



## Case Summaries February 10, 2023

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### OPINIONS

#### PROCEDURE—TRIAL AND POST-TRIAL

##### Finality of Judgments

*Patel v. Nations Renovations, LLC*, \_\_\_ S.W.3d \_\_\_, 2023 WL \_\_\_ (Tex. Feb. 10, 2023) (per curiam) [[21-0643](#)]

The issue in this case is whether a judgment confirming a final arbitration award was final.

This case arose out of a construction-project dispute between Nations, Huntley, and a third party, in which all parties agreed to submit all claims to binding arbitration. The arbitrator issued a final arbitration award in Nations' favor. At Nations' request, the district court rendered a judgment confirming the arbitration award. The judgment stated that: "Nations have all writs and processes to aid in execution of this judgment[,] . . . that all relief not granted herein is denied[,] . . . [and] that this is a final judgment and appealable." However, after the arbitration award was issued, and then again after the judgment confirming the arbitration award was signed, Nations added additional defendants to the case, including relator Patel. Nations alleged that the new defendants are alter egos of Huntley and sought to hold them vicariously liable for the damages owed by Huntley.

Approximately a year and a half later, Nations moved the district court to modify the judgment to clarify that it was interlocutory, not final. Unsure of its jurisdiction and whether the judgment was final, the district court granted Nations' motion to modify the judgment but sua sponte certified the question for interlocutory appeal. The court of appeals denied review.

Treating the defendants' petition for review as a petition for writ of mandamus, the Supreme Court held that the judgment confirming the arbitration award was clearly and unequivocally final. The Court reasoned that while no magic language is required to establish sufficient indicia of finality, the statements in the judgment here, taken together, render it final, even though none of the statements would alone be sufficient. The Court then clarified that a judgment cannot be final as to some parties but not others. Finally, the Court pointed out that Nations' motion to modify came far too late; if, when the judgment was entered, Nations was unsure as to its finality or thought that a final judgment had been entered erroneously, Nations should have sought clarification or appealed within the statutory time frame for doing so. Because the order granting the motion to modify the judgment confirming the arbitration award

was void, the Court granted mandamus relief directing the trial court to withdraw it.

## **GOVERNMENTAL IMMUNITY**

### **Texas Tort Claims Act**

*Christ v. Tex. Dep't of Transp.*, \_\_\_ S.W.3d \_\_\_, 2023 WL \_\_\_ (Tex. Feb. 10, 2023) [[21-0728](#)]

The issue in this case is whether the Tort Claims Act waives immunity for a premises-defect claim based on a commonly occurring condition.

Daniel Christ and his wife were riding their motorcycle through a construction zone when they collided head-on with a vehicle that crossed into their lane. The Texas Department of Transportation prepared the construction project's traffic control plan, which called for the placement of concrete barriers between the opposing lanes of traffic. The contractor instead placed yellow stripes and buttons, acting on TxDOT's purported oral approval. The Christs sued TxDOT, alleging negligence based on a premises defect.

TxDOT filed a plea to the jurisdiction and no-evidence motion for summary judgment. It argued the Tort Claims Act did not waive its sovereign immunity because the Christs failed to raise a fact issue on their premises-defect claim and because TxDOT's roadway-design decisions were discretionary. The trial court denied TxDOT's plea and motion, and TxDOT appealed. The court of appeals reversed, holding that TxDOT retained its immunity because it had discretion to orally modify the traffic control plan. The Christs petitioned the Supreme Court for review.

The Court affirmed on different grounds. The Court held that the Christs failed to raise a fact issue on whether a condition of the roadway was unreasonably dangerous. In the trial court, the Christs argued the construction zone was unreasonably dangerous solely due to the substitution of stripes and buttons for concrete barriers. The Christs presented no evidence that the use of stripes and buttons to separate travel lanes, a common condition on roadways, was measurably more likely to cause injury in this case. Nor did they present evidence of any complaints or reports of injuries from the use of stripes and buttons. Because the Christs did not raise a fact issue as to the existence of an unreasonably dangerous condition, an essential element of their premises-defect claim, they failed to establish a waiver of TxDOT's immunity under the Tort Claims Act.