



Case Summaries November 1, 2024

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

DECIDED CASES

Procedure—Appellate Preservation of Error

In re Est. of Phillips, ___ S.W.3d ___, 2024 WL ___ (Tex. Nov. 1, 2024) (per curiam) [[24-0366](#)]

The issue in this case is whether a plaintiff waives a claim by omitting it from an amended petition when the omission is required to comply with the trial court's prior order.

Billy Phillips devised his estate, including a 14-acre tract of land, to his daughters Sheila Smith and Billie Hudson. After Smith, as independent executor, sought to sell the tract, Hudson intervened in the probate proceeding, asserting claims to partition the property in kind and other claims for relief. The trial court granted Smith's special exceptions, struck Hudson's partition claims, and ordered her to file an amended petition omitting those claims. Hudson complied, though her amended pleading expressly reserved the right to replead the stricken claims if the trial court's order was reversed on appeal. The trial court later signed an order authorizing Smith to sell the property. A divided court of appeals affirmed, holding that Hudson abandoned the partition claims by omitting them from her amended petition, which superseded her prior petitions.

The Supreme Court reversed. The Court acknowledged the general rule that any claim not carried forward in an amended petition is deemed dismissed but pointed to caselaw recognizing possible exceptions to this rule. One is that when a plaintiff files an amended petition omitting a claim that the trial court previously ruled against, but the plaintiff indicates an intent not to abandon the claim, the plaintiff does not waive her ability to complain of that ruling on appeal. The Court explained that this exception applies to Hudson's amended petition and that the court of appeals erred by viewing Hudson's adherence to the trial court's order as manifestation of an intent to abandon the stricken claims. Because Hudson opposed Smith's special exceptions and obtained an adverse ruling from the trial court, no further step was required to preserve her complaint for appellate review. The Court held that the court of appeals erred in failing to address Hudson's complaint on the merits and remanded for the court to do so.