

Court Advisory

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



Contact: Keith Hottle, Clerk of the Court
Phone: (210) 335-2510

FOR IMMEDIATE RELEASE
September 16, 2016

Fourth Court of Appeals to Hear Oral Argument

The Fourth Court of Appeals will hear oral arguments in two appeals on Tuesday, September 20, 2016, beginning at 9:00 a.m., before the following panel of justices: Justice Karen Angelini, Justice Marialyn Barnard, and Justice Rebeca C. Martinez.

The following cases will be presented:

Kenneth H. Tarr v. Timberwood Park Owners Association Inc. – In this appeal, this Court will consider whether a restrictive covenant limiting all tracts to “be used solely for residential purposes” prohibits short-term rentals of a home, such as those found on vacation websites like www.vrbo.com and www.airbnb.com.

Laborde Properties, L.P. and Laborde Management, LLC v. U.S. Shale Energy II, LLC, Raymond B. Roush Dodge, Ruthie Roush Dodge, and David E. Roush – This appeal arises out of a trial court’s order granting summary judgment in a case involving the interpretation of a royalty deed. On appeal, appellants argue the trial court erred in granting summary judgment in favor of appellees because the non-participating royalty interest at issue was a fixed rather than a floating royalty interest.

The Fourth Court of Appeals will hear oral arguments in one appeal on Wednesday, September 21, 2016, beginning at 10:30 a.m., before the following panel of justices: Chief Justice Sandee Bryan Marion, Justice Luz Elena D. Chapa, and Justice Jason Pulliam.

The following case will be presented:

Joeris General Contractors, Ltd. v. Rolando Cumpian – This appeal arises from an action brought against Joeris General Contractors, Ltd. by Rolando Cumpian, an employee of a sub-contractor who was injured on a job site. Cumpian sued Joeris for negligence and gross negligence. A jury found in favor of Cumpian, awarding actual and exemplary damages. Joeris appeals the trial court’s judgment

Court Advisory

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



arguing: (1) the record does not support liability based upon a general negligence theory because the undisputed evidence shows this is a premises defect action, Joeris did not control the sub-contractor's work, it owed no duty to Cumpian, and Cumpian and his co-worker were the only negligent parties who caused the injury; (2) alternatively, Casteel error in the submission of two jury questions mandates reversal; (3) Chapter 95 of the Texas Civil Practice and Remedies Code, or conforming common law, precludes liability; (4) the individual and cumulative effects of the trial court's harmful evidentiary errors mandates new trial; (5) the trial court erred by awarding exemplary damages; and (6) the trial court erred by allowing unsupported and inaccurate jury argument on Joeris's net worth.

The Fourth Court of Appeals will hear oral arguments in two appeals on Wednesday, September 21, 2016, beginning at 2:00 p.m., before the following panel of justices: Justice Patricia O. Alvarez, Justice Luz Elena D. Chapa, and Justice Jason Pulliam.

The following cases will be presented:

Westport Oil & Gas Company, L.P. n/k/a Kerr-McGee Oil & Gas Onshore, L.P. v. Betsy Mecom, Donald R. Mullins, Lannie Louise Mecom, Mark Mullins and Wahatoya, Ltd. – This appeal arises from a dispute over whether Kerr-McGee Oil and Gas Onshore, LP, f/k/a Westport Oil and Gas Co., LP, underpaid Appellees for oil and gas royalties due under a 1974 lease.

Appellant Kerr-McGee argues it paid the appropriate amount of royalties under the "market value at the well" measure specified in paragraph 3(b) of the lease. Kerr-McGee insists the trial court erred when it instructed the jury, based on lease paragraph 17, "that market value [was] to be computed on the average of the highest price paid by three separate Intrastate Purchasers of gas of like quality and quantity in Texas Railroad Commission District Four."

The jury found Kerr-McGee failed to comply with the lease royalty provisions and Kerr-McGee was not excused from doing so. The jury assessed damages at \$2.3 million and trial-level attorney's fees at \$480,000.00. The trial court rendered judgment on the verdict and added approximately \$1.45 million for pre-judgment interest and costs of court.

On appeal, Kerr-McGee argues the trial court erred when, inter alia, it misconstrued the lease, erroneously instructed the jury on how to compute damages, and improperly excluded evidence of Kerr-McGee's defenses. It also argues the evidence is neither legally nor factually sufficient to support the jury's breach of contract and damages findings.

Court Advisory

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



Ronald Rife, Mary Kathryn Hampton, Individually and as Administratrix of the Estate of Randall Rife, deceased v. Joseph Kerr, James Drought, Robert Lee Bobbit, Jr., Nancy Northway Gill, Lynn Northway Swanson, as Independent Co-Executor of the Estate of William Northway, Jr., et al. - The parties in this appeal dispute ownership to an undivided ½ interest in a mineral estate located in Dimmit County. The Rifés appeal the trial court’s summary judgment in favor of the Kerrs on the Rifés’ trespass to try title claim. The Rifés argue they conclusively established superior title to the disputed interest through a common source and that they are entitled to judgment as a matter of law. The Kerrs argue the Rifés failed to prove superior title and, alternatively, the Kerrs adversely possessed any interest the Rifés might have had. The issues presented include whether the Rifés proved superior title to the undivided ½ interest through a common source and, if so, whether the Kerrs produced some evidence raising a fact issue that they adversely possessed the Rifés’ interest.

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