Case Summaries
April 11, 2025

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DECIDED CASES

Save Our Springs All., Inc. v. Tex. Comm'n on Env't Quality, ___ S.W.3d ___, 2025 WL ___ (Tex. Apr. 11, 2025) [23-0282]

This suit for judicial review involves claims that TCEQ (1) misapplied its "antidegradation" rules in granting a wastewater discharge permit and (2) failed to make "underlying fact" findings as required by section 2001.141 of the Administrative Procedure Act.

TCEQ rules prohibit permitted discharges into high-quality waterbodies that would either (1) disturb existing water uses or (2) degrade water quality. The City of Dripping Springs applied for a permit to discharge wastewater into Onion Creek. Predictive modeling estimated that dissolved oxygen levels at the mixing point would drop more than 20% but would remain at sufficient levels to protect existing uses and then quickly return to baseline levels. Taking into consideration other water-quality parameters, TCEQ's Executive Director concluded that overall water quality would not suffer and proposed to grant the City's application.

Contested-case and judicial-review proceedings ensued. A local environmental group, Save Our Springs Alliance, asserted that a significant reduction in dissolved oxygen level constitutes degradation of water quality as a matter of law. The administrative law judge rejected SOS's parameter-by-parameter antidegradation methodology as reflecting a misreading of the applicable rules. TCEQ agreed and granted the permit. The reviewing courts split on the matter. Reading the rules as requiring a parameter-by-parameter degradation analysis, the trial court vacated and enjoined the City's permit. A divided court of appeals reversed and upheld the permit.

The Supreme Court affirmed, holding that TCEQ did not misread or misapply its rules. TCEQ's practice of assessing degradation of water quality on a whole water basis, rather than affording decisive weight to numeric changes in individual water-quality parameters, conforms to the antidegradation standards as written. SOS's additional complaint that TCEQ's final order was void for want of sufficient underlying fact findings was not preserved for judicial review. That complaint also failed on the merits because the language in TCEQ's antidegradation rules is not "statutory language" for which section 2001.141 requires additional fact findings.

Raoger Corp. v. Myers, ___ S.W.3d ___, 2025 WL ___ (Tex. Apr. 11, 2025) [23-0662]

At issue is the sufficiency of a Dram Shop Act claimant's summary judgment evidence.

Barrie Myers sued Cadot Restaurant under the Dram Shop Act for injuries he sustained in a 2018 automobile accident. The driver who hit him, Nasar Khan, had consumed alcohol at Cadot with a friend approximately two hours prior to the accident. The Act provides for dram shop liability if it was "apparent" that an individual to whom the dram shop provided alcohol "was obviously intoxicated to the extent that he presented a clear danger," and the individual proximately caused injury to a claimant. Although there was no evidence that Khan appeared intoxicated at Cadot, Myers relied on other evidence such as Khan's appearance just after the accident and his blood alcohol level, which was well above the legal limit when it was taken three hours later.

The trial court granted summary judgment for Cadot, and the court of appeals reversed. The Supreme Court granted the petition for review and reinstated the trial court's summary judgment, holding that the record lacked competent evidence to establish Khan's "apparent" and "obvious" intoxication at Cadot. While the evidence may have indicated that Khan consumed a large amount of alcohol and became intoxicated at some point before the accident, it merely permitted speculation as to how Khan *appeared* at Cadot. The Court also held that the trial court did not abuse its discretion in denying Myers's motion to continue the summary-judgment hearing, because Khan did not establish the materiality and purpose of the additional discovery sought.

RECENTLY GRANTED CASES

Tex. Comm'n on Env't Quality v. Sierra Club, ___ S.W.3d ___, 2022 WL 17096693 (Tex. App.—Austin 2022), *pet. granted* (Apr. 4, 2025) [23-0244]

This case is about whether the Texas Commission on Environmental Quality met a deadline to request an Attorney General decision under the Public Information Act and whether the Commission must disclose the requested information regardless.

On July 1, 2019, Sierra Club requested information from the Commission pursuant to the Act. On July 2, the Commission emailed Sierra Club, asking whether it intended to seek confidential information. The same day, Sierra Club responded that it did. The Commission was closed on July 4 and 5 in observance of Independence Day. It ultimately provided some documents but withheld others, claiming they were confidential under the deliberative-process privilege. The Commission sought an Attorney General decision on that issue, as required by the Act. The Commission deposited its decision request in interagency mail on July 17, and the Attorney General received the request on July 18.

The Attorney General required the Commission to disclose the information because (1) the Commission requested an Attorney General decision after its ten "business day" deadline to do so had expired, and (2) there was no "compelling reason to withhold the information." The Commission sued for declaratory relief, and Sierra Club intervened. The trial court granted summary judgment requiring disclosure. The court of appeals affirmed.

The Commission petitioned the Supreme Court for review, arguing it met its deadline for either of two reasons: first, July 5 was not a "business day" because the Commission was closed; second, the Commission's July 2 email was a clarification or narrowing request and thus reset the ten-business-day clock. The Commission also argued that, even if it missed the deadline, the deliberative-process privilege is a "compelling reason" for nondisclosure. The Supreme Court granted the petition.

Cockrell Inv. Partners, L.P. v. Middle Pecos Groundwater Conservation Dist., 676 S.W.3d 677 (Tex. App.—El Paso 2023), *pet. granted* (Apr. 4, 2025) [23-0593], *consolidated for oral argument with* ***Cockrell Inv. Partners, L.P. v. Middle Pecos Groundwater Conservation Dist.***, 677 S.W.3d 727 (Tex. App.—El Paso 2023), *pet. granted* (Apr. 4, 2025) [23-0742]

These petitions concern the statutory requirements for waiving a groundwater district's immunity under the Texas Water Code.

Petitioner Cockrell sought party status to challenge a neighboring landowner's administrative application for a groundwater-production permit. The District rejected Cockrell's request, and Cockrell requested a rehearing. Believing that the rehearing request was denied by operation of law under the District's Local Rules after forty-five days, Cockrell sought judicial review under the Water Code. The District (and other defendants) filed pleas to the jurisdiction, arguing Cockrell failed to exhaust its administrative remedies because it sought judicial review before its rehearing request expired by operation of law under the Water Code's ninety-day deadline. The trial court granted the pleas and dismissed Cockrell's case.

As the disputed permit's renewal date drew near, Cockrell again sought party status, this time to protest the renewal. Without addressing Cockrell's latest party-status request, the District renewed the neighbor's permit. Cockrell requested a rehearing, but as before, Cockrell believed the rehearing request was denied by operation of law when the District failed to issue a decision before the Local Rule's forty-five-day deadline. Cockrell sought judicial review, and the District (and other defendants) jointly filed a motion for summary judgment. The trial court granted the motion and dismissed Cockrell's case.

In both cases, Cockrell appealed, and the court of appeals affirmed. And in both cases, the court of appeals held that Cockrell failed to satisfy the Water Code's administrative-exhaustion requirement, instead seeking judicial review before its rehearing request expired by operation of law under the Code's ninety-day deadline, and that Cockrell's claims for declaratory relief could not proceed without a valid waiver of immunity.

Cockrell petitioned for review in each case, arguing that the Water Code's statutory requirements for waiving the District's immunity do not apply to Cockrell because it is not "an applicant or a party to a contested hearing," TEX. WATER CODE § 36.413(b), and that Cockrell's claims for declaratory relief can proceed because the District and its officials acted ultra vires. The Supreme Court granted the petitions.

Third Coast Servs., LLC v. Castaneda, 679 S.W.3d 254 (Tex. App.—Houston [14th Dist.] 2023), *pet. granted* (Apr. 4, 2025) [23-0848]

At issue in this case is whether the statutory immunity afforded to a contractor who constructs a highway "for the Texas Department of Transportation" requires contractual privity between that contractor and the Department.

Pedro Castaneda was fatally struck by two large trucks when he attempted to drive across the intersection of State Highway 249 and Woodtrace Boulevard. At the time of the accident, the intersection was under active construction pursuant to a contract between the Department of Transportation and Montgomery County. The Castaneda family sued the general contractor, SpawGlass Civil Construction, Inc., and the subcontractor hired to install traffic signals, Third Coast Services, LLC, alleging negligence and gross negligence.

SpawGlass and Third Coast each moved for traditional summary judgment, arguing they were entitled to statutory immunity under Section 97.002 of the Civil Practice and Remedies Code because they were highway contractors for the Department. When the trial court denied the motions, SpawGlass and Third Coast each filed an interlocutory appeal. The court of appeals affirmed, holding that because Section 97.002 requires privity between the Department and the contractor invoking immunity, SpawGlass and Third Coast—who were hired by the County—were ineligible for statutory immunity.

SpawGlass and Third Coast each petitioned for review, arguing that the court of appeals impermissibly read a privity requirement into the statute that was not reflected by its plain language. The Supreme Court granted both petitions.

Tex. Dep't of State Health Servs. v. Sky Mktg. Corp., ___ S.W.3d ___, 2023 WL 6299115 (Tex. App.—Austin 2023), *pet. granted* (Apr. 4, 2025) [23-0887]

At issue in this case is whether the agency responsible for maintaining Texas's schedules of controlled substances properly modified certain definitions within those schedules and whether the plaintiffs have standing to enjoin the effect of those modifications.

Both federal and Texas law have recently been modified to allow commercial production and sale of hemp, a variety of cannabis. The federal Drug Enforcement Administration issued an interim final rule to implement certain regulations consistent with the change in federal law. The Commissioner of the Texas Department of State Health Services refused to adopt language in the DEA's rule on the basis that doing so would legalize certain psychoactive isomers of THC. The Commissioner also modified certain definitions in Texas's schedule of controlled substances relating to marihuana and THC, and DSHS later posted a statement on its website that any form of THC in consumable hemp products, save certain low concentrations of one isomer, constitutes a controlled substance.

Hemp sellers and consumers sued DSHS and the Commissioner, seeking declaratory and injunctive relief. They contend that DSHS and the Commissioner lacked authority to modify and publish the relevant definitions, which purport to prohibit the sale and consumption of legal products. DSHS and the Commissioner filed a plea to the jurisdiction, asserting that the plaintiffs lacked standing and that sovereign immunity barred their claims. The trial court denied the plea and granted

a temporary injunction prohibiting both the changes to the Texas schedules and the website posting. The court of appeals affirmed.

DSHS and the Commissioner petitioned for review, arguing that the plaintiffs lack standing because they suffered no injury and because DSHS cannot enforce criminal penalties. They also contend that the Commissioner's actions were statutorily authorized and that the trial court abused its discretion in granting the temporary injunction. The Supreme Court granted the petition.

Ortiz v. Nelapatla, ___ S.W.3d ___, 2023 WL 4571916 (Tex. App.—Dallas 2023), *pet. granted* (Apr. 4, 2025) [23-0953]

This personal injury case concerns the admissibility of partially controverted affidavits offered to prove the reasonableness and necessity of medical expenses.

Ortiz and Nelapatla were involved in a car crash, and Ortiz sued Nelapatla for negligence. Prior to trial, Ortiz served medical-provider affidavits pursuant to Texas Civil Practice and Remedies Code Section 18.001. In response, Nelapatla timely served counteraffidavits challenging the reasonableness and necessity of a portion, but not all, of Ortiz's medical expenses. Nelapatla objected that the affidavits were inadmissible because he contravened them with counteraffidavits and because they were hearsay. The trial court sustained Nelapatla's objections. Ortiz moved to offer the counteraffidavits into evidence because she had designated the authors as experts. Nelapatla objected, and the court sustained the objection. Ortiz offered the affidavits twice more at trial, with Nelapatla objecting both times on the same grounds as before. The trial court sustained both objections.

The trial court granted Ortiz a money judgment for her past medical expenses. A divided court of appeals affirmed.

Ortiz filed a petition for review. Ortiz argues that the plain text of Section 18.001 supports the admission of the undisputed portions of the affidavits. Ortiz also argues that Section 18.001 does not restrict the use of counteraffidavits as evidence of the claimant's uncontested expenses because the affidavits are a party-opponent statement that can be used against the party who made them—namely, Nelapatla. The Supreme Court granted the petition.

In re UMTH Gen. Servs., L.P., ___ S.W.3d ___, 2023 WL 8291829 (Tex. App.—Dallas 2023), *argument granted on pet. for writ of mandamus* (Apr. 4, 2025) [24-0024]

This petition concerns whether a trust's shareholder can assert claims directly against an advisor who contracted with the trust or whether such claims must be brought derivatively.

A real estate investment trust entered into an advisory agreement with UMTH that gave UMTH authority to manage corporate assets. Alleging corporate funds were improperly used to cover legal fees, NexPoint, one of the trust's shareholders, sued UMTH and its affiliates, asserting various claims under the advisory agreement itself. UMTH filed a verified plea in abatement, a plea to the jurisdiction, and special exceptions, arguing that NexPoint's claims alleged collective harm to the trust and thus NexPoint lacked capacity and standing to bring a direct claim. The trial court denied the motions. UMTH filed a petition for writ of mandamus in the court of

appeals, which was denied.

UMTH then petitioned the Supreme Court for mandamus relief. UMTH argues that the trial court abused its discretion in allowing NexPoint to bring its claims directly rather than derivatively, as it lacked a personal cause of action and a personal injury, and that NexPoint lacked derivative standing because it did not maintain continuous or contemporaneous ownership of trust shares. The Supreme Court set the case for oral argument.

K&K Inez Props., LLC v. Kolle, ___ S.W.3d ___, 2023 WL 8941487 (Tex. App.—Corpus Christi–Edinburg 2023), *pet. granted* (Apr. 4, 2025) [24-0045]

This nuisance case concerns an exemplary-damages cap calculation and whether intentional and grossly negligent nuisance are mutually exclusive causes of action when based on the same property damage.

The Kolles own approximately 126 acres of land. David Kucera, Valerie Kucera, and K&K Inez Properties own a parcel adjacent to the Kolles' land and developed a portion of that property into a residential neighborhood. The Kolles then sued K&K and the Kuceras, alleging their development of the land caused the Kolles' property to flood. The Kuceras moved to add Victoria County, where the property was located, as a responsible third party.

The trial court granted leave to designate Victoria County, but subsequently struck the designation. The trial court rendered judgment on the jury's verdict in favor of the Kolles, holding that David, Valerie, and K&K negligently and intentionally caused nuisance, Valerie engaged in a conspiracy, and David and K&K committed gross negligence. The trial court awarded damages for diminution in market value and loss of use, as well as exemplary damages. The court of appeals reversed the trial court's award of loss-of-use damages but otherwise affirmed the trial court.

The Kuceras petitioned for review, arguing that Victoria County was improperly struck, that the lower courts improperly calculated the exemplary-damages award cap, and that the Kolles should not be allowed to recover exemplary damages for grossly negligent nuisance while also recovering compensatory damages for intentional nuisance. The Supreme Court granted the petition.

Morrison v. Morrison, ___ S.W.3d ___, 2023 WL 8288316 (Tex. App.—Tyler 2023), *pet. granted* (Apr. 4, 2025) [24-0053]

The central issue in this case is whether a post-divorce enforcement order that applied an agreed divorce decree's damages provision impermissibly changed the substantive division of property after the trial court's plenary power had expired.

After years of contentious proceedings, Debbie and Rodney Morrison finalized their divorce in an agreed divorce decree. The decree memorialized terms of their mediated settlement agreement, which included a negotiated damages provision. The provision provides that if a party violates the decree by failing to timely deliver property, it "shall result in the award of damages (including a redistribution of cash or other assets) and attorney's fees to the other party." Under the Texas Family Code,

a trial court maintains jurisdiction to enforce a divorce decree, but an enforcement order may not change the substantive division of property approved in a final divorce decree. If it does, the order is beyond the trial court's power and is unenforceable. When Rodney violated the divorce decree, Debbie sought enforcement. After finding that Rodney committed numerous violations of the decree, the trial court assessed damages and ordered a redistribution of property that resulted in Rodney's divestment of certain assets.

Rodney appealed, arguing that the enforcement order impermissibly altered the decree's property division after the trial court's plenary power expired. The court of appeals agreed, vacating the trial court's order and dismissing the case.

The Supreme Court granted Debbie's petition for review. She argues that the damages provision is enforceable because it was contractually agreed to by the parties in an agreed divorce decree.

Mankoff v. Privilege Underwriters Reciprocal Exch., ___ S.W.3d ___, 2024 WL 322297 (Tex. App.—Dallas 2024), *pet. granted* (Apr. 4, 2025) [24-0132]

The issue in this case is whether the term "windstorm," when undefined in a homeowner's insurance policy, unambiguously includes a tornado.

After the Mankoffs' home was damaged by a tornado, they submitted a claim under their homeowner's policy. The insurer, PURE, paid most of the claim but withheld a portion under the policy's "Windstorm or Hail Deductible." The Mankoffs sued PURE for breach of contract and sought a declaration that a tornado is not a "windstorm" under the policy, so the deductible did not apply. On cross-motions for summary judgment, the trial court granted PURE's motion and rendered a take-nothing judgment against the Mankoffs.

A divided court of appeals reversed. The majority held that "windstorm" is ambiguous because it is susceptible to two reasonable meanings—one that includes a tornado, and one that does not. Concluding that the Mankoffs' interpretation was reasonable, it held that the trial court was required to construe the policy in their favor. The dissenting justice would have held that a tornado is unambiguously a "subtype" of windstorm.

PURE petitioned for review, arguing that the court of appeals erred in concluding the term "windstorm" was ambiguous. PURE contends that the only reasonable construction of "windstorm" includes a tornado. PURE also contends the court of appeals erred by relying on improper sources to determine a term's plain meaning. The Supreme Court granted the petition.

In re Zaidi, ___ S.W.3d ___, 2024 WL 194353 (Tex. App.—Houston [14th Dist.] 2024) (per curiam), *argument granted on pet. for writ of mandamus* (Apr. 4, 2025) [24-0245]

At issue in this case is whether the trial court clearly abused its discretion in granting Real Parties' (Shah's) motion to disqualify Relators' (Zaidi's) counsel.

Shah sued Zaidi in 2009 after a real-estate deal turned sour. From 2009 to 2011, Felicia O'Loughlin assisted Fred Wahrlich of the law firm Munsch Hardt. O'Loughlin is variously described in the record and briefing as a legal secretary, legal assistant, and paralegal. She left Munsch Hardt to join the law firm Hicks Thomas

in 2011. Robin Harrison joined Hicks Thomas in 2016 and brought Zaidi with him as a client, whom he had represented since 2014. Starting in 2017 and ending in 2022, O'Loughlin assisted Harrison with the *Shah v. Zaidi* matter. In February 2023, Shah's counsel notified Harrison that they believed O'Loughlin had worked with Wahrlich on this case while at Munsch Hardt. Shah then moved to disqualify Harrison and Hicks Thomas due to the firm's employment of O'Loughlin.

The trial court granted the motion, and the court of appeals denied mandamus relief. Zaidi petitioned the Supreme Court for a writ of mandamus, arguing that the trial court clearly abused its discretion in granting the motion to disqualify despite *Phoenix Founders, Inc. v. Marshall*, 887 S.W.2d 831 (Tex. 1994), and its progeny. The Supreme Court set the case for argument.

Studio E. Architecture & Interiors, Inc. v. Lehmberg, 690 S.W.3d 725 (Tex. App.—San Antonio 2024) *pet. granted* (Apr. 4, 2025) [24-0286]

At issue in this case is whether a plaintiff may cure a defective petition under Chapter 150 of the Civil Practice and Remedies Code through amendment, or whether the defect may only be cured by filing a new action.

Lehmberg sued Studio E. for claims related to Studio E.'s work on Lehmberg's home renovation project. Nearly two years later, Studio E. filed a motion to dismiss. It argued that it was entitled to dismissal under Chapter 150 because Lehmberg failed to file a "certificate of merit" with her original petition, which is statutorily required in lawsuits against certain licensed or registered professionals. Lehmberg argued in response that her claims fell outside the scope of the statute. The trial court denied the motion to dismiss.

Studio E. filed an interlocutory appeal, and the court of appeals reversed. It concluded that the statute applied, so Studio E. was entitled to dismissal. However, it remanded to the trial court to determine whether the dismissal should be with or without prejudice. On remand, the trial court dismissed without prejudice. Lehmberg then filed an amended petition with the certificate of merit attached. By this point, the statute of limitations on Lehmberg's claims had expired. Studio E. filed another motion to dismiss, arguing that Lehmberg could not cure the original, deficient petition through amendment. The trial court denied the motion to dismiss, and Studio E. brought a second appeal.

The court of appeals affirmed. It concluded that because the trial court dismissed the original petition without prejudice, Lehmberg could either amend or file a new action.

Studio E. filed a petition for review, arguing that the court of appeals erred in concluding that Lehmberg could cure her defective, dismissed petition through amendment. Rather, it argues, dismissed claims—even those dismissed without prejudice—may only be revived by filing a new action. Studio E. argues that allowing Lehmberg to amend effectively nullifies the limitations provisions in Chapter 150.

The Supreme Court granted the petition.

In re Greystar Dev. & Constr., LP, 2024 WL 1549466 (Tex. App.—Dallas 2024), *argument granted on pet. for writ of mandamus* (Apr. 4, 2025) [24-0293]

The issue in this mandamus proceeding is whether Texas Civil Practice and Remedies Code Section 52.006(b)'s $25 million cap on supersedeas bonds applies per judgment debtor or per judgment.

A crane at Greystar's construction site collapsed on an apartment building in Dallas during severe weather in 2019, killing Kiersten Smith and injuring several others. Smith's relatives brought a wrongful-death suit against Greystar and related entities. The trial court rendered a judgment awarding Smith's relatives more than $400 million in actual damages and prejudgment interest. Greystar and related entities perfected an appeal and filed a joint supersedeas bond of $25 million. Smith's relatives filed an emergency motion asking the trial court to declare the joint bond void because the $25 million statutory cap applies per judgment debtor.

The trial court found that the bond violated Section 52.006(b) and was invalid as to two of the three defendants. The court of appeals affirmed, holding that the trial court correctly concluded that the statute's $25 million cap applied per individual judgment debtor and that the trial court acted within its broad discretion in providing instructions as to how the defendants could supersede the judgment.

Greystar sought mandamus relief in the Supreme Court, arguing that Section 52.006(b)'s $25 million cap applies per judgment, not per judgment debtor. The Supreme Court set the mandamus petition for oral argument.

In re H.S., ___ S.W.3d ___, 2024 WL 1207304 (Tex. App.—Fort Worth 2024), *pet. granted* (Apr. 4, 2025) [24-0307]

The issues in this case are whether there was legally sufficient evidence to support a parental termination order and whether the trial court abused its discretion by denying a motion to extend the mandatory dismissal date.

Mother and Father separately challenge an order terminating their parental rights to their three children. The Department of Family and Protective Services removed the children after discovering Father, who had previously assaulted Mother, returned home in violation of a safety plan Mother had signed. The jury heard evidence that Father had threatened suicide while the children were home and that both parents made some progress in completing their service plans, but neither plan was completed before the trial. Mother moved to extend the statutory dismissal date to allow her more time to complete her plan, but the trial court denied the motion.

After a jury trial, the trial court rendered judgment terminating both parents' rights to all three children. The court of appeals affirmed, concluding the evidence was legally and factually sufficient to support both endangerment grounds for termination and that termination was in the children's best interest.

Both parents petitioned for review. Mother challenges the trial court's denial of her motion to extend the dismissal date and argues that the evidence is legally insufficient to terminate her rights. She contends that she was penalized for Father's conduct and for not divorcing him, even though the Department never made that expectation clear. Father argues the evidence is legally insufficient to support termination of his rights. Both parents argue that termination was not in the children's best interest. The Supreme Court granted both petitions.

Shamrock Enters., LLC v. Top Notch Movers, LLC, ___ S.W.3d ___, 2024 WL 2857011 (Tex. App.—Corpus Christi–Edinburg 2024), *pet. granted* (Apr. 4, 2025) [24-0581]

This restricted appeal raises personal jurisdiction and substituted service-of-process issues in a dispute about payment under a contract for moving services.

In the aftermath of Hurricane Laura, Top Notch Movers, a Texas-based LLC, provided moving services in Louisiana and Alabama to Alabama-based Shamrock Enterprises, LLC. Top Notch sued Shamrock in Texas for nonpayment of services. Alleging Shamrock was required, but failed, to have a registered agent for service of process in Texas, Top Notch employed substituted service on the Texas Secretary of State. The Secretary of State forwarded service to Shamrock at the address Top Notch provided, but it was returned with the notation "Return to Sender, Vacant, Unable to Forward." Shamrock did not appear. The trial court rendered a default judgment against Shamrock, which was sent to the same address and similarly returned as undeliverable.

Shamrock filed a restricted appeal. The court of appeals affirmed the default judgment finding no error apparent on the face of the record.

The Supreme Court granted Shamrock's petition for review, which argues that (1) personal jurisdiction is lacking; (2) the court of appeals erroneously concluded that Shamrock was amenable to substituted service because the pleadings and record are facially insufficient to show Shamrock was transacting business in the state; and (3) return of the forwarded service is prima facie proof that service was defective.