

Court Advisory

Fourth Court of Appeals
Cadena-Reeves Justice Center
300 Dolorosa, Suite 3200
San Antonio, Texas 78205-3037



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FOR IMMEDIATE RELEASE
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Fourth Court of Appeals to Hear Oral Argument

The Fourth Court of Appeals will hear oral arguments in one appeal on Tuesday, February 15, 2011, beginning at 9:00 a.m., before the following panel of justices: Justice Sandee Bryan Marion, Justice Rebecca Simmons, and Justice Marialyn Barnard.

The following case will be presented:

In the Estate of Wilbur Waldo Lynch, Deceased - This appeal arises from a will contest over the 2003 will of Wilbur Waldo Lynch. After Wilbur died in July 2005, one of his daughters (the appellant) filed an application to probate the 2003 will. When the trial court signed an order admitting the will to probate, his other two daughters (the appellees) contested the will on the grounds that their father lacked capacity to execute the 2003 will and he executed the will as a result of undue influence by appellant. A jury returned a verdict in favor of appellees and awarded them their attorney's fees. Although the jury found that appellant incurred over \$600,000 in reasonable and necessary attorney's fees, it found she did not act in good faith and with just cause in defending the will issue; therefore, she was not awarded her fees. On appeal, appellant challenges (1) the sufficiency of the evidence in favor of the jury's findings on testamentary capacity and undue influence; (2) whether there is a conflict between the two findings on testamentary capacity and undue influence; (3) whether appellees' expert failed to recognize that lack of mental capacity and undue influence are mutually exclusive and, therefore, the expert's opinion amounts to no evidence; and (4) the jury's failure to award her attorney's fees.

The Fourth Court of Appeals will hear oral arguments in one appeal on Wednesday, February 16, 2011, beginning at 9:00 a.m., before the following panel of justices: Chief Justice Catherine Stone, Justice Phylis Speedlin, and Justice Steven C. Hilbig.

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The following case will be presented:

Lyda Swinerton Builders, Inc. v. Pools by Blue Haven, Inc. - This appeal arises from the trial court's denial of a motion to compel arbitration filed by Lyda Swinerton Builders, Inc. The appeal raises questions concerning whether Lyda waived its right to arbitrate because it substantially invoked the judicial process to Blue Haven's detriment. The appeal also raises issues regarding whether Lyda was first required to mediate with Blue Haven as an express condition precedent before invoking the arbitration provision of its contract. In addition, the appeal addresses whether an arbitrator has already concluded that arbitration of Blue Haven's claims is improper.

The oral arguments will be held in the Fourth Court's Courtroom, Caden-Reeves Justice Center, Third Floor, 300 Dolorosa, San Antonio, Texas.