

TENTH COURT OF APPEALS OF TEXAS

Don Michael Higgins and Janet Higgins v. Charles H. Crowell, Teresa H. Crowell, and Camp Creek Water Company

Higgins v. Crowell, No. 10-21-00083-CV · No. No. 10-21-00083-CV · Decided March 15, 2023

SUMMARY

The Texas Tenth Court of Appeals reviews an appeal arising from a dispute over the location of a boathouse at Camp Creek Lake. The court holds that the pre-2019 Texas Citizens Participation Act does not apply because the Higginses’ nuisance claims were based on the Crowells’ conduct in building the boathouse, rather than on communications. The appeal also concerns TCPA attorney’s fees and sanctions, summary judgment on nuisance claims against Camp Creek Water Company, and dismissal of derivative claims.

CASE DETAILS

COURT	Tenth Court of Appeals of Texas
WRITING FOR THE COURT	Matt Johnson; Chief Justice Gray; Justice Johnson; Justice Smith
JURISDICTION	Texas
DECIDED	March 15, 2023
DOCKET	No. 10-21-00083-CV
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Higginses appealed the trial court's dismissal of their claims against the Crowells under the Texas Citizens Participation Act, the award of attorney's fees and sanctions, summary judgment in favor of Camp Creek Water Company on their nuisance and negligence claims, and dismissal of their shareholder derivative claims under Texas Business Organizations Code section 21.558.
STANDARD OF REVIEW	The TCPA ruling and both traditional and no-evidence summary-judgment rulings were reviewed de novo. The court reviewed pleadings and evidence in the light most favorable to the nonmovant. For traditional summary judgment, the movant had to establish entitlement to judgment as a matter of law and the absence of a genuine issue of material fact; for no-evidence summary judgment, the nonmovant had to produce more than a scintilla of evidence raising a genuine issue of material fact.

PRECEDENTIAL VALUE	published and precedential
PARTIES	Don Michael Higgins, Janet Higgins v. Charles H. Crowell, Teresa H. Crowell, Camp Creek Water Company

TOPICS

summary judgment motions to dismiss shareholder derivative suits civil procedure appellate procedure

PRACTICE AREAS

civil procedure real estate torts corporate law appellate procedure

QUESTIONS PRESENTED

1. Whether the TCPA applied to the Higginses' claims against the Crowells when those claims were based on the Crowells' conduct in constructing the boathouse rather than on communications made during the approval process.
2. Whether the Crowells were entitled to TCPA attorney's fees and sanctions after the trial court's TCPA dismissal was erroneous.
3. Whether Camp Creek Water Company was entitled to traditional or no-evidence summary judgment on the Higginses' nuisance and negligence claims.
4. Whether the trial court could dismiss the Higginses' derivative claims under Texas Business Organizations Code section 21.558 without evidence supporting the corporation's motion.

HOLDINGS

1. The TCPA did not apply because the Higginses' claims were based on the Crowells' conduct in constructing a boathouse that interfered with the Higginses' property rights, not on a communication by the Crowells.
2. Because the TCPA did not apply and the dismissal was erroneous, the Crowells were not entitled to attorney's fees under the TCPA and the sanctions award was unauthorized.
3. Camp Creek Water Company was not entitled to no-evidence or traditional summary judgment because the Higginses produced evidence raising genuine issues of material fact concerning their occupancy interest in the lake area occupied by their boathouse, Camp Creek Water Company's intentional or negligent conduct, and injury caused by the nuisance.
4. A trial court may not dismiss a derivative proceeding under section 21.558 without evidence supporting the corporation's motion and the statutory determination.

KEY QUOTATIONS

“When a legal action does not allege a communication, and is instead based on a party’s conduct, the TCPA is not implicated.” (at 9)

“We therefore conclude that the Higginses produced evidence raising a genuine issue of material fact regarding whether they had a sufficient occupancy interest in that portion of Camp Creek Lake that the existing boathouse occupies.” (at 21)

“Based on the language of the statutes, we conclude that the Legislature did not intend for the trial court to dismiss a derivative proceeding under section 21.558 without evidence.” (at 30)

FACTUAL BACKGROUND

The Higginses owned Lots 340 and 341 at Camp Creek Lake and used a boathouse on Lot 341. The Crowells built a boathouse on adjoining Lot 339 in a location the Higginses alleged violated Camp Creek Water Company's rules and interfered with access to and safe use of the Higginses' boathouse. After the Higginses complained, Camp Creek Water Company's board determined that the Crowells' boathouse should remain in place despite evidence that it had been built in a different location from the one approved. The Higginses sued for nuisance and negligence and also asserted a shareholder derivative action against Camp Creek Water Company.

PROCEDURAL HISTORY

The Higginses sued the Crowells and Camp Creek Water Company over the location of the Crowells' boathouse and asserted nuisance and negligence claims. The trial court dismissed the claims against the Crowells under the pre-September 1, 2019 version of the TCPA and awarded the Crowells attorney's fees and sanctions. The court later granted Camp Creek Water Company's combined traditional and no-evidence motion for summary judgment and dismissed the Higginses' derivative claims under section 21.558. The court of appeals sustained all four appellate issues, reversed the trial court's judgment, and remanded for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

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

CASES CITED

- Martin v. Walker, 606 S.W.3d 565, 567 (Tex. App.—Waco 2020, pet. denied)
- Holcomb v. Waller County, 546 S.W.3d 833, 839 (Tex. App.—Houston [1st Dist.] 2018, pet. denied)
- Robert B. James, DDS, Inc. v. Elkins, 553 S.W.3d 596, 603 (Tex. App.—San Antonio 2018, pet. denied)
- In re Lipsky, 460 S.W.3d 579, 586 (Tex. 2015)
- Castleman v. Internet Money Ltd., 546 S.W.3d 684, 691 (Tex. 2018) (per curiam)
- Youngkin v. Hines, 546 S.W.3d 675, 679-680 (Tex. 2018)
- Allied Orion Grp., LLC v. Pitre, 2021 WL 2154065, at *3-4 (Tex. App.—Houston [14th Dist.] May 27, 2021, no pet.)
- Pacheco v. Rodriguez, 600 S.W.3d 401, 410 (Tex. App.—El Paso 2020, no pet.)

- *City of Port Aransas v. Shodrok*, 2019 WL 6205466, at *5 (Tex. App.—Corpus Christi—Edinburg Nov. 21, 2019, no pet.)
- *Provident Life & Accident Ins. Co. v. Knott*, 128 S.W.3d 211, 215 (Tex. 2003)
- *Strandberg v. Spectrum Office Bldg.*, 293 S.W.3d 736, 738 (Tex. App.—San Antonio 2009, no pet.)
- *First United Pentecostal Church of Beaumont v. Parker*, 514 S.W.3d 214, 219-220 (Tex. 2017)
- *Mack Trucks, Inc. v. Tamez*, 206 S.W.3d 572, 581-582 (Tex. 2006)
- *Humphrey v. Pelican Isle Owners Ass’n*, 238 S.W.3d 811, 813 (Tex. App.—Waco 2007, no pet.)
- *King Ranch, Inc. v. Chapman*, 118 S.W.3d 742, 751 (Tex. 2003)
- *Merrell Dow Pharms., Inc. v. Havner*, 953 S.W.2d 706, 711 (Tex. 1997)
- *Ford Motor Co. v. Ridgway*, 135 S.W.3d 598, 601 (Tex. 2004)
- *Crosstex N. Tex. Pipeline, L.P. v. Gardiner*, 505 S.W.3d 580, 588, 593-594, 605-609, 614 (Tex. 2016)
- *Holubec v. Brandenberger*, 111 S.W.3d 32, 37 (Tex. 2003)
- *Hot Rod Hill Motor Park v. Triolo*, 293 S.W.3d 788, 790-791 (Tex. App.—Waco 2009, pet. denied)
- *New v. Khojal*, 1999 WL 675448, at *2-3 (Tex. App.—San Antonio Aug. 31, 1999, no pet.)
- *Thompson v. Clayton*, 346 S.W.3d 650, 655 (Tex. App.—El Paso 2011, no pet.)
- *Timberwalk Apartments, Partners, Inc. v. Cain*, 972 S.W.2d 749, 753 (Tex. 1998)
- *Ft. Worth & Rio Grande Ry. Co. v. Glenn*, 97 Tex. 586, 588, 80 S.W. 992, 993 (1904)
- *Mathis v. Barnes*, 316 S.W.3d 795, 801 (Tex. App.—Tyler 2010), rev'd on other grounds, 353 S.W.3d 760 (Tex. 2011) (per curiam)
- *Cain v. Rust Indus. Cleaning Servs., Inc.*, 969 S.W.2d 464, 470 (Tex. App.—Texarkana 1998, pet. denied)
- *Env’t Processing Sys., L.C. v. FPL Farming, Ltd.*, 457 S.W.3d 414 (Tex. 2015)
- *Goodyear Tire & Rubber Co. v. Mayes*, 236 S.W.3d 754, 755-756 (Tex. 2007) (per curiam)
- *M.D. Anderson Hosp. & Tumor Inst. v. Willrich*, 28 S.W.3d 22, 23 (Tex. 2000) (per curiam)
- *Centeq Realty, Inc. v. Siegler*, 899 S.W.2d 195, 197 (Tex. 1995)
- *In re Canales*, 52 S.W.3d 698, 702 (Tex. 2001) (orig. proceeding)
- *Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 865-866 (Tex. 1999)
- *Meritor Auto., Inc. v. Ruan Leasing Co.*, 44 S.W.3d 86, 90 (Tex. 2001)