Supreme Court of Texas

No. 24-0543

Family Dollar Stores of Texas, LLC, ARCP FDCCC1403 LLC, 7B Building & Development, LLC, Triple C Development, Inc., Burkhardt Engineering Company, and M&S Utility Construction, LLC,

Petitioners,

v.

JLMH Investments, LLC,

Respondent

On Petition for Review from the Court of Appeals for the Second District of Texas

JUSTICE BUSBY, joined by Justice Lehrmann and Justice Devine, concurring.

"Chesterton reminds us not to clear away a fence just because we cannot see its point. Even if a fence doesn't seem to have a reason, sometimes all that means is we need to look more carefully for the reason it was built in the first place." *Artis v. District of Columbia*, 583 U.S. 71, 92 (2018) (Gorsuch, J., dissenting). Although our Court has not considered the issue in this century, we have noted the holdings of several Texas courts "that limitations (as opposed to laches) does not bar

a suit seeking only to enjoin a nuisance" without "seeking damages." *Schneider Nat'l Carriers, Inc. v. Bates*, 147 S.W.3d 264, 288-89 (Tex. 2004); *see also ExxonMobil Corp. v. Lazy R Ranch, LP*, 511 S.W.3d 538, 542 n.14 (Tex. 2017) ("Texas cases hold that limitations is not a defense to abate[ment of] a continuing nuisance."). The Court's opinion holds that the court of appeals erred in relying on this broad principle. I write separately to point out that today's case does not implicate narrower reasons identified by some of these courts that require a careful approach to this issue, including distinctions between private and public nuisances and between the two-year and ten-year statutes of limitations.

Here, the parties agree that the two-year statute of limitations governs JLMH's causes of action, which seek both damages and an injunction for a private nuisance injury to the use and enjoyment of its property due to runoff from neighboring property. But the court of appeals concluded otherwise, reasoning that "Texas law does not recognize limitations as a defense to injunctive relief" in this situation and that JLMH has a "standalone right to have a nuisance abated." 716 S.W.3d 770, 781, 783 (Tex. App.—Fort Worth 2024). As the Court's opinion explains, both points are wrong: Liability must be proven to obtain an injunction, and limitations generally provides an affirmative defense to liability whether the plaintiff seeks legal or equitable relief. *Ante* at 14-17.

But *whether* a limitations defense is available and *which* statute of limitations applies are separate questions. Careful scrutiny of the cases on which the court of appeals relied reveals at least two narrower

underlying rationales. Some courts have concluded that limitations is not an available defense when a landowner's suit seeks to abate a *public* nuisance by injunction. And regarding which statute applies, a landowner typically has *ten years* to sue for recovery of its property being used adversely by another party before that use ripens into an easement by prescription that will cut off litigation. *See* TEX. CIV. PRAC. & REM. CODE § 16.026(a); *Albert v. Ft. Worth & W. R.R.*, 690 S.W.3d 92, 98 (Tex. 2024) (per curiam).

Neither rationale applies in this case: JLMH has not argued that a public nuisance is at issue, and it agrees that the two-year statute of limitations governs all of its claims, which seek to remedy a permanent injury to the use and enjoyment of its land. Thus, today's opinion should not be understood to express any view regarding when the ten-year statute applies or whether or how limitations plays a role in public nuisance cases.

To illustrate why these important questions are separate ones to be explored in future cases, I begin with an overview of the Texas cases addressing the broad principle that the court of appeals misapplied here and highlight certain cases that identify the two narrower rationales just mentioned. I then offer some points to consider regarding how those rationales intersect with the text of the statutes of limitations enacted by the Legislature.

I

Texas courts have repeatedly concluded for more than a century that limitations is not a defense to an action to abate a permanent

nuisance.[1] Four cases are particularly helpful in understanding this principle and its rationales.

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[1] *E.g.*, *Yalamanchili v. Mousa*, 316 S.W.3d 33, 39-40 (Tex. App.—Houston [14th Dist.] 2010, pet. denied) ("Limitations is not a defense to a request to permanently abate a nuisance."); *Nugent v. Pilgrim's Pride Corp.*, 30 S.W.3d 562, 575 (Tex. App.—Texarkana 2000, pet. denied) ("One cannot ordinarily acquire a prescriptive right to maintain a nuisance. Limitations will not bar a suit to abate a continuing nuisance."); *Jamail v. Stoneledge Condo. Owners Ass'n*, 970 S.W.2d 673, 676-77 (Tex. App.—Austin 1998, no pet.) ("Limitations is not a defense to an action to abate a continuing nuisance."); *Abbott v. City of Princeton*, 721 S.W.2d 872, 875 (Tex. App.—Dallas 1986, writ ref'd n.r.e.) ("Furthermore, limitation does not bar a suit to abate a continuing nuisance."), *disapproved on other grounds by Schneider*, 147 S.W.3d at 281 n.79; *Stein v. Highland Park Indep. Sch. Dist.*, 540 S.W.2d 551, 554 (Tex. Civ. App.—Texarkana 1976, writ ref'd n.r.e.) ("But here appellant alleged a continuing nuisance, praying for abatement as well as for damages. Limitations is not a defense to an action to abate a continuing nuisance."), *disapproved on other grounds by Schneider*, 147 S.W.3d at 281 n.79; *Hughes v. Jones*, 94 S.W.2d 534, 536 (Tex. Civ. App.—Eastland 1936, no writ) ("It seems to be fairly well settled by the decisions in this state that in an action to abate a nuisance, public or private, prescription or limitation is no defense."); *City of Corsicana v. King*, 3 S.W.2d 857, 861 (Tex. Civ. App.—Waco 1928, writ ref'd) (rejecting argument that a city "acquired by prescription a vested right to pollute the waters" of a creek); *City of Dallas v. Early*, 281 S.W. 883, 885 (Tex. Civ. App.—Dallas 1926, writ dism'd w.o.j.) ("The doctrine in this state, thoroughly well established, is that the right to maintain nuisances cannot be acquired by prescription. It follows, therefore, that limitation is no defense to a proceeding instituted for the abatement of a continuing nuisance."); *Gose v. Coryell*, 126 S.W. 1164, 1168 (Tex. Civ. App.—Austin 1910, no writ) ("[T]he doctrine of prescription is not available as a defense; but, at the same time, we are of [the] opinion that the facts and circumstances relied on as constituting prescription, as well as those bearing upon the question of estoppel, are pertinent and proper to be considered in determining whether or not, in the exercise of sound discretion, relief by injunction should be granted."); *Boyd v. Schreiner*, 116 S.W. 100, 103 (Tex. Civ. App.—San Antonio 1909, writ ref'd) ("It now seems to be settled by the weight of authority that the right to maintain a nuisance cannot be acquired by prescription."); *City of Ennis v. Gilder*, 74 S.W. 585, 587 (Tex. Civ. App.—San Antonio 1903, writ ref'd) ("It follows that his claim for damages might be barred without impairing his right to abate the nuisance. It cannot be seriously claimed that the city could acquire any right

City of Dallas v. Early was a public nuisance case in which the plaintiffs sued the city and its officials to abate a nuisance caused by certain drainage ditches and sewers. 281 S.W. 883, 884 (Tex. Civ. App.—Dallas 1926, writ dism'd w.o.j.). Plaintiffs alleged that whenever it rained, water flooded their property and then became stagnant, leading to odors and mosquitoes. *Id.* The court rejected the city's limitations defense, explaining: "The doctrine in this state, thoroughly well established, is that the right to maintain nuisances cannot be acquired by prescription. It follows, therefore, that limitation is no defense to a proceeding instituted for the abatement of a continuing nuisance."[2]

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in plaintiff's realty, by easement or otherwise, by adverse use that had existed for less than ten years."); *Int'l & Great N. Ry. v. Davis*, 29 S.W. 483, 484 (Tex. Civ. App.—Austin 1895, writ ref'd) (holding that "limitation did not affect the remedy to abate the nuisance" where culvert became a permanent injury when it flooded neighbor's land and injury "was not only continuing, but was constantly increasing"); *Rhodes v. Whitehead*, 27 Tex. 304, 316 (1863) ("The right, however, to a nuisance, cannot be acquired by prescription, and if the damming of the water . . . interfere[s] with the comfortable enjoyment of [the plaintiff's] property . . . , it is a nuisance of which he may complain."); *see also Simi Inv. Co. v. Harris County*, 236 F.3d 240, 250 n.14 (5th Cir. 2000) ("Under Texas law, limitations is not a defense to an action to abate a continuing nuisance." (cleaned up)).

[2] *Early*, 281 S.W. at 885 (citing *Rhodes*, 27 Tex. at 316; *Gilder*, 74 S.W. at 587; *Boyd*, 116 S.W. at 103). In Texas, we do not have a separate analytical category for "continuing" nuisances—we have temporary or permanent ones. *Schneider*, 147 S.W.3d at 280. We synthesized the distinction between temporary and permanent injuries to land most clearly in *Gilbert Wheeler, Inc. v. Enbridge Pipelines (E. Tex.), L.P.*, 449 S.W.3d 474 (Tex. 2014). There, we explained that an injury is permanent if: "(a) it cannot be repaired, fixed, or restored, *or* (b) even though the injury can be repaired, fixed, or restored, it is substantially certain that the injury will repeatedly, *continually*, and regularly recur, such that future injury can be reasonably evaluated." *Id.* at 480 (second

In *City of Corsicana v. King*, the city dumped sewage into a creek near plaintiffs' homes, and they sought past damages and a prospective injunction to restrain the public nuisance. 3 S.W.2d 857, 859 (Tex. Civ. App.—Waco 1928, writ ref'd). Needless to say, "the air was laden with offensive odors," and "great swarms of mosquitoes from said creek invaded the homes of all of the appellees." *Id.* at 860. There, in a writ refused case of equal precedential value to our own cases,[3] the court rejected the city's argument that it had obtained a right by adverse possession to discharge the sewage, explaining that "when the acts which create a nuisance are prohibited by law, no prescriptive right to

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emphasis added). Conversely, an injury is temporary if: "(a) it can be repaired, fixed, or restored, *and* (b) any anticipated recurrence would be only occasional, irregular, intermittent, and not reasonably predictable, such that future injury could not be estimated with reasonable certainty." *Id.* Over time, different authorities have used these terms differently. *See, e.g.*, *City of Tucson v. Apache Motors*, 245 P.2d 255, 257 (Ariz. 1952) ("Much confusion has arisen in the various jurisdictions of the United States as to just what constitutes a permanent nuisance as distinguished from a temporary or continuing nuisance . . . ."); JOSEPH A. JOYCE & HOWARD C. JOYCE, TREATISE ON THE LAW GOVERNING NUISANCES § 459 (1906) (referring to a continuing nuisance as one that "may be abated by law"). But in general, the continuing nuisances in the cases examined here would be considered permanent under the definitions quoted above. *See, e.g.*, *Jamail*, 970 S.W.2d at 677 (referring to a locked gate as potentially a "continuing nuisance"); *Early*, 281 S.W. at 885 (referring to a "constant menace" as a "continuing nuisance"); 2 H.G. WOOD, A PRACTICAL TREATISE ON THE LAW OF NUISANCES IN THEIR VARIOUS FORMS § 780 (3d ed., rev. 1893) (defining a continuous nuisance as one that "occurs so often, and is so necessarily an incident of the use of property complained of, that it can fairly be said to be continuing, although not constant or unceasing").

[3] *See Texas Rules of Form: The Greenbook* app. E (Texas Law Review Ass'n ed.,16th ed. 2025) (explaining that when used between 1927 and 1997 the notation "writ refused" means such cases possess "equal precedential value with the Texas Supreme Court's own opinions").

continue such acts and the nuisance resulting therefrom can be acquired." *Id.* at 861.

In *City of Ennis v. Gilder*, the city erected a dam that caused water to back up, "rendering the places improved by plaintiff for the occupancy of his tenants unfit for habitation." 74 S.W. 585, 585 (Tex. Civ. App.—San Antonio 1903, writ ref'd). Gilder, the landowner, sought damages and an injunction to abate the nuisance. *Id.* at 585-86. The trial court sustained the city's demurrer to Gilder's evidence of damages because the statute of limitations had run but permitted Gilder to seek abatement of the nuisance. *Id.* at 586. The court of appeals affirmed, explaining that a landowner's "claim for damages might be barred [by limitations] without impairing his right to abate the nuisance." *Id.* "It cannot be seriously claimed that [a neighbor who creates flooding on an owner's land] could acquire any right in [that owner's] realty, by easement or otherwise, by adverse use that had existed for less than ten years." *Id.* at 587. The court went on to explain that, "[i]f necessary to relieve plaintiff from the injurious effects of these conditions, the [trial] court had power to abate the dam altogether." *Id.*

Both *Gilder* and *King* rely on our decision in *Rhodes v. Whitehead*, 27 Tex. 304 (1863). Rhodes sought damages for and abatement of a nuisance created by damming a river. *Id.* at 308. After a lengthy discussion about the nature of prescriptive rights, the Court made the following statement:

> The right, however, to a nuisance, cannot be acquired by prescription, and if the damming of the water, though in accordance with a prescriptive right, "worketh hurt, inconvenience, or damage" to the plaintiff, by "creating pools of stagnant and putrid water, or in any manner

> creating or causing such annoyance as seriously to interfere with the comfortable enjoyment of his property; or that it has a direct or decided tendency to cause sickness in his family or immediate neighborhood," it is a nuisance of which he may complain.

Id. at 316. In other words, "[t]he defendant cannot use his easement[,] if he have one, so as to hurt or injure the plaintiff in the free enjoyment of that part of his lot not affected by it." *Id.* at 316-17.[4]

II

Although the Court now rejects the broad pronouncement that limitations never bars a suit to enjoin a nuisance, one of the specific grounds that certain cases identify as supporting their approach to limitations is the existence of a public rather than a private nuisance. *See, e.g.*, *King*, 3 S.W.2d at 861 (invoking the "rule universally recognized that prescription or lapse of time cannot be relied on to establish a right to maintain a public nuisance," such as pollution of a

[4] Other cases apply similar principles. In *Simon v. Nance*, another water runoff case, the defendant pleaded the two-year statute of limitations as to damages and ten and twenty years' prescription as to a widening ditch. 142 S.W. 661, 662-63 (Tex. Civ. App.—Austin 1911, no writ). The court concluded that laches barred an injunction when the condition lasted for twenty-one years. *Id.* at 664. In *Scharlack v. Gulf Oil Corp.*, appellants conceded that the two-year statute of limitations barred their damages claim but sought injunctive relief. 368 S.W.2d 705, 706 (Tex. Civ. App.—San Antonio 1963, no writ). Rather than dismissing the claim for injunctive relief because of the two-year limitations bar, the court held that appellants failed to show they had suffered a nuisance. *Id.* at 707. And in a more recent case, *Gearhart v. Wardell*, the court declined to apply the two-year statute of limitations and instead applied the ten-year statute for adverse possession to injunctive relief to remove a wall. No. 13-15-00096-CV, 2016 WL 7011402, at *3 (Tex. App.—Corpus Christi–Edinburg Dec. 1, 2016, no pet.). The court recognized that the claim for damages expired two years after the wall was built. *Id.* at *2.

watercourse); *Early*, 281 S.W. at 885.[5] When real property rights common to the public are infringed, it is not surprising that relevant considerations regarding the role of defenses such as limitations can differ.

Thus, in one of our principal modern opinions untangling the law of nuisance, we treated public nuisances as categorically distinct and limited our analysis to the requirements and limitations of private nuisances. *See Crosstex N. Tex. Pipeline, L.P. v. Gardiner*, 505 S.W.3d 580, 591 n.3 (Tex. 2016).[6] Today's opinion likewise does not address the role of limitations in public nuisance cases. *Ante* at 17 n.15.

III

A second specific rationale that these cases identify is the relevance of adverse possession or prescription to the limitations

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[5] *See also Richardson v. Lone Star Salt Co.*, 49 S.W. 647, 648 (Tex. Civ. App.—Austin 1899, no writ) ("Under the present statutes of this state, it is clear that no right in the obstruction of a public street can grow up on the ground of limitation."); JOYCE, *supra* note 2 §§ 50, 55 (stating of public nuisances: "No prescriptive right to maintain such a nuisance can be acquired"; and of private nuisances: "Th[is] rule . . . does not apply where the nuisance is not a public one but private only.").

[6] This Court has not thoroughly explored the distinction between public and private nuisances. In general, "a 'public' or 'common nuisance' is a condition that amounts to an unreasonable interference with a right common to the general public." *In re Premcor Refin. Grp.*, 233 S.W.3d 904, 907 (Tex. App.—Beaumont 2007, no pet.) (citation omitted); *see also* RESTATEMENT (SECOND) OF TORTS § 821B (A.L.I. 1979) ("A public nuisance is an unreasonable interference with a right common to the general public."). And a private nuisance "is a nontrespassory invasion of another's interest in the private use and enjoyment of land." RESTATEMENT (SECOND) OF TORTS § 821D (A.L.I. 1979); *see Kane v. Cameron Int'l Corp.*, 331 S.W.3d 145, 147-48 (Tex. App.—Houston [14th Dist.] 2011, no pet.).

analysis. *See King*, 3 S.W.2d at 861; *Early*, 281 S.W. at 885; *see also Rhodes*, 27 Tex. at 316. Again, although we reject today the broad principle that a suit to remedy a nuisance injury can never be barred by limitations, some cases indicate that the two-year limitations period does not apply to a claim seeking a prospective injunction to abate an adverse use of property so it does not become an easement by prescription. *Gilder*, 74 S.W. at 587.[7] Because JLMH has not alleged such a claim and agrees that the two-year period applies here, the Court properly does not address other limitations periods, which remain to be considered in future cases. As I discuss below, the difference highlighted by these cases can be traced to the texts of our statutes of limitations themselves, which show that distinct limitations periods can apply to causes of action that seek different forms of relief to remedy different injuries.

Chapter 16 of the Civil Practice and Remedies Code sets out many different statutes of limitations. The two-year statute to "bring suit for trespass for *injury* to the estate or to the property of another" appears in subchapter A addressing "limitations of *personal* actions." TEX. CIV. PRAC. & REM. CODE § 16.003(a) (emphases added). The Legislature also

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[7] *See also, e.g., Simi Inv. Co.*, 236 F.3d at 250 n.14; *Gearhart*, 2016 WL 7011402, at *2-3; *Yalamanchili*, 316 S.W.3d at 39; *Abbott*, 721 S.W.2d at 875; *Stein*, 540 S.W.2d at 554; 1 JAMES L. HIGH, A TREATISE ON THE LAW OF INJUNCTIONS § 786 (Shirley L. High ed., 4th ed. 1905) ("[I]t is held that no acquiescence short of [the statutory period for] adverse user will bar plaintiff from his right to relief by injunction against a nuisance, unless he is estopped by some act or conduct which has induced defendant to incur expense, or to take action upon the strength of such conduct."). A suit to recover property interrupts the period of peaceable use necessary to acquire an easement by prescription. TEX. CIV. PRAC. & REM. CODE § 16.021(3).

provides various periods of "limitations of *real property* actions" in subchapter B, including the ten-year statute to "bring suit" on a "cause of action . . . to *recover* real property held in peaceable and adverse possession by another who cultivates, uses, or enjoys the property." *Id.* § 16.026(a) (emphases added).[8] This statute provides ten years to bring a suit to enjoin an adverse use of property—such as drainage or passage—before it ripens into an easement by prescription. *See Albert*, 690 S.W.3d at 98 (applying ten-year period to determine whether trespass claim seeking injunction against adverse use of easement was barred by limitations).[9] Versions of both statutes have been on the books since the earliest days of Texas. *See, e.g.*, Former TEX. REV. CIV. STAT. arts. 3194, 3203 (1879).[10]

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[8] There are several other statutes of limitations for real property actions. *E.g.*, *id.* § 16.024 (three years under title or color of title); *id.* § 16.025 (five years when person uses, pays taxes on, and claims property under a deed); *id.* § 16.0265 (fifteen years for cotenant heirs); *id.* § 16.027 (twenty-five years notwithstanding disability); *id.* § 16.028 (twenty-five years with recorded instrument). Although I base my discussion on the general ten-year statute, there may be circumstances in which one of the other limitations periods applies to cut off the right to an injunction.

[9] The use of another's property as a flooding runoff area for the statutory period can result in an easement by prescription. *Haas v. Choussard*, 17 Tex. 588, 590 (1856); *First Nat'l Bank of Marshall v. Beavers*, 602 S.W.2d 327, 329 (Tex. Civ. App.—Texarkana 1980, no writ); *see also* JOYCE, *supra* note 2, § 396 (recognizing that "putting trash, filth and garbage upon" the land of another is a "use").

[10] *See also, e.g.*, Act approved Feb. 5, 1841, 5th Cong., R.S., §§ 1, 17, 1841 Repub. Tex. Laws 163, 163, 167-68, *reprinted in* 2 H.P.N. Gammel, *The Laws of Texas 1822–1897*, at 627, 631-32 (Austin, Gammel Book Co. 1898) (providing two years for "trespass for injury done to the estate, or property of another" and that "ten years of . . . peaceable possession and cultivation, use or enjoyment thereof, without any evidence of title, shall give to such naked possessor full property precursive of all other claims").

When read together, these statutes take into account that property owners can suffer different kinds of injuries. As we explained in *Crosstex*, these include injury to the owner's right to use and enjoy land (nuisance), interference with the right to exclusive possession of the land such as by physical entry of a person or thing (trespass), and injury to the land itself. 505 S.W.3d at 594, 603 n.17. Our laws provide owners with various—sometimes overlapping—causes of action for violations causing these injuries,[11] and each type of action may offer multiple remedies that redress different injuries. Thus, courts confronted with a limitations defense to a property-based claim must pay careful attention to how the text of the relevant statutes applies to each alleged violation and injury for which a remedy is sought. *See Regency Field Servs. v. Swift Energy Operating, LLC*, 622 S.W.3d 807, 814 (Tex. 2021) ("[A] claim accrues when the defendant's wrongful conduct causes the claimant to suffer a legal injury, which gives the claimant the right to seek a judicial remedy.").

Key textual distinctions between these statutes show that the two-year limitations period applies to JLMH's causes of action seeking to remedy a nuisance injury to its personal use and enjoyment of land through damages and an injunction. JLMH alleges that Family Dollar's development has "repeatedly inundated [JLMH's property] temporarily

[11] "[I]n some instances an action can be both a trespass and a [negligent] nuisance." *Rankin v. FPL Energy, LLC*, 266 S.W.3d 506, 509 (Tex. App.—Eastland 2008, pet. denied). And the Water Code's description of the conduct and injury it prohibits—"damages" to another's property by an "overflow" of diverted or impounded water—may also support a cause of action for trespass or negligence. TEX. WATER CODE § 11.086(a).

with large volumes" of water; that "temporary retention" of the water has "deprived [JLMH] of the use and enjoyment of a substantial portion or all of its property, including . . . the loss of the value of such use" to carry out its business; and that it has suffered "property damage" to its parking lot and building. JLMH's suit to remedy these harms is thus a "personal action[]" for "injury to the estate or property," not a suit to "recover real property." TEX. CIV. PRAC. & REM. CODE §§ 16.003(a), 16.026(a).[12]

But the Legislature has recognized that there is also a "cause of action" that offers "recover[y]" as a remedy for "adverse" "use[]" of "real property," and holders of property interests have ten years to "bring [such a] suit." *Id.* § 16.026(a). Future cases will need to explore when this ten-year limitations period applies rather than the two-year period, and the statutory text and our cases provide some useful guidance. The ten-year statute is written generally to cover any cause of action that seeks to recover exclusive possession and use of real property. Thus, as just explained, the limitations period for a certain type of claim can vary depending on the violation alleged and the injury sought to be remedied.

For example, different limitations periods apply to trespass-to-try-title claims depending on the source of the title dispute. If the source is an adverse use, this ten-year statute or another relevant

[12] *See Miller v. Rusk*, 17 Tex. 170, 171 (1856) ("[R]ecovery . . . manifestly has reference to the possession" of property, while "an injury to the . . . freehold or estate" results in "damages.").

statute governing recovery of land applies.[13] But if the source is a conveyance, the four-year statute applies to a claim to set aside a voidable deed (such as for fraud), while the ten-year or other relevant statute governing recovery of land applies to a claim that a deed is void. *Slaughter v. Qualls*, 162 S.W.2d 671, 674 (Tex. 1942); *see also Ford v. Exxon Mobil Chem. Co.*, 235 S.W.3d 615, 618 (Tex. 2007) (per curiam).

When the owner brings a trespass-to-try-title suit beyond the period to recover land, the defendant may assert limitations as a defense, arguing that it has "title by limitations." *Lance v. Robinson*, 543 S.W.3d 723, 735 (Tex. 2018). In that situation, the limitations period is the adverse possession period (usually ten years) because an owner cannot recover his land beyond that period. *See, e.g.*, TEX. CIV.

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[13] *See, e.g.*, *Wells v. MSW 1221 S. Lamar, LLC*, No. 05-23-01288-CV, 2026 WL 188025, at *11-12 (Tex. App.—Dallas Jan. 23, 2026, pet. filed) (applying ten-year limitations period for trespass-to-try-title action); *Hestia Mgmt., LLC v. Klimist*, No. 13-24-00431-CV, 2025 WL 3548514, *3 (Tex. App.—Corpus Christi–Edinburg Dec. 11, 2025, no pet.) (describing adverse possession statue as a "limitations statute"); *Gutierrez v. Lorenz*, No. 14-18-00608-CV, 2020 WL 1951606, at *5 (Tex. App.—Houston [14th Dist.] Apr. 23, 2020, no pet.) (barring action to recover property due to "adverse possession limitations"); *Brown v. Snider Indus.*, 528 S.W.3d 620, 630 (Tex. App. Texarkana 2017, pet. denied) (applying adverse possession limitations to bar trespass-to-try-title suit); *Valdez v. Moerbe*, No. 03-14-00731-CV, 2016 WL 1407800, at *6-8 (Tex. App.—Austin Apr. 6, 2016, pet. denied) (addressing which statute for recovery of land applies to trespass-to-try-title claim); *Mem'l Park Med. Ctr., Inc. v. River Bend Dev. Grp.*, 264 S.W.3d 810, 817-820 (Tex. App.—Eastland 2008, no pet.) (same); *Thedford v. Union Oil Co. of Cal.*, 3 S.W.3d 609, 615 (Tex. App.—Dallas 1999, pet. denied) (applying 25-year limitations period to bar trespass-to-try-title action); *see also* 2 TEX. JUR. 3d *Adverse Possession* § 1 ("Statutes providing limitation periods control in any case involving the recovery of land claimed by adverse possession; thus, one having a right to recover property from an adverse possessor must institute suit within three, five, 10, or 25 years, depending on various factors and circumstances, or subsequently be barred from recovery." (footnote omitted)).

PRAC. & REM. CODE § 16.026(a); *see also* 2 W. MIKE BAGGETT & BRIAN THOMPSON MORRIS, TEX. PRAC. GUIDE: REAL EST. LITIG. § 5:62 (Aug. 2025) ("The adverse possession statutes are statutes of limitation[s].").[14]

It is not clear whether a statutory action for trespass to try title can be used to establish or prevent an easement, however, as an easement is a nonpossessory interest authorizing the holder to use land for a particular purpose while a trespass-to-try-title action determines title or a possessory right. *See Lance*, 543 S.W.3d at 736-37.[15] So what is a cause of action to which the ten-year statute applies in the easement context? The answer to this question will be relevant not only to landowners like JLMH that seek to recover exclusive possession of their property before an adverse use ripens into an easement by prescription, but also to easement holders like utilities, pipelines, and railroads that seek to prevent others from eroding their full usage rights through conflicting uses.

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[14] Put another way, adverse possession is not a claim in itself; it is the shorthand label we apply when the ten-year or other applicable limitations period has run on a claim to recover real property being used adversely by another. The actionable injury is the adverse use, not the prescriptive easement that may result in the future if no suit is filed to recover the property within ten years. Thus, the ten-year statute becomes relevant when the adverse use begins for which suit can be brought, not merely when the ten-year period has run. I agree with my concurring colleagues that the fate of JLMH's untimely nuisance suit under the two-year statute says nothing about a hypothetical claim to which the ten-year statute applies. *Post* at 11 (Young, J., concurring in part and in the judgment).

[15] Similarly, it is not clear whether a suit to quiet title or remove a cloud on title can be used to establish or prevent an easement, as one party is not claiming title to the property. *See Kapur v. U.S. Bank Nat'l Ass'n*, 691 S.W.3d 663, 667 (Tex. App.—Houston [14th Dist.] 2024, pet. denied) (listing elements of quiet title action, which include a claim by defendant affecting title).

Some of our cases indicate that one such cause of action is a common-law trespass claim seeking a prospective injunction to recover property that is being used adversely. *See Boerschig v. Rio Grande Elec. Coop.*, ___ S.W.3d ___, 2026 WL 1468464, at *11 (Tex. May 22, 2026) (rendering judgment for landowner on trespass claim against party using property outside scope of authorizing easement); *Albert*, 690 S.W.3d at 98. Applying the ten-year statute to such a claim, as we did in *Albert*, mirrors the period we apply when a limitations defense is raised to a trespass-to-try-title action involving adverse possession as discussed above.[16]

Of course, an owner may also be able to seek government help or exercise self-help to abate certain adverse uses before they ripen into an easement by prescription. But neither is a replacement for judicial remedies,[17] so they shed no light on what constitutes a "suit" on a "cause of action . . . to recover" an interest in "real property" to which the ten-year statute of limitations applies. TEX. CIV. PRAC. & REM. CODE § 16.026(a).

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[16] Our decision in *Schneider National Carriers, Inc. v. Bates*, 147 S.W.3d 264 (Tex. 2004), is not to the contrary. Permitting a single suit to recover a property interest that another party has been permanently using adversely for more than two but less than ten years does not "split[] one claim into several suits" or recognize shifting accrual dates that could create an "indefinite limitations period." *Id.* at 278, 281-82. Instead, it respects the language the Legislature chose in Section 16.026.

[17] *See Byrne Oil Co. v. Walraven*, 722 S.W.3d 339, 349 (Tex. App.—Eastland 2025, pet. filed) ("[S]elf-help abatement is a privileged remedy that cannot be pursued if there is adequate time to pursue a judicial remedy." (internal quotation marks omitted)).

In addition, self-help is not "available in every case," *Gardiner*, 505 S.W.3d at 610, and "few Texas cases . . . have addressed the circumstances when [it] is available." *Byrne Oil Co.*, 722 S.W.3d at 348. For example, an owner may be able to abate certain adverse uses by building a wall. But many nuisances cannot be abated by self-help at all (such as noise, dust, or odor), and other adverse uses such as flooding might be abatable or not depending on the slope of the terrain, the nature of the soil, and other factors. It would make little sense to have the length of the limitations period for a claim seeking to enjoin an adverse use turn on the vagaries of whether self-help is an available alternative in a particular case.

Today's decision leaves courts and parties free to explore the narrower limitations rationales identified in these cases, which are not implicated here.

J. Brett Busby
Justice

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