Case Summaries
May 2, 2025

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DECIDED CASES

Stary v. Ethridge, ___ S.W.3d ___, 2025 WL ___ (Tex. May 2, 2025) [23-0067]

At issue in this case is the standard of proof that must support a domestic violence protective order barring parent-child contact for longer than two years.

Christine Stary and Brady Ethridge divorced in 2018 and agreed to share custody of their three children. In 2020, Ethridge applied for a protective order against Stary, alleging that Stary had committed conduct constituting felony family violence. The trial court granted the order, which, among other restrictions, prohibited Stary from communicating with her children for Stary's lifetime. The court of appeals affirmed, holding that due process does not require clear and convincing evidence to grant a lifetime protective order against a parent because such an order does not terminate parental rights.

The Supreme Court reversed. The Court first held that the protective order deprived Stary of her fundamental right to make decisions concerning the care, custody, and control of her children by prohibiting all contact with them. The Court next held that due process requires clear and convincing evidence to support the requisite findings for protective orders barring parent-child contact exceeding two years. Like parental termination orders, no-contact protective orders exceeding two years break the ties between parent and child and thus require a heightened evidentiary burden to reduce the risk of an erroneous deprivation of the fundamental right to parent. Finally, the Court held that a trial court must consider the best interest of the child in deciding whether to prohibit parental contact beyond two years.

The Court remanded the case to the trial court for a new protective order hearing in light of the standards announced.

City of Mesquite v. Wagner, ___ S.W.3d ___, 2025 WL ___ (Tex. May 2, 2025) (per curiam) [23-0562]

At issue in this case is whether an on-duty K-9 police officer was acting in good faith when his police service dog bit a fleeing criminal suspect.

Jason Crawford, an officer for the Mesquite Police Department, was on overnight K-9 duty when he received a call for assistance at the scene of a burglary in progress. When Officer Crawford arrived, he was directed to pursue multiple fleeing suspects on foot. One such suspect, Anthony Wagner, was arguing loudly with another officer while he was being placed in custody. Although Officer Crawford held his service dog, Kozmo, to his left side as he attempted to pass the altercation occurring on his right, Kozmo abruptly lunged toward Wagner, causing Officer Crawford to trip over the leash and fall. Kozmo bit Wagner, who was treated at a nearby hospital. Wagner sued the City of Mesquite, alleging his injury was caused by Officer Crawford's negligent handling of Kozmo.

The City filed a plea to the jurisdiction, arguing that it was entitled to governmental immunity because its employee, Officer Crawford, retained official immunity at the time of the incident. The trial court denied the plea and the City appealed. The court of appeals affirmed, holding the City failed to establish that Officer Crawford was acting in good faith.

The Supreme Court reversed, holding Officer Crawford was entitled to official immunity that afforded the City derivative governmental immunity. Considering Officer Crawford's sworn affidavit submitted with the City's plea, the Court emphasized that Officer Crawford's description of the chaotic conditions—including the rapidly evolving circumstances of the active crime scene, multiple fleeing suspects in the night, and the presence of treacherous terrain—was sufficient evidence of good faith that Wagner failed to controvert.

PDT Holdings, Inc. v. City of Dallas, ___ S.W.3d ___, 2025 WL ___ (Tex. May 2, 2025) [23-0842]

The issue in this case is whether the trial court abused its discretion in estopping the City of Dallas from enforcing a height-related ordinance against the builder of a noncompliant structure.

After city officials advised PDT that the only height restriction applicable to its property limited a structure to 36 feet, PDT submitted a plan seeking to construct a nearly 36-foot structure. The City approved the plan and issued a permit, after which PDT began construction. While construction was ongoing, a city inspector determined that a portion of the structure exceeded 36 feet and issued a stop-work order. Once PDT resubmitted an amended construction plan, which the City approved, construction resumed. Several months later, when the structure was nearly complete, the City issued another stop-work order, citing a violation of a different height ordinance restricting the structure's height to 26 feet—10 feet less than the height shown on the approved plans and issued permits. PDT applied for a variance, but it was denied.

PDT then sued, seeking to estop the City from enforcing its height-related ordinance. The trial court ruled for PDT following a bench trial, but the court of appeals reversed. Citing *City of White Settlement v. Super Wash, Inc.*, 198 S.W.3d 770 (Tex. 2006), the court held that justice did not require equitable estoppel against the City.

The Supreme Court reversed, reinstating the trial court's judgment. The Court concluded that sufficient evidence supported the trial court's findings on each challenged element of equitable estoppel. The Court then applied its rule from *Super Wash*: that estoppel against a city is only appropriate "in exceptional cases where the circumstances clearly demand its application to prevent manifest injustice." The Court concluded that "justice required" estoppel because the City had made an affirmative misrepresentation, and other circumstances were similar to prior cases where estoppel applied against the government. Next, the Court concluded that applying estoppel would not "interfere" with the City's performance of a "governmental function" because it could still enforce the restriction in other cases.

Massage Heights Franchising, LLC v. Hagman, ___ S.W.3d ___, 2025 WL ___ (Tex. May 2, 2025) (per curiam) [23-0996]

The issue in this case is whether a franchisor can be liable for injuries caused by a franchisee's employee.

Petitioner Massage Heights, a franchisor, entered into a Franchise Agreement with MH Alden Bridge, designating MH Alden Bridge as an independent contractor with sole responsibility for employment decisions. MH Alden Bridge hired Mario Rubio, a licensed massage therapist, despite his criminal background. Rubio sexually assaulted respondent Danette Hagman, a client at MH Alden Bridge. Hagman sued Massage Heights, MH Alden Bridge, and other parties, alleging negligence, negligent undertaking, and gross negligence. The jury found all defendants negligent, attributed 15% responsibility to Massage Heights, and awarded Hagman both actual and exemplary damages. The court of appeals reversed the exemplary damages award but upheld the trial court's finding that Massage Heights was negligent for not providing a list of disqualifying criminal offenses to its franchisees, which allowed MH Alden Bridge to hire Rubio.

The Supreme Court reversed. It concluded that Massage Heights did not owe Hagman a duty of care because Massage Heights lacked control over Rubio's hiring. Nothing in the Franchise Agreement gave Massage Heights contractual control, and Massage Heights' actions failed to amount to actual control over hiring. The Court also held that Massage Heights was not liable for Hagman's injuries because it franchised with MH Alden Bridge, as the proximate cause of Hagman's injuries was MH Alden Bridge's hiring of Rubio, not the franchising relationship. Finally, the Court held that Hagman lacked legally sufficient evidence to support the jury's finding that Massage Heights negligently performed an undertaking that proximately caused Hagman's injury.