

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
December 9, 2011

Fourth Court of Appeals to Hear Oral Argument

The Fourth Court of Appeals will hear oral arguments in two appeals on Tuesday, December 13, 2011, beginning at 9:00 a.m., before the following panel of justices: Chief Justice Catherine Stone, Justice Karen Angelini, and Justice Rebecca Simmons.

The following cases will be presented:

City of Laredo v. Luis Montano, et al. – The City of Laredo appeals a judgment awarding attorney’s fees to the appellees after a jury found that the City intended to condemn the appellees’ property for an unauthorized use. The City challenges the legal and factual sufficiency of the evidence to support the award, the appellees’ ability to recover appellate attorney’s fees, and the assessment of costs for the preparation of the reporter’s record.

J. Jesus Rodriguez, et al. v. Philip Boerjan, et al. - This appeal concerns a wrongful death suit. A husband, wife, and their daughter were killed in a rollover accident on private property. In the trial court, the wife’s parents—the plaintiffs—sued the landowners and their agents—the defendants. The plaintiffs alleged that the defendants are responsible for the accident in which their daughter, granddaughter, and son-in-law were fatally injured. In response, the defendants asserted that they are not liable for the deaths because all three family members had entered the United States without permission, were still engaged in illegal activity when they were killed, and the unlawful acts rule prevents the plaintiffs from suing on behalf of their fatally injured family members. The trial court dismissed all of the plaintiffs’ claims against the defendants. The wife’s parents appeal the trial court’s judgment.

The Fourth Court of Appeals will hear oral arguments in two appeals on Wednesday, December 14, 2011, beginning at 9:00 a.m., before the following panel of justices: Justice Sandee Bryan Marion, Justice Phylis J. Speedlin, and Justice Marialyn Barnard.

The following cases will be presented:

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Callaghan Ranch, Ltd. v. David Killam, et al. – Appellant complains of the denial of its motion for judgment notwithstanding the verdict. The underlying controversy pertains to whether the road at issue was impliedly dedicated to the public.

City of Laredo v. Homero Mojica and International Association of Firefighters Local 1390 – This appeal arises out of a dispute over the interpretation of a sick leave buy-back provision in a collective bargaining agreement between the City of Laredo and its firefighters. The appeal raises challenges to the trial court’s judgment upholding the arbitrator’s finding that the collective bargaining agreement gave the City of Laredo an option to buy back sick leave every year, but because firefighters expected the City of Laredo to exercise that option, the City of Laredo was obligated to do so.

The Fourth Court of Appeals will hear oral arguments in two appeals on Thursday, December 15, 2011, beginning at 9:00 a.m., before the following panel of justices: Justice Sandee Bryan Marion, Justice Rebecca Simmons, and Justice Steven C. Hilbig.

The following cases will be presented:

City of San Antonio v. Headwaters Coalition, Inc., et al. – This is an accelerated appeal from the trial court’s temporary injunction in favor of appellees, Headwaters Coalition, Inc., A Sponsored Ministry of The Congregation of Sisters of Charity of The Incarnate Word and The River Road Neighborhood Association. This appeal arises from a dispute over the location of the City of San Antonio’s proposed drainage project along Broadway and Hildebrand.

Texas Department of Public Safety v. Rachel Deakyne - This appeal arises from a car accident. In 2009, Rachel Deakyne and Trooper Kavin Edwards, who was driving his patrol car, were involved in an automobile accident in Bexar County. Deakyne was injured in the accident, and she sued Edwards and the Department of Public Safety claiming they were both responsible for her injuries. The State, representing the Department, cited the election of remedies provisions of the Tort Claims Act, and asked the trial court to dismiss Edwards from the suit; the trial court granted the request. The State also asked the trial court to dismiss Deakyne’s suit against the Department. The State argued that because Deakyne initially sued both Edwards and the Department, the election of remedies

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provisions require the trial court to dismiss her suit in its entirety. The trial court disagreed and signed an order denying the State’s request. The State appeals the trial court’s order.

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