Case Summaries
April 10, 2026

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DECIDED CASES

In re Zaidi, ___ S.W.3d ___, 2026 WL ___ (Tex. Apr. 10, 2026) [24-0245]

This mandamus proceeding challenged an order disqualifying defense counsel because his legal assistant previously worked on the same case for the opposing party's former counsel.

The legal assistant had worked for plaintiffs' counsel for several years before moving to another firm that was not representing any party at that time. Five years later, an attorney representing the defendants joined the firm, and the legal assistant was assigned a few case-related tasks. The plaintiffs and their counsel became aware of the legal assistant's work on the case after receiving two e-filing notifications bearing her name. After conducting a brief investigation, the plaintiffs filed a motion to disqualify defense counsel. The trial court granted the motion, and the court of appeals summarily denied mandamus relief.

The Supreme Court denied the defendants' mandamus petition, which contested the disqualification order on both substantive and procedural grounds. First, the Court held that disqualification was required because defense counsel did not instruct the legal assistant to abstain from working on any matter from a previous employment, a minimal safeguard required when a nonlawyer "switches sides" in a case. Even though the legal assistant did not switch sides when she was hired, a proper admonishment was nonetheless required at some point before she commenced work on the same case. Second, the Court rejected defense counsel's argument that the disqualification motion was untimely. Although the plaintiffs filed the motion almost a year after receiving the e-filing notifications naming the legal assistant, that fact did not conclusively overcome the plaintiffs' testimony that they were unaware of the issue until shortly before filing the motion.

H-E-B, LP v. Peterson, ___ S.W.3d ___, 2026 WL ___ (Tex. Apr. 10, 2026) [24-0310]

At issue in this slip-and-fall case is whether evidence of earlier water leaks in a grocery store created a fact question as to whether the store owner had constructive knowledge of a puddle on the floor.

Marissa Peterson slipped on a clear liquid in the toy aisle of an HEB store about two hours after it rained. She sued HEB for premises liability. HEB moved for summary judgment, arguing that no evidence demonstrates it had actual or constructive knowledge of the puddle before Peterson's fall. In response, Peterson relied on evidence of numerous roof leaks throughout the store in the year before her fall. She also presented evidence that she saw water dripping from a ceiling rafter after she fell and that no HEB employees had walked down the toy aisle in the two hours before her fall despite the store's heightened inspection protocol after rainstorms.

The trial court granted summary judgment for HEB. The court of appeals reversed, holding that the trial court erred in granting summary judgment and partially erred in excluding testimony from Peterson's expert.

The Supreme Court reversed the court of appeals' judgment and reinstated the trial court's summary judgment. The Court held that evidence of earlier roof leaks in other parts of the store is not probative of HEB's constructive knowledge of the toy aisle puddle because the leaks occurred outside the vicinity of the puddle and were not temporally related to the time and place of Peterson's injury. The Court further held that HEB is entitled to summary judgment because no other evidence, including the expert testimony the court of appeals found admissible, showed the duration of the puddle's existence before Peterson's fall. Without temporal evidence indicating that the dangerous condition existed long enough for a reasonable premises owner to have discovered it, HEB cannot be charged with constructive knowledge.

Spectrum Gulf Coast, LLC v. City of San Antonio, ___ S.W.3d ___, 2026 WL ___ (Tex. Apr. 10, 2026) [24-0794]

The issue in this case is whether a municipally owned public utility breached its contract with a telecommunications provider by charging discriminatory rates in contravention of a later-enacted statute.

CPS Energy, a public utility owned by the City of San Antonio, contracts with other entities that wish to attach equipment to CPS's utility poles and thus provide services to their customers. In 1984, Spectrum's predecessor in interest executed such an agreement with CPS. AT&T later entered into a similar agreement.

Spectrum paid an increasing annual pole-attachment rate, while AT&T continued to pay the circa-1984 rate despite being invoiced for a higher rate. In 2008, Spectrum sued CPS for breach of contract and violations of pricing requirements in the Public Utility Regulatory Act, which was amended in 2005 to prohibit public utilities from discriminating for or against telecommunications providers. Spectrum eventually amended its petition to allege that by violating existing law, CPS's discriminatory rates also breached the contract. The trial court allowed a permissive appeal on whether CPS breached the parties' agreement by unlawfully imposing discriminatory rates on Spectrum. The court of appeals held that the 1984 agreement did not incorporate subsequent changes in law, such as the 2005 statutory amendments.

The Supreme Court reversed. The Court held that the contract's text reflected the parties' joint commitment "at all times" to comply with "all laws" that affected their rights and obligations under the contract and that the parties understood that regulatory changes were inevitable in monopolistic industries such as utilities. Accordingly, Spectrum was authorized to pursue its contract claim, and the Court therefore remanded the case to the trial court for further proceedings.

In re Lapuerta, ___ S.W.3d ___, 2026 WL ___ (Tex. Apr. 10, 2026) [24-0879]

This case concerns whether the district court erred in ordering a new trial.

Torres injured his finger in a saw accident. Dr. Lapuerta treated him. Torres was later treated by another doctor who amputated the finger. Torres sued Lapuerta for malpractice. The jury was given a "loss of chance" instruction stating that the finger must have had a greater than 50% chance of survival for Lapuerta's negligence to be a proximate cause of injury. The trial court rendered judgment for Lapuerta after the jury returned a defense verdict. Torres moved for a new trial, initially referencing a letter from the lone dissenting juror. This juror thought that a portion of the finger might have been saved with proper treatment and that the jury was uncertain whether the loss of chance instruction referred to all or part of the finger. There was a question from the jury regarding this uncertainty and the court had instructed the jury to refer to instructions already given. The trial court granted Torres's amended motion for new trial, giving several reasons. Lapuerta unsuccessfully sought mandamus relief in the court of appeals and then sought relief in the Supreme Court.

The Court directed the trial court to vacate the new-trial order and render judgment based on the verdict. The Court first noted that the juror's letter invaded the privacy of jury deliberations and should not have been considered. Several of the reasons given for the new trial questioned whether "loss of chance" or "lost chance of survival" was recognized under Texas law at all or whether it was limited to cases where the patient died. The Court held that loss of chance is a recognized doctrine and is not limited to death cases. It also reasoned, contrary to the new-trial order, that even if an ideal instruction might have distinguished between the whole finger and the partial finger, the record did not show that the jury probably would have reached a different result with a more nuanced instruction.

Tex. Dep't of Pub. Safety v. Callaway, ___ S.W.3d ___, 2026 WL ___ (Tex. Apr. 10, 2026) [24-0966]

At issue is whether a former Department of Public Safety Special Agent sufficiently established his claim for disability discrimination to survive a plea to the jurisdiction.

While he was on medical leave to receive treatment for alcoholism and posttraumatic stress disorder, Chris Callaway received a call from counselors at his daughter's school. The counselors reported that they had detained Callaway's daughter due to a mental-health crisis. Grabbing his badge, handcuffs, and personal sidearm, Callaway hurried to the school and loudly confronted one of the

counselors. He also threatened to arrest two of the school district's police officers, who had arrived at the scene. Following an investigation, DPS terminated Callaway's employment.

Callaway sued DPS for disability discrimination. DPS filed a plea to the jurisdiction and hybrid motion for summary judgment. The district court denied DPS's motions, and the court of appeals affirmed. DPS petitioned for review.

The Supreme Court reversed and rendered judgment for DPS. The Court held that Section 21.105 of the Texas Labor Code does not prevent an employer from terminating an employee who cannot reasonably perform his job because of a disability. DPS reasonably determined that Callaway's posttraumatic stress disorder impaired his ability to perform his job because giving him a sidearm and a badge and sending him out to handle stressful situations would endanger citizens and officers alike. Therefore, the court of appeals erred by not dismissing Callaway's disability-discrimination claim.

Fasken Oil & Ranch, Ltd. v. Puig, ___ S.W.3d ___, 2026 WL ___ (Tex. Apr. 10, 2026) [24-1033]

This case concerns whether cost-free language in an oil and gas royalty agreement includes postproduction costs incurred to prepare the minerals for sale downstream from the well.

The Puigs' predecessor reserved "an undivided one-sixteenth (1/16) of all . . . minerals . . . in, to and under or that may be produced from the above described acreage, to be paid or delivered to Grantor . . . free of cost forever." Fasken operates wells on the relevant leaseholds. In paying the Puigs' royalty, Fasken historically deducted postproduction costs to calculate the market value of raw gas produced at the wellhead, and in turn, the royalty owed.

In 2021, the Puigs sued Fasken for breach of the royalty agreement. Relying on the deed's "free of cost forever" language, the Puigs sought a declaration that their royalty is free of both production and postproduction costs, meaning it must be calculated based on a downstream sales price. Fasken sought a declaration that the royalty bears postproduction costs because it is based on raw minerals "produced from the above described acreage"; that is, market value at the wellhead. On cross-motions, the trial court granted partial summary judgment for the Puigs but certified an interlocutory appeal on whether the deed's "free of cost forever" language applies to postproduction costs. The court of appeals affirmed.

The Supreme Court reversed, rendered partial summary judgment for Fasken, and remanded the case to the trial court. The Court held that the Puigs hold a non-participating royalty in raw minerals produced at the well and thus it bears its usual share of postproduction costs. In the absence of language calling for a royalty on the sales price for enhanced minerals downstream, the deed's "produced from the above-described acreage" language reserves a royalty based on the market value of unprocessed minerals at the point of production—the wellhead. The "free of cost forever" language refers to production costs; it does not relieve the royalty of

postproduction costs incurred to transform the raw minerals into a downstream sales product.

RECENTLY GRANTED CASES

Edcouch-Elsa Indep. Sch. Dist. v. Comprehensive Training Ctr., LLC, ___ S.W.3d ___, 2024 WL 3708934 (Tex. App.—Corpus Christi–Edinburg 2024), *pet. granted* (Mar. 27, 2026) [24-0772]

This case concerns a school district's invocation of governmental immunity to defeat a breach of contract claim on the theory that the superintendent lacked authority to enter the contingent-fee contracts at issue.

Edcouch-Elsa Independent School District's school board delegated authority to the District's superintendent "to make budgeted purchases for goods or services," but board approval was required for budgeted purchases of $25,000 or more. The superintendent signed contingent-fee contracts for grant-writing and consulting services, contingent upon a successful grant application, with Comprehensive Training Center and ERI Funding Group. The District was awarded the grant, and the superintendent purportedly terminated the contracts without paying. Comprehensive Training Center and ERI Funding Group sued the District for breach of contract, and the District filed a plea to the jurisdiction, which the trial court denied. The court of appeals reversed after determining that the superintendent lacked authority to enter into the contracts because the contracts were not "budgeted purchases" and thus were not properly executed.

Comprehensive Training Center and ERI Funding Group petitioned for review and argue that the Supreme Court should adopt a rebuttable presumption of delegated authority for contingent-fee contracts and that fact questions remain as to whether the contracts cost $25,000 or more.

The Supreme Court granted the petition.

ACS State Healthcare, LLC v. M&M Orthodontics, PA, ___ S.W.3d ___, 2024 WL 3844744 (Tex. App.—Austin 2024), *pet. granted* (Mar. 27, 2026) [24-0802]

At issue in this case is whether interlocutory appellate jurisdiction exists, whether ACS State Healthcare was an employee of the State under Texas law, and whether ACS is entitled to derivative sovereign immunity.

Under a contract with the State, Conduent Healthcare administered the Texas Medicaid program and was responsible for vetting prior-authorization requests. The federal government notified Texas of its intent to audit the State's prior-authorization process. With the threat of a federal clawback, the State initiated an administrative enforcement action against M&M Orthodontics, an approved Medicaid provider owned by the Malones. After years of litigation, both Conduent and the Malones agreed to settlements with the State. Later, M&M moved for partial summary judgment, and Conduent filed a plea to the jurisdiction.

The trial court denied M&M's motion and Conduent's plea to the jurisdiction. The court of appeals affirmed. It held that Conduent did not conclusively establish

that it was not an independent contractor, and thus, not an agent of the State. In addition, the court found that derivative sovereign immunity did not apply to Conduent, as M&M's remaining claims are based on Conduent's own bad acts that were not directed by the State. A dissenting justice would have dismissed the appeal for want of jurisdiction.

The Supreme Court granted the petition for review.

Old Republic Ins. Co. v. Morris, 700 S.W.3d 172 (Tex. App.—Tyler 2024), *pet. granted* (Mar. 27, 2026) [24-1034]

This case concerns the proper calculation of an offset for an insurance carrier's subrogation lien.

Several Georgia-Pacific employees were injured in an explosion while working at a mill. Old Republic, Georgia-Pacific's insurer, paid workers' compensation benefits. Old Republic also paid settlements on behalf of Georgia-Pacific and other entities, and plaintiffs obtained settlements from other defendants. Plaintiffs obtained a favorable jury verdict in federal court, in which the jury found Georgia-Pacific partially responsible for plaintiffs' damages. The court reduced the amount of the judgment based on the settlements and the percentages of responsibility found by the jury.

Old Republic later asserted a subrogation lien against plaintiffs' recovery. Plaintiffs sued Old Republic in state court, seeking a declaration of the lien's correct amount. Applying the employer responsibility offset set forth in the Workers' Compensation Act, the trial court concluded that Old Republic's lien was extinguished because the federal court's judgment reduced the plaintiffs' recovery by an amount greater than the lien based on Georgia-Pacific's percentage of responsibility. The court of appeals calculated the offset differently, concluding among other things that plaintiffs' recovery in the federal court judgment was reduced by the settlements.

Plaintiffs petitioned the Supreme Court for review, arguing that Old Republic waived any reliance on the settlements to reduce the amount of the lien's offset. Plaintiffs also argue the court of appeals' calculation of the offset strayed from the statute's plain text and that Old Republic contractually agreed not to seek any subrogation interest or credit for its settlement payments. The Court granted the petition.

In re L.H., ___ S.W.3d ___, 2024 WL 4701487 (Tex. App.—Houston [1st Dist.] 2024), *pet. granted* (Mar. 27, 2026) [25-0229]

At issue in this case is whether the court of appeals properly concluded there was insufficient evidence to support a juvenile's transfer to criminal district court after his eighteenth birthday.

The State charged L.H. with murder in juvenile court when he was sixteen years old. Two days before L.H. turned eighteen, the juvenile court denied the State's request to waive its jurisdiction and transfer the case to district court. The State later asked the juvenile court to transfer the case under a separate provision of the

Juvenile Justice Code governing persons over eighteen. Among other things, that provision requires the juvenile court to find that it was not practicable to proceed in juvenile court before L.H. turned eighteen through no fault of the State. The juvenile court granted the State's request and transferred the case to district court. The court of appeals reversed and remanded, holding that there was insufficient evidence to support the juvenile court's finding.

The State petitioned for review. It argues that the court of appeals erroneously interpreted the phrase "practicable to proceed." The State also argues that the court improperly omitted events after L.H.'s eighteenth birthday from the practicability analysis. The Supreme Court granted the petition for review.

Aran & Franklin Eng'g, Inc. v. Zody, ___ S.W.3d ___, 2025 WL 866855 (Tex. App.—Corpus Christi–Edinburg 2025)*, pet. granted* (Mar. 27, 2026) [25-0374]

This professional negligence case concerns whether a third-party petition in a construction dispute complied with the certificate of merit requirements found in Civil Practice & Remedies Code Chapter 150.

As a general contractor, New Millennium Construction hired Aran & Franklin to serve as its Appointed Qualified Inspector. The property owners later sued New Millennium for professional negligence, and New Millennium brought a third-party claim against Aran & Franklin. Aran & Franklin moved to dismiss the claim for New Millenium's failure to attach a certificate of merit affidavit. The trial court denied the motion, and the court of appeals reversed. On remand, and after New Millennium provided an affidavit to support its claim, the trial court dismissed the case without prejudice.

New Millennium then refiled the third-party claim, attaching another certificate of merit from a different affiant. Aran & Franklin again moved to dismiss, arguing that the affiant is not an Appointed Qualified Inspector and thus is not competent to opine on the work performed. The trial court denied the motion to dismiss. The court of appeals again reversed, holding that the first certificate of merit was not filed contemporaneously with the second third-party action and thus is ineffective. The court also rejected the second certificate of merit because the court concluded that the affiant was not qualified to opine on Aran & Franklin's work.

New Millennium filed a petition for review, arguing that the first certificate of merit on file with the trial court was contemporaneously filed with its second petition and the affiant of its second certificate of merit is qualified to opine about the work performed. The Supreme Court granted review.

In re Bosco, ___ S.W.3d ___, 2025 WL 1005620 (Tex. App.—Austin 2025), *argument granted on pet. for writ of mandamus* (Mar. 27, 2026) [25-0421]

The issue is whether the trial court abused its discretion when it ordered a defendant to allow the plaintiffs to enter and inspect her property.

Pamela Bosco, the owner of a fourteen-acre residential property, was sued by her neighbors, the Bierschwales, for allegedly violating deed restrictions regarding the number and types of animals on her property and the location of certain

structures. The Bierschwales served a request for entry and inspection of Bosco's property under Rule of Civil Procedure 196.7. After Bosco objected, the Bierschwales moved to compel the requested inspection. The trial court ultimately ordered the inspection.

Bosco seeks mandamus relief, arguing that the Bierschwales' request does not comply with the heightened standard recognized by various courts for obtaining inspection of a residential property. Bosco also argues that the information the Bierschwales seek from the inspection is obtainable from other sources that are more convenient, less burdensome, or less expensive. The Bierschwales respond that Rule 196.7 imposes no special requirements when seeking inspection of a party's property and that the inspection order imposed reasonable limitations and therefore was within the court's discretion. The Court granted argument on the petition for writ of mandamus.

In re Simon Prop. Grp., L.P., ___ S.W.3d ___, 2025 WL 3244457 (Tex. App.—Dallas 2025), *argument granted on pet. for writ of mandamus* (Mar. 27, 2025) [26-0023]

At issue in this case is whether an outlet shopping mall and its corporate affiliates are entitled to mandamus relief from the trial court's denial of their motion to dismiss various tort claims arising from a mass shooting at the mall.

In May 2023, a lone gunman opened fire at an outlet mall in Allen, Texas, killing eight people and wounding seven others. The outlet mall, owned by Simon Property Group, contracted with Allied Security Services to provide security at the mall. Victims and family members of those who died sued Simon, Allied, and the owner of the nearby hotel where the gunman prepared for his attack. They asserted various negligence and premises liability claims, alleging that Simon was aware of the risk of a mass shooting at the mall but lacked adequate security measures to protect shoppers from such an attack. Simon moved to dismiss the claims under Rule 91a of the Texas Rules of Civil Procedure. The trial court ultimately denied the motion.

Simon sought mandamus relief in the court of appeals. After the court denied that request, Simon filed a petition for writ of mandamus in the Supreme Court, arguing that it has no duty to protect shoppers from unforeseeable criminal conduct like a premeditated mass shooting. The Court granted argument on the petition for writ of mandamus.