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This paper summarizes and analyzes selected oil and gas cases, with a primary focus on Texas cases, decided during 2021 and a few Texas cases decided in early 2022.<sup>6</sup> The briefs use the following abbreviations: OGL for an oil and gas lease; NPRI for a nonparticipating royalty interest, ORRI for an overriding royalty interest; MI for a mineral interest; and RRC for Texas

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<sup>6</sup> For case summaries covering cases arising in all oil and gas producing states, see *2021 Annual Survey on Developments in Oil and Gas Law*, published by the OIL AND GAS, NATURAL RESOURCES, AND ENERGY JOURNAL (ONE J), in partnership with Steptoe & Johnson, PLLC. More information on ONE J is available at <https://digitalcommons.law.ou.edu/onej/>. The authors thank the *Oil and Gas, Natural Resources, and Energy Journal* (ONE J), Editor-in-Chief Piper Hampton, Mr. Kurt Krieger, and Steptoe & Johnson, PLLC for permission to publish some of the national case summaries from ONE J's Annual Survey of Developments in Oil and Gas Law. The authors also thank William B. Burford of Kelly Hart & Hallman in Midland, Texas, for sharing his updates prepared for the Foundation of Natural Resources and Energy Law and the Live Oak CLE [hereinafter Buford Case Law Update].

Railroad Commission. Following the Texas cases, cases from other states are listed alphabetically by state.

## TEXAS AND RELATED FEDERAL

### TITLES AND CONVEYANCING

#### ***Brumley v. McDuff*, 616 S.W.3d 826 (Tex. 2021)<sup>7</sup>**

Brumley filed a quiet title lawsuit against McDuff concerning a 345.9-acre tract of land. Brumley claimed title through a deed from Corker and further asserted title by adverse possession under the 10-year adverse possession statute. McDuff filed a counterclaim seeking a declaratory judgment that Corker owned no interest in the 345.9 acres, and McDuff denied the adverse possession claim. The jury ruled in favor of Brumley's adverse possession claim. McDuff appealed on an alleged error in jury submission.

The court of appeals concluded that given Brumleys' pleadings, the evidence, the arguments of counsel presented during trial, the jury charge presented by the parties, the arguments or lack thereof made during the charge conference, and the objection of the McDuffs' counsel to the trial on any theory not raised by the pleadings, the issue of determining title via a trespass-to-try-title suit was not tried by consent. Accordingly, because the judgment entered was not supported by the pleadings nor tried by consent, it could not stand.

The Texas Supreme Court reversed the court of appeals. The Court held that Brumley sufficiently pleaded a trespass-to-try-title action by adverse possession under Tex. R. Civ. P. 783, and therefore the appellate court erred by holding otherwise. Brumley's pleadings alleged each element of a ten-year adverse-possession claim, i.e., actual, visible, continuous, hostile, and exclusive possession and use of the property for over ten years. The petition included the other required allegations of a trespass-to-try-title action that apply to an adverse-possession claim, including the parties' names and residences, a metes-and-bounds description of the property, and the property interest claimed, and the petition prayed for relief establishing title in petitioners' name.

By statute, a trespass-to-try-title action "is the method of determining title to lands." TEX. PROP. CODE § 22.001(a). Although related claims exist to determine narrower questions of possession, Chapter 24 of the Texas Property Code authorizes a suit for forcible detainer to obtain possession of real property from a tenant who refuses to surrender possession. *See* TEX. PROP. CODE §§ 24.001–.011. It "embraces all character of litigation that affects the title to real estate." In a trespass-to-try-title action, a plaintiff may prove legal title by establishing: (1) a regular chain of title of conveyances from the sovereign to the plaintiff; (2) a superior title to that of the defendant out of a common source; (3) title by limitations (i.e., adverse possession); or (4) possession that has not been abandoned. *Rogers v. Ricane Enters., Inc.*, 884 S.W.2d 763, 768 (Tex. 1994).

The special pleading requirements that govern trespass-to-try-title actions have been described as "detailed," but they are not arduous. A petition must state: (1) the real names of the parties and their residence, if known; (2) a legally sufficient description of the premises; (3) the plaintiff's claimed interest; (4) that the plaintiff possesses the premises or is entitled to possession; (5) that the defendant unlawfully entered and dispossessed the plaintiff of the premises and withholds possession; and (6) a "prayer for the relief sought." When these

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<sup>7</sup> Jones Case Law Update.

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