Case Summaries
June 16, 2023

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OPINIONS

DAMAGES

Wrongful Death

Gregory v. Chohan, ___ S.W.3d ___, 2023 WL ___ (Tex. June 16, 2023) [21-0017]

In this wrongful death case, the main issue is whether a noneconomic damages award of just over $15 million is supported by sufficient evidence.

Sarah Gregory—a truck driver for New Prime, Inc.—jackknifed her eighteen-wheeler, causing a multiple-fatality, multi-vehicle pileup. Among the deceased was Bhupinder Deol, whose estate and family brought suit. The case, which involved Deol and other decedents, was tried to a jury, which returned a nearly $39 million verdict. Deol's family's share was nearly $16.5 million, and the family's noneconomic damages accounted for just over $15 million. Concluding that the award neither shocked the conscience nor manifested passion or prejudice, the court of appeals affirmed.

In divided opinions, the Supreme Court of Texas reversed. Writing for a plurality, Justice Blacklock concluded that parties must provide both evidence of the existence of mental anguish and evidence to justify the amount awarded. The plurality would require parties defending a noneconomic damages award to demonstrate a rational connection between the evidence and the amount awarded. The "shock the conscience" standard of review is insufficient, and parties should not rely on unsubstantiated anchors or ratios between economic and noneconomic damages.

Justice Devine, joined by Justice Boyd, concurred in the judgment. His concurrence expressed concern that the plurality's "rational connection" requirement is an impossible standard to meet that infringes upon the jury's traditional role.

Justice Bland concurred in part. She agreed that improper argument affected the jury's verdict but considered that a sufficient basis for reversal in this case.

The case presented a secondary issue about whether ATG Transportation, another trucking company whose truck overturned during the accident, was wrongly excluded as a responsible third party. Both concurrences agreed with the plurality that ATG should have been joined as a responsible third party, and on that basis, the Court remanded for a new trial.

PROCEDURE—TRIAL AND POST-TRIAL

New Trial Orders

In re Rudolph Auto., LLC, ___ S.W.3d ___, 2023 WL ___ (Tex. June 16, 2023) [21-0135]

The issue in this case is whether the trial court abused its discretion in granting a new trial.

At the end of a workday during the year-end sales season, several employees consumed beer on the premises of Rudolph Mazda. This case arose after a tragic accident: one departing employee hit Irma Vanessa Villegas, another employee, with his truck when she was walking in the parking lot. Villegas suffered serious injuries and was left permanently paralyzed on one side before passing away several years later. Villegas's daughter, Andrea Juarez, sued Rudolph and its employees for negligence, failure to train, and premises liability.

A pretrial order in limine prohibited testimony about Villegas's drinking habits aside from the day of the accident. At the end of the three-week jury trial, the final witness—an expert toxicologist—provided testimony that the court found to have violated the order. The judge gave a stern limiting instruction to the jury and the trial proceeded. The jury awarded Villegas and Juarez over $4 million in damages.

Juarez then filed a motion for new trial, which the district court granted. The court listed four reasons in its new-trial order: (1) the apportionment of responsibility to Rudolph was irreconcilable with the jury's failure to find Rudolph negligent; (2) the jury's awards in certain categories of non-economic damages were inadequate given the record's positive depiction of Villegas; (3) on the day of the jury verdict, this Court issued a decision in an unrelated case that might have affected the trial court's earlier rulings; and (4) the expert's improper testimony was incurable and caused the rendition of an improper verdict.

Rudolph petitioned the court of appeals for a writ of mandamus, which that court denied. The Supreme Court, however, granted relief based on its precedents requiring clear, specific, and valid reasons to justify a new trial.

The Court reasoned that, individually or collectively, none of the articulated errors warranted a new trial: (1) the verdict could be harmonized as a matter of law, so a new trial was unnecessary; (2) nothing in the new-trial order explained, based on the evidence, why the jury could not have rationally allocated damages as it did; (3) this Court's separate decision in a different case had no plausible effect on this verdict; and (4) the jury system depends on the presumption that jurors can and will follow instructions, as they each said they would do in this case regarding the curative instruction about expert testimony. To rebut this presumption, a new-trial order must show why this jury could not follow the instruction, but no such reason was given here.

Because no new trial was necessary, the Court conditionally granted mandamus relief and ordered the trial court to vacate the new-trial order, harmonize the verdict, and move to any remaining post-trial proceedings.

STATUTE OF LIMITATIONS

Tolling

Levinson Alcoser Assocs., L.P. v. El Pistolón II, Ltd., ___ S.W.3d ___, 2023 WL ___ (Tex. June 16, 2023) [21-0797]

The primary issue in this case is whether the running of limitations was equitably tolled during the appeal of the plaintiff's earlier, identical suit, which was ultimately dismissed after limitations expired.

In 2010, El Pistolón sued Levinson for professional negligence and breach of contract arising from Levinson's performance of architectural services. El Pistolón's petition included a certificate of merit as required by statute. Levinson moved to dismiss, challenging the certificate of merit. The trial court denied the motion, but the court of appeals and the Supreme Court held that the certificate failed to satisfy statutory requirements. The trial court dismissed El Pistolón's suit without prejudice in 2018.

El Pistolón immediately refiled with a new certificate of merit and pleaded that equitable tolling paused the running of limitations. Levinson moved for summary judgment on limitations. The trial court granted Levinson's motion, but the court of appeals reversed, holding that the running of limitations was equitably tolled while the 2010 suit was on appeal. Levinson petitioned for review.

The Supreme Court reversed and reinstated the trial court's judgment. The Court noted that equitable tolling is sparingly applied and limited in scope. It concluded that the court of appeals improperly relied on a broad "legal impediment rule" to support equitable tolling because the Court's precedents have limited such a rule's application to (1) cases where an injunction prevents a claimant from bringing suit and (2) legal-malpractice claims. The Court also held that the dismissal of El Pistolón's 2010 suit was not based on a procedural defect that would support equitable tolling. The Court rejected El Pistolón's alternative arguments that summary judgment was improper because Levinson's motion inartfully recited the summary-judgment burden and failed to establish the precise accrual date.

NEGLIGENCE

Res Ipsa Loquitur

Schindler Elevator Corp. v. Ceasar, ___ S.W.3d ___, 2023 WL ___ (Tex. June 16, 2023) [22-0030]

The main issue in this case is whether the trial court abused its discretion by including in the jury charge an instruction on res ipsa loquitur.

Darren Ceasar alleges he was injured in a hotel elevator that ascended rapidly and then came to an abrupt stop at the wrong floor. He sued the hotel's elevator-maintenance company, Schindler, for personal injuries and presented two theories of negligence to the jury: (1) res ipsa, which permits the jury to infer negligence based purely on the way an accident happened; and (2) the theory that Schindler negligently maintained the elevator's SDI board, which controls the elevator's position and velocity. The trial court submitted a jury instruction on res ipsa over Schindler's objection. The jury found for Ceasar, and the court of appeals affirmed the trial court's judgment on the verdict.

The Supreme Court reversed and remanded for a new trial. The first evidentiary requirement for a res ipsa instruction is that the character of the accident is such that it would not ordinarily occur in the absence of negligence. The Court held that Ceasar presented no evidence to support this requirement because the testimony of Ceasar's elevator expert is conclusory. The expert testified on direct and redirect examination that a properly maintained elevator would not ascend rapidly or stop abruptly at the wrong floor, while also agreeing with Schindler's counsel on cross-examination that there are many potential causes of an elevator's malfunctioning besides negligent maintenance. The expert never reconciled his conflicting testimony or explained the basis for his testimony on direct and redirect examination.

The Court further held that the court's submission of the res ipsa instruction was harmful because both of Ceasar's negligence theories were hotly contested, and the jury returned a 10–2 verdict. Finally, the Court rejected Schindler's challenges to a discovery-sanctions order, the court's exclusion of evidence, and the court's refusal to include a jury instruction on spoliation.

FAMILY LAW

Termination of Parental Rights

In re J.S., ___ S.W.3d ___, 2023 WL ___ (Tex. June 16, 2023) [22-0420]

This case concerns the findings a trial court is required to make under Section 263.401(b) of the Family Code to extend the automatic dismissal deadline for a parental-rights-termination suit.

The suit to terminate the rights of J.S.'s parents was initially set for trial by remote appearance on the same day as the deadline for either commencing trial or dismissing the suit under Section 263.401(a). But J.S.'s attorney ad litem failed to appear, and both parents made last-minute requests for a jury trial. The trial court granted DFPS's motion to extend the dismissal deadline and rescheduled the trial to a later date. At DFPS's prompting, the court made an oral finding that the extension was in the best interest of the child. The court did not mention the second finding required by Section 263.401(b), that extraordinary circumstances necessitate the child's remaining in DFPS's conservatorship. Neither parent's counsel objected to the extension. The court later signed a written extension order that included both findings.

The parents' rights were eventually terminated after a jury trial, and Mother appealed. The court of appeals reversed, holding that the trial court's failure to make the extraordinary-circumstances finding when it granted the extension deprived the court of subject-matter jurisdiction. The court of appeals then vacated the trial court's judgment and dismissed the case.

The Supreme Court reversed. The Court held while Section 263.401(b) requires the best-interest and extraordinary-circumstances findings to be made expressly, these findings are mandatory rather than jurisdictional. As a result, a parent whose rights have been terminated generally must object before the initial automatic dismissal deadline passes in order to preserve the complaint for appellate review. Because Mother did not raise her complaint before the initial automatic dismissal deadline and did not oppose the extension, she had not preserved her complaint. Holding otherwise, the Court said, would penalize the trial court for doing its best to honor the parents' last-minute requests for a jury trial.

Justice Boyd concurred in judgment. He would have held that the findings are jurisdictional but can be made impliedly. Because the record in this case supports an implied finding of extraordinary circumstances, he joined the Court's judgment.

GRANTED CASES

RES JUDICATA

Elements of Res Judicata

Wilson v. Fleming, 2021 WL 5116236 (Tex. App.—Houston [14th Dist.] 2021), *pet. granted* (June 16, 2023) [22-0166]

The issue in this case is whether Texas law recognizes implied-agreement privity for collateral estoppel purposes based on an alleged implied agreement to be bound to a bellwether trial.

George Fleming and his law firm represented thousands of plaintiffs in securing a product-liability settlement. Fleming allegedly deducted certain costs from his clients' settlements without authorization, and approximately 4,000 plaintiffs sued for fiduciary and contractual breaches. The trial court adopted the parties' agreed trial plan, selected a subset of six bellwether plaintiffs, and severed those claims from the remaining case. After Fleming prevailed at the bellwether plaintiffs' trial, he moved for summary judgment, contending that his trial win collaterally estopped the remaining plaintiffs from litigating the same issues. The trial court agreed and dismissed the remaining plaintiffs' claims with prejudice.

The court of appeals reversed, holding that Fleming failed to establish that the remaining plaintiffs were in privity with the bellwether plaintiffs such that they were bound by the verdict. The court of appeals rejected Fleming's argument that the plaintiffs had conceded privity with the bellwether plaintiffs by invoking offensive collateral estoppel against Fleming in their pleading. It also rejected the argument that the bellwether plaintiffs' similar allegations and use of the same counsel established privity.

Fleming petitioned for review, arguing that the Supreme Court should adopt frameworks from other contexts that permit an implied agreement to establish privity for collateral estoppel purposes and that the evidence warrants finding such privity in this case. The Court granted review.

PROCEDURE—APPELLATE

Finality of Judgments

Sealy Emergency Room, L.L.C. v. Free Standing Emergency Room Managers of Am., L.L.C., 2022 WL 1216172 (Tex. App.—Houston [1st Dist.] 2022), *pet. granted* (June 16, 2023) [22-0459]

This case examines whether a trial court can sever unresolved claims following a grant of partial summary judgment, thereby creating an appealable final judgment. FERMA was hired to manage Sealy Emergency Room L.L.C. When a contract dispute arose, FERMA sued Sealy ER for breach of contract. Sealy ER countersued FERMA and three of its doctors. FERMA and the third-party doctors filed a traditional motion for partial summary judgment on Sealy ER's counterclaims and third-party claims.

The trial court granted the motion for partial summary judgment on Sealy ER's counterclaims and third-party claims. It severed the claims disposed of by the partial summary-judgment motion into a new action with a separate cause number, leaving FERMA's original claims against Sealy ER pending in the trial court in the original cause. Sealy ER appealed the trial court's judgment under the new cause number.

The court of appeals dismissed the appeal for lack of jurisdiction due to the pendency of FERMA's unresolved claims against Sealy ER in the trial court under the

original cause number. The court of appeals noted that neither the partial summary judgment nor the severance order contained finality language or any other clear indication that the trial court intended the order to dispose of the entire case completely. In that court's view, the judgment was final for purposes of appeal only if it disposed of all claims and parties before the trial court. Because claims between the parties arising from the same transaction remained pending in the trial court, the court of appeals concluded that the partial summary judgment order did not dispose of all claims and parties before the trial court.

Sealy ER petitioned the Supreme Court for review. Sealy ER argues that trial courts for decades have permissibly granted summary judgment on some claims and severed them into a separate lawsuit to render them final for purposes of appeal. When a trial court grants summary judgment and severs that judgment from the main case, the judgment in the severed case is final if it disposes of all parties and issues in that cause. In this case, the severed lawsuit on appeal consisted only of Sealy ER's counterclaims against FERMA and third-party claims against the third-party doctors. Because the partial summary judgment order fully disposed of those claims, Sealy ER argues that the partial summary judgment order disposed of all claims and parties before the trial court in the severed cause, and therefore the court of appeals should have concluded it had jurisdiction and decided the case on its merits.

The Court granted the petition for review.

JURISDICTION

Territorial Jurisdiction

Sabatino v. Goldstein, 649 S.W.3d 841 (Tex. App.—Houston [1st Dist.] 2022), *pet. granted* (June 16, 2023) [22-0678]

The primary issue in this case is whether a trial court must have territorial jurisdiction over an alleged offender's conduct to issue a protective order under the Texas Code of Criminal Procedure.

Rachel Goldstein and James Sabatino dated while they both lived in Massachusetts. Three years after they stopped dating, Sabatino started continuously texting Goldstein. Goldstein obtained a protective order in Massachusetts prohibiting Sabatino from contacting her. After Goldstein moved to Texas, Sabatino filed several small-claims suits against Goldstein, and the notices were forwarded to her in Texas.

Goldstein applied for a protective order in Texas under the Code of Criminal Procedure. Following a hearing, the trial court found there were reasonable grounds to believe that Goldstein was a victim of stalking and harassment. It issued a lifetime protective order prohibiting Sabatino from various acts. The court of appeals reversed and vacated the order, holding that the trial court lacked territorial jurisdiction over Sabatino's alleged harassment because the conduct all occurred in Massachusetts.

Goldstein petitioned the Supreme Court for review, arguing that territorial jurisdiction is solely a criminal-law concept and does not apply to protective orders, which are civil matters. She contends the court of appeals erred in vacating the order because the trial court had both subject-matter jurisdiction and personal jurisdiction over Sabatino.

The Court granted Goldstein's petition for review.

INSURANCE

Policies/Coverage

In re Ill. *Nat'l Ins. Co.*, 2022 WL 4553342 (Tex. App.—Houston [14th Dist.] 2022), *argument granted on pet. for writ of mandamus* (June 16, 2023) [22-0872]

The issues in this case are whether an insured's nonrecourse settlement with a third party may inform contract liability and damages against insurers after the insurers allegedly breached their duties to their insured and whether the no-direct-action rule precludes the third party from intervening in the insured's suit against its insurers.

Relator GAMCO sued relator Cobalt for securities fraud. The parties settled after Cobalt filed for bankruptcy. The parties agreed that GAMCO would pursue insurance coverage to satisfy the settlement amount but not Cobalt itself, and Cobalt agreed to cooperate with GAMCO's collection effort against Cobalt's insurers. The federal bankruptcy and district courts approved the settlement.

Cobalt sued its insurers for breach of contract. GAMCO intervened. The trial court entered summary-judgment orders ruling that: (1) the no-direct-action rule did not bar GAMCO from suing Cobalt's insurers because the settlement reflected Cobalt's liability to GAMCO; (2) Cobalt suffered insured losses by paying defense costs and becoming liable for the settlement amount; (3) the settlement was reached in fully adversarial litigation so it is enforceable against the insurers; (4) the insurers abandoned Cobalt and therefore could not assert defenses to the settlement; and (5) comity precluded the insurers from challenging the settlement because the federal courts approved the agreement.

The insurers sought a writ of mandamus to reverse those rulings, and the court of appeals denied relief. In the Supreme Court, the insurers argue that the no-direct-action rule bars GAMCO's claims, the settlement is not enforceable against them because the liability amount was not established in an adversarial proceeding since Cobalt is not directly liable under the agreement with GAMCO, Cobalt did not suffer covered losses, and comity does not apply. The Court granted oral argument.

HEALTH AND SAFETY

Involuntary Commitment

In re A.R.C., 657 S.W.3d 585 (Tex. App.—El Paso 2022), *pet. granted* (June 16, 2023) [22-0987]

At issue in this case is whether a second-year psychiatry resident qualifies as a "psychiatrist" under Section 574.009(a) of the Texas Health and Safety Code.

A second-year psychiatry resident recommended court-ordered mental-health services for a patient displaying psychotic symptoms. The resident subsequently filed an involuntary commitment application. Two "certificates of medical examination," completed by second-year psychiatry residents, supported the application.

Before the trial court's hearing on the application, the patient filed a motion to dismiss, arguing that the statutory prerequisites for holding the hearing had not been met. Specifically, the patient asserted that Section 574.009(a) requires at least one of the certificates of medical examination to be completed by a psychiatrist, and neither of the second-year psychiatry residents qualified.

The trial court denied the patient's motion to dismiss and signed an order for temporary inpatient mental-health services. A divided court of appeals reversed, holding that a psychiatry resident is not a "psychiatrist" under the Code.

In its petition for review, the State argues that the term "psychiatrist" refers to any physician who has chosen to specialize in psychiatry. According to the State, dictionary definitions indicate the need for additional training in psychiatry and a specialized focus but do not require completion of a specific program or board certification. The State contends that, because psychiatry residents commit their professional attention to psychiatry, the second-year psychiatry residents fall squarely within the definition of a psychiatrist.

The Court granted the State's petition for review.