

## Ryan Pitts in Appellate Lawyer: ‘A Couple Developments in Preserving Evidentiary Errors in Summary Judgment Practice’

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**PRACTICES** Appellate, Power and Renewables Litigation, Oil and Gas Litigation, Litigation

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[Ryan Pitts](#), an associate in Haynes Boone’s Appellate practice group, authored an article in the Houston Bar Association’s *Appellate Lawyer* about recent decisions from the Texas Supreme Court. Below is an excerpt:

This article lays out two recent developments in the preservation rules regarding challenges to summary judgment evidence. To understand them, quickly reciting a few basics helps. “The same evidentiary standards that apply in trials also control the admissibility of evidence in summary-judgment proceedings.” A party must “timely object and secure a ruling from the trial court on the objection.” Both Texas Rule of Appellate Procedure 33.1 and Texas Rule of Civil Procedure 166a(f) apply. For the objecting party, absent an objection and a ruling, “complained-of evidence remains part of the summary judgment record and should be considered by the court of appeals in reviewing the trial court’s judgment.” As to the evidence’s proponent, the trial court must have been informed of “the purposes for which the evidence was offered and the reasons why it was admissible.”

Recent decisions from the Texas Supreme Court offer clarity on two long-running issues related to this preservation standard.

- First, *Browder v. Moree* seemingly resolves a disagreement among the intermediate courts of appeals about whether—to preserve error for appellate review—a party must separately object to a trial court’s decision that sustains an opposing party’s objection to summary judgment evidence.
- Second, *FieldTurf USA, Inc. v. Pleasant Grove Independent School District* held that an on-the-record oral ruling on an objection to summary judgment evidence suffices as a “ruling” for preservation purposes, regardless of whether it is reduced to writing.

This article discusses the implications these decisions have for preserving error in summary judgment practice. It also briefly notes that, by reasoning and result, *Browder* and *FieldTurf* reflect the Texas Supreme Court’s broader movement toward common-sense preservation rules and deciding appeals on their merits whenever possible, practicable, and fair.

Excerpted from *Appellate Lawyer*. To read the full article, click [here](#).