



Case Summaries January 26, 2024

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GRANTED CASES

TAXES

Tax Protests

Travis Cent. Appraisal Dist. v. Tex. Disposal Sys. Landfill, Inc., ___ S.W.3d ___, 2022 WL 2236109 (Tex. App.—Austin 2022), *pet. granted* (Jan. 26, 2024) [[22-0620](#)]

The issue in this case is whether the trial court had subject-matter jurisdiction over an appraisal district's claim that the Appraisal Review Board's appraisal of a taxpayer's property was below market value, even though the taxpayer brought, and the board decided, only an unequal-appraisal protest.

After the Travis County Appraisal District appraised Texas Disposal Systems Landfill's 344-acre property for the 2019 tax year, the Landfill protested the value to the Travis ARB, asserting only an unequal-appraisal challenge. The ARB issued an order agreeing that the appraisal was unequal and significantly reducing the appraised value of the property. The ARB did not determine the property's market value.

As authorized by the Tax Code, TCAD appealed the ARB's order to a district court, pleading that the ARB's appraisal resulted in unequal appraised value and was below market value. The trial court granted the Landfill's plea to the jurisdiction and dismissed TCAD's market-value claim on the ground that the ARB only determined an unequal-appraisal protest. The court of appeals reversed the plea, holding that the trial court had jurisdiction over TCAD's market-value claim.

Texas Disposal Systems petitioned the Supreme Court for review, arguing that the Tax Code limits trial courts' subject-matter jurisdiction to only the grounds raised in the taxpayer protest and determined by the ARB. The Supreme Court granted the petition.

GOVERNMENTAL IMMUNITY

Texas Torts Claim Act

City of Austin v. Powell, ___ S.W.3d ___, 2022 WL 1509304 (Tex. App.—Austin 2022), *pet. granted* (Jan. 26, 2024) [[22-0662](#)]

At issue in this case is whether a police officer in a high-speed chase acted with reckless disregard such that the emergency exception under the Texas Tort Claims Act does not apply and immunity is waived.

Officer Bullock was assigned as backup to pursue a suspect in a vehicle chase. He was following Officer Bender who slowed down suddenly to make a right turn based

on the radio report of the suspect's location. Bullock rammed into the back of Bender's vehicle, causing the two police cruisers to crash into Powell's van sitting at the stop sign.

After Powell sued the City, the trial court denied the City's plea to the jurisdiction based on the Texas Tort Claims Act's emergency exception. The court of appeals affirmed, concluding that Bullock's failure to maintain a safe following distance, combined with his inattention and failure to control his speed, create a fact issue on recklessness. The City filed a petition for review in the Supreme Court, challenging the court of appeals' analysis. The Court granted the petition.

REAL PROPERTY

Implied Reciprocal Negative Easements

River Plantation Cmty. Improvement Ass'n v. River Plantation Props. LLC, 661 S.W.3d 812 (Tex. App.—Beaumont 2022), *pet. granted* (Jan. 26, 2024) [[22-0733](#)]

The issue in this case is whether real property in a residential subdivision is burdened by an implied reciprocal negative easement requiring it to be maintained as a golf course.

River Plantation is a subdivision that contains hundreds of homes and a golf course. The subdivision's deed restrictions provide that certain "golf course lots" are burdened by restrictions that require structures to be set back from the golf course, prevent garages from facing the golf course, and mandate that telephone lines be buried. The developer included graphic depictions of the golf course in some of the plat maps that it filed for the subdivision, and the subdivision was often marketed as a golf course community. When the developer subsequently sold the golf course, the deed included an express restriction that the property must be operated as a golf course for ten years. Forty years later, the subsequent owner of the golf course, River Plantation Properties, sought to sell the golf course to a new owner who intended to stop maintaining the property as a golf course.

The subdivision's HOA sued River Plantation Properties to establish the existence of an implied restrictive negative easement on the golf course, requiring that it be used as a golf course. While the case was pending, River Plantation Properties sold a portion of the golf course to Preisler Golf Properties LLC, and the HOA added Preisler as a defendant. Ultimately, River Plantation Properties and Preisler filed motions for traditional summary judgment, contending that any restriction on the property had expired, that the HOA failed to raise a fact issue as to the existence of a common scheme, and that River Plantation Properties had no notice of any common scheme. The trial court granted summary judgment in favor of River Plantation Properties and Preisler, and the court of appeals affirmed.

The HOA petitioned for review, arguing it had at least raised a fact issue as to the existence of a common scheme sufficient to support the claimed easement of which all parties had notice. The Supreme Court granted the petition.

GOVERNMENTAL IMMUNITY

Official Immunity

City of Houston v. Rodriguez, 658 S.W.3d 633 (Tex. App.—Houston [14th Dist.] 2022), *pet. granted* (Jan. 26, 2024) [[23-0094](#)]

At issue in this case is whether a police officer acted with reckless disregard such that the Texas Tort Claims Act's emergency exception does not apply, and whether the

officer acted in good faith such that he is entitled to official immunity.

Officer Corral was engaged in a high-speed chase with a suspect who drove erratically and at one point against traffic. Corral tried to make a sudden right turn but was unable to complete it because of his speed. He swerved into the curb to avoid hitting a truck waiting at the stop sign but lost control and struck the truck. Corral produced affidavit testimony asserting that he only hit the curb because his brakes were not working.

The City filed a motion for summary judgment asserting official immunity and immunity under the Texas Tort Claims Act's emergency exception. The trial court denied the motion, and the court of appeals affirmed. The court held that the City did not meet its initial burden to demonstrate good faith because Corral's affidavit did not assess the risk of harm in light of the condition of his vehicle's brakes and that Corral's alleged brake failure raises a fact issue as to whether he acted recklessly.

The City filed a petition for review, arguing that Corral engaged in risk assessment measures that precluded a fact issue for recklessness and that the unrefuted evidence offered by both parties establishes Corral's good faith. The City also argues that nothing in the record provides a reasonable inference that Corral's brakes were malfunctioning or that he was aware his brakes were malfunctioning before the incident. The Supreme Court granted the petition.

PROCEDURE—PRETRIAL

Discovery

In re Rashid, ___ S.W.3d ___, 2023 WL 3730320 (Tex. App.—San Antonio 2023), *argument granted on pet. for writ of mandamus* (Jan. 26, 2024) [[23-0414](#)]

The issue in this case is whether a defendant timely designated two experts who were initially designated by co-defendants that later settled.

A man passed away while receiving long-term acute care at Lifecare Hospital. His wife, Anna Marie Moreno, sued several healthcare providers for negligence, including Dr. Rashid.

The trial court issued a docket control order setting a trial date and discovery deadlines, including a deadline for designating expert witnesses. Rashid timely designated one expert, while reserving the right to call any other party's designated expert. Two of Rashid's co-defendants timely designated Dr. Garrett, a neurosurgeon, and Dr. Trevino, an economist. Moreno later settled her claims against those co-defendants.

Days before trial was set to begin, the parties received notice that the trial would be continued due to a scheduling error. The parties filed a Rule 11 Agreement extending the docket control order's deadlines relating to exchanging objections to deposition testimony, exhibit lists, motions in limine, and jury charges. The trial was eventually reset to January 9, 2023.

On December 8, 2022—months after the docket control order's deadline for defendants to designate testifying experts—Rashid supplemented his discovery responses to designate Dr. Trevino and Dr. Garrett. The trial court struck Rashid's supplemental designation on Moreno's motion and later denied his motion for rehearing. The court of appeals denied Rashid's mandamus petition.

Rashid sought mandamus relief in the Supreme Court. He argues that he properly designated Dr. Garrett and Dr. Trevino before the docket control order's deadline or that his supplementation was proper under the Texas Rules of Civil

Procedure.