

Court Advisory

Fourth Court of Appeals
Cadena-Reeves Justice Center
300 Dolorosa, Suite 3200
San Antonio, Texas 78205-3037



Contact: Keith Hottle, Clerk of the Court
Phone: (210) 335-2510

FOR IMMEDIATE RELEASE
June 15, 2012

Fourth Court of Appeals to Hear Oral Argument

The Fourth Court of Appeals will hear oral arguments in one appeal on Tuesday, June 19, 2012, beginning at 9:00 a.m., before the following panel of justices: Justice Sandee Bryan Marion, Justice Rebecca Simmons, and Justice Marialyn Barnard.

The following case will be presented:

Rubena Akhter v. Smooth Solutions DFW One, LLC, Smooth Solutions Franchising, L.P., Smooth Solutions Limited Partnership - Rubena Akhter received laser hair removal services from Smooth Solutions for several years. She asserts that during her last procedure, the non-physician laser operator who performed the hair removal was negligent and severely burned her face. Akhter brought negligence and gross negligence claims against Smooth Solutions DFW One, LLC, Smooth Solutions Franchising, L.P., and Smooth Solutions L.P., and vicarious liability claims against Drs. Kimberly and Steven Finder as general partners of Smooth Solutions. The trial court dismissed Akhter's causes of action for failure to file an expert report in compliance with section 74.351 of the Civil Practice & Remedies Code. On appeal, Akhter contends that the laser hair removal services performed on her did not give rise to a health care liability claim, and, therefore, the trial court erred in dismissing her claims.

The Fourth Court of Appeals will hear oral arguments in one appeal on Thursday, June 21, 2012, beginning at 9:00 a.m., before the following panel of justices: Justice Karen Angelini, Justice Sandee Bryan Marion, and Justice Rebecca Simmons.

The following case will be presented:

In the Interest of R.J., et al., Children - Appellants Raul Juarez and Heraldo Perez assert they are Mexican nationals; each had his parental rights terminated to his children born to Abigail Arguijo. Each asserts the trial court (1) erred in terminating his parental rights because the Department of Family and Protective Services failed to prove it exercised due diligence in locating him and (2) erred when it failed to appoint him as a managing or possessory conservator of

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his child. Citing section 161.002 of the Texas Family Code, the Department responds that the men were merely alleged fathers whose parental rights could be terminated without notice and the statutory presumptions of parental conservatorship do not apply to them. See TEX. FAM. CODE ANN. § 161.02 (West 2011). Juarez and Perez each appeal the trial court's order.

The Fourth Court of Appeals will hear oral arguments in one appeal on Thursday, June 21, 2012, beginning at 2:00 p.m., before the following panel of justices: Justice Phylis Speedlin, Justice Steven C. Hilbig, and Justice Marialyn Barnard.

The following case will be presented:

City of San Antonio, Acting through City Public Service Board of San Antonio v. Wheelabrator Air Pollution Control, Inc. - The City appeals the trial court's denial of its plea to the jurisdiction in this lawsuit by Wheelabrator Air Pollution Control, Inc. asserting a breach of contract claim and, alternatively, a quantum meruit claim for the reasonable value of its services. The issue in this interlocutory appeal is limited to whether the trial court has jurisdiction over the quantum meruit claim. The City contends the trial court does not have jurisdiction because (i) the legislature has not waived the City's immunity from suit for quantum meruit claims, (ii) the proprietary-governmental dichotomy has not been extended beyond the tort claim context, and (iii) the City did not waive its immunity from suit by its conduct.

The Fourth Court of Appeals will hear oral arguments in one consolidated appeal on Thursday, June 21, 2012, beginning at 3:15 p.m., before the following panel of justices: Justice Sandee Bryan Marion, Justice Rebecca Simmons, and Justice Steven C. Hilbig.

The following consolidated appeal will be presented:

City of San Antonio, Acting through City Public Service Board of San Antonio v. Casey Industrial, Inc. - These are two consolidated accelerated appeals arising from orders in favor of appellee, Casey Industrial, Inc. In the first order, the trial court granted Casey's motion for summary judgment on the issue of whether the parties' contract was void. Casey moved for a partial summary judgment on two grounds: (1) the contract is void because CPS violated statutory procurement laws and (2) Casey is entitled to recover under the doctrine of

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quantum meruit. The trial court granted the parties permission to appeal pursuant to Texas Civil Practice and Remedies Code section 51.014(d). In the second order, the trial court denied the City's plea to the jurisdiction, and the City appealed pursuant to Texas Civil Practice and Remedies Code section 51.015(a)(8). On the parties' motion, this court consolidated the two appeals.

The oral arguments will be held in the Fourth Court's Courtroom, Caden-Reeves Justice Center, Third Floor, 300 Dolorosa, San Antonio, Texas.