Case Summaries
June 6, 2025

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

DECIDED CASES

Leibman v. Waldroup, ___ S.W.3d ___, 2025 WL ___ (Tex. June 6, 2025) [23-0317]

In this negligence suit for injuries sustained in a dog attack, the issue is whether the Medical Liability Act requires an expert report for the plaintiffs' claim against a doctor who wrote letters stating that the dog owner's service animals helped with her medical disorder.

Dr. Leibman, a gynecologist, provided his patient with letters stating that the symptoms of her generalized anxiety disorder were alleviated by her service dog, Kingston, so that the patient could avoid eviction. The patient put a "Service Animal" vest on Kingston and brought him to a restaurant, where he attacked a toddler. The toddler's parents sued, among others, the patient and Dr. Leibman. Dr. Leibman filed a motion to dismiss for failure to file an expert report, arguing that the claim against him was a health care liability claim. TEX. CIV. PRAC. & REM. CODE §§ 74.351(a), (b). The trial court denied the motion, and the court of appeals affirmed.

Granting Dr. Leibman's petition for review, the Supreme Court affirmed. In an opinion by Justice Busby, the Court concluded that the plaintiffs had standing to sue Dr. Leibman and held that the claims against Dr. Leibman were not health care liability claims. The Court emphasized that the plaintiffs did not challenge Dr. Leibman's diagnosis of the patient or his determination that Kingston—who was certified as a service animal by a private company—assisted with his patient's anxiety symptoms. Instead, the plaintiffs faulted Dr. Leibman for failing to independently ascertain Kingston's temperament before he represented that the dog was a service animal. The Court held this claim did not concern a departure from accepted standards of medical care and thus was not subject to dismissal for failure to timely serve an expert report under the Act.

Justice Huddle filed a dissenting opinion. She would have held that the plaintiffs' claim was presumed to be a health care liability claim because it involved facts implicating a physician's conduct while rendering medical care to his patient. The plaintiffs failed to overcome that presumption because the operative facts

underlying the plaintiffs' claim were inseparably intertwined with the physician's medical care, and plaintiffs cannot artfully plead their claim to avoid the Act's application.

Lane v. Comm'n for Law. Discipline, ___ S.W.3d ___, 2025 WL ___ (Tex. June 6, 2025) [23-0956]

The case concerns the application of the limitations period in the Rules of Disciplinary Procedure to a reciprocal discipline proceeding.

In 2017, attorney Nejla Lane sent emails to an Illinois federal magistrate judge criticizing the judge's rulings. Lane was suspended by the Northern District of Illinois in 2020 and then by the Illinois Supreme Court in 2023. Following her 2023 suspension, the Commission for Lawyer Discipline sought an identical suspension in Texas. The Board of Disciplinary Appeals imposed a judgment of suspension, and Lane appealed to the Supreme Court.

The Court reversed and dismissed the disciplinary proceeding. The Court rejected the CLD's argument that the limitations rule did not apply to reciprocal-discipline proceedings. The Court also disagreed with BODA's conclusion that the rule's application was waived because Lane failed to plead it. Analyzing the rule's text, the Court held that the disciplinary proceeding was time-barred because Lane's "Professional Misconduct"—sending the emails in 2017—occurred more than four years before the CLD received the "Grievance" upon which it acted.

Justice Boyd and Justice Busby filed dissenting opinions. Justice Boyd argued that the limitations rule does not apply to reciprocal-discipline cases because it is not listed as a defense on which an attorney can rely "to avoid the imposition" of reciprocal discipline; and if that list of defenses were not exclusive, Lane waived the limitations defense by failing to plead it. Justice Busby would have held that "Professional Misconduct" for purposes of reciprocal discipline occurs when the attorney has been disciplined in another jurisdiction, so the reciprocal-discipline proceeding here was timely.

Rush Truck Ctrs. of Tex., L.P. v. Sayre, ___ S.W.3d ___, 2025 WL ___ (Tex. June 6, 2025) [24-0040]

This case raises venue and jurisdiction issues in an interlocutory appeal from a venue ruling.

Six-year-old Emory Sayre died after a school bus accident. Her parents sued the manufacturer, Rush Truck, in Dallas County for product liability. Rush Truck moved to transfer venue to either Parker County, where the accident occurred, or Comal County, Rush Truck's headquarters. The trial court denied the motion. The court of appeals affirmed, holding that a substantial part of the events or omissions giving rise to the Sayres' product liability claim arose in Dallas County. The court of appeals noted evidence that the bus was ordered, delivered, inspected, titled, billed, and paid for out of Rush Truck's Dallas County office.

The Supreme Court vacated the judgment of the court of appeals and remanded the case for further proceedings in the district court. The Court held that

Section 15.003(b) of the Civil Practice and Remedies Code did not allow for interlocutory appeal in this case involving multiple plaintiffs. Section 15.003(b) provides a limited exception to the general prohibition against interlocutory appeals. It permits interlocutory appeal of a venue determination involving multiple plaintiffs only in cases where a plaintiff's independent claim to venue is at issue. Because the plaintiffs asserted identical claims, based on identical facts, with identical venue grounds, the court of appeals lacked jurisdiction over the interlocutory appeal.

RECENTLY GRANTED CASES

RJR Vapor Co., LLC v. Hegar, 681 S.W.3d 867 (Tex. App—Austin 2023), *pet. granted* (May 30, 2025) [24-0052]

At issue in this case is whether a state tax on tobacco products, defined as products "made of tobacco or a tobacco substitute," applies to oral nicotine products.

RJR sells oral nicotine products under the brand name VELO. Relying on guidance from the Comptroller, RJR believed that its pouches and lozenges—which contain nicotine isolate derived from tobacco but not tobacco leaf—were not "tobacco products." After receiving new guidance from the Comptroller that its products were subject to the tobacco product tax, RJR began paying the tax under protest.

RJR sued to recover the payments it made under protest. It also sought a declaration that the statute's definition of "tobacco product" was unconstitutional. The trial court held that VELO's products are not "tobacco products" under the statute and that the statutory definition was unconstitutional. The court of appeals affirmed the holding that the tax did not apply to VELO products and vacated the portion of the trial court's opinion declaring the Tax Code's definition of "tobacco product" unconstitutional.

The Comptroller petitioned the Supreme Court for review, arguing that VELO products are "made of tobacco" because the nicotine isolate they contain is derived from the tobacco plant. The Supreme Court granted the petition.

***Corsicana Indus. Found., Inc. v. City of Corsicana*,** 685 S.W.3d 171 (Tex. App.—Waco 2024), *pet. granted* (May 30, 2025) [24-0102]

At issue is whether an economic development agreement violates the Gift Clause found in Article III, Section 52(a) of the Texas Constitution.

The City of Corsicana and Navarro County approached Gander Mountain about the possibility of constructing a store in Corsicana. To help offset the cost of construction, the City and County offered to pledge a fixed portion of sales-tax revenue from the Gander Mountain store and nearby stores to Gander Mountain's future landlord, the Corsicana Industrial Foundation. Gander Mountain agreed. In a series of agreements, the retailer promised to lease the facility, the Foundation promised to procure a $10 million construction loan to build the facility, and the City and County formally pledged sales-tax revenue to the Foundation. Gander Mountain's rent was pegged to the quarterly loan payments, meaning that if sales-tax

revenue exceeded the payment due on the loan, Gander Mountain would pay nothing in rent to the Foundation. JPMorgan Chase served as the Foundation's lender. Gander Mountain went bankrupt, and the City and County ceased transferring sales-tax revenue to the Foundation.

The City and County then sued Gander Mountain and the Foundation, seeking a declaration that the economic development agreement violated Article III, Section 52(a) of the Texas Constitution, which requires that grants of public money contain sufficient controls such that each grant achieves a public, rather than wholly private purpose. Chase intervened to defend the agreement's validity. The trial court held for the City and County and declared the agreement void and unenforceable. The court of appeals affirmed, holding that the agreement lacked sufficient controls to ensure a public purpose was achieved by the use of taxpayer funds.

Chase petitioned the Supreme Court for review, arguing that the agreement is not subject to Section 52(a), and in any event, satisfies Section 52(a)'s requirements. The Court granted Chase's petition.

Webb Consol. Indep. Sch. Dist. v. Marshall, 690 S.W.3d 698 (Tex. App.—San Antonio 2023), *pet. granted* (May 30, 2025) [24-0339]

This case presents two issues regarding school board members' statutory rights to access district information and to obtain attorney's fees under the Texas Education Code.

In 2019 and 2020, Robert and Amy Marshall, serving as school board members for Webb Consolidated Independent School District, requested documents under Section 11.1512(c) of the Texas Education Code, which grants school board members an "inherent right" to access district information. The Marshalls alleged that the District withheld responsive documents and filed suit seeking injunctive relief in June 2020. The trial court granted a temporary injunction ordering production of certain documents in September 2020. By November 2022, both Marshalls' terms as school board members had expired. The District filed a plea to the jurisdiction and a traditional and no-evidence motion for summary judgment. The trial court denied both.

The court of appeals affirmed. It held that while the Marshalls were no longer school board members, and thus no longer entitled to information under Section 11.1512(c), the Marshalls' temporary injunction victory entitled them to prevailing party status, allowing their attorney's fees claim to breathe life into the otherwise moot case. The court also held that the Legislature created an exception to the general administrative exhaustion requirement for school board members seeking injunctive relief.

The District filed a petition for review, arguing that the Marshalls were not prevailing parties because the temporary injunction provided them no practical relief and did not materially alter the parties' legal relationship. The District also contends that the Marshalls were required to exhaust their administrative remedies before filing suit. The Supreme Court granted the petition.

D.V. v. Tex. Dep't of Fam. & Protective Servs., ___ S.W.3d ___, 2024 WL 3995381 (Tex. App.—Austin 2024), *pet. granted* (May 30, 2025) [24-0840]

The issue in this case is whether the Department of Family and Protective Services abandons its request for termination of parental rights when the Department's caseworker and representative at trial unequivocally testifies that the Department is no longer seeking termination, but the written pleadings and other circumstances at trial indicate that the Department is still seeking termination.

In January 2021, the Department received reports of domestic violence in D.V.'s home, removed D.V.'s child from the home, and sued to terminate D.V.'s parental rights. At trial, the caseworker who was designated as the Department's representative testified that the Department was asking that Father be named as the child's permanent sole managing conservator and that D.V.'s rights be limited to parent non-conservator with no visitation or contact. Later, during cross-examination, the caseworker confirmed that the Department was no longer seeking termination of D.V.'s parental rights. After the caseworker's testimony, however, D.V. and her attorney asked the court not to terminate her parental rights, and the Court Appointed Special Advocate recommended that D.V.'s parental rights be terminated. The Department's lawyer never announced to the court that the Department was abandoning its termination request and did not give a closing statement. The trial court terminated D.V.'s parental rights. The court of appeals affirmed, holding that the Department had not abandoned its pleading because the Department's lawyer never announced the Department was abandoning its termination request and because the actions of the participants at the hearing, including D.V. herself, indicated that they understood the Department was still seeking termination.

D.V. filed a petition for review, arguing that the Department abandoned its request to terminate her parental rights when its caseworker and representative at trial unequivocally testified that the Department was no longer seeking termination. The Court granted the petition.