Case Summaries
June 2, 2023

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OPINIONS

GOVERNMENTAL IMMUNITY

Texas Tort Claims Act

City of Austin v. Quinlan, ___ S.W.3d ___, 2023 WL ___ (Tex. Jun. 2, 2023) [22-0202]

The issue is whether the Texas Tort Claims Act waives the City of Austin's governmental immunity from a claim that it negligently maintained a permitted sidewalk café.

The City granted a restaurant a permit to use a portion of the sidewalk for a sidewalk café. As part of the permitting process, the restaurant entered into a maintenance agreement with the City. The agreement required the restaurant to operate and maintain the sidewalk café's premises at its own expense. However, the City had the right to enter the sidewalk café premises to ensure the restaurant's compliance.

Quinlan was injured after exiting the restaurant when she fell from an elevated edge of the sidewalk to the street below. She sued the City, alleging, among other claims, that it negligently implemented a policy of ensuring that the restaurant complied with the maintenance agreement. The City filed a plea to the jurisdiction. The trial court denied the City's plea. A divided court of appeals affirmed with respect to Quinlan's negligent-implementation claims.

The Supreme Court reversed, holding that Quinlan's claims are subject to the discretionary-function exception to the Texas Tort Claims Act. First, the Court noted that neither Quinlan nor the court of appeals identified any maintenance- or inspection-related act that the City was affirmatively required to perform under the maintenance agreement. Rather, the agreement granted the City permission to conduct inspections and order additional maintenance as it deemed fit. Second, the Court rejected Quinlan's argument that the City had a nondelegable statutory duty to protect the public from sidewalk cafés with dangerous conditions. Because the City had discretion, but not a legal obligation, to intervene, the City's decision not to do so was a discretionary decision for which it remained immune.

GRANTED CASES

OIL AND GAS

Mineral Interest Pooling Act

Ammonite Oil & Gas Corp. v. R.R. Comm'n of Tex., 2021 WL 4976324 (Tex. App.—San Antonio 2021), *pet. granted* (June 2, 2023) [21-1035]

At issue in this case is whether one oil-and-gas company's forced-pooling offer to another, which included a 10% risk penalty, was unreasonably low under the Texas Mineral Interest Pooling Act.

EOG Resources drilled sixteen wells on a riverbed tract in the Eagleville Field based on drilling permits it received from the Railroad Commission. EOG's wells surrounded a seven-mile portion of the Frio River riverbed leased by petitioner Ammonite Oil & Gas Corp. Concerned that its mineral interested would be essentially stranded, Ammonite sent a series of letters to EOG proposing the formation of sixteen voluntarily pooled units, including a 10% risk charge—a charge intended to cover the economic risks assumed in drilling the wells. EOG rejected the offer. Ammonite then filed sixteen applications with the Railroad Commission seeking to force-pool its riverbed tracts with EOG's wells.

The Commission ultimately rejected Ammonite's applications, finding that Ammonite's offers to EOG were not "fair or reasonable" as required by the Mineral Interest Pooling Act (MIPA) and dismissed Ammonite's applications on that basis. Ammonite petitioned for judicial review in the trial court, which affirmed the Commission's order. The court of appeals did the same, holding that substantial evidence supported the Commission's finding that a 10% risk penalty was unreasonably low. Ammonite petitioned for review to the Supreme Court, arguing that nothing in the plain text of MIPA even requires that a risk penalty be included in a voluntary-pooling offer, so a low-risk penalty (or even the absence of one) cannot render an offer statutorily unreasonable. The Court granted the petition for review.

PRODUCTS LIABILITY

Design Defects

Am. Honda Motor Co. v. Milburn, 2021 WL 5504887 (Tex. App.—Dallas 2021), *pet. granted* (June 2, 2022) [21-1097]

The main issues on appeal are whether Honda defectively designed the seatbelt that caused Sarah Milburn's injuries and whether Texas Civil Practice and Remedies Code Section 82.008's rebuttable presumption of nonliability shields Honda from liability.

Honda designed a new ceiling-mounted detachable anchor seat belt system for the third-row middle seat of the 2011 Honda Odyssey. Unlike traditional seatbelt designs, the detachable anchor allows the seat belt to disengage from the seat and retract into a ceiling compartment behind the middle seat. If the belt is not latched into the anchor buckle, and the passenger pulls the belt down as she does with other systems, the belt leaves her lap unbelted. In November 2015, an Uber driver picked up Milburn and her friends in a 2011 Honda Odyssey. Milburn sat between her friends in the third-row middle seat, reached up, pulled the ceiling-mounted seat belt across her body, and buckled herself in. The detachable anchor was not connected to the anchor buckle. As the Uber driver entered an intersection, a pickup truck hit the van's passenger side, causing the van to overturn on its roof. As everyone else left the van

unassisted, Milburn hung upside down by the shoulder strap portion of her seat belt, causing quadriplegia paralysis.

Milburn sued Honda, Uber Technologies and its subsidiaries Uber USA and Rasier, the Uber driver, and the Odyssey's owner. Before trial, Milburn settled with all defendants but Honda. Milburn asserted claims against Honda for negligence in designing, manufacturing, and marketing the van's third-row middle seat belt system. Milburn alleged that the seat belt system was defective and dangerous because it was likely that an ordinary passenger would not use the seatbelt as designed because the intended method of use was dangerously confusing and counterintuitive. The jury found that Honda negligently designed the defective seat belt system. The jury also found that Honda was entitled to the Section 82.008(a) presumption of nonliability, but that Milburn rebutted it under Section 82.008(b).

The court of appeals affirmed, holding that Honda was entitled to the presumption of nonliability but that Milburn rebutted it and that the record contained evidence that the detachable anchor seat belt system was defectively designed, and a safer alternative exists.

Honda petitioned the Supreme Court for review, arguing that Milburn was required, but failed, to present sufficient expert testimony to rebut Section 82.008's presumption of nonliability on regulatory inadequacy grounds. Honda contends that a "regulatory expert" must explain why the federal standards are inadequate to protect the public from unreasonable risk.

The Court granted Honda's petition for review.

NEGLIGENCE

Duty

HNMC, Inc. v. Chan, 637 S.W.3d 919 (Tex. App.—Houston [14th Dist.] 2021), *pet. granted* (June 3, 2023) [22-0053]

The central question in this case is whether an employer is liable to an employee when that employee is injured while crossing a public roadway that divided the employer's property.

Chan worked as a nurse for HNMC and was struck by a vehicle while walking across a roadway that divides HNMC's hospital from its parking lot and which is owned and operated by Harris County. The accident resulted in Chan's death, following which her estate sued the driver that struck her and HNMC, asserting claims for negligent property design and failure to warn. The jury found HNMC partially responsible, and the trial court signed a judgment that awarded damages against HNMC. The court of appeals affirmed, holding (1) that HNMC failed to preserve its argument that the Texas Workers' Compensation Act barred Chan's claims, and (2) that the hospital owed a duty of care to Chan because the risk of serious injury on the roadway was highly foreseeable.

HNMC petitioned for review. HNMC first argues that there is generally no common-law duty to property-owners adjacent to a public roadway for risks presented by the road. Since HNMC did not create or hide any dangers related to crossing the roadway, no duty applies to it. Second, HNMC argues that if the property design of the hospital is at fault, Chan is required to recover through the Texas Workers' Compensation Act, not through a common-law action. For either of these reasons, HNMC argues judgment should be rendered that Chan take nothing. The Supreme Court granted HNMC's petition for review.

INTENTIONAL TORTS

Defamation

Polk Cnty. Publ'g Co. v. Coleman, 2021 WL 6138973 (Tex. App.—Beaumont 2021), *pet. granted* (June 2, 2023) [22-0103]

This case presents primarily two issues: (1) whether a newspaper is entitled to a substantial-truth defense despite publishing an article that was not literally true and (2) whether a local prosecutor is a limited-purpose public figure.

Valarie Reddell, a newspaper editor and employee of Polk County Publishing Company, published an article about a newly hired assistant district attorney in the Polk County District Attorney's Office, respondent Tommy Coleman. The article, which was part of an ongoing series about the need for criminal-justice reform, spoke about Coleman's "soft landing" at the District Attorney's Office after his alleged assistance with the "prosecution" of Michael Morton, a man who was later exonerated of murder charges. The article described the prosecution of Morton at length and stated that, during one of Morton's post-conviction habeas proceedings, Coleman had mocked Morton's request to test certain evidence for DNA. Coleman read the article and informed the newspaper that it was false, pointing out that he was never involved in Morton's "prosecution." The newspaper later ran a correction and stated that it had "mischaracterized" Coleman's involvement because he "was not involved in the initial trial or prosecution of Michael Morton in 1987," which took place more than a decade before Coleman graduated law school.

Coleman then sued Reddell and Polk County Publishing Company for defamation. Reddell and the Publishing Company moved to dismiss Coleman's claims under the TCPA. The trial court denied the motion, and the court of appeals affirmed, holding that (1) Coleman was not a limited-purpose public figure because his work history and employment were not matters being publicly discussed at the time and (2) Coleman met his burden in showing that the article was false because the average reader would have understood from the article that Coleman was involved in Morton's initial prosecution, not the post-conviction habeas proceedings. Reddell and the Publishing Company petitioned for review, arguing that the article was "substantially true" and that Coleman failed to meet his TCPA burden as a limited-purpose public figure.

The Court granted the petition for review.

ADMINISTRATIVE LAW

Jurisdiction

Lampasas Indep. Sch. Dist. v. Morath, 644 S.W.3d 866 (Tex. App.—Austin 2022), *pet. granted* (June 2, 2023) [22-0169]

This case concerns whether the Commissioner of Education has jurisdiction to review a petition to detach territory from one school district and annex it to another.

Bellpas, Inc. is a land development company that owns property within the Lampasas Independent School District. In December 2015, Bellpas sought to detach some of its property from Lampasas and attach it to the Copperas Cove Independent School District, filing a petition for annexation and detachment under section 13.051 of the Texas Education Code with each school district. Each petition also contained an attached set of field notes with metes-and-bounds descriptions of the affected territory. In January 2016, Bellpas amended its petitions to reduce the size of the territory to be annexed. Although the amended versions of the petitions contained identical metes-

and-bounds descriptions of the affected territory, the body of the petitions listed different acreages for the affected territory. The Board of Trustees for each school district held a hearing on Bellpas's petition. Although Copperas approved Bellpas's amended petition in May 2016, Lampasas has yet to adopt a resolution approving or disapproving of either the original or amended version of Bellpas's petition.

On June 6, 2017, the day after the Board of Trustees for Lampasas denied a grievance Bellpas had filed concerning Lampasas's delay in acting on its petition—Bellpas filed a petition for review with the Commissioner of Education, asking him to conduct a hearing under section 13.051 of the Education Code. The Commissioner issued a final decision in June 2019, which approved Bellpas's petition for detachment and annexation over Lampasas's objections that (1) the Commissioner lacked jurisdiction to accept Bellpas's petition for review in the absence of a final decision from both school districts, and (2) the Commissioner lost jurisdiction by failing to conduct a hearing or issue his decision in compliance with statutory deadlines.

Lampasas then sought judicial review of the Commissioner's jurisdiction under section 7.057 of the Education Code. The trial court summarily affirmed the Commissioner's decision in all respects. Lampasas appealed. The court of appeals vacated the trial court's judgement and dismissed the case, holding that the Commissioner lacked jurisdiction over Bellpas's petition because the Commissioner could not rely on a theory of constructive disapproval to establish jurisdiction under section 13.051. The Commissioner filed a petition for review, as did Bellpas and Copperas Cove. The Supreme Court granted both petitions.

EMPLOYMENT LAW

Employment Discrimination

Thompson v. Scott & White Mem'l Hosp., 659 S.W.3d 83 (Tex. App.—El Paso 2022), *pet. granted* (June 2, 2023) [22-0558]

The main issue on appeal is whether the court of appeals erred in reversing the trial court's order granting summary judgment on Dawn Thompson's retaliation claim by failing to properly analyze causation.

Thompson was a licensed registered nurse who worked as an at-will employee at Baylor Scott & White McLane Children's Medical Center. Before her termination, Thompson received two reprimands for policy violations from BSW. The first reprimand included a warning that future violations "may result" in actions such as termination of employment, and the second incident included a written warning that a failure to meet expectations or other incidents "will result in separation from employment." The events leading to Thompson's termination involved an incident in which Thompson revealed health information subject to protection under HIPAA and filed a report with the Texas Child Protective Services in compliance with the Texas Family Code. Thompson sued BSW, claiming BSW discriminated against her and retaliated in violation of several Texas statutes. BSW moved for no-evidence and traditional summary judgment, arguing that Thompson was terminated based on her HIPAA violation. The trial court granted the motion.

The court of appeals reversed the trial court's judgment and remanded to the trial court for further proceedings. The court of appeals held that Thompson was allowed a rebuttable presumption of a causal connection between filing the CPS report and her termination and that BSW's evidence did not overcome that presumption.

BSW petitioned the Supreme Court for review, arguing that in reversing the trial

court's order granting summary judgment, the court of appeals misapplied or ignored Supreme Court precedent. BSW argues that Thompson did not establish but-for causation because BSW would have terminated Thompson when it did, even if Thompson did not make the CPS report. When Thompson violated HIPAA, BSW contends it merely carried out its previously contemplated employment decision, which is no evidence of causation. The Court granted BSW's petition for review.

FAMILY LAW

Termination of Parental Rights

In the Interest of R.R.A. H.G.A, H.B.A, Children, 654 S.W.3d 535 (Tex. App.—Houston [14th Dist.] 2022), *pet. granted* (June 2, 2023) [22-0978]

The issue in this case is whether evidence of a causal connection between a parent's drug use and any alleged endangerment of the child is required to terminate a parent's rights under Section 161.001(b)(1)(D) or (E) of the Texas Family Code.

The Department of Family and Protective Services sought to terminate Father's parental rights to his three children after it learned of allegations that Father and the children were homeless, and that Father was using drugs. The children were removed from Father and initially placed with their grandmother but were removed a second time after she was hospitalized and could not care for the children. At the time of the second removal, Father threatened to kill himself if the children were removed again. Father tested positive for drugs several times after the children's removal and eventually refused to submit to required drug testing. The trial court terminated Father's parental rights, finding by clear and convincing evidence that Father had endangered the children under Section 161.001(b)(1)(D) and (E) of the Family Code and that he used a controlled substance in a manner that endangered the children under subsection (P).

Father appealed. A split panel of the court of appeals reversed. The majority held that the evidence was legally insufficient to support termination. It relied on a recent Fourteenth Court en banc opinion, which held that evidence of a causal connection between drug use and endangerment is required to terminate a parent's rights under subsection (E). The majority concluded that no such evidence existed here. Nor did it find any other evidence against Father—including his homelessness and threat of self-harm—sufficient to support termination. Accordingly, it reversed and rendered judgment for Father.

The Supreme Court granted the Department's and the children's petition for review.

PROCEDURE—PRETRIAL

Statute of Limitations

Sanders v. The Boeing Company, 2023 WL 3638265 (5th Cir. 2023), *certified question accepted*, __ Tex. Sup. Ct. J. __ (June 2, 2023) [23-0388]

At issue in this certified-question case is the interpretation of Section 16.064 of the Texas Civil Practice and Remedies Code, which tolls limitations where a prior action is dismissed "because of lack of jurisdiction" and refiled in a court of "proper jurisdiction" within sixty days after the date the dismissal "becomes final."

Lee Marvin Sanders and Matthew Sodrok sustained injuries in connection with their employment as flight attendants by United Airlines. The flight attendants sued the Boeing Company and other defendants in federal district court, which later

dismissed their suit for failure to adequately plead diversity jurisdiction—this was despite the fact that the parties agree that the flight attendants could have invoked the district court's jurisdiction if they had included the proper allegations. The flight attendants filed this suit shortly after the Fifth Circuit affirmed, but the district court dismissed their claims as barred by the statute of limitations.

On appeal to the Fifth Circuit, the flight attendants argued that Section 16.064 of the Texas Civil Practice and Remedies Code tolled the applicable statute of limitations while they pursued their prior suit because that case was dismissed for lack of jurisdiction and they filed this suit less than sixty days after the Fifth Circuit affirmed the prior judgment and denied their petition for rehearing en banc.

The Fifth Circuit certified two questions to the Supreme Court: (1) Does Texas Civil Practice & Remedies Code Section 16.064 apply to this lawsuit where the flight attendants could have invoked the prior district court's subject-matter jurisdiction with proper pleadings?; and (2) Did the flight attendants file this lawsuit within sixty days of when the prior judgment became "final" for purposes of Section 16.064? The Supreme Court accepted these questions.