Case Summaries
September 1, 2023

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OPINIONS

OIL AND GAS

Deed Construction

Thomson v. Hoffman, ___ S.W.3d ___ (Tex. Sept. 1, 2023) (per curiam) [21-0711]

At issue in this case is whether a 1956 deed reserved a fixed or floating royalty interest.

Peter and Marion Hoffman conveyed to Graves Peeler 1,070 acres of land in McMullen County, Texas, but reserved a royalty interest for Peter Hoffman. The deed expressly gave Peter "an undivided three thirty-second's (3/32's) interest (same being three-fourths (3/4's) of the usual one-eighth (1/8th) royalty) in and to all the oil, gas and other minerals." Other parts of the deed then referred to 3/32 without using the double-fraction description. Two interpleader actions were filed and consolidated in the trial court for a determination of the deed's meaning. The trial court concluded that the deed created a fixed 3/32 nonparticipating royalty interest, but the court of appeals reversed, holding that "the usual one-eighth (1/8th) royalty" language indicated an intent to reserve a floating interest.

The Hoffmans petitioned for review. After the parties filed briefs on the merits, the Supreme Court decided *Van Dyke v. Navigator Group*, 668 S.W.3d 353 (Tex. 2023), in which it held that an antiquated mineral instrument containing "1/8" within a double fraction raised a rebuttable presumption that 1/8 was used as a term of art to refer to the total mineral estate, not simply one-eighth of it. Subsequently, the parties filed supplemental briefing concerning the effect of *Van Dyke* on this case. But because the court of appeals did not have the benefit of *Van Dyke* and its rebuttable-presumption framework, the Supreme Court vacated the court of appeals' judgment and remanded for further proceedings in light of changes in the law.

TAXES

Property Tax

Duncan House Charitable Corp. v. Harris Cnty. Appraisal Dist., ___ S.W.3.d ___, 2023 WL ___ (Tex. Sept. 1, 2023) (per curiam) [21-1117]

This case concerns the applicability of a charitable tax exemption.

Duncan House applied for a charitable tax exemption for the 2017 tax year covering its interest in an historic home, but its application was denied. Duncan House filed suit for judicial review. When its protest for a 2018 exemption was also denied, it

amended its petition to also challenge the denial of the 2018 exemption. The trial court dismissed the 2018 claim for want of jurisdiction because Duncan House never applied for the 2018 exemption. The court of appeals affirmed, holding that a timely filing of an application for the exemption is a statutory prerequisite to receive the exemption.

The Supreme Court reversed, holding that Duncan House did not need to apply for 2018 if it was entitled to the 2017 exemption. That issue remains pending in the trial court. If the courts ultimately conclude that Duncan House did not qualify for the exemption in 2017, Duncan House's failure to timely apply for the 2018 exemption will preclude it from receiving the exemption for 2018. But if the courts ultimately allow the exemption for 2017, Duncan House will then be entitled to the exemption for all subsequent years, including 2018. The Court remanded to the trial court for further proceedings.

ARBITRATION

Arbitrability

Alliance Auto Auction of Dall., Inc. v. Lone Star Cleburne Autoplex, Inc., ___ S.W.3.d ___, 2023 WL ___ (Tex. Sept. 1, 2023) (per curiam) [22-0191]

This case concerns the issue of incorporation of American Arbitration Association rules into their contract delegate the question of arbitrability to the arbitrator when the selection of AAA rules is contingent on another clause in the agreement.

Lone Star sued Alliance, alleging that Alliance conspired with two of Lone Star's employees to embezzle money from Lone Star. Alliance moved to stay the suit and compel arbitration, relying on arbitration clauses contained in authorization agreements between Lone Star and a third party. Alliance argues those agreements designate it as a third-party beneficiary who may invoke the arbitration clause against Lone Star. The arbitration agreement states that if the parties are unable to agree on an alternative dispute resolution firm, the arbitration will be conducted under AAA rules.

The trial court denied Alliance's motion to compel arbitration. The court of appeals affirmed, holding that the question of whether a case should be sent to arbitration is a gateway issue that courts must decide. After Alliance filed its petition for review in the Supreme Court, it issued its decision in *Totalenergies E&P USA, Inc., v. MP Gulf of Mexico, LLC*, ___ S.W.3d ___, 2023 WL 2939648 (Tex. April 14, 2023), which held that the general rule is that the incorporation of AAA rules constitutes a clear and unmistakable agreement that the arbitrator must decide whether the parties' disputes must be resolved through arbitration.

Lone Star argues that this case is distinguishable from *TotalEnergies* because (1) the parties here agreed to arbitrate under the AAA rules only if they are unable to agree on a different ADR firm; and (2) Alliance is not a party to the arbitration agreement but is instead a third-party beneficiary that may, or may not, elect to invoke the arbitration agreement. In a per curiam opinion, the Court remanded to the court of appeals to consider Lone Star's arguments, along with any other issues the parties raised that the court did not reach, in light of the Court's holdings in *TotalEnergies*.

EVIDENCE

Exclusion for Untimely Disclosure

Jackson v. Takara, ___ S.W.3d ___, 2023 WL ___ (Tex. Sept. 1, 2023) (per curiam) [22-0288]

The issue in this case is whether the trial court committed reversible error by allowing an untimely identified witness to testify.

Reuben Hitchcock fell while trimming a tree on Andrew Jackson's property and died. Hitchcock's sister, Kristen Takara, sued Jackson on the estate's behalf. Shortly before trial, Jackson identified Valerie McElwrath, a neighbor, as a person with knowledge of relevant facts. Takara moved to exclude McElwrath from testifying because the identification was untimely. Jackson's counsel represented to the trial court, without objection, that the parties had agreed to extend the discovery period and that Takara was not unfairly surprised or unfairly prejudiced because she knew McElwrath and mentioned McElwrath by name multiple times in her deposition. The trial court allowed McElwrath to testify. The jury found neither Jackson nor Hitchcock negligent, and the trial court rendered a take-nothing judgment.

A divided court of appeals reversed and remanded for a new trial. It held the trial court should have prohibited McElwrath from testifying because she was not timely identified, there was no discovery agreement that complied with Rule 11, and there was no evidence in the record that Takara was aware of McElwrath or her potential testimony.

The Supreme Court reversed and rendered judgment for Jackson. The Court held that the trial court did not abuse its discretion by allowing McElwrath to testify because the record included counsel's uncontested statements regarding the state of discovery and Takara's knowledge of McElwrath. The Court also held that the trial court's ruling, even if erroneous, would not constitute reversible error because the jury's failure to find negligence did not turn on McElwrath's testimony.

GRANTED CASES

DAMAGES

Settlement Credits

Mulvey v. Bay, Ltd., 2021 WL 2942448 (Tex. App.—San Antonio 2021), *pet. granted* (Sept. 1, 2023) [22-0168]

The primary issue in this case is whether the defendant is entitled to a settlement credit under the one-satisfaction rule.

Bay sued Mulvey and one of Bay's former employees, alleging that the employee made unauthorized improvements to a ranch owned by Mulvey using Bay's materials and equipment. Bay also sued the employee in a separate lawsuit, alleging that he engaged in a pattern of similar acts for the benefit of himself, Mulvey, and others. Bay and the employee agreed to the entry of a $1.9 million judgment for Bay, and the employee agreed to make monthly payments to Bay in exchange for Bay's agreement not to execute the judgment.

Bay then nonsuited the employee and went to trial against Mulvey for unjust enrichment. The jury found for Bay and awarded damages. Mulvey sought a settlement credit based on the other judgment and agreement. The trial court refused and rendered

judgment consistent with the jury findings. The court of appeals reversed and held that Mulvey was entitled to a credit. It therefore rendered a take-nothing judgment without reaching the other issues raised by Mulvey.

Bay petitioned for review, arguing that Mulvey was not entitled to a credit because the other judgment had not been satisfied. The Supreme Court granted the petition.

OIL AND GAS

Contract Interpretation

Samson Expl., LLC v. Bordages, 662 S.W.3d 501 (Tex. App.—Beaumont 2022), *pet. granted* (September 1, 2023) [22-0215]

The central issue in this case is whether a contractual "late charge" on past-due royalties allows for compound rather than simple interest.

As landowners, the Bordages executed multiple oil-and-gas leases with Samson Exploration, LLC. The leases provide for an 18% late-charge penalty on past-due royalties to be calculated each month but do not expressly state whether the interest should be compound or simple. After fellow royalty owners with a similar late-charge provision sued Samson on various breach-of-lease theories, the Bordages joined suit, but their case was later severed into a separate cause. The trial court rendered judgment against Samson for just over $13 million in "late charges," with approximately $11 million of that number based on the interest being compounded monthly. The court of appeals affirmed.

Samson petitioned the Supreme Court for review, arguing that Texas law and nationwide authority disfavors compound interest when it is not expressly provided for in a contract and that applying simple interest is supported by the leases' plain language and a utilitarian construction. The Bordages respond that stare decisis and the leases' plain language preclude Samson's construction and that collateral estoppel bars this issue because it was already resolved in the fellow royalty owners' case in favor of compounding.

The Court granted Samson's petition for review.

JURISDICTION

Service of Process

Tex. State Univ. v. Tanner, 644 S.W.3d 747 (Tex.App.—Austin 2022), *pet. granted* (Sept. 1, 2023) [22-0291]

At issue in this case is whether diligence in service of process is a "statutory prerequisite to suit" for claims brought under the Tort Claims Act. In 2014, Hannah Tanner sustained serious injuries after being thrown from a golf cart while on the Texas State University golf course. In 2016, Tanner timely sued TSU, the Texas State University System, and Dakota Scott (a TSU employee who drove the golf cart) under the Tort Claims Act. Tanner served the System in 2016 but did not serve Scott until 2018. Scott moved for summary judgment on the grounds that Tanner did not exercise diligence as a matter of law because she had delayed serving Scott for two years. The district court denied Scott's motion and granted the System's plea to the jurisdiction. Finally, in 2020, Tanner served TSU.

TSU filed a plea to the jurisdiction, asserting that Tanner's claims were barred by the two-year statute of limitations because she had delayed serving TSU for over three and a half years. The district court agreed and granted TSU's plea. The court of

appeals reversed, holding that diligence in service of process is not a statutory prerequisite to suit under Section 311.034 of the Government Code and is thus not jurisdictional.

TSU petitioned the Supreme Court for review, arguing that timely service is a jurisdictional prerequisite because a court does not obtain jurisdiction over a defendant until service is effectuated. The Supreme Court granted the petition.

GOVERNMENTAL IMMUNITY

Ultra Vires Claims

Image API, LLC v. Young, 2022 WL 839425 (Tex. App.—Amarillo 2022), *pet. granted* (Sept. 1, 2023) [22-0308]

At issue is whether Section 32.0705(d) of the Human Resources Code imposes a mandatory one-year time limit for the Health and Human Services Commission to conduct external audits of "Medicaid contractors."

Image API, LLC contracted with the Commission to provide document-processing services. The Commission later audited Image and demanded that Image repay over $400,000. Image sued, seeking a declaration that the audit was untimely and thus *ultra vires* because the audit was beyond the one-year time limit for external audits imposed by Section 32.0705(d). The Commission filed a plea to the jurisdiction and moved for summary judgment, arguing that Section 32.0705(d) either does not apply or is directory (and thus judicially unenforceable). The trial court denied the Commission's plea but granted its summary-judgment motion.

The court of appeals reversed in part, holding that Section 32.0705 applies to the Commission's audit because Image is a "Medicaid contractor" under that statute. The court of appeals also held that Section 32.0705(d) is merely a directory provision, not a mandatory one. Consequently, Section 32.0705(d) neither imposes a ministerial duty on the Commission to conduct audits within the one-year period nor prohibits an audit from being conducted beyond that period.

Image petitioned the Supreme Court for review, arguing that Section 32.0705(d) is mandatory. The Court granted Image's petition.

CONSTITUTIONAL LAW

Free Speech

Stonewater Roofing, Ltd. v. Tex Dep't of Ins., 641 S.W.3d 794 (Tex. App.—Amarillo 2022), *pet. granted* (Sept. 1, 2023) [22-0427]

At issue in this case is whether the statutory licensing requirement and conflict-of-interest prohibition for public insurance adjusting are content-based restraints of free speech subject to heightened scrutiny under the First Amendment.

Stonewater, a Texas-based roofing company, offers commercial and residential customers services that include repairing and replacing roofing systems. Although Stonewater is not a licensed public insurance adjuster, its website promotes extensive experience in dealing with the insurance claims process. The assertions on Stonewater's website implicate two Insurance Code provisions. The first, Section 4102.051(a), provides that a person may not act or hold himself out as a public insurance adjuster unless he is licensed. The second, Section 4102.163(a), bars contractors from both acting as public insurance adjusters and marketing claim-adjustment capabilities for projects they undertake.

Stonewater sued the Texas Department of Insurance, seeking a declaration that

the two provisions violate the First Amendment and are unconstitutionally vague. The Department filed a motion to dismiss, which the trial court granted. The court of appeals reversed and remanded, holding that Stonewater's pleadings demonstrated an adequate basis in law and fact as to both its constitutional claims.

In its petition for review, the Department argues that the challenged provisions do not violate Stonewater's free speech rights because they regulate professional conduct with only an incidental effect on speech. Additionally, the Department argues that Stonewater's conduct clearly violates the challenged laws, foreclosing the company's vagueness claim.

The Court granted the Department's petition for review.

NEGLIGENCE

Unreasonably Dangerous Conditions

Prado v. Lonestar Res., Inc., 647 S.W.3d 731 (Tex. App.—San Antonio 2021), *pet. granted* (Sept. 1, 2023) [22-0431]

This case raises questions of what counts as sufficient evidence of an unreasonably dangerous condition of a railroad crossing and what constitutes notice that such a condition exists.

Rolando Prado was struck and killed by a Union Pacific Railroad Company train after he failed to come to a full stop at the stop sign in front of the railroad tracks, which Union Pacific also owned. The crossing was located on a private road owned by Evan Alderson Ranches. Prado's heirs sued the ranch and Union Pacific for negligence, negligence per se, and gross negligence. Prado argued that the curve of the road, the tree line, and a fence obstructed the view of oncoming trains and so the defendants breached their duties to warn of extra-hazardous and unreasonably dangerous conditions. The trial court granted summary judgment in favor of the defendants. The court of appeals reversed, holding that reasonable jurors could disagree as to whether the crossing was extra-hazardous or an unreasonably dangerous condition.

Both the ranch and Union Pacific filed petitions for review. The ranch argues there is no evidence that the crossing was unreasonably dangerous and, even if there is, there is no evidence that the ranch was aware of the condition. Union Pacific argues that there is not sufficient evidence that the crossing was extra-hazardous because Prado did not exercise reasonable care, and there is a lack of evidence to support the finding even if reasonable care is not required. The Supreme Court granted both petitions.

PROCEDURE—TRIAL AND POST-TRIAL

Collateral Attack

City of San Antonio v. Campbellton Rd., Ltd., 647 S.W.3d 751 (Tex. App.—San Antonio 2022), *pet. granted* (Sept. 1, 2023) [22-0481]

The issue is whether the City of San Antonio Water System is entitled to governmental immunity from Campbellton's breach-of-contract suit.

Campbellton planned to develop two new subdivisions in southeast San Antonio. To ensure the subdivisions would have adequate sewage services, Campbellton entered into a contract with the Water System. Campbellton agreed to design, build, and ultimately convey various oversized wastewater facilities to the Water System. In exchange, the Water System agreed to reserve adequate wastewater capacity for Campbellton's proposed development and to provide Campbellton with credits for

impact fees it would otherwise owe. When Campbellton requested to connect the new subdivisions to the sewage system, the Water System had already allocated its capacity to other customers, taking the position that the contract expired by its terms years earlier.

Campbellton sued the Water System for breach of contract. The Water System filed a plea to the jurisdiction, arguing that it is immune from Campbellton's suit. The trial court denied the plea. The court of appeals reversed, holding that the contract does not qualify as an agreement for the provision of services to the Water System and that the claims for breach of the agreement thus do not fall within the scope of Local Government Code Section 271.151, which waives governmental immunity with respect to written contracts stating the essential terms of an agreement to provide goods or services to a local government entity. Campbellton petitioned for review, arguing that Section 271.151 waives the Water System's immunity because Campbellton agreed under a written contract to provide the Water System with construction services that directly benefited the Water System.

The Supreme Court granted Campbellton's petition for review.

GOVERNMENTAL IMMUNITY

Independent Contractors

Tex. Dep't of Transp. v. Self, 2022 WL 1259094 (Tex. App.—Fort Worth 2022), *pet. granted* (Sept. 1, 2023) [22-0585]

This case presents two questions involving the scope of the Texas Tort Claims Act's immunity waiver: (1) whether a governmental employee's control over a third-party contractor constitutes "operation or use" under the Act's waiver of immunity for property damage "aris[ing] from" the operation or use of motor-driven equipment, and (2) whether a subcontractor's workers who removed trees from private property adjacent to a public roadway were TxDOT "employees" under the statute.

In a negligence and inverse-condemnation suit alleging improper removal of trees outside of a right-of-way easement, the trial court denied TxDOT's plea to the jurisdiction. The court of appeals affirmed as to the negligence claim but dismissed the takings claim for want of jurisdiction.

The appeals court acknowledged a split of authority regarding waiver of immunity based on control over motor-driven equipment that was physically operated by someone other than a state employee. Without weighing in on the debate, the court held that (1) TxDOT did not exercise sufficient control over the tree-removal equipment to invoke the Act's immunity waiver under the more expansive line of cases; however, (2) evidence that TxDOT actually controlled the details of the tree-removal task created a fact issue about whether the workers were "employees" rather than independent contractors. In dismissing the inverse-condemnation claim, the court found no evidence of "intent" as required to sustain the claim.

The Supreme Court granted the parties' cross-petitions for review.

GOVERNMENTAL IMMUNITY

Contract Claims

San Jacinto River Auth. v. Texas, 2022 WL 1177645 (Tex. App.—Beaumont 2022), *pet. granted* (Sept. 1, 2023) [22-0649]

The principal issue in this case is whether a contractual mediation requirement is a limitation on the waiver of sovereign immunity on contract claims under the Local

Government Contract Claims Act.

The Cities of Conroe and Magnolia receive water from the San Jacinto River Authority. The contracts between the Authority and the Cities require mediation of certain claims. The Authority and the Cities disagreed over the water rates the Authority charged the Cities. The Authority brought claims against the Cities for declaratory judgment and for non-payment under the contracts. The Cities filed pleas to the jurisdiction, alleging that mediation is required under the contracts and that the claims should therefore be dismissed. The trial court granted the Cities' pleas to the jurisdiction. The court of appeals affirmed.

The Authority filed a petition for review raising several issues. It argues that governmental immunity on its claims is waived under the Local Government Contract Claims Act and the terms of the contracts. The Act waives governmental immunity on certain contract claims for goods and services. The Authority argues that its contract claims are not subject to mediation under the terms of the contracts, and that even if the claims require mediation, that requirement is not a jurisdictional limitation on the scope of the Act's waiver of immunity. Conversely, the Cities argue that mediation is required because the Authority's claims include claims for "performance" defaults subject to mediation under the terms of the contracts, as opposed to "payment" defaults that are not subject to mediation. The Cities also argue that a mediation requirement is an "adjudication procedure" under the Act that limits the scope of the Act's waiver of immunity, and therefore the trial court properly granted the pleas to the jurisdiction.

The Court granted the petition for review.

GOVERNMENTAL IMMUNITY

Texas Tort Claims Act

Cai v. Chen, 2022 WL 2350049 (Tex. App.—Houston [14th Dist.] June 30, 2022), *pet. granted* (Sept. 1, 2023) [22-0667]

The issue is whether an employee's report of sexual harassment by a coworker and comments about the matter to another coworker fall within the employee's scope of employment for purposes of the Texas Tort Claims Act.

Chen and Cai both worked at the DePinho Laboratory at M.D. Anderson Research Center in Houston and were subject to the Center's policies and procedures for the filing and investigating of sexual-harassment claims. In October 2018, Cai reported to a supervisor, as well as the Center's Title IX coordinator, that Chen was sexually harassing and stalking her, which ultimately led to Chen's placement on investigative leave and the commencement of criminal charges against him. Cai also discussed the matter with another coworker at the lab, repeating her allegations of stalking and harassment by Chen.

In November 2019, Chen sued Cai, alleging claims of slander, defamation, libel, malicious, criminal prosecution, and tortious interference with contract, among others. Chen moved to dismiss under Section 101.106(f) of the Tort Claims Act, which requires a court to dismiss a suit against a government employee based on conduct within the general scope of that employee's employment. Chen refused to amend his pleadings to substitute the governmental unit as the defendant, arguing that reporting or discussing sexual harassment was not within the general scope of Cai's employment. The trial court denied Cai's motion to dismiss.

The Court of Appeals affirmed in part and reversed and rendered judgment in part, dismissing Chen's malicious prosecution claim in its entirety and dismissing his

remaining claims to the extent they are based on Cai's reports of sexual harassment or conduct relating to the subsequent investigation. One justice, dissenting in part, also would have dismissed any claims based on Cai's statements to the coworker.

Chen and Cai filed cross-petitions for review. The Supreme Court granted both petitions.

GOVERNMENTAL IMMUNITY

Texas Commission on Human Rights Act

Tex. Tech Univ. Health Scis. Ctr. v. Martinez, 2022 WL 3449495 (Tex. App.—Amarillo 2022), *pet. granted* (Sept. 1, 2023) [22-0843]

The issue is whether certain university entities are immune from Martinez's age-discrimination suit under the Texas Commission on Human Rights Act.

In 2008, Martinez began working for the Texas Tech University Health Sciences Center as Senior Assistant to the then-President of the Center. Martinez was promoted to Chief of Staff the following year and continued serving in that position through Dr. Ted Mitchell's appointment as President of the Center in 2010, as well as his dual appointment as Chancellor of the Texas Tech University System in early 2019. Martinez's employment was formally terminated in June 2019, shortly after Mitchell had sent an e-mail to Martinez and others in May 2019, which discussed the Texas Tech University Board of Regents' expression of interest in "succession planning" following the results of an age-analysis of the President's executive council.

After receiving a Notice of Right to Sue from the Equal Opportunity Employment Commission, Martinez filed an action for employment discrimination under the TCHRA, naming the Center, the Board of Regents, Texas Tech University, and the Texas Tech University System as defendants. The university entities jointly filed a plea to the jurisdiction, arguing that the TCHRA's waiver of sovereign immunity was inapplicable because Martinez did not qualify as their indirect employee under Texas caselaw. The trial court denied the plea to the jurisdiction and the university entities filed an interlocutory appeal. The court of appeals affirmed the denial of the plea to the jurisdiction for all the university entities except Texas Tech University.

The remaining university entities filed a petition for review, which the Supreme Court granted.

PROCEDURE—PRETRIAL

Summary Judgment

Gill v. Hill, 658 S.W.3d 618 (Tex. App.—El Paso 2022), *pet. granted* (Sept. 1, 2023) [22-0913]

The issue in this case concerns which party to a collateral attack on a judgment bears the summary-judgment burden to show whether the underlying judgment was obtained without regard for due process.

In 1999, several taxing entities sued to foreclose on hundreds of properties in Reeves County. The taxing entities attempted service on the defendant landowners by posting notice of the suit on the courthouse door. The successors in interest to some of the original landowners collaterally attacked the foreclosure judgment, alleging that the original landowners were not provided notice of the foreclosure. The subsequent buyers of the properties moved for summary judgment, asserting that the suit was barred by the Tax Code's one-year statute of limitations on suits challenging tax foreclosure sales. The buyers attached the foreclosure judgment and resulting sheriff's

deed to the summary-judgment motion; the landowners' successors attached no evidence to their response.

The trial court granted summary judgment. In a divided opinion, the court of appeals affirmed. It held that the buyers had established that the limitations period had run, which shifted the burden to the successors to produce some evidence of the due process violation. Because the successors provided no evidence in their response, they failed to meet their burden.

The successors filed a petition for review. They argue that the buyers bore the burden to show compliance with due process. Specifically, they argue that, to establish that the limitations period had run, the buyers were required to show that the sheriff's deed was valid. Additionally, the successors argue that the Tax Code's limitations period does not apply to a collateral attack on a judgment that is void for lack of due process under this Court's recent decision in *Mitchell v. Map Resources*, 649 S.W.3d 180 (Tex. 2022). The Court granted the petition for review.

GOVERNMENTAL IMMUNITY

Texas Whistleblower Act

City of Denton v. Grim, 2022 WL 3714517 (Tex. App.—Dallas 2022), *pet. granted* (Sept. 1, 2023) [22-1023]

The issues in this case are whether two employees' report of misconduct by an unpaid city councilmember qualifies for protection under the Texas Whistleblower Act and whether there is sufficient evidence that the report caused the employees' termination.

Michael Grim and Jim Maynard worked for the City of Denton and were on the planning committee for a new natural gas plant. A city councilmember who opposed the plant released allegedly confidential documents to a local newspaper. Grim and Maynard reported this disclosure to the city attorney. Following a change in the City's leadership, the new city manager began investigating the procurement process for the new plant. Grim and Maynard were ultimately terminated.

Grim and Maynard sued the City, alleging that their terminations were in retaliation for their report and therefore violated the Whistleblower Act. The jury agreed and awarded damages, and a divided court of appeals affirmed.

The City petitioned for review. It argues that the Whistleblower Act does not apply because the councilmember was not acting in her official capacity, so there is no report of a violation by "the employing governmental entity" as required by the Act. The City also argues that the evidence is legally insufficient to support a finding that the employees' report caused their terminations. The Supreme Court granted the City's petition.