Recent State Cases TCCA October 2, 2014

Ryan Henry
Law Offices of Ryan Henry, PLLC.
1380 Pantheon Way, Suite 215
San Antonio, Texas 78232
210-257-6357 Phone
www.rshlawfirm.com

Paper is a little different

- www.rshlawfirm.com – cut and paste
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Statute of Limitations is Now Jurisdictional

- *DEMAGALONI v BEXAR COUNTY HOSPITAL DISTRICT*, No. 04-12-00691-CV (Tex. App. – San Antonio, September 11, 2013).
- TEX.GOV'T CODE ANN. § 311.034 (West 2013) (Code Construction Act) which notes statutory prerequisites are jurisdictional
- Statute of Limitations is a statutory prerequisite

PIA – City need only ask for emails on personal accounts

- *CITY OF EL PASO, TEXAS v. GREG ABBOTT, ATTORNEY GENERAL OF TEXAS and STEPHANIE TOWNSEND ALLALA*, 03-13-00820-CV, (Tex. App. – Austin, August 1, 2014).
- After change in law, Allala continued to pursue mandamus
- City established what it did to comply so no mandamus permissible
- PIA has no mechanism for City to compel other than asking

City's agenda posting sufficient under Texas Open Meetings Act says 5th Court of Appeals

- *MARK BAKER v. THE CITY OF FARMERS BRANCH, TEXAS, et al*. Cause No. 05-13-01174-CV (Tex. App. –Dallas, July 15, 2014)
- The City posted it would discuss the *Fabela* lawsuit in executive session. Baker asserted should have listed the City was considering settling the matter
- The City properly identified the specific lawsuit and alerted the public to discussions regarding that lawsuit, which is sufficient.

Lease for marina use is not a contract for services says Tx. Suprm. Ct.

- *LUBBOCK COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT et al v. CHURCH & AKIN*, 12-1039 (Tex. July 3, 2014).
- City's marina leased to Church & Akin to continue its operation as a marina. When canceled lease, C&A sued for breach of contract
- The lease did not require Church & Akin to operate a marina. It merely noted that if they chose to use the property, the only use is that of a marina without written consent.
- No "goods or services" to the entity triggering waiver

Proprietary/Governmental Dichotomy in Contracts

- *CHRISTOPHER L. GAY and STEVEN L. CARROLL v. THE CITY of WICHITA FALLS*, 08-13-00028-CV (Tex. App. – El Paso, August 13, 2014).
- *REBECCA SCHOFFSTALL v. CITY OF CORPUS CHRISTI*, 13-13-00531-CV (Tex. App. – Corpus Christi, August 25, 2014).
- *CITY OF SAN ANTONIO v. ALAMO AIRCRAFT SUPPLY, INC. et al*, 04-14-00057-CV (Tex. App. – San Antonio, August 13, 2014.)
- *WASSON INTERESTS, LTD. v. CITY OF JACKSONVILLE, TEXAS*; Cause No. 12-13-00262-CV (Tex. App. –Tyler, July 9, 2014)

Falling television was premise defect claim, not tangible personal property claim

- *DALLAS COUNTY HOSPITAL DISTRICT v. LAURA CONSTANTINO*, 05-13-01084-CV (Tex. App. – Dallas, August 7, 2014).
- Constantino's shoulder was injured when a television detached from the mount and fell on her.
- Non-locking nuts used – but that's not the "use" of property. Pleadings focus on invitee status so it's a premise defect

Board members can be sued individually for giving contracts to campaign contributors

- *LA JOYA INDEPENDENT SCHOOL DISTRICT, ET AL v. RUTH VILLARREAL*, 13-13-00325-CV (Tex. App. – Corpus Christi, July 3, 2014).
- After winning the election, the District replaced Villarreal with Trevino for health plan broker. Villarreal brought suit against the District for breach of contract.
- Since LJISD cannot legally target property right of Villareal, board members must have done so outside scope of powers and therefore not entitled to immunity from personal liability.

Texas Supreme Court holds City is immune for officer's negligent use of handcuffs

- *THE CITY OF WATAUGA v. RUSSELL GORDON*, 13-0012 (Tex. June 6, 2014).
- After DWI arrest sued for negligent use of handcuffs causing injury
- Court held improper use of handcuffs is a battery and calling it negligence will not waive immunity. Use of handcuffs is "offensive conduct" by nature.

City no longer "used" property under Tort Claims Act after it loaded contents into truck for transport

- *WILLIAM BOATMAN v. CITY OF GARLAND*, 05-13-01232-CV (Tex. App. – Dallas, June 12, 2014).
- Boatman picked up load from transfer station, drove to dump, opened back and contents fell on him. Alleged negligent loading by City personnel.
- The "use" must cause the injury.
- Once contents loaded in truck, City stopped using it. Fact contents shifted after transport is not the use by the City

Deputy's detailed analysis of the need to drive a high rate of speed equated to his entitlement to official immunity

- *HARRIS COUNTY, TEXAS v. SOUTHERN COUNTY MUTUAL INSURANCE COMPANY*, 01-13-00870-CV (Tex. App. – Houston [1st Dist.], August 26, 2014)
- Deputy lost control of car while responding to attempted suicide call. Provided highly detailed analysis of balance between need to go that fast with responding to life-threatening call.
- Examined time of day, weather, streets, traffic, and much more. This qualified for objective reasonableness entitling Deputy to official immunity
- Fact Deputy reprimanded by County for causing accident did not negate immunity.

Constitutional "hold over" provision controls over "resign to run" rule says 13th Court of Appeals

- *RICHARD BIANCHI v. THE STATE OF TEXAS*, 13-14-00303-CV (Tex. App. – Corpus Christi, August 21, 2014) (31 page opinion)
- Bianchi was the County Attorney and resigned to run for County Judge. He remained in office while County searched for replacement but County chose not to replace him.
- DA thought "resign to run" rule controlled and Bianchi's announcement was automatic resignation
- Court disagreed. Said hold-over controlled. Also said County chose to leave him in office and court would not second guess County decision

Report to supervisor not "appropriate law enforcement authority" even when agency has prosecution division

- *TEXAS DEPARTMENT OF HUMAN SERVICES v OKOLI*, 10-0567 (Tex. August 22, 2014)
- Tx. Suprme. Ct. in *Gentilello* did not preclude supervisor qualifying
- Here, TDHS has Office of Inspector General ("OIG") with prosecution authority
- Court held report to supervisor outside of OIG division does not qualify, even if supervisor was required to forward to OIG.

AG's policy obligating division head to report crimes to Special Investigation Division makes them "appropriate law enforcement authorities"

- *OFFICE OF THE ATTORNEY GENERAL v. GINGER WEATHERSPOON*, 05-13-00632-CV (Tex. App. – Dallas, June 16, 2014).
- Weatherspoon (in Child Support Division) alleged she was pressured to sign affidavit which was incorrect.
- Reported to division head pursuant to AG policy. Policy stated division head was required to refer the report to the AG's Office of Special Investigations, which has prosecution authority.
- The AG policy created a reasonable belief reporting to division head was a report to appropriate law enforcement authority.

District judge not an "appropriate law enforcement authority"

- *HUNT COUNTY COMMUNITY SUPERVISION and CORRECTIONS DEPARTMENT v. CHRISTINA GASTON*, 03-13-00189-CV (Tex. App. – Austin, August 6, 2014).
- The "entity" must be the appropriate authority, not the person.
- Not in the nature of judiciary to be a prosecutor or investigator or enforcer.

Texas Supreme Court holds firefighter who cannot fight fires is not "disabled"

- *CITY OF HOUSTON v. SHAYN A. PROLER*, 12-1006, – S.W.3d — (Tex. June 6, 2014)
- Lacking necessary skill is not a disability. Prowler froze on two occasions and would not enter fire
- Special skill to run into fire when instincts are to run away, irrespective of "global transient amnesia"
- No disability claim

Fire Fighter suspension upheld – Court holds violating state civil service rule sufficient even though no local rule violation was found

- *CHRISTOPHER JENKINS v. CITY OF CEDAR PARK, TEXAS*, 03-13-00215-CV (Tex. App. – Austin, July 24, 2014).
- Suspended after receiving DWI. Hearing examiner found state civil service violation, but opinion did not mention violation of local rule (even though a local rule existed mirroring state)
- Form over substance - §143.051 is a "civil service rule" which can be the basis

No-evidence summary judgment is improper vehicle to make jurisdictional challenge

- *FRANK and SHELLEY THORNTON v. NORTHEAST HARRIS COUNTY MUD 1*, 14-13-00890-CV (Tex. App. – Houston [14th dist.], July 24, 2014).
- MUD filed an eminent domain suit to acquire part of a drainage easement. Thornton counterclaimed for damages due to lead-contaminated soil. Trial court granted no-evidence MSJ of MUD
- Using no-evidence MSJ forces plaintiffs to put on their case to establish jurisdiction. Vehicle improper and no analysis of evidence was provided.

The End

- Well, not really, but sort of. . . .