Case Summaries
October 4, 2024

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DECIDED CASES

PROCEDURE—PRETRIAL

Discovery

In re Peters, ___ S.W.3d ___, 2024 WL ___ (Tex. Oct. 4, 2024) (per curiam) [23-0611]

This case involves the application of the Fifth Amendment privilege against self-incrimination to discovery requests.

After drinking, Taylor Peters caused a multi-car crash that injured the plaintiffs. Peters was admitted to a hospital, where he told the responding police officer that he had visited two bars whose names he had forgotten, drank three beers, and remembered feeling "buzzed." The officer noted that Peters appeared confused and disoriented. A breathalyzer test revealed that Peters had a blood-alcohol concentration above the legal limit. He was arrested and charged with intoxication assault with a motor vehicle.

After suing Peters for negligence, the plaintiffs served interrogatories inquiring where Peters had been before the crash. They sought the names of the bars that served Peters alcohol in order to initiate a timely dram shop action. Peters invoked the Fifth Amendment and refused to provide the information. The trial court granted the plaintiffs' motion to compel. The court of appeals denied Peters' mandamus petition.

The Supreme Court conditionally granted mandamus relief. The constitutional privilege against self-incrimination applies in civil litigation and can bar discovery, no matter how critical the need for that discovery is. Here, Peters' discovery responses could be used against him in the criminal case by leading to evidence that Peters drank more than the three beers that he claimed. The Court rejected the plaintiffs' argument that Peters waived the privilege by disclosing to the police that he had visited two bars, drank three beers, and felt buzzed. The plaintiffs did not show a voluntary, knowing, and intelligent waiver of the privilege in the record; indeed, the officer's notes about Peters' condition cut against a voluntary waiver.

PROCEDURE—PRETRIAL

Summary Judgment

Verhalen v. Akhtar, ___ S.W.3d ___, 2024 WL ___ (Tex. Oct. 4, 2024) (per curiam) [23-0885]

The issue is whether the trial court abused its discretion by denying a motion to file a summary judgment response tendered one day late.

Georgia Verhalen and her mother sued Evan Johnston and Adriana Akhtar for negligence. The defendants filed motions for summary judgment, resulting in an October 5, 2022, deadline for the Verhalens' responses. The Verhalens did not file their responses until 11:48 p.m. on October 6. They also filed a verified motion for leave to file the responses late. The motion and affidavit explained that the deadline was improperly entered in the calendaring software used by the plaintiffs' counsel and that counsel filed the responses immediately upon discovering the oversight. The trial court denied the motion for leave, insisting on strict compliance with the response deadline prescribed by the rules of civil procedure. The trial court then granted the defendants' motions for summary judgment and awarded take-nothing judgments to both. The Verhalens appealed the denial of their motion for leave, but the court of appeals affirmed.

The Supreme Court reversed and remanded to the trial court for further proceedings. The Court held that the trial court abused its discretion by denying the motion for leave because the Verhalens established good cause for the delay in filing. The Court emphasized counsel's uncontroverted factual assertions about her discovery of the calendaring error and her prompt action in response.