

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
February 15, 2013

Fourth Court of Appeals to Hear Oral Argument

The Fourth Court of Appeals will hear oral arguments in two appeals on Tuesday, February 19, 2013, beginning at 9:00 a.m., before the following panel of justices: Justice Karen Angelini, Justice Patricia O. Alvarez, and Justice Luz Elena D. Chapa.

The following cases will be presented:

Joseph Allen Garcia v. The State of Texas – Appellant Joseph Allen Garcia was charged with one count of first degree felony murder of Mario Alberto Gonzalez and three counts of second degree felony aggravated assault with a deadly weapon. Garcia chose a jury trial for both phases: verdict and punishment. The State argued that Garcia fired an AK-47 from the back of a pickup truck, mortally wounded Gonzalez, wounded two others, and then fled the country to Mexico. Appellant testified that he was not the shooter, that he was free to leave this country, and that his father drove him to Mexico to protect their family members from gang retaliation. The jury found Garcia guilty on all four counts and sentenced him to seventy years for the murder, and lesser terms and fines for the other counts. In eleven issues, Garcia appeals the verdict and the punishment.

Troy Shane Knowles v. The State of Texas - Appellant appeals from his conviction by a jury for continuous sexual abuse of a young child, his 11 year old step-daughter, for which he was sentenced by the court to 50 years confinement. He asserts on appeal that (1) the trial court abused its discretion in finding the child's mother was a proper outcry witness because the child first made a statement which described the offense in some discernible manner to a Child Protective Services worker; (2) the trial court erred by including in the jury charge an erroneous instruction which lowered the State's burden of proof by assuming an essential element of the offense; and (3) the trial court erred in denying Appellant's motion to quash the indictment.

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The Fourth Court of Appeals will hear oral arguments in two appeals on Tuesday, February 19, 2013, beginning at 1:30 p.m., before the following panel of justices: Justice Karen Angelini, Justice Patricia O. Alvarez, and Justice Luz Elena D. Chapa.

The following cases will be presented:

In the Matter of the Guardianship of C.Y.B., Jr., an Incapacitated Person – The sole issue raised in this appeal is whether parties in a guardianship proceeding were entitled to a jury trial on a motion for an attorney to show authority filed under Rule 12 of the Texas Rules of Civil Procedure.

Old Tin Roof Steakhouse, LLC v. Michael D. Haskett and Hedel Haskett - This appeal arises out of a dispute between a restaurant and its landlord. The issues are whether the trial court erred in denying two motions to recuse and disqualify the trial judge and whether the trial court erred in granting summary judgment that the statute of frauds precludes enforcement of a right-of-first-refusal clause in the lease.

The Fourth Court of Appeals will hear oral arguments in two appeals on Wednesday, February 20, 2013, beginning at 9:00 a.m., before the following panel of justices: Chief Justice Catherine Stone, Justice Sandee Bryan Marion, and Justice Rebeca C. Martinez.

The following cases will be presented:

In re Estate of William H. McNutt, Deceased – In this appeal all parties challenge the trial court’s judgment in which the court found that the elements of an oral gift of land had been proven by appellant, Sherry D. McNutt, but it limited the gift to “a permanent residence structure existing on (5) five acres of land, with water.” On appeal, Sherry argues she proved the elements of an oral gift of land to the 2,000-acre “north side” of the almost 3,700-acre McNutt Ranch. Appellees are the Estate of William H. McNutt, Deceased; McNutt Ranch, Ltd.; and McNutt Management, LLC, the General Partner of McNutt Ranch, Ltd. (collectively, “appellees”). In their cross-appeal, appellees assert the trial court erred in awarding Sherry an undefined five-acre parcel.

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Cynthia Dupnik v. Hermina Hermes - Cynthia Dupnik appeals the trial court's denial of her motion for summary judgment and the grant of Hermina Hermis's motion for summary judgment, which declared that Hermis owned title to the mineral interest in land conveyed by Hermis to Dupnik in 1998. Specifically, Dupnik asserts that the 1998 deed was ambiguous and the trial court erred by not considering the circumstances surrounding the conveyance in determining the intention of the parties. Dupnik also alleges that summary judgment in favor of Hermis was erroneous because Dupnik's verified affidavit should have weighed more heavily than Hermis's affidavit. Dupnik further contends that even if the trial court's grant of summary judgment in favor of Hermis was not error, the trial court granted more relief than was requested. Hermis responds that the deed unambiguously grants Dupnik the surface estate only, and that the suit is barred by the statute of frauds and the statute of limitations.

The Fourth Court of Appeals will hear oral arguments in one appeal on Wednesday, February 20, 2013, beginning at 1:30 p.m., before the following panel of justices: Chief Justice Catherine Stone, Justice Sandee Bryan Marion, and Justice Rebeca C. Martinez.

The following case will be presented:

Reynaldo Garcia v. The State of Texas – In this appeal, appellant Reynaldo Garcia challenges his conviction for aggravated sexual assault, arguing that trial counsel's ineffective assistance deprived him of a fair trial.

The Fourth Court of Appeals will hear oral arguments in one appeal on Thursday, February 21, 2013, beginning at 9:00 a.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:

BP America Production Company v. Carlos M. Zaffirini, Sr., et al. – This appeal arises from a dispute over the amount of money BP America Production Company owes co-owners of an oil and gas lease in Webb County. BP America entered into two separate leases to produce oil and gas from a mineral estate owned primarily by family members. BP America first signed a lease with Diana Solis (Solis lease) for her 30% interest in the undivided mineral estate.

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Subsequently, BP America signed a second lease (Zaffirini lease) with others, including Solis's family members, who are co-owners of the remaining 70% interest. BP America filed a declaratory judgment action for the court to determine its obligations under the Zaffirini lease. The trial court granted the Zaffirini lessors' summary judgment and awarded them approximately \$3.9 million in damages and attorney's fees. BP America appeals the trial court's judgment.

The Fourth Court of Appeals will hear oral arguments in one appeal on Thursday, February 21, 2013, beginning at 2:00 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:

Fulmer v. State - Dale Wayne Fulmer was indicted for the offense of continuous sexual abuse of a child under the age of fourteen. The jury convicted him of the offense and assessed punishment at life imprisonment. On appeal, Fulmer raises five issues: (1) the statute under which he was convicted violates the unanimity requirement, due process, and due course of law; (2) the statute prohibiting parole violates state and federal constitutional equal protection guarantees; (3) the trial court erred in beginning voir dire outside of Fulmer's presence; (4) the trial court erred in permitting the jury to consider other sexual abuse incidents that occurred in counties other than Guadalupe County; and (5) the trial court erred in its assessment of attorney's fees.

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