

Texas Lawyer Blog

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Texas Supreme Court rules in case involving takings, nuisance, separation of powers



After reading and reporting on Texas Supreme Court rulings for the better part of 12 years, I can honestly say that no decision has hit closer to home for me than Jan. 27's *City of Dallas v. Heather Stewart* — about seven blocks to be exact.

The decision concerns what once was a handsome brick Craftsman-style bungalow located 6017 Hudson, a mysteriously abandoned property that I used to ponder while walking my dog in my East Dallas neighborhood. Years ago, bulldozers leveled that house (empty lot, pictured), but I never knew why. However, the Supreme Court today tells the story of Heather Stewart's house, 6017 Hudson.

"Between 1991, when Stewart abandoned her house, and 2002, when the City demolished it, the Stewart home was a regular stop for Dallas Code Enforcement officials. Although utilities were disconnected and windows boarded up, the home suffered vandalism in 1997 and was occasionally occupied by vagrants. Stewart did little to improve the property, apart from building a fence to impede access, and she consistently ignored notices from the City. Inspectors returning to the home often found old notices left on the door," Chief Justice Wallace Jefferson wrote in the majority opinion.

Stewart fought a demolition order in municipal board proceedings, lost and appealed the municipal decision to state district court. She eventually won \$75,000 from a jury after arguing that the demolition was an improper taking by the city. The city appealed and the case ended up at the high court.

In a 5-4 decision on July, 1, 2011, the high court ruled in Stewart's favor, upholding the award. The city filed for rehearing and numerous other Texas cities filed amici briefs, worried that "failing to accord administrative nuisance determinations preclusive effect will open the floodgates for takings claims. Because takings claims have a ten-year statute of limitations, they contend, parties will now sue to challenge demolitions that occurred any time in the past ten years," according to Jefferson's opinion.

On Jan. 27, the high court withdrew its July 1, 2011, ruling, substituted another 5-4 decision and again ruled in Stewart's favor. But this time the court concluded that Stewart "properly asserted her takings claim on appeal to district court" and met the proper deadlines — something that rarely happens when city demolishes a house because it becomes a "nuisance."

"The majority opinion was tweaked to make it clear that to protect your constitutional rights you need to file a direct appeal of the city board's decision within the deadline. And it does not change the result to Ms. Stewart, because she did" meet the deadline, says Chris Bowers, an assistant Dallas city attorney who represents the city in the case. Bowers adds that the city is still deciding what to do next about the decision. "The case will have an impact on how cities deal with substandard or dilapidated properties," Bowers says.

Julius Staev, a Dallas solo who represents Stewart, says the decision makes clear that people like his client who lose municipal demolition battles must file state court appeals immediately — as his client did. "Now it makes the decision very accurate and doesn't leave a big issue like that open," he says.

— *John Council*

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