Case Summaries
September 12, 2025

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DECIDED CASES

Johnson v. Clifton, ___ S.W.3d ___, 2023 WL 4443016 (Tex. App.—El Paso 2023), *pet. granted* (Sept. 5, 2025) [23-0671]

The issues in this case are how to interpret a double fraction in an oil-and-gas deed and whether the presumed-grant doctrine applies.

A deed executed in 1951 granted "an undivided one-one hundred and twenty-eighth (1/128) interest" in all the oil under the land described. It also purported to grant "a 1/128 (1/16 of the usual 1/8 royalty) part of all the oil, gas, and other minerals taken." From 1951 to 2020, the original grantors and grantees, along with their successors-in-interest, agreed that the deed had conveyed a fixed 1/128 royalty to the grantees. In 2020, Johnson sued the Cliftons, arguing that the deed actually provided for a floating 1/16 non-participatory royalty interest. The parties filed cross-motions for summary judgment. The trial court denied Johnson's motion for summary judgment and granted the Cliftons' motion.

While Johnson's appeal was pending, the Supreme Court decided *Van Dyke v. Navigator Group*, 668 S.W.3d 353 (Tex. 2023). *Van Dyke* addressed both double fractions and the presumed-grant doctrine. In Johnson's appeal, the court of appeals held that Johnson was entitled to a floating 1/16 royalty, rather than the fixed 1/128 royalty that had previously been received. The court declined to consider the Cliftons' arguments regarding the presumed-grant doctrine because the Cliftons did not raise that issue in the trial court.

The Cliftons filed a petition for review, arguing that the court of appeals erred in applying *Van Dyke* to the deed's double-fraction language and that, at a minimum, the Supreme Court should remand in the interest of justice for the trial court to consider the presumed-grant doctrine. The Court granted the petition.

Ly v. Maya Walnut LLC, ___ S.W.3d ___, 2024 WL 260761 (Tex. App.—Dallas 2024), *pet. granted* (Sept. 5, 2025) [24-0171]

The issue in this case is whether a commercial tenant could justifiably rely on a landlord's continued negotiations for lease renewal in light of alleged red flags.

Maya Walnut leased a space from Walnut Creek Center. In 2016, the parties began negotiating for the lease's renewal, though the lease did not expire until 2019. In July 2018, Walnut Creek signed a lease with Maya's competitor for the same space. But Walnut Creek did not tell Maya about the lease and continued negotiating with Maya through December 2018. Eventually, Maya learned from online employment solicitations that Walnut Creek had leased the space to Maya's competitor.

Maya sued Walnut Creek and its owners for fraud, negligent misrepresentation, promissory estoppel, and conspiracy. Maya alleged that Walnut Creek's continued negotiations left Maya with little or no opportunity to pursue an alternate lease for property nearby. Walnut Creek brought counterclaims for breach of contract based on past-due rent and property damage. A jury found for Maya on its claims and Walnut Creek on the counterclaims. The trial court rendered judgment on the verdict. The court of appeals reversed as to Maya's claims and rendered judgment for Walnut Creek on those claims, holding that red flags should have put Maya on notice of the unreliability of Walnut Creek's representations and that Maya failed to adequately protect itself.

Maya filed a petition for review. It argues the red-flag doctrine should not conclusively preclude justifiable reliance where, as here, the plaintiff could not have reasonably discovered the fraud. The Supreme Court granted the petition.

Huffman Asset Mgmt., LLC v. Colter, ___ S.W.3d ___, 2023 WL 7319054 (Tex. App.—Dallas 2023), *pet. granted* (Sept. 5, 2025) [24-0205]

This case raises multiple issues regarding service of process, including whether a *Whitney* certificate must show that process documents were forwarded to an entity's most recent principal address in its filings with the Secretary of State.

In this lease dispute, the Colters sued Prairie and its property manager, Huffman, complaining about the living conditions in the apartment the Colters rented from Prairie. The Colters attempted substituted service through the Secretary, who issued certificates in accordance with *Whitney v. L & L Realty Corp.*, 500 S.W.2d 94 (Tex. 1973), confirming that the process documents were sent to Prairie and Huffman at their designated registered offices for service. The Colters moved for default judgment relying on these *Whitney* certificates, which the trial court granted.

The trial court mailed copies of its default judgment to Prairie and Huffman at the address the Colters provided in the Certificate of Last Known Address filed with the motion for default judgment. After receiving the judgment, Prairie and Huffman timely filed a motion for new trial, arguing that the *Whitney* certificates were inadequate because they did not show that process documents were forwarded to the entities' "most recent address . . . on file" with the Secretary, as required by statute. The trial court denied the motion for new trial. The court of appeals held service was proper but remanded for a new trial on certain damages awarded in the trial court's judgment. Huffman and Prairie filed a petition for review raising multiple issues regarding service of process, including whether the Secretary forwarded process documents to the proper address.

The Supreme Court granted the petition for review.

Boerschig v. Rio Grande Elec. Coop., ___ S.W.3d ___, 2024 WL 172587 (Tex. App.—San Antonio 2024)*, pet. granted* (Sept. 5, 2025) [24-0213]

This case concerns the existence and scope of a utility company's easement by estoppel.

John P. Boerschig purchased a ranch in 2002 with notice of an electrical line running across the property. The Rio Grande Electrical Cooperation constructed the line in 1947. At that time, the executor of the then-landowner's estate signed a document permitting the line to be placed, constructed, operated, repaired, maintained, relocated, and replaced on acreage alleged to be within the ranch's boundaries. The document was not recorded. Relying in part on that document, in 2012 Rio Grande upgraded the line and roughly tripled the number of utility poles. Boerschig sued for trespass and sought injunctive and declaratory relief. A jury found that Rio Grande did not possess a written or prescriptive easement but that it did possess an easement by estoppel. It also found that the upgrades did not exceed the scope of this easement.

The court of appeals affirmed. It held that legally sufficient evidence supports the jury's finding of an easement by estoppel. It rejected Boerschig's argument that Rio Grande's easement was limited to its initial form of construction, holding that legally sufficient evidence also supports the jury's finding that the upgrades were permissible.

Boerschig petitioned for review. He argues that the record contains no evidence of the elements of an easement by estoppel supporting Rio Grande's right to upgrade the line because the 1947 document is not enforceable as a written easement and does not grant Rio Grande the right to expand its line. The Supreme Court granted review.

Peterson v. HEB Grocery Co., ___ S.W.3d ___, 2024 WL 1203892 (Tex. App.—Corpus Christi–Edinburg 2024), *pet. granted* (Sept. 5, 2025) [24-0310]

The issue in this slip-and-fall case is whether the defendant store was entitled to summary judgment when the plaintiff presented evidence of prior leaks only in other parts of the store.

Marissa Peterson slipped and fell on water that had accumulated in the toy aisle of an HEB store. After she sued, HEB filed a motion for summary judgment, arguing it had no actual or constructive knowledge of the water on the floor. The trial court denied HEB's motion. HEB filed a second motion for summary judgment, attaching additional evidence that the roof was in good condition and that there was no evidence of a leak over the toy aisle. The trial court granted HEB's second motion. Peterson appealed, and the court of appeals reversed and remanded. On remand, HEB filed a third summary judgment motion, which the trial court granted.

The court of appeals reversed and remanded. It held evidence that the store frequently underwent extensive roof repairs and that water leaked from the ceiling every time it rained could lead a reasonable factfinder to conclude that the puddle existed for a long enough period that HEB should have known about it prior to Peterson's fall. The court explained that evidence of prior leaks over the toy aisle in particular was not necessary to survive summary judgment on constructive knowledge.

HEB filed a petition for review, arguing that constructive knowledge of prior roof leaks in other areas of the store did not amount to constructive knowledge of a puddle in the area where Peterson slipped. HEB also argues that the court of appeals erred in reversing the trial court's exclusion of expert testimony on HEB's roof maintenance and inspection procedures. The Court granted the petition.

In re K.N., ___ S.W.3d ___, 2024 WL 4249163 (Tex. App.—Amarillo 2024), *pet. granted* (Sept. 5, 2025) [24-0881]

Mother and Father challenge the trial court's jurisdiction and the sufficiency of the evidence supporting the termination of their parental rights.

Mother has four children, three of whom she shares with Father. The Department of Family and Protective Services initiated a removal and termination proceeding against Mother and Father shortly after their move from Texas to Louisiana with all four children.

After a jury trial, Father's parental rights were terminated as to the three shared children based on endangerment, constructive abandonment, and failure to comply with a court order. Mother's rights were terminated on the same grounds but only as to the child who is not Father's. Despite finding that termination grounds also existed for Mother as to the three shared children, the jury found that termination of Mother's parental rights was not in their best interest.

Both parents appealed, and the court of appeals affirmed, holding the evidence was factually and legally sufficient to support the endangerment and best-interest findings.

Mother's and Father's petitions for review each challenge the trial court's jurisdiction based on the family's move to Louisiana prior to suit and the sufficiency of the evidence supporting the jury's endangerment findings.

The Supreme Court granted the petitions.

In re Bell Helicopter Servs. Inc., ___ S.W.3d ___, 2024 WL 4457564 (Tex. App.—Houston [14th Dist.] 2024), *argument granted on pet. for writ of mandamus* (Sept. 5, 2025) [24-0883]

The issue in this case is whether Bell Helicopter is entitled to mandamus relief after Bell moved for summary judgment based on a federal statute of repose and was denied.

Matthew Kawamura died while piloting a helicopter in 2017. His relatives brought negligence and products-liability actions against multiple defendants, including Bell, which manufactured and sold the helicopter in 1997. Bell moved for traditional summary judgment on the relatives' claims under the General Aviation Revitalization Act's 18-year statute of repose for civil actions "arising out of an accident involving a general aviation aircraft." The trial court denied Bell's motion.

Bell sought mandamus relief at the court of appeals, arguing it lacked an adequate remedy on appeal for the trial court's ruling because the Act is a federal statute barring the relatives' suit against Bell. The court of appeals denied mandamus relief, which Bell now seeks from the Supreme Court on the same grounds.

The Supreme Court granted argument on the petition for writ of mandamus.

In re Tafel, ___ S.W.3d ___, 2024 WL 4850107 (Tex. App.—Dallas 2024), *argument granted on pet. for writ of mandamus* (Sept. 5, 2025) [24-1062]

At issue in this case is whether a *qui tam* action survives the death of the plaintiff/*qui tam* relator.

Dr. Scott Ludlow brought a *qui tam* action in Dallas County under the Texas Medicaid Fraud Prevention Act against Robert Tafel and others, claiming that the

defendants had overcharged the Texas Medicaid program for dental services. The State declined to take over the action under the TMFPA. Dr. Ludlow passed away and the trial court substituted his wife Laura Ludlow, the executrix of Dr. Ludlow's estate, as the plaintiff and *qui tam* relator. Tafel filed a motion for summary judgment arguing that the *qui tam* claims did not survive the death of Dr. Ludlow. The trial court denied the motion and Tafel sought mandamus relief in the court of appeals. After the court of appeals denied relief, Tafel sought mandamus relief in the Supreme Court.

Tafel argues that the TMFPA is a penal statute and that penal causes of action typically do not survive the death of the plaintiff. The State and Ludlow argue that a *qui tam* action by its nature leaves the State as a surviving claimant, most of any recovery will go to the State, and therefore the case should proceed.

Tafel separately argues that this suit is barred because under the TMFPA's first-to-file and public-disclosure bars, an earlier action filed in Travis County barred this Dallas County suit. Tafel argues these rules bar the Dallas County suit because the two suits make essentially the same factual allegations against largely the same defendants. Ludlow argues that the bars do not apply because the essential facts and parties are not the same.

The Supreme Court granted argument on the petition for writ of mandamus.