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## Appellate Lawyer of the Week: Demolition Man

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Dallas solo Julius Staev

When the Texas Supreme Court issues a revised majority opinion that is a substitute for the original, the prevailing lawyers and their clients tend to fear the worst. Will the court roll back their hard-earned victory?

Dallas solo Julius Staev was in that position when he first read the high court's Jan. 27 revised opinion in *City of Dallas v. Heather Stewart*. Eight months earlier, the court had affirmed his client's \$75,000 damage award. A jury sided with Stewart in her suit accusing the city of demolishing her East Dallas house after an improper taking.

"Sure, when I saw a new opinion was issued, I was nervous about it," Staev says.

Yet the new opinion preserved his client's damage award, made the city of Dallas happy and resulted in what both sides say is an important municipal law ruling.

The majority opinion in *Stewart* provides the following background in the case: "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," Chief Justice Wallace Jefferson wrote for the majority. "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."

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demolition order in municipal board proceedings, lost and appealed the municipal decision to state district court. She won \$75,000 at trial, and the city appealed to Dallas County District Court Appeals, which affirmed Stewart's award. The city appealed to the high court.

In a July, 1, 2011, opinion a 5-4 Supreme 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," Jefferson wrote in the Jan. 27 opinion. [[See the original opinion.](#)]

Then, last month, in another 5-4 decision, the court sided with Stewart, concluding that she "properly asserted her takings claim on appeal to the district court" and met the proper deadlines — something that rarely happens when a city demolishes a house because it becomes a "nuisance." [[See the revised opinion.](#)]

Justices Phil Johnson and Eva Guzman wrote separate dissenting opinions in the case.

Dallas City Attorney Tom Perkins says he likes the final result of the case. "We think it's important, and we are very pleased with the result. First, the Supreme Court concluded that the cities are not subject to new takings claims for long-abated nuisance claims . . .," Perkins says. "It adds some certainty and is a positive result."

Staev agrees, saying the decision makes clear that people like Stewart 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.

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