

Court Advisory

Fourth Court of Appeals
Cadena-Reeves Justice Center
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FOR IMMEDIATE RELEASE
October 15, 2015

Fourth Court of Appeals to Hear Oral Argument

The Fourth Court of Appeals will hear oral arguments in one appeal on Wednesday, October 21, 2015, beginning at 9:00 a.m., before the following panel of justices: Chief Justice Sandee Bryan Marion, Justice Karen Angelini, and Justice Jason Pulliam.

The following case will be presented:

John A. Lance, Debra L. Lance, F.D. Franks and Helen Franks v. Judith and Terry Robinson, Gary and Brenda Fest, Virginia Gray and Butch Townsend - This appeal arises from the trial court's grant of Plaintiff's motion for partial summary judgment on their requests for declaratory relief. In this action, the Defendants attempt to preclude the residents of the Redus Point Subdivision on Medina Lake common use of a beachfront tract of land situated between the Defendants' property and the lakefront.

The Fourth Court of Appeals will hear oral arguments in two appeals on Wednesday, October 21, 2015, beginning at 10:00 a.m., before the following panel of justices: Chief Justice Sandee Bryan Marion, Justice Karen Angelini, and Justice Jason Pulliam.

The following cases will be presented:

Chad William Ballard v. State - Chad William Ballard entered an open plea of guilty to the offense of aggravated assault and elected to have the trial court decide punishment. On appeal, Ballard contends: (1) the State failed to provide notice of its intention to seek an affirmative finding on the use of a deadly weapon; and (2) trial counsel rendered ineffective assistance by failing to advise him the trial court could not grant probation if a deadly weapon finding was made and by failing to investigate his mental health.

Adam Paul Eannarino v. State - Adam Paul Eannarino was convicted by a jury of continuous sexual abuse of his stepdaughter and was sentenced by the trial court to life imprisonment without parole. On appeal, Eannarino contends: (1) the trial court abused its discretion in prohibiting cross-examination of the complainant's mother and grandfather concerning specific incidents of conduct by the complainant; (2) the trial court erred in overruling an objection to the prosecutor's closing argument; (3) the jury charge erroneously allowed the jury to convict him even if they did not unanimously agree on the specific acts of abuse committed or the exact dates on which the acts were committed; (4) section 21.02(d) of the Texas Penal Code unconstitutionally permits a jury to convict a person of continuous sexual abuse of a child even if the jury does not unanimously agree on the specific acts of abuse committed or the exact dates on which the acts were committed; and (5) the trial court erred in determining the complainant's medical records did not contain material, exculpatory information which the State was required to disclose to him.

The Fourth Court of Appeals will hear oral arguments in one appeal on Thursday, October 22, 2015, beginning at 9:00 a.m., before the following panel of justices: Justice Rebeca C. Martinez, Justice Patricia O. Alvarez, and Justice Luz Elena D. Chapa.

The following case will be presented:

In re Dean Davenport, Dillon Water Resources, Ltd., 5D Drilling and Pump Service, Inc. f/k/a Davenport Drilling & Pump Service, Inc., 5D Water Resources, LLC f/k/a Davenport Oper., LLC, Water Exploration Co, Ltd., WAD, Inc., et al. - The underlying suit in this original mandamus proceeding is a breach of contract action arising from a contingent fee agreement between a client and his former attorneys. The breach of contract action was tried to a jury in October 2013 and the jury found in the client's favor on the issue of whether the fee agreement entitled the attorneys to an interest in a company as part of their fee. After entering judgment on the jury's verdict, the trial court granted the attorneys' motion for new trial. This mandamus proceeding seeks a merits-based review of the trial court's stated reasons for setting aside the jury verdict and granting a new trial under *In re Toyota Motor Sales*, 407 S.W.3d 746 (Tex. 2013).

The oral arguments will be held in the Fourth Court's Courtroom, Cadena-Reeves Justice Center, Third Floor, 300 Dolorosa, San Antonio, Texas.