Opinion Summaries
March 4, 2022

Opinion summaries are prepared by court staff as a courtesy. They are not a substitute for the actual opinions.

Opinions

GUARDIANSHIP
Service of Process
In re Guardianship of Fairley, — S.W.3d —, 2022 WL — (Tex. Mar. 4, 2022) [20-0328]

The issue in this case was whether orders issued in a guardianship proceeding were void because the ward was not properly served in compliance with Texas Estates Code chapter 1051. James Fairley's wife, Mauricette, filed applications to be appointed as his temporary and permanent guardian. Both applications were personally served on James by a private process server. James's daughter, Juliette, opposed the applications. The probate court appointed Mauricette as James's guardian, and Juliette unsuccessfully appealed that order. After James died, Juliette filed a wrongful-death suit against Mauricette in district court. On Mauricette's motion, the probate court transferred the wrongful-death suit to the still-pending guardianship proceeding. The probate court then denied Juliette's motion under the Texas Citizens Participation Act (TCPA) challenging both the motion to transfer and a Rule 91a motion to dismiss. Juliette filed an interlocutory appeal, arguing (among other things) that the probate court's orders were void because James was never properly served with the applications under chapter 1051 of the Estates Code. The court of appeals held that James was properly served, and it affirmed the probate court's order. Juliette petitioned for review, asserting that all the probate court's orders were void for lack of jurisdiction over James.

The Supreme Court held that the probate court's orders were not void. The Court first concluded that the probate court obtained subject-matter jurisdiction over the guardianship proceeding when Mauricette filed her initial application. James's death did not moot the appeal, nor did his death automatically terminate

the guardianship proceeding so as to deprive the probate court of jurisdiction to transfer the wrongful-death suit.

With respect to service, the Court held that Estates Code section 1051.103(a) identifies who must be personally served with a guardianship application, but section 1051.051 specifies who may serve the application and how service must be effected. If the person to be served is in Texas, service must be by "the sheriff or constable." But if the person to be served is not in Texas, service is authorized by "a disinterested person competent to make an oath." The application for temporary guardianship was served on James while he was in New York. Although the statute allowed that application to be served by a private process server, the record failed to establish that the person effecting service was "disinterested." James was in Texas when he was served with the application for permanent guardianship, so service of that application by a private process server did not comply with the statute.
The Court nevertheless concluded that these technical defects in service did not void the probate court's orders. James was represented in the guardianship proceeding by a court-appointed attorney ad litem, and through the attorney's affirmative actions, James entered a general appearance in that proceeding and thereby consented to the personal jurisdiction of the probate court and waived any technical defects regarding service. It was undisputed that James was personally served with the applications, and Juliette failed to establish that any defect in the method of service rose to the level of a violation of due process.

Justice Devine, joined by Justice Blacklock, dissented. Noting that proposed wards in guardianship proceedings are among the most vulnerable members of society, the dissent would have held that the failure to strictly comply with the heightened service requirements set forth in the Estates Code deprived the probate court of jurisdiction over James.

PROCEDURE—TRIAL AND POST-TRIAL
Error Preservation

FieldTurf USA, Inc v. Pleasant Grove Indep. Sch. Dist., — S.W.3d —, 2022 WL — (Tex. Mar. 4, 2022) [20-0507]

The issues presented in this case are (1) whether a trial court's on-the-record, oral ruling on an objection to summary judgment evidence is sufficient for error-preservation purposes when the ruling is not reduced to a written order and (2) whether the court of appeals erred in remanding for a new trial without addressing the appellant's rendition issues. A school district contracted for the installation of an artificial-turf field. After the field began to degrade, the district sued its general contractor (Altech) and the turf manufacturer (FieldTurf) for breach of warranty. Altech moved for summary judgment, arguing that there was no evidence that it had breached any warranty. The district responded that the construction contract specified a range of acceptable "G-Max" ratings the field was required to meet and attached a report showing that the field's G-Max rating exceeded that range. Altech

objected in writing to the report on several grounds, including that it was not authenticated. The trial court sustained the objection on the record at the summary judgment hearing and granted Altech's motion for summary judgment, but the court did not issue a written order on the objections. After a five-day trial on the district's breach-of-warranty claims against FieldTurf, the trial court rendered judgment for the District on the jury's verdict and awarded the district $175,000 in damages.

The district appealed the summary judgment for Altech, and the district and FieldTurf both appealed the trial court's judgment on the jury's verdict. The court of appeals reversed the summary judgment, holding that the G-Max report remained in the summary judgment record because of the lack of a written order on Altech's objection and that the report created a fact issue on the breach-of-warranty claim against Altech. Without addressing the merits of the issues presented on appeal as to the judgment against FieldTurf, the court of appeals remanded the warranty claims against both defendants for a new trial, holding that the erroneous summary judgment for Altech limited the evidence presented to the jury with respect to the claim against FieldTurf.

The Supreme Court reversed. The Court first held that the court of appeals erred in remanding the claim against FieldTurf for a new trial "in the interest of justice" because the record contained no support for the court of appeals' conclusion that the summary judgment for Altech, whether or not erroneous, affected the development or presentation of the evidence at trial on the claim against FieldTurf. Accordingly, the Court remanded the case to the court of appeals to address the merits of the parties' appellate issues on that claim in the first instance.

The Court further held that the court of appeals erred in holding that the G-Max report remained in the summary judgment record and could be considered in reviewing the summary judgment for Altech. Recognizing that both an objection and a ruling by the trial court are necessary to preserve error, the Court held that a written order is not required if the record clearly shows a ruling on the objection. Here, the reporter's record of the summary judgment hearing showed that the trial court sustained Altech's objection to the G-Max report, and the district did not argue on appeal that the court erred in doing so. Accordingly, the Court held that the report was not part of the summary judgment record on appeal and that the court of appeals erred in relying on the report to reverse the summary judgment. Finally, the Court rejected the district's argument that the G-Max report was cumulative of other evidence in the record that created a fact issue on the warranty claim. The Court thus reversed the court of appeals' judgment and reinstated the summary judgment for Altech.

INSURANCE
Texas Anti-Indemnity Act

Maxim Crane Works, LP v. Zurich Am. Ins. Co., —S.W.3d— (Tex. Mar. 3, 2022) [21-0727]

At issue in this certified question case is whether a person employed by a general contractor is also considered an "employee" of the subcontractor under the Texas Anti-Indemnity Act.

Skanska USA, Inc., a general contractor, hired Berkel & Co. Contractors as a subcontractor on a large construction project in Houston. As a condition of working on the job, Skanska required its subcontractors to participate in a contractor-controlled insurance program (CCIP), which provided both general commercial liability and workers' compensation insurance. Berkel then leased a crane from Maxim Crane Works, L.P., for use on the construction project. As required under the lease, Berkel named Maxim as an additional insured under Berkel's commercial general liability insurance policy, which was issued by Zurich American Insurance Company. Maxim did not enroll in Skanska's CCIP.

A Berkel employee operating the crane caused the boom to collapse, crushing the leg of Tyler Lee, a Skanska project supervisor. Lee recovered workers' compensation benefits under Skanska's CCIP and then sued Berkel, Maxim, and others in state court. A jury returned a verdict for Lee, allocating 90% of the fault to Berkel and 10% to Maxim. Maxim and Lee settled. The Fourteenth Court of Appeals reversed the trial court's judgment against Berkel because it concluded that the Texas Workers Compensation Act provided the exclusive remedy for Lee's injuries. The court reasoned that because Lee and Berkel were both covered under Skanka's CCIP, they were effectively co-employees under the Act.

In this separate suit, which was removed to federal court, Maxim sought declaratory relief and damages against Zurich for improperly denying Maxim coverage as an additional insured under Berkel's policy. The TAIA sets forth a general rule making indemnification clauses in construction contracts unenforceable. The rule applies equally to additional insured coverage, but an exception makes additional insured coverage enforceable if the claim runs against the policyholder's employee. The district court granted summary judgment for Zurich on the ground that the "employee exception" of the Texas Anti-Indemnity Act (TAIA) precluded Maxim from coverage as an additional insured. Maxim appealed.

In the U.S. Court of Appeals for the Fifth Circuit, Maxim and Zurich agreed that the TAIA voids Berkel's CGL policy from covering Maxim's costs unless the "employee exception" applies to their dispute. The Fifth Circuit therefore certified the following question to the Court: whether the employee exception "allows additional insured coverage when an injured worker brings a personal injury claim against the additional insured (indemnitee), and the worker and the indemnity[or] are deemed 'co-employees' . . . for purposes of the [Texas Workers' Compensation Act (TWCA)]."

The Court accepted the certified question and held that the word "employee" in section 151.103 of the TAIA bears its common, ordinary meaning, which is not affected by whether the indemnitor and injured employee are considered co-employees for purposes of the TWCA.