Decoding precedent

Mark Zuniga

1

Resource

- Pro Se Appeals Guide for Texas Courts, by the Texas Young Lawyers Association, https://e3x5np3m2p9.exactdn.com/wp-content/uploads/2023/08/45460_TYLA-Pro-Se-Appeals_24web.pdf

2

If some lawyer throws case law at you and you don't understand it

- It might be a good idea to recess the hearing, go to our Legal Question Board, and give one of our attorneys an opportunity to read and analyze it.

3

Life of a lawsuit through the appellate process

4

Case begins in justice court

- Not a court of record
- Civil cases have their own rules of civil procedure, and the rules of evidence don't necessarily apply
- More informal
- By comparison, trials are resolved quickly

5

Justice court case may be appealed *de novo*

- District court or county court at law gives no deference to lower court ruling
- Rules of evidence and the full rules of civil procedure apply in civil cases
- This is a court of record with a court reporter.
- Much more formal
- More time consuming.
- Case does not come back to justice court unless appeal not fully perfected

6

Case may be appealed again to a court of appeals

There are 14 geographical appellate courts in Texas

As of 9/1/2024, the Fifteenth Court of Appeals handles certain appeals brought by and against certain governmental entities.

7

Some counties are governed by more than one court of appeals

Decision is usually made by the appellant (the person who files the appeal first).

8

Appellate courts are not trial courts

Trial Courts

- One judge
- Gather evidence at hearings/trial
- Make findings of fact
- Apply the law to the facts

Court of Appeals

- Panel of at least three justices
- Rely exclusively on the record from the lower court
- Does not make findings of fact, relies on the finder of fact as long as the factfinder was reasonable
- Makes holdings of legal propositions.

9

Appellate courts do not enforce judgments

Cases are remanded back to the trial court once appeal is completed.

This may be why some courts erroneously remand a case back to you after an appeal.

10

Appellate justices are not in the room where it happens

- Questions of fact are normally left to the factfinder
- Questions of law are reviewed de novo.

11

Deference to fact finder (oversimplified)

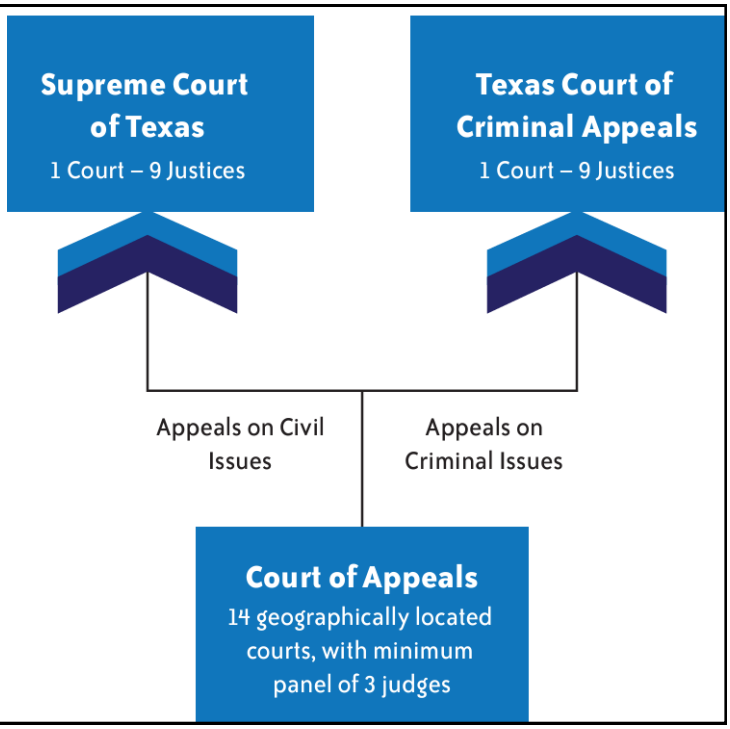
- Legal insufficiency – less than a scintilla of evidence. Finding is upheld if there is enough evidence for reasonable people to reach different conclusions. If the evidence is legally insufficient, reverse and render.

- Factual insufficiency (civil only) – so against the great weight of the evidence as to be manifestly unjust. If evidence is factually insufficient, appellate court reverses the judgment and remands back to the trial court for a new trial.

12

Lose on appeal? Parties can try to appeal a second time

SCOTX and CCA are both courts of last resort in Texas law. Like SCOTUS, they get to choose which cases they will take.

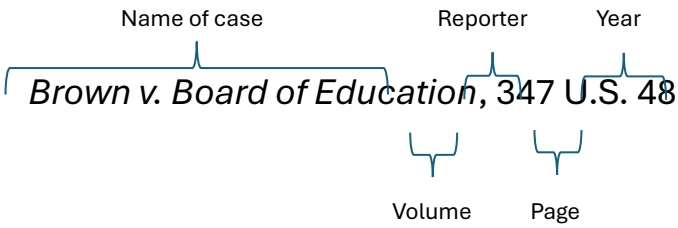


13

How to read a case citation

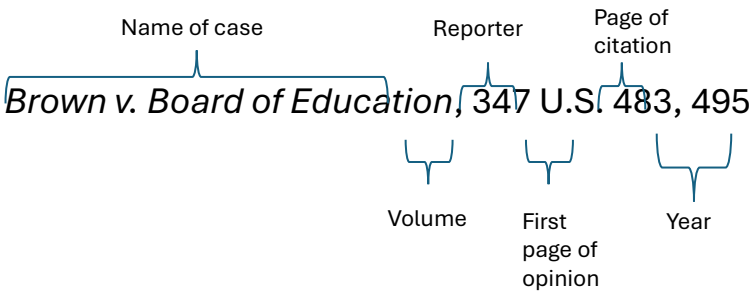
14

Citation for U.S. Supreme Court opinion generally



15

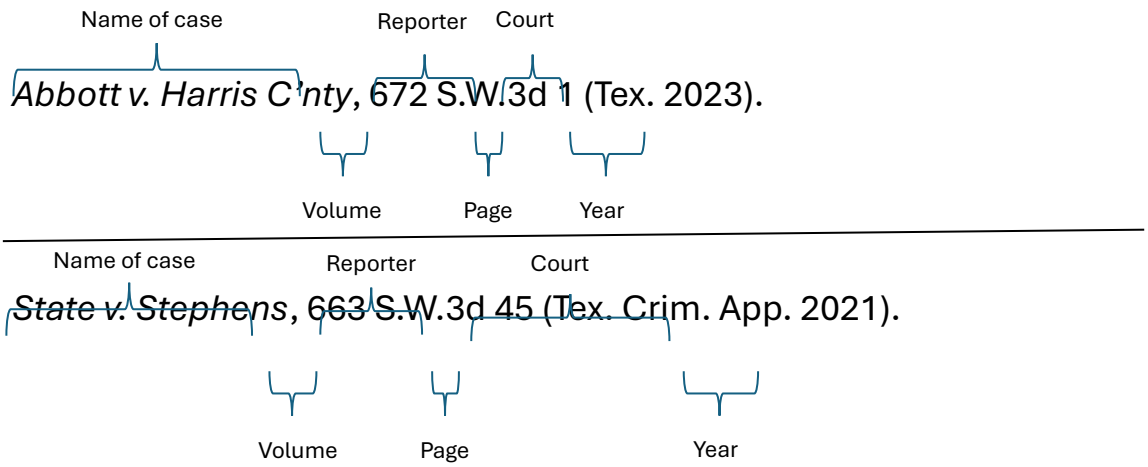
Citation for U.S. Supreme Court opinion with specific page



"Separate education facilities are inherently unequal."

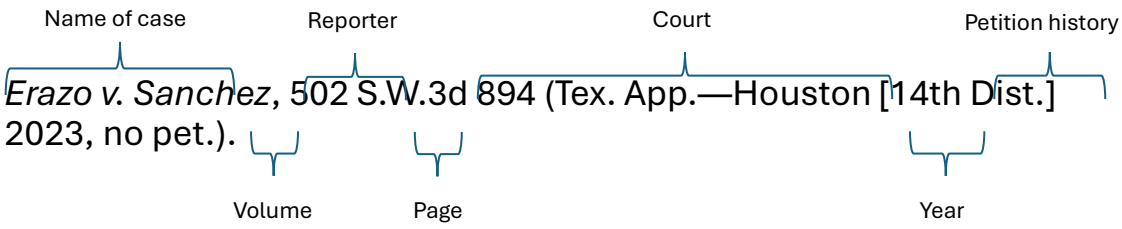
16

Citations for Texas courts of last resort



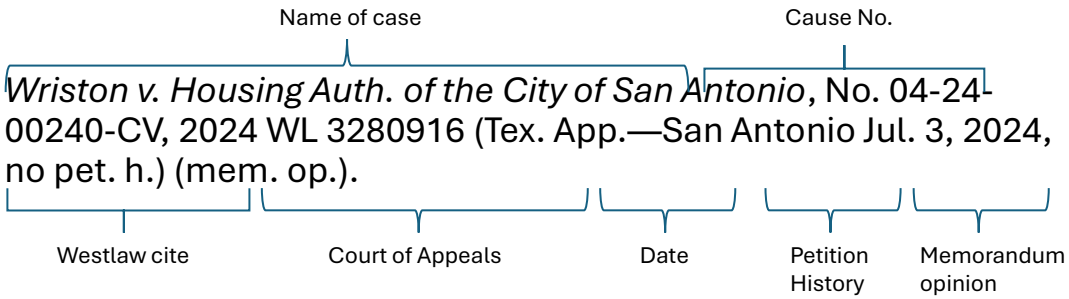
17

Citations for intermediate appellate courts in Southwestern Reporter



18

Citations for intermediate appellate courts NOT in Southwestern Reporter



19

Stare decisis

Binding vs. persuasive precedent

20

Why adhere to precedence?

Mitschke v. Borromeo, 645 S.W.3d 251 (Tex. 2022)

- Stare decisis exists to protect wrongfully decided cases;
- Commercial and financial decisions would be far more challenging without confidence that courts would honor the legal framework within which those decisions are made;
- The same is true of any decision involving calculations about risk—decisions in virtually every corner of life, ranging from property, to family, to employment, and beyond.

21

How does an appellate decision affect you?

Binding Precedent

- U.S. Supreme Court
- Texas Supreme Court
- Texas Court of Criminal Appeals
- Court of Appeals for your geographic area
- 15th Court of Appeals (maybe?)

Persuasive Precedent

- Federal Fifth Circuit Court of Appeals
- Other Texas courts of appeal

22

“Dicta” or “obiter dicta”

Language in the opinion that has no bearing on the end result of the holding is persuasive, not binding.

23

What about a memorandum opinion?

- A criminal case that was not published in the Southwestern Reporter has no precedential value but may be helpful in letting you know how the justices think about an issue.
- In civil cases since 1997, all opinions have precedential value.

24

Persuasive precedent is worth looking at

Appellate judges from opposing political parties often agree with each other outside of hot button issues. Disagreements are normally minimal.

Appellate judges know that if their court disagrees with another court of appeals on an important issue, the court of last resort is likely to take the case. Risk might not be worth it.

25

Before we go further …

A brief review on the general rule on notices to vacate in eviction matters.

26

Generally, the NTV must be given in person or by mail,

In person delivery means:

- Personally delivered to the tenant or any person residing at the premises who is at least 16 y/o
- Attaching the notice to the *inside* of the main entry door.

Delivery by mail means:

- Regular mail, registered mail, or certified mail, return receipt requested. The notice period is calculated from the day on which the notice is delivered.

27

Let's read some cases

Two cases were included in the materials, *Mendoza v. Bazan* and *Furrer v. Furrer*.

28

Front page of *Mendoza v. Bazan*, No. 08-17-00117-CV (Tex. App.—El Paso, pet. denied)

COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

NESTOR MENDOZA, JR., Appellant, v. ANNIE MARIE BAZAN, Appellee.	§ § § § § § § §	No. 08-17-00117-CV Appeal from the County Court of Hudspeth County, Texas (TC# CV-570)

OPINION

Nestor Mendoza Jr. appeals a judgment of eviction and monetary award of unpaid rent following a forcible detainer suit by Annie Marie Bazan. Mendoza raises eight issues challenging not only the subject-matter jurisdiction of the courts below, but also the judgment of possession and unpaid rent. We affirm.

29

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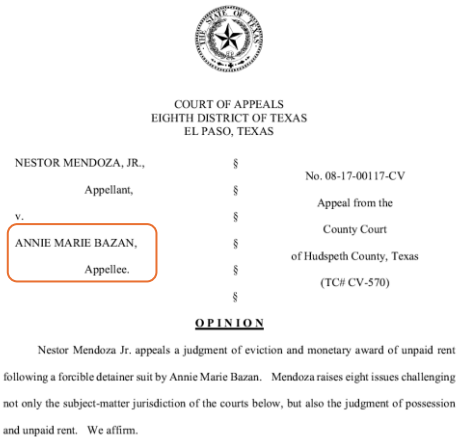

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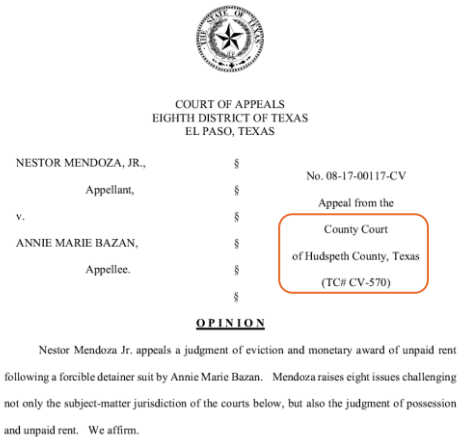

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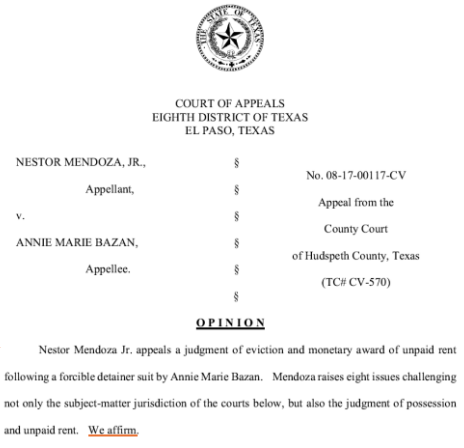

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Opinion starts immediately

34

The front page of the *Furrer* decision looks different

Different courts format their cases slightly differently.

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-18-00360-CV

RONNIE FURRER AND GENEVA MAE SCHNELLE, Appellants

V.

FAY ELAINE FURRER, Appellee

On Appeal from the County Court at Law No. 2
Montgomery County, Texas
Trial Cause No. 18-30808

MEMORANDUM OPINION

Ronnie Furrer and Geneva Mae Schnelle ("the Appellants") appeal from a

35

Look at the Westlaw version of *Mendoza* (1/4)

- Westlaw edited the document for uniformity and to add commentary

574 S.W.3d 594
Court of Appeals of Texas, El Paso.

Nestor MENDOZA, Jr., Appellant,
v.
Annie Marie BAZAN, Appellee.

No. 08-17-00117-CV
|
April 5, 2019

Synopsis
Background: Landlord brought forcible detainer action against tenant at sufferance, seeking to restore possession of the property, unpaid rent, and attorney fees. After justice court entered judgment to landlord, the County Court, Hudspeth County, Kenneth DeHart, J., in a de novo review, entered judgment for landlord. Tenant appealed.

36

Look at the Westlaw version of *Mendoza* (2/4)

Citation (available well after release)

574 S.W.3d 594
Court of Appeals of Texas, El Paso.

Nestor MENDOZA, Jr., Appellant,
v.
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37

Look at the Westlaw version of *Mendoza* (3/4)

Parties to appeal

574 S.W.3d 594
Court of Appeals of Texas, El Paso.

Nestor MENDOZA, Jr., Appellant,
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38

Look at the Westlaw version of *Mendoza* (4/4)

574 S.W.3d 594
Court of Appeals of Texas, El Paso.

Nestor MENDOZA, Jr., Appellant,
v.
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Procedural history added by Westlaw editors

39

Editors added holdings

- Not part of the opinion, not part of the law, but indicates what Westlaw editors think the appellate court did

Holdings: The Court of Appeals, Gina M. Palafox, J., held that:

[1] justice court had jurisdiction over landlord's forcible detainer action;

[2] there was no issue of title sufficient to divest justice court of jurisdiction over landlord's forcible detainer action;

[3] collateral estoppel did not preclude litigation of issue of right to possession;

[4] tenant's admission that a notice to vacate had been received was sufficient to support finding that landlord complied with three-day notice requirement under Property Code, as required to bring forcible detainer action against the tenant; and

This is the part of the opinion we will be talking about

40

Right side of first page of *Mendoza* opinion

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West Headnotes (39)

[1] **Courts** Aggregate of principal and interest, attorney fees, or costs

In determining the amount in controversy for jurisdictional purposes, accrued interest and post-judgment attorney's fees are not normally considered. Tex. Gov't Code Ann. § 27.031(a)(1), (2).

[2] **Justices of the Peace** Jurisdiction dependent on jurisdiction of lower court in general

The appellate jurisdiction of a statutory county court is confined to the jurisdictional limits of the justice court, and a county court does not have appellate jurisdiction over cases originating in the justice court if the justice court did not initially have jurisdiction. Tex. Const. art. 5, § 19; Tex. Gov't Code Ann. § 27.031(a)(1), (2).

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41

Another research tool from headnotes

If you had Westlaw, you could click on the part that says "2 Cases cite this headnote" to see if your court of appeals made the same holding.

Lexis has similar feature.

[4] **Justices of the Peace** Interest, costs, and attorney fees

Justice court had jurisdiction over landlord's forcible detainer action, even though landlord's damages for unpaid rent and attorney fees were over jurisdictional limit of $10,000, where landlord pleaded an amount in controversy within jurisdictional limit of the justice court, $10,000 in unpaid rent, and post judgment attorney fees were not considered in determining amount in controversy. Tex. Const. art. 5, § 19; Tex. Gov't Code Ann. §§ 27.031(a)(1), (2), 27.031(a)(2).

2 Cases that cite this headnote

42

Opinion from the court doesn't start until page 6 of handout

***598** Appeal from the County Court of Hudspeth County, Texas (TC# CV-570)

Attorneys and Law Firms

Hon. Scott P. Foster, Hon. James D. Lucas, El Paso, for Appellant.

Hon. C. R. Kit Bramblett, El Paso, Hon. John P. Mobbs, for Appellee.

Before McClure, C.J., Rodriguez, and Palafox, JJ.

OPINION

GINA M. PALAFOX, Justice

***599** Nestor Mendoza Jr. appeals a judgment of eviction and monetary award of unpaid rent following a forcible detainer suit by Annie Marie Bazan. Mendoza raises eight issues challenging not only the subject-matter jurisdiction of the courts below, but also the judgment of possession and unpaid rent. We affirm.

- The markings "*598" and "*599" indicate where the pages are for the Southwestern Report.

43

Let's focus on the issue with the notice to vacate, starting on page 11 of printout

The numbers correspond with the headnotes from the first few pages of Westlaw's opinion.

Notice to Vacate

[23] In his eighth issue, Mendoza contends that there was legally insufficient evidence that Bazan gave proper notice to the Mendozas to vacate the property, which is required before a landlord may file a forcible detainer suit.

[24] **[25]** **[26]** **[27]** **[28]** **[29]** When an appe brings a challenge against the legal sufficiency of the evidence supporting an adverse finding on which he or she did not have the burden of proof at trial, as is the case here, the appellant must demonstrate that there is no evidence to

44

El Paso Court of Appeals cites two other courts

24.005(a). Since forcible detainer is a statutory cause of action, a landlord must strictly comply with its requirements. *Kennedy v. Andover Place Apartments*, 203 S.W.3d 495, 497 (Tex. App.—Houston [14th Dist.] 2006, no pet.) (citing *Perkins v. Group Life & Health Ins. Co.*, 49 S.W.3d 503, 506 (Tex. App.—Austin 2001, pet. denied)). Proper notice under Section 24.005(a) is an element of a forcible detainer action.

45

Top of page 12

Section 24.005 requires that when notice to vacate is given by mail, notice shall be given "to the premises in question." Tex. Prop. Code Ann. § 24.005(f). While the statute does not require receipt by any particular person, notice must be either mailed or hand-delivered to a person at the premises. *Id.*; *see also Trimble v. Fed. Nat'l Mortgage Ass'n*, 516 S.W.3d 24, 31 (Tex. App.—Houston [1st Dist.] 2016, pet. denied).

46

Facts of case, second paragraph of page 12

At trial, Bazan presented a document titled "Letter to Tenant for Eviction," dated April 20, 2010. While the letter appears to contain the mailing address of the property, it does not contain any evidence that it was mailed via certified or first-class mail. During her testimony, Bazan claimed that while she had not personally sent notice to vacate via mail or personal delivery, "[her] attorney took care of that."

47

Facts of case, second paragraph of page 12

At trial, Bazan presented a document titled "Letter to Tenant for Eviction," dated April 20, 2010. While the letter appears to contain the mailing address of the property, it does not contain any evidence that it was mailed via certified or first-class mail. During her testimony, Bazan claimed that while she had not personally sent notice to vacate via mail or personal delivery, "[her] attorney took care of that."

48

Still more facts

When Bazan then stated that her attorney's secretary had told her that the notice had been hand-delivered, Mendoza's attorney objected based on hearsay. The trial court sustained the objection. Later at trial, Mendoza admitted that he had received the notice to vacate and that he had knowledge that he was supposed to vacate the premises, but he did not state when he had received the notice.

49

If you had been the judge on this case, how could you have handled it better?

50

My understanding of holding in *Mendoza*

- Appellate court cannot ignore the fact that Mendoza did not dispute that he received the notice to vacate or that he was supposed to vacate the property.
- Held: the evidence was legally sufficient to support the implied finding that Bazan complied with the three-day notice requirements.
- I take this case to mean that if a landlord tells their lawyer to send a notice to vacate and the tenant received the notice to vacate, it is not **unreasonable** to **infer** that the lawyer properly delivered the notice to vacate.

51

"… nothing in the record established that the notice was properly delivered by mail or personal delivery."

— another lawyer

52

A lawyer disagrees with me

"the court nonetheless held that Mr. Mendoza's admission of receiving the letter along with the date of the letter was sufficient evidence supporting an implied finding that Bazan sent the notice on or about the date of the letter. Thus, the court held that Bazan complied with the 3-day notice requirement."

53

Now let's look at the *Furrer* opinion

It is a memorandum opinion. It has precedential value, but Westlaw did not add a synopsis or headnotes.

The notations "*1" and "*2" are Westlaw page numbers. Citations are not to the page on a printout of the opinion but these arbitrary numbers.

54

Facts begin on page 1

- Faye left home, which she owned, in 2009 because of family violence.
- Fay was afraid of Ronnie because of violence in the past, and she has posted the NTV on the outside of the door because she was afraid.
- Faye claimed Ronnie is not leasing the property from her and does not have permission to be there; she has asked him to leave many times.
- Ronnie testified that he received a notice to vacate the property, which was posted on the outside of the front door.
- Ronnie denied receiving a copy of the notice to vacate in the mail.
- Ronnie claimed he paid rent; Faye claimed he never paid her.

55

Let's look at page 21 of the Evictions Deskbook

Alternative notice is available if the landlord reasonably believes that harm to a person would result from in person delivery.

If that's the case, the landlord may:

- Securely attach the notice to the outside of the main entry door in an envelope with the tenant's name, address, and the words "**Important Document**" or similar language; **and**
- By 5:00 p.m. of the same day, deposit a copy of the notice to vacate to the tenant in the mail (must be mailed from the same county as the premises).

56

Problems with the facts in this case

- Nothing in the opinion indicates that Faye or Ronnie testified about the envelope the NTV may have been in.
- Ronnie denied getting a NTV in the mail; nothing in the opinion indicates that anyone asked Faye about mailing the notice.

57

"Prior to filing suit, Fay attached a notice to vacate to the exterior of the front door of the house, but **did not mail the notice**."

— other lawyer

58

On appeal

"The Appellants contend that the evidence is factually insufficient to support the court's finding that Fay provided proper notice to vacate. According to the Appellants, Fay attempted to give notice by posting it on the outside of the front door, but she failed to put the notice in an envelope marked 'IMPORTANT DOCUMENT' and to send the notice by certified or regular mail."

Remember that "factually insufficient" means against the great weight of the evidence and manifestly unjust.

59

Furrer also says

"Proper notice is an element of forcible detainer."

"However, an alleged failure to comply with section 24.005(f) of the Texas Property Code does not deprive the court of jurisdiction to consider the eviction suit."

60

Appellate court points out

- Appellants did not complain about the sufficiency of Fay's notice to vacate in their answer.
- Appellants did not object when the trial court admitted the notice to vacate into evidence.

61

Holding in *Furrer*

- Fay's testimony that she posted the notice on Ronnie's front door, together with the notice and Ronnie's testimony that he received the notice, are some evidence from which the county court could reasonably conclude that Ronnie received actual notice to vacate the property.

- Court's conclusion that the notice was sufficient was not so contrary to the great weight and preponderance of the evidence as to be clearly wrong and unjust.

62

Some lawyers are using these cases

Argument is that El Paso and Beaumont are taking a practical view, and that a notice to vacate will still be valid even though unintentionally there was no strict compliance. All that matters is tenant's actual knowledge.

63

My problems with this analysis

- Neither of these cases actually say that the landlord does not have to comply with the statutory requirements of the notice to vacate if the tenant has actual knowledge. *Mendoza*, in fact, says "a landlord must strictly comply" with the statutory eviction requirements.
- These cases seem to be more about the lack of direct evidence of delivery rather than holding that close enough is good enough on a notice to vacate.
- Also, can't ignore the domestic violence implications in *Furrer*. It's possible that future courts will hold that the strict requirements for a notice to vacate under fear of violence do not matter when the tenant has actual notice; this holding might not extend to other NTVs.

64

Courts that have said landlord must "strictly comply" with Property Code's requirements

- El Paso
- Houston [14th Dist.]
- Austin
- Houston [1st Dist.]
- Fort Worth

65

Further research

Trial court erred in granting attorney's fees to landlord because tenant did not get 11 days' notice to move out to avoid attorney's fees even though tenant had actual knowledge of at least 90 days that the landlord would seek attorney's fees. *Tillman v. Lake Pointe Owners Group, Inc.*, No. 07-19-00385-CV, 2020 WL 6253238, at *4 (Tex. App.—Amarillo Oct. 22, 2022, no pet.) (mem. op.).

66

Group discussion

67

Hypothetical

- Rick and Lucy Arnaz move out of their condo and into a retirement community after Rick retires from the music industry. They rent out the condo for some additional income. This is their only rental.
- Michelle Tanner, a trust fund baby, becomes their tenant and doesn't pay the rent.
- Rick testifies that he had Lucy deliver the notice to vacate. Lucy is not at trial.
- Michelle admits that she received the notice to vacate.

What do you do?

68

Let's talk about rent

69

Shields L.P. v. Bradberry, 526 S.W.3d 471 (Tex. 2017)

The first thing you might notice is the yellow flag. This means that in another opinion the court said that the circumstances of the two cases were different.

KeyCite Yellow Flag - Negative Treatment
Distinguished by Interest of J.S., Tex., June 16, 2023

526 S.W.3d 471
Supreme Court of Texas.

SHIELDS LIMITED PARTNERSHIP, Petitioner,
v.
Boo Nathaniel BRADBERRY and 40/40 Enterprises, Respondents

No. 15-0803
|
Argued March 23, 2017
|
OPINION DELIVERED: May 12, 2017
|
Rehearing Overruled September 22, 2017

70

Terms of lease

- Rent due "without … prior demand" on the first of the month. Failure to by rent by the tenth of the month is "an event of default."
- "All waivers must be in writing and signed by the waiving party. **Landlord's** failure to enforce any provision of this Lease or its **acceptance of late installments of Rent shall not be a waiver** …" (emphasis added)
- If Bradberry fulfilled all the terms of the lease, Bradberry had option to extend lease
- Base rent is $3k/month. If lease not extended, holdover rent is $3k/month. If lease is extended, rate to be tied to Consumer Price Index.

71

Facts of *Shields*

- Bradberry was regularly more than 10 days behind on the rent. Landlord, without fail, accepted the rent.
- Bradberry gave notice of intent to exercise option to extend lease.
- By the time the original lease period ended on May 31, 2012, Bradberry was one month late with the rent. Tenant tendered the rent on June 13, 2012, which landlord accepted.
- Rent (being paid under holdover rate, not CPI adjusted rate) continued to be late
- After giving the notice of intent to exercise option, tenant made $30k in improvements to premises

72

More facts from *Shields*

- Landlord asserted that they were on a month-to-month lease, gave notice of lease termination, and later a notice to vacate. Term could not be extended because tenant was in default.
- Tenant claimed it had exercised option to extend the lease term, and that the landlord had waived the issue about late payment of rent by accepting the money.

73

From page 6 of Handout

"Disposition of that matter ultimately turns on the force and effect of the parties' nonwaiver agreement, which unequivocally precludes a defense of waiver premised on the landlord's acceptance of late rental payments."

74

Page 8 of Handout

"Given Texas's strong public policy favoring freedom of contract, there can be no doubt that, as a general proposition, nonwaiver provisions are binding and enforceable."

"We agree a nonwaiver provision absolutely barring waiver in the most general of terms might be wholly ineffective. But we cannot agree that a nonwaiver provision is wholly ineffective in preventing waiver through conduct the parties explicitly agree will never give rise to waiver."

75

Money quote on page 8

"We therefore hold that engaging in the very conduct disclaimed as a basis for waiver is insufficient as a matter of law to ***485** nullify the nonwaiver provision in the parties' lease agreement."

76

Holdings in *Shields*

- No waiver because landlord only acted in a way which could not constitute waiver under the lease.
- Landlord did nothing to induce the tenant to spend $30k on improvements.
- Judgment rendered that landlord has superior right of possession; case remanded back to trial court to award attorney's fees to landlord.

77

Of course this is in the TAA lease form

Paragraph 23.2

- ***After giving notice of vacate or filing an eviction suit, we may still accept Rent or other sums due; the filing or acceptance doesn't waive or diminish our right of eviction or any other contractual or statutory right."***
- "Accepting money at any time doesn't waive our right to damages, to past or future Rent or other sums, or to our continuing with eviction proceedings."

78

“Acceptance of payment by the landlord after [the NTV] is considered a waiver the landlord's right to pursue forfeiture of the lease agreement”

--A different lawyer, citing a case from 1932

79

But wait, isn’t a residential lease different?

Churchill Forge v. Brown, 61 S.W.3d 368 (Tex. 2001) stands for the proposition that parties to a residential lease “shall have the upmost liberty of contracting.”

80

Group discussion, part 2

81

Hypothetical

- Michelle Tanner, after signing a TAA lease, is late on her rent.
- Rick Arnaz mails Michelle a notice to vacate, stating that she has 11 days to either pay the rent or move out. Otherwise, he will file an eviction proceeding.
- Michelle pays the rent.

Can Rick still obtain possession of the premises?

82

Questions?

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