Case Summaries
February 16, 2024

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OPINIONS

INTENTIONAL TORTS

Defamation

Polk Cnty. Publ'g Co. v. Coleman, ___ S.W.3d ___, 2024 WL ___ (Tex. Feb. 16, 2024) [22-0103]

This case involves the application of the Texas Citizens Participation Act to a defamation claim against a newspaper.

The *Polk County Enterprise* published an article criticizing local prosecutor Tommy Coleman and his former employer, the Williamson County District Attorney's office, for their involvement in the wrongful conviction of Michael Morton. Coleman sued the Polk County Publishing Company—the *Enterprise*'s owner—alleging that the article was false and defamatory. Coleman challenges a specific statement that he had "assisted with the prosecution of Michael Morton" while a prosecutor in Williamson County. In support of his claim that this statement is false, Coleman averred that he was not a licensed lawyer when Morton was convicted in 1987; that he was only a prosecutor in the Williamson County DA's office from 2008 to 2012; and that, while there, he never appeared as counsel, signed court filings, discussed case strategy, argued in court, or gave any public statements or interviews in the Morton case. The trial court denied Polk County Publishing's motion to dismiss under the TCPA, and the court of appeals affirmed.

The Supreme Court reversed. In an opinion by Justice Blacklock, the Court explained that an article is substantially true and not defamatory if the "gist" of the article is true, even if it "errs in the details." The *Enterprise* article reported that Coleman, while present in the courtroom during one of Morton's post-conviction hearings, mocked Morton's efforts to obtain the DNA evidence that ultimately exonerated him. The Court reasoned that, reading the article as a whole, an average reader would not conclude from it that Coleman had assisted with the original conviction of Morton in 1987; rather, the article's gist is that Coleman "assisted with the prosecution" by mocking Morton's post-conviction efforts to exonerate himself and by providing courtroom support for his office's opposition to Morton's efforts. The Court also held that the challenged statement is not actionable for the additional reason that the undisputedly true account of Coleman's courtroom mocking of Morton, in the mind of an average reader, would be more damaging to Coleman's reputation than the specific statement that Coleman alleged to be false and defamatory.

Justice Boyd concurred in the Court's judgment.

ADMINISTRATIVE LAW

Jurisdiction

Morath v. Lampasas Indep. Sch. Dist., ___ S.W.3d ___, 2024 WL ___ (Tex. Feb. 16, 2024) [22-0169]

The central issue in this case is whether the Commissioner of Education had jurisdiction over a detachment-and-annexation appeal.

A land development company petitioned two school boards to detach undeveloped property from one school district and annex it to the other. Under the relevant statutory provisions, if both boards agree on the disposition of a petition, the decision is final. But if only one board "disapproves" a petition, the Commissioner can settle the matter in an administrative appeal. Here, one board approved the petition, but the other board took no action following a hearing. After sixteen months and repeated requests to secure a decision from the board, the company appealed to the Commissioner, asserting that the board constructively disapproved the petition by its inaction. The Commissioner approved the annexation but surpassed a statutory deadline to issue a decision. In a suit for judicial review, the trial court affirmed. But the court of appeals vacated the judgment and dismissed the case, holding that a board's inaction cannot provide the requisite disagreement for an appeal to the Commissioner.

The Supreme Court reversed. The Court held that the Commissioner had jurisdiction because, under a plain reading of the statute, a board "disapproves" a petition by not approving it within a reasonable time after a hearing. The Court further held that the Commissioner did not lose jurisdiction when the statutory deadline passed. The deadline is not jurisdictional, and the Legislature did not intend dismissal as a consequence for noncompliance with that deadline. The Court remanded the case to the court of appeals to address in the first instance the remaining procedural and merits challenges to the Commissioner's decision.

REAL PROPERTY

Easements

Albert v. Fort Worth & W. R.R. Co., ___ S.W.3d ___, 2024 WL ___ (Tex. Feb. 16, 2024) (per curiam) [22-0424]

The issue presented is whether legally sufficient evidence supports a jury's finding of an easement allowing a landowner to cross adjacent railroad tracks to access a highway.

Albert purchased a tract of land in Johnson County, which is separated from a state highway by a strip of land owned by Fort Worth & Western Railroad. Western operates railroad tracks along that strip. After the purchase, Albert and his business partners formed Chisholm Trail Redi-Mix, LLC to operate a concrete plant on the property. After the plant became operational, Chisholm Trail's trucks used a single-lane gravel road to cross the tracks and access the highway. The gravel road is the sole point of access between the concrete plant and the highway.

Western sent Albert a cease-and-desist letter demanding that he and Chisholm Trail stop using the gravel crossing. Albert and Chisholm Trail sued, seeking a declaration that they possessed easements by estoppel, necessity, and prescription allowing them to use the gravel road. The jury found that the plaintiffs are entitled to all three easements, and the trial court rendered judgment on the verdict. The court of appeals reversed, holding that the evidence is legally insufficient to support all three

easement findings.

The Supreme Court affirmed the court of appeals' judgment in part and reversed it in part. The Court agreed that the evidence is legally insufficient to support the jury's findings as to the easements by estoppel and necessity. But the Court also held that legally sufficient evidence supports the jury's finding of a prescriptive easement. The Court explained that testimony presented at trial could enable a reasonable and fair-minded juror to find that Albert and his predecessors-in-interest used the gravel crossing in a manner that was adverse, open and notorious, continuous, and exclusive for the requisite ten-year period. The Court remanded the case to the court of appeals to consider additional, unaddressed issues.

HEALTH AND SAFETY

Involuntary Commitment

In re A.R.C., ___ S.W.3d ___, 2024 WL ___ (Tex. Feb. 16, 2024) [22-0987]

At issue in this case is whether a second-year psychiatry resident qualifies as "psychiatrist" under the Texas Health and Safety Code.

A.R.C. was detained on an emergency basis after exhibiting psychotic behavior during a visit to an emergency room. After a medical examination yielded troubling results, the State filed an application for involuntary commitment. By statute, a court cannot hold a hearing to determine whether involuntary civil commitment is appropriate unless it has received "at least two certificates of medical examination for mental illness completed by different physicians." One of those certificates must be completed by "a psychiatrist" if one is available in the county. In this case, both certificates of medical examination filed with respect to A.R.C. were completed by second-year psychiatry residents.

In the probate court, A.R.C. argued that neither resident qualifies as a psychiatrist under the statute because each was licensed under a physician-in-training program and was training under more senior doctors. The court disagreed and ordered A.R.C. to undergo in-patient mental health services for forty-five days.

A split panel of the court of appeals agreed with A.R.C.'s argument that the residents are not psychiatrists. That court thus vacated the probate court's order without reaching A.R.C.'s alternative argument challenging the legal and factual sufficiency of the evidence to support the probate court's commitment order.

The Supreme Court granted the State's petition for review, reversed the court of appeals' judgment, and remanded the case to that court to consider A.R.C.'s remaining challenges. The Court held that physicians who specialize in psychiatry are psychiatrists under the applicable statute. The Court first applied the statutory definition of "physician," which includes medical residents who practice under physician-in-training permits. It then examined whether the plain meaning of "psychiatrist" inherently excludes medical residents and found that it does not. Instead, dictionaries show that psychiatrists are physicians who specialize their practices in psychiatry. Because the second-year residents who completed certificates of medical examination with respect to A.R.C. met that standard, they qualify as psychiatrists.

GRANTED CASES

OIL AND GAS

Assignments

Citation 2002 Inv. LLC v. Occidental Permian, Ltd., 662 S.W.3d 550 (Tex. App—El Paso 2022), *pet. granted* (Feb. 16, 2024) [23-0037]

The issue in this case is whether an assignment of mineral interests is limited by the depths described in the referenced exhibit.

In 1987, Shell Western E&P, Inc. assigned to Citation a large oil-and-gas property. The assignment incorporated and attached an exhibit that described the conveyed property. Some of the descriptions referenced property depth, describing a tract of land down to a certain number of feet. In 1997, Shell purported to transfer certain oil-and-gas interests to Occidental, some of which had been previously conveyed to Citation in the Shell-Citation assignment but for deeper interests than those referenced in the exhibit. Both Occidental and Citation later attempted to assign to third parties some of the interests they obtained from Shell, leaving the "deep rights" conveyed in the Shell-Occidental assignment in dispute.

Occidental contends that the interests conveyed in the Shell-Citation assignment were depth-limited, leaving Shell free to assign its deep rights to them. Citation argues that the Shell-Citation assignment was not depth-limited. Thus, Citation and the third party it sold to own all the interests described in the exhibit. The trial court held that the assignment was a limited-depth grant that did not convey Shell's deep rights to Citation. The court of appeals reversed, holding that the assignment was not depth-limited, leaving Citation and its transferee the sole owners of the described interests.

Occidental filed a petition for review in the Supreme Court, arguing that the referenced exhibit clearly describes the depths of the interests to be conveyed. It further argues that the court of appeals erred by construing the assignment's "subject to" language as an expansion rather than a limitation and by construing a Mother Hubbard clause as a general grant. The Court granted Occidental's petition for review.

TAXES

Tax Protest

Wilbarger Cnty. Appraisal Dist. v. Oncor Elec. Delivery Co. NTU, LLC, 660 S.W.3d 760 (Tex. App.—Amarillo 2022), *pet. granted* (Feb. 16, 2024) [23-0138], consolidated for oral argument with *Oncor Elec. Delivery Co. NTU LLC v. Mills Cent. Appraisal Dist.*, 660 S.W.3d 288 (Tex. App.—Austin 2022), *pet. granted* (Feb. 16, 2024) [23-0145]

The issue is whether Oncor Electric Delivery Company can revise the description of its property on the appraisal roll after having settled the total value of its property on the roll with the appraisal district.

In 2019, Oncor's predecessor-in-interest protested the value of its transmission lines to be included on the appraisal rolls of Wilbarger and Mills counties. After an appraisal, the prior owner entered a settlement with both counties' appraisal districts agreeing to the total value of the transmission lines on each county's appraisal roll.

In 2020, Oncor acquired the company that owned the transmission lines and discovered that the company had sent incorrect data to an appraisal firm. This mistake inflated the agreed values in the settlement agreements and Oncor's tax bills. Oncor sought to correct the appraisal rolls with each county's appraisal review board. Both appraisal review boards denied the claims because the Texas Tax Code states that

settlement agreements are "final." Oncor sought review in district court, winning in Wilbarger County and losing in Mills County.

In the Wilbarger County case, the court of appeals reversed and rendered for the taxing entities, holding that the value in the settlement agreement was final and nonreviewable. Oncor petitioned the Supreme Court for review.

In the Mills County case, the court of appeals reversed in part and remanded, holding that the doctrine of mutual mistake prevented that settlement agreement from becoming final. The taxing entities petitioned the Supreme Court for review.

In the Supreme Court, Oncor argues that the courts have jurisdiction to consider whether the settlement agreements are binding as to this dispute and whether the agreements are voidable for mutual mistake. The taxing entities argue that the Tax Code's provision making settlement agreements final is jurisdictional, or is at least determinative of the merits, and that Oncor's current tax protest fails.

The Court granted both petitions for review and consolidated the cases for oral argument.

EMPLOYMENT LAW

Sexual Harassment

Harris v. Fossil Grp., Inc., ___ S.W.3d ___, 2023 WL 1794030 (Tex. App.—Dallas 2023), *pet. granted* (Feb, 16, 2024) [23-0376]

The issue in this case is whether an employee's statement that she sent an email reporting sexual harassment to her employer raises a material fact issue as to whether the employer knew or should have known of the harassing behavior.

Nicole Harris was hired by the Fossil Group to work at a Fossil store in Frisco. During her employment, she began exchanging messages on Instagram with the store's assistant manager, Leland Brown. Many of these messages were sexual in nature, which Harris alleges constitutes sexual harassment. Harris contends that she reported Brown's sexual harassment to Fossil through email. However, neither she nor Fossil was able to locate the email. Harris sued Fossil alleging a hostile work environment theory.

The trial court granted summary judgment for Fossil. The court of appeals reversed, holding that Harris's allegation that she sent an email was sufficient to raise a material fact issue about whether Fossil knew or should have known of the harassment and failed to take appropriate action.

Fossil petitioned the Supreme Court for review. Fossil argues that Harris has not created a fact issue on the question of whether it knew or should have known about the alleged harassment. In the alternative, Fossil argues that it has conclusively established the *Faragher*/*Ellerth* affirmative defense to harassment because (1) it exercised reasonable care to prevent and correct promptly any harassment, and (2) Harris unreasonably failed to take advantage of any preventive or corrective opportunities provided by Fossil or to otherwise avoid harm. The Court granted the petition for review.