Case Summaries
June 27, 2025

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DECIDED CASES

Werner Enters., Inc. v. Blake, ___ S.W.3d ___, 2025 WL ___ (Tex. June 27, 2025) [23-0493]

This case concerns whether plaintiffs established the substantial-factor element of their negligence claims.

During icy conditions, Blake and her three children were in a pickup driven by Trey Salinas, traveling eastbound on I-20. Eastbound and westbound lanes are separated by a 42-foot grassy median. Trainee driver Ali was driving westbound in an 18-wheeler owned by Werner Enterprises. Salinas lost control and crossed the median, into the path of the 18-wheeler. Ali immediately braked but the vehicles nevertheless collided. One Blake child was killed and the other family members were injured.

The Blakes sued Werner and Ali for negligence. They alleged Werner was negligent in training and supervising Ali and in sending Ali, an inexperienced trainee driver, into winter weather without access to important weather updates. Expert testimony asserted Ali was driving too fast given the icy conditions, or should not have been driving at all. The jury found both defendants negligent and assigned 70% of responsibility to Werner acting through employees other than Ali, 14% to Ali, and 16% to Salinas. The trial court rendered judgment against both defendants. The court of appeals affirmed.

The Supreme Court reversed and rendered judgment. It held that, to establish negligence, the proximate cause element requires proof of both but-for causation and substantial-factor causation. Evidence of substantial-factor causation was legally insufficient. The sole substantial factor explaining why the accident happened was Salinas losing control of his pickup and crossing in front of the 18-wheeler. Ali's negligence if any was too attenuated to constitute a substantial factor. There were no viable liability theories against Werner that were independent of Ali's responsibility for the accident, so Werner and Ali were entitled to rendition of judgment.

The defendants asked the Court to adopt the "Admission Rule," under which a defendant who admits that an employee was acting in the course and scope of employment need not also defend against other derivative theories of negligence. The Court held it need not consider this argument. Justice Young agreed, but in a concurrence noted his inclination to adopt the Admission Rule in a future case.

Justice Bland dissented in part. She concluded the jury charge was erroneous, and the jury was misled into placing disproportionate responsibility on Ali and Werner. But there was evidence that Ali bore some responsibility for the Blakes' injuries. The dissent would have reversed and remanded for a new trial.

Cactus Water Servs., LLC v. COG Operating, LLC, ___ S.W.3d ___, 2025 WL ___ (Tex. June 27, 2025) [23-0676]

This case involves a dispute about ownership of "produced water" from oil-and-gas operations. The issue is whether this liquid-waste byproduct was included in the hydrocarbon conveyance to the mineral lessee or whether the surface estate retained ownership because subsurface water was not expressly severed from the surface estate.

COG conducts hydraulic fracturing operations under mineral leases with two surface owners. Fracking involves injecting fluids, chemicals, and proppants into oil-producing formations. A portion of the injected fluid then returns to the surface mixed with hydrocarbons, emulsified brine, and assorted substances and chemicals. Oil and gas are then mechanically separated, leaving a hazardous substance known as produced water. Oil-and-gas operations cannot continue without expeditious and proper disposal of produced water. As the well operator, COG is legally responsible for proper handling and disposal of this substance.

Years after executing the mineral leases with COG, the surface owners executed Produced Water Lease Agreements with Cactus. These leases purported to convey to Cactus the produced water from oil-and-gas operations on the land. Cactus's claim of ownership and control prompted COG to sue for a declaration that COG owned exclusive rights to the produced water from its operations under the mineral leases. Cactus counterclaimed, asserting a right of ownership under the produced-water leases. On cross-motions for summary judgment, the trial court declared that COG owned the produced water that was part of COG's hydrocarbon production stream. The court of appeals affirmed.

The Supreme Court affirmed, holding that a mineral conveyance using typical language to convey oil and gas rights, though not expressly addressing produced water, includes that substance as part of the conveyance. Absent an express reservation or exception, the surface estate does not retain ownership of constituent water incidentally and necessarily produced with hydrocarbons. As there was no such exception or reservation, COG had the right to possession, custody, control, and disposition of the constituent water in the liquid waste from its hydrocarbon production.

In a concurring opinion, Justice Busby observed that the default rule may be altered by a conveyance's terms and that other questions remain open but were neither presented nor determined.

S. Methodist Univ. v. S. Cent. Jurisdictional Conf. of United Methodist Church, ___ S.W.3d ___, 2025 WL ___ (Tex. June 27, 2025) [23-0703]

At issue is whether a nonmember, nonprofit corporation may be sued by a controlling religious conference for amending the corporation's articles of incorporation without the conference's approval when those articles provided that no amendments shall be made without such approval.

Southern Methodist University is a nonmember, nonprofit corporation founded by a predecessor-in-interest to the South Central Jurisdictional Conference of the United Methodist Church. Since its founding, SMU's articles of incorporation have stated that it is to be owned and controlled by the Conference and that the articles may not be amended without Conference approval. In 2019, without Conference approval, SMU's board of trustees amended its articles to remove these and other provisions and filed a sworn certificate of amendment with the Texas Secretary of State. The Conference sued SMU, seeking declaratory relief regarding the validity of the 2019 amendments and asserting, among others, claims for breach of contract and filing a materially false amendment certificate.

The trial court dismissed some of the Conference's claims under Rule 91a before granting summary judgment for SMU on the remaining claims. The court of appeals reversed in pertinent part, holding that the Conference was authorized to challenge the 2019 amendments under the Business Organizations Code, that SMU's articles constituted a contract between SMU and the Conference, and that issues of fact precluded summary judgment on the Conference's false-filing claim.

The Supreme Court affirmed in part and reversed in part. After concluding that the church-autonomy doctrine did not deprive it of subject matter jurisdiction, the Court held that Business Organizations Code Section 22.207, which authorizes a religious conference to control a nonprofit educational corporation's board of directors, allows the controlling conference to sue the corporation for engaging in conduct that its articles of incorporation do not permit. Next, it held that, based on the pleadings, the Conference could pursue its breach-of-contract claim as a third-party beneficiary of SMU's articles, which constitute a contract between SMU and the State. Finally, the Court held that SMU was entitled to summary judgment on the Conference's false-filing claim because, considering the statements in the amendment certificate as a whole, the certificate did not constitute a "materially false instrument" as a matter of law. The Court remanded for further proceedings on the declaratory-judgment and breach-of-contract claims.

Justice Young concurred to express additional views on the church-autonomy doctrine.

Justice Bland dissented in part. She agreed that the Conference had authority to pursue its declaratory-judgment claims but would have reinstated the trial court's dismissal of the breach-of-contract claim.

Paxton v. Am. Oversight, ___ S.W.3d ___, 2025 WL ___ (Tex. June 27, 2025) [24-0162]

The issue in this case is whether Section 552.321 of the Government Code gives district courts jurisdiction to issue a writ of mandamus against two constitutional executive officers, the Governor and Attorney General.

Beginning in 2022, American Oversight sent various Public Information Act requests to the Governor's office and the Attorney General's office. Both offices provided some information. Both obtained opinions authorizing withholding of other information. As to other information requested, the offices found no responsive documents. American Oversight filed a petition for writ of mandamus in district court against the Governor and the Attorney General. The Governor and Attorney General filed pleas to the jurisdiction, arguing sovereign immunity was not waived. The district court denied the pleas, and the court of appeals affirmed.

The Supreme Court reversed, holding the district court lacked jurisdiction to issue a writ of mandamus against either officer. Under Section 22.002(c) of the Government Code, "only the supreme court has the authority to issue a writ of mandamus . . . against any of the officers of the executive departments of the government of this state." Section 22.002(a) further provides that even the Supreme Court may not issue such a writ against the Governor. Against this statutory background, Section 552.321(b) of the Public Information Act provides that "[a] suit filed by a requestor under this section must be filed in a district court for the county in which the main offices of the governmental body are located." The "suit filed" "under this section" was addressed in *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668 (Tex. 1995). In *Sharp*, the Supreme Court held that "district courts generally have no jurisdiction over executive officer respondents. Any exception to this rule would require express statutory authorization by the legislature naming district courts as the proper fora." After analyzing *Sharp*, the Court turned to Section 552.321(b) and held that provision does nothing to expressly authorize district courts as the proper fora for mandamus suits against constitutional executive officers.

Justice Young filed a concurring opinion. Noting that the Court's opinion properly did not reach the question whether any court in this state could exercise mandamus jurisdiction over the Governor, he suggested it was unlikely any court may properly do so.

Borusan Mannesmann Pipe US, Inc. v. Hunting Energy Servs., LLC, ___ S.W.3d ___, 2025 WL ___ (Tex. June 27, 2025) (per curiam) [24-0183]

This case concerns the standards for appellate forfeiture.

The underlying dispute between Borusan Mannesmann Pipe US, Inc. and Hunting Energy Services, LLC is about which of them must indemnify the other for defective pipes sold to a third party. The trial court rendered a declaratory judgment in favor of Hunting. Borusan appealed, but the court of appeals held that Borusan inadequately briefed and thus forfeited its indemnity issue, which the court therefore

refused to consider. Borusan filed a petition for review, arguing that it did not forfeit its indemnity issue.

The Supreme Court reversed. Citing its recent decision in *Bertucci v. Watkins*, 709 S.W.3d 534 (Tex. 2025), it explained that courts should reach the merits of an appeal and avoid summarily disposing of issues based on procedural defects whenever possible. Borusan's brief did not cite statutes or cases, but it spent five pages asserting its theory of the case and provided record citations to documents, testimony, and the trial court's findings of fact and conclusions of law. Parties need not cite statutes or cases if they are not essential or relevant to the legal position they advance. Borusan's argument was adequate to preserve its indemnity issue. Whether the argument was sufficiently thorough or persuasive for it to prevail presents a wholly different question on which the Court expressed no view. Accordingly, the Court reversed the court of appeals' judgment and remanded the case to that court for consideration of Borusan's issue on the merits.

In re Space Expl. Techs. Corp., ___ S.W.3d ___, 2025 WL ___ (Tex. June 27, 2025) (per curiam) [24-0290]

In this original proceeding, the issue is whether the trial court abused its discretion in overturning a jury verdict and granting a new trial.

While commuting to work at a SpaceX site, Lauren Krueger rear-ended a vehicle, pushing it into a pickup. The pickup passengers contacted their employer, who in turn reached out to his lawyer. That lawyer referred them to various doctors for treatment. The passengers then sued Krueger for negligence and SpaceX for vicarious liability. At trial, the parties disputed the existence and extent of the injuries, and testimony described how the employer's lawyer referred the plaintiffs to doctors. Closing arguments featured vigorous advocacy, with SpaceX's counsel describing the lawsuit as a "lawyer-driven plan" and "shakedown."

The jury found that Krueger's negligence caused the accident, she was acting outside the scope of her SpaceX employment, and she was liable for $123,500. After rendering judgment on the verdict, the trial court granted plaintiffs' motion for a new trial. The court ultimately provided three reasons in its new-trial order: (1) defense counsel's closing included incurable argument, (2) testimony about the lawyer's doctor referrals was improperly admitted, and (3) the awarded damages were manifestly low. SpaceX and Krueger petitioned for mandamus relief, which the court of appeals denied.

The Supreme Court conditionally granted mandamus relief, holding that none of the cited reasons supported a new trial. First, a new trial is inappropriate for improper argument when the error was curable, but the complaint was waived. Here, the jury argument was not incurable and even if improper, the plaintiffs failed to request a curative instruction or obtain a ruling on the objection. Second, evidence that the lawyer chose the doctors was admitted without objection, thus waiving any error. Finally, the new-trial order did not explain how or why the awarded damages were manifestly low. But the mandamus record lacked plaintiffs' medical exhibits to establish that the trial court had no valid basis to reach that conclusion. The Court

therefore required the trial court to redraft its order to explain its reasoning as to this ground. Because this reason does not address the jury's finding that Krueger was acting outside the scope of her employment, the Court explained that the redrafted order must be limited to the claims against Krueger, and the trial court must render a take-nothing judgment in SpaceX's favor.

In re Oncor Elec. Delivery Co., ___ S.W.3d ___, 2025 WL ___ (Tex. June 27, 2025) [24-0424]

The issue in this case is whether the trial court should have dismissed the plaintiffs' intentional nuisance and gross negligence claims against transmission and distribution utilities for alleged misconduct related to an extreme winter storm.

In 2021, Winter Storm Uri hit Texas, causing massive electricity demand. To preserve the grid, the Electric Reliability Council of Texas ordered the Utilities to cut electricity to some customers. As a result, there were widespread power outages.

Thousands of customers filed hundreds of lawsuits against participants in the Texas electricity market, including the Utilities. The cases were transferred to a multidistrict litigation court, which designated several bellwether cases for initial motions. The Utilities moved to dismiss under Rule 91a. The trial court dismissed some claims but refused to dismiss the negligence, gross negligence, and nuisance claims. The court of appeals granted partial mandamus relief, ordering dismissal of the negligence and strict-liability nuisance claims but allowing the gross negligence and intentional nuisance claims to proceed. The Utilities petitioned the Supreme Court for mandamus relief, arguing the remaining claims must be dismissed.

The Supreme Court conditionally granted relief. It held that to be liable for intentional nuisance, a defendant must have "created" or affirmatively "maintained" a nuisance. Because the Utilities were not a source of the nuisance—here, freezing temperatures—the intentional nuisance claims had no basis in law.

The Court also held that the plaintiffs did not adequately plead the "conscious indifference" element of gross negligence. The plaintiffs failed to plead facts showing that the Utilities' acts or omissions in their initial response to ERCOT's orders to cut power were consciously indifferent. As to acts and omissions before and after those initial decisions, the plaintiffs did not adequately plead that the Utilities could have acted differently despite legal requirements restricting them.

Accordingly, the Court ordered the trial court to dismiss the nuisance claims with prejudice and allow the plaintiffs an opportunity to replead the gross negligence claims.

Suday v. Suday, ___ S.W.3d ___, 2025 WL ___ (Tex. June 27, 2025) (per curiam) [24-1009]

At issue in this case is whether an executor may represent the estate pro se if she is the sole beneficiary.

Maryvel Suday is the sole beneficiary and independent executor of her mother's estate. She engaged in substantial litigation seeking to challenge her parents' divorce decree and property distribution. While her appeal was pending in

the court of appeals, Maryvel informed her attorney that she no longer desired his services, and he withdrew. The court of appeals notified Maryvel that she could not represent her mother's estate pro se and extended her briefing deadline to allow her time to secure new counsel. Maryvel did not obtain counsel for the estate, so the court of appeals dismissed the appeal for want of prosecution.

The Supreme Court reversed. It assumed without deciding the correctness of the general rule, adopted by several Texas courts of appeals, that an estate's executor may not represent the estate pro se. Even so, the Court explained, the rule would not apply in the narrow circumstance here, in which the executor is also the sole beneficiary. The logic underlying the general prohibition is that an executor serves in a representative capacity, thereby requiring her to represent the rights of third parties. But when there are no other parties with an interest in the estate, the executor represents only her own rights. In this situation, the right to self-representation outweighs any competing concerns.

Accordingly, the Court reversed the court of appeals' judgment and remanded the case to the court of appeals to address the remaining issues on the merits.

RECENTLY GRANTED CASES

Equinor Energy LP v. Lindale Pipeline, LLC, ___ S.W.3d ___, 2023 WL 8041045 (Tex. App.—Houston [1st Dist.] 2023), *pet. granted* (June 20, 2025) [24-0425]

At issue is whether an oil and gas operator breached its agreement with a water pipeline operator by buying water from other suppliers.

Brigham Oil & Gas was an operator on the Bakken Shale in North Dakota. To supply water for its then-growing hydrofracturing operations, Brigham signed an agreement with Lindale Pipeline LLC. Under the agreement, Brigham would construct a pipeline to supply water that Lindale would then operate. The agreement also stipulated that Lindale would serve as "the sole and exclusive water provider and pumper on the Pipeline." Brigham was later acquired by Equinor LP. Equinor began purchasing water at a lower cost from suppliers other than Lindale in 2014, utilizing a new technology referred to as lay-flat hosing.

Lindale sued Equinor, claiming that Equinor's purchase of water from third parties breached the agreement's "sole and exclusive water provider" clause. The parties filed cross-motions for summary judgment. The trial court ruled that the agreement's exclusivity clause was ambiguous and submitted both its interpretation and the question of resulting damages to the jury. After hearing testimony from the Lindale and Equinor representatives who drafted the agreement, the jury found that Equinor had breached the agreement by purchasing water from third parties and that the breach damaged Lindale by $29 million. Because Lindale had also breached the agreement by failing to pay fees it owed to Equinor, the damages award was reduced to $26 million. Equinor appealed, arguing that the trial court erred by submitting the contract to the jury, that the agreement unambiguously did not make

Lindale its exclusive water supplier, and that insufficient evidence supported the $26 million damages figure. The court of appeals affirmed.

Equinor petitioned the Supreme Court for review, arguing that the agreement unambiguously did not make Lindale its exclusive water supplier and that the damages award should be reversed for lack of evidence. The Court granted the petition for review.

JRJ Pusok Holdings, LLC v. State, 693 S.W.3d 679 (Tex. App.—Houston [14th Dist.] 2023), *op. on reh'g*, 693 S.W.3d 860 (Tex. App.—Houston [14th Dist.] 2024), *pet. granted* (June 20, 2025) [24-0447]

The issue in this case is whether the State is immune from a suit to repurchase property acquired through eminent domain.

In 2013, the Texas Department of Transportation notified landowners of its intent to acquire a portion of their property for a highway improvement project. After negotiations failed, the State filed a petition for condemnation. The parties agreed to settle, and the landowners conveyed the property to the State in exchange for compensation. In 2016, the landowners sought to repurchase a portion of the property from TxDOT because the highway improvement project was rerouted. TxDOT refused to sell the property back to the landowners.

The landowners assigned their claims to JRJ Pusok Holdings. JRJ Pusok sued the State for violating Chapter 21 of the Texas Property Code, which governs repurchase claims, and other causes of action. The State filed a plea to the jurisdiction, arguing that it was immune from suit. The trial court granted the State's plea and dismissed the case. The court of appeals reversed and remanded the trial court's dismissal of the repurchase claim, holding that Chapter 21 waives the State's immunity.

The State petitioned the Supreme Court for review. It argues that Chapter 21 does not waive the State's immunity from repurchase claims. It further argues that the repurchase claim falls outside the scope of Chapter 21 because JRJ Pusok brought suit in a Harris County Court at Law, the property was acquired by purchase rather than eminent domain, and the suit seeks to recover only a portion of the property. The Supreme Court granted the petition.

Ruth v. Comm'n for Lawyer Discipline, 696 S.W.3d 233 (Tex. App—San Antonio 2024), *pet. granted* (June 20, 2025) [24-0613]

At issue in this case is whether an attorney representing himself is subject to the disciplinary rule barring attorneys from communicating directly with parties who are represented by counsel.

Attorney William W. Ruth represented himself in an attorney disciplinary hearing. During that proceeding, Ruth directly communicated with opposing parties represented by counsel—individual members of the Commission for Lawyer Discipline—by adding them to the service lists of his electronic filings and by writing a letter to the chair. The Commission's counsel informed Ruth of her belief that these communications were improper and asked him to stop contacting individual

commissioners. Among other requests, the communications asked the Commission to remove its counsel. As a result, the Commission initiated a second disciplinary proceeding against Ruth. The trial court found that Ruth had violated the "no-contact" provision of Rule 4.02(a) of the Texas Disciplinary Rules of Professional Conduct. The court of appeals affirmed.

Ruth petitioned the Supreme Court for review, arguing that the "no-contact" rule applies to a lawyer representing a client and not to a lawyer representing himself pro se. The Supreme Court granted review.

S. Tex. Indep. Sch. Dist. v. Busse, 696 S.W.3d 773 (Tex. App.—Corpus Christi–Edinburg 2024), *pet. granted* (June 20, 2025) [24-0782]

This petition primarily concerns whether Lyford Consolidated Independent School District and Willacy County taxpayers have standing to challenge South Texas Independent School District's changed use of *ad valorem* tax revenue.

South Texas was originally chartered under Chapter 26 of the Texas Education Code, which allowed it to assess an *ad valorem* tax to further its statutory mission as a rehabilitation district for handicapped students. Chapter 26 was later amended to allow South Texas to enroll nondisabled students, and it became an open-enrollment "magnet school district." Several decades later, Lyford (which partially overlaps with South Texas) and individual Willacy County taxpayers sued South Texas, alleging that it was using tax revenue for an illegal purpose and seeking injunctive and declaratory relief. South Texas filed a plea to the jurisdiction, arguing, among other things, that neither Lyford nor the Willacy County taxpayers had standing. The trial court denied South Texas's plea to the jurisdiction.

South Texas filed an interlocutory appeal, and the court of appeals reversed. Concluding that Lyford's harm was too speculative, the court of appeals held that Lyford lacked standing. It also held that the Willacy County taxpayers lacked taxpayer standing because allowing their suit would cause a significant disruption to government operations and disturb voters' settled expectations.

Lyford and the Willacy County taxpayers petitioned the Supreme Court for review. They argue, among other things, that Lyford has standing to sue because it is harmed by the resulting funding disparity caused by South Texas's allegedly unlawful tax, and that the Willacy County taxpayers have standing to sue under Texas's taxpayer standing doctrine. The Supreme Court granted the petition.

In re C.S., Jr., ___ S.W.3d ___, 2024 WL 5080505 (Tex. App.—Eastland 2024), *pet. granted* (June 20, 2025) [25-0008]

The principal issue in this case is whether the trial court properly extended its jurisdiction over a parental-rights-termination suit past the Family Code's automatic dismissal deadline.

The Department of Family and Protective Services intervened after Mother engaged in a physical altercation involving a firearm in the presence of her children. Mother and the children subsequently tested positive for marijuana, and the Department initiated a suit to terminate Mother's parental rights. Under the Family

Code, a trial court automatically loses jurisdiction over a termination suit if it does not commence a trial on the merits or grant an extension within one year of the suit's filing. During a pretrial hearing before the dismissal deadline, the trial court reset the final trial to a date after the deadline for logistical reasons. After the one-year deadline passed, Mother filed a motion to dismiss the suit, arguing the trial court lost its jurisdiction by failing to grant an extension in accordance with the Family Code. The trial court denied the motion. The case proceeded to trial, and Mother's parental rights were terminated.

The court of appeals affirmed. It held that the trial court did not lose jurisdiction because it properly granted an extension prior to the dismissal deadline. The court of appeals further concluded that Mother waived her argument that the extension was deficient because she failed to object to the error at the earliest possible opportunity. It then affirmed the termination order, holding that the evidence was legally and factually sufficient to support termination.

Mother filed a petition for review. She argues that the trial court did not extend its jurisdiction because it did not grant an extension orally in the presence of a court reporter or in a sufficient writing prior to the dismissal deadline. She also argues that even if the trial court retained jurisdiction, its extension was deficient, and her objection to that deficiency—made after the dismissal deadline but prior to the final termination order—was timely. Finally, she argues that termination was not in the best interest of the children.

The Supreme Court granted the petition.