



Case Summaries September 30, 2022

Case summaries are prepared by court staff as a courtesy. They are not a substitute for the actual opinions.

GRANTED CASES

ATTORNEYS

Attorney-Client Privilege

Franklin Ctr. for Gov't & Pub. Integrity v. Univ. of Tex. Sys., 2020 WL 7640146 (Tex. App.—Austin 2020), *pet. granted* (Sept. 30, 2022) [[21-0534](#)]

This case presents the question whether an independent investigator is a “lawyer’s representative” for purposes of the attorney–client privilege when the investigator is not retained solely for legal advice.

The University of Texas System hired Kroll Associates to investigate allegations of improper admissions practices at UT Austin. After Kroll’s report was released, the Franklin Center made a request under the Texas Public Information Act for all documents obtained by Kroll in its investigation. In the litigation that ensued, the Franklin Center continued to seek a subset of documents that were either provided to Kroll by the UT System or created by Kroll in the course of its investigation. The UT System argues that all of the documents sought are protected from disclosure by the attorney–client privilege because Kroll was serving as its “lawyer’s representative” under Texas Rule of Evidence 503.

The trial court granted the UT System’s motion for summary judgment, but the court of appeals reversed. The court held that Kroll is not a “lawyer’s representative” and that, therefore, none of the documents withheld are exempt from disclosure. The Supreme Court granted the UT System’s petition for review. Oral argument is set for January 11, 2023.

ADMINISTRATIVE LAW

Judicial Enforcement

Hous. Pro. Fire Fighters’ Ass’n, IAFF Local 341 v. Hous. Police Officers’ Union, 651 S.W.3d 41 (Tex. App.—Houston [14th Dist.] 2021), *pet. granted* (Sept. 30, 2022) [[21-0755](#)]

The Supreme Court granted this case to combine with 21-0518 *City of Houston v. Houston Professional Fire Fighters’ Association*. Houston voters adopted a provision in the Houston City Charter that requires firefighters and police officers be paid the same. The Houston Police Officers Union sued the City of Houston and it sued the Houston Professional Fire Fighters’ Association. In this case, the police officers’ union argues that the provision should be enjoined because it is preempted by state law and

it is void because it did not go through proper procedures. The Supreme Court granted this case to address both questions. Oral argument is set for November 29, 2022.

PROCEDURE—PRETRIAL

Venue

Great Divide Ins. Co. v. Fortenberry, 2021 WL 3160189 (Tex. App.—Dallas 2021), *pet. granted* (Sept. 30, 2022) [[21-1047](#)]

The issue in this case is whether a hotel may be a residence for purposes of determining venue.

Fortenberry signed a three-year contract to play for the Dallas Cowboys and began training with the team in Dallas County. The team provided Fortenberry with a room at a Residence Inn hotel, where Fortenberry stayed while participating in team activities. He suffered a serious knee injury at the Cowboys' training camp in California. He was unable to return to professional football, and the Cowboys eventually terminated his contract.

Fortenberry filed suit against Great Divide Insurance Co. for workers' compensation in Dallas County. Great Divide moved to transfer venue to Travis County, asserting that venue was not proper in Dallas County because it was not Fortenberry's residence at the time of the injury. The trial court denied Great Divide's motion and the case proceeded to trial. The jury rendered a verdict in Fortenberry's favor, and Great Divide was ordered to pay temporary income benefits to Fortenberry.

Great Divide appealed the verdict on several issues. The court of appeals reversed and remanded for further proceedings on the venue issue. The court concluded that Fortenberry had not presented prima facie evidence that he resided in Dallas County at the time of his injury because a stay in a hotel cannot meet the three-prong residence test created by *Snyder v. Pitts*, 241 S.W.2d 136 (Tex. 1951).

In his petition for review, Fortenberry argues that the court of appeals erred by (1) failing to review the entire record for any evidence of proper venue, as required by *Ruiz v. Conoco*, 868 S.W.2d 752 (Tex. 1993); (2) misapplying the *Snyder* residence test; and (3) holding that Fortenberry did not produce prima facie evidence that Great Divide had a principal office in Dallas County.

The Supreme Court granted Fortenberry's petition for review. Oral argument is set for January 11, 2023.

FAMILY LAW

Termination of Parental Rights

In re J.S., 2022 WL 620709 (Tex. App.—Dallas 2022), *pet. granted* (Sept. 30, 2022) [[22-0420](#)]

The issue in this case is whether the trial court complied with the statutory requirements for extending its jurisdiction over a suit to terminate parental rights initiated by the Department of Family and Protective Services. The Family Code provides for automatic dismissal of such a suit if the trial on the merits has not commenced within a year of the case's initiation, but the Code also allows the trial court to extend its jurisdiction over the suit for an additional six months if the court finds that "extraordinary circumstances" necessitate its doing so and that the extension would be "in the best interest of the child."

On the statutory dismissal date, Mother appeared for a bench trial but requested a jury trial. At the Department's request, the court made the best-interest finding

required by the Family Code orally on the record and then set a jury trial for a later date. About six weeks after the initial dismissal date, the court issued an order reciting both the extraordinary-circumstances and best-interest findings required by the Code. The court eventually issued a judgment terminating Mother's parental rights. Mother appealed, challenging the sufficiency of the evidence to support the judgment.

The court of appeals raised the issue of the trial court's compliance with the statutory requirements for extending jurisdiction on its own. The court held that the trial court's attempt to extend its jurisdiction was ineffective because the court made only the best-interest finding before the initial dismissal date, and the court's order making both findings came too late. The court vacated the trial court's judgment and dismissed the case for lack of subject-matter jurisdiction.

After initially denying the Department's petition for review, the Supreme Court granted the Department's motion for rehearing and its petition for review. Oral argument is set for January 11, 2023.