

APPENDIX INDEX

- A. Fifth District Court of Appeals' Memorandum Opinion and judgement, entered July 18, 2022
- B. Fifth District Court of Appeals Order denying Motion For Rehearing, entered September 13, 2022
- C. Fifth District Court of Appeals' Order denying Motion For Reconsideration, entered November 22, 2022
- D. 296th District Court Final Judgment, entered August 11, 2020
- E. Supreme Court of Texas Order denying Petition For Review, entered March 24, 2023
- F. Supreme Court of Texas Order denying Motion For Rehearing, entered June 2, 2023
- G. Amended Notice of Appeal for Guardianship Case, (05-22-00768-CV)
- H. Supreme Court of Texas Order denying Motions To Transfer, dated November 21, 2022; entered January 26, 2023
- I. Notice of Consideration of Plaintiff's Motion For Traditional And No-Evidence Summary Judgment On Submission, filed November 20, 2019; and Petitioner's request for clerk's record, filed November 30, 2020
- J. Agreement For Legal Services, dated July 16, 2019
- K. Relevant Rules And Statutes

pg. 38

TAB - A

AFFIRMED and Opinion Filed July 18, 2022



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-20-00969-CV

BRIGETTA D'OLIVIO A/K/A BRIGETTA ALIX ANDERSON, ALIX
BRIGETTA, Appellant

V.

HILARY THOMPSON HUTSON, Appellee

On Appeal from the 296th Judicial District Court
Collin County, Texas
Trial Court Cause No. 296-04855-2019

MEMORANDUM OPINION

Before Justices Partida-Kipness, Reichek, and Goldstein
Opinion by Justice Reichek

In this appeal from a summary judgment, Brigetta D'Olivio a/k/a Brigetta Alix Anderson, Alix Brigetta ("D'Olivio") contends the trial court erred in granting judgment against her because (1) the trial court lacked subject matter jurisdiction, (2) she was not given sufficient notice of the summary judgment hearing under rule 166a(c), (3) the motion for no-evidence summary judgment was improper, and (4) there are genuine issues of material fact precluding summary judgment. We affirm the trial court's judgment.

Background

The following facts relevant to the disposition of this appeal were conclusively established by the summary judgment evidence. Richard W. Thompson, Jr. (“Thompson”) and his wife, Euvonne R. Thompson, purchased a home in Collin County, Texas in 1973 and declared it as their homestead. Euvonne passed away on December 24, 2007. At the time of Euvonne’s death, she and Thompson had only two living children, both from their marriage – Richard W. Thompson III and Hilary Thompson Hutson. Richard Thompson III died in 2013.

On May 5, 2018, Thompson signed a deed without warranty conveying the homestead property to himself and Hutson as joint tenants with full right of survivorship. The deed reserved from the conveyance a homestead life estate in favor of Thompson. The conveyance explicitly included “all interest of [Thompson] except the reserved life estate.” Thompson signed the deed before a notary public and filed it with the Collin County clerk’s office.

A few months later, D’Olivio began claiming a romantic interest in Thompson. At the time, Thompson was 92 and D’Olivio was substantially younger. Concerned for her father, Hutson filed an application for appointment of a temporary guardian in the Collin County probate court.

On December 27, 2018, the probate court signed an order in which it stated there were “substantial concerns” that Thompson was incapacitated, and probable cause to believe that Thompson’s person and estate were in imminent danger. The

court appointed Julie Reedy as Thompson's temporary guardian and granted her numerous powers including the power to (1) determine Thompson's marriages, (2) determine access to Thompson by third parties, including D'Olivio specifically, (3) take possession of all assets of whatever kind and nature in Thompson's estate, and (4) take any and all actions necessary to collect, preserve, and protect Thompson's estate.

According to D'Olivio, Thompson executed an affidavit in February 2019 stating the deed granting Hutson joint tenancy with right of survivorship in the homestead property was forged. Several months later, however, the probate court read an agreement into the record concerning Thompson's guardianship. The record shows that all parties, including Thompson and his counsel, agreed the May 2018 deed to Hutson was effective and Thompson possessed only a life estate in the homestead property as provided in section 102.005 of the Texas Estates Code.

Six weeks after the agreement was signed, D'Olivio claims she and Thompson were married. D'Olivio further asserts that, two weeks after they were purportedly married, Thompson signed a last will and testament bequeathing his entire estate, including all his real property, to her. Thompson was found dead the next day.

Following her father's death, Hutson immediately sent notice to D'Olivio instructing her to vacate the homestead property. When D'Olivio began claiming she had title to the property, Hutson brought this suit for trespass to try title. D'Olivio filed a general denial and motion to abate asserting the probate court had

exclusive jurisdiction over all matters relating to Thompson's estate. D'Olivio moved to transfer the case, and the probate court declined to accept the transfer. The trial court denied D'Olivio's motion to abate.

Hutson filed a motion for traditional and no-evidence summary judgment contending the evidence showed she had superior title to the homestead property as a matter of law and she was entitled to a forcible detainer eviction order. The no-evidence portion of the motion was directed solely at the issue of D'Olivio's ability to recover for any alleged improvements she made to the property. D'Olivio responded and filed numerous objections along with a motion for continuance.

The motion for summary judgment was not considered by the trial court until eight months later. On August 11, 2020, the court signed a final order and judgment stating that, even assuming D'Olivio was lawfully married to Thompson at the time of his death, Thompson's life estate in the homestead property expired when he died, and D'Olivio had no surviving right to the property. The court granted summary judgment on the trespass to try title claim, concluding the evidence showed Hutson had superior title as a matter of law. The court also granted the no-evidence motion stating D'Olivio could not recover for any improvements to the property. Finally, the court held Hutson was entitled to a forcible detainer eviction of D'Olivio. D'Olivio filed a motion to reconsider, set aside, and dismiss the judgment that was overruled by operation of law. She then brought this appeal.

Analysis

I. Jurisdiction

In her first and second issues, D'Olivio contends the trial court's judgment is void because the probate court has exclusive or, alternatively, dominant jurisdiction over this case. In arguing the probate court has exclusive jurisdiction, D'Olivio relies on section 32.005 of the Texas Estates Code. Section 32.005 states that, in a county in which there is a statutory probate court, the probate court "has exclusive jurisdiction of all probate proceedings, regardless of whether contested or uncontested." TEX. ESTATES. CODE ANN. § 31.002. In addition, a cause of action "related to the probate proceeding" must be brought in the probate court unless the jurisdiction of the probate court "is concurrent with the jurisdiction of a district court as provided by Section 32.007 or with the jurisdiction of any other court." *Id.* D'Olivio argues that, because the claims asserted by Hutson do not fall under any of the categories listed in section 32.007, the probate court's jurisdiction over the case is exclusive rather than concurrent. D'Olivio's argument is misplaced.

For section 32.005 to apply, the case must be either a probate proceeding or a case involving matters related to a probate proceeding. Matters related to a probate proceeding are defined to include "an action for trial of title to real property *that is estate property*," and "an action for trial of the right of property *that is estate property*." *Id.* § 31.002(c)(1). In this case, the sole issue was Hutson's superior title to the property, which she obtained before her father died. The evidence

conclusively showed that Hutson and Thompson were joint tenants of the property based on the May 2018 deed. Thompson and his counsel ratified that deed and agreed Thompson had only a life estate in the property at issue. A life estate terminates upon the death of the life tenant and the life tenant has no power to devise the property that remains at his death. *In re Estate of Hernandez*, No. 05-16-01350-CV, 2018 WL 525762, at *6 (Tex. App.—Dallas Jan. 24, 2018, no pet.) (mem. op.). The property, therefore, passed outside of the estate and is not a part of, or related to, the probate proceeding. *See Wallace v. Wallace*, No. 05-17-00447-CV, 2017 WL 4479653, at *4 (Tex. App.—Dallas 2017, no pet.) (mem. op.) (probate court did not have exclusive jurisdiction where former wife was seeking to partition property as tenant in common and not as heir).

Because the property is not at issue in the probate proceeding, the probate court also does not have dominant jurisdiction in this case. Dominant jurisdiction may arise where two or more cases are inherently interrelated because they involve the same parties and the same controversy. *In re Volkswagen Clean Diesel Litigation*, 557 S.W.3d, 73, 76 (Tex. App.—Austin 2017, no pet.). Although D'Olivio attempts to conflate the two, the controversy in this case concerns the May 2018 deed, while the controversy before the probate court concerns competing wills. Although the same parties are involved, the suits do not involve the same transaction or occurrence. We conclude D'Olivio has not shown the trial court lacked subject matter jurisdiction in this case. *See In re Forney*, 554 S.W.3d 145, 151–52 (Tex.

App.—San Antonio 2018, orig. proceeding). We resolve her first two issues against her.

II. Notice

In her third issue, D'Olivio contends she was not given twenty-one days' notice of the summary judgment hearing as required by rule 166a(c) of the Texas Rules of Civil Procedure. Rule 166a(c) states that "[e]xcept on leave of court, with notice to opposing counsel, the motion and any supporting affidavits shall be filed and served at least twenty-one days before the time specified for hearing." TEX. R. CIV. P. 166a(c). The rule further requires that any response and opposing affidavits be filed seven days before the day of the hearing. *Id.* The purpose of the notice requirement is to inform the respondent of when their response is due. *Martin v. Martin, Martin, & Richards, Inc.*, 989 S.W.2d 357, 359 (Tex. 1998).

The record in this case shows that Hutson filed and served her motion for traditional and no-evidence summary judgment and supporting evidence on November 18, 2019. After the trial court issued a notice stating it would consider the motion on submission, D'Olivio filed her response and supporting evidence on December 10, 2019.

When no decision on the motion was forthcoming from the trial court, Hutson had her motion reset for consideration. On June 11, 2020, Hutson served D'Olivio with notice stating the motion would be considered by submission on July 16. Hutson then filed a motion on June 25, twenty-one days before the hearing,

“renewing” her original motion for summary judgment and asking the court to rule. The renewal motion incorporated the original motion and contained no new argument or evidence pertaining to the summary judgment grounds asserted. The motion did, however, attach exhibits demonstrating D’Olivio’s actions during the previous six months, including filing thousands of pages of motions. Based on D’Olivio’s extreme litigiousness, Hutson requested the trial court rule on her original summary judgment motion to resolve the case and prevent further waste of judicial resources.

On July 28, 2020, the trial court issued a memorandum stating it was granting Hutson’s motion for traditional and no-evidence summary judgment. On August 11, the court signed an order and judgment stating,

The Plaintiff filed a Motion for Traditional and No-Evidence Summary Judgment on November 18, 2019, renewing that Motion on June 16, 2020.¹ After consideration of the Motion and the extensive briefing of both parties, the Court finds and rules as follows.

The court went on to discuss the evidence, issues, and applicable law and granted Hutson’s motion in its entirety.

D’Olivio does not dispute she received Hutson’s motion for traditional and no-evidence summary judgment. Nor does she dispute she received notice that the motion would be considered by submission on July 16, 2020. D’Olivio contends

¹ The court’s recitation of the date of the renewal motion appears to be a typographical error. Both the file stamp on the renewal motion and the trial court’s docket sheet show the renewal motion was filed on June 25, 2020.

only that she was never served with Hutson's renewal motion. Even assuming the record supported D'Olivio's contention, the renewal motion did nothing more than request the court to rule on the grounds for summary judgment set forth in Hutson's motion filed nine months earlier. D'Olivio responded to that motion and had ample opportunity to supplement her response if she chose to do so. Because D'Olivio was able to respond to the motion that was ruled upon, and the trial court considered her response to that motion, D'Olivio's alleged failure to be served with a copy of the renewal motion was harmless. *Id.* We resolve D'Olivio's third issue against her.

III. No-Evidence Summary Judgment

In her fourth issue, D'Olivio contends the trial court erred in granting Hutson's motion for no-evidence summary judgment because (1) Hutson was not entitled to seek a no-evidence summary judgment, (2) the relief sought was nothing more than an impermissible advisory opinion, and (3) she was not given adequate time for discovery.

The basis for D'Olivio's assertion that Hutson was not entitled to seek a no-evidence summary judgment is that Hutson bore the burden of proof at trial on her trespass to try title claim. But Hutson limited her request for a no-evidence summary judgment to only D'Olivio's ability to recover under section 22.021 of the Texas Property Code. Section 22.021 gives a defendant in a trespass to try title action, who is determined not to be the rightful owner of the property, the ability to recover the amount by which the estimated value of improvements made to the property exceeds

the estimated value of the defendant's use, occupation, waste, or other injury to the property. TEX. PROP. CODE ANN. § 22.021(a). D'Olivio bore the burden of proof on this issue. *Id.*; see also *Lemus v. Aguilar*, 491 S.W.3d 51, 61 (Tex. App.—San Antonio 2016, no pet.).

Section 22.021 requires a defendant to prove they were in good-faith adverse possession of the property for more than a year before the trespass to try title action was filed. TEX. PROP. CODE ANN. § 22.021(c)(1). Hutson moved for a no-evidence summary judgment on the basis that her trespass to try title action was filed within weeks after her father died and, therefore, D'Olivio could not show she had adversely possessed the property for more than a year. D'Olivio argues the trial court's granting the no-evidence summary judgment was somehow an advisory opinion on an unpleaded adverse possession claim. Regardless of whether the trial court's ruling on the section 22.021 issue would ultimately foreclose a future adverse possession claim, the decision was a proper determination of an issue in the pending trespass to try title action.

Finally, with respect to D'Olivio's contention that she was not given adequate time for discovery before the no-evidence motion was heard, D'Olivio does not point to either an affidavit explaining the need for further discovery or a verified motion

for continuance filed in the trial court.² See *Tenneco Inc. v. Enter. Prods. Co.*, 925 S.W.2d 640, 647 (Tex. 1996). Accordingly, she has waived any argument that consideration of the motion was premature. We resolve D'Olivio's fourth issue against her.³

IV. Summary Judgment

In her last issue, D'Olivio contends the trial court erred in granting Hutson's motion for traditional summary judgment because Hutson failed to carry her burden under the "common source doctrine" and there are genuine issues of material fact about whether Hutson had a claim to title. To prevail on a trespass to try title action, a plaintiff must generally prove one of the following: (1) a regular chain of conveyances from the sovereign; (2) superior title out of a common source; (3) title by limitations; or (4) title by prior possession coupled with proof that possession was

² Although D'Olivio's December 2019 response to Hutson's motion for summary judgment included a motion requesting a sixty-day continuance, the record does not contain a motion for continuance pertaining to the July 2020 submission date.

³ In the "Issues Presented" portion of D'Olivio's brief, she lists two other sub-issues as part of her challenge to the no-evidence summary judgment: that Hutson failed to meet the specificity requirement of rule 166a(i), and the no-evidence motion failed to address her amended answer and affirmative defenses. Because D'Olivio makes no argument and cites no authority in the body of her brief concerning her specificity complaint, we conclude that issue is waived. See *Sullivan v. Bickel & Bickel & Brewer*, 943 S.W.2d 477, 486 (Tex. App.—Dallas 1995, writ denied) (bare assertions of error, without argument or authority, present nothing for review on appeal). With respect to D'Olivio's contention that Hutson's motion for summary judgment failed to address her amended pleading, we see nothing in the record showing that D'Olivio filed an amended pleading. The copy of the pleading D'Olivio references in her brief is an attachment to her response to the motion for summary judgment. And while the trial court's docket statement shows correspondence sent to the court regarding an amended answer, the docket statement does not reflect that any such pleading was ever filed. Moreover, D'Olivio does provide any argument or authority to show that Hutson's motion for summary judgment did not, directly or indirectly, address and resolve all matters asserted in the amended pleading.

not abandoned. *Lance v. Robinson*, 543 S.W.3d 723, 735 (Tex. 2018). Because both Hutson and D'Olivio claimed title to the property through Thompson, Hutson moved for summary judgment on the basis that she had superior title out of a common source.

In support of her motion for summary for summary judgment, Hutson submitted: (1) a certified copy of the deed by which her parents obtained title to the property in question; (2) a certified copy of her mother's death certificate; (3) a certified copy of her brother's death certificate; (4) a certified copy of the May 2018 deed by which Hutson and Thompson became joint tenants with right of survivorship with a life estate reserved in favor of Thompson; (5) a copy of the order from the probate court placing Thompson under a temporary guardianship; (6) a transcript of the mediated settlement agreement in which Thompson and his counsel ratified the May 2018 deed; (7) a certified copy of Thompson's death certificate; and (8) an abstract of title. This was sufficient proof of title from a common source pursuant to rule 798 of the Texas Rules of Civil Procedure. TEX. R. CIV. P. 798.

In support of her claim to superior title, D'Olivio relies upon her purported marriage to Thompson two weeks before he died, and a will he allegedly signed the day before he died. Because Thompson had only a life estate in the property at the time of his death, D'Olivio could not have obtained superior title to the property through a bequest. *See In re Estate of Hernandez*, 2018 WL 525762, at *6. As for D'Olivio's status as Thompson's purported wife, Thompson's right to occupy his

homestead property during his lifetime did not give rise to a similar right for D'Olivio to occupy the property during her lifetime. *See Conrad v. Judson*, 465 S.W.2d 819, 831 (Tex. App.—Dallas 1971, writ ref'd n.r.e.).

D'Olivio asserts she submitted evidence raising genuine issues of material fact precluding summary judgment. In making this assertion, D'Olivio relies primarily on an affidavit she claims Thompson made in February 2019 stating his signature on the May 2018 deed was forged. The affidavit was created while Thompson was the ward of a guardianship instituted primarily to protect him and his estate from D'Olivio. It is undisputed that the guardian, who was given full power to preserve and protect Thompson's estate, played no role in the creation of that affidavit. The trial court concluded the affidavit was "without legal effect" and D'Olivio does not challenge that conclusion on appeal. In addition, as the summary judgment evidence shows, Thompson and his counsel later confirmed the validity of the May 2018 deed and affirmatively agreed that Thompson held only a life estate in the homestead property. We conclude the affidavit does not create a fact issue regarding Hutson's superior title to the property.

D'Olivio additionally points to a copy of a will that appears to have been signed by Hutson's mother, Euvonne, in 1999. D'Olivio argues the will creates a fact issue because Hutson alleged her mother died intestate. Even assuming the will is valid and was not revoked prior to Euvonne's death, there is nothing in the will that affects Hutson's title to the homestead property. The will states that Euvonne

devised and bequeathed all her interest in the homestead property to Thompson. This is the same interest in the property Thompson received as a result of Euvonne's community estate passing to him through intestacy. *See* TEX. ESTATES CODE ANN. § 201.003. Accordingly, either by virtue of the will or intestacy, Thompson's interest in the property was the same at the time he signed the May 2018 deed.

To the extent D'Olivio argues generally that she provided "an overwhelming amount of evidence that contradicted each and every piece of evidence" submitted by Hutson, a global reference to all of the materials submitted does not provide a coherent argument explaining why summary judgment was improper. *Barnett v. Veritas DGC Land Inc.*, No 14-05-01074-CV, 2006 WL 2827379, at *3 (Tex. App.—Houston [14th Dist.] Oct. 5, 2006, pet. denied) (mem. op.). We resolve D'Olivio's fifth issue against her.

We affirm the trial court's judgment.

/Amanda L. Reichel/
AMANDA L. REICHEK
JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

BRIGETTA D'OLIVIO A/K/A
BRIGETTA ALIX ANDERSON,
ALIX BRIGETTA, Appellant

No. 05-20-00969-CV V.

HILARY THOMPSON HUTSON,
Appellee

On Appeal from the 296th Judicial
District Court, Collin County, Texas
Trial Court Cause No. 296-04855-
2019.

Opinion delivered by Justice
Reichek. Justices Partida-Kipness
and Goldstein participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellee HILARY THOMPSON HUTSON recover her costs of this appeal from appellant BRIGETTA D'OLIVIO A/K/A BRIGETTA ALIX ANDERSON, ALIX BRIGETTA.

Judgment entered July 18, 2022

TAB - B

Order entered September 13, 2022



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-20-00969-CV

**BRIGETTA D'OLIVIO A/K/A BRIGETTA ALIX ANDERSON,
ALIX BRIGETTA, Appellant**

V.

HILARY THOMPSON HUTSON, Appellee

**On Appeal from the 296th Judicial District Court
Collin County, Texas
Trial Court Cause No. 296-04855-2019**

**ORDER
Before Justices Partida-Kipness, Reichek, and Goldstein**

Appellant's motion for rehearing filed August 30, 2022 is **DENIED**.

/s/ AMANDA L. REICHEK
JUSTICE

TAB - C

Order entered November 22, 2022



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-20-00969-CV

**BRIGETTA D'OLIVIO A/K/A BRIGETTA ALIX ANDERSON, ALIX
BRIGETTA, Appellant**

V.

HILARY THOMPSON HUTSON, Appellee

**On Appeal from the 296th Judicial District Court
Collin County, Texas
Trial Court Cause No. 296-04855-2019**

ORDER

On September 19, 2022, appellant Brigetta D'Olivio a/k/a Brigetta Alix Anderson, Alix Brigetta, filed a motion for reconsideration and motion to transfer this case to one of the Houston courts of appeals. On September 27, pursuant to the procedure set forth in *Miles v. Ford Motor Company*, 914 S.W.2d 135, 137 n. 2 (Tex. 1995) (per curiam), this Court referred the portion of appellant's motion requesting a transfer to the Texas Supreme Court for determination. On our own motion, we abated the case pending the supreme court's resolution of the transfer

issue. On November 21, 2022, the Texas Supreme Court denied appellant's request for transfer. Accordingly, we now **LIFT THE ABATEMENT** and **REINSTATE** the case.

This Court denied appellant's motions for rehearing and for en banc reconsideration on September 13, 2022. In denying appellant's motions, we did not modify our judgment, vacate our judgment, render a new judgment, or issue a new opinion. Appellant's September 19, 2022 motion for reconsideration is, therefore, not authorized by the Texas Rules of Appellate Procedure. *See* TEX. R. APP. P. 49.4. A motion for reconsideration not authorized by the rules is a nullity. *Mapco, Inc. v. Forrest*, 795 S.W.2d 700, 702 (Tex. 1990). Accordingly, we **DISMISS** appellant's motion for reconsideration.

/s/ AMANDA L. REICHEK
JUSTICE

TAB - D

CAUSE NO. 296-04855-2019

HILARY THOMPSON HUTSON,	§	IN THE DISTRICT COURT
	§	
<i>Plaintiff</i>	§	
	§	
v.	§	
	§	296TH JUDICIAL COURT
	§	
BRIGETTA D'OLIVIO, a/k/a	§	
BRIGETTA ALIX ANDERSON,	§	
ALIX BRIGETTA,	§	
	§	
<i>Defendant.</i>	§	COLLIN COUNTY, TEXAS
	§	

**FINAL ORDER AND JUDGMENT
 ON PLAINTIFF'S MOTION FOR TRADITIONAL
 AND NO-EVIDENCE SUMMARY JUDGMENT**

This is a Trespass to Try Title action, involving a residential property in Plano, Collin County, Texas. The Plaintiff filed a Motion for Traditional and No-Evidence Summary Judgment on November 18, 2019, renewing that Motion on June 16, 2020. After consideration of the Motion and the extensive briefing of both parties, the Court finds and rules as follows.

Standard of Inquiry

A traditional motion for summary judgment requires the moving party to show that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. Tex. R. Civ. P. 166(a). If the movant carries this burden, the burden shifts to the nonmovant to raise a genuine issue of mater fact that would preclude summary judgment. No-evidence summary judgment motions are based on a contention that there is no evidence supporting an essential element of a burden borne by the nonmovant. There must be either a complete absence of evidence (or no more than a mere scintilla); or legal reasons why the court may not consider evidence to the

contrary; or conclusive evidence establishing the opposite of a legally vital fact. *Merriman v. XTO Energy*, 407 S.W.3d 244, 248 (Tex. 2013)(citation omitted).

The Court indulges every reasonable inference and resolves doubts in favor of the nonmovant. *E.g., Lujan v. Navistar*, 555 S.W.3d 447, 451 (Tex. App. – Dallas 2008, pet. denied).

Relevant Facts

Indulging every reasonable inference and resolving genuine doubt in favor of the Defendant, the Court predicates its judgment on the following relevant facts.

The Plaintiff is Hilary Thompson Hutson, and the Defendant is Brigetta D'Olivio, who claims to be the widow of Plaintiff's father, Richard W. Thompson, Jr. For purposes of this Order, it is assumed that a July 1, 2019 marriage of Mr. Thompson and the Defendant occurred and is lawful.

The property in this trespass to try title action is located at 2916 Creekbend Drive, Plano, 75075, and its legal description is not in dispute:

BEING LOT 15 in Block 13 of THE FOURTH SECTION OF DALLAS NORTH ESTATES, 12th INSTALLMENT, an Addition to the City of Plano, Texas, according to the Map thereof recorded in Volume 7, Page 54 of the Map Records of Collin County, Texas, together with all improvements located thereon.

This property (the "Property") was deeded to Richard W. Thompson, Jr., and Euvonne R. Thompson on June 29, 1973, and recorded at Vol. 874, P. 439 of the Official Records of Collin County. It was declared to be the Thompsons' homestead on December 30, 1992, Doc. No. 92-0084522, and remained so until Euvonne Thompson died intestate on December 24, 2007. At her death, Euvonne Thompson had two living children, the Plaintiff and a son, Richard W. Thompson, III, who passed away in 2013. Neither Richard nor Euvonne had any other living children and Mr. Thompson was the father of both Plaintiff and Richard W. Thompson, III.

On May 5, 2018, Richard W. Thompson, Jr. conveyed the Property to himself and Plaintiff as "Joint Tenants with Full Right of Survivorship," by a Deed Without Warranty filed June 12, 2018 in the Official Records of Collin County. Document No. 20180612000719590. The deed reserved from conveyance, "the homestead life estate of Grantor," and indicated that it "covers and includes all interest of Grantor except the reserved life estate."

Late in 2018, the Plaintiff was granted temporary guardianship over the person and estate of her father in orders issued by the Probate Court of Collin County, *In the Guardianship of Richard W. Thompson, Jr.*, Cause No. GA1-0261-2018. The Defendant proffered several affidavits of Richard W. Thompson, Jr., purportedly challenging the validity of the May 5, 2018 Deed Without Warranty. Such affidavits were dated during the period of the temporary guardianship and were without legal effect.

In a court-ordered mediation conducted on May 6, 2019, Mr. Thompson's attorney admitted on his behalf that Mr. Thompson was then occupying the Property pursuant to the homestead provisions of Section 102.005 of the Texas Estates Code.

The marriage between Mr. Thompson and Ms. D'Olivio is alleged to have occurred on July 1, 2019. The body of Mr. Thompson was discovered at the Property on the morning of July 14, 2019, and his death is recorded as having occurred that day.

Determination of a Trespass to Try Title

Trespass to try title actions are the sole methods in Texas for determining disputes as to title to real property, and require as its single element of proof that the plaintiff must demonstrate prima facie right of title by one of four methods. The plaintiff can demonstrate its right by proving one of the following: (1) regular chain of conveyances from the sovereign, (2) superior title out of a common source, (3) title by limitations, or (4) prior possession, which has been

abandoned. *Bacon v. Jordan*, 763 S.W.3d 395, 396-97 (Tex. 1988); Tex. Prop. Code § 22.001. Trespass to try title actions are governed by Texas Rules of Civil Procedure 783-809, which prescribe both the sole element of proof and the procedural rules for such cases.

Plaintiff Hilary Hutson has proceeded in this case as the holder of a common source title; that is, to the extent the Defendant claims a right to possession or ownership of the Property, her claim derives from the same chain of title as the Plaintiff's. Rules of proof for such a claim are set forth in Rule 798, which obviates a property survey, and instead requires certified copies of relevant deeds to be filed with the Court and served on the Defendant. This requirement was met. Additionally, an abstract of title is required under Rules 791 and 792, if requested. While it is uncertain whether an abstract was requested, one was filed and served in this case.

Application to the Instant Case

When Euvonne R. Thompson died intestate on December 24, 2007, her surviving spouse Richard was entitled to the homestead life estate set forth in Article XVI, Section 52 of the Texas Constitution. He also became owner in fee simple because community property vests in the surviving spouse of an intestate decedent when all of his or her living children are also the children of the decedent. In this case, the Plaintiff Hilary Thompson Hutson and her brother Richard W. Thompson, III were the only children of Euvonne Thompson, and Richard W. Thompson, Jr. was their father.

Mr. Thompson was free to separate his homestead life estate from his title interests in the Property, as the homestead life estate confers only possessory rights, and is not itself title. *Laser v. First Huntsville Properties*, 826 S.W.2d 125, 129 (Tex. 1981). He did precisely that with his Deed Without Warranty of May 5, 2018, granting to himself and his daughter Plaintiff Hilary a joint tenancy with right of survivorship, but reserving his homestead life estate.

The homestead life estate in question was the surviving spouse's as prescribed in the Texas Constitution Article XVI, Section 52. That provision is codified at Estates Code 102.005, which was the provision acknowledged as his sole basis for possession of the Property at the mediation proceeding of May 6, 2019.

When Mr. Thompson died on July 14, 2019, title to the Property passed to the Plaintiff pursuant to the Joint Tenancy with Right of Survivorship. At the same time, his homestead life estate expired, but a new one did not arise for his putative surviving spouse. This is because the surviving spouse of a decedent who himself was possessing property pursuant to the Art. XVI, § 52 life estate is not entitled to a further life estate. *Marina v. Lombardo*, 277 S.W.2d 749 (Tex. App. – Beaumont 1955, writ n.r.e.); *see, also Conrad v. Judson*, 465 S.W.2d 819 (Tex. App. – Dallas 1971)(decided under older version of the former Probate Code, § 45(a)).

Because Defendant's only claim of title or possessory right to the Property is pursuant to the homestead life estate, and no such estate arose on the death of Richard W. Thompson, Jr., the Plaintiff has a superior claim of title, and is GRANTED summary judgment on the trespass to try title.

No-Evidence Summary Judgment

The Plaintiff sought a no-evidence summary judgment solely as to the issue of a prospective claim for good-faith improvements to the Property by the Defendant. Such claims may only be brought by a plaintiff who occupied the property in a trespass to try title for more than one year prior to the filing of suit. Tex. Prop. Code § 22.021(c)(1). In this instance, the action having been filed 45 days after Mr. Thompson's death, such claims are legally foreclosed, and the Plaintiff can come forward with no evidence to the contrary as a matter of law. Summary judgment is thus GRANTED as to this issue.

Forcible Detainer Eviction and Writ of Possession

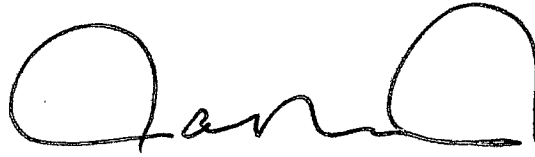
A successful trespass to try title plaintiff is entitled to a writ of possession if that issue is successfully proven. Tex. R. Civ. P. 804. The elements of such a writ, which derives from a forcible detainer eviction, are set forth in Chapter 24 of the Property Code, and have been met by the Plaintiff. The Plaintiff has made an affirmative showing of notice to the occupant-Defendant more than three days prior to the filing of this lawsuit by certified and regular mail, §§ 24.002, 240.004, and has demonstrated compliance with the Servicemembers Civil Relief Act, 50 U.S.C. App. § 501, et seq., with proof that the Defendant is not a member of the United States military. Having been granted summary judgment on the trespass to try title, and having made a successful showing as to eviction, the Plaintiff is GRANTED summary judgment as to Forcible Detainer Eviction and may proceed in Justice of the Peace Court to enforce her rights thereunder.

THEREFORE, having determined the issues before it in their entirety, the Court GRANTS summary judgment in favor of Plaintiff Hilary Thompson Hutson and against Defendant Brigetta D'Olivio, and further ORDERS that:

- (a) Title to the Property at 2916 Creekbend Drive, Plano, Collin County, Texas 75075 shall vest solely in the Plaintiff, Hilary Thompson Hutson by operation of a lawful Joint Tenancy with Right of Survivorship; and
- (b) Plaintiff is entitled to a Forcible Detainer Eviction and Writ of Possession as to the Property at 2916 Creekbend Drive, Plano, Collin County, Texas 75075, which she may pursue with the Justice of the Peace Court of Collin County; and

(c) Final judgment shall be entered in favor of Plaintiff and against Defendant with each party to bear its own costs.

SO ORDERED, this 11th day of August, , 2020.

A handwritten signature in black ink, appearing to read "John Roach, Jr.", written over a horizontal line.

HON. JOHN ROACH, JR.
296th District Court
Presiding

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on all counsel of record in accordance with the Texas Rules of Civil Procedure on August 6, 2020.

/s/ Bruce D. Cohen

Bruce D. Cohen

TAB - E

FILE COPY

RE: Case No. 22-1155

DATE: 3/24/2023

COA #: 05-20-00969-CV

TC#: 296-04855-2019

STYLE: D'OLIVIO v. HUTSON

Today the Supreme Court of Texas denied the Motion to Stay and denied the petition for review in the above-referenced case.

MS. BRIGETTA D'OLIVIO

* DELIVERED VIA E-MAIL *

TAB - F

FILE COPY

RE: Case No. 22-1155

DATE: 6/2/2023

COA #: 05-20-00969-CV

TC#: 296-04855-2019

STYLE: D'OLIVIO v. HUTSON

Today the Supreme Court of Texas denied the motion for rehearing of the above-referenced petition for review.

MS. BRIGETTA D'OLIVIO

* DELIVERED VIA E-MAIL *

TAB - G

MAR 2 2023

Ruben Morin
Clerk, 5th District

**05-22-00768-CV
IN THE COURT OF APPEALS
FOR THE FIFTH DISTRICT OF TEXAS**

RECEIVED
Court of Appeals

MAR 2 2023

Ruben Morin
Clerk, 5th District

**IN THE GUARDIANSHIP OF RICHARD W. THOMPSON, JR.,
AN ALLEGED INCAPACITATED PERSON**

On Appeal From the Collin County Probate Court
Collin County, Texas, Tr. Ct. No. GA1-0261-2018
The Honorable Weldon Copeland

AMENDED NOTICE OF APPEAL

TO THE HONORABLE FIFTH DISTRICT COURT OF APPEALS

Brigetta D'Olivio, ("D'Olivio"), surviving spouse of Richard W. Thompson, Jr., (Deceased), and interested party in the above-referenced cause, files this Amended Notice of Appeal. This is an appeal from every corner of the final judgment entered on May 5, 2022 and from every corner of each and every order issued in the underlying trial court cause number. D'Olivio filed Notice of Appeal to the Fifth District Court of Appeals on June 6, 2022 in the underlying trial court cause number. On the same date as said Notice of Appeal, D'Olivio filed a 329b(g) motion in the underlying trial court cause number and on June 8, 2022, D'Olivio filed a 306a(5) motion in the underlying trial court cause number.

Respectfully Submitted;

A handwritten signature in black ink, appearing to read 'Brigetta D'Olivio', written over a horizontal line.

Brigetta D'Olivio
2916 Creekbend Dr
Plano, TX 75075
214-733-7204
bdt2916@gmail.com

05-22-00768-CV
IN THE COURT OF APPEALS
FOR THE FIFTH DISTRICT OF TEXAS

IN THE GUARDIANSHIP OF RICHARD W. THOMPSON, JR.,
AN ALLEGED INCAPACITATED PERSON

On Appeal From the Collin County Probate Court
Collin County, Texas, Tr. Ct. No. GA1-0261-2018
The Honorable Weldon Copeland

CERTIFICATE OF SERVICE


I, Brigetta D'Olivio, Appellant in the above-caption case, do certify I served all parties
Appellant's "*Amended Notice Of Appeal*", dated February 21, 2023, pursuant to Texas Rules of
Civil Procedure 21(a), at the last known address: (2/21/23) (B)

Leu & Peirce PLLC
Erin Peirce
2313 Coit Rd.,
Plano, TX 75075

Law Office Of Julie C. Reedy
c/o Julie C. Reedy
4428 W. Lovers Lane
Dallas, TX 75209

Ford & Bergner LLP
c/o Don Ford
901 Main St., 33rd Flr
Dallas, TX 75202

Caldwell, Bennett, Thomas, Toraason, & Mead, PLLC
c/o James Brian Thomas
4851 LBJ Freeway, Suite 601
Dallas, TX 75244


Brigetta D'Olivio
2916 Creekbend Dr
Plano, TX 75075
214-733-7204
bdt2916@gmail.com

LEDEX

ORIGIN ID: DNEA (214) 733-7204

BRUGETTA DOLIVIO

2916 CREEKBEND DR.

PLANO, TX 75075

UNITED STATES, US

SHIP DATE: 27FEB23
ACTWGT: 1.00 LB
CAL: 252872373/NET4580

BILL SENDER

TO **CLERK OF THE COURT**
5TH DISTRICT COURT OF APPEALS
600 COMMERCE ST. STE. 200

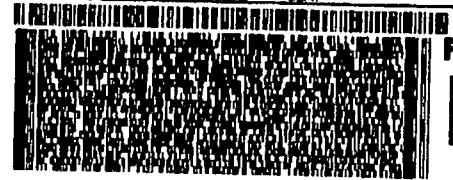
DALLAS TX 75202

(214) 712-3450

REF:

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DEPT:



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Court of Appeals

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TAB – H

Supreme Court of Texas

Misc. Docket No. 22-9102

Denial of Requests to Transfer Cases from the Fifth Court of Appeals

The Supreme Court denies the requests to transfer the following cases from the Fifth Court of Appeals District, Dallas, Texas:

Case No. 05-22-00768-CV

In the Guardianship of Richard W. Thompson, Jr., An Alleged Incapacitated Person

Case No. 05-20-01118-CV

Brigetta D'Olivio v. Hilary Thompson Hutston

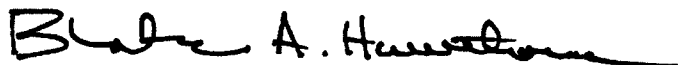
and

Case No. 05-20-00969-CV

Brigetta D'Olivio a/k/a Brigetta Alix Anderson, Alix Brigetta v. Hilary Thompson Hutston

ORDERED by the Supreme Court of Texas, in Chambers,

With the Seal thereof affixed at the City of Austin, this 21st day of November, 2022.



BLAKE A. HAWTHORNE, CLERK
THE SUPREME COURT OF TEXAS

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

TAB - I

CAUSE NO. 296-04855-2019

HILARY THOMPSON HUTSON,	§	IN THE DISTRICT COURT
	§	
<i>Plaintiff</i>	§	
	§	
v.	§	
	§	296TH JUDICIAL COURT
	§	
BRIGETTA D'OLIVIO, a/k/a	§	
BRIGETTA ALIX ANDERSON, a/k/a	§	
ALIX BRIGETTA,	§	
	§	
<i>Defendant.</i>	§	COLLIN COUNTY, TEXAS
	§	

NOTICE OF CONSIDERATION OF
PLAINTIFF'S MOTION FOR TRADITIONAL AND NO-EVIDENCE
SUMMARY JUDGMENT ON SUBMISSION

TO: BRIGETTA D'OLIVIO, Defendant
2916 Creekbend Drive
Plano, Texas 75075
beautifulhomesbybrigetta@gmail.com

PLEASE TAKE NOTICE that Plaintiff's Motion for Traditional and No-Evidence Summary Judgment, will be taken up by the Court on submission of papers on December 9, 2019. By direction of the Court, no hearing will be conducted and parties are not requested or expected to be present on that day.

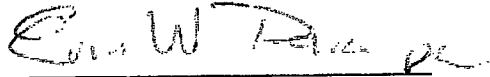
This 20th day of November, 2019.

Respectfully submitted,



Bruce D. Cohen
Texas Bar No 24014866
MC 3A-130C
7701 Legacy Drive
Plano, Texas 75024
(972) 334-2260
cohenbru@msu.edu

LEU & PEIRCE, PLLC




Erin W. Peirce
State Bar No. 24058035
epeirce@leulawfirm.com
Lauren E. Olson
State Bar No. 24084729
lolson@leulawfirm.com
2313 Coit Road, Suite A
Plano, TX 75075
Telephone: 972.996.2540
Facsimile: 972.996.2544

**ATTORNEYS FOR PLAINTIFF
HILARY THOMPSON HUTSON**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing was served on all Counsel of Record on November 20, 2019, in accordance with the Texas Rules of Civil Procedure.


Bruce D. Cohen

NO. 296-04855-2019

HILARY T. HUTSON	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
V.	§	
	§	296TH JUDICIAL DISTRICT
BRIGETTA D'OLIVIO AKA	§	
BRIGETTA ALIX ANDERSON,	§	
ALIX BRIGETTA,	§	
Defendant	§	COLLIN COUNTY, TEXAS
	§	

APPELLANT'S REQUEST FOR CLERK'S RECORD

To the Clerk:

Appellant, Brigetta D'Olivio, files this request for clerk's record in this appeal and requests the clerk to prepare a Clerk's Record, including the following items:

- Info Sheet, filed on 08/28/2019
- Plaintiff's Original Petition, filed on 08/28/2019
- Defendant's Original Answer, filed on 09/20/2019
- Defendant's Motion To Abate, filed on 11/18/2019
- Defendant's Certificate of Service (Motion To Abate), filed on 11/18/2019
- Defendant's Certificate of Conference (Motion To Abate), filed on 11/18/2019
- Plaintiff's Motion For Traditional and No Evidence Summary Judgment, filed on or about 11/20/2019
- Notice (Notice of Consideration of Plaintiff's Motion For Traditional and No Evidence Summary Judgment on Submission), filed on 11/20/2019
- Defendant's Amended Motion To Abate, filed on 11/21/2019
- Defendant's Certificate of Service (Amended Motion To Abate), filed on 11/21/2019
- Defendant's Notice of Hearing (Amended Motion To Abate), filed on 11/21/2019

FILED

2020 NOV 30 PM 4:03

LYNN F. SMLEY
DISTRICT CLERK
COLLIN COUNTY, TX

A. Clark

CONFIDENTIAL
CONFIDENTIAL

LEU & PEIRCE
ELDER LAW ATTORNEYS

AGREEMENT FOR LEGAL SERVICES

1. Hilary Hutson ("Client") hereby employs Leu & Peirce, PLLC ("Attorney") to provide legal services in connection with the probate of the Estate of Richard W. Thompson, Jr, the Custodial Accounts, the real property located at 2916 Creekbend Drive, Plano, Texas 75075, and all other related matters.
2. Client agrees to pay Attorney at an hourly rate. Attorney's fees for legal services are based primarily on the published hourly rates in effect for each lawyer and legal assistant in our firm at the time the services are rendered. These rates vary between \$175 and \$375 per hour for attorneys, currently, \$375 per hour for Lori Leu, \$300 per hour for Erin Peirce, \$225 per hour for Lauren Olson, \$200 per hour for Laura Chavero and \$175 per hour for Zachary Stubblefield and are subject to change; however, no change is anticipated before January 1, 2020. The hourly rate for paralegals is \$125 per hour. From time to time you may ask for, and receive, estimates for projects. We will use our best efforts to give accurate estimates, but you should understand that they are only good faith estimates.
3. Client is responsible for paying all costs that are incurred by Attorney in representing Client. For purposes of this agreement, "Costs" mean and include, but are not limited to, all allowable court and discovery costs, record fees, travel and related expenses, court reporter fees, courier service and delivery fees, electronic database research fees, postage and outside copying fees. Attorney may also employ investigators, consultants, and experts, and the expenses of such employment are also Costs. Depending on the nature of the Costs, Attorney may advance the Cost and invoice Client, or send the Cost invoice directly to Client for payment. Client agrees to reimburse the Attorney or pay the Cost invoice within twenty (20) days of request for payment.
4. Client agrees to provide necessary information, and agrees that Attorney can rely on the information provided. Client has a duty to read all documents provided by Attorney.
5. Client agrees to immediately notify Attorney of any changes in residence or telephone number. Attorney shall have the right to cease legal work if Client does not furnish Attorney with all necessary, complete, and truthful information and documents, or if Client does not cooperate fully with Attorney in the handling of this matter.

2313 Colt Road, Suite A
Plano, Texas 75075

www.leulawfirm.com

972.996.2540 Office
972.996.2544 Fax

HUTSON2 03015

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CONFIDENTIAL

Agreement for Legal Services
Page 2

6. Attorney will provide information to third parties (e.g., CPAs, financial planners, etc.) at Client's request. However, Client understands that doing so could affect the attorney-client privilege.
7. Although Attorney may offer an opinion about possible results regarding the subject matter of this Agreement, Attorney cannot guarantee any particular result. Client acknowledges that Attorney has made no representations or promises about the outcome and that any opinion offered by Attorney in the future will not constitute a guarantee and/or warranty regarding the success of the case. Client acknowledges that Attorney is simply expressing its opinion, and Client acknowledges that the uncertainty of the legal process makes any reliance on such an opinion unjustified.
8. Client authorizes Attorney to prepare, file and serve all notices, papers and pleadings (including complaints), and to take all steps in the prosecution and/or defense of Client's claims which Attorney, in its discretion, deems reasonable or necessary. Client authorizes Attorney to negotiate the settlement of Client's claims.
9. There is an attorney-client privilege in communications between Attorney and Client concerning a lawsuit. In order to preserve the confidentiality of discussions, Client should be careful what is said about the lawsuit to anyone outside the presence of Attorney. To encourage swift, open and inexpensive communications, Client authorizes Attorney to communicate with Client by electronic means, including email, voice mail, instant messaging and facsimile. The risk of inadvertent disclosure of confidential communications may increase with the use of these additional means of communications. Client accepts and acknowledges that risk.
10. Client acknowledges receipt of the following notice: The State Bar of Texas investigates and prosecutes professional misconduct committed by Texas attorneys. Although not every complaint against or dispute with an attorney involves professional misconduct, the State Bar's Office of General Counsel will provide you with information about how to file a complaint. Please call 1-800-932-1980 for more information.
11. This agreement is formed under and shall be governed by the laws of the State of Texas. Client and Attorney have made no agreements or promises other than the ones contained in this document.

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Agreement for Legal Services
Page 3

AGREED

Attorney:

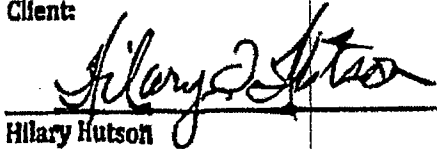


Leu & Peirce, PLLC

By: Erin W. Peirce

Date: 7.16.19

Client:



Hilary Hutson

Date: 7-16-2019

TAB - K

RELEVANT RULES AND STATUTES

TEXAS GOVERNMENT CODE

Section 27.031(a)(2) In addition to the jurisdiction and powers provided by the constitution and other law, the justice court has original jurisdiction of...(2) cases of forcible entry and detainer...”.

Section 25.0451(b) Collin County has one statutory probate court, the Probate Court No. 1 of Collin County.

TEXAS ESTATES CODE AS RELATES TO GUARDIANSHIP PROCEEDINGS

Section 1022.001 General Probate Court Jurisdiction In Guardianship Proceeding

(a) All guardianship proceedings must be filed and heard in a court exercising original probate jurisdiction. The court exercising original probate jurisdiction also has jurisdiction of all matters related to the guardianship proceeding as specified in Section 1021.001 for that type of court.

Section 1022.002 Original Jurisdiction For Guardianship Proceedings

(c) In a county in which there is a statutory probate court, the statutory probate court has original jurisdiction of guardianship proceedings.

(d) From the filing of the application for the appointment of a guardian of the estate or person, or both, until the guardianship is settled and closed under this chapter, the administration of the estate of a minor or other incapacitated person is one proceeding for purposes of jurisdiction and is a proceeding in rem.

Section 1022.005 Exclusive Jurisdiction Of Guardianship Proceeding In County With Statutory Probate Court

- (a) In a county in which there is a statutory probate court, the statutory probate court has exclusive jurisdiction of all guardianship proceedings, regardless of whether contested or uncontested.
- (b) A cause of action related to a guardianship proceeding of which the statutory probate court has exclusive jurisdiction as provided by Subsection (a) must be brought in the statutory probate court unless the jurisdiction of the statutory probate court is concurrent with the jurisdiction of a district court as provided by Section 1022.006 or with the jurisdiction of any other court.

Section 1022.006 Concurrent Jurisdiction With District Court

A statutory probate court has concurrent jurisdiction with the district court in:

- (1) a personal injury, survival, or wrongful death action by or against a person in the person's capacity as a guardian; and
- (2) an action involving a guardian in which each other party aligned with the guardian is not an interested person in the guardianship.

TEXAS ESTATES CODES AS RELATES TO PROBATE PROCEEDINGS

Section 101.001

- (a) Subject to Section 101.051, if a person dies leaving a lawful will:
 - (1) all of the person's estate that is devised by the will vests immediately in the devisees;
 - (2) all powers of appointment granted in the will vest immediately in the donees of those powers

Section 32.001 – General Jurisdiction

- (a) All probate proceedings must be filed and heard in a court exercising original probate jurisdiction. The court exercising original probate jurisdiction also has jurisdiction of all matters related to the probate proceeding as specified in Section 31.002 for that type of court.
- (b) A probate court may exercise pendent and ancillary jurisdiction as necessary to promote judicial efficiency and economy.
- (c) A final order issued by a probate court is appealable to the court of appeals.
- (d) The administration of the estate of a decedent, from the filing of the application for probate and administration, or for administration, until the decree of final distribution and the discharge of the last personal representative, shall be considered as one proceeding for purposes of jurisdiction. The entire proceeding is a proceeding in rem.

Section 32.002(c) – Original Jurisdiction

- (c) In a county in which there is a statutory probate court, the statutory probate court has original jurisdiction of probate proceedings.

Section 32.005 Exclusive Jurisdiction of Probate Proceeding in County With Statutory Probate

- (a) In a county in which there is a statutory probate court, the statutory probate court has exclusive jurisdiction of all probate proceedings, regardless of whether contested or uncontested. A cause of action related to the probate proceeding must be brought in a statutory probate court unless the jurisdiction of the statutory

probate court is concurrent with the jurisdiction of a district court as provided by Section 32.007 or with the jurisdiction of any other court.

Section 32.007 Concurrent Jurisdiction With District Court

A statutory probate court has concurrent jurisdiction with the district court in:

- (1) a personal injury, survival, or wrongful death action by or against a person in the person's capacity as a personal representative;
- (2) an action by or against a trustee;
- (3) an action involving an inter vivos trust, testamentary trust, or charitable trust, including a charitable trust as defined by Section 123.001, Property Code;
- (4) an action involving a personal representative of an estate in which each other party aligned with the personal representative is not an interested person in that estate;
- (5) an action against an agent or former agent under a power of attorney arising out of the agent's performance of the duties of an agent; and
- (6) an action to determine the validity of a power of attorney or to determine an agent's rights, powers, or duties under a power of attorney.

TEXAS RULES CIVIL PROCEDURE AS RELATES TO MOTIONS FOR SUMMARY JUDGMENT

Rule 166a

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the adverse party has appeared or answered, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof. A summary judgment,

interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to amount of damages.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) Motion and Proceedings Thereon. The motion for summary judgment shall state the specific grounds therefor. Except on leave of court, with notice to opposing counsel, the motion and any supporting affidavits shall be filed and served at least twenty-one days before the time specified for hearing. Except on leave of court, the adverse party, not later than seven days prior to the day of hearing may file and serve opposing affidavits or other written response. No oral testimony shall be received at the hearing. The judgment sought shall be rendered forthwith if (i) the deposition transcripts, interrogatory answers, and other discovery responses referenced or set forth in the motion or response, and (ii) the pleadings, admissions, affidavits, stipulations of the parties, and authenticated or certified public records, if any, on file at the time of the hearing, or filed thereafter and before judgment with permission of the court, show that, except as to the amount of damages, there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the issues expressly set out in the motion or in an answer or any other response. Issues not expressly presented to the trial court by written motion, answer or other response shall not be considered on appeal as

grounds for reversal. A summary judgment may be based on uncontroverted testimonial evidence of an interested witness, or of an expert witness as to subject matter concerning which the trier of fact must be guided solely by the opinion testimony of experts, if the evidence is clear, positive and direct, otherwise credible and free from contradictions and inconsistencies, and could have been readily controverted.

(d) Appendices, References and Other Use of Discovery Not Otherwise on

File. Discovery products not on file with the clerk may be used as summary judgment evidence if copies of the material, appendices containing the evidence, or a notice containing specific references to the discovery or specific references to other instruments, are filed and served on all parties together with a statement of intent to use the specified discovery as summary judgment proofs: (i) at least twenty-one days before the hearing if such proofs are to be used to support the summary judgment; or (ii) at least seven days before the hearing if such proofs are to be used to oppose the summary judgment.

(e) Case Not Fully Adjudicated on Motion. If summary judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the judge may at the hearing examine the pleadings and the evidence on file, interrogate counsel, ascertain what material fact issues exist and make an order specifying the facts that are established as a matter of law, and directing such further proceedings in the action as are just.

(f) Form of Affidavits; Further Testimony. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions or by further affidavits. Defects in the form of affidavits or attachments will not be grounds for reversal unless specifically pointed out by objection by an opposing party with opportunity, but refusal, to amend.

(g) When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(h) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

(i) No-Evidence Motion. After adequate time for discovery, a party without presenting summary judgment evidence may move for summary judgment on the ground that there is no evidence of one or more essential elements of a claim or defense on which an adverse party would have the burden of proof at trial. The motion must state the elements as to which there is no evidence. The court must grant the motion unless the respondent produces summary judgment evidence raising a genuine issue of material fact.

TEXAS RULES CIVIL PROCEDURE AS RELATES TO DISCOVERY

Rule 190.1 - Discovery Control Plan

“Every case must be governed by a discovery control plan as provided in this Rule. A plaintiff must allege in the first numbered paragraph of the original petition whether discovery is intended to be conducted under Level 1, 2, or 3 of this Rule”.

190.2 Discovery Control Plan - Expedited Actions and Divorces Involving \$250,000 or Less (Level 1)(a)Application.

This subdivision applies to:

- (1)** any suit that is governed by the expedited actions process in Rule 169; and
- (2)** unless the parties agree that rule 190.3 should apply or the court orders a discovery control plan under Rule 190.4, any suit for divorce not involving children in which a party pleads that the value of the marital estate is more than zero but not more than \$ 250,000.

(b) Limitations. Discovery is subject to the limitations provided elsewhere in these rules and to the following additional limitations:

(1) Discovery period. All discovery must be conducted during the discovery period, which begins when initial disclosures are due and continues until 180 days after the date the initial disclosures are due.

(2) Total time for oral depositions. Each party may have no more than 20 hours in total to examine and cross-examine all witnesses in oral depositions. The court may modify the deposition hours so that no party is given unfair advantage.

(3) Interrogatories. Any party may serve on any other party no more than 15 written interrogatories, excluding interrogatories asking a party only to identify or authenticate specific documents. Each discrete subpart of an interrogatory is considered a separate interrogatory.

(4) Requests for Production. Any party may serve on any other party no more than 15 written requests for production. Each discrete subpart of a request for production is considered a separate request for production.

(5) Requests for Admissions. Any party may serve on any other party no more than 15 written requests for admissions. Each discrete subpart of a request for admission is considered a separate request for admission.

(c) Reopening Discovery. If a suit is removed from the expedited actions process in Rule 169 or, in a divorce, the filing of a pleading renders this subdivision no longer applicable, the discovery period reopens, and discovery must be completed within the limitations provided in Rules 190.3 or 190.4, whichever is applicable. Any person previously deposed may be redeposed. On motion of any party, the court should continue the trial date if necessary to permit completion of discovery.

190.3 Discovery Control Plan - By Rule (Level 2)

(a) Application. Unless a suit is governed by a discovery control plan under Rules 190.2 or 190.4, discovery must be conducted in accordance with this subdivision.

(b) Limitations. Discovery is subject to the limitations provided elsewhere in these rules and to the following additional limitations:

(1) Discovery period. All discovery must be conducted during the discovery period, which begins when the initial disclosures are due and continues until:

(A) 30 days before the date set for trial, in cases under the Family Code; or

(B) in other cases, the earlier of

(i) 30 days before the date set for trial, or

(ii) nine months after the initial disclosures are due.

(2) Total time for oral depositions. Each side may have no more than 50 hours in oral depositions to examine and cross-examine parties on the opposing side, experts designated by those parties, and persons who are subject to those parties' control. "Side" refers to all the litigants with generally common interests in the litigation. If one side designates more than two experts, the opposing side may have an additional six hours of total deposition time for each additional expert designated. The court may modify the deposition hours and must do so when a side or party would be given unfair advantage.

(3) Interrogatories. Any party may serve on any other party no more than 25 written interrogatories, excluding interrogatories asking a party only to identify or

authenticate specific documents. Each discrete subpart of an interrogatory is considered a separate interrogatory.

Rule 192.2 – Timing and Sequence of Discovery

(a) Timing.

(1) In a suit not governed by the Family Code, unless otherwise agreed to by the parties or ordered by the court, a party cannot serve discovery on another party until after the other party's initial disclosures are due.

(2) In a suit governed by the Family Code, a party may serve discovery with the initial pleading.

Rule 194.1 – Duty To Disclose; Production

(a) **Duty to Disclose.** Except as exempted by Rule 194.2(d) or as otherwise agreed by the parties or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties the information or material described in Rule 194.2, 194.3, and 194.4.

(b) **Production.** Copies of documents and other tangible items ordinarily must be served with the response. But if the responsive documents are voluminous, the response must state a reasonable time and place for the production of documents. The responding party must produce the documents at the time and place stated, unless otherwise agreed by the parties or ordered by the court, and must provide the requesting party a reasonable opportunity to inspect them.

Rule 194.2 – Initial Disclosures

(a) Time for Initial Disclosures. A party must make the initial disclosures within 30 days after the filing of the first answer or general appearance unless a different time is set by the parties' agreement or court order. A party that is first served or otherwise joined after the filing of the first answer or general appearance must make the initial disclosures within 30 days after being served or joined, unless a different time is set by the parties' agreement or court order.

(b) Content. Without awaiting a discovery request, a party must provide to the other parties:

- (1) the correct names of the parties to the lawsuit;
- (2) the name, address, and telephone number of any potential parties;
- (3) the legal theories and, in general, the factual bases of the responding party's claims or defenses (the responding party need not marshal all evidence that may be offered at trial);
- (4) the amount and any method of calculating economic damages;
- (5) the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case;
- (6) a copy or a description by category and location of all documents, electronically stored information, and tangible things that the responding party has in its possession, custody, or control, and may use to support its claims or defenses, unless the use would be solely for impeachment;

- (7) any indemnity and insuring agreements described in Rule 192.3(f);
- (8) any settlement agreements described in Rule 192.3(g);
- (9) any witness statements described in Rule 192.3(h);
- (10) in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills that are reasonably related to the injuries or damages asserted or, in lieu thereof, an authorization permitting the disclosure of such medical records and bills;
- (11) in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by the responding party by virtue of an authorization furnished by the requesting party; and
- (12) the name, address, and telephone number of any person who may be designated as a responsible third party.

(a) In General. In addition to the disclosures required by Rule 194.2 and 194.3, a party must provide to the other parties and promptly file the following information about the evidence that it may present at trial other than solely for impeachment:

- (1) the name and, if not previously provided, the address, and telephone number of each witness-separately identifying those the party expects to present and those it may call if the need arises;
- (2) an identification of each document or other exhibits, including summaries of other evidence-separately identifying those items the party expects to offer and those it may offer if the need arises.

(b)Time for Pretrial Disclosures. Unless the court orders otherwise, these disclosures must be made at least 30 days before trial.

Rule 169 Expedited Actions

(a) *Application.* The expedited actions process in this rule applies to a suit in which all claimants, other than counter-claimants, affirmatively plead that they seek only monetary relief aggregating \$250,000 or less, excluding interest, statutory or punitive damages and penalties, and attorney's fees and costs.

(b) *Recovery.* In no event may a party who prosecutes a suit under this rule recover a judgment in excess of \$250,000, excluding interest, statutory or punitive damages and penalties, and attorney's fees and costs.

(c) *Removal from Process.*

(1) A court must remove a suit from the expedited actions process:

(A) on motion and a showing of good cause by any party; or

(B) if any claimant, other than a counter-claimant, files a pleading or an amended or supplemental pleading that seeks any relief other than the monetary relief allowed by (a).

(2) A pleading, amended pleading, or supplemental pleading that removes a suit from the expedited actions process may not be filed without leave of court unless it is filed before the earlier of 30 days after the discovery period is closed or 30 days before the date set for trial. Leave to amend may be granted only if good cause for filing the pleading outweighs any prejudice to an opposing party.

(3) If a suit is removed from the expedited actions process, the court must reopen discovery under Rule 190.2(c).

(d) *Expedited Actions Process.*

(1) Discovery. Discovery is governed by Rule 190.2.

(2) Trial Setting; Continuances. On any party's request, the court must set the case for a trial date that is within 90 days after the discovery period in Rule 190.2(b)(1) ends. The court may continue the case twice, not to exceed a total of 60 days.

Rule 329b(g) – Motion For New Trial, Modify, Correct Or Reform A Judgment

“A motion to modify, correct or reform a judgment, (as distinguished from motion to correct the record of a judgment under Rule 316), if filed, shall be filed and determined within the time prescribed by this rule for a motion for new trial and shall extend the trial court’s plenary power and the time for perfecting an appeal in the same manner as a motion for a new trial. Each such motion shall be in writing and signed by the party or his attorney and shall specify the respects in which the judgment should be modified, corrected or reformed...”.

TEXAS GOVERNMENT CODE

Section 74.101 – Court Coordinators.

(a) The local administrative judge and each district or statutory county court judge may establish a court coordinator system and appoint a court coordinator for his court to improve justice and expedite the processing of cases through the courts.

(b) Each court coordinator serves at the pleasure of the judge who appointed him.

TEXAS CODE OF JUDICIAL CONDUCT

Canon 3(A) - Performing the Duties of Judicial Office Impartially and Diligently

A. Judicial Duties in General. The judicial duties of a judge take precedence over all the judge's other activities. Judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply:

Canon 3(B)(1) - Adjudicative Responsibilities. (1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required or recusal is appropriate.

Canon 3(B)(8) - A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications or other communications made to the judge outside the presence of the parties between the judge and a party, an attorney, a guardian or attorney ad litem, an alternative dispute resolution neutral, or any other court appointee concerning the merits of a pending or impending judicial proceeding. A judge shall require compliance with this subsection by court personnel subject to the judge's direction and control.