Supreme Court of Texas
May 16, 2014

McAllen Hospitals, L.P. v. State Farm County Mutual Insurance Company of Texas
No. 12-0983
Case Summary written by Tarryn Johnson, Online Edition Editor.

Justice Lehrmann delivered the opinion of the Court.

Jose Gil and Melinda Hernandez were involved in an accident for which Carlos Benavidez was responsible. State Farm County Mutual Insurance Company of Texas (State Farm) insured Benavidez. McAllen Hospitals (the hospital) treated Gil and Hernandez for their injuries. The cost of treatment for Gil totaled $53,564 and Hernandez's totaled $1,281. In order to secure payment for the treatment, the Hospital filed hospital liens under chapter 55 of the Texas Property Code. The statute provides that a hospital has a lien on the cause of action of a patient "who receives hospital services for injuries caused by an accident that is attributed to the negligence of another person," provided that the patient is admitted to the hospital within seventy-two hours of the accident. TEX. PROP. CODE § 55.002(a). Neither party disputed the validity of the liens.

Gil and Hernandez both eventually settled their claims with Benavidez and released their claims against him. The hospital was not a party to the releases and it was not informed that the parties had settled; State Farm knew of the hospital's liens. When State Farm issued the checks to Gil and Hernandez, they were made payable to each party and the hospital as copayee; however, both Gil and Hernandez deposited their checks without the hospital's endorsement. State Farm never informed the hospital that checks had been disbursed and the charges for the hospital's treatment of Gil and Hernandez remained unpaid. At this point, the hospital sued State Farm to enforce the hospital liens, but State Farm contended that their obligation was satisfied when it sent checks to Gil and Hernandez with the hospital as copayee. The trial court ruled in favor of State Farm on motion for summary judgment and the court of appeals affirmed.

<u>Issue</u>: Whether the hospital's charges were "paid" under the Hospital Lien Statute and the Uniform Commercial Code (UCC) even though the hospital never received notice that the settlement funds had been delivered to the patients and were never reimbursed for the treatment costs.

The Supreme Court held that the payment of a check to one nonalternative copayee without the endorsement of the other does not constitute payment to a "holder" under the UCC, and thus, does not discharge the drawer of either his liability on the instrument or the underlying obligation. Therefore, the court of appeals erred in holding that

the patients' releases of their causes of action against Benavidez were valid under TEX. PROP. CODE § 55.007 of the Hospital Lien Statute and the hospital's liens on those causes of actions remain unsatisfied.

The Texas Legislature passed the Hospital Lien Statute "to provide hospitals an additional method of securing payment for medical services, thus encouraging the prompt and adequate treatment of accident victims" and reducing hospital costs. *Bashara v. Baptist Mem'l Hosp. Sys.*, 685 S.W.2d 307, 309 (Tex. 1985). The hospital in this case undisputedly adhered to all requirements of chapter 55 Hospital Lien Statute requirements and the hospital's lien. The applicability of § 55.007 of the Hospital Lien Statute was key to determining whether State Farm remained responsible to the hospital for the unpaid charges. Section 55.007 specifies that a release of a cause of action is invalid unless (1) the medical provider claiming the lien was paid in full before the release; (2) the medical provider claiming the lien was paid in full before the release to the extent another party to the release gave consideration to one of the injured parties; or (3) the medical provider is a party to the release. Here, the parties disputed only the second condition—that the hospital's lien was paid in full before the release to the extent that State Farm gave consideration to Gil and Hernandez.

State farm argued that by issuing checks to Gil and Hernandez with the hospital as copayee, they therefore effectively "paid" the hospital. The hospital, however, argued that actual compensation was never received, thus, State Farm was still responsible for the satisfaction of the lien. The Court evaluated the arguments under the provisions of the UCC as codified in the TEX. BUS. & COM. CODE § 3.102. In a multipart analysis, the Court held that first, delivery of the checks to Gil and Hernandez constituted constructive delivery by State Farm to the hospital as copayee.

Secondly, "if an instrument is payable to two or more persons not alternatively, it is payable to all of them and may be negotiated, discharged, or enforced only by all of them." *Id.* § 3.110(d). Therefore, payment to one nonalternative copayee without the endorsement of the other is not payment to a "holder," it does not discharge the drawer of either his liability on the instrument or the drawer's underlying obligation. The Court was guided by interpretations of similar statutes in Massachusetts, North Dakota, and California. Furthermore, the Court noted that just because an alternative route existed for a wronged copayee does not change whether a hospital was "paid" in accordance with respective UCC and Hospital Lien Statute provisions.

In sum, State Farm "[did not show] that the charges of the hospital . . . claiming the lien were paid before the execution and delivery of the release [of the injured individual's cause of action] to the extent of any full and true consideration paid to the injured individual by or on behalf of the other parties to the release." TEX. PROP. CODE § 55.007(a)(2). As to the question of the hospital's proper remedy going forward, the Court noted that the plain

language of § 55.007 expressly invalidates the release of the cause of action. Thus, the patient's cause of action that was previously settled is revived and the hospital retains the lien on the cause of action between Gil and Hernandez as patients, and Benavidez as the insured. The court did not resolve the question of whether the hospital has a separate cause of action under the Hospital Lien Statute against State Farm, because the issue was not raised below as a ground for summary judgment.

Kennedy Hodges, L.L.P. v. Gobellan
NO. 13-0321
Case Summary written by Tarryn Johnson, Online Edition Editor.

Per Curiam.

Facts: Ventura Gobellan was driving an armored car for his employer when the vehicle was involved in an accident, which killed a passenger and injured Gobellan. Gobellan and his wife retained Kennedy Hodges, L.L.P. to defend them against a wrongful death suit and to also file suit against Gobellan's employer (the Gobellan Suit). The Gobellans agreed to pay forty percent of the gross recovery to Kennedy Hodges. The fee agreement provided that the Gobellans would be liable to Kennedy Hodges for the entire contingency fee if they terminated the firm without cause, and the agreement contained an arbitration clause for any potential fee dispute.

Kennedy Hodges originally assigned associate attorney Canonero Brown to the case, but Brown subsequently left the firm bur assured the Gobellans that a fee-splitting agreement would be reached between Brown and Kennedy Hodges, which would not affect the Gobellan's case. The Gobellans proceeded to retain Brown to represent them. Kennedy Hodges then filed suit against Brown to recovery contingency fees for Brown taking several former clients with him (the Brown Suit). The Brown Suit was later settled between the parties, including a portion of the fees from the Gobellan Suit.

In the Gobellan Suit, the parties submitted their dispute to arbitration. The Gobellans obtained an award that was confirmed by a final judgment. Kennedy Hodges then sued the Gobellans in a separate proceeding and moved for a no-answer default judgment. After conferring with the Gobellans, however, Kennedy Hodges pursued its claim by intervening in the Gobellan Suit and moving to compel arbitration. The trial court denied the motion, and the court of appeals affirmed, concluding that Kennedy Hodges substantially invoked the litigation process as to the Gobellan fee based on the discovery it conducted in the Brown Suit. The court also found the Gobellans established prejudice because Kennedy Hodges attempted to "have it both ways" by switching between litigation and arbitration.

Issue: whether a law firm waived its right to arbitrate a fee dispute

with former clients by litigating with a former associate.

The Court agreed with Kennedy Hodges that the Brown Suit did not affect the firm's right to arbitrate with the Gobellans because the Brown Suit contained tort and contract claims that did not involve the Gobellans as parties. Additionally, the lower courts' decisions conflict with the case of *Perry Homes v. Cull*, 258 S.W.3d 580, 589 (Tex. 2008).

In *Cull*, the Court held that a party might waive the right to arbitrate "by substantially invoking the judicial process to the other party's detriment or prejudice." Whether the judicial process is "substantially invoked" is evaluated on a case-by-case basis and the totality of the circumstances. Factors that should be considered are: (1) when the movant knew of the arbitration clause; (2) how much discovery was conducted; (3) who initiated the discovery; (4) whether the discovery related to the merits rather than arbitrability or standing; (5) how much of the discovery would be useful in arbitration; and (6) whether the movant sought judgment on the merits.

The Court was guided by *Cull*, where prejudice was found because one party resisted motions to compel arbitration until shortly before trial, when they then requested arbitration after extreme delay; and *In re Service Corp. International*, 85 S.W.3d 171, 175 (Tex. 2002), where one party litigated a claim with one opponent did not substantially invoke the litigation process against another party for a related yet distinct claim with whom it had an arbitration agreement. The Court concluded that the situation between Kennedy Hodges and the Gobellans was most similar to *In re Service Corp. International*, because the Gobellans were not parties to the Brown suit; Kennedy Hodges' suit with Brown did not cause the Gobellans undue delay, expense, or damage; the pleadings filed by Kennedy Hodges against the Gobellans did not rise to the level required to show a waiver of the arbitration clause; and Kennedy Hodges conducted no discovery in the Gobellan Suit. Ultimately, these factors and the similarity of the Gobellan Suit to the precedent of *In re Service Corp. International*, led the Court to hold that Kennedy Hodges did not waive its right to arbitrate its dispute with the Gobellans.

Sims v. Carrington Mortgage Services, L.L.C.

NO. 13-0638

Case Summary written by Tarryn Johnson, Online Edition Editor.

Chief Justice Hecht delivered the opinion of the Court.

Frankie and Patsy Sims obtained a 30-year home equity loan in 2003. In 2009, the Simses, behind on their payments, reached a "Loan Modification Agreement" with Carrington Mortgage Services, L.L.C (CMS). The agreements involved capitalizing past-due interest and other charges, including fees and unpaid taxes and insurance premiums, and reducing the

interest rate and monthly payments. Two years later, the Simses were again behind, and this time CMS sought foreclosure. The Simses resisted, asserting that the 2009 restructuring violated constitutional requirements for home equity loans. The parties then reached a second "Loan Modification Agreement," further reducing the interest rate and payments.

The original note required the Simses to pay principal, interest, and late charges. The security agreement also had that requirement and added an obligation for the Simses to make payments for items such as taxes, assessments, and insurance premiums. The security agreement also authorized the lender to "do and pay for whatever is reasonable or appropriate" to protect its interest in the property and its rights under the agreement and provided that any amount the lender disbursed to that end "shall become additional debt of Borrower secured by this Security Instrument." The 2009 and 2011 "Loan Modification Agreements" provided that all the Simses' obligations and all the loan documents remained unchanged.

Two months after the 2011 agreement, the Simses brought this class action against CMS in the U.S. District Court, alleging that CMS's loan modifications for them and other similarly situated borrowers violated Article XVI, Section 50 of the Texas Constitution. The district court dismissed the case under FRCP 12(b)(6), and the Simses appealed. After oral argument, the Fifth Circuit certified four questions for the Texas Supreme Court:

> (1) After an initial extension of credit, if a home equity lender enters into a new agreement with the borrower that capitalizes past-due interest, fees, property taxes, or insurance premiums into the principal of the loan but neither satisfies nor replaces the original note, is the transaction a modification or a refinance for purposes of Section 50 of Article XVI of the Texas Constitution?
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> If the transaction is a modification rather than a refinance, the following questions also arise:
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> (2) Does the capitalization of past-due interest, fees, property taxes, or insurance premiums constitute an impermissible "advance of additional funds" under Section 153.14(2)(B) of the Texas Administrative Code?
> (3) Must such a modification comply with the requirements of Section 50(a)(6), including subsection (B), which mandates that a home equity loan have a maximum loan-to-value ratio of 80%?
> (4) Do repeated modifications like those in this case convert a home equity loan into an open-end account that must comply with Section 50(t)?

In response to the first question posed by the Fifth Circuit, the Texas Supreme Court clarified that "[t]he applicability of this particular provision, as well as all of Section 50(a)(6), which governs home equity loans, depends not on whether the transaction is a modification or a refinance but on whether it is an "extension of credit". If the transaction is not an extension of credit, then the section simply does not apply. The Court's ultimate answer to the first question was that

> the restructuring of a home equity loan that, as in the context from which the question arises, involves capitalization of past-due amounts owed under the terms of the initial loan and a lowering of the interest rate and the amount of installment payments, but does not involve the satisfaction or replacement of the original note, an advancement of new funds, or an increase in the obligations created by the original note, is not a new extension of credit that must meet the requirements of Section 50.

As to the second question, the Court articulated that the capitalization of past-due interest, fees, property taxes, and insurance premiums are not the advancement of additional funds "if those amounts were among the obligations assumed by the borrower under the terms of the original loan. And more importantly, such capitalization is not a new extension of credit under Section 50(a)(6)."

Third, a restructuring like the Simses does not have to comply with the requirements of Section 50(a)(6) because it does not involve a *new extension of credit.*

Fourth, repeated modifications like those in this case do not convert a home equity loan into an open-end account that Section 50(t) applies to because a home equity loan has a stated principle and is to be repaid on a specific schedule from the outset, but might be restructured to avoid foreclosure. An open-ended account under Section 50(t) is "a form of an open-end account that may be debited from time to time, under which credit may be extended from time to time and under which . . . the owner requests advances, repays money, and reborrows money." The repeated transactions are clearly contemplated from the outset. The listed responses were then submitted to the Fifth Circuit for consideration.

In re A.B.
No. 13-0749
Case Summary written by Tarryn Johnson, Online Edition Editor.

Justice Guzman delivered the opinion of the Court.

This case involves parental rights termination and the Court is asked to expand the requirement of when an appeals court must give a detailed review of why it finds evidence sufficient to either reverse or affirm the jury's verdict.

Mother and Father had two children together, A.B. born in 2005, and H.B. born in 2006. The parents separated in 2007 and the children largely remained with the mother. Child H.B. suffered seizures in 2007 which were the result of inadequate nutrition. H.B. also suffered significant developmental delays.

After H.B. was discharged from the hospital, Texas Department of Family and Protective Services (DFPS) placed both children with relatives so Mother and Father could complete services with DFPS. Father completed his services, and the children were returned to his care in June 2008. One month later, DFPS visited the children at the father's home and observed injuries on the children, and they were removed from the father's care. DFPS filed suit to terminate Father's rights the next day. Mother voluntarily terminated her rights June 2009 and was not involved in subsequent litigation.

A bench trial found by clear and convincing evidence that "the father knowingly placed or allowed the children to remain in conditions and surroundings that endangered their physical and emotional well-being, and that Father engaged in conduct and knowingly placed the children with persons who engaged in conduct that endangered the physical and emotional well-being of the children." Accordingly, Father's parental rights were terminated. Father appealed this 2009 decision and an appeals court found that while the evidence was legally sufficient, it was not factually sufficient to support an endangerment finding.

The case was retried in 2011, and a jury found grounds for termination of rights because of endangerment. Father once again appealed the verdict and once again the appeals court found that DFPS did not present enough new evidence to change the verdict from the prior holding. Motions for en banc reconsideration were filed and in a per curiam opinion, the appeals court found the evidence of endangerment factually sufficient to support termination. Now, the father argues that the most recent decision failed to conduct a proper factual sufficiency review because, though its opinion analyzed the evidence favorable to DFPS, it failed to review evidence favorable to Father. As such, Father argues the court improperly disregarded relevant, probative evidence in performing its factual sufficiency review, and erred when it "failed to detail the conflicting evidence."

<u>Issue</u>: Whether a court of appeals must detail the relevant evidence in

its opinion and clearly state why the evidence is insufficient to support the termination finding by clear and convincing evidence when it affirms the jury's decision.

The Court held that an appeals court is not required to conduct the same exacting review when affirming a jury's verdict in a parental rights termination case as they must do when reversing a jury's verdict. Termination of parental rights proceedings pose the interests of parents in maintaining custody and control of their children against the State's fundamental interest in protecting the welfare of the child. *See In re M.S.*, 115 S.W.3d 534, 547–48 (Tex. 2003). The parent's rights are safeguarded by requiring that the State's interests overcome the parent's interests and also by the requirement for "courts of appeals to conduct an exacting review of the entire record when a parent challenges a termination order for insufficient evidence."

In its decision, the Court succinctly reasoned that:

> [the] exacting review safeguards the constitutional rights of parents, while simultaneously ensuring the emotional and physical interests of the child are appropriately considered. But the court of appeals' authority to conduct a factual sufficiency analysis does not permit the court to stand in the role of a thirteenth juror. Thus, if the reviewing court is to reverse the factfinder, it must detail the evidence supporting its decision. Here, by considering the record in its entirety, the court of appeals executed an appropriate factual sufficiency review. Because the court ultimately affirmed the jury's termination findings, it was not required to detail the evidence.

An appellate court's requirements on affirmation or reversal of a jury's verdict in parental termination cases therefore remains unchanged, and detailing evidence most favorable to the Father was not required.