

Supreme Court of Texas

No. 25-0421

In re Pamela Bosco,
Relator

On Petition for Writ of Mandamus

Argued September 16, 2026

JUSTICE DEVINE delivered the opinion of the Court.

Texas Rule of Civil Procedure 196.7 permits a party, upon serving a timely and specific request, to gain entry onto another party’s property for limited discovery purposes. But the rule has its limits: discovery must always be proportionate to the needs of the case.¹ In a dispute between feuding neighbors, the trial court erroneously compelled entry onto the relator’s homestead for inspection over her objection. We conditionally grant mandamus relief.

An inspection of private property—especially a homestead—often imposes a substantial burden. On this record, the relator has shown the inspection is not justified. The information sought is available from more convenient, less burdensome sources, and the inspection’s burden

¹ See TEX. R. CIV. P. 192.4.

outweighs its likely benefit. The trial court therefore abused its discretion by compelling disproportionate discovery.

I. Background

Pamela Bosco and James and Carolyn Bierschwale are neighbors in the Kirby Springs Ranch residential community. Bosco owns a fourteen-acre homestead where she keeps fowl and other animals for companionship and personal use.

The Declaration of Easements, Covenants and Restrictions for Kirby Springs Ranch governs the community's lots. As relevant here, and subject to certain exceptions, the Declaration permits (1) animals and fowl normally found on rural property to be raised for personal, noncommercial use and (2) exotic game that does not affect other landowners' health, safety, or welfare. But animals must be appropriately fenced; owners may keep no more than three chickens per acre and two dogs per lot; and feeding and commercial operations are prohibited. The Declaration also regulates the placement of structures. Animal shelters must be located on the rear third of the property, at least fifty feet from the side property lines, and out of view from the road; other buildings must be at least twenty-five feet away from the side property lines and fifty feet from the front property line. Finally, the Declaration prohibits property use that "adversely affects adjoining property owners" or "creates an annoyance or nuisance," including noise pollution from dogs and other nuisance-causing animals or fowl.

In 2020, the Kirby Springs Ranch property owners association (the POA) notified Bosco about a formal complaint alleging that her property use violated the Declaration. According to Bosco, the

Bierschwales had lodged that complaint, which concerned three main issues: the types and number of animals permitted on the property; uses allegedly constituting a nuisance; and structure-location requirements.

Over the next two years, Bosco and the POA attempted to resolve the dispute. They ultimately executed a mediated settlement agreement requiring Bosco to take specified remedial measures—removing animals and removing or relocating some structures—and provide proof of compliance. Bosco later submitted a certificate of compliance, along with photos and other documentation, to satisfy that requirement.

The Bierschwales were invited to participate in the mediation, but they declined and objected to the adequacy of the settlement agreement. Before the settlement was finalized, they sued Bosco for breach of the Declaration, declaratory and injunctive relief, actual damages, and attorney's fees. Like their earlier complaint, the lawsuit focused on three alleged violations: an excessive number of animals; nuisances caused by animals' noises and accumulated excrement; and structures violating setback requirements or located outside the rear third of Bosco's property.

Bosco answered and counterclaimed for a declaratory judgment that the Bierschwales' claims had been released because, as mandatory POA members, they were bound by the settlement agreement.² In response, the Bierschwales filed an amended petition seeking a

² Bosco later asserted the Right to Farm Act as an affirmative defense, *see* TEX. AGRIC. CODE §§ 251.001–.009, and amended her counterclaims to allege the Bierschwales violated the Declaration and to assert claims for invasion of privacy, intentional infliction of emotional distress, injunctive relief, and attorney's fees.

declaration that the agreement does not bind them and alleging that Bosco had engaged in “new, additional, and continuing violations” of the Declaration post-settlement.

Discovery requests followed. In addition to deposing Bosco, the Bierschwales served interrogatories, requests for production, and a Rule 196.7 request for entry onto Bosco’s “entire” property, excluding only her residence, to take photographs, videos, measurements, samplings, and decibel readings. The interrogatories and requests for production were primarily concerned with uncovering whether Bosco was conducting a commercial operation involving her animals. One interrogatory asked Bosco to identify the number and species of animals on the property. She responded: “2 cows, 5 horses, 3 ducks, 5 geese, 2 emus, 2 ostriches, 6 goats, 2 exotic pheasants, 3 ringneck pheasants, 1 parrot, 30 chickens, tortoise, and 5 dogs.”³ Notably, none of the written discovery requests specifically sought information about the location of structures or buildings relative to the applicable setback lines.

This mandamus proceeding concerns the ensuing discovery dispute, which centered on the Rule 196.7 request and the Bierschwales’ access to Bosco’s homestead. Bosco objected that the request was overbroad, exceeded the scope of permissible discovery, and subjected her to harassment, annoyance, and invasion of her personal,

³ Bosco’s answer was subject to an objection, and the Bierschwales later withdrew the interrogatory after their counsel acknowledged that Bosco had identified the animals on her property during her deposition. As to the dogs and cattle, Bosco contends the POA “released and waived the purported limitation of 2 dogs in the settlement agreement” and the Declaration permits her to keep cattle for noncommercial purposes.

constitutional, and property rights. She also asserted that the proposed inspection was unreasonably cumulative or duplicative. Those objections, which were supported by a citation to Rule 192.4, concerned proportionality even though Bosco did not specifically use that label.⁴ When the Bierschwales moved to compel entry, Bosco renewed her objections and emphasized that “[t]here are less intrusive means . . . to gain information without invading [Bosco’s] property,” including by obtaining information from the Bierschwales’ “side of the fence.” After a hearing, the trial court granted the Bierschwales’ motion in part but permitted each side to have a “neutral third-party person present during the inspection and measurements.”

Bosco moved for reconsideration on the basis that the court failed to first consider “any less invasive discovery method.” Her supporting affidavit stated that her deposition and written discovery responses already provided the information the Bierschwales are seeking. She also explained that, when she purchased the property in 2011, several structures already stood near the boundary with the Bierschwales’ property, as depicted in an attached survey. Over the years, she had continued developing those structures and added one or two more within the setback. According to Bosco, those structures are outside the designated rear portion of her property because that area lies below the floodplain. Bosco took the position that the settlement agreement with the POA granted her variances from the Declaration’s location and

⁴ See TEX. R. CIV. P. 192.4 (“Limitations on Scope of Discovery”); *St. John Missionary Baptist Church v. Flakes*, 595 S.W.3d 211, 214 (Tex. 2020) (“[A] party sufficiently preserves an issue for review by arguing the issue’s substance, even if the party does not call the issue by name.”).

setback requirements. She further averred that the Bierschwales' inspection would "disrupt my livestock, impede the daily work of my ranch hands who caretake my property, and will cause my household and myself unnecessary stress and distraction."

Following another hearing, the trial court partially granted Bosco's motion for reconsideration to narrow the order's scope. The amended order authorized a single entry not to exceed four hours, between 9:00 a.m. and 4:00 p.m., on a mutually acceptable date within forty-five days. The order requires the parties to conduct themselves respectfully and permit video and audio recordings to document compliance with the order. Under the revised order, the Bierschwales, their attorney, and a designated representative may photograph, videotape, audio-record, and take measurements of the structures, excluding Bosco's and her ranch hands' residences, without touching, removing, or otherwise disturbing any items. If necessary, the Bierschwales may open the doors to the structures, which Bosco must unlock and make accessible, but may not enter them. Bosco must also remove animals from the residences so the Bierschwales can observe, photograph, videotape, and audio-record the animals without touching, prodding, or otherwise disturbing them.

Bosco seeks mandamus relief from this order. The court of appeals summarily denied relief.⁵ We heard argument on Bosco's mandamus petition and now conditionally grant relief.

⁵ 735 S.W.3d 802 (Tex. App.—Austin 2025).

II. Discussion

Texas Rule of Civil Procedure 196.7 permits a party to “gain entry on [another party’s] land or other property to inspect, measure, survey, photograph, test, or sample the property or any designated object or operation thereon” by timely serving “a request on all parties.”⁶ The request must state the inspection’s time, place, manner, conditions, and scope and specifically describe proposed testing or sampling processes and procedures and the persons who will perform them.⁷ A party resisting a Rule 196.7 inspection must timely “state objections and assert privileges” in a written response⁸ and present “any evidence necessary to support the objection or privilege” at a hearing.⁹

But Rule 196.7 does not operate in isolation from broader discovery limits. As we have repeatedly emphasized, the mere fact that requested discovery is relevant and nonprivileged “does not mean that discovery must be had.”¹⁰ Rule 192.4 imposes a “proportionality overlay”¹¹ requiring a court to limit discovery “if it determines, on motion or on its own initiative and on reasonable notice,” that:

⁶ TEX. R. CIV. P. 196.7(a)(1).

⁷ *Id.* R. 196.7(b).

⁸ *Id.* R. 196.7(c).

⁹ *Id.* R. 193.4(a).

¹⁰ *In re State Farm Lloyds*, 520 S.W.3d 595, 605 (Tex. 2017) (orig. proceeding) (internal quotation marks omitted).

¹¹ *Id.*

(a) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; or

(b) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.¹²

Proportionality objections must be “supported with evidence, not conclusory allegations,” and are evaluated on a “case-by-case basis.”¹³ When the burden of inspection is disproportionate to its likely benefit, a Rule 196.7 request—like any other discovery request—must yield. An order compelling discovery that exceeds those limits is an abuse of discretion for which mandamus is the proper remedy.¹⁴

A.

A Rule 196.7 inspection that requires entry onto realty presents the kind of burden Rule 192.4 requires courts to consider and balance. That burden is especially significant when the property is a homestead because compelled entry implicates interests to which the law has long accorded special weight: the right to exclude others from one's property and the sanctity and privacy of the home.

“Private property rights have been described as fundamental, natural, inherent, inalienable, not derived from the legislature and as

¹² TEX. R. CIV. P. 192.4.

¹³ *In re State Farm Mut. Auto. Ins. Co.*, 712 S.W.3d 53, 68 (Tex. 2025) (orig. proceeding).

¹⁴ *Id.* at 70.

pre-existing even constitutions.”¹⁵ Among the bundle of rights accompanying ownership, the right to exclude is “one of the most treasured strands.”¹⁶ An owner therefore “suffers a special kind of injury when a *stranger* directly invades and occupies the owner’s property,”¹⁷ whether permanently or temporarily.¹⁸ Forcing a property owner to admit an unwanted visitor—particularly an adverse litigant—thus imposes a qualitatively different burden from ordinary forms of discovery.

A homestead, moreover, is not merely another parcel of property.¹⁹ The law has long recognized the home as a uniquely protected sphere of privacy and sanctity, where “the right to undisturbed enjoyment of residential property” is “sacred” and “a

¹⁵ *Severance v. Patterson*, 370 S.W.3d 705, 709 & n.4 (Tex. 2012) (internal quotation marks omitted).

¹⁶ *Id.* at 709 (quoting *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435-36 (1982)).

¹⁷ *Id.* (quoting *Loretto*, 458 U.S. at 435-36).

¹⁸ *Cf. Cedar Point Nursery v. Hassid*, 594 U.S. 139, 152-53 (2021) (holding, in the takings context, that a physical appropriation may be a taking “whether it is permanent or temporary”); *Env’t Processing Sys., L.C. v. FPL Farming Ltd.*, 457 S.W.3d 414, 421-22, 424 (Tex. 2015) (recognizing the “well-established rule” that “every unauthorized entry” on another’s land is a trespass in light of the “fundamental notion that [g]enerally, an owner of realty has the right to exclude all others from use of the property” (quoting *Severance*, 370 S.W.3d at 709)).

¹⁹ *See, e.g.*, TEX. CONST. art. XVI, §§ 50, 52 (bestowing heightened protections for homesteads against forced sale, unauthorized liens, and forced partition that would interfere with continued family occupancy); TEX. PROP. CODE §§ 41.001–.024 (defining homestead status and providing protection from creditor claims and seizure).

foundational liberty, not a contingent privilege.”²⁰ These interests are at their zenith within the residence and its immediate surroundings—the home’s “curtilage”²¹—as reflected by the special solicitude afforded those areas in a variety of legal contexts.²² To protect these substantial interests, any request for, or order compelling, a

²⁰ *City of Houston v. Carlson*, 451 S.W.3d 828, 831 (Tex. 2014) (internal quotation marks omitted); see *Clayton’s Adm’r v. Frazier*, 33 Tex. 91, 101 (1870) (recognizing that when a person has “purchased the land for a home,” “labored upon it,” and “improved it,” then “all the thousand sacred associations of home cluster around it, and about it”); Marcus Tullius Cicero, *The Speech Concerning His House Delivered Before the College of Pontiffs*, in *THE SPEECHES OF CICERO* 132, 263 (E. Capps, T.E. Page & W.H.D. Rouse eds., N.H. Watts trans., 1923) (“What is more sacred, what more inviolably hedged about by every kind of sanctity, than the home of every individual citizen?”).

²¹ See *Oliver v. United States*, 466 U.S. 170, 180 (1984) (“At common law, the curtilage is the area to which extends the intimate activity associated with the sanctity of a man’s home and the privacies of life.” (internal quotation marks omitted)).

²² See TEX. CONST. art. I, §§ 9 (“The people shall be secure in their . . . houses . . . from all unreasonable seizures or searches[.]”), 25 (“No soldier shall in time of peace be quartered in the house of any citizen without the consent of the owner, nor in time of war but in a manner prescribed by law.”); *Carlson*, 451 S.W.3d at 831 (“The unique importance of the home is reflected in our Bill of Rights, which protects us from uncompensated dispossession, unwarranted search, and unwanted guests.” (citing U.S. CONST. amends. III, IV, V)); see also *Florida v. Jardines*, 569 U.S. 1, 6 (2013) (“[W]hen it comes to the Fourth Amendment, the home is first among equals. At the Amendment’s very core stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.” (internal quotation marks omitted)); *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008) (“[The Second Amendment] surely elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home.”); *California v. Ciraolo*, 476 U.S. 207, 212-13 (1986) (“The protection afforded the curtilage is essentially a protection of families and personal privacy in an area intimately linked to the home, both physically and psychologically, where privacy expectations are most heightened.”).

homestead inspection under Rule 196.7 should expressly exclude not only the residence but also its curtilage unless the proposed intrusion into those areas is demonstrably proportionate to the inspection's legitimate purpose.²³ Although such interests do not terminate at the curtilage's boundaries, their force tends to diminish with distance from the residence and with increasing openness and exposure of the area to public view.

To the extent the requested discovery impinges on those interests, that intrusion must figure prominently—and, where appropriate, decisively—in evaluating a Rule 192.4 objection. Here, the breadth of the discovery order leaves no doubt about the degree of the intrusion. It authorizes the Bierschwales to enter anywhere on Bosco's fourteen-acre homestead—excluding only the residences and the interiors of the structures—and to observe, photograph, audio-record, and videotape those areas, even to the point of opening the doors and peering inside.²⁴

B.

Considering the gravity of the interests at stake, the record warrants close attention to determine whether the burden of the court-ordered homestead inspection outweighs its anticipated benefits.

²³ See TEX. R. CIV. P. 192.4; *cf. In re Weekley Homes, L.P.*, 295 S.W.3d 309, 311 (Tex. 2009) (orig. proceeding) (holding that the trial court abused its discretion by ordering the defendant's employees to turn over computer hard drives "considering the highly intrusive nature of computer storage search and the sensitivity of the subject matter").

²⁴ The order also plainly authorizes entry into the curtilage, although the mandamus record does not permit us to delineate those precise boundaries. The order prohibits the Bierschwales from *entering* the residences but imposes no corresponding restriction for the immediate surroundings.

In addition to testifying that forced entry would disrupt her livestock, ranch hands, and household, Bosco has explained why the inspection is unnecessary: the information has already been provided or is available “from some other source that is more convenient [or] less burdensome.”²⁵ In written discovery responses and at her deposition, Bosco identified the types and number of animals on her property. And in a declaration made under penalty of perjury, she admitted that certain structures were built within the setback and outside the rear third of the property. The record also includes a survey depicting the structures on the property when Bosco purchased it along with her certificate of compliance with the settlement agreement. As Bosco observes, if the Bierschwales desire confirmation of compliance, they can seek it directly from the POA. Finally, the relevant sights, sounds, and odors allegedly causing a nuisance are those that reach the Bierschwales’ property. Those conditions can be observed and measured from their side of the fence, without the necessity of entering Bosco’s property to quantify them at the source.²⁶

We have said that “the party seeking discovery must comply with proportionality limits on discovery requests and may well need to . . . make its own showing of many or all of the proportionality

²⁵ See TEX. R. CIV. P. 192.4(a).

²⁶ In response to Bosco’s summary-judgment motion, the Bierschwales did precisely this. They submitted a recording of an exotic bird making a noise heard at their residence and photographs taken from their side of the fence depicting animals, excrement piles, and structures on Bosco’s property.

factors.”²⁷ The Bierschwales do not dispute, however, that the information they seek has already been, or could readily be, obtained through less burdensome discovery methods, such as interrogatories, requests for production, and depositions. Nor have they submitted any evidence controverting Bosco’s testimony or impugning the validity of her discovery responses to justify any need to inspect her homestead.

For example, notwithstanding Bosco’s concession that some structures are within the property setback lines and none are in the designated rear third of the property, the inspection order broadly authorizes the Bierschwales to take measurements of *all* “buildings, structures, sheds, corrals, pens, or other enclosures” that are not residences. Yet they have not identified any specific structure whose location in relation to the setback lines is disputed and for which measurements would serve any demonstrable purpose.²⁸ Nor have they identified which specific animals they intend to count, photograph, audio-record, or videotape or explained why an inspection of nearly the entire fourteen-acre property is necessary when, by their own account, the animals “are primarily contained” in enclosures occupying “less than 2 acres” near the adjoining property line.

The Bierschwales instead maintain that Bosco’s testimony “remains subject to verification, contradiction, and credibility testing”

²⁷ *State Farm Lloyds*, 520 S.W.3d at 614 (internal quotation marks omitted).

²⁸ *See In re Off. of Att’y Gen.*, 702 S.W.3d 360, 365 (Tex. 2024) (orig. proceeding) (“Information sought regarding a fact issue that will not be contested at trial will not aid the dispute’s resolution and therefore is not discoverable.” (internal quotation marks omitted)).

and that “[t]here is no other way to objectively confirm” the alleged violations except through a property inspection. To be sure, “[t]he primary policy behind discovery is to seek truth so that disputes may be decided by facts that are revealed rather than concealed.”²⁹ But given the circumstances of this case—and the absence of any evidence calling Bosco’s discovery responses into question—the marginal benefit of verifying information that has already been provided, or is readily obtainable through less burdensome means, does not outweigh the substantial burden of this compelled homestead inspection.³⁰

The Bierschwales further assert that they seek to inspect Bosco’s property to “determine if there are other concealed deed restriction violations.” That statement is inherently troubling: an inspection undertaken for such an open-ended purpose would amount to a “fishing expedition,” which “[r]easonable discovery does not countenance.”³¹

In sum, Bosco established that the homestead inspection the trial court ordered exceeds Rule 192.4’s proportionality limits. The trial court

²⁹ *Tom L. Scott, Inc. v. McIlhany*, 798 S.W.2d 556, 559 (Tex. 1990) (orig. proceeding).

³⁰ Indeed, in light of Bosco’s statements regarding the animals on her property and the location of the structures, the dispute appears to turn less on contested facts than on legal questions: what certain prohibitions in the Declaration mean; which parties are bound by the POA settlement agreement; and whether that agreement could, and did, waive any requirements or grant any variances. See TEX. R. CIV. P. 192.4(b) (directing courts to consider in the proportionality analysis “the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues”).

³¹ *State Farm Lloyds*, 520 S.W.3d at 611.

therefore abused its discretion by ordering Bosco to allow it;³² and because Bosco lacks an adequate appellate remedy from an excessive discovery order, she is entitled to mandamus relief.³³

III. Conclusion

For these reasons, we conditionally grant mandamus relief and direct the trial court to vacate its Rule 196.7 order. A writ will issue only if the trial court does not promptly comply.

John P. Devine
Justice

OPINION DELIVERED: October 30, 2026

³² We do not decide whether a more narrowly tailored Rule 196.7 order would be proportionate under these or similar circumstances. The proportionality analysis must be conducted on a case-by-case basis, and no such order is before us.

³³ See *State Farm*, 712 S.W.3d at 70.