# Case Summaries
# December 15, 2023

Case summaries are prepared by court staff as a courtesy. They are not a substitute for the actual opinions.

## OPINIONS

## FAMILY LAW

### Termination of Parental Rights

*In re R.J.G.*, ___ S.W.3d ___, 2023 WL ___ (Tex. Dec. 15, 2023) [22-0451]

The issue in this case is whether strict compliance is required to avoid termination of parental rights based on the alleged failure to comply with the provisions of a court-ordered service plan.

The Department of Family and Protective Services removed Mother's three children and prepared a service plan identifying required actions for her to obtain reunification. The Department alleged that Mother failed to comply with the plan. Specifically, the Department alleged that Mother failed to complete requirements that she participate in individual counseling and complete classes on parenting and substance abuse. It sought termination solely on that basis under Section 161.001(b)(1)(O) of the Family Code.

Mother argued that she substantially complied with these requirements. The Department's only witness testified that Mother had complied with the plan's requirements but not when she needed to or in the way she was ordered to comply. The trial court ordered termination of Mother's parental rights, concluding that strict compliance with the plan was required. The court of appeals affirmed, and Mother petitioned for review.

The Supreme Court reversed, holding that strict or complete compliance with every plan requirement is not always necessary to avoid termination under (O). The Court noted that (O) authorizes termination only when the plan requires the parent to perform direct, specifically required actions. In addition, the parent must have failed to comply with a material plan requirement; termination is not appropriate for noncompliance that is trivial or immaterial in light of the plan's requirements overall. In this case, the plan did not specifically require Mother to achieve any particular benchmark in her individual counseling sessions, so the Department did not establish by clear and convincing evidence that Mother failed to comply with that requirement. And there was evidence that Mother completed the parenting and substance abuse classes with another provider, so her asserted failure to provide a certificate of completion was too trivial and immaterial, in light of the degree of her compliance with the plan's material requirements, to support termination. Because Mother complied with the material provisions of the plan, the Court held there was insufficient evidence

to support termination by clear and convincing evidence under (O). The Court therefore reversed and vacated the order terminating Mother's parental rights.

## SUBJECT MATTER JURISDICTION

### Standing

*Busbee v. County of Medina*, ___ S.W.3d ___, 2023 WL ___ (Tex. Dec. 15, 2023) (per curiam) [22-0751]

This case involves a dispute between the 38th and 454th Judicial Districts over an office building in Medina County.

In 1998, when Medina County was part of the 38th Judicial District, the 38th District used funds from its forfeiture account to buy an office building in the County. The property's deed named the County as the grantee but restricted the building's use to 38th District business for as long as the County owned the property. The deed also required the 38th District Attorney's consent before the County could sell the property.

In 2019, the Legislature carved Medina County out of the 38th District into the new 454th District. Because of the deed's restrictions on use, the County decided to sell the property and divide the proceeds with the two counties that remained in the 38th District. Before the sale closed, newly elected 38th District Attorney Christina Busbee notified the County that she did not consent to the sale and took the position that all sale proceeds were 38th District forfeiture funds under Chapter 59 of the Texas Code of Criminal Procedure.

Medina County sued Busbee in her official capacity to quiet title. Busbee asserted several counterclaims stemming from her assertions that the property—and any proceeds from its sale—rightfully belonged to the 38th District Attorney and that the County could not sell the property without her consent. The County filed a plea to the jurisdiction as to the counterclaims, arguing among other grounds that Busbee lacked standing. The trial court granted the plea to the jurisdiction on the standing ground and did not reach the other jurisdictional issues presented in the plea. The court of appeals affirmed, holding that only the Attorney General may sue to enforce Chapter 59 and that, because Busbee's claims were all "based on Chapter 59," she lacked standing to bring them.

The Supreme Court reversed, holding that whether Busbee may sue under Chapter 59 affects her right to relief but does not implicate the trial court's subject-matter jurisdiction over the case. The Court explained that Busbee has standing in the constitutional, jurisdictional sense if she has a concrete injury that is traceable to the defendant's conduct and redressable by court order. Busbee's claims that the County is attempting to sell the property without her mandated consent and that the 38th District Attorney is entitled to all proceeds from the property's sale present such an injury. The Court expressed no opinion on the merits of Busbee's claims or the court of appeals' analysis of Chapter 59, holding only that the court's conclusion could not support an order granting a plea to the jurisdiction. The Court remanded the case to the trial court for further proceedings.

## GRANTED CASES

### PROCEDURE—PRETRIAL

#### Compulsory Joinder

*In re Tr. A & Tr. C, Established Under Bernard L. & Jeannette Fenenbock Living Tr. Agreement, Dated Mar. 12, 2008*, 651 S.W.3d 588 (Tex. App.—El Paso 2022), *pet. granted* (Dec. 15, 2023) [22-0674]

The central issue in this case is whether compulsory joinder extends to subsequent purchasers of stock when a lawsuit between other parties effectively adjudicates the stock's ownership.

Glenna Gaddy, a co-trustee of a family trust, transferred stock from the family trust to her personal trust. Gaddy then sold the stock from her personal trust to her two sons. Following the sale, Mark Fenenbock sued Gaddy, seeking a declaration that he is a co-trustee under the trust agreement and that the transfer was void because he had not consented to it as co-trustee.

The probate court declared the stock transfer to be void, ordered that the stock be "restored" to the family trust, and ordered Gaddy to undertake certain actions, including an accounting and deposit of substantial funds. Gaddy appealed the probate court's order declaring the stock transfer from the family trust to her personal trust void.

The court of appeals vacated and remanded, holding that the probate court lacked jurisdiction to declare the stock transfer void due to the omission of "jurisdictionally indispensable" parties. In particular, the court of appeals concluded that the probate court committed fundamental error and lacked subject-matter jurisdiction to enter the order for failing to join Gaddy's sons—the purported owners of the stock in question.

Both parties petitioned for review as to the court of appeals' jurisdictional holding. Fenenbock argues that Gaddy's sons need not have been joined at all. Gaddy argues that her sons need not have been joined for the probate court to have jurisdiction, but that the probate court's adjudication of the stock's ownership in her sons' absence was error. The Supreme Court granted the parties' petitions for review.

### REAL PROPERTY

#### Landlord Tenant

*Virtuolotry, LLC v. Westwood Motorcars, LLC*, ___ S.W.3d ___, 2022 WL 1769232 (Tex. App.—Dallas 2022), *pet. granted* (Dec. 15, 2023) [22-0846]

This case concerns the preclusive effect of an agreed judgment awarding possession of leased premises to the landlord in an eviction proceeding on a related suit by the tenant for damages in district court.

Westwood is an automobile dealer, and Virtuolotry was Westwood's landlord. When Westwood attempted to renew its lease under the terms of the lease contract, Virtuolotry rejected the renewal and attempted to terminate the lease.

Westwood sued Virtuolotry in district court for a declaratory judgment that Westwood had properly renewed the lease. A few weeks later, Virtuolotry initiated eviction proceedings and was awarded immediate possession of the premises by the justice court. Westwood appealed to the county court, but the parties ultimately entered an agreed judgment in that court awarding Virtuolotry immediate possession of the premises.

Westwood then amended its district court petition to add damages claims for breach of the lease and constructive eviction. After a jury trial, the trial court rendered judgment for Westwood, awarding it over $1 million in damages. The court of appeals reversed, reasoning that the agreed judgment in the eviction proceeding precluded Westwood's damages claim.

Westwood filed a petition for review, arguing that the court of appeals erred in its holding that the agreed judgment precludes Westwood's damages claims. The Supreme Court granted the petition.

## TAXES

### Tax Protests

*J-W Power v. Sterling Cnty. Appraisal Dist.*, ___ S.W.3d ___, 2022 WL 2836807 (Tex. App.—Austin 2022), *pet granted* (Dec. 15, 2023) [22-0974], *consolidated for argument with J-W Power v. Irion Cnty. Appraisal Dist.*, ___ S.W.3d ___, 2022 WL 2836812 (Tex. App.—Austin 2022), *pet granted* (Dec. 15, 2023) [22-0975]

The main issue is whether unsuccessful ad valorem tax protests preclude a subsequent motion to correct the appraisal rolls for the same years.

J-W Power owns natural gas compressors and leases them to oil and gas companies throughout the state. When not leased, the compressors are kept by J-W Power in Ector County. For the 2013–2016 tax years, Sterling County appraised J-W Power's compressors leased in those counties as conventional business personal property. J-W Power filed protests, arguing that under the Tax Code, the compressors qualify as a "dealer's heavy equipment inventory" that can only be taxed in Ector County where the compressors are based and maintained. The Sterling County Appraisal Review Board denied the protests. J-W Power did not seek judicial review of the denials.

In 2018, the Supreme Court issued an opinion in *EXLP Leasing, LLC v. Galveston County Appraisal District* that addressed the Tax Code provisions on a "dealer's heavy equipment inventory." J-W Power then filed a motion under Section 25.25(c) of the Code to correct the Sterling County appraisal rolls for the years 2013-2016. The Sterling County Appraisal Review Board denied the motion and J-W Power sought judicial review in the district court. The trial court granted summary judgment for the Sterling County Appraisal District. The court of appeals affirmed, holding that the denial of J-W Power's protests precluded its subsequent motion to correct under the doctrine of res judicata.

J-W Power petitioned for review, challenging the court of appeals' res judicata holding and analysis. The Supreme Court granted the petition.

## CONSTITUTIONAL LAW

### Gift Clauses

*Borgelt v. Austin Firefighters Ass'n, IAFF Loc. 975*, ___ S.W.3d ___, 2022 WL 17096786 (Tex. App.—Austin 2022), *pet. granted* (Dec. 15, 2023) [22-1149]

The main issue is whether a provision in a collective bargaining agreement that allocates a pool of paid leave to further a union's interests violates any "Gift Clause" in the Texas Constitution (Article III, Sections 50, 51, 52(a) and Article XVI, Section 6(a)). The Gift Clauses are structural limitations that aim to reduce the misuse of public funds and resources by requiring specific conditions to be met before such expenditures can be made.

The Austin Firefighters Association represented members of the Austin Fire Department in contract negotiations with the City of Austin, which resulted in a collective bargaining agreement. Article 10 of the agreement allocates thousands of hours of paid leave to be used by the Association president and authorized firefighters for "Association business."

A group of Austin taxpayers sued the Association and City, arguing that Article 10 violates the Gift Clauses because it lacks sufficient consideration and fails to serve a predominantly public purpose. The State intervened in support of the taxpayers and further asserted that Article 10 does not serve a strictly public purpose. The trial court rendered judgment for the defendants after a bench trial. The court of appeals affirmed, reasoning that the paid leave arrangement is not a gratuitous gift and serves a predominantly public purpose.

The taxpayers and the State filed petitions for review, which the Supreme Court granted.

## PRODUCTS LIABILITY

### Statute of Repose

*Ford Motor Co. v. Parks*, ___ S.W.3d ___, 2022 WL 17423590 (Tex. App.—Dallas 2022) *pet. granted* (Dec. 15, 2023) [23-0048]

This case concerns when a sale occurs under the statute of repose for products liability, which requires a claimant to sue the manufacturer or seller "before the end of 15 years after the date of the sale of the product by the defendant."

Samuel Gama sustained permanent, severe injuries when his Ford Explorer flipped and rolled several times during a traffic accident. Gama, his mother, and his wife, Parks, sued Ford for products liability under negligence and strict-liability theories. Ford asserted the statute of repose as an affirmative defense, arguing that the case was barred because it was brought more than 15 years after the Explorer was originally sold. Ford moved for a traditional summary judgment, arguing that a dealership first sold the Explorer more than 15 years before Parks brought suit. When Parks demonstrated that the dealership had initially leased the Explorer, Ford brought a second motion for a traditional summary judgment based on its sale of the Explorer to the dealership. In response, Parks argued that Ford failed to conclusively establish the date of sale because it relied on the inconsistent and contradictory testimony of interested witnesses.

The trial court granted summary judgment for Ford, but the court of appeals reversed, and Ford filed a petition for review. Ford argues that proof of payment on a date certain is not required to demonstrate that a sale occurred for purposes of the statute of repose. Instead, Ford contends it merely had to show that a sale must have occurred outside of the 15-year window for suit. Ford also asserts that it met its burden at summary judgment to prove that a sale occurred outside the 15-year window. The Supreme Court granted the petition for review.

## JURISDICTION

### Subject Matter Jurisdiction

*Pruski v. Tex. Windstorm Ins. Ass'n*, 667 S.W.3d 460 (Tex. App.—Corpus Christi 2023), *pet. granted* (Dec. 15, 2023) [23-0447]

This case concerns the effect of a statutory provision requiring that certain insurance-coverage disputes be presided over by a judge appointed by the judicial panel

on multidistrict litigation.

The Texas Windstorm Insurance Association is a quasi-governmental body created by Chapter 2210 of the Insurance Code to provide an adequate market for windstorm and hail insurance in the seacoast territory of Texas. Section 2210.575 authorizes a TWIA policyholder to sue the association after it denies coverage of a claim, but subsection (e) requires that "an action brought under this subsection . . . be presided over by a judge appointed by the judicial panel on multidistrict litigation."

Stephen Pruski's beachfront home was damaged by Hurricane Harvey. After receiving what he considered to be partial payment from TWIA, Pruski sued the association in Nueces County district court. The judge assigned to the case was not appointed by the MDL panel. After the court granted summary judgment for TWIA, Pruski appealed, claiming that the judgment is void for lack of subject-matter jurisdiction. The court of appeals agreed and reversed. The court held that the panel-appointment process is mandatory; that Pruski did not waive his right to an MDL-appointed judge; and that the summary judgment is void because the trial court lacked subject-matter jurisdiction.

TWIA filed a petition for review, arguing that Pruski waived his right to an MDL-appointed judge and that the summary judgment is not void in any event because the statutory requirement of an MDL-appointed judge does not affect a trial court's subject-matter jurisdiction. The Supreme Court granted the petition for review.