



Case Summaries June 9, 2023

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OPINIONS

GOVERNMENTAL IMMUNITY

Contract Claims

City of League City v. Jimmy Changas, Inc., ___ S.W.3d ___, 2023 WL ___ (Tex. June 9, 2023) [[21-0307](#)]

This case involves the governmental/proprietary dichotomy in a breach-of-contract context. League City and Jimmy Changas entered into an agreement under Chapter 380 of the Texas Local Government Code, which permits cities to provide economic-development incentives to stimulate commercial activity. The City agreed to reimburse Jimmy Changas for certain fees and taxes if Jimmy Changas built a restaurant and created jobs in League City. After Jimmy Changas completed the project, League City refused to provide the promised reimbursements, and Jimmy Changas sued. The City filed a plea to the jurisdiction, arguing that contracts made under Chapter 380 were governmental functions and the City was therefore immune from suit. The trial court denied the City's plea, concluding that the City acted in its proprietary capacity, and the court of appeals affirmed.

The Supreme Court likewise affirmed. First, it held that Chapter 380 contracts are not similar to those expressly identified in the Tort Claims Act as being governmental. The Act includes only community-development activities under Chapter 373 and urban-renewal activities under Chapter 374 and does not suggest that local economic-development activities under Chapter 380 should be impliedly included.

It then held that the *Wasson* factors weigh in favor of determining that the City's acts were proprietary. The City's decision to contract with Jimmy Changas was discretionary, the contract primarily benefited City residents, the City acted on its own behalf (that is, it did not act as an agent of the State), and the City's acts were not sufficiently related to a governmental function so as to make them governmental as well.

Justice Young filed a concurring opinion. Although he agreed with the majority opinion, he suggested that the Court reconsider its reliance on the list of governmental functions in the Torts Claims Act when deciding a contract case, and he questioned the usefulness of the *Wasson* factors in other cases.

Justice Blacklock filed a dissenting opinion, in which Justice Bland joined in part. He agreed with the concurrence that the *Wasson* factors do not aid the Court in answering the ultimate question of whether the City's acts were governmental or

proprietary. The dissent would hold that a Chapter 380 tax-incentive grant program for local economic development is a governmental function because such contracts implement a government grant program operated for a diffuse public benefit.

FAMILY LAW

Termination of Parental Rights

In re A.A., ___ S.W.3d ___, 2023 WL ___ (Tex. June 9, 2023) [[21-0998](#)]

In this case Mother challenges the termination of her parental rights under Section 161.001(b)(1)(O) of the Family Code because the children were relocated to foster care from Father’s home and for his wrongdoing.

Mother and Father have a history of drug use and domestic violence. When they divorced in New Mexico, Mother stipulated to a decree giving Father sole custody of the children. Eventually, DFPS relocated the children from Father’s Texas home due to Father’s drug use and neglect. The trial court signed orders under Chapter 262 that removed the children from both Mother and Father and into DFPS’ conservatorship. Later, the court terminated Mother’s rights under Paragraph (O), and the court of appeals affirmed.

The Supreme Court also affirmed. Paragraph (O) applies when a parent has failed to comply with a service plan imposed “as a result of the child’s removal from the parent under Chapter 262 for the abuse or neglect of the child.” The Court rejected Mother’s argument that (O) does not apply to her because she was “the non-offending parent.” The Court first explained that “removal from the parent under Chapter 262” is not just physical relocation but the transfer by court order of the bundle of rights that the law gives a parent by default from the parent to DFPS. The Court then pointed to its own caselaw establishing that the term “abuse or neglect” in (O) includes the danger to the child’s health or safety created by the parent’s conduct.

Finally, the Court held that the record contains sufficient evidence that the children were indeed removed from Mother under Chapter 262 for her abuse or neglect. The trial court’s removal orders expressly transfer parental rights from Mother to DFPS, include the findings required by Chapter 262, and were based on evidence that Mother voluntarily gave the children to Father despite his history of violence and drug use and that she lacked stable housing or employment.

Justice Young filed a dissenting opinion, joined by Justice Blacklock and Justice Busby. They would have held that (O) does not apply on these facts as a matter of law.

FAMILY LAW

Divorce Decrees

In re J.N., ___ S.W.3d ___, 2023 WL ___ (Tex. June 9, 2023) [[22-0419](#)]

This case concerns a trial court’s failure to interview a child under Section 153.009(a) of the Family Code. Under this section, upon application by certain parties, a trial court “shall” interview a child twelve and older to determine the child’s wishes as to who will have the exclusive right to determine their primary residence. This statute applies only to nonjury trials or hearings. Therefore, a litigant must forgo her right to a jury trial to benefit from Section 153.009(a)’s interview provision.

In this divorce proceeding, a mother withdrew her jury demand for the stated purpose of invoking the trial court’s statutory obligation to interview her thirteen-year-old daughter regarding which parent she would prefer to have determine her primary residence. Although the mother had properly requested an interview under Section

153.009(a), the trial court did not conduct the interview and ultimately granted the father the exclusive right to determine the primary residence of the couple's four children.

The court of appeals affirmed in a split decision. The panel agreed that the trial court erred in failing to conduct an in-chambers interview but disagreed about whether the error is subject to a harm analysis.

The Supreme Court held that the trial court erred in failing to conduct the interview because Section 153.009(a)'s interview requirement is mandatory, and such an error is subject to a harm analysis. Here, the mother gave up her right to a jury trial based on the false premise that the interview would occur, and the case involved disputed fact issues. Therefore, the trial court's error was harmful. Consequently, the Court reversed the judgment in part and remanded for an interview under Section 153.009(a), followed by a new judgment regarding the child's primary residence.