



Case Summaries June 28, 2024

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

DECIDED CASES

PROCEDURE—TRIAL AND POST-TRIAL

Jury Instructions and Questions

Horton v. Kan. City S. Ry. Co., ___ S.W.3d ___, 2024 WL ___ (Tex. June 28, 2024) [[21-0769](#)]

This case raises questions of federal preemption, evidentiary sufficiency, and charge error.

Ladonna Sue Rigsby was killed by a Kansas City Southern Railroad Company train while she was driving across a railroad crossing. Her children (Horton) sued the Railroad, alleging two theories of liability: (1) the Railroad failed to correct a raised hump at the crossing; and (2) it failed to maintain a yield sign at the crossing. Both theories were submitted to the jury in one liability question. The jury found both the Railroad and Rigsby negligent, and the trial court awarded Horton damages for the Railroad's negligence.

The court of appeals reversed, holding that the federal Interstate Commerce Commission Termination Act preempted Horton's humped-crossing theory and that the submission of both theories in a single liability question was harmful error. The court remanded for a new trial on the yield-sign theory alone.

The Supreme Court granted both sides' petitions for review. In a June 2023 opinion, the Court affirmed the court of appeals' judgment, but on different grounds. It held that federal law does not preempt the humped-crossing claim, but no evidence supports the jury's finding that the absence of a yield sign proximately caused the accident. The Court then concluded that the trial court's use of a broad-form question to submit the negligence claim was harmful error.

Both parties filed motions for rehearing. The Court denied the Railroad's motion and granted Horton's, which challenged the holding that the submission of the broad-form question was harmful error. The Court withdrew its original opinion. In a new opinion by Justice Boyd, the Court maintained its holdings that the humped-crossing claim is not preempted and that no evidence supports the yield-sign theory. But in the new opinion, the Court concluded that the submission of the broad-form question was not harmful error.

The Court held that *Casteel's* presumed-harm rule does not apply when a theory or allegation is "invalid" because it lacks legally sufficient evidentiary support, as was the case here. The Court then reviewed the entire record and concluded that the broad-

form question did not probably cause the rendition of an improper judgment. It therefore reversed the court of appeals' judgment and reinstated the trial court's judgment in Horton's favor.

Justice Busby filed a concurring opinion, urging the Supreme Court of the United States to reconsider its holding in *Hines v. Davidowitz*, 312 U.S. 52, 68 (1941), on the basis that implied-obstacle preemption is inconsistent with the federal Constitution.

Justice Young, joined by Justice Blacklock, dissented to the Court's judgment. He would apply *Casteel* whenever there is the risk that the jury relied on any theory that turns out to be legally invalid.

OIL AND GAS

Pooling

Ammonite Oil & Gas Corp. v. R.R. Comm'n of Tex., ___ S.W.3d ___, 2024 WL ___ (June 28, 2024) [[21-1035](#)]

This case arises from the Railroad Commission's rejection of forced-pooling applications under the Mineral Interest Pooling Act.

Ammonite leases the State-owned minerals under a tract of the Frio River. EOG leases the minerals on the land next to the river on both sides. The leases lie in a field in which minerals can only be extracted through horizontal drilling. Because the river is narrow and winding, a horizontal well cannot be drilled entirely within the boundaries of Ammonite's riverbed lease.

While EOG was drilling its wells, Ammonite proposed that the parties pool their minerals together. EOG rejected the offers because its wells would not reach the riverbed; thus, Ammonite was proposing to share in EOG's production without contributing to it.

Ammonite filed MIPA applications in the Commission. By then, EOG's wells were completed and it was undisputed they were not draining the riverbed. The Commission "dismissed" the applications because it concluded that Ammonite's voluntary-pooling offers were not "fair and reasonable." The Commission alternatively "denied" the applications because Ammonite failed to prove that forced pooling is necessary to "prevent waste." The lower courts affirmed the Commission's final order.

The Supreme Court also affirmed but for different reasons than the court of appeals gave. In an opinion by Chief Justice Hecht, the Court repudiated the intermediate court's reasoning that the Commission's dismissal is justified by Ammonite's offering a "risk penalty" of only 10%. The Court pointed out that Ammonite had agreed to a higher penalty if prescribed by the Commission, and there is no statutory requirement that a voluntary-pooling offer include a risk-penalty term.

The Court held that both of the Commission's dispositions are reasonable on the record. The Court reasoned that Ammonite's offers were based solely on EOG's wells as permitted and did not suggest extending them, EOG's wells do not drain the riverbed, and Ammonite did not present any evidence to the Commission on the feasibility of reworking them. The Court explained that even if Ammonite's minerals are stranded, forced pooling could not, at the time of the hearing, have *prevented* waste because the wells were already completed.

Justice Young dissented. He opined that Ammonite's offers were fair and reasonable as a matter of law and, because Ammonite's minerals are stranded, that forced pooling might be necessary to prevent waste. He would have reversed and remanded either to the court of appeals or to the Commission for further proceedings.

PRODUCTS LIABILITY

Design Defects

Am. Honda Motor Co. v. Milburn, ___ S.W.3d ___, 2024 WL ___ (Tex. June 28, 2024) [[21-1097](#)]

The main issue presented is whether Texas Civil Practice and Remedies Code Section 82.008's rebuttable presumption of nonliability shields Honda from liability on a design-defect claim.

Honda designed a ceiling-mounted, detachable-anchor seatbelt system for the third-row middle seat of the 2011 Honda Odyssey. The detachable system allowed the seat to fold flat for additional cargo space. The Federal Motor Vehicle Safety Standards promulgated by the National Highway Traffic Safety Administration authorize the detachable system used in the Odyssey.

In November 2015, an Uber driver picked up Milburn and her friends in a 2011 Odyssey. Milburn sat in the third-row middle seat and buckled her seatbelt, but because the anchor was detached at the time, her lap remained unbelted. An accident caused the van to overturn, and Milburn suffered severe cervical injuries. Milburn sued several defendants and settled with all except Honda. Milburn alleged that the seatbelt system was defectively designed and confusing, creating an unreasonable risk of misuse. The jury found that Honda negligently designed the system, Honda was entitled to the Section 82.008 presumption of nonliability, and Milburn rebutted the presumption. The trial court rendered judgment for Milburn, and the court of appeals affirmed.

The Supreme Court reversed and rendered judgment for Honda. In an opinion by Justice Lehrmann, the Court first held that the statutory presumption applies because the system's design complied with mandatory federal safety standards governing the product risk that allegedly caused the harm. Next, the Court addressed the basis for rebutting the presumption, which requires a showing that the applicable standards are inadequate to protect the public from unreasonable risks of injury. The Court explained that defective design and regulatory inadequacy are necessarily independent inquiries, and that sufficient evidence of the former does not equate to sufficient evidence of the latter. The Court concluded that absent a comprehensive review of the various factors and tradeoffs the federal agency considered in adopting the standard, which was not provided here, the standard generally may not be deemed "inadequate" to prevent an unreasonable risk of harm to the public as a whole.

Justice Blacklock concurred, emphasizing that a factfinder cannot validly judge a safety standard's adequacy absent testimony about how the regulatory process works and the many competing considerations it entails.

Justice Devine dissented, opining that legally sufficient evidence supports the jury's findings of defective design and safety-standard inadequacy.

INTENTIONAL TORTS

Fraud

Keyes v. Weller, ___ S.W.3d ___, 2024 WL ___ (Tex. June 28, 2024) [[22-1085](#)]

At issue is whether Section 21.223 of the Business Organizations Code limits a corporate owner's personal liability for torts committed as a corporate officer or agent.

David Weller spent several months in employment negotiations with MonoCoque Diversified Interests LLC, which is wholly owned by Mary Keyes and Sean Nadeau. The parties exchanged emails detailing compensation terms, Weller's salary, a training supplement, and payments based on quarterly revenues. Weller declined other

employment opportunities and accepted MonoCoque's employment offer. MonoCoque and Weller subsequently disagreed on the terms of the required compensation, and Weller resigned. MonoCoque denied owing Weller any additional compensation.

Weller sued MonoCoque for breach of contract and asserted fraud claims against Keyes and Nadeau individually, alleging that they are personally liable for their own tortious conduct. Keyes and Nadeau moved for summary judgment on the ground that Section 21.223 bars the claims against them individually because they were acting as authorized agents of MonoCoque. The trial court granted the motion, but the court of appeals reversed and remanded for further proceedings.

The Supreme Court affirmed. In a unanimous opinion by Justice Lehrmann, the Court explained that Section 21.223, which limits the liability of corporate shareholders and LLC members with respect to matters relating to corporate contractual obligations, has no bearing on the common-law principle that corporate agents are personally liable for their own tortious conduct when acting on behalf of the corporation. That is, Section 21.223 does not shield a corporate agent who commits tortious conduct from direct liability merely because the agent also possesses an ownership interest in the company. Because Weller's claims against Keyes and Nadeau stemmed from their allegedly fraudulent conduct as MonoCoque's agents, not as its owners, they were not entitled to summary judgment on the ground that Section 21.223 shields them from liability. The Court expressed no opinion on the merits of Weller's claims.

Justice Busby concurred, opining that the statutory text and the Court's opinion provide guidance on future analysis of Section 21.223's effect on a shareholder's liability for tortious acts not committed as a corporate agent.

Justice Bland also concurred, emphasizing the distinction between a shareholder's conduct in his role as an owner and conduct in his role as a corporate agent acting on the company's behalf.

JURISDICTION

Subject Matter Jurisdiction

Hensley v. State Comm'n on Jud. Conduct, ___ S.W.3d ___, 2024 WL ___ (June 28, 2024) [[22-1145](#)]

This case raises jurisdictional issues arising from a suit under the Texas Religious Freedom Restoration Act.

Justice of the Peace Dianne Hensley declined to officiate marriages for same-sex couples due to her religious beliefs but referred those couples to another officiant. Although no one complained, the Commission found out and issued a public warning against Hensley for violating the Canon proscribing extra-judicial conduct that casts doubt on a judge's capacity to act impartially as a judge. Rather than appeal the warning to a Special Court of Review, Hensley sued the Commission and its members under TRFRA, alleging that the warning substantially burdens her free exercise of religion. The trial court granted the defendants' plea to the jurisdiction, which was based on exhaustion of remedies and sovereign immunity. The court of appeals affirmed.

In an opinion by Chief Justice Hecht, the Supreme Court reversed most of the court of appeals' judgment. The Court first held that Hensley was not required to appeal the warning before bringing her TRFRA claim. Even if the Special Court were to reverse the warning, that disposition would not moot Hensley's claims because it would not extinguish the burden on her rights while the warning was in effect. Hensley also seeks

injunctive relief against future sanctions, and the Special Court is not authorized to grant that relief.

The Court turned to sovereign immunity and concluded that most of Hensley's suit survives the defendants' challenges. TRFRA waives immunity from suit and liability under the Act. The defendants argued that the waiver does not apply because Hensley failed to meet a statutory presuit notice requirement. But the Court held that the written notice letter Hensley's attorney sent the Commission is sufficient under TRFRA. The Court clarified that the immunity from liability accorded the defendants under Government Code Chapter 33 does not affect a court's jurisdiction, and it held that Hensley's allegations are sufficient to state an ultra vires claim against the commissioners. The Court affirmed the court of appeals' judgment dismissing one request for a declaratory judgment against the Commission, reversed the remainder of the judgment, and remanded to the court of appeals.

Justice Blacklock and Justice Young filed concurrences. Justice Blacklock opined that the Court should reach the merits of Hensley's TRFRA claim and rule in her favor. Justice Young expressed his view that the Court should only address legal questions in the first instance when doing so is truly urgent, and that test is not met here.

Justice Lehrmann dissented. She would have held that Hensley's suit is barred by her failure to appeal the public warning to the Special Court of Review.

CONSTITUTIONAL LAW

Gift Clauses

Borgelt v. Austin Firefighters Ass'n, ___ S.W.3d ___, 2024 WL ___, (Tex. June 28, 2024) [[22-1149](#)]

The issues in this case are (1) whether article 10 of a collective-bargaining agreement between the City of Austin and the Austin Firefighters Association violates the Texas Constitution's Gift Clauses; and (2) whether the trial court erred by imposing TCPA sanctions and attorneys' fees on the plaintiffs.

In 2017, the City and the Association entered into a collective-bargaining agreement. Article 10 of the agreement, titled "Association Business Leave," authorizes 5,600 hours of paid time off for firefighters to engage in "Association business activities," which was defined to include activities like addressing cadet classes and adjusting grievances. Article 10 permits the Association's president to use 2,080 of those hours, which is enough for him to work full time while on ABL.

The Gift Clauses in the Texas Constitution prohibit "gifts" of public resources to private parties. Taxpayers and the State sued the City, alleging that article 10 violates the Gift Clauses and seeking declaratory and injunctive relief. Specifically, plaintiffs allege that ABL time has been used for improper private purposes and that the City does not exercise meaningful control over the ABL scheme, but instead approves nearly all ABL requests without maintaining adequate records of how ABL time is used.

The trial court ruled on summary judgment that the text of article 10 is not unconstitutional and awarded the Association attorneys' fees and sanctions under the TCPA. The case proceeded to a bench trial on the issue whether article 10 is being implemented in an unconstitutional manner. The trial court concluded it is not and rendered judgment for the City. The court of appeals affirmed.

In an opinion by Justice Young, the Supreme Court affirmed in part and reversed in part. The Court affirmed the court of appeals' holding that article 10 as written does not constitute an unlawful "gift" of funds. The agreement's text and context impose

limits on the use of ABL time, including that all such uses must support the fire department. Allegations of misuse of ABL would constitute violations of the agreement rather than show that the agreement itself is unconstitutional. The Court reversed the TCPA award of sanctions and attorneys' fees, holding that the taxpayers' contentions are sufficiently weighty and supported by the evidence to avoid dismissal under the TCPA.

Justice Busby filed an opinion dissenting in part and concurring in the judgment in part. He would have held that article 10 violates the Gift Clauses because the City does not exercise control over the Association to ensure that firefighters used ABL time only for public purposes. For that reason, he agreed that the TCPA awards must be reversed.

CONSTITUTIONAL LAW

Due Course of Law

State v. Loe, ___ S.W.3d ___, 2024 WL ___ (Tex. June 28, 2024) [[23-0697](#)]

The issue in this direct appeal is whether a law prohibiting certain medical treatments for children with gender dysphoria likely violates the Texas Constitution.

Parents of children who have been diagnosed with gender dysphoria, along with doctors who treat such children, sought to enjoin enforcement of a Texas statute that prohibits physicians from providing certain treatments for the purpose of transitioning a child's biological sex or affirming a perception of the child's sex that is inconsistent with their biological sex. The trial court entered a temporary injunction enjoining enforcement of the law, concluding that it likely violates the Texas Constitution in three ways: (1) it infringes on the parents' right to make medical decisions for their children; (2) it infringes on the physicians' right of occupational freedom; and (3) it discriminates against transgender children.

The Supreme Court reversed and vacated the injunction. In an opinion by Justice Huddle, the Court concluded that the plaintiffs failed to establish a probable right to relief on their claims that the law violates the Constitution. The Court first concluded that, although fit parents have a fundamental interest in making decisions regarding the care, custody, and control of their children, that interest is not absolute and it does not include a right to demand medical treatments that are not legally available. The Court observed that the Texas Legislature has express constitutional authority to regulate the practice of medicine, and the novel treatments at issue in this case are not deeply rooted in the state's history or traditions such that parents have a constitutionally protected right to obtain those treatments for their children. The Court therefore concluded that the law is constitutional if it is rationally related to a legitimate state purpose, and the plaintiffs failed to establish that it is not.

The Court next concluded that physicians do not have a constitutionally protected interest to perform medical procedures that the Legislature has rationally determined to be illegal, and the law does not impose an unreasonable burden on their ability to practice medicine. Finally, the Court held that the statute does not deny or abridge equality under the law because of plaintiffs' membership in any protected class, so the plaintiffs failed to establish that the law unconstitutionally discriminates against them.

Justice Blacklock, Justice Busby, and Justice Young filed concurring opinions, although they also joined the Court's opinion. Justice Blacklock observed that the issues in this case are primarily moral and political, not scientific, and he would conclude that

the Legislature has authority to prohibit the treatments in this case as outside the realm of what is traditionally considered to be medical care. Justice Busby wrote to clarify that the scope of traditional parental rights remains broad and is limited only by the nation's history and tradition, not by the nature of the state power being exercised. Justice Young noted that there is a considerable zone of parental authority or autonomy that is inviolate, but the parents' claim in this case falls outside it.

Justice Lehrmann filed a dissenting opinion. The dissent would have held that parents have a fundamental right to make medical decisions for their children by seeking and following medical advice, so a law preventing parents from obtaining potentially life-saving treatments for their children should be subjected to strict scrutiny, which this law does not survive.