



Case Summaries June 14, 2024

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DECIDED CASES

REAL PROPERTY

Implied Reciprocal Negative Easements

River Plantation Cmty. Improvement Ass'n v. River Plantation Props. LLC, ___ S.W.3d ___, 2024 WL ___ (Tex. June 14, 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 subdivision contains hundreds of homes and a golf course. The subdivision's restrictive covenants provide that certain "golf course lots" are burdened by restrictions that, among other things, require structures to be set back from the golf course. The developer included graphic depictions of the golf course in some of the plat maps that it filed for the subdivision, which was often marketed as a golf course community. Forty years later, the subsequent owner of the golf course, RP Properties, sought to sell the property to a new owner who intended to stop maintaining it as a golf course.

The subdivision's HOA sued RP Properties to establish the existence of an implied reciprocal negative easement burdening the golf course, requiring that it be used as a golf course in perpetuity. RP Properties sold a portion of the property to Preisler, who was added as a defendant. The trial court granted the defendants' motions for summary judgment, declaring that the golf course property is not burdened by the claimed easement. The court of appeals affirmed.

The Supreme Court affirmed, holding that the implied reciprocal negative easement doctrine does not apply. This kind of easement is an exception to the general requirement that restraints on an owner's use of its land must be express. It applies when an owner subdivides its property into lots and sells a substantial number of those lots with restrictive covenants designed to further a common development scheme, such as a residential-use restriction. In that instance, the lots retained by the owner or sold without the express restriction to a grantee with notice of the restrictions in the other deeds will be subject to the same restrictions. Here, the HOA did not claim that the golf course property should be impliedly burdened by similar restrictions to the other lots in the subdivision; rather, it claimed that the property should be burdened by an entirely different restriction. The Court declined to consider whether a broader, unpleaded servitude-by-estoppel theory could be applied or would entitle the HOA to relief.

GOVERNMENTAL IMMUNITY

Texas Labor Code

Tex. Tech Univ. Sys. v. Martinez, ___ S.W.3d ___, 2024 WL ___ (Tex. June 14, 2024) [[22-0843](#)]

The issue in this case is whether the plaintiff's petition alleged sufficient facts to demonstrate a valid employment-discrimination claim against certain university entities and thus establish a waiver of immunity.

Pureza "Didit" Martinez was terminated at age 72 from her position at the Texas Tech University Health Sciences Center. She sued the Center for age discrimination under the Texas Labor Code. Her petition also named as defendants Texas Tech University, the TTU System, and the TTU System's Board of Regents.

The University, the System, and the Board jointly filed a plea to the jurisdiction. They argued that only the Center, Martinez's direct employer, could be liable for her employment-discrimination claim. Martinez responded that she alleged sufficient facts to impose liability under the Labor Code against the other defendants. The trial court denied the plea. The court of appeals reversed the trial court's order as to the University, though it allowed Martinez to replead. The court affirmed as to the System and the Board, concluding that Martinez's allegations were sufficient. The System and the Board petitioned the Supreme Court for review.

The Court reversed. In an opinion by Justice Huddle, the Court first noted that to affirmatively demonstrate a valid employment-discrimination claim against defendants other than her direct employer, Martinez needed to allege sufficient facts showing that those defendants controlled access to her employment opportunities and that they denied or interfered with that access based on unlawful criteria. While no one disputes that Martinez sufficiently alleged an employment-discrimination claim against the Center, the Court held that Martinez's factual allegations and the exhibits attached to and incorporated in her petition fail to demonstrate she has a valid claim against the System or the Board. The Court rejected the court of appeals' gloss on Martinez's allegations as inconsistent with both the standard for reviewing such pleadings and the legal standard for imposing employer liability. Because Martinez's petition does not affirmatively demonstrate that she cannot cure the jurisdictional defect, the Court remanded to the trial court to allow her to replead.

Justice Young filed a dissenting opinion. He would have held that Martinez's allegations are sufficient at this stage of the litigation, particularly under the Court's duty to liberally construe her pleading in a way that reflects her intent.

CONTRACTS

Interpretation

Bd. of Regents of the Univ. of Tex. Sys. v. IDEXX Labs., Inc., ___ S.W.3d ___, 2024 WL ___ (Tex. June 14, 2024) [[22-0844](#)]

The issue is whether royalty provisions in a licensing agreement are ambiguous.

IDEXX Labs develops and sells veterinary diagnostic tests to detect disease in dogs. To improve its products that detect heartworm, Labs obtained a license for a Lyme disease peptide patented by the University of Texas. Under the license agreement, the amount of the royalty owed to the University depends on how a test for Lyme disease is packaged with other tests. One provision grants the University a 1% royalty for products sold to detect Lyme and "one other veterinary diagnostic test." Another provision grants a 2.5% royalty on the sales of products that detect Lyme and "one or

more” tests “to detect tickborne diseases.”

Each of the Labs products at issue test for heartworm, Lyme disease, and at least one other tickborne disease. For years, Labs paid the University royalties of 1%. The University sued, claiming it is owed royalties of 2.5%. The trial court granted the University’s motion for partial summary judgment on the applicable royalty rate. The court of appeals reversed, concluding that the royalty provisions are ambiguous. The court characterized the parties’ competing interpretations as “equally reasonable” and reasoned that when the provisions are considered separately and in the abstract, each could logically be read to apply.

The Supreme Court reversed, holding that the provisions are not ambiguous. The Court emphasized that contractual text is not ambiguous merely because it is unclear or the parties disagree about how to interpret it. A reviewing court must read the text in context and in light of the circumstances that produced it to ascertain whether it is genuinely uncertain or whether one reasonable meaning clearly emerges. After applying that analysis, the Court concluded that the provisions are most reasonably interpreted to require royalties paid at the higher, 2.5% rate. The Court remanded the case to the court of appeals to address remaining issues, including defenses raised by Labs.

NEGLIGENCE

Premises Liability

Pay & Save, Inc. v. Canales, ___ S.W.3d ___, 2024 WL ___ (Tex. June 14, 2024) (per curiam) [[22-0953](#)]

The issue is whether a wooden pallet used to transport and display watermelons is an unreasonably dangerous condition.

Grocery stores use wooden pallets to transport and display whole watermelons. While shopping at a Pay and Save store, Roel Canales’ steel-toed boot became stuck in a pallet’s open side. When Canales tried to walk away, he tripped, fell, and broke his elbow. Canales sued the store for premises liability and gross negligence. After a jury trial, the trial court signed a judgment awarding Canales over \$6 million.

The court of appeals reversed. The court concluded that the evidence is legally, but not factually, sufficient to support a finding of premises liability, and it remanded for a new trial on that claim. The court rendered judgment for Pay and Save on gross negligence because Canales had not presented clear and convincing evidence that the pallet created an extreme degree of risk. Both parties filed petitions for review.

Without hearing oral argument, the Court reversed and rendered judgment for Pay and Save on premises liability. One element of an invitee–plaintiff’s claim is the existence of an unreasonably dangerous condition on the premises. Pay and Save argued that the wooden pallet is not unreasonably dangerous as a matter of law, and the Court agreed. The Court has consistently held that common or innocuous hazards are not unreasonably dangerous as a matter of law. To raise a fact issue on whether a common condition is unreasonably dangerous, a plaintiff must show more than a mere possibility of harm; there must be sufficient evidence of prior accidents, injuries, complaints, reports, regulatory noncompliance, or other circumstances that transformed the condition into one measurably more likely to cause injury. There was a complete absence of such evidence here.

The Court went on to affirm the court of appeals’ judgment on gross negligence because the absence of legally sufficient evidence for premises liability also disposed of

the gross-negligence claim.

ADMINISTRATIVE LAW

Public Utility Commission

Pub. Util. Comm'n of Tex. v. Luminant Energy Co., ___ S.W.3d ___, 2024 WL ___ (Tex. June 14, 2024) [[23-0231](#)]

The main issue is whether orders issued by the Public Utility Commission during Winter Storm Uri exceed the Commission's authority under Chapter 39 of the Public Utility Regulatory Act.

The 2021 storm's record low temperatures caused almost 50% of Texas' power-generation equipment to freeze and go offline. The resulting imbalance in the supply and demand of electricity put the state's electrical grid on the brink of collapse. The wholesale price of electricity is determined by a complex mathematical formula administered by the Electric Reliability Council of Texas. When mandatory blackouts failed to return the grid to equilibrium, the Commission determined that its pricing formula was sending inaccurate signals to market participants about the state's urgent need for additional power. In two orders, the Commission directed ERCOT to adjust the formula so that electricity would trade at the regulatory cap of \$9,000/MWh instead of at the lower price the formula was producing.

Luminant Energy Co. challenged the orders in a statutory suit for judicial review against the Commission in the court of appeals. Chapter 39 states that the Commission "shall" use "competitive rather than regulatory methods to achieve the goals of [the] chapter to the greatest extent feasible." The court of appeals agreed with Luminant that the orders violate this charge by directing ERCOT to set a single price for electricity.

The Supreme Court reversed and rendered judgment affirming the orders. After rejecting the Commission's jurisdictional challenges to Luminant's suit, the Court turned to the merits. Luminant's challenge rested on Chapter 39's express preference for competition over regulation. But the Court pointed to other language in Chapter 39 commanding the Commission and ERCOT to ensure the reliability and adequacy of the electrical grid and acknowledging that the energy market will not be completely unregulated. After applying the whole-text canon of statutory construction, the Court held that Luminant had not overcome the presumption that agency rules are valid. The Court went on to hold that the orders substantially comply with the Administrative Procedure Act's emergency rulemaking procedures.

EMPLOYMENT LAW

Sexual Harassment

Fossil Grp., Inc. v. Harris, ___ S.W.3d ___, 2024 WL ___ (Tex. June 14, 2024) [[23-0376](#)]

The issue in this workplace sexual-harassment case is whether the summary-judgment record bears any evidence that a company knew or should have known its employee was being harassed and failed to take prompt remedial action.

Shortly after Fossil Group hired Nicole Harris as a sales associate, the assistant store manager sent her sexually explicit content through social media. Harris told some colleagues about the conduct but did not tell anyone in management. After a brief term of employment, Harris voluntarily resigned. A week later, her store manager learned of the harassment from another source, met with her, and immediately reported it to human resources. Fossil then fired the assistant store manager at the end of that month.

Harris sued Fossil for a hostile work environment, alleging that she had reported the harassment by an email through Fossil's anonymous reporting system days before she resigned. Fossil moved for summary judgment, challenging the email's existence with a report from the system showing that it never received the complaint and asserting that its subsequent actions were prompt and remedial. The trial court granted summary judgment. But the court of appeals reversed, holding that Harris's testimony regarding her email is some evidence Fossil knew of the harassment without taking remedial action.

The Supreme Court reversed the court of appeals' judgment and reinstated the trial court's take-nothing judgment. The Court held that (1) Fossil's actions following the date of the email, even if taken in response to learning of the harassment from another source, were sufficiently prompt and remedial as a matter of law to avoid liability, and (2) Harris did not adduce evidence that Fossil knew or should have known of the harassment before that date.

Justice Blacklock filed a concurring opinion, emphasizing that federal Title VII sexual-harassment authorities do not play any formal role beyond what the Court has already recognized in the interpretation and application of Texas statutory law on sexual harassment.

Justice Young also filed a concurring opinion, concluding that Harris's testimony regarding her email at most raised a presumption that Fossil was notified of her harassment, which Fossil rebutted through its generated report that it did not receive her complaint through the anonymous reporting system.

ADMINISTRATIVE LAW

Public Utility Commission

Pub. Util. Comm'n of Tex. v. RWE Renewables Ams., LLC, ___ S.W.3d ___, 2024 WL ___ (Tex. June 14, 2024) [[23-0555](#)]

The central issues in this case are: (1) whether the Public Utility Commission's order approving a protocol adopted by the Electric Reliability Council of Texas regarding electricity scarcity-pricing constitutes a "competition rule[] adopted by the commission" under Section 39.001(e) of the Public Utility Regulatory Act, which may be directly reviewed by the court of appeals; and (2) if so, whether the Commission exceeded its authority under PURA or violated the Administrative Procedure Act's mandatory rulemaking procedures in issuing the approval order.

In 2021, Winter Storm Uri strained Texas's electrical power grid to an unprecedented degree. Electricity suppliers were unable to produce enough electricity to meet market-wide demand during the storm. Consequently, regulators struggled to maintain critical grid conditions and ultimately resorted to mandating lengthy and widespread blackouts to prevent catastrophic damage to the state's power grid. Simultaneously, the Commission issued emergency orders administratively setting the wholesale price of electricity to the regulatory maximum in an effort to incentivize generators to rapidly resume production.

In the storm's aftermath, ERCOT adopted, and the Commission approved, a formal protocol setting electricity prices at the regulatory ceiling under certain extreme emergency conditions. RWE, a market participant, appealed the Commission's approval order directly to the Third Court of Appeals. The court held the order was invalid, determining that (1) the order constituted a competition rule under PURA and a rule under the APA; (2) by setting prices, the rule was anti-competitive and so exceeded the

Commission’s statutory authority under PURA; and (3) the Commission implemented the rule without complying with the APA’s rulemaking procedures.

The Supreme Court reversed, holding that the Commission’s approval order is not a “competition rule[] adopted by the commission” subject to the judicial-review process for such rules. The Court reasoned that PURA envisions a separate path for ERCOT-adopted protocols, which are subject to a lengthy and detailed process before being implemented. The statutory requirement that the Commission approve those adopted protocols before they may take effect does not transform Commission *approval orders* into Commission *rules* eligible for direct review by a court of appeals. Hence, the court of appeals lacked jurisdiction over the proceeding. Accordingly, the Supreme Court vacated the court of appeals’ judgment and dismissed the case for lack of jurisdiction.

PROCEDURE—APPELLATE

Temporary Orders

In re State, ___ S.W.3d ___, 2024 WL ___ (Tex. June 14, 2024) [[24-0325](#)]

In this mandamus proceeding arising from a guaranteed-income program, the Court addressed the standard for deciding a motion for temporary relief.

Under Harris County’s Uplift Harris program, residents who meet eligibility requirements can apply to receive monthly payments of \$500 for 18 months. The State sued to block the program, claiming that it violates Article III, Section 52(a) of the Texas Constitution—one of the Gift Clauses. The trial court denied the State’s request for a temporary injunction. On interlocutory appeal, the court of appeals denied the State’s request for an order staying Uplift Harris payments under Texas Rule of Appellate Procedure 29.3. The State filed a mandamus petition in the Supreme Court challenging the court of appeals’ Rule 29.3 ruling and separately filed a motion for temporary relief under Texas Rule of Appellate Procedure 52.10.

The Court addressed the request for temporary relief under 52.10. It first observed that while “preserving the status quo” remains a valid consideration in a request for temporary relief, identifying the status quo is not always a straightforward undertaking. Rule 29.3’s analogous standard of an order “necessary to preserve the parties’ rights” pending appeal is more helpful, the Court said. Then, exercising its equitable authority, the Court identified two factors important to deciding the Rule 52.10 motion pending before it. The first is the merits; an appellate court asked to issue temporary relief should make a preliminary inquiry into the likely merits of the parties’ legal positions. The second is the injury that either party or the public would suffer if relief is granted or denied. Other equitable considerations may also be relevant depending on the circumstances, the Court noted.

Applying those factors here, the Court concluded that the State’s motion for temporary relief should be granted. The State has raised serious doubt about the constitutionality of Uplift Harris. The Court’s Gift Clause precedents require that the governmental entity issuing the funds retain public control over them. The record here indicates that Uplift Harris advertised a “no strings attached” stipend, and so it appears there will be no public control of the funds after they are disbursed. Turning to the balance of harms, the Court pointed to precedent recognizing that ultra vires conduct by local officials automatically results in harm to the State, and it observed that once the funds are disbursed to individuals, they cannot feasibly be recouped.

The Court ordered Harris County to refrain from distributing funds under the program until further order of the Court and directed the court of appeals to proceed to decide the temporary-injunction appeal pending before it. The State’s mandamus petition remains pending before the Court.

GRANTED CASES

ADMINISTRATIVE LAW

Commission on Environmental Quality

Tex. Comm’n on Env’t Quality v. Save Our Springs All., Inc., 668 S.W.3d 710 (Tex. App.—El Paso 2022), *pet. granted* (June 14, 2024) [[23-0282](#)]

The issue is whether a Texas Commission on Environmental Quality order approving a permit to discharge wastewater into a creek violates state and federal law governing water-quality standards.

The City of Dripping Springs applied to TCEQ for a permit to discharge wastewater into Onion Creek, which is home to two endangered species of salamander. The creek is considered a “high quality” waterbody, meaning that the quality of its waters exceeds the standards required to maintain their existing uses, which include recreation, aquatic life, aquifer protection, and domestic water supply. Under state and federal law, an application to discharge wastewater into a high-quality waterbody must satisfy two tiers of review. Under Tier 1 review, no discharge is allowed that would affect the maintenance of existing uses and water quality sufficient to protect those uses. Under Tier 2 review, no discharge is permitted that would degrade or lower the quality of high-quality waters without a showing that the degradation is necessary to accommodate an important economic or social development. And even if this showing is made, any permissible degradation must still not affect a waterbody’s existing uses.

After contested-case proceedings in the agency and the State Office of Administrative Hearings, TCEQ issued a final order approving the permit. Nonprofit conservation group Save Our Springs Alliance filed suit for judicial review of the order under the Administrative Procedure Act, arguing that TCEQ misapplied the standards for Tier 1 and Tier 2 review and failed to demonstrate reasoned decision-making in its order.

Agreeing with Save Our Springs, the trial court reversed the order as unsupported by law or substantial evidence. A split panel of the court of appeals reversed the trial court’s judgment and affirmed TCEQ’s final order issuing the permit. The Supreme Court granted Save Our Springs’ petition for review.

FAMILY LAW

Divorce Decrees

In re Marriage of Benavides, ___ S.W.3d ___, 2023 WL 1806844 (Tex. App.—San Antonio 2023), *pet. granted* (June 14, 2024) [[23-0463](#)]

The issues in this case are (1) whether, and in what circumstances, a guardian may petition for divorce on behalf of a ward; and (2) the effect of one spouse’s death on the appeal from a divorce decree.

Carlos and Leticia Benavides married in 2005. Carlos was later placed under a guardianship. Carlos’s guardian—his adult daughter, Linda—separated Carlos from Leticia.

In 2018, Linda filed a petition for divorce on Carlos's behalf. Linda moved for partial summary judgment that the divorce should be granted because Carlos and Leticia lived apart for more than three years—a no-fault ground for divorce under the Family Code. The trial court granted Linda's motion and rendered a final divorce decree. Leticia appealed, but while her appeal was pending, Carlos passed away. The court of appeals concluded that Carlos's death mooted Leticia's appeal of the partial summary judgment granting the divorce, but it otherwise affirmed the divorce decree and its disposition of the couple's property.

Leticia petitioned for review, arguing that her challenge to the divorce decree is not moot, that a guardian cannot petition for divorce on behalf of a ward, and that a living-apart divorce requires that at least one of the spouses voluntarily separated. The Supreme Court granted the petition for review.

CONSTITUTIONAL LAW

Separation of Powers

Comm'n for Law. Discipline v. Webster, 676 S.W.3d 687 (Tex. App.—El Paso 2023), *pet. granted* (June 14, 2024) [[23-0694](#)]

The issue in this case is whether sovereign immunity or the separation of powers doctrine protects government lawyers from professional discipline procedures arising from alleged misrepresentations made to a court.

First Assistant Attorney General Webster signed the State's briefs in *Texas v. Pennsylvania*, 141 S. Ct. 1230 (2020), in which Texas challenged the election procedures of other states in the 2020 election. The Supreme Court of the United States held that Texas failed to raise a cognizable interest in other states' election procedures and dismissed the case. These proceedings arise from a disciplinary complaint against Webster that alleges he was dishonest in making assertions in the *Pennsylvania* briefs.

The trial court granted Webster's plea to the jurisdiction and dismissed the disciplinary action on grounds of separation of powers. The court concluded that the action impermissibly sought to limit the Attorney General's broad power to file lawsuits on behalf of the State. The court of appeals reversed, holding that neither separation of powers nor sovereign immunity deprived the trial court of jurisdiction. The court reasoned that sovereign immunity does not protect Webster's personal license to practice law and that the Attorney General, like all attorneys, must follow the ethical rules of professional conduct.

Webster filed a petition for review, invoking sovereign immunity and contending that the disciplinary action improperly influences the Attorney General's broad discretion in filing suits and weighing evidence when deciding to file suits. The Supreme Court granted review.

INSURANCE

Insurance Code Liability

In re State Farm Mut. Auto. Ins. Co., ___ S.W.3d ___, 2023 WL 5604145 (Tex. App.—Dallas 2023), and ___ S.W.3d ___, 2023 WL 5604142 (Tex. App.—Dallas 2023), *argument granted on pet. for writ of mandamus* (June 14, 2024) [[23-0755](#)]

The issue in this case is whether the trial court must sever and abate Insurance Code claims when a motorist sues her insurance company for underinsured motorist benefits and violations of the Insurance Code.

Mara Lindsey alleges that she was injured in an automobile accident. Lindsey

settled with the driver of the other vehicle for his insurance policy limit and then sought underinsured motorist benefits from State Farm. State Farm, through its claims adjuster, offered Lindsey far less than she claims she is entitled to under her policy. Lindsey sued State Farm and the claims adjuster, seeking a declaratory judgment that she is entitled to additional benefits and for violations of the Insurance Code. State Farm moved to sever and abate the Insurance Code claims until the underlying declaratory judgment action determines the amount of liability and damages caused by the allegedly underinsured motorist. Lindsey opposed the motion, arguing that bifurcation is the proper procedure for underinsured motorist cases, and discovery on the extracontractual claims is permitted against the insurer before the bifurcated trial. The trial court denied State Farm's motion and the court of appeals denied mandamus relief.

State Farm petitioned for a writ of mandamus from the Supreme Court. State Farm argues that the Insurance Code claims should have been severed and abated and that Lindsey is not entitled to discovery on those claims until she establishes that she is entitled to underinsured motorist benefits because the liability and damages caused by the underinsured driver exceeded the amount of the third party's policy limits. State Farm also argues that because the claims should have been abated, the trial court abused its discretion in refusing to quash the depositions of State Farm's corporate representative and claims adjuster, who lack personal knowledge about the facts of the underlying accident. Finally, State Farm argues that the trial court abused its discretion by limiting State Farm's access to Lindsey's medical records when her medical condition is at issue. The Court granted argument on the petition for writ of mandamus.

JURISDICTION

Personal Jurisdiction

BRP-Rotax GmbH & Co. KG v. Shaik, ___ S.W.3d ___, 2023 WL 4992606 (Tex. App.—Dallas 2023), *pet. granted* (June 14, 2024) [23-0756]

The issue in this case is whether the trial court had specific jurisdiction over a foreign manufacturer for claims based on an allegedly defective product.

Sheema Shaik suffered serious injuries when a plane she was flying crashed at an airport in Texas. She and her husband sued BRP-Rotax, the plane's engine manufacturer, asserting claims for strict products liability, negligence, and gross negligence. Rotax is based in Austria and sells its engines to international distributors who then sell the engines worldwide. The engine in this case was sold by Rotax under a distribution agreement to a distributor in the Bahamas whose designated territory included the United States.

The trial court denied Rotax's special appearance contesting personal jurisdiction. The court of appeals affirmed. Applying the stream-of-commerce-plus test, the court held that Rotax purposefully availed itself of the Texas market and that Shaik's claims arose from or related to those contacts with Texas.

Rotax petitioned this Court for review. It argues that all relevant contacts with Texas were initiated by Rotax's distributor, which Rotax had no control over or ownership interest in. In response, Shaik argues that Rotax's distribution agreement indicated an intent to serve the U.S. market, including Texas, and that Rotax maintained a website that allowed Texas customers to register their engines and identified a Texas-based repair center. The Court granted the petition for review.