Case Summaries
December 30, 2022

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OPINIONS

GOVERNMENTAL IMMUNITY

Texas Tort Claims Act

Gulf Coast Ctr. v. Curry, ___ S.W.3d ___, 2022 WL ___ (Tex. Dec. 30, 2022) [20-0856]

The issue in this case is whether the Texas Tort Claims Act's caps on the amount of a governmental unit's liability implicate the trial court's jurisdiction so the plaintiff has the burden to prove which cap applies.

Daniel Curry was struck by a bus driven by an employee of The Gulf Coast Center, a governmental unit that provides intellectual-disability services in Galveston and Brazoria Counties. Curry sued Gulf Coast under the Tort Claims Act, which caps the amount of a defendant's liability based on what type of governmental unit the defendant is. Following a jury trial, the trial court rendered judgment for Curry that included $216,000 in damages. Gulf Coast appealed, arguing that its liability should be capped at $100,000 because Curry failed to establish that a higher cap applies or, alternatively, the evidence conclusively established that Gulf Coast was subject to the $100,000 cap. The court of appeals affirmed. It concluded that the Tort Claims Act's damages caps are an affirmative defense and Gulf Coast had the burden either to obtain a jury finding or to present conclusive evidence at trial that the lower cap applied. Gulf Coast petitioned the Supreme Court for review.

The Supreme Court reversed. It held that the Tort Claims Act's damages caps are incorporated into the Act's waiver of immunity from suit, so a governmental unit retains its immunity from suit as to a claim that exceeds the applicable cap. The Court concluded that, as part of the plaintiff's burden to affirmatively demonstrate the trial court's jurisdiction, the plaintiff has the burden to establish which cap applies. The Act's higher ($250,000) cap applies only to "the state government" or "a municipality," and the Court determined that Curry did not plead or prove that Gulf Coast was either. As a result, he failed to satisfy his burden that Gulf Coast waived its immunity from suit beyond the $100,000 cap. The Court independently held that the uncontroverted evidence established that Gulf Coast was a community center under Chapter 534 of the Health and Safety Code and therefore subject to the Tort Claims Act's $100,000 cap. The Court concluded that the trial court should have considered evidence presented after trial regarding the applicable damages cap.

PROBATE: WILLS, TRUSTS, ESTATES, AND GUARDIANSHIPS

Will Construction

Jordan v. Parker, ___ S.W.3d ___, 2022 WL ___ (Tex. Dec. 30, 2022) [21-0205]

This case presents the issue of whether a conveyance of "all of my right, title and interest" in a ranch included the grantor's remainder interest in an estate that held an interest in the same ranch.

J. Loyd Parker Jr. left a life estate to his widow, Ruthie Parker, with a remainder in the estate to their two children. The estate included many real estate holdings, including a one-fourth interest in the Cottonwood Ranch. Loyd Jr.'s son, Loyd III, separately owned a one-eighth fee simple interest in the Cottonwood Ranch. During his mother's lifetime, Loyd III conveyed "all of my right, title and interest" in the Cottonwood Ranch to his daughters, Elise and Allison, in equal shares. Loyd III died and left his entire estate to his wife, Kathy.

After Loyd III's death, Elise claimed a right to a one-sixteenth interest in the Cottonwood Ranch from Loyd III's remainder interest that followed Ruthie's life estate. Kathy sued Elise to resolve this claim, and the trial court granted summary judgment to Elise. The court of appeals reversed. It held that Loyd III's deed, executed during his mother's lifetime, did not convey any remainder interest that followed her life estate. The court of appeals relied on the rule that a grantor may convey a future interest only by clear and express language demonstrating the intent to do so.

The Supreme Court affirmed. The Court held that, because Loyd Jr.'s will gave the life tenant expansive powers to sell or give away estate holdings, Loyd III had only an expectancy in any particular piece of estate property during Ruthie's life tenancy. The Court reaffirmed the longstanding rule that an expectancy or future interest may be conveyed only through language that clearly manifests the grantor's intent to convey it. Therefore, when Loyd III conveyed all his right, title, and interest in the Cottonwood Ranch through a deed that did not expressly refer to his expectancy, he conveyed only the fee simple interest he owned at the time.

CONSTITUTIONAL LAW

Abortion

Zimmerman v. City of Austin, ___ S.W.3d ___, 2022 WL ___ (Tex. Dec. 30, 2022) (per curiam) [21-0262]

The issue in this case is whether a statute that was never expressly repealed is enforceable after a case that held the statute to be unconstitutional was overruled.

The City of Austin approved a budget that included funding for entities that provide support to residents who seek abortions. Don Zimmerman sued the City, alleging that this budget allocation violated a Texas statute that prohibits furnishing the means for procuring an abortion. The trial court granted the City's plea to the jurisdiction, and the court of appeals affirmed. The court of appeals concluded that Zimmerman's claim could not proceed because of the United States Supreme Court's opinion in *Roe v. Wade*, 410 U.S. 113 (1973). Zimmerman petitioned the Texas Supreme Court for review, arguing that the statute was never repealed and therefore remained enforceable despite *Roe*.

After the Court requested and received briefs on the merits, the U.S. Supreme Court issued its opinion in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), which overruled *Roe*. The Texas Supreme Court vacated the lower courts' judgments and remanded this case to the trial court to address the effect of this change

in the law, as well as any intervening factual developments.

NEGLIGENCE

Vicarious Liability

Cameron Int'l Corp. v. Martinez, ___ S.W.3d ___, 2022 WL ___ (Tex. Dec. 30, 2022) (per curiam) [21-0614]

The issue in this case is whether an oilfield worker traveling for personal necessities was acting in the course and scope of his employment, such that the employer is vicariously liable for the worker's alleged negligence in connection with a car accident en route.

Cameron International Corporation hired John Mueller for a four-day job at a remote oil well worksite near Orla, Texas. After Mueller's last contracted workday, his supervisor invited him to eat in Pecos. Mueller drove on his own to eat with his supervisor, fuel his truck, and restock his personal supply of food and water to bring back to the worksite, anticipating contracting for additional work. On his way back, Mueller was involved in a deadly accident. The accident survivors and their estates sued Mueller, Cameron, and others for negligence, and sought to hold Cameron liable under the doctrine of respondeat superior.

Cameron moved for summary judgment, arguing that it was not liable for worker travel that it did not control or direct. The trial court granted Cameron's motion, but the court of appeals reversed. The court of appeals held that a fact issue existed as to whether Mueller was on a special mission in the course and scope of his duties for Cameron at the time of the accident.

Cameron petitioned the Supreme Court for review, arguing that the court of appeals erred in interpreting the special mission doctrine too broadly by applying it to a personal errand. The Court agreed and reversed per curiam, reinstating the trial court's judgment. The Court emphasized its recent statements that an employer cannot be held vicariously liable for accidents that occur while a worker conducts personal errands. The Court also declined to expand the scope of vicarious liability to match that of workers' compensation liability, and it reaffirmed past holdings that workers' compensation liability uses a distinct framework and attaches in broader situations than common law vicarious liability.

PROCEDURE—APPELLATE

Dismissal

Durden v. Shahan, ___ S.W.3d ___, 2022 WL ___ (Tex. Dec. 30, 2022) (per curiam) [21-1003, 21-1017, 21-1018]

The issues in this case are (1) whether a county attorney has authority to initiate a Texas Open Meetings Act suit in the name of the State; and (2) whether the attorney made a bona fide attempt to invoke the court of appeals' jurisdiction with respect to sanctions imposed against the attorney personally.

County Attorney Todd Durden filed three lawsuits on behalf of the State of Texas that alleged violations of the Texas Open Meetings Act by Kinney County officials. The trial court concluded that Durden lacked authority to file the suits on the State's behalf. The court dismissed all three cases and sanctioned Durden personally by ordering him to pay the defendants' attorney's fees and costs. Durden filed a notice of appeal that stated that Durden, in his official capacity, was appealing as to all issues and all parties affected by the order. The court of appeals affirmed, agreeing that Durden lacked

authority and refusing to reach the merits of his sanctions complaint because he failed to file a notice of appeal in his individual capacity.

In a per curiam opinion, the Supreme Court affirmed the part of the court of appeals' judgment dismissing Durden's Texas Open Meetings Act suits because he lacked authority to bring them, but the Court reversed the part of the judgment that dismissed Durden's appeal of the sanctions imposed against him personally. The Court first held that while the Texas Constitution authorizes county attorneys to represent the State in some cases, that authority to represent the State does not include the authority to independently decide whether to institute a suit on the State's behalf. The Legislature must specifically provide that authority by statute. The Court went on to reject Durden's argument that TOMA's language authorizing any "interested person" to sue provides authority for a county attorney to bring a TOMA suit on the State's behalf. The Court then turned to the dismissal of Durden's sanctions appeal. After reiterating the rule that appeals should be decided on the merits rather than dismissed for procedural defect, the Court held that the court of appeals should have accepted Durden's appeal from the sanctions order or permitted him to amend the notices of appeal because Durden made a bona fide attempt to invoke the court's jurisdiction. The Court remanded the case to the court of appeals for further proceedings.

TAXES

Property Tax

In re Stetson Renewables Holdings, LLC and Ogallala Renewable Project, LLC, ___ S.W.3d ___, 2022 WL ___ (Tex. Dec. 30, 2022) [22-1119]

The issue in this case is whether applicants in a statutory tax-incentive program have a judicially enforceable right to compel the Comptroller to process their applications.

Chapter 313 of the Texas Tax Code establishes a tax program that allows school districts to offer property-tax incentives to businesses willing to make investments within the districts' boundaries. The Legislature gave the Comptroller a supervisory role over this program, part of which includes completing an economic-impact evaluation and issuing certificates of approval (or a written explanation of a denial) to businesses that apply. Relators in this case are renewable-energy businesses that submitted Chapter 313 applications. The Comptroller informed them, however, that because of the high volume of applications submitted, the limited resources of his office, and Chapter 313's statutory deadline of December 31, 2022, he will not be able to process their applications.

In response, the businesses filed a petition for writ of mandamus and a motion for temporary relief against the Comptroller, asking the Court to order the Comptroller to review their Chapter 313 applications and to extend the statutory expiration date of the Chapter 313 program to accommodate the influx of applications. In support of these requests, the businesses argued that Chapter 313 imposed a mandatory, non-discretionary duty on the Comptroller to process their applications. They pointed out, for example, that Chapter 313 says the Comptroller "shall" complete applicants' economic-impact evaluations within ninety days.

The Supreme Court, however, denied the businesses' mandamus petition and motion for temporary relief. It held that the businesses did not have a judicially enforceable right to compel the Comptroller to process their applications. The Court agreed that, even though the Comptroller's duties might be mandatory and non-

discretionary, nothing in the statute indicated that *the Court* was meant to enforce the deadline. Even in the absence of a judicially crafted remedy, the Court said, a statutory command remains a statutory command because the Legislature has many ways to correct the executive's failure to abide by a statutory deadline. The Court further reasoned that a judicial remedy could also intrude on the Legislature's prerogative to determine not only when a tax-incentive program must end but also how far it is worth pressing to achieve compliance with a statutory directive. For those reasons, the Court concluded that the businesses were not entitled to mandamus relief.