



Case Summaries March 31, 2023

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OPINIONS

GOVERNMENTAL IMMUNITY

Ultra Vires Claims

Hartzell v. S.O. and *Trauth v. K.E.*, ___ S.W.3d ___, 2023 WL ___ (Tex. Mar. 31, 2023) [[20-0811](#), [20-0812](#)]

These cases, consolidated for oral argument, address whether a public university has authority to revoke a former student's degree. In *Hartzell*, S.O. received a Ph.D. from UT Austin, which subsequently initiated disciplinary proceedings premised on allegations that S.O. engaged in scientific misconduct and academic dishonesty in connection with her doctoral research. In *Trauth*, K.E. received a Ph.D. from Texas State, which subsequently revoked K.E.'s degree after determining in an administrative proceeding that she engaged in academic misconduct in connection with her doctoral research. In both suits, the former students brought *ultra vires* claims against the respective university officials, asserting that they lack statutory authority to revoke previously conferred degrees. In *Trauth*, K.E. also alleged that she was denied due process. The trial courts denied the universities' pleas to the jurisdiction with respect to the statutory-authority and due-process claims, and the courts of appeals affirmed.

The Supreme Court reversed as to the statutory-authority claims and dismissed those claims. The Court held that the statutory authority of the university systems' boards of regents is broad enough to encompass the authority to determine that a student did not meet the requisite conditions for earning a degree because of academic misconduct. The Court reasoned that whether the determination is made before or after a degree has been formally conferred is immaterial so long as the underlying conduct occurred during the student's tenure at the university, and due process is provided. The Court explained that courts in other states applying similarly worded grants of authority have uniformly determined that public universities have degree-revocation power.

However, the Court affirmed the denial of the jurisdictional plea as to K.E.'s due-process claim. The Court held that K.E. properly seeks prospective relief with respect to that claim and remanded the claim to the trial court for further proceedings.

Justice Boyd concurred in the judgment, opining that the only actions alleged to be *ultra vires* are scheduling a disciplinary hearing for S.O., noting on K.E.'s transcript that her degree was revoked, and requesting that K.E. return her diploma and no longer represent that she holds her degree. Justice Boyd concluded that the universities did

not act *ultra vires* with regard to those specific actions.

Justice Blacklock, joined by Justice Devine, dissented, concluding that the governing statutes grant the universities neither express nor implied authority to revoke a previously conferred degree. The dissent would have held that revocation of a degree—an intangible asset—may result only from a judicial determination in a court of law.

CONSTITUTIONAL LAW

Separation of Powers

City of Houston v. Hous. Pro. Fire Fighters Ass'n, Local 341 and Hous. Police Officers' Union v. Hous. Pro. Fire Fighters Ass'n, Local 341, ___ S.W.3d ___, 2023 WL ___ (Tex. Mar. 31, 2023) [[21-0518](#), [21-0755](#)]

The Court decided three issues in these consolidated cases: (1) whether a statute that requires the judiciary to set the compensation for firefighters after collective bargaining fails violates the constitutional separation of powers; (2) whether the statute waives governmental immunity; and (3) whether the statute preempts a local city charter provision that also governs firefighter pay.

The City of Houston's collective-bargaining agreement with its Fire Fighters Association expired, and the parties did not reach a new agreement. The Fire Fighters sued the City under The Fire and Police Employee Relations Act, alleging that the City failed to provide the terms of employment required by the Act, and asking the court to establish their terms of employment for one year as the Act provides. The City countered that the Legislature delegated the task of establishing firefighter pay to the judiciary in violation of the constitutional separation of powers and that the City's immunity was not waived under the Act because the firefighters failed to propose certain required terms during collective bargaining. The trial court rejected the City's constitutional and immunity challenges, and the court of appeals affirmed.

Meanwhile, the Fire Fighters successfully campaigned for a city charter amendment that would require their compensation to be in parity with city police officers. Upon its passage, the Police Officers' Union, joined by the City, sued for a declaratory judgment that the Act preempts the pay-parity amendment. The trial court held that the Act preempts the pay-parity amendment, but a divided court of appeals reversed.

The Supreme Court held that the Act does not unconstitutionally delegate legislative authority. The Act furnishes a judicial remedy that provides adequate and familiar comparators to guide judicial discretion in setting terms of employment, like requiring compensation to be "substantially equal" to "comparable employment" in the private sector. The Supreme Court held that the Act's waiver of immunity was not contingent on the proposal of certain terms during collective bargaining because the statutory definition of the bargaining duty is limited to meeting at reasonable times and conferring in good faith. Finally, the Supreme Court held that the Act preempted the pay-parity amendment because the amendment attempted to supplant the Act's rule of decision for establishing firefighter compensation.

PROCEDURE—PRETRIAL

Venue

Fortenberry v. Great Divide Ins. Co., ___ S.W.3d ___, 2023 WL ___ (Tex. Mar. 31, 2023) [[21-1047](#)]

This case addresses whether an injured plaintiff presented sufficient evidence to support the application of a statute that mandates venue in the county where he resided at the time of his injury.

After signing a three-year contract to play for the Dallas Cowboys, Alcus Fortenberry stayed in a Dallas County hotel room provided by the team while he trained and participated in preseason activities. Fortenberry was injured while training out of state, and the Cowboys terminated his contract. Great Divide Insurance Company, the Cowboys' insurer, denied Fortenberry's request for workers' compensation benefits. After exhausting the administrative process, Fortenberry sued Great Divide in Dallas County. Great Divide moved to transfer venue to Travis County, which the trial court denied. The trial court rendered judgment for Fortenberry following a jury verdict, and Great Divide appealed.

Great Divide challenged the trial court's venue determination among other things. The court of appeals concluded that Fortenberry failed to present prima facie evidence that he resided in Dallas County at the time of his injury as required under the venue statute governing workers' compensation appeals. The court reversed and remanded for further venue proceedings. Fortenberry petitioned for review, which the Supreme Court granted.

The Supreme Court reversed. The Court reiterated that a trial court's venue determination must be upheld if there is any probative evidence in the record to support it and that appellate courts must consider the entire record, including the trial on the merits, when reviewing that determination. The Court recognized that Texas cases have taken a flexible view of what it means to reside in a county for venue purposes, particularly when a party is in the process of moving from one county to another. It therefore rejected the court of appeals' categorical prohibition against a hotel room serving as a person's residence for venue purposes.

The Court concluded there was sufficient evidence in the record to support the trial court's venue ruling. Fortenberry testified by affidavit that he lived in Dallas County at the time of his injury. He was working out and participating in team activities for nearly three months before his injury after signing a three-year contract with the team. And the parties stipulated during the administrative proceeding that Fortenberry resided within 75 miles of the Workers' Compensation Division's Dallas Field Office at the time of his injury. The Court therefore reversed the judgment of the court of appeals and remanded for that court to consider Great Divide's other, unaddressed issues.