

Court Reverses Ruling – Sides with Rancher in Adverse Possession by Grazing Case

Posted on [July 31, 2023](#) by [tiffany.dowell](#)

In what is a truly unusual turn of events, the Waco Court of Appeals recently issued a [new opinion](#) in an adverse possession case, *Parker v. Weber*. What makes this unusual is that the court issued its initial opinion in May 2018 and now—five years later—issued an opinion reaching an opposite result. Do note that this case does have a Petition for Review currently pending before the Texas Supreme Court.

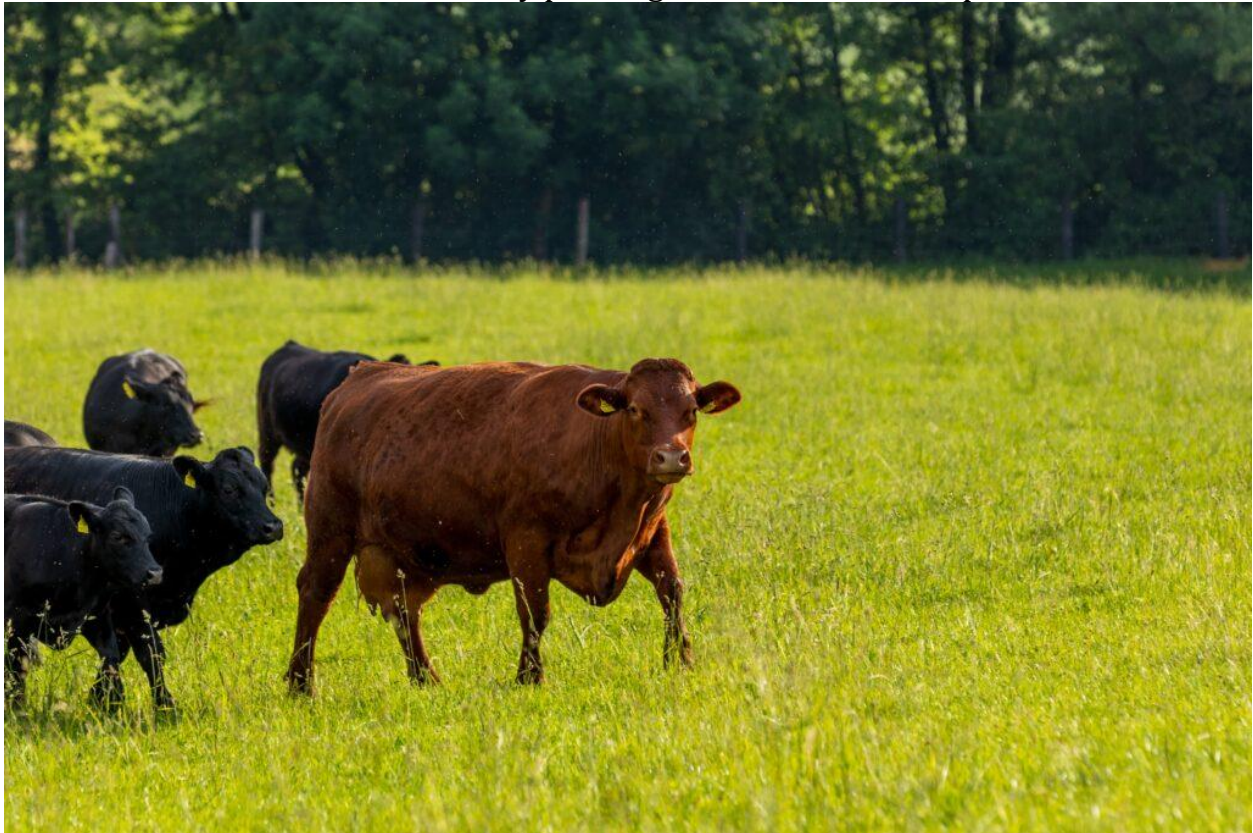


Photo by [Andreas Schantl](#) on [Unsplash](#)

Background

This lawsuit involves neighbors, Glenn Weber and Jay and Lindsey Parker, and a dispute over ownership of 20.62 acres near Crawford.

In 1958, Weber purchased 560.9 acres from his father. In 2014, the Parkers purchased 102 acres from Dick Taylor. By separate deed, they also purchased the 20.62-acre tract at issue in this case from Taylor for \$100. Parker understood Taylor would not warrant the 20.62 acres because he understood there had been some dispute, and he did not want to get into a lawsuit.

The disputed area lies south of a creek and at the north end of the Parker's 102-acre tract. The true southern boundary line of Weber's property is the creek. However, a fence south of the creek runs east to west and separates the 20.62 acres from the Parker's 102 acres, making those 20.62 acres fenced with Weber's property. Weber relies on this fence to assert ownership of the disputed tract, claiming that he bought everything under fence.

Testimony

Parker said he knew there was "some dispute," but did not know Weber claimed title to the land prior to purchasing it. When researching the ownership, Parker claimed to have found a document signed by Weber's father in 1960 stating what appeared to be a boundary agreement agreeing that no existing fences or fences built in the future would affect the surveyed and recorded property lines. Parker claimed that the existing fence is enclosed, but a person can go around the fence at the bluff. He admitted that the fence prevented cattle from getting onto the bluff.

Taylor, the owner of the disputed tract prior to the Parkers, testified that he did not use the property. While he owned the property, he said he was only down there two or three times. He said he was aware someone used the land but did not know who. He said he never saw cattle or activity on the land. He knew of a prior lawsuit between Lacy, a predecessor in interest, and Weber over the disputed property. He testified that the disputed area is fenced on the south side separating it from the 102-acres he sold to the Parkers. Taylor testified the fence does not go all the way to the creek or the bluff.

Weber testified that he bought everything under fence, including the disputed area, in 1958. He said he has used the disputed area exclusively since 1959. Other than the one lawsuit, he never had an issue with anyone about ownership of the disputed tract. He never saw Lacy or Taylor on the land. He denied knowing anything about

an agreement made by his father to graze cattle on the property. He said the existing road and fence have always been on the property. He testified that a neighbor, Mr. Dehume, built a new fence on Weber's entire property, including the disputed tract, and put up no trespassing signs after doing so.

Weber's son, Christopher, testified that the disputed area is inclusive of Weber's perimeter fence and has been the 30 years he has been alive. He testified he does brush clearing and fence work on the disputed area. He testified there is no cross-fencing on the Weber property and that cattle roam at large on the entire tract, including the disputed area. He testified the average stocking rate is about 10 acres/cow, so they would have about 60 cows on their entire property. He testified they built roads through the disputed property. He testified he has used the disputed land for hunting, casual enjoyment, family time, hunting arrowheads, just getting way, and enjoying nature. He said he has never seen anyone else on the land until the Parkers.

Larry Matlage grew up on another piece of land neighboring the Weber's property. He testified that Weber's father had been in exclusive possession of the disputed land for 40-50 years, and Glen Weber has been in possession for years after that. He said Weber is protective of his property and, to Matlage's knowledge, no one has gone on the disputed property without permission. He said that Weber's fence goes all the way to the bluff.

Travis Dechaume lives in the area and has known Weber all his life. He testified that the disputed property was exclusively possessed by the Webers for 40-50 years, and they have run cattle on the land the entire time. He said he worked on the disputed acreage at least twice a week on the average of a year over the last 10 years. He said he did not see anyone else on the property until the Parkers bought it. He said there is a fence around all of the Weber property, and the disputed area is under that fence. He said that Weber's property is "continuously fenced, with no breaks." Although the fence goes up to the bluff, but does not connect to another fence, there is no access between the bluff and the fence.

John Laufenberg testified to living in Crawford his whole life and that Weber has always claimed ownership to the property. Other than the prior dispute with Lacy, he was not aware of anyone else who would claim ownership of the land.

Litigation

The Parkers began to use the disputed tract in 2014, a conflict arose between the parties. Weber filed suit against the Parkers.

A bench trial was held, and the court awarded Weber title to the disputed property by adverse possession pursuant to the 25-year statute of limitations.

The Parkers appealed to the Waco Court of Appeals.

Applicable Law

If a person meets the statutory requirements of adverse possession in Texas, that person may claim title to real property titled in the name of another. In other words, a person may divest another person ownership of the property if certain requirements are met. In order to prove adverse possession in Texas, possession must be actual, visible, continuous, notorious, distinct, hostile, and of such character as to indicate unmistakably an assertion of a claim of exclusive ownership in the occupant for a statutorily mandated period of time. Here, Weber relies upon the twenty-five-year adverse possession statute. *See* Tex. Civ. Practice & Remedies Code Section 16.027.

For an adverse claimant who relies on grazing only as evidence of his adverse use and enjoyment, he must usually show that the land at issue was “designedly enclosed” versus there merely being a fence in place that constitutes a “casual fence.” Typically, when a fence exists at the time the claimant took possession, it is presumed to be a casual fence, but that may be rebutted by showing the fence was designedly enclosed the tract or that the claimant so changed the character of the fence that it became a designed enclosure.

Court of Appeals’ 2018 Opinion

In May 2018, the Waco Court of Appeals issued an opinion (“2018 Opinion”) reversing the trial court verdict and siding with the Parkers. [Read prior blog post [here](#).] The court found that Weber failed to adequately prove his adverse possession claim. The court found the fence to be a casual fence and not a designed enclosure, and his claims of grazing and other casual use to be insufficient.

Weber filed a motion for rehearing. The motion was granted and the 2018 Opinion was withdrawn.

Court of Appeals' 2023 Opinion

On rehearing, the Waco Court of Appeals reached the opposite result from the 2018 Opinion, this time affirming the trial court and siding with Weber. [Read Opinion [here](#).]

Exclusive Possession

The Parkers argued that there was no evidence that the Webers exclusively used the land. The court disagreed, noting that multiple witnesses testified that the Webers were the only users and they saw no one else on the land until the Parkers purchased it. These witness statements were based on personal knowledge and, therefore, sufficient legal evidence.

The Parkers also argued that the Weber's use was not exclusive because the Parkers also used the property starting in 2014. The court noted, however, this use was not sufficient to defeat a claim of adverse possession because the 25-year requirement was met by 2012. Thus, their use from 2014 on was irrelevant.

Taxes

The Parkers argued Weber could not adversely possess the property because he did not pay taxes on it. The court disagreed, noting that, "standing alone, the failure to pay taxes has no probative value."

Characterization of the Fence

The Parkers contended the fence was a casual fence and not a designed enclosure and, therefore, insufficient to provide title by adverse possession.

The court found evidence that the fence dividing the disputed property from the Parker property has been in existence since at least 1903. Because it existed before either party owned their land, it is presumed to be a casual fence. However, the court held that Weber provided enough evidence to overcome this presumption.

Multiple witnesses testified that the Webers ran cattle on the disputed land. The cattle had free range of the 561 acres owned by the Webers, making sense that there might not always be cows on the disputed property at a given time.

Weber testified that he rebuilt the entire perimeter fence, including the fence dividing the disputed property and the Parker property. Due to the terrain, he had to hire someone to air drill the holes and use iron posts. Further, Chris maintains the fences.

Based on this evidence, the court held that the factfinder could reasonably conclude the fence at issue is not a casual fence. With regard to the dispute over whether the fence completely enclosed the Weber property, the court found for Weber noting that there was no testimony that the fence built to the bluff was insufficient to keep cattle in. Finally, the reputation in the community was that the property belonged to the Webers.

Based on this, the court held that the evidence supported the trial court's finding that the fence is a designed enclosure.

Notice

The Parkers argued that Weber did not use the property in such a way as to put them on reasonable notice of a hostile claim. The court dismissed this argument because the designed enclosure coupled with continuous use for grazing provides sufficient notice of a claim of adverse possession.

Permissive use

The Parkers argued the Weber's use could not constitute adverse possession since Weber's father grazed cattle on the land with permission based on the 1960 agreement. The court, however, found this irrelevant because even without tacking on the years his father used the land, Weber himself could prove over 25 years of adverse use.

Conclusion

The court found Weber established legally and factually sufficient evidence that he adversely possessed the property for at least 25 years. The trial court's judgement was affirmed.

Appeal

The Parkers have sought review from the Texas Supreme Court. No action has been taken on their Petition at this time.

Concurring Opinion

Justice Johnson issued a [concurring opinion](#) beginning with the following, "Because today we issue a memorandum opinion in a case that has been pending more than half a decade with this court, we owe it to the litigants and the public to detail the procedural background of this appeal. We are directed by the Texas Rules of Appellate Procedure to render our judgment promptly, which this Court has filed to do here."

The notice of appeal to the Waco Court of Appeals was filed in December 2016. The first memorandum opinion was issued in May 2018. A motion for rehearing was filed shortly thereafter. Then the delays began.

Nearly two and a half years later, in December, 2020, the motion to reconsider was granted. The Chief Justice claimed responsibility for the delay, which he explained as being caused by "administrative responsibilities and case priorities." He apologized for the delay in his order withdrawing the initial opinion and returning the case to the docket of the court.

Then, nearly two years after that, in November 2022, Chief Justice Gray recused himself from the case. Once it was reassigned, the court "endeavored to resolve this case as promptly as possible."

Key Takeaways

First, do note that while I always advise people that civil lawsuits take a lot of time, it is certainly unusual for a case to be at the court of appeals for nearly 5 years.

Second, it is interesting to look at the different facts highlighted and prioritized in each opinion. Given the opposite results, it is interesting to see which specific facts the court gave more weight to each time.

Third, it is important to keep in mind that successfully bringing an adverse possession claim is difficult. As you see here, there are numerous elements that must be proven, and courts very strictly apply each of these requirements. There is no quick and easy way to show adverse possession. Questions I receive on this frequently are whether the fence being built off the boundary line for a long period of time (like the 120-year-old fence here) changes the boundary line. The answer is no—that fact alone does not change a boundary line or prove adverse possession. Similarly, as the court noted here, paying taxes (or not paying taxes) on a piece of property, alone, does not constitute proof of adverse possession.

Fourth, this is an important reminder for any landowners or land purchasers who may have fences off the boundary line to look into this issue now and try to clean it up in the deed records for heirs or subsequent buyers. It may be that a simple boundary agreement between neighbors could be drafted and filed and avoid years of time and lots of money going into litigation. Similarly, if a landowner allows someone else to use his or her property with permission, documenting that permission and filing it in the deed records is an easy, but important step to avoiding this type of litigation in the future.