



Case Summaries May 16, 2025

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DECIDED CASES

Myers-Woodward, LLC v. Underground Servs. Markham, LLC, ___ S.W.3d ___, 2025 WL ___ (Tex. May 16, 2025) [[22-0878](#)]

The parties dispute who has the right to use underground salt caverns.

Myers owned the surface estate to the acreage in issue. Original and correction deeds granted the owner of the mineral estate ownership of oil, gas and other minerals. Myers retained a 1/8th royalty. By deed USM acquired a portion of the mineral estate as to salt.

USM began producing salt and claimed ownership of the underground cavern space created by its mining. The parties' disagreements as to ownership of the caverns and the royalty due led to this suit. The district court ruled that USM owned the caverns but could use the caverns for salt production only, and that Myers was owed a royalty of 1/8th of the market value of the salt. The court of appeals held that the district court had properly calculated the royalty, but that Myers owned the empty underground spaces.

The Supreme Court considered the language of the deeds in issue and relevant caselaw. It held that USM owned the salt under the tract, but that subsurface voids encased in salt and created by the production of salt belonged to Myers. USM, however, as the owner of the dominant mineral estate, had a qualified right to use the salt caverns, limited to uses that are reasonably necessary to recover USM's minerals. But USM could not use the caverns for storage of hydrocarbons or off-site minerals.

The Court next considered the royalty due to Myers. Myers argued that the deeds entitled it to in-kind possession of 1/8th of the salt produced or 1/8th of the net proceeds from the actual sale of the salt produced. USM argued that Myers was only entitled to a lesser royalty equal to 1/8th of the market value of the amount of salt produced. The Court agreed with Myers that the royalty is payable in kind.

The Court therefore affirmed the court of appeals as to ownership of the space within the salt caverns, reversed as to the amount of the royalty owed to Myers, and remanded the case to the district court for further proceedings.

Walgreens v. McKenzie, ___ S.W.3d ___, 2025 WL ___ (Tex. May 16, 2025) [[23-0955](#)]

The main issue in this case is whether an employer may take advantage of the Texas Citizens Participation Act's protections with respect to a claim that it negligently hired, trained, and supervised one of its employees.

McKenzie was shopping at Walgreens when one of its employees erroneously accused her of shoplifting at the store earlier in the day, which resulted in her detention by police. After reviewing surveillance video and determining that McKenzie was not the thief, the police released her. McKenzie sued Walgreens for, among other claims, negligent hiring, training, and supervision. Walgreens moved to dismiss under the TCPA, arguing that McKenzie's claims were based on the employee's alleged false report to police, making it a protected "communication made in connection with a matter of public concern." The trial court denied the motion and Walgreens appealed. A divided court of appeals affirmed in part and reversed in part, holding McKenzie's negligent hiring, training, and supervision claim was not subject to dismissal under the TCPA because it was not wholly based on or in response to the exercise of a protected right.

The Supreme Court reversed the part of the court of appeals' judgment affirming the trial court's denial of Walgreen's motion to dismiss the claim, and rendered judgment dismissing that claim. The Court held that the TCPA applies to any claim for negligent hiring, training, or supervision when at least one of the underlying tortious acts is based on or in response to the defendant's exercise of free speech, as it was here. The Court further held that McKenzie failed to establish a prima facie case of negligent hiring, training, or supervision, and therefore her claim must be dismissed.

In re Newkirk Logistics, Inc., ___ S.W.3d ___, 2025 WL ___ (Tex. May 16, 2025) (per curiam) [[24-0255](#)]

The issue in this case is whether the trial court abused its discretion by imposing death-penalty sanctions against a party for alleged discovery abuses.

Rayah Lemons and Nicholas Begaye were injured when their vehicle was struck by a tractor-trailer operated by Mario Cottman, an employee of Newkirk Logistics. Plaintiffs sued Cottman, Newkirk, DHL eCommerce, and Hogan Truck Leasing, asserting various ordinary and gross negligence claims. During discovery, Plaintiffs sought contracts between Newkirk and DHL eCommerce. Newkirk stated that it found no responsive documents after diligent searches. Later, DHL eCommerce produced two contracts that were signed by it and Newkirk. Plaintiffs then moved for sanctions against Newkirk, arguing that Newkirk intentionally concealed and failed to produce the contracts. The trial court struck Newkirk's pleadings as a sanction for discovery abuse, effectively granting Plaintiffs a default judgment on all their claims, including gross negligence. The court of appeals denied Newkirk mandamus relief.

The Supreme Court conditionally granted mandamus relief. The Court held that the trial court abused its discretion in imposing death-penalty sanctions against

Newkirk. Although Newkirk signed the contracts years earlier, there was insufficient evidence that Newkirk intentionally concealed or failed to produce the contracts. The Court also rejected the trial court's other justifications for the death-penalty sanctions, finding insufficient evidence that Newkirk had possession of or intentionally withheld other requested documents. As a result, the sanctions lacked a direct relationship to the alleged conduct, and the sanctions were excessive because the record lacked evidence of flagrant or extreme bad faith. Further, the trial court did not consider lesser sanctions before striking Newkirk's pleadings. Accordingly, the Court directed the trial court to vacate its order striking Newkirk's pleadings.

State v. \$3,774.28, ___ S.W.3d ___, 2025 WL ___ (Tex. May 16, 2025) [[24-0258](#)]

At issue in this case is whether, in deciding a no-evidence motion for summary judgment, the trial court should have considered an affidavit that was on file with the court but not attached to the nonmovant's response to the no-evidence motion.

The State initiated civil-forfeiture proceedings for bank accounts related to an opioid trafficking operation. The claimants filed a no-evidence motion for summary judgment on the State's claim that the accounts were used or intended to be used in the commission of a felony, making the accounts contraband. The State's response to the motion referenced and summarized an affidavit from the investigating law enforcement officer. The affidavit was attached to the State's original notice of forfeiture proceedings but was not attached to its response to the no-evidence motion.

The trial court granted summary judgment for the claimants, refusing to consider the affidavit because it was not attached to the State's response. The court of appeals affirmed, concluding that the rules require attachment.

The Supreme Court reversed. It held that Texas Rule of Civil Procedure 166a(i) does not require attachment of previously filed evidence. Rather, the more crucial inquiry is whether the nonmovant's response points out the evidence it alleges raises a fact issue. But "mere reference" to previously filed evidence is insufficient; the nonmovant must discuss the evidence with some specificity. The State's discussion of the affidavit in its response adequately directed the trial court's attention to the alleged fact issues, and the trial court abused its discretion in refusing to consider the affidavit. Without commenting on the merits of the claimants' no-evidence motion, the Court remanded the case to the trial court to reconsider the motion in light of the Court's opinion.