

Court Advisory

Fourth Court of Appeals
Cadena-Reeves Justice Center
300 Dolorosa, Suite 3200
San Antonio, Texas 78205-3037



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FOR IMMEDIATE RELEASE
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Fourth Court of Appeals to Hear Oral Argument

The Fourth Court of Appeals will hear consolidated oral arguments in two appeals on Thursday, January 31, 2013, beginning at 9:00 a.m., before the following panel of justices: Justice Karen Angelini, Justice Sandee Bryan Marion, and Justice Rebeca C. Martinez.

The following cases will be presented:

Pamela Scheel and Gary M. Poenisch v. Brian Alfaro and Primera Energy Partners, L.L.C. and Pamela Scheel v. Brian Alfaro and Primera Energy Partners, L.L.C. - These appeals are from orders entered in favor of appellees setting aside a receiver's sale, imposing sanctions, and setting aside two turnover orders. The underlying facts in both appeals are the same. On appeal, appellant Pamela Scheel raises two challenges to the trial court's order setting aside the receiver's sale: (1) the trial court did not have jurisdiction to set aside the sale, and (2) if the trial court had jurisdiction, the court erred because there is no evidence of fraud or material irregularities in the sale. Scheel does not challenge the trial court's removal of the receiver or the denial of her motion to confirm the receiver's sale. Also on appeal, appellant Gary Poenisch raises four complaints about the sanctions order: (1) the trial court lacked jurisdiction to impose the sanctions, (2) the requirements to impose sanctions were not satisfied, (3) the sanctions order does not adequately explain or specify the reasons for the sanctions, and (4) the order improperly sanctions him for conduct outside the scope of permissible sanctions.

The Fourth Court of Appeals will hear oral arguments in one appeal on Thursday, January 31, 2013, beginning at 1:30 p.m., before the following panel of justices: Chief Justice Catherine Stone, Justice Sandee Bryan Marion, and Justice Patricia O. Alvarez.

The following case will be presented:

State of Texas v. Phyllis Jean Whittington - Phyllis Whittington was charged with driving while intoxicated. After a hearing, the trial court granted

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Whittington's motion to suppress evidence of the arrest and the patrol-car videotape. On appeal, the State challenges the trial court's rulings, claiming: (1) Whittington was not arrested when she was instructed not to enter her home, to stay where she was, and not to move, but instead, was subjected to an ongoing investigative detention; (2) the informant was identified and the information was corroborated prior to Whittington's arrest; and (3) the officer had probable cause to arrest Whittington after conducting the field sobriety tests.

The Fourth Court of Appeals will hear oral arguments in one appeal on Thursday, January 31, 2013, beginning at 2:30 p.m., before the following panel of justices: Justice Sandee Bryan Marion, Justice Marialyn Barnard, and Justice Luz Elena D. Chapa.

The following case will be presented:

Bruington Engineering, Ltd. v. Pedernal Energy, L.L.C. - In the underlying lawsuit, Pedernal Energy L.L.C. sued Bruington Engineering Ltd. and three other entities ("the Schlumberger entities") for damages allegedly caused to an oil well and the surrounding formation. Because Pedernal's lawsuit was for damages arising out of the provision of professional services by a licensed or registered professional, Pedernal was required to file an expert affidavit, known as a certificate of merit, pursuant to Texas Civil Practice and Remedies Code section 150.002. Bruington filed a motion to dismiss, with prejudice, all of Pedernal's claims against it on the grounds that Pedernal failed to timely file its certificate for the claims alleged against Bruington. The trial court denied the motion, and this interlocutory accelerated appeal ensued. In this appeal, the panel must decide whether section 150.002 requires a plaintiff to attach the certificate of merit to the plaintiff's first-filed pleading and, if a plaintiff fails to do so, may the plaintiff cure by attaching the certificate to a later amended pleading. In a somewhat related issue, the panel must determine whether a plaintiff can cure its failure to attach the certificate to its first-filed pleading by nonsuiting its claim against a defendant and then filing an amended pleading, thereby bringing the nonsuited defendant back into the suit, with the certificate.

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