

TEXAS COURT OF APPEALS, THIRD DISTRICT AT AUSTIN

Save Our Springs Alliance, Inc. v. City of Dripping Springs; Todd Purcell, in His Official Capacity as Mayor of the City of Dripping Springs; and Mak Foster Ranch, L.P.

No. 03-04-00683-CV · No. No. 03-04-00683-CV · Decided February 12, 2010

SUMMARY

This dissenting opinion argues that en banc reconsideration was warranted because the panel’s decision allegedly conflicted with Texas precedent concerning associational standing to assert members’ environmental, recreational, and scientific interests. Justice Patterson contends that standing does not require a member to possess an affected vested property interest and would have granted Save Our Springs Alliance’s motion for en banc reconsideration.

CASE DETAILS

COURT	Texas Court of Appeals, Third District at Austin
WRITING FOR THE COURT	Jan P. Patterson; Chief Justice Jones; Justice Patterson; Justice Puryear; Justice Pemberton; Justice Waldrop; Justice Henson
JURISDICTION	Texas
DECIDED	February 12, 2010
DOCKET	No. 03-04-00683-CV
DISPOSITION	other
PROCEDURAL POSTURE	Save Our Springs Alliance moved for en banc reconsideration of a two-justice panel decision concerning its standing to pursue environmental, recreational, and scientific injury claims on behalf of its members. This dissent disagrees with the denial of en banc reconsideration.
STANDARD OF REVIEW	En banc reconsideration is warranted under Texas Rule of Appellate Procedure 41.2(c) to secure or maintain uniformity of the court's decisions.
PRECEDENTIAL VALUE	Published dissenting opinion; the dissent's proposed standing rule is nonbinding.
PARTIES	Save Our Springs Alliance, Inc. v. City of Dripping Springs, Todd Purcell, in his Official Capacity as Mayor of the City of Dripping

TOPICS

standing environmental law municipal law appellate procedure motion for reconsideration

PRACTICE AREAS

Environmental law Civil procedure Municipal law Appellate procedure

QUESTIONS PRESENTED

1. Whether en banc reconsideration was warranted because the panel's standing rule conflicted with the court's prior decisions.
2. Whether an association seeking to assert its members' environmental, recreational, or scientific injury must show that a member has a vested or other property interest affected by the challenged governmental action.

HOLDINGS

1. The dissent would grant Save Our Springs Alliance's motion for en banc reconsideration because the panel's decision conflicted with the court's jurisprudence concerning associational standing and environmental injury.
2. The dissent would reject a categorical requirement that an association show that one of its members has an affected property interest; recreational, aesthetic, scientific, or environmental injury may constitute injury in fact when sufficiently concrete and particularized.

KEY QUOTATIONS

“An injury need not affect “vested” property rights to confer standing” (at 1)

“the harm [for purposes of standing] may be economic, recreational, or environmental.” (at 1)

“While generalized harm to the forest or the environment will not alone support standing, if that harm in fact affects the recreational or even the mere esthetic interests of the plaintiff, that will suffice.” (at 3)

FACTUAL BACKGROUND

Save Our Springs Alliance, an environmental association, asserted claims based on alleged environmental, recreational, and scientific harm to its members involving public land and actions by the City of Dripping Springs and related appellees. The panel concluded that, absent a statute conferring standing, the association had to show that one of its members possessed a property interest affected by the appellees' actions. The dissent argued that the alleged injuries could support standing even without an affected vested property interest.

PROCEDURAL HISTORY

The case arose from the District Court of Hays County, 207th Judicial District, cause number 02-1748. After a two-justice panel issued a decision requiring the association to show that one of its members had an affected property interest, the association sought en banc reconsideration. The court denied that motion, and Justice Patterson dissented, joined by Justice Henson.

DISPOSITION

other

CASES CITED

- Texas Rivers Prot. Ass'n v. Texas Natural Res. Conservation Comm'n, 910 S.W.2d 147, 151-52 (Tex. App.—Austin 1995, writ denied)
- Coastal Habitat Alliance v. Public Util. Comm'n, 294 S.W.3d 276, 287 (Tex. App.—Austin 2009, no pet.)
- Walker v. City of Georgetown, 86 S.W.3d 249, 253 (Tex. App.—Austin 2002, pet. denied)
- Lindig v. City of Johnson City, No. 03-08-00574-CV, 2009 Tex. App. LEXIS 8188, at *19-20 (Tex. App.—Austin Oct. 21, 2009, no pet.)
- Lujan v. Defenders of Wildlife, 504 U.S. 555, 560, 562-63, 564, 568 (1992)
- Nobles v. Marcus, 533 S.W.2d 923, 927 (Tex. 1976)
- Summers v. Earth Island Inst., 129 S. Ct. 1142, 1149, 1152-53 (2009)
- Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 183 (2000)
- Sierra Club v. Morton, 405 U.S. 727, 735 (1972)
- Bennett v. Spear, 520 U.S. 154, 167 (1997)
- Cantrell v. City of Long Beach, 241 F.3d 674, 681 (9th Cir. 2001)

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