
- Rhodes v. Cahill, 802 S.W.2d 643, 645 (Tex. 1990)
- Perkins v. McGehee, 133 S.W.3d 287, 290-91 (Tex. App.—Fort Worth 2004, no pet.)
- York v. Flowers, 872 S.W.2d 13, 15 (Tex. App.—San Antonio 1994, writ denied)
- Bywaters v. Gannon, 686 S.W.2d 593, 595 (Tex. 1985)
- Kyle v. Countrywide Home Loans, Inc., 232 S.W.3d 355, 362 n.2 (Tex. App.—Dallas 2007, pet. denied)
- Blanche v. First Nationwide Mtg. Corp., 74 S.W.3d 444, 451 (Tex. App.—Dallas 2002, no pet.)
- In re Estate of Guerrero, No. 14-13-00580-CV, 2014 WL 4377465, at *10 (Tex. App.—Houston [14th Dist.] Sept. 4, 2014, no pet.)
- Perkins v. Crittenden, 462 S.W.2d 565, 568 (Tex. 1970)
- Kotzur v. Kelly, 791 S.W.2d 254, 257 (Tex. App.—Corpus Christi 1990, no writ)