



**In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana**

No. 06-11-00056-CV

JERRY SMITH, ON BEHALF OF THE HEIRS OF
WADE AND CLARA SMITH, Appellant

V.

HORACE E. PEEK AND ELIZABETH J. PEEK, Appellees

On Appeal from the 76th Judicial District Court
Camp County, Texas
Trial Court No. CV-08-773

Before Morriss, C.J., Carter and Moseley, JJ.
Memorandum Opinion by Justice Carter

MEMORANDUM OPINION

Horace E. Peek and Elizabeth J. Peek purchased a 52.41-acre piece of real property from Paul Mayben.¹ Jerry Smith, on behalf of the heirs of Wade Smith and Clara Smith, brought suit to quiet title against the Peeks, claiming ownership of the property based on his distant relation to the Smiths, who became owners of the property over a century ago.² The Peeks filed a motion for summary judgment and attached deeds purporting to trace title to the property back to the Smiths, whose heirs had allegedly conveyed the property. The Peeks argued that because they could establish Jerry had no interest in the property, he could not be successful in his action to quiet title. They further claimed they had established adverse possession in the form of actual and visible appropriation of the property since 1986 under color of deed. Smith appeals the trial court's summary judgment granted in favor of the Peeks. Because the Peeks both traced title to a common source and established adverse possession as a matter of law, we affirm the trial court's judgment.

Traditional summary judgment is proper when the movant establishes that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *City of Houston v. Clear Creek Basin Auth.*, 589 S.W.2d 671, 678 (Tex. 1979); *Dresser Indus., Inc. v. Underwriters at Lloyd's, London*, 106 S.W.3d 767 (Tex. App.—Texarkana

¹This tract is known as Tract 2 of the Tanton Estate. Irvin and Nancy Tanton conveyed Tracts 1 and 2 of their estate to W. H. Smith.

²The Smiths took possession of the property in question on January 26, 1892.

2003, pet. denied). Because the movant bears the burden of proof, all evidence favorable to the nonmovant is taken as true, and all doubts as to the genuine issue of material fact are resolved in favor of the nonmovant. *Rhone–Poulenc, Inc. v. Steel*, 997 S.W.2d 217, 223 (Tex. 1999). Summary judgment for a defendant is proper when the defendant pleads and conclusively establishes each element of an affirmative defense. *Sci. Spectrum, Inc. v. Martinez*, 941 S.W.2d 910, 911 (Tex. 1997). Because the propriety of a summary judgment is a question of law, we review the trial court’s decision de novo. *See Natividad v. Alexis, Inc.*, 875 S.W.2d 695, 699 (Tex. 1994).

The trial court’s summary judgment specified no particular ground as supporting the summary judgment. When, as is the case here, the trial court does not set out the grounds on which it ruled, we affirm the summary judgment if any ground urged in the motion for summary judgment is meritorious. *W. Invs., Inc. v. Urena*, 162 S.W.3d 547, 550 (Tex. 2005).

A copy of the 1986 deed from Mayben to the Peeks was attached to the motion for summary judgment. After setting forth the metes and bounds description of Tract 2 of the Tanton Estate conveyed in Mayben’s deed, the affidavit of Horace Peek stated:

3. I took possession of the above-described property from Paul Mayben on August 11, 1986.

4. A duly recorded deed reflects my acquisition of the above-referenced property.

5. Since taking possession of the above-described property in 1986, I have enjoyed continuous and uninterrupted use of the property. I have paid taxes on the property and use the property to the fullest extent possible.

6. My possession of the above-described property has been actual and visible, peaceable, and open and notorious, and I have exercised exclusive control over who is granted use of an access to the property. To that end, I have utilized a locked gate to prevent unauthorized entry onto my property. Peek's affidavit established the claim of adverse possession under Section 16.025 of the Texas Civil Practice and Remedies Code (five-year statute of limitations). TEX. CIV. PRAC. & REM. CODE ANN. § 16.025 (West 2002). Smith's response to the motion for summary judgment and the exhibits attached thereto did not mention or raise any genuine issues of material fact relating to Peek's adverse possession claim. Therefore, the Peeks established their entitlement to summary judgment on their adverse possession claim as a matter of law.

We affirm the trial court's judgment.

Jack Carter
Justice

Date Submitted: August 11, 2011
Date Decided: August 16, 2011