



Case Summaries May 31, 2024

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DECIDED CASES

CONSTITUTIONAL LAW

Abortion

State v. Zurawski, ___ S.W.3d ___, 2024 WL ___ (Tex. May 31, 2024) [[23-0629](#)]

The issue in this direct appeal is whether Texas’s civil abortion law permitting an abortion when the woman has a life-threatening physical condition is unconstitutional when properly interpreted.

The Center for Reproductive Rights, representing obstetricians and women who experienced serious pregnancy complications but were delayed or unable to obtain an abortion in Texas, sought to enjoin enforcement of Texas’s civil, criminal, and private-enforcement laws restricting abortion. The Center argued that the laws must be interpreted to allow physicians to decide in good faith to perform abortions for all unsafe pregnancies and pregnancies where the unborn child is unlikely to sustain life after birth. If not so interpreted, the Center charged that the laws violate the due-course and equal-protection provisions of the Texas Constitution. The State moved to dismiss the case on jurisdictional grounds, including standing and sovereign immunity. The trial court entered a temporary injunction, barring enforcement of the laws when a physician performs an abortion after determining in good faith that the pregnancy is unsafe or that the unborn child is unlikely to sustain life.

In a unanimous opinion, the Texas Supreme Court vacated the injunction, holding that it departed from Texas law. The Court held that jurisdiction existed for one physician’s claims against the Attorney General to enjoin enforcement of the Human Life Protection Act because she had been threatened with enforcement and her claims were redressable by a favorable injunction. Next, the Court held it error to substitute a good faith standard for the statutory standard of reasonable medical judgment. Reasonable medical judgment under the law does not require that all physicians agree with a given diagnosis or course of treatment but merely that the diagnosis and course of treatment be made “by a reasonably prudent physician, knowledgeable about [the] case and the treatment possibilities for the medical conditions involved.” Under the statute, a physician must diagnose that a woman has a life-threatening physical condition, but the risk of death or substantial bodily impairment from that condition need not be imminent. Under this interpretation, the Court concluded that the Center did not present a case falling outside the law permitting abortion to address a life-threatening physical condition, where the due

course clause would compel an abortion. Nor is the law, which regulates the provision of abortion on medical grounds, based on membership in a protected class subject to strict scrutiny under the equal-protection clauses.

Justice Lehrmann filed a concurring opinion, emphasizing that a more restrictive law—one requiring imminent death or physical impairment or unanimity among the medical profession as to diagnosis or treatment—would be unconstitutional and a departure from traditional constitutional protections.

Justice Busby filed a concurring opinion, explaining that the Court’s opinion leaves open whether the statute is void for vagueness or violates the rule of strict construction of penal statutes and does not decide the extent to which an abortion must mitigate a risk of death or bodily impairment.

GRANTED CASES

ADMINISTRATIVE LAW

Public Information Act

Univ. of Tex. at Austin v. Gatehouse Media Tex. Holdings, II, Inc., 656 S.W.3d 791 (Tex. App.—El Paso 2022), *pet. granted* (May 31, 2024) [[23-0023](#)]

The issue in this case is whether the Texas Public Information Act gives the University of Texas discretion to withhold information concerning the results of disciplinary proceedings.

Gatehouse Media sent a Public Information Act request to the University, seeking the results of disciplinary proceedings in which the University determined that a student had been an “alleged perpetrator” of a violent crime or sexual offense and committed a violation of the University’s rules or policies. The University declined to provide the information, asserting that the Federal Education Rights and Privacy Act of 1974 does not require this information’s disclosure.

Gatehouse filed a petition for mandamus in the trial court, seeking to compel the disclosure. Gatehouse then moved for summary judgment, claiming that while FERPA makes the University’s disclosure of disciplinary information discretionary, the mandatory-disclosure requirements of the PIA revoked the University’s discretion, requiring disclosure here. The trial court granted Gatehouse’s motion, finding that the information was presumed subject to disclosure because the University failed to seek an opinion from the Office of the Attorney General, as the PIA requires. The court of appeals affirmed.

The University filed a petition for review, arguing that disclosure of the requested information is discretionary under both state and federal law. Additionally, the University contends that past opinions from the Attorney General and this Court render such an opinion unnecessary in this case. The Supreme Court granted the petition.

ATTORNEYS

Barratry

Cheatham v. Pohl, ___ S.W.3d ___, 2022 WL 3720139 (Tex. App.—Houston [1st Dist.] 2022), *pet. granted* (May 31, 2024) [[23-0045](#)]

This case raises questions about the extraterritorial reach of Texas’s civil barratry statute and whether barratry claims are subject to a two- or four-year statute of limitations.

Mark Cheatham, a Louisiana plaintiff, hired Texas attorneys, Michael Pohl and Robert Ammons, to represent him in a wrongful-death suit. Cheatham later asserted civil barratry claims against Pohl and Ammons in Texas, alleging that the attorneys paid a sham financing company run by Pohl’s wife, Donalda, to offer him money for funeral expenses as an incentive to hire Pohl and Ammons.

Pohl and Ammons filed motions for partial summary judgment, asserting that Cheatham’s claims were barred by a two-year statute of limitations. The trial court denied the motions, concluding that a four-year statute of limitations applied. Pohl, Ammons, and Donalda filed subsequent motions for summary judgment, asserting that the barratry statute has no extraterritorial reach to conduct that occurred out of state. The trial court granted the motions. The court of appeals reversed and remanded, reasoning that the attorneys’ conduct occurred in Texas, but even if it had not, the statute can permissibly be extended to out-of-state conduct.

Pohl, Donalda, and Ammons petitioned for review, arguing that the court of appeals impermissibly extended the reach of the barratry statute and maintaining that such claims are subject to a two-year statute of limitations. The Supreme Court granted their petitions for review.

PROCEDURE—APPELLATE

Waiver

Bertucci v. Watkins, ___ S.W.3d ___, 2022 WL 17998480 (Tex. App.—Austin 2022), *pets. granted* (May 31, 2024) [[23-0329](#)]

These cross-petitions raise issues of briefing waiver and whether fiduciary duties are owed among business partners.

Bertucci and Watkins founded several companies to develop low-income housing projects. After many years of working together, Bertucci came to suspect that Watkins was misappropriating the companies’ funds and sought an accounting. Because of the dispute, certain company profits were placed in escrow, and eventually, Watkins sued for their distribution. Bertucci counterclaimed on behalf of himself and derivatively on behalf of the companies for theft and breach of fiduciary duty. Watkins maintains that Bertucci, now deceased, orally approved compensating Watkins with the allegedly misappropriated funds. The parties filed competing motions for summary judgment, and the trial court granted Watkins’ motion.

The court of appeals, sitting en banc, reversed. First, it held that Bertucci waived his appeal of the summary judgment on the derivative claims by failing to brief them. The court concluded fact issues precluded summary judgment on Bertucci’s individual claims. The court also held that Watkins’ testimony that Bertucci orally approved of the transactions should have been excluded under the Dead Man’s Rule, which precludes testimony by a testator against the executor in a civil proceeding. Both parties filed petitions for review.

Bertucci argues that his brief should have been liberally construed so that appeal

of the derivative claims was not lost by waiver. He also argues that the trial court erred in admitting an auditor's report into evidence, alleging that it is unverified and unreliable. Watkins argues that he is entitled to summary judgment on the breach of fiduciary duty claim because, as limited partners in a partnership, Watkins did not owe Bertucci a fiduciary duty as a matter of law. Watkins further argues that the statute of limitations has run on Bertucci's claims because the discovery rule does not apply. Finally, Watkins argues that his testimony about Bertucci's oral approvals was corroborated and therefore admissible under the Dead Man's Rule. The Supreme Court granted both petitions for review.

REAL PROPERTY

Bona Fide Purchaser

CRVI Riverwalk Hosp., LLC v. 425 Soledad, Ltd., ___ S.W.3d ___, 2022 WL 3219593 (Tex. App.—San Antonio 2022), *pet. granted* (May 31, 2024) [[23-0344](#)]

A main issue is whether a creditor's bona fide protections pass to a subsequent purchaser if the property is purchased through a receivership sale rather than through foreclosure.

A parking garage, hotel, and office building initially were under common ownership. The owner retained the garage and hotel but sold the office building, which was eventually acquired by 425 Soledad. The original owner and purchaser executed an agreement making a certain number of parking spots in the garage available to the office building and its tenants. The agreement stated that it would run with the land and be binding on the parties' successors and assigns, but it was never recorded.

The garage and hotel were later sold to a purchaser who financed the transaction with two promissory notes. CRVI Crowne acquired the B note. When the new owner of the garage and hotel defaulted, Crowne chose to place the properties into receivership rather than foreclose on them. A related entity, CRVI Riverwalk, purchased the garage and hotel through the receiver. After Riverwalk became the owner of the garage and hotel, 425 Soledad requested parking spaces pursuant to the agreement made by the garage and hotel's original owner. Riverwalk refused to provide the spaces, and 425 Soledad sued.

Riverwalk argues that the parking agreement is unenforceable because Crowne was a bona fide creditor when it purchased the note without notice of the unrecorded agreement; then, when Riverwalk purchased the garage and hotel from the receiver, Crowne's bona fide protections passed through to it. The trial court rejected these arguments and entered judgment for 425 Soledad after a bench trial.

The court of appeals reversed. The court agreed with the trial court that the parking agreement is an easement, but it concluded that Crowne was a bona fide creditor and that Crowne's status "sheltered" and passed through to Riverwalk when Riverwalk purchased the garage and hotel through the receivership sale.

425 Soledad petitioned the Supreme Court for review. It argues that because Riverwalk purchased the properties from the debtor's receiver, and not from creditor Crowne in a foreclosure sale, that Crowne's bona fide protections, if any, cannot shelter or pass through to Riverwalk. The Court granted the petition.

REAL PROPERTY

Deed Restrictions

EIS Dev. II, LLC v. Buena Vista Area Ass'n, ___ S.W.3d ___, 2023 WL 2919331 (Tex. App.—El Paso 2023), *pet. granted* (May 31, 2024) [[23-0365](#)]

The central issue in this case is the interpretation of a deed restriction.

EIS Development II acquired land in Ellis County to develop as a residential subdivision. The land came with a deed restriction stating: “No more than two residences may be built on any five acre tract. A guest house or servants’ quarters may be built behind a main residence location . . .” The subdivision was platted with 73 homes on 100 acres, with all but one lot being smaller than two acres. Nearby landowners formed the Buena Vista Area Association and sued to enforce the deed restriction.

The trial court denied EIS’s plea in abatement, which sought to join adjoining landowners who were not already parties. The court concluded that the deed restriction unambiguously limits building on the property to two main residences per five-acre tract, and it granted partial summary judgment for the Association on that issue. The parties then proceeded to a jury trial on EIS’s affirmative defense of “changed conditions.” The jury failed to find that EIS had established that defense. The trial court entered a final judgment for the Association that permanently enjoined EIS from building more than two main residences per five-acre tract. The court of appeals affirmed.

In its petition for review, EIS challenges the trial court’s denial of its plea in abatement, the court’s interpretation of the deed and other legal rulings, and the jury instructions. The Supreme Court granted the petition.

PROCEDURE—PRETRIAL

Forum Non Conveniens

In re Pinnergy Ltd., ___ S.W.3d ___, 2023 WL 5021214 (Tex. App.—Houston [1st Dist.] 2023), *argument granted on pet. for writ of mandamus* (May 31, 2024) [[23-0777](#)]

The issue in this case is whether the trial court erred by denying the defendants’ motion to dismiss for forum non conveniens.

A Union Pacific train collided with Pinnergy’s 18-wheeler truck (driven by Ladonta Sweatt) in northwest Louisiana. Thomas Richards and Hunter Sinyard were conductors on Union Pacific’s train. Pinnergy filed suit in Red River Parish, Louisiana, seeking damages from the Louisiana Department of Transportation and Union Pacific. Three months later, Richards filed suit in Harris County, Texas against Pinnergy, Union Pacific, and Sweatt. Sinyard intervened in the Harris County suit as a plaintiff.

The Harris County defendants filed a motion to dismiss that suit for forum non conveniens. They pointed out that the accident occurred 240 miles from the Harris County courthouse, but only 18 miles from the Louisiana courthouse; that the plaintiffs live closer to Red River Parish than to Harris County; and the existence of litigation in Louisiana arising from the same collision. The trial court denied the motion without explanation. The court of appeals denied the defendants’ mandamus petition without substantive opinion.

The defendants filed a petition for writ of mandamus in the Supreme Court, arguing that all six statutory forum non conveniens factors have been met. The Court set the petition for oral argument.