THE FIFTEENTH COURT OF APPEALS AND THE LIMITS OF CONCURRENT APPELLATE JURISDICTION

By Kirk Cooper[1]

In *Kelley v. Homminga*, the Texas Supreme Court recently resolved a dispute surrounding the scope of the newly created Fifteenth Court of Appeals' appellate jurisdiction.[2] The Court held that while the Fifteenth Court of Appeals may have technical concurrent jurisdiction with the fourteen regional courts of appeals over civil cases, the Fifteenth Court only has exclusive appellate subject-matter jurisdiction over certain categories of cases. Thus, if an appellant appeals a case outside the Fifteenth Court's exclusive jurisdiction to the Fifteenth Court, and another party moves to transfer the appeal out of the Fifteenth Court and back to the regional court of appeals, the Fifteenth Court has a ministerial duty to transfer that case out to the appropriate regional court of appeals.

Although the final per curiam decision from the Texas Supreme Court in *Kelley* is relatively simple, intuitive, and straightforward, the debate surrounding the limits of the Fifteenth Court of Appeals' jurisdiction leading up to the *Kelley* decision was not. This Article serves not just as a procedural update about which types of cases may be properly litigated in the Fifteenth Court of Appeals, but also as an attempt to preserve the historical record and improve accessibility to materials crucial to the Supreme Court's decision in this unusual jurisdictional dispute.

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[2] *Kelley v. Homminga*, 706 S.W.3d 829 (Tex. 2025).

Important discussions and debates surrounding the limits of Texas appellate court jurisdiction have been buried in procedural letters exchanged among the justices of different courts of appeals that are contained in the docket files of two cases. While these letters are currently available online, they have not been picked up by commercial databases such as Westlaw and Lexis because they are not in the form of "opinions." As such, copies of the letter decisions issued by the First, Thirteenth, Fourteenth, and Fifteenth Courts of Appeals are attached to this article as appendices to ensure that with the publication of this article in *The Appellate Advocate*, these letter decisions and the reasoning contained in these letters might be more easily found and cited.

I. BACKGROUND

A. Fifteenth Court of Appeals Jurisdiction

Prior to 2024, the State of Texas was divided into fourteen courts of appeals districts based on geographic location. Section 22.220(a) of the Texas Government Code granted each of these court of appeals districts "appellate jurisdiction of all civil cases within its district of which the district courts of county court have jurisdiction when the amount in controversy or the judgment rendered exceeds $250, exclusive of interest and costs."[3]

The Fifteenth Court of Appeals was created by S.B. 1045.[4] As the Texas Supreme Court described the Fifteenth Court in assessing its constitutionality, the Fifteenth Court was designed to "exclusively exercise the statewide appellate jurisdiction that the Third Court previously exercised, jurisdiction over some appeals that would have been heard in different courts before S.B. 1045 (because of docket-equalization transfers from the Third Court or because the underlying cases did not have to be litigated in Travis County), and any other jurisdiction conferred by separate statutes, but it will not hear criminal cases."[5]

S.B. 1045 enacted new statutes and made changes to others. Section 22.201(p) created a Fifteenth Court of Appeals with a geographic district embracing the entire state: "the Fifteenth Court of Appeals District is composed of all the counties in this state."[6] S.B. 1045 also amended the general grant of civil appellate jurisdiction in Section 22.220(a) to include caveat language: the courts of appeals had general civil appellate jurisdiction over county and district courts in their districts "[e]xcept as provided by Subsection (d)."[7]

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[3] Tex. Gov't Code Ann. § 22.220(a).
[4] Act of May 21, 2023, 88th Leg., R.S., ch. 459, 2023 Tex. Sess. Law. Serv. 1115.
[5] *In re Dallas Cnty.*, 697 S.W.3d 142, 147–48 (Tex. 2024).
[6] Tex. Gov't Code Ann. § 22.201(p).
[7] *Kelley*, 706 S.W.3d at 831 (describing amendment).

That new Subsection (d)—Texas Government Code § 22.220(d)—vested the Fifteenth Court of Appeals with exclusive jurisdiction over three types of cases:

- Any "matters brought by or against the state or a board, commission, department, office, or other agency in the executive branch of the state government, including a university system or institution of higher education . . . or by or against an officer or employee of the state or a board, commission, department, office, or other agency in the executive branch of the state government arising out of that officer's or employee's official conduct," subject to 15 excluded classes of cases;[8]

- Cases involving challenges to state statutes or regulations in which the state attorney general is a party;[9]

- Other cases as provided by law,[10] including exclusive jurisdiction over an appeal from an order or judgment of the business court or an original proceeding related to an action or order of the business court, as provided for by a separate statute.[11]

B. **Inter-Court Transfer Procedure**

As part of S.B. 1045, the Legislature also enacted a new statute (Section 73.001(b)) prohibiting the Texas Supreme Court from "transfer[ing] any case or proceeding properly filed in the Court of Appeals for the Fifteenth Court of Appeals District to another court of appeals for the purpose of equalizing the docket of the courts of appeals."[12] That said, the Legislature also foresaw that there might be situations in which transfer between a regional court and the Fifteenth Court and vice versa might be necessary for other reasons. As such, the Legislature also adopted Section 73.001(c), an enabling statute granting the Texas Supreme Court some rulemaking authority:

> (c) The supreme court shall adopt rules for:
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> > (1) transferring an appeal inappropriately filed in the Fifteenth Court of Appeals to a court of appeals with jurisdiction over the appeal; and

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[8] Tex. Gov't Code Ann. § 22.220(d)(1).
[9] Tex. Gov't Code Ann. § 22.220(d)(2).
[10] Tex. Gov't Code Ann. § 22.220(d)(3).
[11] Tex. Gov't Code Ann. § 25A.007(a).
[12] Tex. Gov't Code Ann. § 73.001(b).

> (2) transferring to the Fifteenth Court of Appeals from another court of appeals the appeals over which the Fifteenth Court of Appeals has exclusive intermediate appellate jurisdiction under Section 22.220(d).[13]

Relying on this grant of rulemaking authority, in order to address situations where a case that should have been filed in the Fifteenth Court of Appeals was filed in a regional court of appeals and vice versa, the Texas Supreme Court also amended the Texas Rules of Appellate Procedure to establish a procedure where a case had been "improperly taken" to the Fifteenth Court. *See generally* Tex. R. App. P. 27a.

Under Tex. R. App. P. 27a(d), which governs transfers to and from the Fifteenth Court of Appeals, a party may file a motion to transfer an appeal from the court in which the case is pending (the transferor court) within 30 days after an appeal is perfected, but no later than by the date when the appellee's brief is filed.[14] The movant also must immediately notify the transferee court of the motion.[15] The transferor court may transfer an appeal if:

> (i) no party files an objection to the transfer within 10 days *or* the transferor court determines that any filed objections lack merit; *and*
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> (ii) the transferee court agrees to the transfer.[16]

After the transferor court makes a decision on the motion, "the transferee court must file, within 20 days after receiving notice from the transferor court of its decision on the motion, a letter in the transferor's court explaining whether it agrees with the transferor court's decision."[17]

II. THE DISPUTE

A. Appellants in *Kelley v. Homminga* and *Devon Energy v. Oliver* file notices of appeals to the Fifteenth Court of Appeals, even though the cases do not fall within the Fifteenth Court's exclusive jurisdiction set by statute.

In the wake of the Texas Supreme Court's decision confirming the constitutionality of the Fifteenth Court of Appeals in *In re Dallas County*,[18] two separate sets of defendants in two cases filed appeals to the Fifteenth Court of

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[13] Tex. Gov't Code Ann. § 73.001(c).
[14] Tex. R. App. P. 27a(c)(1)(A).
[15] *Id*.
[16] *Id*. (emphasis added).
[17] Tex. R. App. P. 27a(c)(1)(C).
[18] *In re Dallas Cnty.*, 697 S.W.3d at 147–48.

Appeals. However, neither of the two cases being appealed fell within exclusive jurisdiction of the Fifteenth Court set out in Subsection (d):

- *Kelley v. Homminga*, No. 15-24-00123-CV, involved a judgment totaling more than $1 million in a home construction dispute arising from the 212th District Court of Galveston County, [19] situated in the First/Fourteenth Court of Appeals District.[20]

- *Devon Energy Production Co. v. Oliver*, No. 15-24-00115-CV, involved an oil-and-gas dispute judgment issued in the 135th District Court in Dewitt County,[21] situated in the Thirteenth Court of Appeals district.[22]

In their notices of appeals, the defendants-appellants in *Kelley* and *Devon Energy* each stated that they were appealing to the Fifteenth Court of Appeals, not the respective regional court of appeals. They asserted this was permissible because Texas Government Code § 22.220(a) granted each of the courts of appeals, including the Fifteenth Court, "appellate jurisdiction of all civil cases within its district[.]" Since the Fifteenth Court's district was statewide, and since the creation of a statewide court of appeals district was found to be constitutional in *In re Dallas County*, the Fifteenth Court of Appeals had concurrent jurisdiction with each of the regional courts of appeals. In defendants-appellants' view, this grant of overlapping concurrent jurisdiction made bypass of the regional courts of appeal in favor of appeal to the Fifteenth Court permissible for all civil cases generally, even if the type of case being appealed did not appear on the list of exclusive jurisdiction cases spelled out in Section 22.220(d).

In briefing before the Fifteenth Court, the *Kelley* appellants cited to *In re A.B.*, 676 S.W.3d 11, 114 & n.1 (Tex. 2023) (per curiam), a parental rights termination case in which the Texas Supreme Court observed that there is overlapping jurisdiction over certain counties between the Sixth Court of Appeals in Texarkana and the Twelfth Court of Appeals in Tyler. The appellants asserted that, like the appellants in counties subject to overlapping Texarkana and Tyler court of appeals jurisdiction in *A.B.*, they could notice their appeal either to the Houston regional courts or to the Fourteenth Court, since there was overlapping jurisdiction.[23]

The appellants in *Kelley* also preemptively urged the Fifteenth Court to retain the case and not transfer it to the First or Fourteenth Court of Appeals in the notice of appeal. They stated that although "[t]his appeal does not fall within the Fifteenth

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[19] The Fifteenth Court of Appeals TAMES case file for this case is available online at https://search.txcourts.gov/Case.aspx?cn=15-24-00123-CV&coa=coa15

[20] Tex. Gov't Code Ann. § 22.201(b), (o).

[21] The Fifteenth Court of Appeals TAMES case file for this case is available online at https://search.txcourts.gov/Case.aspx?cn=15-24-00115-CV&coa=coa15.

[22] Tex. Gov't Code Ann. 22.201(n).

[23] App. Resp. to Mtn. to Transfer at 4, *Kelley v. Homminga*, No. 15-24-00123-CV.

Court's exclusive jurisdiction because the suit was commenced before the Business Courts existed," the appeal "presents important issues aligned with the Court's specialization in complex business disputes" on which the Fifteenth Court could opine.[24] However, in the response in opposition to transfer, the *Kelley* appellants later conceded that even if the business courts had been operational at the time of trial, this case would not have fallen within the business courts' jurisdiction because the amount in controversy was too low.[25]

B. The Fifteenth Court denies the motion to transfer without written order and requests a Rule 27a(c)(1)(C) response from the First, Thirteenth, and Fourteenth Courts of Appeals.

The plaintiffs-appellees in both *Kelley* and *Devon Energy* filed Rule 27a(b)(1)(A) motions to transfer the appeals to the respective regional courts of appeals, arguing that the appeals were "improperly taken" to the Fifteenth Court of Appeals because neither *Kelley* nor *Devon Energy* were cases that fell within the Fifteenth Court's exclusive jurisdiction under Section 22.201(d). The *Kelley* plaintiffs-appellees did not explicitly contest the general appellate jurisdiction argument, but instead refuted each of the points raised in the notice of appeal as presenting genuine issues of law falling within the Fifteenth Court's business expertise.[26] However, the *Devon Energy* plaintiffs-appellees did directly contest the assertion that the Fifteenth Court had general civil appellate jurisdiction statewide, arguing that the Fifteenth Court was one of limited jurisdiction and that the case fell outside the scope of the Fifteenth Court's jurisdictional ambit.[27]

The docket sheet in *Kelley* does not show that the Fifteenth Court issued a formal order resolving the plaintiffs-appellees' motion to transfer. Instead, on December 4, 2024 in *Kelley*, the Fifteenth Court of Appeals issued a letter to the Clerk of Court for the First and Fourteenth Court of Appeals, both of which had overlapping jurisdiction over the county from which *Kelley* arose.[28] In the letter, the Fifteenth Court stated that it had decided to deny the motion to transfer, noting that Chief Justice Brister would grant the motion to transfer.[29] The *Kelley* letter did not lay out the Fifteenth Court's reasoning, but it did request that the First and Fourteenth Courts each file a letter with the Fifteenth Court within 20 days explaining whether they agreed with the Fifteenth Court's decision to deny the motion under Tex. R. App. P. 27a(c)(1)(C).

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[24] Notice of Appeal at 2-3, *Kelley v. Homminga*, No. 15-24-00123-CV.
[25] App. Resp. to Mtn. to Transfer at 5, *Kelley v. Homminga*, No. 15-24-00123-CV.
[26] Mtn to Transfer at 4-5, *Kelley v. Homminga*, No. 15-24-00123-CV.
[27] Mtn. to Transfer at 2-3, *Devon Energy* v. Oliver, No. 15-24-00115-CV.
[28] Court Letter dated Dec. 4, 2024, *Kelley v. Homminga*, No. 15-24-00123-CV (Appendix A).
[29] *Id*.

On December 6, 2024, the Fifteenth Court issued a similar letter to the Thirteenth Court requesting that court's opinion in *Devon Energy*.[30]

C. The First Court consents to the Fifteenth Court's retention of *Kelley*, while the Thirteenth and Fourteenth Courts of Appeals file Rule 27a(c)(1)(C) protest letters with the Fifteenth Court urging transfer back to the regional courts of appeals.

The chief justices of the First, Thirteenth, and Fourteenth Courts of Appeals all filed letters in *Kelley* and *Devon Energy* on behalf of their courts. The First and Fourteenth Courts split over whether to consent to the Fifteenth Court's retention of the *Kelley* appeal—the First Court agreed with the Fifteenth Court's decision to retain *Kelley*, while the Fourteenth Court disagreed and asked that *Kelley* be transferred to the Houston regional appellate courts. The Thirteenth Court of Appeals objected to the Fifteenth Court's retention of *Devon Energy* and asked that the Fifteenth Court transfer the case to the regional Corpus Christi appellate court.

Each of the three courts laid out their legal positions interpreting the relevant provisions of Chapter 22. A summary of their respective analyses is set out below.

1. Fourteenth Court of Appeals' position (Chief Justice Christopher)

The Fourteenth Court of Appeals filed its response first in the *Kelley* appeal. On December 16, 2024, Chief Justice Tracy Christopher of the Fourteenth Court of Appeals sent a letter objecting to the Fifteenth Court's retention of *Kelley*.[31]

Chief Justice Christopher opined that although the Fifteenth Court did have concurrent jurisdiction with the Houston courts by virtue of its statewide geographic reach set by Subsection 22.201(p) and the general grant of jurisdiction in Texas Government Code 22.002(d), the appeal in *Kelley* was "inappropriately filed" in or "inappropriately taken" to the Fifteenth Court as contemplated by the rules-enabling statute and Tex. R. App. P. 27a because the appeal did not fall within the category of cases over which the Fifteenth Court had exclusive jurisdiction.[32] Chief Justice Christopher also opined that although the Fifteenth Court of Appeals may generally have concurrent statewide civil jurisdiction with the sister regional courts of appeals, and although language of Rule 27a appears to make transfer from the Fifteenth Court discretionary rather than mandatory, the Fifteenth Court should grant motions to transfer inappropriately filed appeals "absent some specific reason to deny the motion," as doing so "would be more favorable to the Fifteenth Court." Chief Justice Christopher also opined that transfer should be granted because appellants failed to

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[30] Court Letter dated Dec. 6, 2024, *Devon Energy* v. Oliver, No. 15-24-00115-CV (Appendix B).

[31] December 16, 2024 letter from Chief Justice Tracy Christopher, Fourteenth Court of Appeals, *Kelley v. Homminga*, No. 15-24-00123-CV (Appendix C).

[32] *Id*. at 2-3.

raise any meritorious objections to the motion, and because the Fourteenth Court was willing to accept the case transfer.[33]

In sum, the Fourteenth Court's position was that (1) the Fifteenth Court had statewide appellate jurisdiction concurrent with its sister courts of appeals, (2) the Fifteenth Court had the discretion to decide whether a civil case filed before it not within the Fifteenth Court's exclusive jurisdiction should be transferred to the regional court of appeals, but (3) in exercising its transfer discretion, the Fifteenth Court should apply a strong presumption against retention and in favor of consenting to transfer of the appeal to the regional court of appeals.

2. First Court of Appeals' position (Chief Justice Adams)

On December 23, 2024, one week after Fourteenth Court Chief Justice Christopher filed a letter stating that her Houston-based court objected to the Fifteenth Court's retention of *Kelley,* Chief Justice Terry Adams of the First Court filed a letter in *Kelley* stating that his Houston-based court agreed with the Fifteenth Court's decision denying the motion to transfer the appeal out of the Fifteenth Court.[34] The First and Fourteenth Court letters largely overlap on the issue of concurrent jurisdiction, but diverge on how the Fifteenth Court should exercise its discretion in deciding whether to transfer cases to the regional courts.

Chief Justice Adams reasoned that the statutes creating the Fifteenth Court were unambiguous, and that "the plain language of Government Code section 22.220 shows that the Fifteenth Court of Appeals' appellate jurisdiction is statewide . . . [a]nd that its exclusive jurisdiction is not its only appellate jurisdiction. . . . [A]s currently written, Government Code section 22.220 gives the Fifteenth Court of Appeals statewide exclusive appellate jurisdiction and general appellate jurisdiction as described in the statute."[35]

Chief Justice Adams dismissed concerns that an expansive reading of the Fifteenth Court's concurrent jurisdiction could leads to a floodgates problem: "It has been argued by appellees that following the plain statutory language is unworkable and will lead to an overburden docket for the Fifteenth Court of Appeals. We are not in a position to know whether that is true, but it is, in any event, a matter of public policy that belongs to the Legislature."[36] "If," Chief Justice Adams wrote, "the Legislature had intended for the Fifteenth Court of Appeals to have only exclusive jurisdiction—and not also general appellate jurisdiction—it certainly could have written Government Code section 22.220(a) that way. But it did not include that 'legislative restriction' in the statute . . . . Accordingly, if the Legislature wants to

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[33] *Id*. at 3-4.
[34] December 23, 2024 letter from Chief Justice Tracy Adams, First Court of Appeals, *Kelley v. Homminga*, No. 15-24-00123-CV (Appendix D).
[35] *Id*. at 3.
[36] *Id*. at 3-4.

rewrite Government Code section 22.220(a) to restrict the appellate jurisdiction of the Fifteenth Court of Appeals to be only its exclusive jurisdiction—it can do so during the next session that is about to start. But again, we may not do so."[37] In Chief Justice Adams' view, the Legislature's failure to explicitly say that the Fifteenth Court's exclusive appellate jurisdiction was also its *only* appellate jurisdiction meant that the Fifteenth Court could exercise jurisdiction over and hear any civil case appealed to the Fifteenth Court.

As for the question of whether an appeal is "appropriately filed" in the Fifteenth Court for purposes of assessing a transfer to the regional court, Chief Justice Adams stated that "as a general rule" a "case is 'properly filed' in a court when that court has jurisdiction to hear it. And when more than one court has jurisdiction to hear a case, the issue becomes one of dominant jurisdiction. Thus, it necessarily follows that when a civil appeal comes within the Fifteenth Court's general appellate jurisdiction (as described in Government Code section 22.220(a))—that civil appeal can be 'properly filed' in the Fifteenth Court."[38]

Thought not explicitly stated, Chief Justice Adams' letter seems to suggest that grounds for transfer would not exist simply by virtue of the fact that a regional court of appeals would also have jurisdiction—the Fifteenth Court would have dominant jurisdiction by virtue of the appellant's first filing, and transfer could happen only if the Fifteenth Court ceded jurisdiction back to the regional court of appeals as an exercise of discretion. Chief Justice Adams did not enumerate what factors the Fifteenth Court should apply, but his opinion suggested that there should be a presumption *against* transfer back to the regional court of appeals, with the burden being on the moving party to establish plus factors beyond the mere existence of concurrent jurisdiction in a regional court of appeals and the fact that an appeal fell outside the Fifteenth Court's exclusive jurisdiction.

3. Thirteenth Court of Appeals (Chief Justice Contreras)

On December 23, 2024, Chief Justice Dori Contreras of the Thirteenth Court filed a letter in *Devon Energy* stating "[t]he justices of the Thirteenth Court of Appeals unanimously disagree with the decision to deny transfer of the above-referenced appeal, although our individual reasoning may differ in some respects."[39] Unlike the First and Fourteenth Courts, which had agreed that the Fifteenth Court had concurrent jurisdiction with the sister regional courts of appeals, the Thirteenth Court disputed the premise that the Fifteenth Court of Appeals had concurrent jurisdiction with the regional courts of appeals at all. In the letter, the Thirteenth

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[37] *Id*. at 5.
[38] *Id*. at 4 (citation omitted).
[39] December 23, 2024 letter from Chief Justice Dori Contreras, Thirteenth Court of Appeals, *Devon Energy* v. Oliver, No. 15-24-00115-CV (Appendix E).

Court raised three overarching objections to the Fifteenth Court's retention of *Devon Energy*.

First, Chief Justice Contreras argued that the assertion that the Fifteenth Court had concurrent jurisdiction with the regional courts of appeals failed as a matter of statutory construction. She wrote that if Section 22.220(a) were interpreted to provide concurrent jurisdiction to the Fifteenth Court, that interpretation would render the caveating phrase "Except as provided by Subsection (d)" in Section 22.220(a) superfluous.[40] The Thirteenth Court also argued that an interpretation of Section 22.220(a) that gave the Fifteenth Court concurrent jurisdiction statewide was inconsistent with other provisions of the statutory framework suggesting that the Fifteenth Court was a court of limited jurisdiction, including Texas Government Code section 22.21(a)-(c)(1), which limited the Fifteenth Court's original jurisdiction to "writs arising out of matters over which the court has exclusive intermediate appellate jurisdiction under Section 22.220(d)."[41] Reading the caveating provision in Section 22.220(a) in the context of the overarching statutory framework applicable to the Fifteenth Court, Chief Justice Contreras concluded that the Fifteenth Court did not have general concurrent statewide jurisdiction with the regional appellate courts; rather, Subsection 22.220(d) set the absolute limits of the Fifteenth Court's appellate jurisdiction.[42]

Second, the Thirteenth Court's letter recounted the legislative history of Section 22.220(d), opining that the framers of the Fifteenth Court did not intend for the Fifteenth Court "to exercise concurrent jurisdiction over all civil cases statewide."[43] The Thirteenth Court wrote:

> The legislature created the Fifteenth Court to address appeals in civil cases of "statewide significance" which require the application of "highly specialized precedent in complex areas of law including sovereign immunity, administrative law, and constitutional law." *See* S. Comm. on Jurisprudence, Bill Analysis, Tex. S.B. 1045, 88th Leg., R.S. (substituted, Mar. 24,2023). Thus, the statement of intent for S.B. 1045 refers to the creation of the Fifteenth Court "with jurisdiction over certain civil cases." *See id*. Construing § 22.220(d) to encompass all civil appeals, regardless of whether they are of statewide significance or require particular expertise, is inconsistent with the legislative objective in creating a specialized court.[44]

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[40] *Id*. at 2.
[41] *Id*.
[42] *Id*.
[43] *Id*. at 2-3.
[44] *Id*.

Third, in addressing the "improperly filed" component of the analysis under Rule 27a, the Thirteenth Court observed that there were other "compelling prudential reasons why the Fifteenth Court should transfer the appeal to the Thirteenth Court," including:

- Appellants offered no compelling reason why the Fifteenth Court of Appeals should hear it, and the Fifteenth Court's exercise of any concurrent jurisdiction should be limited to instances where there is "a compelling reason" to do so;

- The Fifteenth Court's "exercise of jurisdiction over a 'standard' appeal, such as this one, which neither falls within its exclusive jurisdiction or its area of expertise, would impair the effectiveness of that Court by diverting its resources from those cases requiring its expertise";

- Allowing concurrent jurisdiction would increase uncertainty in litigation, "ender forum shopping at the appellate level[,]" and potentially overwhelm the Fifteenth Court with new cases, especially given that Texas Government Code Section 73.001(b) prohibited the Texas Supreme Court from transferring cases filed in the Fifteenth Court out of the Fifteenth Court for the purpose of docket equalization.[45]

D. The Fifteenth Court certifies the dispute to the Texas Supreme Court and lays out the justices' conflicting decisions in the certification letter.

Having received the responses from the chief justices of the First, Thirteenth, and Fourteenth Court of Appeals, on January 6, 2026, and January 15, 2025, pursuant to Texas Rule of Appellate Procedure 27a(d)(1), the Fifteenth Court certified the dispute over the motion to transfer to the Texas Supreme Court in two letters.[46]

Although the Fifteenth Court did not issue a formal opinion analyzing its own jurisdiction, the Fifteenth Court did lay out the justices' respective legal positions in the Rule 27a(d)(1) certification letters. The letters in *Kelley* and *Devon Energy* differ slightly, but the substantive analysis is largely the same, except on the question of the limits of the Fifteenth Court's discretion to deny a transfer request. The majority position in each letter was not signed by a single justice, but Chief Justice Scott Brister issued a dissenting statement in both *Kelley* and *Devon Energy*, leaving the

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[45] *Id*. at 3.

[46] Rule 27a(d)(1) Certification Letter to Supreme Court of Texas dated January 6, 2025, *Kelley v. Homminga*, No. 15-24-00123-CV (Appendix F); Rule 27a(d)(1) Certification Letter to Supreme Court of Texas dated January 13, 2025, *Devon Energy* v. Oliver, No. 15-24-00115-CV (Appendix G).

majority to be formed by the concurrence of the remaining two justices on the court: Justice Scott Field and Justice April Farris. Those positions were as follows.

1. Majority View (Field and Farris, JJ.)

The majority began both letters by analyzing its own jurisdiction, agreeing with the appellants and the First Court of Appeals' position in *Kelley* that although Subsection 22.201(d) granted the Fifteenth Court exclusive jurisdiction over certain classes of appeals, the general grant of civil jurisdiction to all courts of appeals in Subsection 22.220(a) meant that the Fifteenth Court also possessed general civil appellate jurisdiction concurrent with its sister regional courts of appeals.[47] The majority rejected the view that Subsection (d) acted as a limitation on the Fifteenth Court's civil appellate jurisdiction: "Although Subsection (d) divests the other intermediate courts of jurisdiction over the categories of cases that fall within the Fifteenth Court's exclusive jurisdiction, nothing in Subsection (d) purports to divest the Fifteenth Court of the general civil intermediate appellate jurisdiction authorized by Subsection (a)."[48] Furthermore, since the Fifteenth Court's geographic district was statewide, "this Court still possesses general appellate jurisdiction over civil cases that within our district, which encompasses 'all the counties in the state.'"[49]

The majority acknowledged the Legislature had imposed jurisdictional restrictions on the Fifteenth Court, but stated that when it wanted to limit the Fifteenth Court's authority, the Legislature had made those specific jurisdictional restrictions explicit in statutes. For example, Texas Code of Criminal Procedure art. 4.01 expressly divested the Fifteenth Court of jurisdiction in criminal matters,[50] and in Texas Government Code Section 22.221(c-1), the Legislature expressly limited the Fifteenth Court's original jurisdiction to issuing writs "arising out of matters over which the court has exclusive intermediate appellate jurisdiction under Section 22.220(d)." Because Subsection (d) did not explicitly divest the Fifteenth Court of general civil jurisdiction granted all courts of appeals in Subsection (a), the majority reasoned that it retained concurrent jurisdiction statewide.[51]

Next, the Fifteenth Court interpreted the phrase "inappropriately filed" as used in Rule 27a to assess its authority to deny transfer motions. On this point, the *Kelley* and *Devon Energy* letters differed in their characterization of the Fifteenth Court's discretionary authority to rule on motions to transfer cases to the regional

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[47] Rule 27a(d)(1) Certification Letter to Supreme Court of Texas at 3-6, *Kelley v. Homminga*, No. 15-24-00123-CV (majority statement); Rule 27a(d)(1) Certification Letter to Supreme Court of Texas, *Devon Energy* v. Oliver, No. 15-24-00115-CV (majority statement).

[48] *Id*. (both previous sources).

[49] *Id*. (both previous sources).

[50] *Id*. (both previous sources) (citing Tex. Code Crim. Pro. art. 4.01 ("The following courts have jurisdiction in criminal actions . . . Courts of appeals, other than the Court of Appeals for the Fifteenth Court of Appeals District.")).

[51] *Id*. (both previous sources).

courts. In *Kelley*, the majority wrote: "We do not agree that civil appeals falling outside the bounds of this Court's exclusive jurisdiction are 'inappropriately filed' in the Fifteenth Court as a categorical matter."[52] Citing to a Merriam-Webster's Dictionary definition of "inappropriate" to mean "unsuitable," the majority concluded that the mere filing of a non-exclusive jurisdiction appeal with the Fifteenth Court was not sufficient to show inappropriateness under Rule 27a, since "[w]hen the Legislature has determined that a certain type of matter is categorically unsuitable for resolution in the Fifteenth Court of Appeals, it has restricted this Court's jurisdiction to hear it."[53]

The majority noted that overlapping courts of appeals had long been a feature of the Texas appellate system. It analogized the situation of the Fifteenth Court's concurrent jurisdiction with the sister regional courts to that of the concurrent jurisdiction between the Sixth Court of Appeals in Texarkana and the Twelfth Court of Appeals in Tyler, whose districts both embrace several of the same counties. In the counties subject to overlapping Sixth and Twelfth Court jurisdiction, the appellant has the choice of which court of appeals to file in. Similarly, the majority reasoned, because the Legislature had created a statewide civil court of appeals district overlaying the regional court of appeals district, an appellant anywhere in the state could elect to file either in their local court of appeals, or in the Fifteenth Court of Appeals, just like in the counties that could appeal to either Tyler or Texarkana, and such a filing was not necessarily inappropriate.

The majority also cited to Texas Government Code Section 22.202, the specific statute providing for the random assignment of appeals between the overlapping First and Fourteenth Court of Appeals districts.[54] The majority observed that because there is no statutory bar to filing in the Fifteenth Court of Appeals, "[w]e cannot find that the appeal was 'improperly filed' in this Court simply because other Courts of Appeals would also have jurisdiction to hear it."[55] Consequently, the majority voted to deny the motion to transfer *Kelley* to the Houston regional courts of appeals.[56]

In *Devon Energy*, the majority took this analysis one step further, denying that it possessed discretionary authority to grant a request to transfer a case to the regional courts at all: "We further find that Texas Government Code Section 73.001(c) and Texas Rule of Appellate Procedure 27a do not authorize us to transfer this case to the Thirteenth Court of Appeals."[57] This language suggests that the majority in *Devon Energy* viewed the "inappropriately filed" language not just as a discretionary

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[52] Rule 27a(d)(1) Certification Letter to Supreme Court of Texas at 3, *Kelley v. Hommingа*, No. 15-24-00123-CV (majority statement).
[53] *Id*. at 3.
[54] *Id*. at 4.
[55] *Id*. at 4-5.
[56] *Id*.
[57] Rule 27a(d)(1) Certification Letter to Supreme Court of Texas at 3, *Devon Energy* v. *Oliver*, No. 15-24-00115-CV (majority statement).

factor, but also a substantive limitation on authority, preventing the Fifteenth Court from agreeing to transfer out cases even when those cases did not fall within its core exclusive jurisdiction.

Finally, the majority addressed and rejected the floodgates issues:

> Appellees further argue that the Fifteenth Court was designed to focus on the categories of appeals falling within its exclusive appellate jurisdiction, and that this purpose will be thwarted if this Court is found to possess general jurisdiction over all civil cases within its boundaries.
>
> Ultimately, the best proof of the Legislature's design for the Fifteenth Court is the jurisdiction that the Legislature created. "As with any statute," we must apply the law "as written" and "refrain from rewriting text that lawmakers chose." *Creative Oil & Gas, LLC v. Lona Hills Ranch, LLC*, 591 S.W.3d 127, 133 (Tex. 2019) (quoting *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 443 (Tex. 2009)). In Chapter 220 of the Texas Government Code, the Legislature made a choice to vest the Fifteenth Court with exclusive jurisdiction over some categories of civil appeals and general jurisdiction over others. We are not free to accept the former while deeming the latter improper. Accordingly, we decide to deny the motion to transfer the appeal.[58]

2. Dissenting View (Brister, C.J.)

Chief Justice Brister dissented in both the *Kelley* and *Devon Energy* certification letters, stating that he would not object to transferring either case back to the regional courts.[59] Chief Justice Brister noted a discrepancy between the rules enabling statute—which directed the Supreme Court to adopt transfer rules for transferred appeals "inappropriately filed" with the Fifteenth Court—and Rule 27a, which states that a case should be transferred out of the Fifteenth Court if it is "improperly taken" to the Fifteenth Court.[60] Chief Justice Brister noted that "[i]n many contexts, 'improper' referred to something *not allowed*, while 'inappropriate' refers to something that *ought not* to be allowed."[61] He agreed with his colleagues that an appeal to the Fifteenth Court of Appeals of a general civil case falling outside the Court's exclusive jurisdiction was not "improper" because the statutes granted the Fifteenth Court general concurrent jurisdiction with its sister regional courts.

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[58] *Id*. at 5.
[59] Rule 27a(d)(1) Certification Letter to Supreme Court of Texas at 6-8, *Kelley v. Homminga*, No. 15-24-00123-CV (dissenting statement); Rule 27a(d)(1) Certification Letter to Supreme Court of Texas at 5-7, *Devon Energy* v. Oliver, No. 15-24-00115-CV (dissenting statement).
[60] *Kelley*, Certification Letter at 6-7 (dissenting statement).
[61] *Id*. at 6 (emphasis in original).

However, he believed transfer was justified because the appeal was "inappropriately filed" in the Fifteenth Court:

> [E]ven if it would be *proper* to file such cases here, it would be *inappropriate* for this Court to entertain hundreds of appeals in family law, criminal law, and personal injury cases as they would inevitably shift time and attention away from our primary tasks.
>
> Furthermore, allowing litigants to routinely opt into one court of appeals instead of another could create a practice that, "if tolerated, breeds disrespect for and threatens the integrity of our judicial system." *In re Bennett,* 960 S.W.2d 35, 40 (Tex. 1997). Appellants here do not argue that this appeal involves an issue of statewide importance or a complex business dispute, but only that it is "the appellant's choice where to take the appeal." I doubt the Legislature intended "appellant's choice" on a large scale to be appropriate. *See* Tex. Gov't Code § 22.202(h) (requiring random assignment of appeals between the First and Fourteenth Courts of Appeals).
>
> The Legislature authorized the Supreme Court to adopt rules for transferring an appeal "inappropriately filed" here. *See* Tex. Gov't Code § 73.001(c). Whether Rule 27a does so or not does not matter in this case; given the First Court's agreement to receive this transfer, it will likely occur if we don't object to it under either Rule 27a or the previous practice governed by *Miles v. Ford Motor Co.*, 914 S.W.2d 135, 137 n.2 (Tex. 1995). I would so inform the Supreme Court; as the Court does otherwise, I respectfully dissent.[62]

3. Reaction

The Fifteenth Court's letter certification of the dispute to the Texas Supreme Court attracted media attention, including a call for a "clean-up" bill from former State Rep. Andrew Murr, the sponsor of the House bill that created the Fifteenth Court of Appeals, to clarify that the Fifteenth Court's jurisdiction was limited. State Rep. Murr was quoted by Bloomberg Law as saying: "I expressly explained to my colleagues in the House that its jurisdiction was not similar to the other 14 existing courts of appeal."[63]

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[62] *Kelley*, Certification Letter at 7-8 (dissenting statement); *accord Devon*, Certification Letter at 6-7 (dissenting statement).

[63] Ryan Autullo, *Texas Court's Wider Authority Invites Shopping, Deluge (Correct)*, Bloomburg Law, https://news.bloomberglaw.com/litigation/texas-courts-unexpected-jurisdiction-invites-shopping-deluge (Feb. 10, 2025).

III. TEXAS SUPREME COURT'S RULING

On March 14, 2025, the Texas Supreme Court in *Kelley v. Homminga* issued a consolidated decision granting the motions to transfer *Kelley* and *Devon Energy* away from the Fifteenth Court and to their respective regional courts of appeals.[64] The opinion is relatively short, but it addresses the key points advanced by the Fifteenth Court majority.

The Texas Supreme Court "agree[d] the Fifteenth Court has jurisdiction over civil cases appealed from every county" because the Legislature wanted to ensure "that all Texas voters have a say in electing the justices who decide cases affecting the State's interests and that cases can be transferred into the Fifteenth Court to equalize its docket."[65] "But this jurisdictional premise alone does not establish that the Legislature intended to grant every civil appellant the option of litigating in the Fifteenth Court. To the contrary, several textual clues indicate that this is not what the Legislature intended at all."[66] The Supreme Court pointed to two textual indications refuting the idea that every civil appellate court could choose to litigate an appeal either locally or with the Fifteenth Court: (1) the title of S.B. 1045 "reflects that the Fifteenth Court was created to hear 'certain cases,'" and (2) the Legislature, by passing a rules-enabling statute, "expressly recognized that some appeals will be 'inappropriately filed' in the Fifteenth Court."[67]

The Supreme Court also rejected the Fifteenth Court's determination that "inappropriately filed" appeals are only those appeals like criminal appeals and certain original proceedings over which the Fifteenth Court lacked jurisdiction entirely:

> That cannot be right because Section 73.001(c) directs that an inappropriately filed appeal be *transferred* to another court of appeals. When a court lacks jurisdiction over a case, the only correct disposition is *dismissal* because the court lacks power to do anything else. By contrast, where an appellate court has jurisdiction over a case but should not exercise it in deference to another court with concurrent jurisdiction, the case is transferred from one court to another.[68]

The Supreme Court also stated that the distinction between "properly filed" and "improperly filed" under the rules-enabling statute did not create jurisdiction; it

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[64] *Kelley v. Homminga*, 706 S.W.3d 829 (Tex. 2025).
[65] *Id.* at 832.
[66] *Id.*
[67] *Id.*
[68] *Id.* at 833 (citations omitted).

simply controlled whether an appeal filed with the Fifteenth Court could be transferred to a regional court of appeals:[69]

> If the Fifteenth Court could hear any and all civil appeals, then these provisions would have no application. Thus, "properly filed" appeals must have a narrower meaning than all civil appeals. Considering the legislation as a whole, we conclude that the most natural meaning of "properly filed" cases that may not be transferred is supplied by Section 22.220(d), which defines the matters over which the Fifteenth Court has "exclusive intermediate appellate jurisdiction." When appeals regarding matters falling outside this jurisdiction are noticed to the Fifteenth Court, they are "inappropriately filed" and must be transferred.[70]

The Supreme Court also observed that if the Fifteenth Court majority's interpretation was correct, an unintended consequence could arise—each of the state's almost 5,000 civil appeals per year could be filed in the Fifteenth Court, the Supreme Court would be powerless to transfer these cases out of the Fifteenth Court, and the Legislature's purpose is establishing the Fifteenth Court as a specialty court of appeals would be wholly thwarted.[71]

In a footnote, the Supreme Court also rejected the Fifteenth Court majority's premise that the Supreme Court's prior decision in *In re A.B.* established a broad premise that "when multiple appellate courts have overlapping jurisdiction, the appellant can file in the court of its choosing . . . ."[72] The Supreme Court stated that in *A.B.*, the Court "pointed out the statutory oddity that two court of appeals districts . . . have jurisdiction over appeals from Gregg County" and that in appeals from Gregg County specifically, "a party may notice an appeal from a trial court's ruling to either court of appeals."[73] However, "*A.B.* does not support construing S.B. 1045 to create an appellant's-choice scheme" between litigating locally and litigating before the Fifteenth Court.[74]

The Texas Supreme Court closed its opinion with this conclusion:

> We conclude S.B. 1045 is susceptible of only one reasonable construction: the Legislature did not intend the Fifteenth Court to hear every civil appeal within its statewide jurisdiction. Rather, the fair meaning of the act, discerned through a contextual reading of all its provisions, is that the Legislature intended that court to hear (1) appeals and writs within its exclusive intermediate appellate jurisdiction, and

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[69] *Id.*
[70] *Id.*
[71] *Id.*
[72] *Id.* at 833 n.6.
[73] *Id.*
[74] *Id.*

> (2) appeals we transfer into the court for docket-equalization purposes. This is the only interpretation of the statutory scheme that harmonizes all its provisions into a cohesive whole. . . .
>
> Because the appeals here do not fall into either category, the motions to transfer are granted.[75]

IV. CONCLUSION

The Texas Supreme Court's per curiam decision in *Kelley* is relatively short and straightforward. But when viewed in light of the competing views advanced by the parties, three regional court chief justices and their cohorts, and the split decision of the three Fifteenth Court of Appeals justices themselves, *Kelley* represents an interesting balancing act, drawing elements from the opinions of several intermediate court justices.

By endorsing the theory that the Fifteenth Court of Appeals has at least some concurrent statewide jurisdiction with all regional courts of appeals on the one hand, and then by making the Fifteenth Court's duty to transfer cases outside its exclusive jurisdiction ministerial despite the use of ostensibly discretionary language in the transfer statute and rules on the other, the Supreme Court's decision in *Kelley* accomplished three things.

First, *Kelley* forestalled the need for the type of jurisdictional "clean up" bill foreseen by S.B. 1045's sponsor. Though the Fifteenth Court majority and First Court Chief Justice Adams suggested that the apparent drafting defect creating ostensible general concurrent jurisdiction between the regional courts and the Fifteenth Court could have been corrected by the Legislature in the current session, the difficulties of getting on the agenda in Texas' abbreviated legislative session made this option unlikely. And even if the Legislature could get the loose language fixed and clarified, there is always the risk that smoothing out one part of the statute creates a wrinkle in another. *Kelley* filled an apparent drafting gap without requiring the legislative intervention contemplated by the First Court and the Fifteenth Court majority.

Second, *Kelley* advanced the Supreme Court's general policy that the right to appeal should not be lost due to procedural technicalities.[76] It did so by avoiding creating a jurisdictional trap raised as a serious issue in *Devon Energy*. As Chief Justice Contreras said in her opinion on behalf of the Thirteenth Court of Appeals, it seems clear once all parts of the statue are put together that the legislature intended for the Fifteenth Court's subject matter jurisdiction to be limited to a specific class of appeals. However, use of the word "jurisdiction" has harsh procedural implications, which the Court hinted at in its discussion of transfer rather than dismissal being the proper remedy for when an appeal is improperly filed before the Fifteenth Court.

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[75] *Id*. at 834.

[76] *Roccaforte v. Jefferson Cnty*., 341 S.W.3d 919, 924 (Tex. 2011).

If the Supreme Court had held that the Section 22.202(d) "laundry list" defined the absolute limit of the Fifteenth Court's appellate jurisdiction, then any appeal filed in error before the Fifteenth Court of Appeals—including the two appeals in *Kelley* and *Devon Energy*—would have to be dismissed for want of jurisdiction, rather than transferred to the appropriate regional court of appeals as contemplated by the rules-enabling statute. By quietly confirming that the Fifteenth Court had some concurrent jurisdiction with all its sister courts, *Kelley* protects litigants who may have good faith but ultimately non-meritorious arguments for invoking the Fifteenth Court's jurisdiction in close-call cases, making the proper remedy transfer, not dismissal.

Third, by requiring the Fifteenth Court to refrain from exercising any apparent concurrent jurisdiction to do anything except assess its own jurisdiction under Section 22.220(d) and transfer non-exclusive cases to an appropriate regional court of appeals under Rule 27a, *Kelley* by court rule effectively limited the Fifteenth Court's exercise of jurisdiction to its core exclusive jurisdiction, thereby ensuring the historical jurisdiction of the courts of appeals were protected despite S.B.'s 1045 faulty drafting.

Kelley pragmatically threaded a needle, with the Supreme Court interpreting its own rules to provide that the Fifteenth Court of Appeals could function as a specialized statewide court, while also preserving the historical jurisdiction of the regional courts of appeals that should have been left intact as part of a political compromise from the effects of an arguable legislative drafting ambiguity that would unravel the balance between the specialty court and its sister courts.

The bottom line? Render unto the Fifteenth Court that which is the Fifteenth Court's, and render unto your local court of appeals that which is of the local court. Civil cases enumerated in Section 22.220(d) should be filed in the Fifteenth Court, and must be transferred there if they are not. All other civil cases must be filed in the appropriate regional court of appeals.

Appendix A

FILE COPY

Fifteenth Court of Appeals

P.O. Box 12852, AUSTIN, TEXAS 78711
www.txcourts.gov/15thcoa.aspx/
512-463-1610

Wednesday, December 4, 2024

The Honorable Deborah Young
Clerk of Court First and
Fourteenth Court of Appeals
301 Fannin St Ste 245
Houston, TX 77002-2062
* DELIVERED VIA E-MAIL *

RE: Court of Appeals Number: 15-24-00123-CV
Trial Court Case Number: 22-CV-0360

Style: Patrick Kelley and PMK Group, LLC
v. Richard Homminga and Chippewa Construction Co., LLC

Dear Ms. Young:

Appellees Richard Homminga and Chippewa Construction Co., LLC filed a motion to transfer this appeal to the First or Fourteenth Court of Appeals on the ground that this Court does not have exclusive intermediate appellate jurisdiction. *See* Tex. Gov't Code § 22.220(d)(1), (2). The Fifteenth Court of Appeals has decided to deny the motion. *See* Tex. R. App. P. 27a(c)(1)(B). Chief Justice Brister would grant the motion to transfer to the First or Fourteenth Court of Appeals.

The First and the Fourteenth Courts of Appeals must, within 20 days after receiving this notice, file a letter in this Court explaining whether they agree with the Fifteenth Court of Appeals' decision to deny the motion. *See* Tex. R. App. P. 27a(c)(1)(C).

Sincerely,

Christopher A. Prine, Clerk

FILE COPY

cc: Kelley Clark Morris (DELIVERED VIA E-MAIL)
David Funderburk (DELIVERED VIA E-MAIL)
Jordan Elton (DELIVERED VIA E-MAIL)
Diane S. Davis (DELIVERED VIA E-MAIL)
Bradley W. Snead (DELIVERED VIA E-MAIL)
Andrew Mytelka (DELIVERED VIA E-MAIL)
Todd C. Collins (DELIVERED VIA E-MAIL)
Victoria Rutherford (DELIVERED VIA E-MAIL)

FILE COPY

Appendix B

Fifteenth Court of Appeals

P.O. Box 12852, AUSTIN, TEXAS 78711
www.txcourts.gov/15thcoa.aspx/
512-463-1610

Friday, December 6, 2024

The Honorable Kathy Mills
Clerk of Court
13th Court of Appeals
901 Leopard St 10th Floor
Corpus Christi, TX 78401
* DELIVERED VIA E-MAIL *

RE: Court of Appeals Number: 15-24-00115-CV
Trial Court Case Number: 16-04-23,735

Style: Devon Energy Production Company, L.P.; Devon Energy Corporation; BPX Operating Company; and BPX Production Company v. Robert Leon Oliver, et al.

Dear Ms. Mills:

Appellees Robert Leon Oliver, et al., filed a motion to transfer this appeal to the Thirteenth Court of Appeals on the ground that this Court does not have exclusive intermediate appellate jurisdiction. *See* Tex. Gov't Code § 22.220(d)(1), (2). The Fifteenth Court of Appeals has decided to deny the motion. *See* Tex. R. App. P. 27a(c)(1)(B). Chief Justice Brister would grant the motion to transfer to the Thirteenth Court of Appeals.

The Thirteenth Court of Appeals must, within 20 days after receiving this notice, file a letter in this Court explaining whether they agree with the Fifteenth Court of Appeals' decision to deny the motion. *See* Tex. R. App. P. 27a(c)(1)(C).

Sincerely,

Christopher A. Prine, Clerk

cc: David W. Jones (DELIVERED VIA E-MAIL)
Gregg Laswell (DELIVERED VIA E-MAIL)
Jane M. Webre (DELIVERED VIA E-MAIL)
Michael Sheppard (DELIVERED VIA E-MAIL)
Marcus Schwartz (DELIVERED VIA E-MAIL)

Appendix C

Fourteenth Court of Appeals

301 Fannin Room 245
Houston, Texas 77002

Chief Justice
TRACY CHRISTOPHER

Clerk
CHRISTOPHER A. PRINE
Phone: 713/274-2800

www.txcourts.gov/14thcoa

December 16, 2024

The Honorable Christopher A. Prine
Clerk of the Fifteenth Court of Appeals
P.O. Box 12852
Austin, TX 78711
* DELIVERED VIA EMAIL *

RE: Response to the Fifteenth Court of Appeals' Denial of Appellees' Motion to Transfer to the First or Fourteenth Court of Appeals
Court of Appeals No.: 15-24-00123-CV
Trial Court Case No.: 22-CV-0360

Style: Patrick Kelley and PMK Group, LLC
v. Richard Homminga and Chippewa Construction Co., LLC

Dear Mr. Prine:

The Court was notified on December 4, 2024, that the Fifteenth Court of Appeals had decided to deny the appellees' motion to transfer *Kelley v. Homminga*, Cause No. 15-24-00123-CV, to the First or Fourteenth Court of Appeals. In accordance with Texas Rule of Appellate Procedure 27a(c)(1)(C), we write to explain why we disagree with that decision.

With certain exceptions, "each court of appeals has appellate jurisdiction of all civil cases within its district of which the district courts or county courts have jurisdiction when the amount in controversy or the judgment rendered exceeds $250, exclusive of interest and costs." TEX. GOV'T CODE § 22.220(a). But "[t]he Fifteenth Court of Appeals District is composed of all counties in this state." *Id.* § 22.201(p). Thus, if a civil appeal is subject to the jurisdiction of any intermediate appellate court, then the appeal is within the concurrent jurisdiction of the Fifteenth Court of Appeals. *See id.* § 22.220(a). In addition, the Fifteenth Court of Appeals has exclusive appellate jurisdiction over appeals from the business court, as well as

over certain cases involving an arm or agent of the executive branch or challenging the constitutionality or validity of a state statute or rule. *See id.* §§ 22.220(d), 25A.007. It is undisputed that the appeal at issue here is within the Fifteenth Court of Appeals' general appellate jurisdiction, not its exclusive jurisdiction.

In creating the Fifteenth Court of Appeals, the legislature directed the Supreme Court of Texas to adopt rules for "transferring an appeal *inappropriately* filed in the Fifteenth Court of Appeals to a court of appeals with jurisdiction over the appeal." TEX. GOV'T CODE § 73.001(c)(1) (emphasis added). The resulting rule provides a procedure for transferring an appeal "*improperly* taken to the Fifteenth Court of Appeals." *See* TEX. R. APP. P. 27a(b)(1)(A) (emphasis added).

The appellees have moved to transfer the appeal to the First or Fourteenth Court of Appeals on the ground that the appeal does not lie within the Fifteenth Court of Appeals' exclusive jurisdiction and, contrary to the appellants' contention, the appeal is not "aligned with [the Fifteenth Court of Appeals'] specialization in complex business disputes." Thus, we understand the appellees' position to be, first, that an "inappropriately filed" appeal is one over which the Fifteenth Court of Appeals lacks exclusive jurisdiction, and second, that this appeal does not require the Court's specialized expertise in complex business disputes. We agree with both of those contentions.

A. The appeal was inappropriately filed in, or improperly taken to, the Fifteenth Court of Appeals.

Neither the legislature nor the Supreme Court of Texas has identified the characteristics of an appeal "inappropriately filed" in, or "improperly taken" to, the Fifteenth Court of Appeals so as to make the appeal subject to transfer. After considering the various possibilities, we conclude that the only construction that makes sense is that an appeal is inappropriately filed in the Fifteenth Court of Appeals if that court lacks exclusive jurisdiction over it.

The Supreme Court of Texas has not determined whether the expression "exclusive jurisdiction," as used in S.B. 1045, entails subject-matter jurisdiction such that the resolution of the appeal by a different intermediate appellate court would be void. *See In re Dallas County*, 697 S.W.3d 142, 161 n.11 (Tex. 2024) (orig. proceeding). It has stated, however, that "[i]f a case that *should* be transferred to the Fifteenth Court is retained and resolved by a different court of appeals, without objection from either party or that court, it would amount to an error of law." *Id.* Because an "inappropriately filed" appeal is properly subject to transfer,

and the transfer would not constitute an error of law, an "inappropriately filed" appeal must be one over which the Fifteenth Court of Appeals lacks exclusive jurisdiction.

Referring to appeals over which the Fifteenth Court of Appeals has only general jurisdiction as "inappropriately filed" with that court makes sense when one considers that an average of around 5,000 civil cases are filed in the Texas intermediate appellate courts every year, many of which are appeals[1]—and the Fifteenth Court of Appeals has concurrent jurisdiction over every one of them. If appeals over which the Fifteenth Court of Appeals has only concurrent jurisdiction can properly be filed in that court, then those cases cannot be transferred as "inappropriately filed." The appeals would remain with the Fifteenth Court of Appeals, and the Supreme Court of Texas is specifically prohibited from transferring appeals from the Fifteenth Court of Appeals for docket equalization purposes. This would be an unworkable situation.

It is therefore appropriate and proper to file a civil appeal in the regional intermediate appellate court rather than in the Fifteenth Court of Appeals, absent some reason such as exclusive jurisdiction or an agreement between the parties. Considering the alternative, it makes sense that the absence of exclusive jurisdiction in the Fifteenth Court of Appeals is both a necessary and sufficient basis on which to determine that a civil appeal was "inappropriately filed" in that court.

Because the Fifteenth Court of Appeals lacks exclusive jurisdiction over this appeal, we conclude that the motion to transfer *can* properly be granted, and we turn next to the question of whether the remaining prerequisites to transfer have been satisfied.

B. The appellants failed to raise meritorious objections, and this Court agrees to the transfer.

The Fifteenth Court of Appeals may transfer an improperly taken appeal on the motion of a party, or on its own motion, if two conditions are met: (1) no party files a timely, meritorious objection to the transfer; and (2) the transferee court agrees to the transfer. *See* TEX. R. APP. P. 27a.

The first condition is met, because although the appellants in this case timely responded to the motion to transfer, their objections are not meritorious.

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[1] See Annual Statistical Report for the Texas Judiciary, FY 2023, https://www.txcourts.gov/statistics/annual-statistical-reports/2023/. The report does not distinguish appeals from original proceedings.

The appellants first acknowledge that the Fifteenth Court of Appeals does not have exclusive jurisdiction over the appeal, but that is undisputed.

Second, the appellants state that the appellees do not, and cannot, rely in their motion to transfer on the ground that this appeal was inappropriately filed or improperly taken to the Fifteenth Court of Appeals. For the reasons previously explained, we disagree. The appellees' arguments are based on the assumption that a civil appeal is improperly taken to the Fifteenth Court of Appeals if the Court lacks exclusive jurisdiction. That assumption is correct.

Third, the appellants state that if appellate courts have concurrent jurisdiction, then the appellants choose the court to which they appeal (unless the courts with concurrent jurisdiction are the First and Fourteenth Courts of Appeals, to which appeals are randomly assigned). But that is not a meritorious objection as applied to cases filed in the Fifteenth Court of Appeals. Under the rule governing transfers, an appeal "improperly taken to the Fifteenth Court of Appeals" remains where it was filed unless the court or a party seeks a transfer. *See* TEX. R. APP. P. 27a. If that happens, then as stated above, the appeal may be transferred if there is no timely meritorious objection and the transferee court agrees to the transfer. If the mere fact that the appellant chose to file the appeal in the Fifteenth Court of Appeals were a meritorious objection to transfer—that is, if the appellate courts were simply to defer to the appellants' choice to take an appeal to the Fifteenth Court of Appeals—then the Fifteenth Court of Appeals could not transfer any case. The purpose of the motion to transfer is to override the appellants' choice.

The remainder of the appellants' response are not truly objections. They clarify that they do not contend that the case, if brought today, could properly have been litigated in a Texas business court, and they state that they will address the merits of the appeal in their brief. Finally, the appellants suggest that the Fifteenth Court of Appeals carries the motion to transfer with the case or set a special briefing schedule and hear argument on the motion. But, these suggestions are incompatible with Texas Rule of Appellate Procedure 27a, which governs the procedure for deciding the motion to transfer.

Because none of these is a meritorious objection, and because we agree to the transfer of this appeal to the Fourteenth Court of Appeals, both preconditions to transfer are satisfied.

The only remaining question is whether the Fifteenth Court of Appeals should grant the motion.

C. Motions to transfer appeals improperly taken to the Fifteenth Court of Appeals should be routinely granted.

Texas Rule of Appellate Procedure 27a says that the Fifteenth Court of Appeals "may" transfer an appeal where, as here, all preconditions for transfer are satisfied. The use of the word "may" indicates that the decision to transfer is discretionary. S.B. 1045 and Rule 27a provide little guidance on how that discretion is to be exercised, but we know that "a motion to [a court's] discretion is a motion, not to its inclination, but to its judgment; and its judgment is to be guided by sound legal principles." *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 139, 126 S. Ct. 704, 710, 163 L. Ed. 2d 547 (2005).

The question then becomes one of identifying the legal principles that should guide the decision to transfer (or in the transferee court's position, the decision to refuse a transfer), so that similar results are reached in similar appeals. And inasmuch as the Fifteenth Court of Appeals shares concurrent jurisdiction over civil appeals with every other intermediate appellate court, it seems best to grant a motion to transfer an inappropriately filed appeal absent some specific reason to deny the motion.

This approach certainly would be more favorable to the Fifteenth Court of Appeals' mission. The Court was created so that appeals of statewide importance would be decided by justices selected on a statewide basis rather than from a more limited geographic region. The Court exercises exclusive jurisdiction over certain kinds of civil appeals, and because it has general jurisdiction, it also can decide appeals that are companion cases to those within its exclusive jurisdiction, or that should be consolidated with them, or have some other relationship to such cases. Equally important, the Fifteenth Court of Appeals' general jurisdiction allows it to hear appeals submitted to it by agreement of parties wishing to avail themselves of the Court's specialized expertise in complex business disputes, regardless of whether the appeal relates to a matter within the Court's exclusive jurisdiction.

But although the Fifteenth Court of Appeals can decide every civil appeal that another intermediate appellate court can, that is not reason enough to do so.

The First through Fourteenth Courts of Appeals can be expected to routinely transfer to the Fifteenth Court of Appeals those civil appeals over which that court

has exclusive jurisdiction and to accept transfers from that court, absent some valid reason to decline transfer of a specific case. If only as a matter of resource allocation, the Fifteenth Court of Appeals should likewise routinely grant motions to transfer, absent a valid reason to deny the motion in a specific case.

The deadlines that apply to a motion to transfer support this conclusion. When a motion to transfer is contested, the transferor must notify the transferee court of its decision, whereupon the transferee court has just twenty days to respond, "explaining whether it agrees with the transferor court's decision." TEX. R. APP. P. 27a(c)(1)(C). If the courts disagree, then the transferor court must forward to the Texas Supreme Court the documents required for that court to decide the motion. TEX. R. APP. P. 27a(d). The documents to be forwarded include a letter explaining the transferor court's decision, and absent exceptional circumstances, the documents are to be submitted to the Supreme Court within twenty days after receipt of the transferee court's letter. *Id.* The brief twenty-day deadlines for each court to explain its position is a further indication that a contested motion to transfer should be granted, and the transfer accepted, unless there is some reason to do otherwise.

Inasmuch as we can identify no reason why this appeal should not be governed by such a general rule, we respectfully disagree with the Fifteenth Court of Appeals' decision to deny the motion.

Respectfully submitted,

Tracy Christopher

Chief Justice Tracy Christopher
Fourteenth Court of Appeals

cc: Kelley Clark Morris (DELIVERED VIA E-MAIL)
David Funderburk (DELIVERED VIA E-MAIL)
Jordan Elton (DELIVERED VIA E-MAIL)
Diane S. Davis (DELIVERED VIA E-MAIL)
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Appendix D

Court of Appeals
First District
301 Fannin Street
Houston, Texas 77002-2066

Monday, December 23, 2024

The Honorable Christopher A. Prine
Clerk of the Fifteenth Court of Appeals
P.O. Box 12852
Austin, Texas 78711

RE: Response to the Fifteenth Court of Appeals' Denial of Appellees' Motion to Transfer to the First or Fourteenth Court of Appeals

Court of Appeals Number: 15-24-00123-CV
Trial Court Case Number: 22-CV-0360

Style: Patrick Kelley and PMK Group, LLC v. Richard Homminga and Chippewa Construction Co., LLC

Dear Mr. Prine:

This letter is being submitted to the Fifteenth Court of Appeals pursuant to the transfer procedure set forth in Texas Rule of Appellate Procedure 27a(c)(1)(C). As set forth below, the First Court of Appeals agrees with the decision of the Fifteenth Court to retain this case and deny appellees' motion to transfer to either the First or Fourteenth Court of Appeals. *See* TEX. R. APP. P. 27a(c)(1)(C).

Background

Appellants Patrick Kelly and PMK Group, LLC filed this appeal in the Fifteenth Court of Appeals on the basis that it falls within that court's general appellate jurisdiction. *See* TEX. GOV'T CODE §§ 22.201(p), 22.220(a).

Appellees Richard Homminga and Chippewa Construction Co., LLC objected and moved to transfer the case to either First or Fourteenth Court of Appeals. *See* TEX. R. APP. P. 27a(c)(1)(A).

Appellees argued that this appeal does not fall within the Fifteenth Court's exclusive appellate jurisdiction and therefore it was "inappropriately filed" or "improperly taken" in that court under the transfer statute (Government Code section 73.001(c)) and the corresponding transfer rule (Texas Rule of Appellate Procedure 27a(b))[1]. *See* TEX. GOV'T CODE § 73.001(c)(1); TEX. R. APP. 27a(b)(1); *see also* TEX. GOV'T CODE § 22.220(d)(1), (2).

According to appellees, under the transfer statute and rule, a case that does not invoke the Fifteenth Court of Appeals' exclusive jurisdiction is "inappropriately filed" or "improperly taken" in that court. Thus, any case involving the Fifteenth Court's general appellate jurisdiction can never be "appropriately filed" or "properly taken" there—and must be transferred.

The Fifteenth Court of Appeals denied appellees' motion to transfer. *See* TEX. R. APP. P. 27a(c)(1)(B). Chief Justice Brister would have granted the motion.

In accordance with Rule 27a(c)(1)(C), the First Court of Appeals now explains why it agrees with the Fifteenth Court of Appeals' decision. *See* TEX. R. APP. P. 27a(c)(1)(C).

Reasons for Agreeing with the Fifteenth Court of Appeals' Decision

It is undisputed that the provisions setting forth the appellate jurisdiction of the Fifteenth Court of Appeals are unambiguous. *See* TEX. GOV'T CODE §§ 22.201(a), (p); 22.220(a).

They provide that "[t]he state is organized into 15 courts of appeals districts with a court of appeals in each district." TEX. GOV'T CODE §§ 22.201(a). And

[1] Section 73.001(c)(1) and (2) instructs the Supreme Court of Texas to adopt rules for "transferring an appeal *inappropriately filed* in the Fifteenth Court to a court of appeals with jurisdiction over the appeals" and for "transferring to the Fifteenth Court of Appeals from another court of appeals the appeals over which the Fifteenth Court of Appeals has exclusive jurisdiction" *See* TEX. GOV'T CODE § 73.001(c)(1), (2) (Emphasis added). Rule 27a is the resulting rule and uses the phrase "*improperly taken*." TEX. R. APP. P. 27a(b)(1)(A) (Emphasis added).

"[t]he Fifteenth Court of Appeals District is composed of all counties in this state." TEX. GOV'T CODE §§ 22.201(p).

Government Code section 22.220 then states that, except for cases under the Fifteenth Court's exclusive jurisdiction, "each court of appeals has appellate jurisdiction of *all civil cases within its district* of which the district courts or county courts have jurisdiction when the amount in controversy or the judgment rendered exceeds $250, exclusive of interest and costs." TEX GOV'T CODE § 22.220(a) (Emphasis added).

Because this statutory language is unambiguous, we must interpret it according to the plain language chosen by the Legislature. *City of Denton v. Grim*, 694 S.W.3d 210, 214 (Tex. 2024); *Molinet v. Kimberly*, 356 S.W.3d 407, 414 (Tex. 2011). And we must presume that the Legislature intended for each of the statute's words to have a purpose. That the Legislature purposefully omitted words it did not include—and purposefully included the words it did include. *See Bexar Appraisal District v. Johnson*, 691 S.W.3d 844, 847 (Tex. 2024).

Based on these principles, the plain language of Government Code section 22.220 shows that the Fifteenth Court of Appeals' appellate jurisdiction is statewide. *See In re Dallas County*, 697 S.W.3d 142, 159 (Tex. 2024). And that its exclusive jurisdiction is not its only appellate jurisdiction. The statutory text also states that each court of appeals, which includes the Fifteenth Court of Appeals, has general appellate jurisdiction over "*all civil cases within its district* of which the district courts or county courts have jurisdiction when the amount in controversy or the judgment rendered exceeds $250, exclusive of interest and costs." TEX GOV'T CODE § 22.220(a) (Emphasis added). Thus, as currently written, Government Code section 22.220 gives the Fifteenth Court of Appeals statewide exclusive appellate jurisdiction and general appellate jurisdiction as described in the statute.

Indeed, as our supreme court has noted:

> *The Fifteenth Court, like all other courts of appeals, generally has appellate jurisdiction over cases decided by the district and county courts within its district.* Since the Fifteenth Court's district is statewide, the court may exercise appellate jurisdiction over cases from any district and county court, subject to legislative restriction.

In re Dallas County, 697 S.W.3d at 159 (Emphasis added).

It is settled, as a general rule, that a case is "properly filed" in a court when that court has jurisdiction to hear it. And when more than one court has jurisdiction to hear a case, the issue becomes one of dominant jurisdiction. *See In re Puig*, 351 S.W.3d 301, 305-06 (Tex. 2011). Thus, it necessarily follows that when a civil appeal comes within the Fifteenth Court's general appellate jurisdiction (as described in Government Code section 22.220(a))—that civil appeal can be "properly filed" in the Fifteenth Court of Appeals. Any other reading of the statute requires us to ignore its plain language and impermissibly substitute our meaning for it over that of the Legislature's.

It has been argued by appellees that following the plain statutory language is unworkable and will lead to an overburdened docket for the Fifteenth Court of Appeals. We are not in a position to know whether that is in fact true, but it is, in any event, a matter of public policy that belongs to the Legislature. *See* TEX. CONST. art. 2, § 1. Judicial policy preferences should play no role in statutory interpretation. *See McLane Champions, LLC v. Houston Baseball Partners LLC*, 671 S.W.3d 907, 918 (Tex. 2023).

Additionally, as referenced above, appellees have argued that the transfer statute (Government Code section 73.001(c)), and the corresponding transfer rule (Texas Rule of Appellate Procedure 27a(b)), should be construed as meaning that an "inappropriately filed" or "improperly taken" case in the Fifteenth Court of Appeal is only one in which the Fifteenth Court lacks exclusive jurisdiction.

Based on that, we understand appellees' position to be that any case invoking the Fifteenth Court's general appellate jurisdiction can never be "appropriately filed" or "properly taken" in that court. And, further, that this meaning of the transfer statute and rule should be used to construe section 22.220 of the Government Code as providing only for exclusive jurisdiction to the Fifteenth Court of Appeals. *See* TEX GOV'T CODE § 22.220(a).

Under that view, we would have to disregard the unambiguous language in section 22.220(a) that provides—the Fifteenth Court of Appeals has general appellate jurisdiction over "*all civil cases within its district* of which the district courts or county courts have jurisdiction when the amount in controversy or the judgment rendered exceeds $250, exclusive of interest and costs." TEX GOV'T CODE § 22.220(a) (Emphasis added). We may not do so. We are bound by the

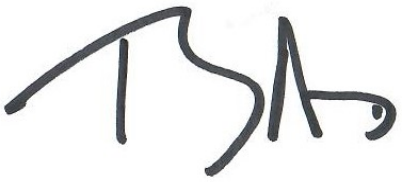
plain meaning of the language used by the Legislature. *City of Denton*, 694 S.W.3d at 214. And because section 22.220(a) is unambiguous, we may not change that language (or its meaning) by looking to a suggested meaning for a different statute and rule. *See Bexar Appraisal District*, 691 S.W.3d at 847.

If the Legislature had intended for the Fifteenth Court of Appeals to have only exclusive jurisdiction—and not also general appellate jurisdiction—it certainly could have written Government Code section 22.220(a) that way. But it did not include that "legislative restriction" in the statute. *See In re Dallas County*, 697 S.W.3d at 159. And "we may not seek a different result by considering what unexpressed purposes, policy considerations, or interests the Legislature may have had in mind" in prescribing the jurisdiction of the Fifteenth Court of Appeals. *See Bonsmara Natural Beef Company, LLC v. Hart of Texas Cattle Feeders, LLC*, 603 S.W.3d 385, 391 (Tex. 2020) ("Separation of powers demands that judge-interpreters be sticklers …about not rewriting statutes under the guise of interpreting them.").

Accordingly, if the Legislature wants to rewrite Government Code section 22.220(a) to restrict the appellate jurisdiction of the Fifteenth Court of Appeals to be only its exclusive jurisdiction—it can do so during the next session that is about to start. But, again, we may not do so. *Id*.

Thus, for all for these reasons, the First Court of Appeals agrees with the decision of the Fifteenth Court to retain this case and deny appellees' motion to transfer to either the First or Fourteenth Court of Appeals.[2]

Sincerely,



Terry Adams
Chief Justice
First Court of Appeals

[2] Justice Gunn, not sitting.

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Appendix E

Court of Appeals

Thirteenth District of Texas

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CORPUS CHRISTI, TEXAS 78401
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361-888-0794 (FAX)

HIDALGO COUNTY
COURTHOUSE ANNEX III
100 E. CANO, 5TH FLOOR
EDINBURG, TEXAS 78539
956-318-2405 (TEL)
956-318-2403 (FAX)
www.txcourts.gov/13thcoa

December 23, 2024

The Honorable Christopher A. Prine
Clerk of the Court
Fifteenth Court of Appeals
P.O. Box 12852
Austin, Texas 78711
DELIVERED VIA EMAIL

Re: Fifteenth Court of Appeals No. 15-24-00115-CV
Trial Court Cause No. 16-04-23,735
Style: *Devon Energy Production Company, L.P.; Devon Energy Corporation; BPX Operating Company, and BPX Production Company v. Robert Leon Oliver, et al.*

Dear Mr. Prine:

On December 6, 2024, you notified us that appellees Robert Leon Oliver, *et al.*, filed a motion to transfer the above-referenced case to the Thirteenth Court of Appeals on the ground that the Fifteenth Court does not have exclusive intermediate appellate jurisdiction over the appeal. *See* TEX. GOV'T CODE ANN. § 22.220(d)(1), (2). You further advised us that the Fifteenth Court has decided to deny the motion; however, Chief Justice Brister would grant the motion to transfer. *See* TEX. R. APP. P. 27a(c)(1)(B). The justices of the Thirteenth Court unanimously disagree with the decision to deny transfer of the above-referenced appeal, although our individual reasoning may differ in some respects. *See id.* R. 27a(c)(1)(C). We provide the following to briefly explain our decision.

I. BACKGROUND

Appellants filed a notice of appeal in the Fifteenth Court from a final judgment rendered in the 135th Judicial District of De Witt County, Texas. Appellants reasoned that since the Fifteenth Court's "district is statewide," and their appeal is not subject to legislative restriction, the Fifteenth Court possesses "concurrent appellate jurisdiction" over their appeal. *See In re Dallas County*, 697 S.W.3d 142, 159 (Tex. 2024) (orig. proceeding) ("Since the Fifteenth Court's district is statewide, the court may exercise appellate jurisdiction over cases from any district and county court, subject to legislative restriction.").

Pursuant to Rule 27a(c)(1)(A), appellees filed a motion to transfer the appeal to the Thirteenth Court on grounds that the case subject to appeal did not fall within the statutory requirements for an appeal to the Fifteenth, and that while the Fifteenth possesses limited exclusive jurisdiction over certain appeals, it does not possess statewide concurrent jurisdiction over all

appeals. *See* TEX. R. APP. P. 27a(c)(1)(A). Appellants thereafter filed an objection to the motion to transfer reiterating and expanding on their argument that the Fifteenth Court has concurrent appellate jurisdiction over all civil cases within the state. *See* TEX. GOV'T CODE ANN. § 22.220(a). Other than their contention that the Fifteenth Court possesses concurrent jurisdiction over the appeal, appellants offer no reason why their appeal should be heard in that court.

II. STATUTORY CONSTRUCTION

As a liminal matter, our rules of statutory construction cast doubt on appellants' contention regarding the interpretation of the government code. Section 22.220(a) of the government code states, "Except as provided by Subsection (d), each court of appeals has appellate jurisdiction of all civil cases within its district of which the district courts or county courts have jurisdiction when the amount in controversy or the judgment rendered exceeds $250, exclusive of interest and costs." *Id.* Subsection (d) explains that the Fifteenth Court "has exclusive intermediate appellate jurisdiction" over certain specified matters "arising out of or related to a civil case." *Id.* § 22.220(d).

Here, appellants assert that the Fifteenth Court has "concurrent jurisdiction" over the appeal because each court of appeals has appellate jurisdiction of all civil cases within its district, see *id.* § 22.220(a), and the "Fifteenth Court of Appeals District is composed of all counties in this state." *Id.* § 22.201(p). However, appellants' interpretation renders the phrase "Except as provided by Subsection (d)" in § 22.220(a) superfluous. In other words, if the Fifteenth Court's jurisdiction extends to all cases from any district, then that language is unnecessary and of no effect. It is a fundamental rule of statutory construction that we must endeavor to interpret a statute in a manner that does not render any part of it surplusage. *Whole Woman's Health v. Jackson*, 642 S.W.3d 569, 581 (Tex. 2022); *see In re Tex. Educ. Agency*, 619 S.W.3d 679, 688 (Tex. 2021) (orig. proceeding) ("[W]e endeavor to afford meaning to all of a statute's language so none is rendered surplusage.").

Appellants' interpretation is also arguably inconsistent with the statutory framework supporting the Fifteenth Court, which is unlike that pertaining to the other intermediate appellate courts. For instance, the Fifteenth Court's original jurisdiction does not extend statewide and "is limited to writs arising out of matters over which the court has exclusive intermediate appellate jurisdiction under Section 22.220(d)." TEX. GOV'T CODE ANN. § 22.221(a), (b), (c), (c-1).

III. LEGISLATIVE HISTORY

The legislative history of § 22.220(d) does not support the conclusion that its drafters intended the Fifteenth Court to exercise concurrent jurisdiction over all civil cases statewide. The legislature created the Fifteenth Court to address appeals in civil cases of "statewide significance" which require the application of "highly specialized precedent in complex areas of law including sovereign immunity, administrative law, and constitutional law." *See* S. Comm. on Jurisprudence, Bill Analysis, Tex. S.B. 1045, 88th Leg., R.S. (substituted, Mar. 24, 2023). Thus, the statement of intent for S.B. 1045 refers to the creation of the Fifteenth Court "with jurisdiction over certain civil cases." *See id.* Construing § 22.220(d) to encompass all civil appeals, regardless of whether they are of statewide significance or require particular expertise, is inconsistent with the legislative objective in creating a specialized court. *See City of Fort Worth v. Pridgen*, 653 S.W.3d 176, 184 (Tex. 2022) ("In interpreting statutes, we look not only to the statutory language, but also to the objective the Legislature sought to attain and the consequences of a particular construction.").

We further note that the supreme court has already identified that the bill resulting in the Fifteenth Court's creation "does not remotely seek a return to that distant past with one appellate court for the whole State." *In re Dallas County*, 697 S.W.3d at 153. Instead, the bill "involve[d]

restrictions that are more significant, *both for the Fifteenth Court* and for the regional courts of appeals." *Id.* at 161 (emphasis added).

IV. PRUDENTIAL CONSIDERATIONS

There are several compelling prudential reasons why the Fifteenth Court should transfer the appeal to the Thirteenth Court. First, as a procedural matter, appellants offer no reason why the Fifteenth Court of Appeals should hear their appeal other than the generalized concept that the Fifteenth Court has concurrent jurisdiction over the appeal. For the Fifteenth Court to exercise jurisdiction over an appeal for which it lacks exclusive jurisdiction, there should be some compelling reason for it to do so. For instance, the Fifteenth Court may choose to exercise jurisdiction over related or companion cases, or cases filed there by agreement of the parties, or cases which would benefit from that court's special expertise in complex disputes. None of those circumstances are present here. Further, it should be the appellants' burden to provide the Fifteenth Court with appropriate pleadings which enable it to "ascertain the matters of fact that are necessary to the proper exercise of its jurisdiction." TEX. GOV'T CODE ANN. § 22.220(c). Appellants have failed to do so in this case.

Second, the Fifteenth Court's exercise of jurisdiction over a "standard" appeal, such as this one, which neither falls within its exclusive jurisdiction nor its area of expertise, would impair the effectiveness of that Court by diverting its resources from those cases requiring its expertise. *See* S. Comm. on Jurisprudence, Bill Analysis, Tex. S.B. 1045, 88th Leg., R.S. (substituted, Mar. 24, 2023).

Third, allowing all civil appeals statewide to be filed either in a court of appeals district or in the Fifteenth Court of Appeals would increase uncertainty in litigation insofar as the parties would be unable to predict the appellate trajectory of their cases. It could also potentially overwhelm that court with innumerable filings. In this regard, we note that the supreme court may not transfer any case "properly" filed in the Fifteenth Court to another court for the purpose of docket equalization. TEX. GOV'T CODE ANN. § 73.001(b). Moreover, the ability of litigants to indiscriminately pick and choose which appellate court to proceed in would likely engender forum shopping at the appellate level.

V. CONCLUSION

Based upon the foregoing, the Thirteenth Court respectfully disagrees with the Fifteenth Court's decision to deny the motion to transfer in this case. Within twenty days after receiving this notice, and as soon as practicable, please forward a copy of this letter, along with the other requisite items, to the Supreme Court of Texas. *See* Tex. R. APP. P. 27a(d)(1)(A), (2). We further note that it may be helpful for the Fifteenth Court and the Supreme Court to address and define those factors relevant to the Fifteenth Court's exercise of jurisdiction.

Yours truly,

Dori Contreras, Chief Justice

cc: David W. Jones (DELIVERED VIA EMAIL)
Gregg Laswell (DELIVERED VIA EMAIL)

Jane Webre (DELIVERED VIA EMAIL)
Michael Sheppard (DELIVERED VIA EMAIL)
Marcus Schwartz (DELIVERED VIA EMAIL)

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Appendix F

FILE COPY

Fifteenth Court of Appeals

P.O. Box 12852, AUSTIN, TEXAS 78711
www.txcourts.gov/15thcoa.aspx/
512-463-1610

Monday, January 6, 2025
(Corrected Letter)

The Honorable Blake A. Hawthorne
Clerk of Court
The Supreme Court of Texas
PO Box 12248
Austin, TX 78711-2248
* DELIVERED VIA E-MAIL *

RE: Court of Appeals Number: 15-24-00123-CV
Trial Court Case Number: 22-CV-0360

Style: Patrick Kelley and PMK Group, LLC
v. Richard Homminga and Chippewa Construction Co., LLC

Dear Mr. Hawthorne:

Appellees Richard Homminga and Chippewa Construction Co., LLC filed a motion to transfer this appeal to the First or Fourteenth Court of Appeals on the ground that this Court does not have exclusive intermediate appellate jurisdiction. *See* Tex. Gov't Code § 22.220(d)(1), (2). The Fifteenth Court of Appeals decided to deny the motion with Chief Justice Brister noting he would grant the motion. *See* Tex. R. App. P. 27a(c)(1)(B). This Court notified the First and Fourteenth Courts of Appeals of our decision to deny appellees' motion and requested that each court file a letter in this Court stating whether it agreed with the Fifteenth Court of Appeals' decision. *See* Tex. R. App. P. 27a(c)(1)(C).

On December 16, 2024, this Court received the enclosed letter from Chief Justice Christopher of the Fourteenth Court of Appeals explaining why the Fourteenth Court disagrees with this Court's decision to deny the motion to transfer.

On December 23, 2024, this Court received the enclosed letter from Chief Justice Adams of the First Court of Appeals explaining why the First Court agrees with this Court's decision to deny the motion to transfer.

Because one of the transferee courts disagrees with the Fifteenth Court's decision on the motion, in accordance with Texas Rule of Appellate Procedure 27a(d)(1), we enclose Appellees' motion, Appellants' objection, letters from the transferee courts, and an explanation of this Court's decision on the motion. Please present this transfer motion, along with the recommendations of the First, Fourteenth, and Fifteenth Courts of Appeals, to the Supreme Court for consideration.

The Fifteenth Court of Appeals Recommendation to Deny the Motion to Transfer, with Chief Justice Brister Voting to Grant.

The instant appeal is from a Galveston County final judgment awarding over $1 million in damages on claims pertaining to a construction dispute over alleged defective work on a single-family home.

Appellees Richard Homminga and Chippewa Construction Co., LLC filed a motion to transfer this appeal to the First or Fourteenth Court of Appeals pursuant to Texas Rule of Civil Procedure 27a's procedure for appeals "improperly taken" to the Fifteenth Court of Appeals. *See* Tex. R. App. P. 27a(b)(1) ("The transfer process in this rule applies to appeals: (A) improperly taken to the Fifteenth Court of Appeals…."). Appellees contend that this appeal was "improperly taken" to the Fifteenth Court because this appeal does not fall within this Court's exclusive appellate jurisdiction and no other source of law "mandates" jurisdiction in this Court.

Appellants Patrick Kelley and PMK Group, LLC oppose the motion to transfer. They acknowledge that this appeal does not fall within this court's exclusive intermediate appellate jurisdiction. They argue that the appeal was appropriately filed in the Fifteenth Court because the Fifteenth Court possesses general civil appellate jurisdiction pursuant to Texas Government Code Section 22.220(d)(3) and the Legislature has not deprived Appellants of the choice of

where to file when geographic districts overlap.

At the outset, we first examine whether this Court has jurisdiction over the appeal at issue. *Hous. Mun. Emps. Pension Sys. v. Ferrell*, 248 S.W.3d 151, 158 (Tex. 2007) ("Courts always have jurisdiction to determine their own jurisdiction."); *see Abbott v. Mexican Am. Legis. Caucus*, 647 S.W.3d 681, 699 (Tex. 2022).

Texas Government Code Section 22.220, entitled "Civil Jurisdiction," states that "[t]he Court of Appeals for the Fifteenth Court of Appeals District has exclusive intermediate appellate jurisdiction" over particular "matters arising or related to a civil case." Tex. Gov't Code § 22.220(d). This subsection, however, is not the only provision addressing the Fifteenth Court's appellate jurisdiction. Subsection (a) states that "[e]xcept as provided by Subsection (d), each court of appeals has appellate jurisdiction of all civil cases within its district of which the district courts or county courts have jurisdiction when the amount in controversy or the judgment rendered exceeds $250, exclusive of interest and costs." *Id.* § 22.220(a). Although Subsection (d) divests the other intermediate courts of jurisdiction over the categories of cases that fall within the Fifteenth Court's exclusive jurisdiction, nothing in Subsection (d) purports to divest the Fifteenth Court of the general civil intermediate appellate jurisdiction authorized by Subsection (a). Consequently, this Court still possesses general appellate jurisdiction over civil cases that fall within our district, which encompasses "all counties in the state." Tex. Gov't Code § 22.201(p).

Appellees do not dispute that this case falls within this Court's general civil intermediate appellate jurisdiction. Rather, Appellees point to Texas Government Code Section 73.001(c) and Texas Rule of Appellate Procedure 27a as providing authority to transfer this case to the First or Fourteenth Court of Appeals. Rule 27a is authorized by Government Code section 73.001(c), which directs the Texas Supreme Court to adopt rules for (1) transferring out "an appeal *inappropriately* filed in the Fifteenth Court of Appeals to a court of appeals with jurisdiction over the appeal"; and (2) transferring in those "appeals over which the Fifteenth Court has exclusive intermediate appellate jurisdiction under Section 22.220(d)." Tex. Gov't Code § 73.001(c) (emphasis added). According to Appellees, an appeal that is not within the Fifteenth Court's exclusive jurisdiction is "inappropriately" filed with the Fifteenth Court and should be transferred to one of the other fourteen Courts of Appeals.

We do not agree that civil appeals falling outside the bounds of this Court's exclusive jurisdiction are "inappropriately filed" in the Fifteenth Court as a categorical matter. The Texas Government Code does not define the term "inappropriately filed," but dictionary definitions can "help inform meaning." *In re Dallas Cnty.*, 697 S.W.3d 142, 156 (Tex. 2024). Merriam-Webster's Dictionary defines the word "inappropriate" to mean "unsuitable." *Inappropriate*, MERRIAM-WEBSTER'S DICTIONARY (11th ed. 2024). When the Legislature has determined that a certain type of matter is categorically unsuitable for resolution in Fifteenth

Court of Appeals, it has restricted this Court's jurisdiction to hear it. For example, the Legislature expressly divested the Fifteenth Court of jurisdiction in criminal actions. Tex. Code Crim. Pro. art. 4.01 ("The following courts have jurisdiction in criminal actions . . . Courts of appeals, other than the Court of Appeals for the Fifteenth Court of Appeals District."). The Legislature also restricted the original jurisdiction of the Court of Appeals to issuing writs "arising out of matters over which the court has exclusive intermediate appellate jurisdiction under Section 22.220(d)." Tex. Gov't Code § 22.221(c-1).

By contrast, the Legislature has not restricted the Fifteenth Court's civil appellate jurisdiction to only those matters falling within this Court's exclusive jurisdiction. Rather, the Legislature explicitly vested the Fifteenth Court with "appellate jurisdiction of *all civil cases* within its district . . . when the amount in controversy or the judgment rendered exceeds $250, exclusive of interest and costs." Tex. Gov't Code § 22.220(a) (emphasis added).[1] Accordingly, we conclude that civil appeals falling outside this Court's exclusive jurisdiction are not categorically unsuitable for resolution by our Court.

The question then becomes whether this particular appeal nevertheless was "inappropriately filed" in the Fifteenth Court, such that it should have been filed in the First or Fourteenth Courts of Appeals. Tex. Gov't Code § 73.001(c). We do not write on a blank slate in answering this question. Overlapping geographical appellate districts are a distinctive and unique feature of the Texas intermediate appellate system. James T. "Jim" Worthen, *The Organizational & Structural Development of Intermediate Appellate Courts in Texas, 1892-2003*, 46 S. TEX. L. REV. 33, 63–64 (2004) ("Texas has the only intermediate appellate system in the nation with overlapping geographical appellate districts."). This overlap has "been part of our system for a century and has survived multiple constitutional amendments without controversy." *In re Dallas Cnty.*, 697 S.W.3d at 158.

It is well settled that when multiple appellate courts have overlapping jurisdiction, the appellant can file in the court of its choosing so long as the Legislature has not restricted the appellant's choice. *In re A.B.*, 676 S.W.3d 112, 114 n.1 (Tex. 2023) (per curiam) ("When there is an option, an appellant selects the court of appeals by denoting it in the notice of appeal.") (citing Tex. Civ. Prac. & Rem. Code § 51.012 and Tex. R. App. P. 25.1(d)(4))); *see also Miles v. Ford Motor Co.*, 914 S.W.2d 135, 137 & n.4 (Tex. 1995) (appellants "are free to elect

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[1] Although, the Legislature has limited what appeals may be transferred out of the Fifteenth Court of Appeals pursuant to docket equalization, the Legislature has not exempted the Fifteenth Court from Texas's docket-equalization process authorized by Texas Government Code section 73.001(a) ("Except as provided by Subsection (b), the supreme court may order cases transferred from one court of appeals to another at any time that, in the opinion of the supreme court, there is good cause for the transfer."). Section 73.001(a) thus creates the potential for the Fifteenth Court to receive appeals from other courts that are not within the Fifteenth Court's exclusive appellate jurisdiction, indicating that such appeals are not unsuitable for resolution by the Fifteenth Court.

either appellate route" and "control the choice of forum except in the First and Fourteenth Districts, where cases have been randomly assigned since 1983"); *see* Tex. Gov't Code § 22.202(h) ("All civil and criminal cases directed to the First or Fourteenth Court of Appeals shall be filed in either the First or Fourteenth Court of Appeals as provided by this section. The trial clerk shall write the numbers of the two courts of appeals on identical slips of paper and place the slips in a container. When a notice of appeal or appeal bond is filed, the trial court clerk shall draw a number from the container at random, in a public place, and shall assign the case and any companion cases to the court of appeals for the corresponding number drawn.").

The Texas Supreme Court recently confronted this scenario when examining the overlapping jurisdiction of the Sixth and Twelfth Courts of Appeals. *In re A.B.*, 676 S.W.3d at 114 n.1. The Court recognized that because both courts have jurisdiction over appeals from Gregg County, the appellant could "notice an appeal" from the Gregg County ruling to "either court of appeals." *Id.* Because there is no statutory bar to filing a notice of appeal in the Fifteenth Court, Appellants were free to choose the Fifteenth Court so long as the appeal is within this Court's jurisdiction. We cannot find that the appeal was "improperly taken to" this Court simply because other Courts of Appeals would also have jurisdiction to hear it.

Appellees argue that the language of Rule 27a itself deprived Appellants of the choice of noticing their appeal to the Fifteenth Court. Specifically, Appellees point to Texas Rule of Appellate Procedure 27a's creation of a "transfer process" for appeals "*improperly* taken to the Fifteenth Court of Appeals." Tex. R. App. P. 27a(b) (emphasis added). Merriam-Webster's Dictionary defines "improper" as "not suited to the circumstances, design, or end." *Improper*, MERRIAM-WEBSTER'S DICTIONARY (11th ed. 2024). Appellees contend that the Fifteenth Court was designed to focus on the categories of appeals falling within its exclusive appellate jurisdiction, and that this purpose will be diminished if the docket is clogged with general jurisdiction appeals.

Ultimately, the best proof of the Legislature's design for the Fifteenth Court is the jurisdiction that the Legislature created. "As with any statute," we must apply the law "as written" and "refrain from rewriting text that lawmakers chose." *Creative Oil & Gas, LLC v. Lona Hills Ranch, LLC*, 591 S.W.3d 127, 133 (Tex. 2019) (quoting *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 443 (Tex. 2009)). In Chapter 220 of the Texas Government Code, the Legislature made a choice to vest the Fifteenth Court with exclusive jurisdiction over some categories of civil appeals and general jurisdiction over others. We are not free to accept the

former while deeming the latter improper.[2]

Accordingly, we recommend that the Texas Supreme Court deny the motion to transfer the appeal.

Chief Justice Brister's Dissent to the Fifteenth Court of Appeals' Recommendation to Deny the Motion to Transfer

I would not object to transferring this appeal to the First or Fourteenth Courts of Appeals. Because the Court chooses to do so, I respectfully dissent.

Government Code Section 73.001 provides three standards for the Supreme Court to transfer appeals:

- it may transfer cases among the courts of appeals at any time for good cause, TEX. GOV'T CODE § 73.001(a);
- it may not transfer out cases for docket equalization purposes that were "properly filed" in the Fifteenth Court, *id*. § 73.001(b); and
- it shall adopt rules for transferring out appeals "inappropriately filed" in the Fifteenth Court, and transferring in appeals within that court's exclusive jurisdiction, *id*. § 73.001(c).

Rule 27a adopted in response by the Supreme Court provides a back-and-forth process for parties and appellate courts to file letter briefs with the Supreme Court, which then decides the matter. But Rule 27a applies only to appeals "improperly taken" to the Fifteenth Court of Appeals, not those "inappropriately filed" in that court. *Compare* TEX. R. APP. P. 27a(b) *with* TEX. GOV'T CODE § 73.001(c). I have little to add to the opposing letters from my colleagues on three different courts, except to note that the synonyms "improper" and "inappropriate" do not always mean the same thing.

In many contexts, "improper" refers to something *not allowed*, while "inappropriate" refers to something that *ought not* to be allowed. For example, *improper* venue (governed by Chapter 15 of the Civil Practice and Remedies Code) and *inappropriate* venue (governed by Section 71.051 of the same code) are both governed by state law, but the former turns on what state law *allows*, while

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[2] Appellees argue that if the Fifteenth Court considers appeals within its general civil appellate jurisdiction to be "properly filed," then the Fifteenth Court's docket will quickly become overwhelmed with general-jurisdiction cases. This is because the Legislature has prohibited the Texas Supreme Court from transferring "any case or proceeding properly filed in the Court of Appeals for the Fifteenth Court of Appeals District to another court of appeals for the purpose of equalizing the dockets of the courts of appeals." Tex. Gov't Code § 73.001(b). The Legislature, however, retains constitutional authority to "prescribe[]" whatever "restrictions" on the Fifteenth Court the Legislature deems proper. Tex. Const. art. V, § 6(a). This "flexibility is a paramount value of Article V, § 6(a)" that frees the Legislature to adapt Texas's appellate system to address concerns like court congestion, just as the Legislature has done in the past. *See In re Dallas Cnty*., 697 S.W.3d at 158.

the latter depends on what *ought to be allowed* under the circumstances. Likewise, the rules governing harmful error and jury argument turn on whether a judgment or jury argument was "improper," not whether it was "inappropriate." *See* TEX. R. APP. P. 44.1(a)(1), 61.1(a); TEX. R. CIV. P. 324(c).

By contrast, the Government Code often uses "inappropriate" in cases requiring discretion. For example, it recognizes that historical markers may be "inappropriate" in some cemeteries (TEX. GOV'T CODE § 442.0061(c)), art popular in a prior era may be "inappropriate" in the Governor's Mansion today (*id.* § 442.0071(b)(3)), and state funding may be withheld from films that contain "inappropriate" content (*id.* § 485.022(e)). In this usage, the law recognizes that some things may not always be *improper*, yet may be barred as *inappropriate*.

Assuming the Legislature and the Supreme Court drafted both the statute and the rule here advisedly, I thus agree with the First Court of Appeals' letter that an appeal is not "*improperly* taken" to this Court when it falls within our general jurisdiction. Since we have concurrent general jurisdiction with our sister courts of this appeal, it was not "improperly taken," and Rule 27a does not seem to apply. *See* TEX. R. APP. P. 27a(b)(1)(A) ("The transfer process in this rule applies to appeals … *improperly* taken to the Fifteenth Court of Appeals.").

But I agree with the Fourteenth Court of Appeals' letter that this appeal was "inappropriately filed" in this Court under the present circumstances. The Legislature specified two primary categories of appeals *included* in this Court's exclusive jurisdiction, and fifteen that were *not*. *See* TEX. GOV'T CODE § 22.220(d)(1). This appeal falls into neither category, as it involves alleged construction defects in a single-family home in Galveston. But hundreds of others do, as all fifteen categories excluded from our exclusive jurisdiction nonetheless arguably fall within our general jurisdiction. But even if it would be *proper* to file such cases here, it would be *inappropriate* for this Court to entertain hundreds of appeals in family law, criminal law, and personal injury cases as they would inevitably shift time and attention away from our primary tasks.

Furthermore, allowing litigants to routinely opt into one court of appeals instead of another could create a practice that, "if tolerated, breeds disrespect for and threatens the integrity of our judicial system." *In re Bennett*, 960 S.W.2d 35, 40 (Tex. 1997). Appellants here do not argue that this appeal involves an issue of statewide importance or a complex business dispute, but only that it is "the appellant's choice where to take the appeal." I doubt the Legislature intended "appellant's choice" on a large scale to be appropriate. *See* TEX. GOV'T CODE § 22.202(h) (requiring random assignment of appeals between the First and Fourteenth Courts of Appeals).

The Legislature authorized the Supreme Court to adopt rules for transferring an appeal "inappropriately filed" here. *See* TEX. GOV'T CODE § 73.001(c). Whether Rule 27a does so or not does not matter in this case; given the First Court's agreement to receive this transfer, it will likely occur if we don't object to it under either Rule 27a or the previous practice governed by *Miles v. Ford Motor Co*., 914 S.W.2d 135, 137 n.2 (Tex. 1995). I would so inform the Supreme Court; as the Court does otherwise, I respectfully dissent.

Pursuant to the procedures for opposed transfers set forth in Rule 27a(d) of the Texas Rules of appellate Procedure, please present this transfer motion and responses, along with the recommendations of the Fifteenth, First and Fourteenth Courts of Appeal, to the Supreme Court for consideration.

Sincerely,

Christopher A. Prine, Clerk

cc: Bradley W. Snead (DELIVERED VIA E-MAIL)
The Honorable Deborah Young (DELIVERED VIA E-MAIL)
Angela Olalde (DELIVERED VIA E-MAIL)
Victoria Rutherford (DELIVERED VIA E-MAIL)

Appendix G

FILE COPY

Fifteenth Court of Appeals

P.O. Box 12852, AUSTIN, TEXAS 78711
www.txcourts.gov/15thcoa.aspx/
512-463-1610

Monday, January 13, 2025

The Honorable Blake A. Hawthorne
Clerk of Court
The Supreme Court of Texas
PO Box 12248
Austin, TX 78711-2248
* DELIVERED VIA E-MAIL *

RE: **Appellees' Opposed TRAP Rule 27a Motion to Transfer**
Court of Appeals Number: 15-24-00115-CV
Trial Court Case Number: 16-04-23,735

Style: Devon Energy Production Company, L.P.; Devon Energy Corporation; BPX Operating Company; and BPX Production Company v. Robert Leon Oliver, et al.

Dear Mr. Hawthorne:

Appellees Robert Leon Oliver, et al. filed a motion to transfer this appeal to the Thirteenth Court of Appeals on the ground that this Court does not have exclusive intermediate appellate jurisdiction. *See* Tex. Gov't Code § 22.220(d)(1), (2). The Fifteenth Court of Appeals decided to deny the motion with Chief Justice Brister noting he would grant the motion. *See* Tex. R. App. P. 27a(c)(1)(B). This Court notified the Thirteenth Court of Appeals of our decision to deny appellees' motion and requested that court to file a letter in this Court whether it agreed with the Fifteenth Court of Appeals' decision. *See* Tex. R. App. P. 27a(c)(1)(C).

On December 23, 2024, this Court received the enclosed letter from Chief Justice Contreras of the Thirteenth Court of Appeals explaining why the Thirteenth Court disagrees with this Court's decision to deny the motion to transfer.

Because the transferee court disagrees with the Fifteenth Court's decision on the motion, in accordance with Texas Rule of Appellate Procedure 27a(d)(1), we enclose Appellees' motion, Appellants' objection, the letter from the transferee court, and an explanation of this Court's decision on the motion. Please present this transfer motion, along with the recommendations of the Thirteenth and Fifteenth Courts of Appeals, to the Supreme Court for consideration.

* * *

The Fifteenth Court of Appeals Recommendation to Deny the Motion to Transfer, with Chief Justice Brister Voting to Grant.

The instant appeal is from a DeWitt County final judgment awarding damages for unpaid oil royalties, interest, and attorneys' fees over $1 million in damages on claims pertaining to an oil royalty dispute.

Appellees Robert Leon Oliver, et al. filed a motion to transfer this appeal to the Thirteenth Court of Appeals pursuant to Texas Rule of Civil Procedure 27a's procedure for appeals "improperly taken" to the Fifteenth Court of Appeals. *See* Tex. R. App. P. 27a(b)(1) ("The transfer process in this rule applies to appeals: (A) improperly taken to the Fifteenth Court of Appeals."). Appellees contend that this appeal was improperly taken to the Fifteenth Court because "this Court's state-wide jurisdiction is clearly limited to cases involving the parties and subject matter specified in [Texas Government Code] section 22.220(d)."

Appellants Devon Energy Production Company, L.P., Devon Energy Corporation, BPX Operating Company, and BPX Production Company oppose the motion to transfer. They argue that the appeal was appropriately filed in the Fifteenth Court because the Fifteenth Court possesses concurrent civil appellate jurisdiction pursuant to Texas Government Code Section 22.220(d)(3) and the Legislature has not deprived Appellants of the choice of where to file when geographic districts overlap.

At the outset, we first examine whether this Court has jurisdiction over the appeal at issue. *Hous. Mun. Emps. Pension Sys. v. Ferrell*, 248 S.W.3d 151, 158 (Tex. 2007) ("Courts always have jurisdiction to determine their own jurisdiction."); *see Abbott v. Mexican Am. Legis. Caucus*, 647 S.W.3d 681, 699 (Tex. 2022).

Texas Government Code Section 22.220, entitled "Civil Jurisdiction," states that "the Court of Appeals for the Fifteenth Court of Appeals District has exclusive

intermediate appellate jurisdiction" over particular "matters arising or related to a civil case." Tex. Gov't Code § 22.220(d). This subsection, however, is not the only provision addressing the Fifteenth Court's appellate jurisdiction. Subsection (a) states that "[e]xcept as provided by Subsection (d), each court of appeals has appellate jurisdiction of all civil cases within its district of which the district courts or county courts have jurisdiction when the amount in controversy or the judgment rendered exceeds $250, exclusive of interest and costs." *Id.* § 22.220(a). Although Subsection (d) divests the other intermediate courts of jurisdiction over the categories of cases that fall within the Fifteenth Court's exclusive jurisdiction, nothing in Subsection (d) purports to divest the Fifteenth Court of the general civil intermediate appellate jurisdiction authorized by Subsection (a). Consequently, this Court still possesses general appellate jurisdiction over civil cases that fall within our district, which encompasses "all counties in the state." Tex. Gov't Code § 22.201(p).

We further find that Texas Government Code Section 73.001(c) and Texas Rule of Appellate Procedure 27a do not authorize us to transfer this case to the Thirteenth Court of Appeals. Rule 27a is authorized by Government Code section 73.001(c), which directs the Texas Supreme Court to adopt rules for (1) transferring out "an appeal *inappropriately* filed in the Fifteenth Court of Appeals to a court of appeals with jurisdiction over the appeal"; and (2) transferring in those "appeals over which the Fifteenth Court has exclusive intermediate appellate jurisdiction under Section 22.220(d)." Tex. Gov't Code § 73.001(c) (emphasis added).

We cannot conclude that appeals falling outside the bounds of this Court's exclusive jurisdiction are "inappropriately filed" in the Fifteenth Court as a categorical matter. The Texas Government Code does not define the term "inappropriately filed," but dictionary definitions can "help inform meaning." *In re Dallas Cnty.*, 697 S.W.3d 142, 156 (Tex. 2024). Merriam-Webster's Dictionary defines the word "inappropriate" to mean "unsuitable." *Inappropriate*, Merriam-Webster's Dictionary (2024). When the Legislature has determined that a certain type of matter is categorically unsuitable for resolution in Fifteenth Court of Appeals, it has restricted this Court's jurisdiction to hear it. For example, the Legislature expressly divested the Fifteenth Court of jurisdiction in criminal actions. Tex. Code Crim. Pro. art. 4.01 ("The following courts have jurisdiction in criminal actions . . . Courts of appeals, other than the Court of Appeals for the Fifteenth Court of Appeals District."). The Legislature also restricted the original jurisdiction of the Court of Appeals to issuing writs "arising out of matters over which the court has exclusive intermediate appellate jurisdiction under Section 22.220(d)." Tex. Gov't Code § 22.221(c-1).

By contrast, the Legislature has not restricted the Fifteenth Court's civil appellate jurisdiction to only those matters falling within this Court's exclusive jurisdiction. Rather, the Legislature explicitly vested the Fifteenth Court with "appellate jurisdiction of *all civil cases* within its district . . . when the amount in

controversy or the judgment rendered exceeds $250, exclusive of interest and costs." Tex. Gov't Code § 22.220(a) (emphasis added).[1] Accordingly, we conclude that civil appeals falling outside this Court's exclusive jurisdiction are not categorically unsuitable for resolution by our Court.

The question then becomes whether this particular appeal nevertheless was "inappropriately filed" in the Fifteenth Court, such that it should have been filed in the Thirteenth Court of Appeals. Tex. Gov't Code § 73.001(c). We do not write on a blank slate in answering this question. Overlapping geographical appellate districts are a unique and distinctive feature of the Texas intermediate appellate system. James T. "Jim" Worthen, *The Organizational & Structural Development of Intermediate Appellate Courts in Texas*, 1892-2003, 46 S. TEX. L. REV. 33, 63–64 (2004) ("Texas has the only intermediate appellate system in the nation with overlapping geographical appellate districts."). This overlap has "been part of our system for a century and has survived multiple constitutional amendments without controversy." *In re Dallas Cnty.*, 697 S.W.3d at 158.

It is well settled that when multiple appellate courts have overlapping jurisdiction, the appellant can file in the court of its choosing so long as the Legislature has not restricted the appellant's choice. *In re A.B.*, 676 S.W.3d 112, 114 n.1 (Tex. 2023) (per curiam) ("When there is an option, an appellant selects the court of appeals by denoting it in the notice of appeal.") (citing Tex. Civ. Prac. & Rem. Code § 51.012 and Tex. R. App. P. 25.1(d)(4))); *see also Miles v. Ford Motor Co.*, 914 S.W.2d 135, 137 & n.4 (Tex. 1995) (appellants "are free to elect either appellate route" and "control the choice of forum except in the First and Fourteenth Districts, where cases have been randomly assigned since 1983"); *see* Tex. Gov't Code § 22.202 ("All civil and criminal cases directed to the First or Fourteenth Court of Appeals shall be filed in either the First or Fourteenth Court of Appeals as provided by this section. The trial clerk shall write the numbers of the two courts of appeals on identical slips of paper and place the slips in a container. When a notice of appeal or appeal bond is filed, the trial court clerk shall draw a number from the container at random, in a public place, and shall assign the case and any companion cases to the court of appeals for the corresponding number drawn.").

The Texas Supreme Court recently confronted this scenario when examining the overlapping jurisdiction of the Sixth and Twelfth Courts of Appeals. *In re A.B.*, 676 S.W.3d at 114 n.1. The Court recognized that because both courts have jurisdiction over appeals from Gregg County, the appellant could "notice an

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[1] Although, the Legislature has limited what appeals may be transferred out of the Fifteenth Court of Appeals pursuant to docket equalization, the Legislature has not exempted the Fifteenth Court from Texas's docket-equalization process authorized by Texas Government Code section 73.001(a) ("Except as provided by Subsection (b), the supreme court may order cases transferred from one court of appeals to another at any time that, in the opinion of the supreme court, there is good cause for the transfer."). Section 73.001(a) thus creates the potential for the Fifteenth Court to receive appeals from other courts that are not within the Fifteenth Court's exclusive appellate jurisdiction, indicating that such appeals are not unsuitable for resolution by the Fifteenth Court.

appeal" from the Gregg County ruling to "either court of appeals." *Id.* Because there is no statutory bar to filing a notice of appeal in the Fifteenth Court, Appellants were free to choose the Fifteenth Court so long as it fell within this Court's jurisdiction. We cannot find that the appeal was "improperly filed" in this Court simply because other Courts of Appeals would also have jurisdiction to hear it.

Appellees further argue that the Fifteenth Court was designed to focus on the categories of appeals falling within its exclusive appellate jurisdiction, and that this purpose will be thwarted if this Court is found to possess general jurisdiction over all civil cases within its boundaries.

Ultimately, the best proof of the Legislature's design for the Fifteenth Court is the jurisdiction that the Legislature created. "As with any statute," we must apply the law "as written" and "refrain from rewriting text that lawmakers chose." *Creative Oil & Gas, LLC v. Lona Hills Ranch, LLC*, 591 S.W.3d 127, 133 (Tex. 2019) (quoting *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 443 (Tex. 2009)). In Chapter 220 of the Texas Government Code, the Legislature made a choice to vest the Fifteenth Court with exclusive jurisdiction over some categories of civil appeals and general jurisdiction over others. We are not free to accept the former while deeming the latter improper. Accordingly, we decide to deny the motion to transfer the appeal.

* * *

Chief Justice Brister's Dissent to the Fifteenth Court of Appeals' Recommendation to Deny the Motion to Transfer

I would not object to transferring this appeal to the Thirteenth Court of Appeals. Because the Court chooses to do so, I respectfully dissent.

Government Code Section 73.001 provides three standards for the Supreme Court to transfer appeals:

- it may transfer cases among the courts of appeals at any time for good cause, TEX. GOV'T CODE § 73.001(a);
- it may not transfer out cases for docket equalization purposes that were "properly filed" in the Fifteenth Court, *id*. § 73.001(b); and
- it shall adopt rules for transferring out appeals "inappropriately filed" in the Fifteenth Court, and transferring in appeals within that court's exclusive jurisdiction, *id*. § 73.001(c).

Rule 27a adopted in response by the Supreme Court provides a back-and-forth process for parties and appellate courts to file letter briefs with the Supreme Court, which then decides the matter. But Rule 27a applies only to appeals "improperly taken" to the Fifteenth Court of Appeals, not those "inappropriately filed" in that court. *Compare* TEX. R. APP. P. 27a(b) *with* TEX. GOV'T CODE § 73.001(c). I have little to add to the letter from my colleagues except to note that

the synonyms "improperly" and "inappropriately" do not always mean the same thing.

In many contexts, "improper" refers to something *not allowed*, while "inappropriate" refers to something that *ought not* to be allowed. For example, *improper* venue (governed by Chapter 15 of the Civil Practice and Remedies Code) and *inappropriate* venue (governed by Section 71.051 of the same code) are both governed by state law, but the former turns on what state law *allows*, while the latter depends on what *ought to be allowed* under the circumstances. Likewise, the rules governing harmful error and jury argument turn on whether a judgment or jury argument was "improper," not whether it was "inappropriate." *See* TEX. R. APP. P. 44.1(a)(1), 61.1(a); TEX. R. CIV. P. 324(c).

By contrast, the Government Code often uses "inappropriate" in cases requiring discretion. For example, it recognizes that historical markers may be "inappropriate" in some cemeteries (TEX. GOV'T CODE § 442.0061(c)), art popular in a prior era may be "inappropriate" in the Governor's Mansion today (*id*. § 442.0071(b)(3)), and state funding may be withheld from films that contain "inappropriate" content (*id*. § 485.022(e)). In this usage, the law recognizes that some things may not always be *improper*, yet may be barred as *inappropriate*.

Assuming the Legislature and the Supreme Court drafted both the statute and the rule here advisedly, I thus agree that an appeal is not "*improperly* taken" to this Court when it falls within our general jurisdiction. Since we have concurrent general jurisdiction with our sister courts of this appeal, it was not "improperly taken," and Rule 27a does not seem to apply. *See* TEX. R. APP. P. 27a(b)(1)(A) ("The transfer process in this rule applies to appeals … *improperly* taken to the Fifteenth Court of Appeals.").

But I also think this appeal was "inappropriately filed" in this Court under the present circumstances. The Legislature specified two primary categories of appeals *included* in this Court's exclusive jurisdiction: cases challenging state laws or state agents, and complex business disputes. *See* TEX. GOV'T CODE § 22.220(d)(1). This appeal falls into neither category, nor do hundreds of others in the fifteen categories omitted from our exclusive jurisdiction that are nonetheless within our general jurisdiction. Even if it would be *proper* to file such cases here, it would be *inappropriate* for this Court to entertain hundreds of appeals in family law, employment discrimination, eminent domain, and personal injury cases as they would inevitably shift time and attention away from our primary tasks.

Furthermore, allowing litigants to routinely opt into one court of appeals instead of another could create a practice that, "if tolerated, breeds disrespect for and threatens the integrity of our judicial system." *In re Bennett*, 960 S.W.2d 35, 40 (Tex. 1997). Appellants here do not argue that this appeal involves an issue of statewide importance or a complex business dispute, but only that they "were entitled to choose between the courts." My colleagues say that does not make this appeal "inappropriately filed" since appellants may choose between two

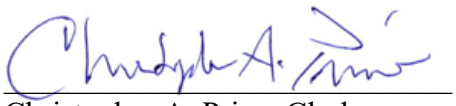
overlapping appellate courts in some cases. But the Legislature has restricted that choice when it involves large numbers of appeals. *See* TEX. GOV'T CODE § 22.202(h) (requiring random assignment of appeals between the First and Fourteenth Courts of Appeals). And choosing between two neighboring courts in appeals from a handful of smaller counties is different from choosing between one statewide court with specific jurisdiction and fourteen others handling every kind of appeal in the State. I doubt the Legislature intended appellant's choice on a large scale to be appropriate.

The Legislature authorized the Supreme Court to adopt rules for transferring an appeal "inappropriately filed" here. *See* TEX. GOV'T CODE § 73.001(c). Whether Rule 27a does so or not does not matter in this case; given the Thirteenth Court's agreement to receive this transfer, it will likely occur if we don't object to it under either Rule 27a or the previous practice governed by *Miles v. Ford Motor Co.*, 914 S.W.2d 135, 137 n.2 (Tex. 1995). I would so inform the Supreme Court; as the Court does otherwise, I respectfully dissent.

* * *

Pursuant to the procedures for opposed transfers set forth in Rule 27a(d) of the Texas Rules of appellate Procedure, please present this transfer motion and responses, along with the recommendations of the Fifteenth, First and Fourteenth Courts of Appeal, to the Supreme Court for consideration.

Sincerely,



Christopher A. Prine, Clerk

cc: D. Davin McGinnis (DELIVERED VIA E-MAIL)
David W. Jones (DELIVERED VIA E-MAIL)
Gregg Laswell (DELIVERED VIA E-MAIL)
Jane M. Webre (DELIVERED VIA E-MAIL)
Juergen Koetter Jr. (DELIVERED VIA E-MAIL)
James Stephen Barrick (DELIVERED VIA E-MAIL)
Allen Rustay (DELIVERED VIA E-MAIL)
Michael Sheppard (DELIVERED VIA E-MAIL)
Amy Parker Beeson (DELIVERED VIA E-MAIL)
Marcus Schwartz (DELIVERED VIA E-MAIL)
The Honorable Kathy Mills (DELIVERED VIA E-MAIL)
Kelly J. Curnutt (DELIVERED VIA E-MAIL)
Russell S. Post (DELIVERED VIA E-MAIL)
Amy Lee Dashiell (DELIVERED VIA E-MAIL)