Jackson Walker LLP

PRESUMPTION RESUMPTION: We Knew It All Along – Van Dyke and Presumed Grant

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Additional Resources

- Ryan Clinton & Laine Schmelzer, Estate Misconception & Presumed Grant: Navigating Mineral Ownership Disputes After Van Dyke, 50th Annual Ernest E. Smith, Oil, Gas & Mineral Law Institute (2024)
- Anna Brandl & Jillian Borreson, *Van Dyke:* Questions Raised and Practical Implications of the Court's Treatment of the Presumed-Grant Doctrine, SBOT 10th Annual Oil & Gas Disputes Course (2024)
- Jerome J. Curtis, Jr., Reviving the Lost Grant, 23 Real Prop. & Tr. J. 535 (1988)
- A.W. Walker, Oil Payments, Texas Law Review, Vol. XX, No. 3, 259 (1942)

ENGLISH COMMON LAW HISTORICAL ANALYSIS

- By Acts of 1540 and 1623, title to real property possessory interests were adjudicated through the common law writ of ejectment. Adverse Possession time bars an owner's claim for ejectment. English courts did not apply these Acts to non-possessory interests.
- Under English Common Law, a non-possessory interest in real property could become vested in a claimant by possession, or use alone without resort to promulgated periods of time so long as the use extended beyond the knowledge of a living person (September 3, 1189)-originally 1066.
- As time marched, on the early Middle Ages dates became onerous (1066 or 1189). A presumption was therefore created that upon proof of long enjoyment of a non-possessory interest by the claimant without any use by the owner that a grant of the interest had been made to the claimant.
- English courts have held that the Prescription Act of 1832 did not supplant the theory of lost deed, Oakley v. Boston (1975) 3 All. E.R. 405.
- See-Reviving the Lost Grant.

AMERICAN LAW ANALYSIS

- American courts began using the lost theory to resolve title to non-possessory interests. Sherwood v. Burr, 4 Am. Dec. 211, 214 (CT 1810).
- Possessory interests were adjudicated under adverse possession, Richard v. Williams, 20 U.S. 259 (1822), but some courts also applied the theory of lost grant, Howell v. Hair, 15 Ala. 194 (1849).
- See Also, Reviving the Lost Grant

Presumed grant & adverse possession (LIMITATIONS TITLE)

- Presumed Grant creates a presumption (Rule of Evidence) that once the claimant establishes long use with non-use (actual conduct) and acquiescence (no conduct) by the owner during that time, that a grant of the land to the claimant was once made. Presumed Grant theory has been applied to possessory and non-possessory interests.
- Presumption may be rebutted. Presumed Grant does not time bar a claim by the owner against a trespasser who satisfies the statutory requirements of the adverse possession statutes. Adverse Possession Statutes are Rules of Law and the elements once established cannot be rebutted.

Presumed grant & adverse possession (LIMITATIONS TITLE)

- Presumed Grant requires use of the property, long claim by the claimant without a corresponding claim and acquiescence by the owner.
- Adverse Possession requires adherence to statutory requirements and an open appropriation of the land under a claim that is hostile and in conflict with the rights of the true owner.
- The cases generally turn on questions of fact.

TEXAS ANALYSIS

- The Theory of Presumed Grant is sometimes clothed in many names, the Theory of Lost Deed, Title By Circumstantial Evidence, Presumed Grant, also sometimes referred to as Common Law Adverse Possession.
- Presumed Grant is not statutory Adverse Possession, or Limitations Title. Adverse Possession is a Rule of Law that vests title, superior to all others, in the claimant who has shown an open, continuous, exclusive, adverse and notorious (OCEAN) appropriation of land under a claim hostile to and in conflict with the rights of the true owner and meets all of the statutory requirements.
- Adverse Possession is the actual and visible appropriation of real property under a claim of right which is inconsistent with and hostile to the claim of the rightful owner, (Tex. Civ. Prac. & Rem. Code Sec. 16.021) even though the adverse claimant believes that the land belongs to him. Calfee v. Duke, 544 S.W. 2d. 640 (Tex. 1976). Such actual and visible appropriation should be open, continuous, exclusive, adverse, and notorious (OCEAN).

TEXAS ANALYSIS (con't)

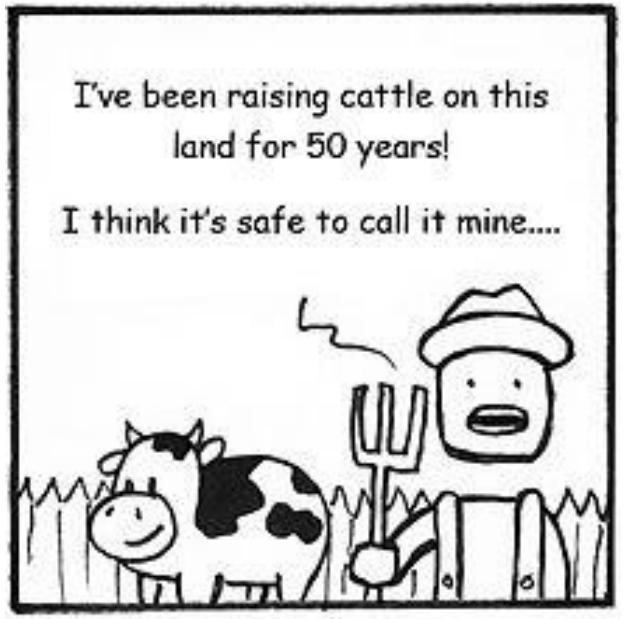
- A limitation title arises as a result of statutes of limitation that bar the claims of other claimants, including record title holders. Each of six different statutes within the Texas Civil Practice and Remedies Code may cause title to a possessory estate to be vested by adverse possession:
  - ''Three-Year Statute'' - (Tex. Civ. Prac. & Rem. Code §16.024)
  - ''Five-Year Statute'' - (Tex. Civ. Prac. & Rem. Code § 16.025)
  - ''Ten-Year Statute'' - (Tex. Civ. Prac. & Rem. Code § 16.026)
  - ''Fifteen-Year Cotenant Heir Statute'' - (Tex. Civ. Prac. & Rem. Code § 16.0265)
  - ''Twenty-Five Year Statute'' (Tex. Civ. Prac. & Rem. Code § 16.027)
  - ''Twenty-Five Year Statute'' (Tex. Civ. Prac. & Rem. Code §16.028)

TEXAS ANALYSIS (con't)

- The "Dominion Statute" (Tex. Prac. & Rem. Code §16.029) is also an evidentiary rule establishing a prima facie case (25years of claim, possession (not OCEAN), pay tax, and non-claim, non-payment of taxes and non-possession). Does not affect right to prove. Title by Circumstantial Evidence.
- Because the perfection of a limitation title depends on the determination of the factual elements specified by the applicable statute, the examination of record title can neither negate the existence of adverse possession claims against the record title ownership, nor confirm the perfection of a limitation title against the record title ownership. The examiner should, however, identify any claims based on adverse possession revealed by the documents within the material examined or otherwise known to the examiner. No limitations statute may be asserted against a political subdivision of the State. (Tex. Civ. Prac. & Rem. Code §16.061). Title Examination Standards, Chapter XVIII (Tex. Prop. Code 2024).

TEXAS ANALYSIS (con't)

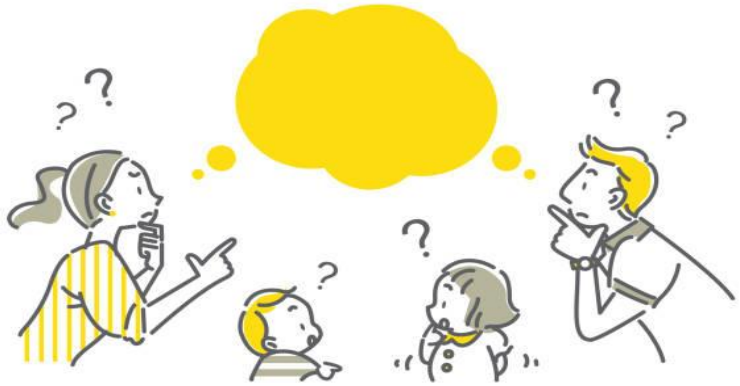
- The Presumed Grant theory has been applied to deficiencies in the records pertaining to old documents due to the loss of the documents altogether and gaps in the chain of title.
- Humphries v. Texas Gulf Sulphur Co., 393 F.2d 69 (5th Cir. 1968), where confusion existed concerning the name of the grantee in an 1835 Mexican Land Grant. The name written in the Grant (William) had been interlineated with the name (Pelham).
- Magee v. Paul, 221 S.W. 254 (Tex. 1920), masked men stole the records.
- Miller v. Fleming, 233 S.W.2d 572 (1950), County Clerk failed to record the document.
- Adams v. Slattery, 156 Tex. 433, 295 S.W.2d 859 (1956).
- Page v. Pan Am Petroleum Corp. 381 S.W.2d 949 (Tex. App.-Corpus Christi 1964, writ ref'd n.r.e.).
- Jeffus v. Coon, 484 S.W. 2d 949 (Tex. App. -Tyler 1972, no writ), courthouse fire between 1865 and 1882 destroyed the records.
- Seddon v. Harrison, 367 S.W. 2d 888 (Tex. App-Houston 1963, writ ref'd. n.r.e), overcame a missing link or gap in the chain of title
- Howland v. Bough, 570 SW2d 876 (Tex. 1978), gap in chain from 1845 to 1878



PRESUMED GRANT IN THE AGE OF VAN DYKE

- VAN DYKE v. NAVIGATOR GRP., 668 S.W.3d 353 (TEX. 2023)
- Van Dyke involved the interpretation of the language of a 1924 deed containing a mineral reservation of 1/2 of 1/8 of all minerals and mineral rights.
- Was the quantum of minerals reserved a fixed 1/16 of the minerals, or a reservation of ½ of the minerals?
- The Texas Supreme Court held that the reservation was of 1/2 of the minerals.
- In the event of double fraction where one of the fractions is 1/8, the term 1/8 is a metonym for the entire mineral interest.
- The Court relied on a presumption using the “Estate Misconception Theory” together with the “Legacy of the 1/8 Royalty” which assumed that the parties to the instrument were mistaken about nature of the interests conveyed and reserved.

WHAT DID I MEAN WHEN I SAID IT?



- The text retains the same meaning today that it had when it was written and does not evolve with the passage of time, or the meaning today.
- The object is to ascertain the intent of the parties using the four corners rule and do not start with extrinsic evidence.
- What did the double fraction mean in 1924?

WHAT DID I MEAN WHEN I SAID IT?

- It is presumed that the use of a double fraction incorporating 1/8 as one of the fractions is a metonym for the entire mineral interest----- no conflict need apply
- Doing the math would invoke mechanical rules, unless the express terms require arithmetic only (no extrinsic evidence please)
- Applied the “Estate Misconception” & the “Legacy of the 1/8” theories

WHAT DO YOU NEED FROM ME?

- The Court thereafter reached the same interpretative conclusion utilizing the Presumed Grant Doctrine, analyzing the treatment of the reserved interest by the parties over the preceding ninety years (Two Paths)
- Take your pick------Presumed Grant, aka Title by Circumstantial Evidence, sometimes aka Common Law Adverse Possession
- Presumed Grant requires that for a long time there be a:
- 1. an adverse claim
- 2. non-claim by the owner (lack of positive conduct)
- 3. acquiescence by the owner (negative conduct)
- No gap required

WHAT HAVE I BEEN DOING?

- The Presumed Grant Theory did not influence the Court's analysis it did confirm the Court's deed interpretation.
- The parties relied on the particular interest as being 1/2
- Ninety years of a multiplicity of documents reflecting a ½ interest (leases, ratifications, conveyances, division orders, contracts, probate documents etc.)

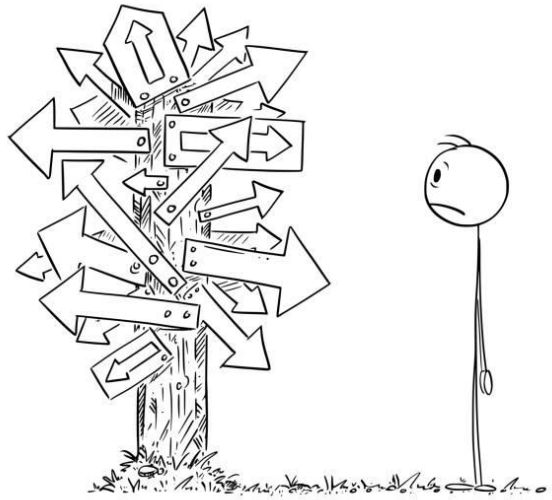
- If the Presumed Grant Theory is necessary it has conclusively established a reservation of a ½ mineral interest.

DO YOU STILL NEED ME?

- Footnote 11 states that where the Presumed Grant Doctrine and its demanding requirements are implicated, it may support (as in Van Dyke) or contradict the double fraction rebuttable presumption and compel adverse result.
- A court could even dispense with the deed construction analysis

HOW DO WE KNOW WHERE WE ARE WHEN WE GET THERE?

- The Double Fraction presumption is rebuttable—to what extent is extrinsic evidence allowed to rebut the presumption?
- Is Presumed Grant a means to avoid inequitable results. What better way to determine the parties intent than by the parties actions over a long period
- What proof will be necessary in order to prove Presumed Grant in double fraction cases?
- How long is a long time? (90 years yes---but then what)
- When would Presumed Grant be proven as a matter of law?



- Van Dyke was a mineral case, yet many (if not most) double fraction instruments involve royalty interests-why limit the application of Presumed Grant (which originally applied only to nonpossessory interests) to mineral interest? Estate Misconception need not apply. Thomas v. Hoffman anyone?
- When can deed interpretation be dispensed and the analysis move straight to Presumed Grant?
- Is Presumed Grant to be used in lieu of other equitable doctrines?
- What conduct/documents is required to satisfy the "long asserted adverse claim?"
- . . . . . and many more.