



Case Summaries December 31, 2024

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DECIDED CASES

GOVERNMENTAL IMMUNITY

Texas Tort Claims Act

City of Austin v. Powell, ___ S.W.3d ___, 2024 WL ___, (Tex. Dec. 31, 2024) [[22-0662](#)]

The issue in this case is whether the Texas Tort Claims Act waives the City of Austin's governmental immunity.

Officers Brandon Bender and Michael Bullock were involved in a police chase. Officer Bullock was closely following Officer Bender's vehicle. Officer Bender decided to make a sudden right turn. Unable to slow in time, Officer Bullock struck the side of Officer Bender's car. The two cars lost control, and Officer Bullock's car hit Noel Powell's minivan, which was stopped at the intersection.

Powell sued the City. The City filed a plea to the jurisdiction under the Act's emergency-response exception. To establish the emergency exception, it was Powell's burden to create a fact issue on either Officer Bullock's compliance with an applicable statute or his recklessness during the chase. The trial court denied the City's motion, and the City filed an interlocutory appeal. The court of appeals affirmed, holding that there is a fact issue about whether Officer Bullock's actions were reckless.

The Supreme Court reversed. The Court held that the City's immunity to suit is not waived. First, no statute specifically applies to Officer Bullock's actions during the chase, and thus no fact issue could arise as to compliance with one. Second, no evidence supports characterizing Officer Bullock's actions as reckless. To qualify as reckless, more than a momentary lapse in judgment must be proven. Instead, there must be evidence that the officer consciously disregarded a high degree of risk. Here, the accident report listed Officer Bullock's inattentiveness and failure to keep a safe following distance as reasons for the accident. At most, this evidence shows that Officer Bullock was negligent. Powell offered no other evidence to create a fact issue as to recklessness. Because the plaintiff must establish a waiver of sovereign immunity, Powell's inability to provide evidence essential to the emergency exception means that the City should have prevailed on its plea to the jurisdiction. Accordingly, the Court reversed the court of appeals' judgment and rendered judgment dismissing the case for lack of jurisdiction.

FAMILY LAW

Division of Marital Estate

In re J.Y.O., ___ S.W.3d ___, 2024 WL ___ (Tex. Dec. 31, 2024) [[22-0787](#)]

This divorce case concerns the characterization and division of a discretionary performance bonus, the marital residence, and a retirement account.

Lauren and Hakan Oksuzler were married in 2010. The trial court granted them a divorce in December 2019, but litigation continued relating to the division of the marital estate. One issue is a performance bonus of \$140,000 that Hakan received from his employer, Bank of America, in early 2020. The evidence shows that Hakan has received a bonus annually as part of his compensation; that the bonus is discretionary and contingent on Hakan's and the Bank's performance during the previous calendar year; and that Hakan must still be employed by the Bank on the date of payment to receive it. The Supreme Court held, consistent with its precedent, that the characterization of a bonus—like any compensation—depends on when it was earned and that a discretionary bonus paid after divorce for work performed during marriage is community property. Because the bonus Hakan received in 2020 was for work performed during marriage, it is community property.

The second issue is the marital residence, which Hakan owned before marriage but refinanced during marriage. The deed executed in connection with the refinancing lists both Hakan and Lauren as grantees. The Supreme Court affirmed the court of appeals' judgment that Hakan and Lauren each own an undivided one-half interest in the home as tenants in common. Texas caselaw establishes a "gift presumption" in the context of real-property conveyances between spouses. When the marital home was purchased by one spouse before marriage, and a new deed executed during marriage purports to convey an interest in the home to the other spouse, a presumption is raised that the owner spouse intended to give the other spouse an undivided one-half interest in the property as a gift. This presumption can be rebutted by clear-and-convincing evidence that a gift was not intended, but the Court held, Hakan presented no evidence to rebut the presumption here.

The final issue is Hakan's 401(k) account. Hakan made contributions to one 401(k) account before marriage. In 2015, during marriage, Hakan opened the account at issue here with an initial deposit of \$124,000. No evidence was introduced tracing the source of the deposit, but Hakan introduced paystubs reflecting that, while married, he contributed \$62,000 to the two consecutive accounts between 2012 and 2018. At the time of divorce, the balance of the second account was \$353,000. Because this account includes contributions during marriage, the Supreme Court explained that it is presumptively community property and any separate property within the account must be traced to contributions made before marriage. The Court held that Hakan failed to overcome the community-property presumption.

The Court thus affirmed in part, reversed in part, and remanded to the trial court for further proceedings.

EMPLOYMENT LAW

Age Discrimination

Tex. Tech Univ. Health Scis. Ctr.—El Paso v. Flores, ___ S.W.3d ___, 2024 WL ___ (Tex. Dec. 31, 2024) [[22-0940](#)]

The issue in this case is whether the trial court should have granted Tech’s jurisdictional plea on the plaintiff’s age-discrimination claim.

Tech employee Loretta Flores, age 59, applied to be chief of staff for Tech’s president, Dr. Richard Lange. Flores had previously complained of age discrimination in connection with her reassignment from director to executive associate. While interviewing Flores, Lange asked her age. He later testified that the question was intended to address the “elephant in the room”—Flores’s prior discrimination complaint. Amy Sanchez, the 37-year-old director of Tech’s office of auditing services, also applied for the chief-of-staff position. Lange hired Sanchez.

Flores sued Tech for age discrimination and retaliation. Tech filed a jurisdictional plea based on sovereign immunity, which the trial court denied. The court of appeals reversed on retaliation but affirmed on age discrimination. Tech filed a petition for review.

The Supreme Court reversed. In an opinion by Justice Lehrmann, the Court applied the *McDonnell Douglas* burden-shifting framework. Tech does not dispute that Flores established a prima facie case of age discrimination, and Flores does not dispute that Tech articulated a legitimate, nondiscriminatory reason for hiring Sanchez: she is more qualified for the position.

The parties’ disagreement is on the third step: whether Flores presented sufficient evidence that the reason given is untrue and a mere pretext for discrimination. The Court held that she did not. The Court pointed to the undisputed evidence that both candidates have relevant experience and qualifications and declined to second-guess the manner in which Lange weighed those qualifications. The Court further reasoned that Lange’s asking Flores’s age is not evidence of pretext when viewed in the context of his knowledge of her prior discrimination claim. The Court thus held that Flores failed to raise a genuine issue of material fact that age was a motivating factor in Lange’s hiring decision.

Justice Blacklock concurred, opining that the *McDonnell Douglas* formula has no foundation in the statutory text governing discrimination claims. His opinion also emphasizes that the chief of staff is a person in whom the president places significant trust and that there is no basis in the record for a reasonable factfinder to conclude that Lange subjectively believed Flores would be better suited to the position than Sanchez if not for her age.

Justice Young also concurred, echoing Justice Blacklock’s call for reexamination of the Court’s burden-shifting framework for analyzing discrimination claims.

RES JUDICATA

Claim Preclusion

Steelhead Midstream Partners, LLC v. CL III Funding Holding Co., ___ S.W.3d ___, 2024 WL ___ (Tex. Dec. 31, 2024) (per curiam) [[22-1026](#)]

In this case, the Court held that a judgment in a lien-foreclosure suit does not bar a later suit on a related contract claim.

Predecessors to Steelhead and CL III had a joint-operating agreement to develop leases. The JOA obliged Steelhead and CL III to share the costs of constructing a

pipeline. Orr placed a lien on the pipeline for unpaid construction costs. CL III settled with Orr and was assigned the lien in a bankruptcy proceeding. CL III then sued Steelhead in Montague County to foreclose on Steelhead's pipeline interest. Steelhead counterclaimed, alleging as a contract claim that under the JOA it had paid its share of construction costs. CL III filed a plea to the jurisdiction arguing the contract claim was barred because it was subject to the jurisdiction of the bankruptcy court. The trial court granted the plea and rendered judgment granting CL III the right to foreclose on the pipeline. Steelhead paid CL III over \$400,000 to avoid foreclosure.

Steelhead brought a separate suit in Travis County, alleging CL III breached the JOA by failing to pay its share of the pipeline costs. The trial court rendered a money judgment for Steelhead. The court of appeals reversed reasoning that the Travis County suit is an impermissible collateral attack on the Montague County judgment.

The Supreme Court reversed. It held that the Travis County suit is not barred because the contract claim was not decided in the Montague County foreclosure suit. The foreclosure suit decided the status of a lien originating from a construction debt owed to a third party. Whether one party to the JOA owed a contractual debt to the other was not decided in the Montague County suit. Steelhead in fact persuaded the Montague County court that it lacked jurisdiction to decide the contract claim. In these circumstances, neither *res judicata* nor judicial estoppel bars the Travis County suit.

ATTORNEYS

Legal Malpractice

Henry S. Miller Com. Co. v. Newsom, Terry & Newsom, LLP, ___ S.W.3d ___, 2024 WL ___ (Tex. Dec. 31, 2024) [[22-1143](#)]

The lead issue in this case is whether a client can pursue a legal-malpractice claim against its former attorney where the client's judgment creditor from the underlying case has a financial interest in the malpractice recovery.

Henry S. Miller Commercial Company sued its former attorney, Steven Terry, for malpractice after losing a fraud case. HSM claims that Terry was negligent in failing to designate a responsible third party and by stipulating to HSM's responsibility for its agent's actions. HSM and its opponent in the fraud case, now a judgment creditor, made an agreement, memorialized in HSM's bankruptcy plan of reorganization, that the creditor would receive the first \$5 million of any malpractice recovery and a percentage of additional amounts. The legal-malpractice case was tried twice. In the second trial, the jury found Terry 100% responsible for the fraud judgment against HSM and awarded actual and punitive damages. After Terry appealed, the court of appeals remanded for a third trial based on jury-charge error.

Both Terry and HSM petitioned for review. In an opinion by Chief Justice Hecht, the Supreme Court addressed Terry's argument that the bankruptcy-plan arrangement giving HSM's judgment creditor an interest in its malpractice recovery constitutes an illegal assignment of the malpractice claim. The Court disagreed, reasoning that HSM retained substantial control over litigation of the claim.

The Court concluded there is some evidence that Terry's negligence caused HSM's damages because the jury likely would have assigned at least partial responsibility to the undesignated third party. However, the only evidence supporting the amount of damages awarded—testimony that the jury would have assigned 85-100% fault to the third party based on the expert's "experience"—is conclusory. Since there is evidence of some damages, but no evidence supporting the full amount

awarded, the Court agreed with the court of appeals' disposition remanding the case for yet another trial. Finally, the Court held that there is no evidence that Terry was grossly negligent and that the punitive damages award must therefore be reversed.

Justice Young filed a concurring opinion to further address how the judicial system should respond where a legal-malpractice case is not impermissibly assigned yet still implicates the concerns that led the Supreme Court to preclude such assignments.

Justice Bland dissented in part. She would have held that the expert testimony is legally insufficient to establish legal malpractice as a cause of damage to HSM and rendered judgment for Terry.

ADMINISTRATIVE LAW

Public Information Act

Univ. of Tex. at Austin v. GateHouse Media Tex. Holdings, II, Inc., ___ S.W.3d ___, 2024 WL ___ (Tex. Dec. 31, 2024) [[23-0023](#)]

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

The Austin–American Statesman sent a PIA request to the University, seeking the results of disciplinary proceedings in which the University determined that a student was an alleged perpetrator of a violent crime or sexual offense and violated the University's rules or policies. The University declined to provide the information, asserting that the federal Family Educational Rights and Privacy Act does not require this information's disclosure.

The Statesman filed a statutory mandamus proceeding in the trial court, seeking to compel the disclosure. It then moved for summary judgment, arguing that the PIA revokes the discretion granted by FERPA. The trial court granted the Statesman's motion, ruling that the records are presumed subject to disclosure because the University failed to comply with the PIA's requirement that a decision of the Office of Attorney General be sought. The court of appeals affirmed.

The Supreme Court reversed and rendered judgment for the University. The Court first held that the plain language of PIA Section 552.026—which states that the act “does not require the release” of education records “except in conformity with” FERPA—grants an educational institution discretion whether to disclose an education record if the disclosure is authorized by FERPA. The Court then held that the University was not required to seek an OAG decision before withholding the records. The Court reasoned that the PIA provision imposing the requirement of an OAG decision does not apply to records withheld under Section 552.026, and it noted OAG's policy refusing to review education records to determine their compliance with FERPA.

OIL AND GAS

Pooling

ConocoPhillips Co. v. Hahn, ___ S.W.3d ___, 2024 WL ___ (Tex. Dec. 31, 2024) [[23-0024](#)]

At issue in this case is the proper calculation of Kenneth Hahn's royalty interest in a tract of land in DeWitt County, Texas.

In 2002, Hahn conveyed the tract to William and Lucille Gips but reserved a 1/8 non-participating royalty interest. The Gipses later leased their executive interest to a subsidiary of ConocoPhillips in exchange for a 1/4 royalty. The lease also allowed

ConocoPhillips to pool the acreage. At ConocoPhillips's request, Hahn signed a document ratifying the lease in all its terms. Hahn also signed a separate stipulation of interest with the Gipses, in which they agreed that Hahn had intended to reserve a 1/8 "of royalty" in his 2002 conveyance to the Gipses. ConocoPhillips then pooled the tract into one of its existing production units.

In 2015, Hahn sued ConocoPhillips and the Gipses, alleging he had reserved a fixed rather than floating royalty interest. The trial court disagreed and granted summary judgment for the Gipses. The court of appeals reversed, holding that Hahn had reserved a 1/8 fixed royalty in the 2002 conveyance. On remand, Hahn added a claim for statutory payment of royalties, and the parties filed cross-motions for summary judgment regarding whether Hahn's ratification of the lease made his non-participating royalty interest subject to the landowner's royalty. The trial court granted summary judgment for the defendants, but the court of appeals reversed, holding that Hahn was only bound to the lease's pooling provisions and that this Court's intervening decision in *Concho Resources v. Ellison* was inapplicable.

Conoco petitioned the Supreme Court for review, arguing that the court of appeals erred by (1) concluding that Hahn ratified only the lease's pooling provision, and (2) disregarding the stipulation of interest. The Supreme Court affirmed in part and reversed in part. The Court upheld the court of appeals' determination that Hahn's ratification of the lease did not transform his royalty interest from fixed to floating. But the Court rejected Hahn's argument that the stipulation of interest failed as a conveyance because it lacked a sufficient property description, and it held that the court of appeals' failure to give effect to the stipulation was contrary to *Concho Resources*. The Court therefore reversed in part and rendered judgment that ConocoPhillips correctly calculated Hahn's share of proceeds from the production on the pooled unit.

GOVERNMENTAL IMMUNITY

Texas Tort Claims Act

City of Houston v. Rodriguez, ___ S.W.3d ___, 2024 WL ___ (Tex. Dec. 31, 2024) [[23-0094](#)]

The issue in this interlocutory appeal is whether the City of Houston established that official immunity protects its police officer from liability in a high-speed pursuit case.

Assisting in a prostitution sting, Officer Corral pursued a suspect fleeing in a stolen car at a high rate of speed. The suspect suddenly turned on a side street, and Corral followed. While making the turn, Corral hit the street curb and struck a vehicle waiting at a stop sign. Corral later testified that he hit the curb due to his brakes not working. The driver and passenger of the vehicle sued the City.

The Texas Tort Claims Act waives a city's immunity from suit for injuries caused by its employee's negligence in operating a vehicle if the employee would be personally liable. But when government officials perform discretionary duties in good faith and within their authority, the law shields them from personal liability. The City moved for summary judgment based on Corral's official immunity. The trial court denied the motion, and the court of appeals affirmed. Relying on Corral's testimony that the brakes were not working, the intermediate court inferred that the brakes were deficient. Because Corral did not explain when he became aware that he was driving with deficient brakes, the court held that a fact issue on good faith precludes summary judgment.

The Supreme Court reversed and rendered judgment dismissing the case. The Court held that (1) a governmental employer bears the burden to assert and prove its employee’s official immunity in a manner analogous to an affirmative defense; (2) when viewed in context, Corral’s statement communicated that the brakes were functional, but their use did not accomplish his intended result of stopping the car before it hit the curb; and (3) the City established as a matter of law Corral’s good faith in making the turn.

Justice Busby concurred to make two observations: evidence of an officer’s recklessness may inferentially rebut the good-faith prong of official immunity, and the Court’s opinion should not be construed as sanctioning the decision to initiate a high-speed chase to apprehend a suspected nonviolent misdemeanor.

PROCEDURE—PRETRIAL

Multidistrict Litigation

In re Jane Doe Cases, ___ S.W.3d ___, 2024 WL ___ (Tex. Dec. 31, 2024) [[23-0202](#)]

The issue in this case is whether the MDL panel erred by refusing to remand a “tag along” case.

In the underlying case, Jane Doe alleges that she was a victim of sex trafficking as a minor, and the perpetrator befriended her on Facebook to convince her to meet in person. Thereafter, she was sexually assaulted at a hotel owned by Texas Pearl. In 2018, Doe sued Facebook and Texas Pearl, alleging they both facilitated her trafficking. In 2019, the MDL panel formed an MDL with seven other cases involving sex-trafficking allegations, and it assigned an MDL pretrial court. None of the other cases involve the same parties or events alleged in the Facebook case. In 2022, Texas Pearl filed a Notice of Transfer of Tag-Along Case to move the underlying case into the MDL, asserting that Doe’s claims relate to the MDL cases because all involve sex-trafficking allegations against hotels.

The MDL pretrial court denied Facebook’s motion to remand, and the MDL panel denied Facebook’s motion for rehearing. Facebook sought mandamus relief in the Supreme Court, arguing that its case shares no common fact question with the MDL, and further that the inclusion of the case in the MDL will not improve convenience or efficiency.

The Supreme Court granted relief, holding that that the Facebook case lacks a fact question in common with the MDL cases, as Government Code Section 74.162 requires to form an MDL. Without a common connection through the same plaintiffs, defendants, or events, general allegations of criminal activity by different perpetrators do not create the required common fact question to include a case within an MDL for pretrial docket management. The Court directed the MDL panel to remand the tag along case to its original trial court.

EMPLOYMENT LAW

Disability Discrimination

Dall. Cnty. Hosp. v. Kowalski, ___ S.W.3d ___, 2024 WL ___ (Tex. Dec. 31, 2024) (per curiam) [[23-0341](#)]

The issue in this case is whether a fact issue exists on disability-based discrimination or retaliation.

Sheri Kowalski served as Director of Finance at Parkland Hospital. In late 2017, Kowalski asked Parkland management to make changes to her workstation to alleviate

neck and upper back pain. Parkland, in turn, had Kowalski and her medical provider complete several forms. Kowalski repeatedly disclaimed having any ADA-covered disability and complained that the tedious process was unnecessary. Around the same time, Kowalski's position at Parkland was eliminated. Kowalski sued, alleging disability discrimination and retaliation under Chapter 21 of the Labor Code.

The trial court denied Parkland's plea to the jurisdiction, concluding that Kowalski had created a fact issue on her discrimination and retaliation claims. The court of appeals affirmed.

The Supreme Court held that Kowalski failed to create a fact issue on any of her claims. Evidence of neck pain without a showing that the pain significantly limits any activity, the Court explained, is no evidence of a disability under Chapter 21. Further, Parkland's having directed Kowalski to its formal accommodation process is not evidence that Parkland regarded Kowalski as disabled. Finally, the Court noted that Kowalski's complaints that Parkland did not require another employee to complete the same process—absent a showing that either employee is disabled—is no evidence that Parkland was on notice of disability-based discrimination. Kowalski's repeated insistence—confirmed by her medical provider—that she does not have a disability further illustrates these points. Without a fact issue on any claim, Parkland's plea to the jurisdiction should have been granted.

Accordingly, the Court reversed the court of appeals' judgment, rendered judgment for Parkland, and dismissed the case for lack of jurisdiction.

REAL PROPERTY

Bona Fide Purchaser

425 Soledad v. CRVI Riverwalk, ___ S.W.3d ___, 2024 WL ___ (Tex. Dec. 31, 2024) [[23-0344](#)]

At issue in this case is whether an easement is enforceable against a property purchaser who claims bona fide purchaser protections.

425 Soledad executed a parking agreement that secured parking availability to its office building occupants in a garage connected by tunnel access. The parties agreed that the parking covenant would run with the land but did not record the interest. The garage later was sold, with the new owner's debt secured by mortgage liens. CRVI Crowne acquired one part of this debt. When the new garage owner neared default, CRVI Crowne placed the property into a receivership, and its affiliate, CRVI Riverwalk, purchased the garage from the receiver. CRVI Riverwalk later rejected an office building occupant's request for parking under the agreement, arguing that it is a bona fide purchaser who took without notice.

The trial court held that the parking agreement is an enforceable easement appurtenant that transferred with the property. The court of appeals agreed that the agreement is an easement but held it unenforceable because CRVI Crowne purchased its note without notice of the easement, and it "sheltered" CRVI Riverwalk as a subsequent purchaser under its bona fide mortgagee status.

The Supreme Court reversed. The Court agreed with both courts that the parking agreement is an easement. However, the Court concluded that the trial court correctly enforced the easement against CRVI Riverwalk because both it and CRVI Crowne had inquiry notice sufficient to remove any bona fide purchaser protection. Because the Court resolved the case on the notice element, it did not address whether a property purchaser can rely on an earlier lender's bona fide status to claim shelter.

CONSTITUTIONAL LAW

Separation of Powers

Webster v. Comm'n for Law. Discipline, ___ S.W.3d ___, 2024 WL ___ (Tex. Dec. 31, 2024) [[23-0694](#)]

The issue in this case is whether the Texas Constitution's separation-of-powers doctrine renders the Commission for Lawyer Discipline's lawsuit against First Assistant Attorney General Brent Webster nonjusticiable.

After the 2020 presidential election, the State of Texas moved for leave to invoke the U.S. Supreme Court's original jurisdiction to sue four other states regarding those states' election-law changes. The first assistant appeared as counsel on the initial pleadings. After the State's lawsuit was dismissed for lack of standing, an individual filed a grievance with the commission alleging that the first assistant committed professional misconduct. The commission eventually agreed and initiated disciplinary proceedings that target six statements in the pleadings. Invoking the separation of powers, the district court dismissed for lack of subject-matter jurisdiction. The court of appeals reversed, holding that neither the separation-of-powers doctrine nor sovereign immunity bars the case.

The Supreme Court reversed. In an opinion by Justice Young, the Court observed that generally, scrutiny of statements made directly to a court within litigation is by the court to whom those statements are made. In contrast with such direct scrutiny, the commission's collateral scrutiny seeks to second-guess the contents of the initial pleadings filed at the attorney general's direction on behalf of the State, which intrudes into the attorney general's constitutional authority both to file petitions in court and to assess the propriety of the representations that form the basis of those petitions. The separation-of-powers balance is delicate. While courts retain inherent authority to compel all attorneys to adhere to standards of professional conduct within litigation (hence why direct review remains available), the other branches lack the authority to control the attorney general's litigation conduct (which is why collateral review outside the litigation process would push too far). This Court's ultimate authority to regulate the practice of law does not depend on allowing the commission to bring its unprecedented lawsuit. Because this lawsuit does not allege criminal or ultra vires conduct, the first assistant is not subject to collateral review of either the choice to file a lawsuit or the representations in the suit's initial pleadings. The Court therefore reinstated the district court's judgment of dismissal.

Justice Boyd filed a dissenting opinion that rejects the Court's newly minted distinction between the judicial branch's "direct" and "collateral" enforcement of the disciplinary rules. In his view, the constitutional separation of powers prohibits a branch of government from exercising a power that belongs to another branch but does not separate the powers that exist within a single branch or restrict the means by which a branch may exercise a power it properly possesses. He thus would have held that the separation-of-powers doctrine does not deprive the courts of subject-matter jurisdiction.

PROCEDURE—PRETRIAL

Summary Judgment

Keenan v. Robin, ___ S.W.3d ___, 2024 WL ___ (Tex. Dec. 31, 2024) (per curiam) [[23-0833](#)]

This dispute between adjacent landowners involves claims of trespass and malicious prosecution.

A plat for a subdivision was approved by Randall County and filed in 2006. The plat shows forty-five lots separated by several named streets that, according to the Owner's Acknowledgment, are "dedicated to the public forever." Although the rest of the subdivision was never fully developed, the Keenans bought one of the lots in 2009. The Ranch Respondents eventually purchased all remaining lots at a bankruptcy auction, began using the land to run cattle, and erected a gate across one of the streets that the Keenans had been using to access their lot. Michael Keenan broke or removed the Ranch's gate and portions of its fence on two occasions, which resulted in his arrest and indictment on two counts of criminal mischief of a livestock fence.

The Keenans filed the underlying lawsuit against the Ranch Respondents, alleging claims for trespass and malicious prosecution and requesting declaratory and injunctive relief in addition to damages. At summary judgment, the parties disputed whether (1) the plat had dedicated the streets to the public or created a private easement, (2) the Ranch had "procured" Michael Keenan's prosecution, and (3) the Ranch Respondents were the owners of the cattle that had been crossing the Keenans' lot without their permission. The trial court granted summary judgment for the Ranch Respondents and entered a take-nothing judgment on all the Keenans' claims. The court of appeals reversed the entry of a take-nothing judgment on the claims for declaratory and injunctive relief but otherwise affirmed the trial court's judgment.

The Supreme Court reversed in part and affirmed in part. The Court disagreed with the court of appeals' conclusion that the Keenans offered no evidence of trespass, pointing to Michael Keenan's declaration stating that he saw cattle and manure on his lot and that one of the respondents admitted ownership of the cattle. The Court further held that the Ranch does not own the dedicated public streets within the subdivision as a matter of law and that, therefore, the court of appeals erred by remanding the claim for declaratory relief to resolve factual disputes. Finally, the Court affirmed the court of appeals' judgment upholding the trial court's take-nothing judgment on the malicious prosecution claim. The Court remanded to the trial court for further proceedings.

OIL AND GAS

Lease Termination

Scout Energy Mgmt., LLC v. Taylor Props., ___ S.W.3d ___, 2024 WL ___ (Tex. Dec. 31, 2024) (per curiam) [[23-1014](#)]

This case concerns whether the due date for payment under an oil-and-gas lease's savings clause is affected by a notation on an earlier check receipt.

Scout was the lessee for two oil-and-gas leases on land owned by Taylor Properties. To maintain the leases during nonproduction, a "shut-in royalty" savings clause provided that the lessee could pay "\$50.00 per well per year, and upon such payment it will be considered that gas is being produced." Scout's predecessor made a payment in September 2017, then made another payment one month later, in October 2017. When Scout made a payment in December 2018, Taylor claimed it was too late and sought a declaration that the leases had terminated. Specifically, Taylor argued

that the leases terminated in October 2018, one year after the second payment, while Scout argued that the second payment secured a full additional year.

The trial court concluded that the savings clause is ambiguous, but it agreed that Scout's interpretation reflects the parties' intent that each payment secure a full year of constructive production, and it therefore rendered judgment for Scout. The court of appeals concluded that the savings clause unambiguously supports Scout's interpretation, but it nonetheless reversed, holding that a notation on the check receipt in October 2017 established a new starting date for the one-year period of constructive production.

The Supreme Court reversed and reinstated the trial court's judgment. The Court agreed with the court of appeals that the savings clause is unambiguous, and that the only reasonable interpretation is that each payment provides a full year of constructive production. The Court then held that the check-receipt notation is too vague to be considered a contract expressing the parties' intent to deviate from the savings clause.

PROCEDURE—PRETRIAL

Discovery

In re Elhindi, ___ S.W.3d ___, 2024 WL ___ (Tex. Dec. 31, 2024) (per curiam) [[23-1040](#)]

At issue in this case is whether the trial court should have delayed production of a video allegedly containing child sexual abuse material to permit law enforcement review.

Magdoline Elhindi sued Hamilton Rucker for invasion of privacy, alleging the filming and distribution of an illicit video made without her consent. The trial court entered a temporary injunction prohibiting the parties from disclosing intimate material of one another. During discovery, Rucker requested videos in Elhindi's possession that depicted him. Elhindi objected to the production of one video, which she alleged contained child sexual abuse material. She sought leave from the trial court's injunction to provide the video to the Federal Bureau of Investigation for its review before producing the video to Rucker. The trial court issued an order allowing Elhindi to send the video to the FBI only after producing it to Rucker. The court of appeals denied Elhindi's request for mandamus relief.

The Supreme Court conditionally granted relief. The Court reasoned that the risk of harm to the alleged minor by further transmission before law enforcement review outweighed any delay in the discovery timeline. The Court directed the trial court to modify its order to permit Elhindi to provide the video to the FBI and receive a determination that it does not contain child sexual abuse material before compelling its production in discovery.