



## Case Summaries May 9, 2025

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### DECIDED CASES

*Pohl v. Cheatham*, \_\_\_ S.W.3d \_\_\_, 2025 WL \_\_\_ (Tex. May 9, 2025) [[23-0045](#)]

This case concerns the extraterritorial reach of Texas’s civil barratry statute.

Texas attorneys were hired by clients in Louisiana and Arkansas to represent them in two separate out-of-state lawsuits. The clients later sued the attorneys and sought to void their legal-services contracts under Government Code Section 82.0651(a), alleging those contracts were procured by conduct violating Texas’s penal statute and disciplinary rule prohibiting barratry. The clients also alleged the attorneys breached their fiduciary duties. The attorneys moved for summary judgment, arguing that Section 82.0651 did not apply to conduct that occurred outside Texas. The trial court granted summary judgment and dismissed the clients’ claims, but the court of appeals reversed.

The Supreme Court reversed as to the statutory claims. Relying on Texas’s strong presumption against extraterritorial application of its statutes, the Court first concluded that nothing in the text of Section 82.0651 indicates the Legislature’s clear intent for it to apply to conduct occurring outside Texas. The Court then held that applying the statute in this case would impermissibly give it extraterritorial effect. The Court observed that the statute’s focus, as expressed in its text, is to protect clients against unlawful solicitation. Because the conduct relevant to that focus—the in-person acts of solicitation that procured the legal-services contracts—occurred outside Texas, the Court concluded that the clients’ civil barratry claims would require the statute to be applied extraterritorially and therefore were properly dismissed by the trial court. But the Court agreed with the court of appeals that summary judgment should not have been granted on the clients’ claims for breach of fiduciary duty.

Justice Busby dissented, reading the statute’s text as expressing the Legislature’s focus to be on all conduct that violates the penal statute or disciplinary rule prohibiting barratry. Because that includes conduct by these attorneys that occurred in Texas, he concluded that this case involves a permissible domestic application of the statute.

***Roxo Energy Co. v. Baxsto, LLC***, \_\_\_ S.W.3d \_\_\_, 2025 WL \_\_\_ (Tex. May 9, 2025) (per curiam) [[23-0564](#)]

This case concerns whether summary judgment was properly granted on fraud claims.

Baxsto as lessee negotiated a mineral interest lease with Roxo. Roxo later purchased Baxsto's mineral rights to the same property. The parties signed numerous agreements effecting the lease and later sale of Baxsto's interests. After the sale, Baxsto sued Roxo for fraud. Baxsto claimed Roxo had misled Baxsto into agreeing to an unproductive lease and then selling its mineral interests below market value by misrepresenting (1) Roxo would not "flip" the lease but would instead make significant investments to develop it, (2) the amount of the bonus Roxo would pay Baxsto under the lease relative to other mineral owners in the area, and (3) Baxsto would pay the bonus before recording the lease. The trial court granted summary judgment against Baxsto on all claims. The court of appeals reversed.

The Supreme Court reversed the court of appeals and reinstated the trial court's judgment. The Court concluded that some of the alleged oral misrepresentations were contradicted by the parties' written agreements. The lease provided that either party could transfer its interests, contradicting the alleged promise to develop the property. Further, the lease contained no clause imposing a timely drilling obligation, and was instead a paid-up lease whereby Baxsto had paid an upfront fee that maintained the lease for its primary term whether or not it conducted drilling. Regarding the amount of the bonus payment, the agreements only provided a six-month "most favored nations" clause that was not breached. The Court noted the parties were sophisticated and experienced, and could have included in their agreements the alleged oral promises. In these circumstances Baxsto's claims failed on the fraud element of justifiable reliance.

Regarding Roxo's alleged failure to disclose that it had recorded the lease earlier than the agreements permitted, the Court held Roxo had no duty to disclose facts to Baxsto because the parties lacked a confidential or fiduciary relationship. Insofar as Baxsto asserted an affirmative misrepresentation by Roxo regarding when Roxo would record the lease, there was no evidence that, in making this alleged representation, Roxo intended to induce Baxsto to sell its mineral interests as Baxsto claimed.

***Ferchichi v. Whataburger Rests. LLC and Haven at Thorpe Lane, LLC v. Pate***, \_\_\_ S.W.3d \_\_\_, 2025 WL \_\_\_ (Tex. May 9, 2025) [[23-0568](#), [23-0993](#)]

These cases, consolidated for oral argument, address the scope of the term "legal action" in the Texas Citizens Participation Act.

In *Ferchichi*, Ferchichi filed a discovery-related motion to compel and for sanctions after Whataburger allegedly failed to disclose an investigative video of Ferchichi prior to mediation. In *Haven*, Haven filed a discovery-related motion to compel and for sanctions, arguing that Pate, a nonparty Haven served with a subpoena duces tecum, failed to fully comply with the subpoena. Pursuant to the TCPA, Whataburger and Pate filed motions to dismiss these motions. Both trial

courts denied the motions. Both courts of appeals reversed, holding that the TCPA applied to the sanctions motions. The courts concluded that because the motions sought additional relief in the form of monetary sanctions, they fell within the TCPA's definition of "legal action": "a lawsuit, cause of action, petition, complaint, cross-claim, or counterclaim or any other judicial pleading or filing that requests legal, declaratory, or equitable relief."

The Supreme Court reversed. Whataburger and Pate argued that the sanctions motions were legal actions to which the TCPA applied, relying on the catch-all provision in the Act's definition of "legal action." The Court applied the doctrine of *ejusdem generis* to limit that catch-all provision. It concluded that the judicial filings specifically listed in the definition serve the function of commencing or materially amending a proceeding on a substantive legal claim. So, the catch-all is limited to pleadings or filings that do the same. Further supporting that conclusion, the TCPA excludes from the definition of "legal action" "a procedural action taken or motion made in an action that does not amend or add a claim for legal, equitable, or declaratory relief." Ferchichi's and Haven's discovery-related motions to compel and for sanctions did not commence or materially amend a proceeding on a substantive legal claim and thus are not "legal action[s]" under the TCPA. Accordingly, the TCPA is inapplicable, and the courts of appeals erred in holding that Whataburger's and Pate's TCPA motions should have been granted. The Court remanded the cases to the respective trial courts for further proceedings.

***Seward v. Santander***, \_\_\_ S.W.3d \_\_\_, 2025 WL \_\_\_ (Tex. May 9, 2025) [[23-0704](#)]

In this wrongful-death, survival, and personal-injury action, the central issues are (1) whether an off-duty police officer was acting within the scope of his governmental employment and (2) whether the Court should adopt a common-law rule restricting the duties owed to responding public-safety officers.

Officer Seward was working as a contract security guard at Home Depot. An employee informed him of a potential shoplifter and requested that Seward issue a criminal-trespass warning. After discovering a mace can on the suspect's belt and a blade in his wallet, Seward putatively frisked the suspect. Seward then called in a warrant check, received a positive hit, and requested backup. Two officers responded and monitored the suspect while Seward confirmed the warrant. During that time, the suspect drew a concealed gun and shot the officers, killing one and injuring the other.

The officers sued Seward and Home Depot for negligence. Finding that Seward's conduct was within the scope of his police-officer employment, the trial court dismissed the suit against him under the Tort Claims Act. The court then granted summary judgment in Home Depot's favor because, among other grounds, there was no evidence it breached any duties owed to the responding officers.

A divided court of appeals disagreed. The court concluded that dismissal and summary judgment were improper because a jury could find that Seward was assisting his private employer and not acting as a police officer and that Home Depot

had violated at least a duty to warn the officers that the suspect had not been adequately searched.

The Supreme Court reversed and reinstated the trial court's judgment. The Court held: (1) Seward was acting within the scope of his public employment because he was responding to a reasonable suspicion that a person in his presence was committing theft; (2) public policy supports adopting the public-safety officer's rule, which restricts the duties owed to officers who are injured by the alleged negligence that necessitated their response; and (3) there was no evidence Home Depot violated any remaining duties, including a duty to warn the responding officers of hidden, dangerous conditions.

Justice Busby concurred, inviting parties in future cases to raise the issue of when a private employer may be vicariously liable for torts committed by an off-duty police officer whose actions are also within the scope of his public employment.

***Elliott v. City of College Station***, \_\_\_ S.W.3d \_\_\_, 2025 WL \_\_\_ (Tex. May 9, 2025) [[23-0767](#)]

This case presents several justiciability issues, including the political-question doctrine and mootness.

Shana Elliott and Lawrence Kalke live in the City of College Station's extraterritorial jurisdiction (ETJ). They have no vote in City elections, but their properties are subject to regulation under certain City ordinances. Elliott and Kalke sued for a declaration that local regulation without a right to vote in local elections violates the Texas Constitution's "republican form of government" clause. The City's plea to the jurisdiction asserted that the constitutional claims were nonjusticiable for several reasons, including under the political-question doctrine. The trial court granted the City's plea and dismissed the suit with prejudice. While the appeal was pending, the legislature adopted a process for ETJ residents to unilaterally opt out of a municipality's ETJ. That law became effective the day after the court of appeals issued its opinion affirming the dismissal judgment. On petition for review, the parties disputed whether the new law mooted the plaintiffs' constitutional claims.

Citing the constitutional-avoidance doctrine, the Supreme Court vacated the lower-court judgments and the court of appeals' opinion. The Court explained that, whether or not mere enactment of the opt-out process mooted the constitutional claims altogether, the law now provides nonjudicial recourse that offers prompt and complete relief for the plaintiffs' alleged injuries. The amended ETJ statute so significantly altered the legal regime that judicial exposition on sweeping questions of constitutional law would be both unnecessary and imprudent at this time. The Court remanded to the trial court with instructions to abate the suit to allow the plaintiffs a reasonable opportunity to complete the opt-out process, a matter of mere paperwork.

Dissenting in part, Justice Sullivan would have permitted the plaintiffs to continue litigating their republican-form-of-government claims on remand.

***Thompson v. Landry***, \_\_\_ S.W.3d \_\_\_, 2025 WL \_\_\_ (Tex. May 9, 2025) [[23-0875](#)]

The issue in this case is whether a sale of real property to foreclose outstanding tax liens can be set aside on due process grounds if the original owner had notice of the sale before the Tax Code's limitations period ended.

Landry inherited her grandmother's interest in a twelve-acre property. To collect delinquent taxes on the property, the taxing authorities served the record owners by posting notice on the courthouse door. The authorities later obtained a default judgment for the outstanding taxes. Thompson purchased the property at a tax foreclosure sale and satisfied the default judgment. Landry lived on the property before and after the sale, and her husband paid rent to Thompson until Thompson asked the Landrys to vacate. Ten years after the sale of the property, Landry sued to void the default judgment and to quiet title, alleging that citation by posting in the suit for unpaid taxes violated her constitutional right to procedural due process.

The trial court granted Landry's summary judgment motion, declared the default judgment void, and denied Thompson's summary judgment motions based on limitations and equitable defenses. The court of appeals reversed, holding that fact issues existed as to whether Landry's due process rights were violated. It further held that Thompson did not establish her defenses as a matter of law.

The Supreme Court affirmed and remanded the case to the trial court for further proceedings. It held that notice during the limitations period that the property has been sold defeats an action against a subsequent purchaser to recover the property brought outside the limitations period. In such cases, an aggrieved owner had notice of the harm resulting from any constitutional violation and an adequate legal remedy. An equitable defense is also available to a subsequent purchaser when the former owner had notice of the purchaser's claim to the property outside the limitations period but delayed in seeking relief to the detriment of the purchaser.

***Red Bluff, LLC v. Tarpley***, \_\_\_ S.W.3d \_\_\_, 2025 WL \_\_\_ (Tex. May 9, 2025) (per curiam) [[24-0005](#)]

This case concerns whether a defendant is entitled to an extension of the post-judgment motion filing deadline under Rule of Civil Procedure 306a because it did not acquire "actual knowledge" of a final judgment against it.

In 2022, a jury awarded Nicole Tarpley a judgment on her claims against Red Bluff, her employer. The court clerk sent notice of the signed judgment to Red Bluff's counsel via email on February 8. Red Bluff's counsel averred, however, that he did not see the email until March 14, when Tarpley's counsel demanded payment on the judgment. Red Bluff filed a Rule 306a motion to reset post-judgment deadlines, requesting that the thirty-day deadline run from the date it obtained actual knowledge of the judgment. The trial court denied the motion, determining Red Bluff was not entitled to a deadline extension because its counsel acquired actual knowledge of the judgment upon receipt of the February 8 email. The court of appeals agreed and affirmed.

The Supreme Court reversed, determining that Red Bluff satisfied Rule 306a's requirements. The Rule extends the deadline for filing post-judgment motions if a party has neither received the notice required by the Rule nor acquired actual knowledge of the judgment. First, because the version of Rule 306a in effect at the time required notice to be sent via first class mail, Red Bluff did not receive the requisite notice. Second, because actual knowledge requires subjective awareness of a fact, Red Bluff's counsel's receipt of the February 8 email did not demonstrate his actual knowledge of the judgment because he did not see the email on that date. Red Bluff was therefore entitled to have its post-judgment deadlines reset to run from March 14, when it obtained actual knowledge of the judgment. The Supreme Court remanded to the trial court to consider Red Bluff's post-judgment motions.