



Case Summaries March 10, 2023

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OPINIONS

OIL & GAS

Royalty Payments

Devon Energy Prod. Co. v. Sheppard, ___ S.W.3d ___, 2023 WL ___ (Tex. Mar. 2023) [[20-0904](#)]

At issue in this mineral dispute is whether a bespoke royalty provision required the producers to include a third-party purchaser's postproduction costs in the royalty base before calculating the landowners' royalty.

In fairly standard language, the mineral leases provided for royalty payments based on gross sales proceeds, broadly defined as "all consideration" received from unaffiliated third-party sales. But in more unusual language, the leases mandated that, if "any reduction or charge for [postproduction] expenses or costs" has been "include[d]" in "any disposition, contract or sale" of production, those amounts "shall be *added to* the . . . gross proceeds." (Emphasis added.)

Unlike typical postproduction-cost disputes, the parties agreed that, under the leases, (1) the landowners' royalty is free of costs to the point of sale; and (2) the producers cannot directly or indirectly charge the royalty holders with a proportionate share of those expenses. But the landowners claimed the producers were also required to pay royalty on sums all agreed were neither the producers' incurred postproduction costs nor gross proceeds: the buyer's actual or anticipated costs to enhance the value of production after the point of sale.

After severing and abating breach-of-contract claims, the parties filed cross-motions for summary judgment on twenty-three stipulated issues, seeking a declaration as to whether the producers were required to add different categories of amounts to the royalty base under the "added to" "gross proceeds" clause. The trial court rendered judgment for producers. The court of appeals reversed and rendered in part and affirmed in part.

Only the producers appealed the adverse judgment. Illustrative of the transactions at issue were contracts setting the sales price—and thus the gross sales proceeds—by using published index prices at market centers downstream from the point of sale and then subtracting \$18 per barrel for the buyer's anticipated post-sale costs for "gathering and handling, including rail car transportation." The question was whether the producers were required, as the lower courts held, to add sums like the \$18 adjustment to the royalty base.

The Supreme Court affirmed, holding the broad lease language unambiguously contemplates a royalty base that may exceed gross proceeds and requires the producers to pay royalties on the gross proceeds of the sale *plus* sums identified in the producers' sales contracts as accounting for actual or anticipated postproduction costs, even if such expenses are incurred only by the buyer after or downstream from the point of sale. The Court observed that the parties expressly deviated from the usual rule that landowners proportionally share the burden of postproduction costs by (1) providing for a "gross proceeds" royalty and (2) mandating that certain sums beyond consideration accruing to the producers be "added to" gross proceeds.

In dissent, Justice Blacklock argued that the mineral leases did not bargain for royalties to be paid on market-center prices, so the producers' sales contracts did not actually include a "reduction" or "charge" for postproduction costs. To the contrary, the sales contracts merely employed a formula for valuing the products at the point of initial sale. Although nothing would ever actually be "added to" "gross proceeds" under this construction of the lease, the dissent explained that the clause prevented "accounting gimmicks" to reduce gross proceeds for the initial sale and thereby reduce the royalty payment."

GOVERNMENTAL IMMUNITY

Texas Tort Claims Act

Ratray v. City of Brownsville, ___ S.W.3d ___, 2022 WL ___ (Tex. Mar. 10, 2023) [[20-0975](#)]

The primary issue in this case is whether a city's decision to close a stormwater gate during a rainstorm, which immediately preceded the flooding of a neighborhood, constitutes the "use or operation of . . . motor-driven equipment" under the Tort Claims Act.

Eleven homeowners in the City of Brownsville alleged that city officials closed a stormwater gate during a rainstorm and thereby caused a nearby resaca (a former channel of the Rio Grande River) to overflow and flood their homes. To recover for their property damage, they sued the City under section 101.021(1)(A) of the Tort Claims Act, which waives governmental immunity for any property damage that "arises from" the "use or operation of . . . motor-driven equipment." The City filed a plea to the jurisdiction, challenging both the "use or operation" and "arises from" elements of the claim. The trial court denied the plea, but a divided court of appeals reversed. The "gravamen of the homeowners' complaint" concerned *nonuse* of the gate, the court of appeals observed, so the homeowners could not invoke the statutory waiver. The court of appeals further held that, even if the homeowners' allegations did concern the use of motor-driven equipment, the homeowners' property damage did not "arise from" the gate's closure because their homes would have flooded regardless of whether the gate was opened or closed.

The Supreme Court reversed. After the Court examined how the Tort Claims Act's jurisdictional requirements applied in the context of this case, it turned to the first issue. The Court held that because closing the gate put it to its intended purpose (blocking water), and because the gate's closure and the flooding of the homes all happened within the same episode of events, the homeowners had adequately pleaded enough facts to show use or operation of motor-driven equipment. As for the second issue, the Court held that the homeowners had produced enough evidence to create a fact issue on causation. In so holding, the Court clarified that plaintiffs can show that

their property damage meets the “arises from” standard by meeting the familiar requirement of proximate cause.

GRANTED CASES

JURISDICTION

Injunctions

Huynh v. Blanchard, 2021 WL 3265549 (Tex. App.—Tyler 2021), *pet. granted* (March 10, 2023) [[21-0676](#)]

The issue in this case is whether a jury finding that the operation of chicken farms was a temporary nuisance precluded the trial court from issuing a permanent injunction.

Sanderson Farms along with local growers, the Huynhs, set up and operated chicken farms in East Texas. The farms were in close proximity to neighboring properties—in violation of law and Sanderson’s own internal policies. Blanchard and other neighbors claimed that the size and close proximity of the chicken farms to their homes created a nuisance.

The jury found that Sanderson and the growers had intentionally caused a nuisance. The jury also determined the nuisance was temporary. The trial court rendered a take-nothing judgment on damages for the neighbors and issued a permanent injunction against Sanderson and the growers. The injunction prevented Sanderson and the growers from buying, selling, delivering, receiving, shipping, transporting, hatching, raising, growing, feeding, handling, burying, or disposing of any chicken of any breed, type, size or age within five miles of where the farms were operated. The court of appeals affirmed the trial court’s judgment.

The Supreme Court granted Sanderson and the growers’ petition for review.

FAMILY LAW

Divorce Decrees

Baker v. Bizzle, 2022 WL 123216 (Tex. App.—Fort Worth 2022), *pet. granted* (Mar. 10, 2023) [[22-0242](#)]

The issue in this case is whether a trial court’s oral rendition of divorce is effective when one spouse dies prior to the entry of a written final decree.

Eve Baker filed for divorce from Terry Bizzle. The court held a bench trial, and the judge declared on the record, “The parties are divorced.” The judge later emailed the parties a proposed property division and requested that Eve’s attorney prepare the decree.

Eve died several weeks later. Neither party had submitted a proposed divorce decree to the court. After receiving notice of Eve’s death, the court held a hearing at which counsel for both parties presented arguments on whether the court retained subject-matter jurisdiction to enter a final divorce decree. Eve’s attorney then submitted a proposed decree, which the judge signed with some handwritten additions.

Terry appealed, arguing that the oral pronouncement, standing alone or in combination with the email containing the proposed property division, did not constitute a full and final rendition of judgment. The court of appeals held that the oral pronouncement was not a final judgment because it did not divide the marital property, and the email did not reflect a present intent to render final judgment because it

expressed uncertainty and invited further discussion. The court of appeals reversed and ordered the case dismissed the case for lack of subject-matter jurisdiction.

Counsel for Eve petitioned the Supreme Court for review, arguing that the oral pronouncement and the property-division email, when viewed together, constitute a complete, present rendition of judgment. The Supreme Court granted the petition.

STATUTE OF LIMITATIONS

Tolling

Thome v. Hampton, 2022 WL 802562 (Tex. App.—Beaumont 2022), *pet. granted* (Mar. 10, 2023) [[22-0435](#)], consolidated for oral argument with *Maypole v. Acadian Ambulance Serv., Inc.*, 647 S.W.3d 533 (Tex. App.—Dallas 2022) (en banc), *pet. granted* (Mar. 10, 2023) [[22-0609](#)]

Under Chapter 74 of the Civil Practice and Remedies Code, notice of a healthcare claim must be accompanied by a medical-authorization form that meets statutory requirements, and notice that is “given as provided in this chapter” will toll limitations on the claim for 75 days. The issue in these cases is whether a form that does not strictly comply with statutory requirements will toll limitations.

In both cases, before the statute of limitations expired, the plaintiffs timely notified the defendants of their intent to sue and sent a medical-authorization form as required by Chapter 74. Both forms omitted information required by statute. In both cases, the plaintiffs filed suit after limitations expired but less than 75 days later.

In *Thome*, defendant Thome filed a motion for summary judgment arguing that the form’s omissions prevented the tolling of limitations. After the motion was denied, and the jury returned a verdict for the plaintiff, Thome renewed his limitations argument in a motion for a judgment notwithstanding the verdict. The trial court denied that motion too, but the Ninth Court of Appeals reversed and rendered judgment for Thome after concluding that the suit was barred by limitations.

In *Maypole*, the trial court granted defendant Acadian Ambulance’s motion for summary judgment. A panel of the Fifth Court of Appeals initially affirmed the judgment. But the full court, sitting en banc, reversed and remanded for a new trial because it concluded that the plaintiffs’ medical-authorization form was sufficient to toll limitations, despite its omissions. The court further concluded that the remedy for a deficient form is abatement rather than dismissal.

The Supreme Court granted the petitions for review filed in both cases. In *Thome*, the plaintiff–petitioner argues that substantial compliance with the statutory requirements for a medical-authorization form is sufficient to toll limitations. In *Maypole*, the defendant–petitioner argues that only strict compliance tolls limitations. The Court has consolidated the cases for oral argument.

ADMINISTRATIVE LAW

Judicial Review

Tex. Health & Hum. Servs. Comm’n v. Estate of Burt, 644 S.W.3d 888 (Tex. App.—Austin 2022), *pet. granted* (Mar. 10, 2023) [[22-0437](#)]

At issue in this case is whether the Texas Health and Human Services Commission reasonably interpreted the Medicaid “home” exclusion as requiring applicants asserting the exclusion to have previously occupied the property.

The Burts purchased a home in Cleburne, Texas. After living there for 36 years, they sold the Cleburne home to their adult daughter and moved into a rental property.

In early August 2017, the Burts moved to a skilled nursing facility. At that time, their bank account balance exceeded the eligibility threshold for Medicaid benefits. However, later that month, the Burts purchased a one-half interest in the Cleburne home, depleting their bank account balance to \$2,000. The same day, the Burts deeded their newly acquired half-interest back to their daughter while reserving an enhanced life estate in the property.

The Burts then applied for Medicaid. HHSC denied their application, concluding that the Burts' resources exceeded the Medicaid resource limit. HHSC concluded that under the applicable regulation, the Burts' partial ownership interest in the Cleburne home could not be excluded from the resource calculation because they never resided in the home while having an ownership interest.

After exhausting their administrative remedies, the Burts sought judicial review. The trial court reversed, holding that HHSC unreasonably interpreted the home exemption to require prior occupancy. HHSC appealed, and the court of appeals affirmed.

In its petition for review, HHSC argues that its interpretation of the term "home" as requiring simultaneous ownership and occupancy was reasonable. The Supreme Court granted HHSC's petition for review.

PROCEDURE—PRETRIAL

Discovery

In re Metro. Water Co., 2022 WL 3093200 (Tex. App.—Houston 2022), *argument granted in pet. for writ of mandamus* (March 10, 2023) [[22-0656](#)]

The issue in this case is whether the trial court abused its discretion when it ordered a sweeping forensic examination of electronic storage devices as a discovery sanction.

Metropolitan Water and Blue Water were involved in litigation over a series of contracts governing rights to develop, market, and sell groundwater. Discovery was sought and ordered during the pendency of this litigation. The trial court ordered Metropolitan Water to turn over certain electronic files to Blue Water. Metropolitan Water did not comply.

The trial court entered an order for forensic inspection of Metropolitan Water's electronic devices as a sanction for its discovery abuse. The order included an inspection of the personal cell phone of Mr. Carlson, the head of Metropolitan Water. Blue Water's own expert was ordered to perform the forensic inspection. The sanction order provided no up-front limitation such as search terms or a time frame to limit the expert's search to relevant information. There was also no opportunity for Metropolitan Water or Mr. Carlson to object that data from their personal devices was private and irrelevant before it was turned over to Blue Water. The court of appeals denied Metropolitan Water's mandamus petition.

The Supreme Court granted oral argument on Metropolitan Water's mandamus petition.