



Case Summaries February 23, 2024

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OPINIONS

NEGLIGENCE

Unreasonably Dangerous Conditions

Union Pac. RR. Co. v. Prado, ___ S.W.3d ___, 2024 WL ___ (Tex. Feb. 23, 2024) [[22-0431](#)]

This case asks what makes a railroad crossing extra-hazardous or unreasonably dangerous.

Rolando Prado was killed by a Union Pacific train after he failed to stop at a railroad intersection located on a private road owned by Ezra Alderman Ranches. Prado's heirs sued the Ranch and Union Pacific for negligence, negligence per se, and gross negligence. They argued that various elements obstructed the view of the train and that the defendants breached their duties to warn of extra-hazardous and unreasonably dangerous conditions. The trial court granted summary judgment for the defendants. The court of appeals reversed, holding that fact issues existed as to whether the crossing was extra-hazardous and unreasonably dangerous.

The Supreme Court reversed and reinstated the trial court's summary judgments. The Court held that a reasonably prudent driver would stop at the posted stop sign at the intersection where he could see and hear an oncoming train. Evidence that most drivers do not stop at a particular stop sign does not establish that reasonably prudent drivers could not stop. Evidence of one similar accident over a nearly forty-year period was also no evidence that the crossing was extra-hazardous.

The Court next held that there was no evidence that the Ranch had actual knowledge that the crossing was unreasonably dangerous. There was no evidence that any Ranch employee knew that the previous fatality resulted from a train-vehicle collision or if the circumstances of that accident were similar. And assuming the Ranch had a duty to evaluate the dangerousness of the crossing, that would establish only that the Ranch should have known it was unreasonably dangerous, not that it actually knew.

JURISDICTION

Appellate

Sealy Emergency Room, L.L.C. v. Free Standing Emergency Room Managers of Am., L.L.C., ___ S.W.3d ___, 2024 WL ___ (Tex. Feb. 23, 2024) [[22-0459](#)]

This case raises questions of appellate jurisdiction and finality of judgments, including whether a trial court can sever unresolved claims following a grant of partial summary judgment, thereby creating an appealable final judgment, and the extent to which summary judgment against a party's claim resolves a related request for attorney's fees.

FERMA sued Sealy ER for breach of contract. Sealy ER counterclaimed and requested attorney's fees on those claims. FERMA obtained a grant of partial summary judgment on its counterclaims that did not separately dispose of Sealy ER's request for attorney's fees. FERMA moved to sever the claims disposed of on partial summary judgment. Sealy ER agreed with FERMA's proposal to sever but moved for reconsideration of the partial summary judgment ruling. The trial court granted the motion to sever and denied the motion for reconsideration. Sealy ER sought to appeal the trial court's judgment, but the court of appeals determined it lacked jurisdiction in light of the claims still pending in the original action and because the trial court's partial summary judgment order did not dispose of Sealy ER's request for attorney's fees on its counterclaims.

The Supreme Court reversed. If an order in a severed action disposes of all the remaining claims in that action or includes express finality language, then that order results in a final judgment regardless of whether claims remain pending in the original action. The Court further noted that although an erroneous severance does not affect finality or appellate jurisdiction, it may have consequences for any preclusion defenses. The Court also held that when a party seeks attorney's fees as a remedy for a claim under a prevailing-party standard, a summary judgment against the party on that claim automatically disposes of the fee request, and therefore a trial court's failure to expressly deny a request for attorney's fees in this context will not affect a judgment's finality for purposes of appeal.

INSURANCE

Policies/Coverage

In re Ill. Nat'l Ins. Co., ___ S.W.3d ___, 2024 WL ___ (Tex. Feb. 23, 2024) [[22-0872](#)]

This mandamus action concerns the no-direct-action rule and when a settlement agreement may be admissible as evidence to establish the amount of the insured's loss.

Relator GAMCO sued Cobalt for securities fraud. Cobalt's insurers denied coverage. Cobalt filed for bankruptcy, and GAMCO and Cobalt settled. The parties agreed that GAMCO would pursue the settlement amount solely through insurance proceeds. The federal bankruptcy and district courts approved the settlement.

GAMCO then intervened in a suit by Cobalt against its insurers. The trial court entered summary-judgment orders ruling that: (1) GAMCO was permitted to sue Cobalt's insurers, (2) Cobalt suffered insured losses, and (3) the settlement was enforceable against the insurers. The insurers sought mandamus relief, which the court of appeals denied.

The Supreme Court granted relief in part. It held that the settlement agreement legally obligated Cobalt to pay to GAMCO its insurance benefits. If Cobalt fails to fulfill its obligations, GAMCO's release will not become effective. And because the settlement

agreement establishes that Cobalt is in fact liable to GAMCO for any recoverable insurance benefits, Cobalt has suffered a covered loss and the no-direct-action rule does not prevent GAMCO from suing the insurers directly.

However, the settlement did not result from a fully adversarial proceeding and was therefore not binding against the insurers as to coverage and the amount of Cobalt's loss. Cobalt did not have a meaningful incentive to ensure that the settlement accurately reflected GAMCO's damages. Mandamus relief was warranted on this issue because the trial court's rulings prevent the insurers from challenging their liability for the full settlement amount.

STATUTE OF LIMITATIONS

Lien on Real Property

Moore v. Wells Fargo Bank, ___ S.W.3d ___, 2024 WL ___ (Tex. Feb. 23, 2024) [[23-0525](#)]

These certified questions concern whether a lender may reset the limitations period to foreclose on a property by rescinding its acceleration of a loan in the same notice that it reaccelerates the loan.

After the Moores failed to make payments on a loan secured by real property, the lenders accelerated the loan, starting the running of the four-year limitations period to foreclose on the property. Several months later, the lenders notified the Moores that they had rescinded the acceleration and, in the same notice, reaccelerated the loan. The lenders issued the Moores four similar notices over the next four years and never foreclosed on the property. After four years, the Moores sought a declaratory judgment that the limitations period had run. The federal district court granted the lenders' motion for summary judgment, holding that the lenders had rescinded the acceleration under Section 16.038 of the Civil Practice and Remedies Code. The Fifth Circuit certified the following questions of law to the Supreme Court: (1) May a lender simultaneously rescind a prior acceleration and re-accelerate a loan under Civil Practices and Remedies Code § 16.038? and (2) If a lender cannot simultaneously rescind a prior acceleration and re-accelerate a loan, does such an attempt void only the re-acceleration, or both the re-acceleration and the rescission?

The Court answered the first question "yes." The lenders' notices to the Moores complied with the requirements of Section 16.038 to be in writing and served via an appropriate method. The statute did not require that a notice of rescission be distinct or separate from other notices, nor did it establish a waiting period between rescission and reacceleration.