

ORAL ARGUMENT – 09/30/04
03-0831
SULTAN V. MATHEW

LAWYER: I will refer to the parties as US Carpet and Floors and Mr. Mathew. I will explain why Gov't Code §28.053(d) is not an exclusionary provision and does not prohibit an appeal to the CA.

This case originated on March 9, 2001 in the small claims of Harris County, Texas, prect. 5, place 1. Judgement was entered for Mr. Mathew on Jan 29, 2002 and US Carpet and Floors sought a de novo trial appeal to Harris County Court at Law No. 2. Judgement was entered for Mr. Mathew on August 16, 2002, by the Harris County Court at Law No. 2. US Carpet and Floors sought appellate review to the 14th CA on Nov. 23, 2002. On April 3, 2003, the 14th CA issued an opinion and dismissed US Carpet and Floors appeal for lack of jurisdiction citing Gov't Code §28.053(d) in Davis v. Covert. US Carpet contends the 14th CA erred in failing to assert jurisdiction over its appeal.

I will divide my argument into three parts. First, final is a requirement for appeal. Second, Gov't Code §22.225(b) controls US Carpet's right to appeal. And third, the 14th CA's opinion violates the open courts provision.

Final is a requirement for appeal. Under Gov't Code §28.053(d) it is stated that, judgment of the county court at law on appeal is final. However, this section is not an exclusionary provision as final has many different interpretations and the court in Davis v. Covert interpreted final to mean not appealable to the CA. However, appeals were only allowed from final judgments. In fact several Texas statutes use the word final. Gov't Code §28.052(a) states a dissatisfied party may appeal the final judgment to the county court or county court at law. Additionally, Civ. Pract. & Rem. Code §51.012 states in a civil case in which judgment or the amount in controversy exceeds \$100 of interest and cost, a person may take an appeal or petition for writ of error to the CA from a final judgment of the district or county court. Both of those sections demonstrate that final does not necessarily mean that there is no appeal allowed. Further there are four gov't code sections that four counties have specifically adopted: Cameron; Lubbock; Grayson and Potter counties have all adopted sections which would violate Davis v. Covert and 58.053(d).

The Cameron and Lubbock sections read, an appeal or writ of error may not be taken to a CA from a final judgment of a county court at law if 1) the court had original or appellate jurisdiction with the justice board; and 2) the judgment or amount in controversy does not exceed \$100...

OWEN: What section are you reading from?

LAWYER: From Gov't Code §25.0332 and also 25.1542. It's splitting interest and cost.

Both of those sections in reading them specifically would allow an appeal to the CA's.

HECHT: Just by inference.

LAWYER: By inference by...

HECHT: It says an appeal may not be taken if. So you're suggesting that if not true, then appeal may be taken. But just by inference.

LAWYER: That is correct. Grayson and Potter counties adopted similar sections: Gov't Code §25.0932 and §25.1902. The only difference in Grayson and Potter county sections and Cameron and Lubbock is that they've reversed the 1 and 2.

OWEN: I don't suppose you researched the difference between county court or county court at law as it's used in these statutes?

LAWYER: No. I have not. Further, there is a significant importance in the word final, and it has various applications in Texas law. Final judgments dispose of all parties and claims; appeals can only be prosecuted for final judgments. The dating of signing a final order disposes of the case and begins the running of the appellate timetables. And the court's plenary power is computed from final orders.

Gov't Code §22.225(b) controls US Carpet's right to appeal. The first court in Davis resolved a conflict between Civ. Pract. & Rem. Code §51.012 and Gov't Code §28.053(d) by determining the language of §28.053 as more specific and thus controls over the more general language of 22.225. However, the Davis court did not take into account Gov't Code §22.225. Section 22.225 is a section which specifically deals with the appellate courts. Subsection (b) specifically states, except as provided by subsection (c) or (d), a judgment of the CA is conclusive on the law and facts, and a petition for review is not allowed to the SC in the following civil cases. One, a case appeal from a county court or from a district court when under the constitution a county court would have had original or appellate jurisdiction of the case with the exception of a probate matter or a case involving state revenue laws or the validity or construction of a statute. By this section, you cannot appeal to the SC; however, you can appeal to the CA because it says that their judgment is conclusive on the law and the facts.

JEFFERSON: Help me understand 28.053(b). It's the provision that says the judgment from the county courts are final. And that's clear. But it's also clear that not all judgments in a county court are necessarily final. They are interlocutory judgments for example. So wouldn't this statute be saying that if there is a final judgment in the CA, the other statutes that you are talking about on judgments being final, usually refer to them as final judgments. You can take an appeal from the final judgment, one that resolves all parties and all issues. Section 28.053(b) it seems to me is saying if there is a final judgment, then that's the ball game. It ends right there. Can you explain how you say that operates?

LAWYER: My explanation for the ____ of that is 1) that final is a modifier of judgment including 8.053(d). So it kind of is a final judgment in that sense as the word final does modify a judgment. Further, the legislature is very well capable of drafting an exclusionary provision stating no further appeals allowed. And in fact have done that for instance in Gov't Code §22.225. Both sections were adopted by the same legislative session. And they have stated in 22.225 that a petition for review is not allowed. The legislature did not specifically...

HECHT: In a case appealed from county court, which means a constitutional county court, not a statutory county court. So we still have sort of a problem there. It goes on to say when under the constitution a county court would have had original or appellate jurisdiction, which statutory county courts don't have constitutional jurisdiction. They just have a proviso that says the legislature can create such courts as it wants to.

OWEN: And you went to a county court at law.

LAWYER: It was a county court at law no. 2. However, I contend that Gov't Code §28.053(d) is not an exclusionary provision and is vague on its face. It says a judgment or county court at law on appeal is final. Final as I've stated has many different interpretations. And the 1st CA in Davis v. Covert arbitrarily assigned that no further appeals allowed for the word final.

In fact under Gov't Code §22.225 it demonstrates the legislative ability to draft exclusionary provisions. Because there is an exclusionary provision in Gov't Code §22.225 and it is clear it controls over the far more general and ambiguous terms of 28.053.

The 14th CA opinion in Davis v. Covert violate the open courts provision. Had the legislature wished that no further appeal would be allowed to the CA in gov't code §28.053(d), they could have stated judgment of a county court or county court at law on appeal - or they could have stated that an appeal is not allowed. Any legislative or judicial exclusion of appellate review by the CA violates §13 of Art. 1 of the Constitution.

If this court finds that final means that no further appeal is allowed, there is no appellate review of county court judgments, which originated in justice courts. As county courts only conduct another trial. Thus, there is no appellate check for a county court's abuse of discretion. That by itself would violate the open courts provision and party's due process rights as trial courts determine the facts, an appellate courts review of the application of the law to those facts.

SMITH: Do you have a case that says it's constitutionally required to have appellate review?

LAWYER: No. I do not. In looking at gov't code §22.225, there is an exclusionary provision, and as there is an exclusionary provision that would control over the more general terms of gov't code §28.053 and the 1st CA in Davis v. Covert.