Case Summaries
February 17, 2023

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OPINIONS

DAMAGES

Settlement Credits

Virlar v. Puente, ___ *S.W.3d*___, 2023 WL ___ (Tex. Feb. 17, 2023) [20-0923]

The main issues in this medical malpractice case involve settlement credits under Chapter 33 of the Civil Practice and Remedies Code and periodic payments for future medical expenses under the Texas Medical Liability Act in Chapter 74 of the Code.

Jo Ann Puente suffered brain injuries due to complications of a prior surgery while in the hospital care of Dr. Jesus Virlar. Puente and members of her family sued Virlar; the physicians association that employed him, referred to as Gonzaba; and other health care providers. Several claims settled prior to trial, including the claims by Puente's minor daughter against some defendants for loss of consortium and services. Ultimately, the only claims tried were Puente's claims against the non-settling defendants, including Virlar and Gonzaba.

After a jury verdict of $14 million for Puente, the defendants moved for a settlement credit under Chapter 33, arguing that the $3.3 million Puente's daughter received in settlement should reduce the amount of Puente's award. The defendants also moved for periodic payments of the award under the Medical Liability Act. The trial court denied both motions.

A majority of the court of appeals, sitting en banc, largely affirmed. Without addressing the predicate question whether Chapter 33 requires a credit for the daughter's settlement, the court held that applying Chapter 33 here would violate the Open Courts provision of the Texas Constitution. The court further held that the defendants had not presented sufficient evidence for the trial court to grant periodic payments. The defendants petitioned for Supreme Court review.

The Court affirmed in part and reversed in part. The Court first reversed with respect to the court of appeals' Chapter 33 analysis. The Court held that the daughter is a "claimant" under Chapter 33 because her claims for loss of consortium and services are claims for injury to another person, Puente. Chapter 33 therefore requires that the daughter's settlement be credited against the judgment. The Court went on to hold that applying Chapter 33 here would not violate the Open Courts provision because the statute gives Puente a greater recovery than she would have obtained under the common law.

The Court also reversed with respect to the court of appeals' analysis of the Medical Liability Act. The Court held that the defendants had presented sufficient evidence of the statutory prerequisites and that the trial court was therefore required by the Act to order periodic payments for at least some of Puente's future damages. Finally, the Court affirmed with respect to some evidentiary challenges raised by the defendants.

OIL AND GAS

Deed Construction

Van Dyke v. Navigator Grp., ___ S.W.3d ___, 2023 WL ___ (Tex. Feb. 17, 2023) [21-0146]

This dispute concerns whether a 1924 deed reserving "one-half of one-eighth" of the mineral estate reserved a 1/2 interest or a 1/16 interest.

In 1924, the Mulkey parties conveyed their ranch and the underlying minerals to the White parties with a reservation of "one-half of one-eighth" of the mineral estate. For many decades, the parties' interactions with each other and in transactions with third parties reflected the understanding that both sides had a 1/2 interest. But in 2013, nearly 90 years after the deed, the White parties brought a trespass-to-try-title action asserting that the deed had reserved only a 1/16 interest. The Mulkey parties assert that they possess a 1/2 interest today for one of two reasons. Either the deed reserved that 1/2 interest all along, or else, even if it originally reserved only a 1/16 interest, the other 7/16 must be recognized by operation of the presumed-grant doctrine. The trial court granted the White parties' motion for partial summary judgment and declared that the deed unambiguously reserved a 1/16 interest. The court of appeals affirmed, holding that the deed unambiguously conveyed 15/16 of the mineral estate to the White parties and that the presumed-grant doctrine did not apply.

The Supreme Court reversed. First, the Court held that the text of the 1924 deed reserved the Mulkey parties a 1/2 interest in the mineral estate. Terms must be given the plain meaning that they bore at the time they were written. Thus, the reservation depends on whether the use of "1/8" in a double-fraction reflected an arithmetical meaning in 1924. The Court held that the double-fraction instead reflects a contemporary term of art, as the estate-misconception theory and the use of 1/8 as the standard royalty show. The Court thus applied a rebuttable presumption that instruments from this time used 1/8 within a double-fraction to refer to the entire mineral estate. Nothing in the text or structure of the deed in question rebuts that presumption, so the 1924 deed's reservation of "one-half of one-eighth" reserved 1/2 of the mineral estate.

In rare cases, the presumed-grant doctrine recognizes that the original instrument does not accurately reflect current ownership. The Court addressed that doctrine and held that the parties' extensive and unbroken history of recognizing and acting in reliance on a 1/2–1/2 split meant that the Mulkey parties had obtained the rest of a 1/2 interest at some point after 1924 even if the deed had reserved only a 1/16 interest.

The Court therefore reversed the judgment of the court of appeals and remanded to the trial court for further proceedings that will lead to a final judgment.

CONSTITUTIONAL LAW

Due Process

B. Gregg Price, P.C. v. Series 1 – Virage Master LP, ___ S.W.3d ___, 2023 WL ___ (Tex. Feb. 17, 2023) (per curiam) [21-1104]

The issue in this case is whether due process entitles a defendant to an amended notice of hearing when a trial court cancels a hearing and subsequently reschedules it for the same date.

B. Gregg Price, P.C., a law firm, took out a loan from Series 1 – Virage Master LP. Virage alleged that B. Gregg Price personally guaranteed the loan and that his law firm failed to repay the loan. Virage sued Price and the firm and moved for summary judgment.

Virage served Price with the motion for summary judgment on March 12, 2020, and notified him of the hearing set for April 2. That same day, the trial court announced that in-person proceedings would be canceled in response to the emerging COVID-19 pandemic. Price's lawyer saw this announcement and assumed he would be notified of a new hearing date when the hearing was rescheduled. Rather than reschedule the oral hearing, the court changed the hearing method to submission and scheduled it for April 2. Price's lawyer first realized the change when he contacted the court on April 1, and he immediately filed a response. On April 2, the trial court granted summary judgment for Virage without considering Price's late-filed response.

Price moved for a new trial, which the trial court denied. The court of appeals held that the original notice was sufficient to apprise Price of the rescheduled hearing date and affirmed the summary judgment for Virage. Price petitioned the Supreme Court for review.

The Court reversed, holding that Price did not receive adequate notice of the April 2 hearing as required by the United States and Texas Constitutions. Notice of a proceeding must be reasonably calculated, given the circumstances, to apprise the parties of the pending action and give them a meaningful opportunity to respond. When a previously scheduled hearing is canceled by the trial court, a new hearing requires new notice. Price did not receive proper notice as required by due process and is therefore entitled to a new trial.