



Case Summaries May 22, 2026

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DECIDED CASES

K&K Inez Props., LLC v. Kolle, ___ S.W.3d ___, 2026 WL ___ (Tex. May 22, 2026) [24-0045]

The main issue in this suit between neighboring landowners is whether the trial court properly applied the statutory cap on exemplary damages.

The Kolles allege that the Kuceras and their company, K&K Inez Properties, caused flooding on the Kolles' property. The jury found for the Kolles on all liability theories and awarded damages for the reduced value of the Kolles' property and for the Kolles' loss of use, plus exemplary damages against David Kucera and K&K. The court of appeals reversed the loss-of-use award, thereby reducing the total amount of economic damages, but otherwise affirmed.

The Kuceras raised four issues in the Supreme Court: (1) the trial court improperly struck their designation of Victoria County as a responsible third party; (2) the trial court erred by refusing to submit questions regarding the Kolles' negligence and proportionate responsibility; (3) the judgment violated the one-satisfaction rule; and (4) the judgment improperly applied the statutory cap on exemplary damages.

The Supreme Court reversed as to exemplary damages. The Court first concluded that the exemplary-damages cap, which is based on "the amount of economic damages," requires consideration of only the damages for which that defendant is found proportionately responsible. The Court then held that the trial court improperly applied the exemplary-damages cap to each plaintiff's separate award of exemplary damages when there was only one amount of economic damages awarded to the Kolles jointly for damages to the property. It also held that the court of appeals should have reexamined whether the exemplary-damages award was unconstitutionally excessive after it reduced the amount of actual damages. The Court remanded the case to the trial court for proper application of the exemplary-damages cap.

Boerschig v. Rio Grande Elec. Coop., ___ S.W.3d ___, 2026 WL ___ (Tex. May 22, 2026) [24-0213]

In this trespass case, the parties dispute whether Rio Grande Electric Cooperative possesses an easement by estoppel over John Boerschig's land and, if so, whether Rio Grande's upgrades to the distribution line on the easement exceeded its scope.

In 1947, Rio Grande constructed an electric distribution line crossing 1.6 miles of property that Boerschig acquired in 2002. After Boerschig acquired the property, Rio Grande made improvements upgrading the distribution line to serve new customers reliably. The upgrade tripled the number of poles, increased their height by seven feet, added three more wires, and replaced the poles' wood with a fiberglass composite. Rio Grande made the upgrades in reliance on an unrecorded easement signed by the executor of the 1947 landowner's estate. Boerschig sued for trespass, seeking injunctive and declaratory relief.

A jury found that Rio Grande possessed an easement by estoppel and that Boerschig failed to establish that Rio Grande's upgrades exceeded the scope of that easement. The court of appeals affirmed, holding that legally sufficient evidence supported the trial court's judgment.

The Supreme Court reversed. In an opinion by Justice Busby, the Court concluded that Rio Grande possesses an easement by estoppel because the unrecorded writing by the prior owner represented that an easement was conveyed, Rio Grande detrimentally relied on that representation, and Boerschig had notice of the line when he purchased the property. But the Court also held that the upgrades exceeded the scope of that easement as a matter of law. The Court explained that Rio Grande's reliance on the original landowner's representation of an easement and Boerschig's notice of the easement were both limited to the existing line. Moreover, Rio Grande produced no evidence that the upgrades were reasonably necessary to continue Rio Grande's existing use of the line.

Justice Bland dissented. Because Rio Grande adduced evidence that the upgrades were necessary and did not increase the landowner's burden, whether the upgrades exceeded the easement's scope was a fact question for the jury. As the jury found in favor of Rio Grande, she would affirm.

Justice Hawkins concurred, emphasizing that he disagrees with the dissent only as to whether these particular facts go so far beyond the proper confines of an easement by estoppel such that they constitute trespass as a matter of law.

In re Greystar Dev. & Constr., L.P., ___ S.W.3d ___, 2026 WL ___ (Tex. May 22, 2026) [24-0293]

At issue in this original proceeding is whether Section 52.006(b)(2) of the Civil Practice and Remedies Code caps the amount of supersedeas security on a per-judgment or per-debtor basis.

Three Greystar Entities filed a \$25 million joint supersedeas bond seeking to suspend execution of an adverse money judgment during their appeal of the judgment. The trial court ordered that the bond was insufficient as to two of them

after determining that the \$25 million cap on the amount of security under Section 52.006(b)(2) applied to each judgment debtor seeking to supersede the judgment. The court of appeals affirmed. The Greystar Entities petitioned for writ of mandamus, and the Supreme Court set the case for oral argument.

In an opinion authored by Justice Busby, the Supreme Court held that the \$25 million cap on the “amount of security” applies per debtor because “security” is defined by statute as “a bond or deposit posted . . . by a judgment debtor.” This language sets a cap on the amount of a bond posted by a debtor, not on the amount of security for a money judgment. The trial court thus did not abuse its discretion in ruling the joint bond insufficient as to two of the three Greystar Entities, but the Court conditionally granted mandamus relief and directed the trial court to provide a reasonable time to post sufficient bonds.

Justice Huddle filed an opinion dissenting in part and would have applied the cap on a per-bond basis and held the \$25 million joint bond sufficient as to all three Greystar Entities.

Paxton v. City of Austin, ___ S.W.3d ___, 2026 WL ___ (Tex. May 22, 2026) [24-1078]

This case concerns whether the State can bring an interlocutory appeal of a trial court’s refusal to rule on a plea to the jurisdiction.

The City of Austin approved a light rail plan and formed Austin Transit Partnership to implement the plan. The City and ATP filed a petition under the Expedited Declaratory Judgment Act seeking declarations that they could assess taxes and issue bonds for the project. The Attorney General, under its statutory right to participate in EDJA cases, filed a plea to the jurisdiction arguing that neither the City nor ATP qualifies as an “issuer” under the EDJA. ATP urged the trial court to take the jurisdictional plea under advisement because ruling on it could trigger an interlocutory appeal under section 51.014(a)(8) of the Civil Practice and Remedies Code and an automatic stay under section 51.014(b). The court took the plea under advisement. It called the case to trial, stating that it was not explicitly or implicitly ruling on the plea. The Attorney General noticed an interlocutory appeal, arguing that the trial court had implicitly denied the jurisdictional plea by calling the case to trial. The court of appeals dismissed the appeal, concluding there was no appealable order.

The Supreme Court held that the trial court had not made an order that “grants or denies a plea to the jurisdiction” under section 51.014(a)(8). This provision does not provide a ground for interlocutory appeal. However, the Court recognized that it could treat a petition for review as one for mandamus relief. Mandamus relief lies where a trial court abuses its discretion and there is no adequate remedy by appeal. The trial court abused its discretion by refusing to rule on the State’s jurisdictional argument. A trial court is obliged to address its jurisdiction before proceeding to the merits. The trial court’s refusal to rule on the jurisdictional plea deprived the State of its procedural right to an interlocutory appeal. The Court directed the trial court to rule on the plea to the jurisdiction.

Gopalan v. Marsh, ___ S.W.3d ___, 2026 WL ___ (Tex. May 22, 2026) [25-0161]

This divorce proceeding presents a statutory-construction issue concerning the children’s “primary residence” with respect to the allocation of possession between parents appointed joint managing conservators.

Mother and Father agreed to joint managing conservatorship of their children but disputed the allocation of parental rights and duties. A jury determined Father should have the exclusive right to designate the children’s primary residence. The trial court adopted the verdict in its divorce decree but awarded Mother greater possession time, child support, most other parental rights, and conditional appellate attorney’s fees. Father appealed, challenging these portions of the decree and other provisions unrelated to possession of the children. The court of appeals affirmed on all issues.

The Supreme Court affirmed in part, reversed in part, and remanded to the trial court. The Court held that, as used in the Family Code, the term “primary residence” does not refer to a home where the child lives less time than elsewhere. The decree’s allocation of greater possession time to Mother therefore contravened the jury verdict, requiring remand for a new possession order. Because allocation of possession may inform the child-support award and assignment of other parental rights and duties, the Court also reversed and remanded those determinations. But the Court found no reversible error as to Father’s other challenges to unrelated decree provisions. Because Father was partially successful on appeal, the Court also held that Mother may not be entitled to the full award of contingent appellate attorney’s fees.