



Case Summaries May 3, 2024

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DECIDED CASES

JURISDICTION

Service of Process

Tex. State Univ. v. Tanner, ___ S.W.3d ___, 2024 WL ___ (Tex. May 3, 2024) [[22-0291](#)]

The main issue in this case is whether diligence in effecting service of process is a “statutory prerequisite to suit” under Section 311.034 of the Government Code and, thus, a jurisdictional requirement in a suit brought against a governmental entity.

In 2014, Hannah Tanner was injured after being thrown from a golf cart driven by her friend, Dakota Scott, a Texas State University employee. Shortly before the two-year statute of limitations ran in 2016, Tanner filed a lawsuit under the Texas Tort Claims Act against the University, Scott, and another defendant. Tanner did not serve the University until 2020, three-and-a-half years after limitations had run. The University filed a plea to the jurisdiction, alleging that Tanner failed to use diligence in effecting service on the University and arguing that Tanner’s untimely service meant that she had failed to satisfy a statutory prerequisite to suit under Section 311.034. The trial court granted the plea, but the court of appeals reversed.

The Supreme Court reversed and remanded. The Court held that the statute of limitations, including the requirement of timely service, is jurisdictional in suits against governmental entities and that the University’s plea to the jurisdiction was the proper vehicle to address Tanner’s alleged failure to exercise diligence. The Court reasoned that diligence is a component of timely service and pointed to its precedent holding that if service is diligently effected after limitations has expired, the date of service will relate back to the date of filing. The Court also noted that the statute of limitations for personal injuries requires a person to “bring suit” within two years of the date the cause of action accrues, and it cited precedent establishing that “bringing suit” includes both filing the petition and achieving service of process.

The Court went on to hold that Tanner could not establish diligence in service on the University. But rather than render a judgment of dismissal, the court remanded to the court of appeals to address in the first instance Tanner’s alternative legal theory that under Section 101.106(f) of the Tort Claims Act, her service on Scott satisfied her obligation to serve the University.

ADMINISTRATIVE LAW

Medicaid Eligibility

Tex. Health & Hum. Servs. Comm'n v. Est. of Burt, ___ S.W.3d ___, 2024 WL ___ (Tex. May 3, 2024) [[22-0437](#)]

The issue in this case is whether an interest in real property purchased after a Medicaid applicant enters a skilled-nursing facility qualifies as the applicant's "home," excluding it from the calculation that determines Medicaid eligibility.

The Burts lived in a house in Cleburne for many years and then sold it to their adult daughter and moved into a rental property. About seven years later, the Burts moved into a skilled-nursing facility. At that time, their cash and other resources exceeded the eligibility threshold for Medicaid assistance. Later that month, the Burts purchased a one-half interest in the Cleburne house from their daughter, reducing their cash assets below the eligibility threshold. They then applied for Medicaid. The Burts passed away, and the Health and Human Services Commission denied their application after determining that the Burts' partial ownership interest in the Cleburne house was not their home and therefore was not excluded from the calculation of the Burts' resources. After exhausting its administrative remedies, the Burts' estate sought judicial review. The trial court reversed, and the court of appeals affirmed the trial court's judgment. The court of appeals held that whether a property interest qualifies as an excludable "home" turns on the property owner's subjective intent and that the Burts considered the Cleburne house to be their home.

The Supreme Court reversed and rendered judgment for the Commission. In an opinion authored by Justice Bland, the Court held that under federal law, an applicant's "home" is the residence that the applicant principally occupies before the claim for Medicaid assistance arises, coupled with the intent to return there in the future. An ownership interest in property acquired after the claim for Medicaid assistance arises, using resources that are otherwise available to pay for skilled nursing care, is insufficient. The Court observed that federal and state regulations provide that the home is the applicant's "principal place of residence," which coheres with the federal statute and likewise requires residence and physical occupation before the claim for assistance arises.

Chief Justice Hecht dissented. He would have held that an applicant's home turns on the applicant's subjective intent to return to the house, even if the applicant had not owned or occupied it before admission to skilled-nursing care, and that the Burts satisfied that standard.

PROCEDURE—TRIAL AND POST-TRIAL

Jury Instructions and Questions

Oscar Renda Contracting v. Bruce, ___ S.W.3d ___, 2024 WL ___ (Tex. May 3, 2024) [[22-0889](#)]

This case raises procedural questions arising from an award of exemplary damages in a verdict signed by only ten jurors.

As part of a flood-mitigation project undertaken by the City of El Paso, Renda Contracting installed a pipeline from Interstate 10 to the Rio Grande river. Nearby homeowners sued Renda Contracting, alleging that vibration and soil shifting from the construction caused damage to their homes. The jury found gross negligence and awarded \$825,000 in exemplary damages, but the verdict certificate and subsequent jury poll indicated that only ten of twelve jurors agreed with the verdict. The jury

charge, which was not objected to, failed to instruct the jury that it must be unanimous in awarding exemplary damages, as required by Section 41.003(e) of the Civil Practice and Remedies Code.

When the homeowners moved for entry of a judgment that included exemplary damages, Renda Contracting objected on the basis that the verdict was not unanimous. The trial court sustained the objection and entered judgment on the jury's verdict without an exemplary damages award.

A split court of appeals reversed. The majority held that unanimity as to exemplary damages could be implied despite the verdict certificate's demonstrating a divided verdict because the disagreement could be on an answer to a different question. The majority further held that Renda Contracting had the burden to prove that the verdict was not unanimous and that it had waived any error in awarding exemplary damages by failing to object to the jury charge. The dissenting justice would have held that the homeowners had the burden to secure a unanimous verdict.

The Supreme Court reinstated the trial court's judgment. The Court explained that Section 41.003 places the burden of proof on a claimant seeking exemplary damages to secure a unanimous verdict and states that this burden may not be shifted. Thus, it was the homeowners' burden to secure a unanimous verdict and to seek confirmation as to unanimity for the amount of exemplary damages after the jury returned a divided verdict. The Court also held that Renda Contracting's objection to the judgment, which the trial court had sustained, was sufficient to preserve the issue for appeal.

EMPLOYMENT LAW

Whistleblower Actions

City of Denton v. Grim, ___ S.W.3d ___, 2024 WL ___ (Tex. May 3, 2024) [[22-1023](#)]

In this case, the Court addressed the scope of the Texas Whistleblower Act. Plaintiffs Grim and Maynard were employees of the City of Denton. They sued the city under the Whistleblower Act after they were terminated. They alleged they were fired for reporting that city council member Briggs had violated the Public Information Act and the Open Meetings Act by meeting at her home with a reporter and disclosing confidential vendor information. The trial court rendered judgment on the jury's verdict for plaintiffs. A divided court of appeals affirmed.

The Supreme Court reversed and rendered judgment for the city. The Act only applies to reports of a violation of law "by the employing governmental entity or another public employee." Briggs was not "another public employee" because Denton's city council members are not paid for their service. The case thus turned on whether Briggs' actions could be imputed to the city as the plaintiffs' "employing governmental entity." The Court answered that question no. The evidence showed that Briggs had acted alone and was not acting on behalf of the city or the city council. Under Texas law, a city council acts as a body through a duly called meeting. Under principles of agency law, a city might authorize a single city council member to act on the city's behalf, but there was no evidence here to support such a theory. It was undisputed that Briggs acted entirely on her own, without the knowledge of other council members or employees, and that she did not purport to be acting for the city. On the contrary, Briggs opposed the city council's support for a new power plant and this opposition motivated her communications with the reporter.