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 YOUNG, with whom Justice Bland and Justice Huddle join and with whom Chief Justice Blacklock joins as to Part II, concurring in part and in the judgment.

Today's opinion does what needs to be done on the merits. First, the Court explains, injunctions to abate a nuisance *are* bound by statutes of limitations. Second, injunctions *do* require a valid (in this case, non-expired) cause of action. The court of appeals held the opposite as to both, and the Court today briskly corrects those serious errors. The correction is proper because an injunction is simply a *remedy* that a plaintiff can request and

that might be available if he pleads and proves a viable claim. I write separately to further explain why the Court's result is compelled not just by logic but also by our existing jurisprudence.

Our appellate jurisdiction, by contrast, presents a closer and more difficult question. I ultimately agree that the Court has jurisdiction to decide the case, but my basis for that conclusion is narrower than the plurality opinion's, so I also write separately for that reason. Accordingly, I join the Court's judgment and the portions of the lead opinion—all but Part I—that constitute the opinion of the Court.

I

Well after we granted the petition for review, the Court identified a potential defect in appellate jurisdiction and directed the parties to address it. The parties do not dispute that our jurisdiction is secure. We must independently resolve any substantial doubts, however, so "[b]efore turning to the merits, we must first ensure that we have jurisdiction to do so." *Leibman v. Waldroup*, 715 S.W.3d 367, 371 (Tex. 2025). Our colleagues in dissent make a number of powerful points regarding finality and jurisdiction, and I agree with much of what they say. In other cases, those principles may well compel a different outcome, but under the specific circumstances of this case, I conclude, along with a majority of the Court's members, that we have jurisdiction to reach the merits.[*]

[*] When an indisputably final judgment is followed by a clarifying order purporting to grant a permissive interlocutory appeal but falling short of procedural requirements—that is to say, an order that does nothing at all—we will treat the notice of appeal as effective. In the case before us, the trial court issued an order dismissing all of JLMH's claims "as a matter of law." The court expressly

II

A

The merits turn out to be simple. A claim that fails for any reason—including, as here, because it was filed outside the limitations period—cannot support *any* relief. An injunction is relief. JLMH's claims are barred by limitations, so a court cannot award an injunction to remedy those claims. The Court's brevity in dispensing with the contrary arguments is laudatory.

Neither the relief sought (a permanent injunction), nor the label affixed to the claims ("nuisance"), presents any complication. Demanding damages, demanding an injunction, demanding both—none of that matters for purposes of determining limitations, which is focused on the *cause of action*. After all, in Texas, "law and equity are so blended as to remove all distinctions, procedural or otherwise," in our courts. *Rogers v. Daniel Oil*

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noted that "[t]his Order is final, disposes of all parties and all claims, and is appealable." Then, within the window of its plenary power, the court issued a "clarifying" order, though its efforts had the opposite effect. After a hearing on its "Motion to Clarify the Summary Judgment Orders and to Proceed with Trial on Injunctive Relief," JLMH filed a proposed order that would have permitted its claim for injunctive relief to proceed to trial and presented a controlling question of law to be argued if the court certified an interlocutory appeal. But the court did not sign that order. Instead, the court signed an order taking only two actions: (1) allowing a permissive interlocutory appeal of the prior final order; and (2) staying proceedings pending resolution of the "interlocutory" appeal of the final order (which, again, disposed of *all* parties and *all* claims). The court's order also emphasized that "JLMH does not waive its right to challenge the [c]ourt's summary judgment rulings, and any Final Judgment." So the court's order noticed JLMH's right to appeal final orders, mentioned an "interlocutory" appeal of a *final* order, and stayed proceedings that did not exist—no claims remained live.

The clarifying order was therefore completely facially ineffective. It did nothing whatsoever. For these reasons, although a lack of clarity in finality is typically construed against finality, in this bizarre (and hopefully unique) situation, there was no lack of clarity. The final order remained final.

& Royalty Co., 110 S.W.2d 891, 894 (Tex. 1937). In our blended system, "where both law and equity are administered by the same court, statutes of limitation apply to equitable actions *the same* as to legal actions." *Culver v. Pickens*, 176 S.W.2d 167, 170 (Tex. 1943) (emphasis added). JLMH sought damages alongside an injunction—all to remedy a permanent nuisance. Had it sought one, the other, or (as it eventually did) both, the result must be the same: its causes of action are time-barred, so the court cannot award relief of any kind.

The court of appeals was therefore wrong to conclude that "Texas law does not recognize limitations as a defense to injunctive relief to abate a nuisance." 716 S.W.3d 770, 781 (Tex. App.—Fort Worth 2024). It may have been accurate as a historical matter to observe that at least some "Texas courts have recognized a plaintiff's standalone right to have a nuisance abated." *Id.* at 783. But it was wrong as a legal matter to have joined those courts in thinking that injunctive relief is freestanding and can be untethered from a valid cause of action.

The Court is quite right to dispel these mistaken views. I endorse the clarity of today's statements: "There is no stand-alone right to abate a nuisance or obtain an injunction." *Ante* at 16. "Regardless of the relief a party seeks, 'remedies are available *only* if liability is established under a cause of action.'" *Id.* (emphasis added) (quoting *Etan Indus., Inc. v. Lehmann*, 359 S.W.3d 620, 625 n.2 (Tex. 2011)). And "[b]ecause it is *the claim itself* that determines which limitations period applies, JLMH's addition of a request for injunctive relief to its claims for injury to land does not alter the two-year limitations period." *Id.* at 18 (emphasis added).

I join all of that without reservation. Notably, none of it is really

about nuisance *per se*; it all inheres in the very concept of a cause of action, regardless of the injury a plaintiff seeks to redress. Courts ask when a cause of action accrued because the cause of action determines the applicable statute of limitations. Likewise, courts do not ask about the requested remedy *before* assessing limitations because the cause of action, not the remedy, determines the answer. If the cause of action is time-barred after two years, as everyone agrees is true of all the causes of action pleaded by JLMH, all potential relief for that cause of action is also necessarily time-barred. The result is simple, clear, and universal.

Today's decision stands for this general and universal rule, clarifying only that there is no exception for so-called "nuisance claims." But because misunderstandings seem to frequently arise over claims involving nuisance, I next turn to why our nuisance jurisprudence is not only consistent with but compels today's result.

B

The law of nuisance has long been a source of great confusion and frustration. "Dean Prosser famously wrote that there 'is perhaps no more impenetrable jungle in the entire law than that which surrounds the word "nuisance."'" *Crosstex N. Tex. Pipeline, L.P. v. Gardiner*, 505 S.W.3d 580, 591 (Tex. 2016) (quoting William L. Prosser, *The Law of Torts* § 88, at 592 (3d ed. 1964)).

This Court began clearing a path through that jungle in *Schneider National Carriers, Inc. v. Bates*, 147 S.W.3d 264 (Tex. 2004), and then in *Crosstex*. The Court's decision today continues that good work.

Schneider is our seminal case about limitations for causes of action in which plaintiffs seek redress for an injury that the law denominates a

"nuisance." In *Schneider*, we criticized existing Texas nuisance cases for their endemic inconsistency and incoherence in determining whether a nuisance was permanent or temporary. *See id.* at 273–75. That taxonomy is key for limitations because it is what determines whether the limitations clock will run (a permanent nuisance) or perpetually restart upon each new infraction (a temporary nuisance). So great was the indeterminacy in the case law—generating an inability to reliably predict how a court would rule based on materially indistinguishable circumstances—that, in then-Justice Brister's famous line for the Court, "half of [the cases] must be wrong; they are simply unreconcilable." *Id.* at 274.

Schneider eliminated the old ad hoc approach to permanent and temporary nuisances. It wiped the old cases away and made clear that they were of no help for limitations purposes. It replaced them with new guidance—namely, that "a nuisance should be deemed permanent if it is sufficiently constant or regular (no matter how long between occurrences) that future impact can be reasonably evaluated." *Id.* at 281. Applying that guidance here, JLMH's alleged injury is a permanent nuisance because the flooding occurs every time it rains and results from permanent structures. No one contends otherwise. JLMH's claims therefore accrued once; they do not accrue anew each time a hard rain causes its parking lot to flood. *See id.* at 270.

Schneider likewise made clear that certain things were beyond questioning: "The limitations period for a private nuisance claim is two years." *Id.* (citing Tex. Civ. Prac. & Rem. Code § 16.003). That formulation is shorthand, of course, because there is in truth no such thing as a "nuisance claim," but only a justiciable cause of action in which an alleged nuisance

constitutes the injury in fact. *See Crosstex*, 505 S.W.3d at 591, 604. The shorthand, though, is useful; it describes the relevant injury in fact, even if that label does not include all the remaining elements of a particular claim.

Nonetheless, the application of this clarified standard for limitations has not been uniform when injunctions are at play. In this case, for example, the court of appeals effectively split the cause of action, treating it as expired as to damages but allowing it to proceed as to the remedy of injunctive relief (ostensibly on the ground that no cause of action was even needed). Other courts, however, have treated requests for injunctive relief as having no effect on limitations. *See, e.g.*, *Mitchell v. Timmerman*, No. 03-08-00320-CV, 2008 WL 5423268, at *1 (Tex. App.—Austin Dec. 31, 2008, no pet.) (affirming summary judgment on the plaintiffs' time-barred nuisance claim seeking damages and injunctive relief). Similarly, courts have differed with respect to limitations when *only* injunctive relief is sought. *Compare, e.g.*, *Yalamanchili v. Mousa*, 316 S.W.3d 33, 39 (Tex. App.—Houston [14th Dist.] 2010, pet. denied) ("Limitations is not a defense to a request to permanently abate a nuisance."), *with Walton v. Phillips Petroleum Co.*, 65 S.W.3d 262, 276 (Tex. App.—El Paso 2001, pet. denied) ("Because Phillips established that all causes of action are barred by limitations, Walton is not entitled to injunctive relief.").

In *Schneider*, we reserved how to deal with limitations when injunctive relief is requested as "a question we do not reach as it is not this case." 147 S.W.3d at 289. Our normal practice, after all, is not to formally reach unpresented issues. At the same time, though, it is also common for prior holdings to leave open only one possible outcome once an issue *is* squarely presented. *Schneider*'s holdings—and common sense—leave

open no other outcome here.

Here is a sampling of why that is so. In *Schneider*, the Court clarified the distinction between permanent and temporary nuisances. One of our central points was that, as in other legal contexts, "characterizing a nuisance as temporary or permanent determines when limitations accrues, and thus when an injured party's *claims* are barred." *Id.* at 279 (emphasis added). We did not say then or at any other time that the accrual of limitations determines when a particular *remedy* is barred. Again, as elsewhere in the law, it is *the claim itself* that is either categorically barred or not barred: "[T]he record here establishes as a matter of law that the alleged nuisances were permanent, and thus barred by limitations." *Id.* at 268. That is why the delineation between temporary and permanent nuisances is so important. "Uncertainty in the test for the distinction can put the parties in a serious predicament." *Id.* at 275 (quoting 1 Fowler V. Harper et al., *The Law of Torts* § 1.30, at 140 (3d ed. 1996)). Indeed, dispelling uncertainty about limitations in nuisance cases is the reason we decided *Schneider* in the first place.

Elsewhere in *Schneider*, we made clear that so-called nuisance claims are not treated differently from other kinds of claims—as always, a claim is a cause of action that can generate remedies. For example:

> Generally, a cause of action accrues and limitations begins to run when facts exist that authorize a claimant to seek judicial relief. As nuisance claims arise only upon a substantial interference with property use, they normally do not accrue when a potential source is under construction . . . . [O]nce operations begin and interference occurs, limitations runs against a nuisance claim *just as against any other*.

Id. at 279 (emphasis added and omitted) (footnotes deleted). And we clearly

contemplated multiple or alternative remedies arising from the same claim. *E.g.*, *id.* at 290 ("If only private interests are involved, courts may well favor the equitable option allowing neighboring owners to stop the uninvited nuisance, rather than the legal option forcing them to live with it and sending them a check.").

One of *Schneider*'s objectives was to eliminate "splitting one claim into several suits when a single suit will suffice." *Id.* at 278. As with any other cause of action, we treated a permanent nuisance as a single claim with multiple potential remedies. Our discussion would have been awkward, at best, if it later turned out that the limitations period for that single claim transformed from two years to something longer if a plaintiff simply failed to sue in time to get damages. As we observed in response to some cases that seemed to allow plaintiffs great flexibility, "claimants cannot opt for an indefinite limitations period or a series of suits whenever they would prefer." *Id.* at 281–82. To the contrary, the rule remains *one* suit for *one* claim. A limitations period in which one remedy (but not another) would be continually available would constitute a maximally "indefinite limitations period" that would allow a demand for an injunction to spring forth at any time.

So, yes, *Schneider* formally reserved the question. But it also set up all the dominoes, which fall exactly where the trial court in this case thought they would. That is why that court treated the causes of action in this context as it would in any other: subject to the usual statutes of limitations.

The Court's opinion today is welcome and necessary because it eliminates the remaining cognitive dissonance that survived *Schneider*. At least some courts took *Schneider*'s formal reservation to mean that the law

allows a wildly different approach to limitations as long as an injunction is at issue. Today's decision eliminates this last vestige of the pre-*Schneider* jurisprudence of confusion, placing everyone on notice that if they seek to redress a nuisance through litigation, they must sue within two years of accrual, *period*.

C

As all parties and the lower courts agree, this case is about nothing more than relief from an alleged permanent nuisance: JLMH's inability to fully enjoy the use of some of its land when it rains. We have reiterated that such nuisance claims have a two-year limitations period because the nuisance injury is allegedly caused by wrongful acts like negligence or trespass. Section 16.003 covers "suit[s] for trespass for injury to the estate or to the property of another." Tex. Civ. Prac. & Rem. Code § 16.003(a).

Unsurprisingly, some infringements on a property owner's enjoyment of his land might, in time, ripen into a threat to that ownership. Adverse possession may lead to property interests like easements. But that does not mean that a nuisance itself has anything to do with adverse possession. An untreated scrape is not itself lockjaw, even though failing to treat such a scrape might sometimes play a role in contracting that entirely different and far more serious ailment.

If an unabated nuisance *does* eventually facilitate an adverse property claim, that is when the law of adverse possession would presumably become relevant. Make three assumptions based on this case to see how that might be so. First, assume things will proceed as they have until the end of a ten-year period, with JLMH's land continually flooding each time it rains heavily, allegedly because of Family Dollar. Second,

assume that those circumstances implicate the ten-year adverse-possession statute of limitations. *See id.* § 16.026(a) (covering causes of action "to recover real property held in peaceable and adverse possession by another who cultivates, uses, or enjoys the property"). Third, assume that, under those circumstances, Family Dollar could actually meet every adverse-possession requirement to claim a prescriptive easement over the portion of JLMH's land flooded by Family Dollar's runoff water.

Even granting all those assumptions (some of which are more dubious than others), the fate of JLMH's untimely *nuisance* suit says nothing about a hypothetical future *adverse-possession* claim. After all, JLMH retains the balance of ten years from the time the nuisance began in which it can prevent any potential easement from maturing. Even if JLMH missed the two-year period to sue for nuisance, it still has the remaining *eight years* to defeat any element of Family Dollar's theoretical adverse-possession claim. *See, e.g.*, *Brumley v. McDuff*, 616 S.W.3d 826, 828 n.3, 834 (Tex. 2021) (setting out the various elements of a claim for trespass to try title by adverse possession, which falls under § 16.026: "actual, visible, continuous, hostile, and exclusive possession and use of the property for over ten years"); *Albert v. Fort Worth & W. R.R. Co.*, 690 S.W.3d 92, 98 (Tex. 2024) ("A person can acquire a prescriptive easement if he uses someone else's land in a manner that is adverse, open and notorious, continuous, and exclusive for the requisite ten-year period." (citing § 16.026)).

That means, for example, that JLMH itself could redirect the water or abate the flooding, which would preclude Family Dollar from establishing the element of exclusive use of the land during floods. JLMH could dig a culvert to direct the water elsewhere, build a wall, or install a larger pump.

Or, if JLMH is correct that Family Dollar is not in compliance with the Water Code, perhaps it could persuade the government to take some enforcement action that would have the effect of redirecting the water. It does not much matter which of these routes (or any other that may exist) is chosen. If *anything* leads to a scenario in which Family Dollar's runoff does not flood JLMH's land when there is heavy rain, Family Dollar could hardly assert a prescriptive easement to do the thing that it no longer does. Defeat any element and you defeat adverse possession *wholly aside* from whether you sought to vindicate your nuisance injury.

Beyond all that, if JLMH indeed abates the nuisance, JLMH would have a *new* nuisance claim if Family Dollar takes steps to again invade JLMH's property. As we said in *Schneider*, even if an old nuisance is time-barred, "an old nuisance does not excuse a new and different one." 147 S.W.3d at 280.

True, JLMH obviously would prefer to benefit from a court-ordered injunction for *this* permanent nuisance to be abated now and for Family Dollar to do the work. But the very nature of limitations in this and every other context is that relief that may have otherwise been available to a plaintiff is now barred.

In no sense does this outcome mean that Family Dollar has the "right" to create a nuisance. This Court long ago stated that "[t]he right . . . to a nuisance, cannot be acquired by prescription." *Rhodes v. Whitehead*, 27 Tex. 304, 316 (1863). Indeed. The only "right" that Family Dollar has, at least at this point, is not to be subjected to judicial process for an untimely claim. This is basic to the law. We would not say that a tort defendant had the "right" to commit a tort any more than a criminal

defendant had the "right" to commit a crime if limitations expired before charges were filed; it just means that they cannot be forced to answer for it in court. It is precisely *because* Family Dollar has no substantive "right" to the alleged nuisance that JLMH can abate the injury to its land even without judicial relief. A plaintiff's forfeiture of a judicial remedy through inaction for nuisance does not mean that the other party has a "right" in the alleged misconduct. Family Dollar, in other words, has no affirmative right in JLMH's land (or in the conditions causing a nuisance)—at least until ten years have elapsed.

* * *

If a claim is time-barred, then *both* damages *and* injunctions are unavailable for the tardy plaintiff. The Court properly holds as much today, providing consistency and straightforwardness to an area of law that is easily convoluted.

Simplifying and settling the limitations questions that arise in this context is to the benefit of all parties. Everyone is better off with this maximally clear up-front rule: Nuisance is no exception to the principles that (1) remedies are not available once a cause of action has been defeated and (2) causes of action cannot be split with different limitations periods for different demanded remedies. With these thoughts, I concur in part and in the judgment.

Evan A. Young
Justice

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