

Did Plaintiff Own the Real Property?

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Sw. Church of Christ v. Country Props. Homeowners, 05-22-01092-CV, 2023 WL 8431507 (Tex. App.—Dallas Dec. 5, 2023, pet. denied) (mem. op.); Adcock v. Cal-Maine Foods, Inc., 03-22-00418-CV, 2024 WL 201963 (Tex. App.—Austin Jan. 19, 2024, no pet.) (mem. op.).

A fundamental premise of property rights is ownership of the real property at stake. *See generally* John D. Sullivan et al., [*The Importance of Property Rights to Development*](#), 27 THE SAIS REV. OF INT’L AFFS. 31 (2007). When homeowners complain about a church erecting a seven thousand-square-foot worship center in their residential neighborhood or a homeowner complains about sludge runoff from a chicken-feed mill destroying his backyard and damaging the foundation of his home, it seems obvious that the plaintiffs own the homes they seek to protect. But what evidence does the court require to find ownership of real property to establish standing? Recently, the Dallas and Austin Courts of Appeals ruled differently on plaintiffs’ testimonies that they “owned” land as evidence of ownership. [*Sw. Church of Christ*](#), 2023 WL 8431507, at *3; [*Adcock*](#), 2024 WL 201963, at *3.

In a December 2023 deed restrictions case, the Dallas Court of Appeals accepted homeowners’ testimonies that they owned lots in the subdivision as evidence of ownership to prove standing to enforce restrictive covenants. [*Sw. Church of Christ*](#), 2023 WL 8431507, at *3. When a church appealed the temporary injunction granted a group of homeowners to enjoin it from continuing construction of a worship center in their residential neighborhood, one of its issues was that the homeowners lacked standing. [*Id.*](#) at *1. The church argued that the homeowners failed to offer competent evidence that any of them were owners subject to the restrictive covenants. [*Id.*](#) at *3. The record showed that three homeowners testified that they “owned” or “purchased” lots in the subdivision and received copies of the deed restrictions upon closing, and a copy of the deed restrictions was admitted into evidence. [*Id.*](#) at *1–2. The Dallas Court of Appeals upheld the trial court’s determination that the evidence implied that the parties owned property in the subdivision and that such properties were subject to the deed restrictions. [*Id.*](#) at *3. Thus, the homeowners’ testimonies that they owned lots were competent evidence to establish ownership and, therefore, standing.

However, in a January 2024 trespass and nuisance case, the Austin Court of Appeals rejected a homeowner’s affidavit that he owned the subject property as evidence to establish the ownership or right-to-possession element of trespass. [*Adcock*](#), 2024 WL 201963, at *3. When the homeowner appealed the denial of his motion for summary judgment on his trespass claim against a chicken-feed mill that allegedly caused sludge to enter his land, he argued that the trial court improperly excluded his statement in his affidavit that he “owns” the subject property. [*Id.*](#) at *2–3. Conversely, the agricultural operation had objected to the statement as conclusory. [*Id.*](#) at *2. The Austin Court of Appeals upheld the trial court’s agreement with the agricultural operation’s objection to the plaintiff’s sworn statement as evidence of the ownership element of trespass. [*Id.*](#) at *3. The court explained, “Generally, a bare assertion that a party ‘owns’ property is conclusory and incompetent and thus insufficient to conclusively establish ownership.” [*Id.*](#) Thus, the homeowner’s affidavit that he owned the subject property did not conclusively establish the essential element of ownership.

Notably, the First District Court of Appeals in Houston seems to acknowledge the split between sister courts and the requirement to prove the element of ownership in a February 2024 trespass and negligence case. [*Beale v. Manchester*](#), 01-22-00752-CV, 2024 WL 747692, *5 n.2 (Tex. App.—Houston [1st Dist.] Feb. 22, 2024, no pet.) (mem. op.). Here, homeowners sued their next-door neighbors when mosquito pesticide vapor allegedly entered their bonus room through a window air conditioner unit and

left residue on a variety of clothes and collectible items.¹ *Id.* at *4. The homeowners responded to the neighbors' motion for no-evidence summary judgment and attached affidavits, which included statements of ownership. *Id.* at *2–3. While the neighbors objected to the homeowners' affidavits on the grounds that they were “speculative and conclusory,” they did not argue the element of ownership or lawful right to possession in their motion. *Id.* at *1, 5. The First District Court of Appeals in Houston ruled that the trial court erred in granting summary judgment in favor of the neighbors because the homeowners had successfully raised a fact issue on the **challenged** elements of their trespass claim. *Id.* at *8. The court pointed out that the neighbors challenged only the second and third elements of trespass. *Id.* at *5. Further, the court noted that the neighbors “did not challenge the first element [of trespass], i.e., that [homeowners] had a lawful right to possess the property.” *Id.* at *5 n.2. Thus, the court raised the issue of ownership but did not take a position on whether the plaintiff's affidavit was competent or insufficient evidence.

To apply this court split to practice, remember to review the element of ownership in a property rights case, no matter how clear-cut the facts might seem, and check for conclusive evidence to establish both the plaintiff's and defendant's ownership of real property in the dispute.

¹ The issue is whether the plaintiff owned the real property. Another question is whether the plaintiff owned the personal property he claimed was damaged by the alleged trespass. What evidence does the court require to establish ownership of two tailored suits, twenty-nine dress shirts, 1,700 Transformers and Star Wars figures valued at \$33,500, and a leather chair? *Beale v. Manchester*, 01-22-00752-CV, 2024 WL 747692, *4–5 (Tex. App.—Houston [1st Dist.] Feb. 22, 2024, no pet.) (mem. op.).