



Case Summaries September 23, 2022

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OPINIONS

NEGLIGENCE

Duty of Reasonable Care

Three Aces Towing, Inc. v. Landrum, ___ S.W.3d ___, 2022 WL ___ (Tex. Sept. 23, 2022) (per curiam) [[21-0652](#)]

The issue in this case is whether the court of appeals misapplied the common-law rule that the duty of reasonable care applicable to a negligent-undertaking claim is limited to the context of the undertaking.

Jeffrey Landrum died after being crushed by an 8' x 8' portable storage unit that he delivered to 3 Aces Storage by tractor trailer. Landrum had asked 3 Aces' owner, Dawn Hancock, to help him push the unit about a foot to the end of the trailer, which she did. Landrum then instructed Dawn to step away from the trailer while he finished the unloading process. Once Dawn had stepped away, Landrum tried to ease the unit down a ramp on the end of the trailer with his hands, but the unit fell on top of him.

Landrum's daughter sued 3 Aces for wrongful death. Though the trial court granted 3 Aces' motion for summary judgment, a divided court of appeals reversed. The panel majority reasoned that once Dawn started assisting Landrum, she undertook a duty to protect him from dangers that a prudent person could foresee resulting from the situation.

Without hearing oral argument, the Supreme Court reversed and rendered judgment for 3 Aces. In a prior case, the Court had explained that when one undertakes to provide services to another, the person assumes a duty of reasonable care that "is limited to that undertaking." Here, the undisputed evidence showed that Landrum asked Dawn only to help him move the unit about a foot to the end of the trailer and that Dawn had stopped helping and stepped away when Landrum asked her to. The Court held that any duty of reasonable care that Dawn undertook ended when Landrum told her to step away while he finished.

ARBITRATION

Enforcement of Arbitration Agreement

In re Ayad, ___ S.W.3d ___, 2022 WL ___ (Tex. Sept. 23, 2022) (per curiam) [[22-0078](#)]

The issue in this case was whether the trial court erred by enforcing a premarital agreement providing for arbitration of disputes before a religious tribunal. Mariam Ayad sued to divorce her husband and be appointed joint managing conservator of the

couple's son. Husband filed a counterpetition and moved to enforce a prenuptial agreement providing that any marital conflict would "be resolved according to the Qur'an, Sunnah, and Islamic Law in a Muslim court, or in [its] absence by a Fiqh Panel." Ayad raised several challenges to the validity and enforceability of the agreement, including challenges based on the indefiniteness of terms, unconscionability, and public policy. The trial court concluded that under the Texas General Arbitration Act, it was required to enforce the agreement. It therefore ordered the parties to arbitration without addressing Ayad's validity and enforceability challenges. The court of appeals denied Ayad's mandamus petition.

The Supreme Court granted Ayad's mandamus petition without hearing oral argument. The Court explained that the trial court had abused its discretion by compelling arbitration without deciding Ayad's challenges because the Family Code alters the ordinary rule regarding who decides validity and enforceability challenges to an arbitration agreement when the agreement is asserted in a suit for divorce or custody of a child. Specifically, Sections 6.6015(a) and 153.00715(a) state that "notwithstanding any provision of the contract to the contrary, the court shall try [issues of validity or enforceability] promptly and may order arbitration only if the court determines that the contract containing the agreement is valid and enforceable against the party seeking to avoid arbitration."

The Court noted that a trial court's error in compelling parties to arbitration is ordinarily reviewable by eventual appeal from a final judgment enforcing an arbitration award. But the Court held that Ayad lacks an adequate remedy by appeal because the trial court's error here was ignoring a statutory command unique to the divorce context to try issues of validity and enforceability before ordering arbitration.