

Supreme Court of Texas
June 20, 2014

Ritchie v. Rupe

No. 11-0447

Case Summary written by Brittany Dumas, Staff Member.

Justice Boyd delivered the opinion of the Court, joined by Chief Justice Hecht and Justices Green, Johnson, Lehrmann, and Devine.

Plaintiff, Ann Rupe, sued Dennard, Ritchie, Lutes, and RIC for engaging in “oppressive” conduct as well as breaching a fiduciary duty. Rupe married Buddy who had an 18% interest in RIC. When Buddy died in 2002, he put that 18% interest in a trust for the benefit of his wife, Rupe and son, with Rupe named the trustee. Ritchie, the president of RIC, offered to appoint Rupe to replace Buddy on RIC’s board of directors. Rupe declined and asked Ritchie if RIC would buy her shares. Ritchie stated they could not buy her out due to financial problems. Later on, Lutes on behalf of RIC, offered a redemption offer to Rupe of \$1 million. Rupe’s declined this offer and asked for a new one. Ritchie made a new offer of \$1,760,947. Rupe again declined and tried to sell her shares to an outside party. Rupe asked Ritchie when he could meet with prospective purchasers, which Ritchie declined and stated that a meeting would be inappropriate because RIC was not a party to the sale. Stasen, Rupe’s new attorney and broker, prepared to market Rupe’s shares, but he discounted the shares from \$3.9 million to \$3.4 million because prospective buyers wanted to meet with the RIC executives and they would not agree to meet. Stasen said there was zero chance of selling due to the executives’ unwillingness to meet.

The trial court found that Dennard, Ritchie, and RIC engaged in “oppressive” behavior and also breached their fiduciary duty to Rupe. The jury found that Rupe was due \$7.3 million—the fair value of the stock. Based on these findings, the trial court order RIC to purchase Rupe’s shares for \$7.3 million.

The court of appeals affirmed the trial court’s determination that the conduct was “oppressive;” however, reversed the \$7.3 million purchase price because that price did not factor in a discounted price due to lack of marketability and control. The court of appeals remanded to the trial court to determine the shares’ actual fair value. Dennard, Ritchie, and Lutes petitioned for the Texas Supreme Court to review, which was granted.

Issue 1: Whether or not “oppressive” under the Texas receivership statute, includes refusal to meet with Rupe’s potential buyers, and if it does what remedies are available? The Court held that the decision by Ritchie, Dennard, and Lutes not to meet with Rupe’s prospective buyers does not constitute “oppressive” action under former article 7.05. See TEX. BUS. ORGS. CODE § 11.404 (former TEX. BUS. CORP. ACT art. 7.06). Further, the Court found that there is only one remedy under the statute—appointment of a rehabilitative receiver; thus, a buy out is not a remedy available under the statute. See BUS. ORGS. § 11.404.

In determining that not meeting with prospective buyers does not constitute “oppressive” action, the Court looked to the Texas receivership statute, former article 7.05 of the Texas Business Corporations Act and its successor, section 11.404 of the Texas Business Organizations Code. See BUS. ORGS. § 11.404. This statute authorizes Texas courts to appoint a receiver to rehabilitate a corporation. See BUS. ORGS. § 11.404. Rupe relies on this statute as authority for the trial court’s judgment ordering RIC to buy out her shares. Rupe relies on (c) of the statute, “that the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent.” See BUS. ORGS. § 11.404. Thus, the Court had to determine what the Legislature meant by “oppressive.” In determining the meaning of “oppressive,” the court had to look to other sources because it was not defined in the statute. Since “oppressive” has multiple meanings, the definition most consistent within the context of the statute’s scheme applies. The Court rejected both the “fair dealing” and “reasonable expectations” tests. Rather the Court concluded that after considering all of the indicators of the Legislature’s intent, the test should be the “business judgment” test. In *Texarkana College Bowl, Inc. v. Phillips*, the court held that a receipt of a receivership is not based off dissatisfaction of corporate management. In rendering this decision, the court found that the shareholder could not receive a receivership based on conduct that was an honest exercise of business judgment. Thus, the court employed the “business judgment” rule. The Supreme Court agreed with *Texarkana College Bowl*. The Court concluded that a corporation’s directors engage in “oppressive” actions when “they intend to harm a shareholder in a manner that does not comport with the honest exercise of their business judgment, and by doing so creates a serious harm to the corporation.”

The Court also found that former article 7.05 creates a single cause of action with a single remedy—an action for appointment of a rehabilitative receiver. See BUS. ORGS. § 11.404. In this case; however, Rupe sought liquidation rather than rehabilitation. In determining that there is only a single cause of action, the Court disagreed with the court of appeals reasoning that because the statute states, “all other remedies available either at law or in equity . . . are determined by the court to be inadequate,” means there is other relief available beyond appointment of a receiver. See BUS. ORGS. § 11.404. Rather, the Court finds this language is a restriction on receivership, not an expansion. See BUS. ORGS. § 11.404.

Issue 2: Whether or not there is a common-law cause of action for shareholder oppression.

The Court declines to recognize a common-law cause of action for shareholder oppression because there are no compelling reasons for changing the law significantly. There is a comprehensive statutory framework dealing with corporations and to change that framework requires significant reasons for doing so. See BUS. ORGS. § 11.404. The Supreme Court has never found someone liable for “minority shareholder oppression.” When determining if a new cause of action is necessary, the court must determine and weigh the costs and benefits. In doing this analysis, the court should consider a number of dispositive factors including:

- (1) The foreseeability, likelihood, and magnitude of the risk of injury;

- (2) The existence and adequacy of other protections;
- (3) The magnitude of the burden of guarding against the injury and the consequences of placing that burden on the persons in question; and
- (4) The consequences of imposing the new duty, including:
 - (a) Whether Texas's public policies are served or disserved,
 - (b) Whether the new duty may upset legislative balancing-of-interests, and
 - (c) The extent to which the new duty provides clear standards of conduct so as to deter undesirable conduct without impeding desirable conduct or unduly restricting freedoms.

The Court balanced these factors and found the benefit did not outweigh the costs.

Issue 3: Did Dennard, Ritchie, and Lute breach their informal fiduciary duties to Rupe?

The court of appeals found that Dennard, Ritchie, Lute, and RIC were liable because they engaged in oppressive conduct. The court of appeals did not determine whether or not there was a breach of fiduciary duty. Since the Supreme Court held that this conduct was not oppressive conduct, the court below needs to determine if there was a breach of fiduciary duty. The case was reversed and remanded to the court of appeals.

Guzman, J., dissenting, joined by Justices Willett and Brown

The dissent argues that the court of appeals decision should be affirmed—the buyout remedy is available, but the valuation determination should be reevaluated based on control. The dissent does not agree with the majority that the business judgment rule is appropriate as a definition for oppression. Instead, the dissent argues for a broad definition of oppression—“burdensome, harsh and wrongful.” This definition is firmly established in Texas case law as well as national case law. The dissent finds that there is oppression in this case.

As for remedies, the dissent states that courts in Texas as well as in other states have permitted court-ordered buyouts. The dissent concludes that the remedy should be a buyout. The dissent disagrees with the majority that the statute can only remedy by receivership. Rather, the dissent argues that the statute prefers lesser legal and equitable remedies than receivership. See BUS. ORGS. § 11.404. The dissent relies on the plain language of the statute that receivership is available only after “all other remedies available either at law or in equity . . . are determined by the court to be inadequate.” See BUS. ORGS. § 11.404. The dissent also bases the decision on the fact that other states and even courts in Texas have found buyouts to be appropriate remedies for oppression.

Additionally, the dissent argues that the majority would likely apply the business judgment rule to the breach of fiduciary claim. The dissent argues that the business judgment rule should not apply to this claim because of *Patton*. In *Patton*, the Court held there was a breach of fiduciary duty, which would not stand if the

business judgment rule were applied—the majority shareholder was injuring the minority, not the corporation.

LAN/STV v. Martin K. Eby Construction Co.

No. 11-0810

Case Summary written by Jessica Eaton, Staff Member.

Chief Justice Hecht delivered the opinion of the Court.

Dallas Area Rapid Transportation Authority (DART) contracted with LAN/STV to make plans and specifications for the construction of a light rail transit line. Eby Construction Company (Eby) won the bid for construction and contracted with DART. LAN/STV and Eby did not have a contract with each other. Eby discovered several errors in LAN/STV's plans and estimated it cost Eby \$14 million. Eby sued DART for breach of contract. The court then dismissed the action because Eby had not exhausted all of its remedies against DART under state law and their contract. Eby then invoked the contract dispute procedures, asking for \$21 million. Eby's claim was rejected and the hearing officer ruled that DART was owed \$2.4 million in damages by Eby. Eby then settled with DART for Eby filed tort suit against LAN/STV for negligence and negligent misrepresentation. The case proceeded to trial on the negligent misrepresentation claim. The trial court found all three parties to be at fault, and rendered judgment against LAN/STV for Eby for \$2.25 million. Both parties appealed and both petitions were granted by the Texas Supreme Court, though this case only addresses LAN/STV's claim that Eby's recovery is barred by the economic loss rule.

Issue: Whether the “economic loss rule” allows a general contractor to claim the increased cost of carrying out its construction contract with the owner in an action against the project architect for negligent misrepresentations in the plans and specifications. Economic damages have historically been limited in negligence claims. In the past, the Supreme Court has allowed recovery of economic losses in negligent misrepresentation actions in the past without citing the rule. The Court held that the economic loss rule precluded a general contractor from regaining delay damages from the architects.

The Court observed that construction projects operate on vertical privity: the owner contracts with an architect and a general contractor, and the general contractor contracts with subcontractors, and so forth. Notably, the architect is not the one who contracts with the general contractor. Thus, as the Court stated, “The issues are whether to treat the architect differently and whether to distinguish between an action for negligent performance of services and an action for negligent misrepresentations.” With regard to the issue of distinguishing between an action for negligent performance of services and an action for negligent misrepresentations, the Court adopted the *Restatement* rule that “[b]oth [torts] are based on the [same] logic” and “[t]he general theory of liability is the same.” With regard to whether the architect is treated differently than a subcontractor, the

Court held that “the contractor’s principal reliance must be on the presentation of the plans by the owner, with whom the contractor is to reach an agreement, not the architect, a contractual stranger. The contractor does not choose the architect, or instruct it, or pay it.”

The judgment of the court of appeals was reversed and judgment was rendered for LAN/STV and Eby takes nothing.

Americo Life. v. Myer & Strider Marketing

No. 12-0739

Case Summary written by Sarah Ellison, Staff Member.

Justice Brown delivered the opinion of the Court, in which Chief Justice Hecht, Justice Green, Justice Guzman, and Justice Devine joined.

Myer and Strider Marketing Group sold a collection of insurance companies to Americo Life, Inc., in which the parties executed a “trailer agreement” to provide for additional payments based on the businesses’ future performance. The trailer agreement included an arbitration clause which contained six paragraphs of terms the parties agreed upon including, “Americo shall appoint one arbitrator and Myer shall appoint one arbitrator and such two arbitrators to select the third Each arbitrator shall be a knowledgeable, independent businessperson or professional.” Furthermore, the arbitration clause stated, “[t]he arbitration proceedings shall be conducted in accordance with the commercial arbitration rules of the American Arbitration Association.”

In 1998, when the parties executed the agreement, AAA rules did not require arbitrator-impartiality, but when Americo invoked arbitration in 2005 following a dispute with Myers, the AAA rules had changed, now requiring that, “[a]ny arbitrator shall be impartial and independent . . . and shall be subject to disqualification for . . . partiality or lack of independence” When the dispute arose, Myer’s challenged the first two arbitrators appointed by Americo on grounds they were not impartial, and the AAA disqualified them. After Americo appointed their third-choice arbitrator, the proceedings continued and Myers was awarded over \$26 million.

When Myers moved to confirm the award in the trial court, Americo renewed its objection to the first-choice arbitrator’s disqualification. Americo argued that the AAA failed to follow the arbitrator-selection process specified in the parties’ agreement. The trial court agreed with Americo’s reading and vacated the award on the grounds that the arbitration agreement was ambiguous. The Court of Appeals reversed on the ground that Americo had waived its objection to the removal of their first-choice arbitrator.

Issue: Whether the arbitration clause unambiguously shows that the parties’ intended to require impartiality of the party-appointed arbitrators. Americo argues that the parties chose the word “independent” not to require impartiality, but to proscribe arbitrators employed by or otherwise under the control of one of the

parties. Myers, on the other hand, contends that the word “independent” is synonymous with the word “impartial”.

The Supreme Court of Texas held that the terms “independent” and “impartial” are not interchangeable in this context, and therefore the parties did not intend to require impartiality of party-appointed arbitrators. Additionally, here, the parties chose a short list of arbitrator qualifications, and in doing so it must be assumed they spoke comprehensively, intentionally leaving out the term “impartial.” Furthermore, just because the parties chose to adopt the AAA rules which they knew were subject to change, it is not conceivable that they agreed to be bound by rules that would alter the express terms of their agreement. Therefore, the Court reversed the Court of Appeals’ judgment and reinstated the trial court’s order vacating the \$26 million arbitration award.

Justice Johnson, joined by Justice Willett, Justice Lehrmann, and Justice Boyd, dissenting

Justice Johnson agrees with the analyses and conclusions of the Court of Appeals. Johnson also agrees that the trailer agreement that requires arbitrators to be “independent” cannot be read interchangeably with “impartial.” However, Johnson counters that the AAA rules requiring arbitrator impartiality and the parties’ unambiguous agreement can be harmonized. The dissent reasons that in addition to the qualifications the parties spelled out in their trailer agreement, they also agreed that (1) the AAA arbitration rules in effect at the time arbitration was demanded would apply, and (2) pursuant to the 2003 rules that were in effect when the arbitration was demanded, the arbitrators would be impartial.

Schlumberger Tech. Corp. v. Arthey

No. 12-1013

Case summary written by Tyler Frankel, Staff Member.

Chief Justice Hecht delivered the opinion of the Court.

Justice Green did not participate in the decision.

Schlumberger Technology Court (Defendant) invited employees of some of its business partners on a retreat expensed by Defendant. Included in the retreat package was an open bar at the Lodge and eight to ten hours of bay fishing on small fishing boats with professional guides. While there was no alcohol supplied on these small fishing boats, the Defendant stated that if the guests wanted alcohol, Defendant could “make it happen.” On Friday morning, David Huff, a guest on the retreat, and William Ney, one of Defendant’s employees, went on one of the small fishing boats with a guide from 9:00 to 10:00. Ney stated that while he did not know if there was alcohol on the small fishing boat, he saw Huff drinking from a can in a “koozie.” Ney also stated that Huff slept most of the trip. Once off the boat, Huff got in his car to drive home. While crossing an intersection, Huff hit a motorcycle ridden by Christopher and Denise Arthey (Plaintiffs), severely injuring the Plaintiffs. Huff

was taken to the hospital where he had a blood alcohol content of 0.25. An expert testified that Huff must have been drinking on the boat to reach that level and still be functioning. Huff admitted he was “significantly intoxicated” at the time of the accident and plead guilty to intoxication assault. Plaintiffs’ subsequently sued Defendant for negligently allowing Huff to drink excessively and asserted that while Texas law does not recognize this kind of liability, federal maritime law should determine this action.

Issue: Is Plaintiff’s action against Defendant governed by federal maritime law, which, Plaintiffs argue, would recognize a social host’s duty to prevent someone from drinking and driving while under Texas law this liability is not recognized?

The Court used the *Grubart* test, which states that a party seeking to invoke federal maritime law instead of state law over a tort claim must satisfy two conditions: (1) a “location” test, and (2) a two-part “connection with maritime activity” test. To satisfy the location condition, a court must determine whether the tort occurred on navigable water or was caused by a vessel on navigable water. To satisfy the connection condition, a court must address two issues: it must first assess the general features of the type of incident involved to address whether it had a potential disruptive impact on maritime commerce, and second, it must determine whether the general activity has a substantial relationship to traditional maritime activity.

The Court held that while the location test was satisfied, the connection test was not. The Court used two cases, *Foremost Insurance Co. v. Richardson* and *Sisson v. Ruby*, as examples that satisfied the connection test. It held that this case was different from these examples. As to the first part of the connection test, the incident in this case was the consumption of alcoholic beverages by guests aboard a small, chartered fishing boat on navigable waters. The Court stated that this incident did not have potential disruptive impact on maritime commerce. Consumption of alcoholic beverages does not disrupt commerce because a guide, not the guest, drives the small, chartered fishing boat. Therefore, the first part of the connection test was not satisfied.

As to the second part, the activity in this case was the supervision of the consumption of alcoholic beverages by a guest aboard a small, chartered fishing boat on navigable waters. The Court stated that this activity did not have a substantial relationship to traditional maritime activity. The Court further stated that even if this activity could be related to traditional maritime activity, federal maritime law should govern not all of this type of activity, and in the case of this activity, state law would be more appropriate. Therefore, the Texas Supreme Court reversed and remanded the appellate court’s decision.

Key Operating & Equipment, Inc. v. Hegar

No. 13-0156

Case Summary written by Josue Galvan, Staff Member.

Justice Johnson delivered the opinion of the Court.

In the 1980s, Key Operating & Equipment, Inc. (“Key”) began operating a well on a sixty-acre tract of land (“Richardson”). In the 1990s, Key acquired another lease (“Curbo/Rosenbaum”) and built a road across the tract that allowed access to the Richardson tract. After Key’s lease on the Curbo/Rosenbaum tract expired, it acquired a new lease that only gave Key the right to pool minerals. In 2002, the Hegars purchased part of the Curbo/Rosenbaum tract, including the piece of land on which Key built the road. After several years of the Hegars’ allowing Key to use the road, Key’s drilling efforts on the nearby Richardson tract significantly increased traffic on the road. This prompted the Hegars to sue Key for trespass. The trial court granted declaratory and injunctive relief in the Hegars’ favor, holding that Key could not use the Hegars’ part of the road for purposes related to the Richardson tract. The court of appeals affirmed, holding that Key could only use the road for purposes related to minerals beneath the Hegar tract.

Issue: Whether a lessee may use a road across a non-producing mineral lease to access the producing lease when two mineral leases have been pooled together.

The Court reversed the court of appeals’ decision, holding that Key had implied rights to use the Hegars’ surface. It based its decision on Texas pooling law, which requires pooled units to be treated as one large tract of land. The Court reasoned that when parts of the Richardson and Hegar tracts were pooled, the tracts lost separate identities as far as production from the pooled unit is concerned. Thus, because the pooled unit included portions of the Richardson and Hegar tracts, Key had a legal right to use the road to access the pooled Richardson part. Furthermore, Key’s legal rights by way of the lease not only made them part owners of the minerals under the Hegars’ land, but also gave them the rights of ingress and egress. Accordingly, Key’s ingress and egress rights included the right to travel across the Hegars’ road, since such rights encompass the right to cross the surface of any pooled unit for purposes related to mineral production from any part of the pooled unit.

Ford Motor Co. v. Castillo

No. 13-0158

Case Summary written by John Garza, Staff Member

Per Curiam.

Ezequiel Castillo and several others (Plaintiffs) sued Ford Motor Company after sustaining injuries from a roll-over accident. Plaintiffs claimed that the Ford Explorer had design defects in its roof and handling or stability. The jury was charged with separately determining Ford’s liability based on these alleged design defects,

and any question regarding damages was conditioned on an affirmative determination of either defect. The jury unanimously rejected liability for one design defect, but the jurors remained at odds for the second design defect. One of the two jurors who voted against Ford for the second design defect was Cynthia Cortez. Cortez was absent from court on the day before a settlement in the case was reached. Her absence postponed deliberations for that day.

While negotiating terms of a possible settlement, Plaintiffs' attorney Mark Cantu stated several times that his "demand would increase to \$3 million if the jury were to send a note about damages." When the jury reconvened the following day, it did in fact inquire about damages. After this inquiry, Ford's attorney immediately obtained authorization to settle the case for \$3 million. Ford later learned that Cortez sent the note inquiring about damages without the knowledge or consent of the collective jury. Suspecting fraud, Ford refused to pay the \$3 million settlement, and Plaintiffs sued Ford for breach of contract as a result.

Issue: Was the circumstantial evidence presented by Ford legally sufficient to establish fraudulent inducement, thereby setting aside the settlement agreement?

To establish fraudulent inducement in this case, it had to be shown that: (1) there was a material misrepresentation, (2) sent by or at the direction of the Plaintiffs with knowledge that it was false, (3) with the intent that Ford rely on the representation, (4) Ford did not know the representation was false and actually and justifiably relied on said representation, and (5) Ford detrimentally relied on the representation by agreeing to the \$3 million settlement. The trial court ruled in favor of Ford, but the court of appeals reversed the judgment and concluded that the evidence was legally insufficient to support a finding of fraudulent inducement. The first three elements were particularly troublesome.

The Supreme Court of Texas found that the note inquiring about damages was a material misrepresentation because it implied that the collective jury was inquiring about damages, which was conditioned on an affirmative determination of liability. As to the second element, the Court points out that allegations of fraud are typically supported only by circumstantial evidence, and therefore must be evaluated based on all the circumstances known. After considering all the relevant circumstances—including the fact that Cantu made very specific threats during his negotiation with Ford's attorneys, the fact that Cortez was noticeably absent from court the day this threat was made, and the fact that Cortez unilaterally sent a note inquiring about damages—the Court found that the second and third elements were satisfied and therefore reinstated the judgment of the trial court.

Graham Central Station, Inc. v. Pena

13-0450

Case Summary written by Chase Goetz, Staff Member.

Per Curiam.

Jesus Pena, as a patron of the Nightclub in Pharr, Texas, was assaulted by other patrons outside the club. Pena sued Graham Central Station, Inc. (GCS) for negligence, claiming that they, as the owners of the Nightclub, failed to provide adequate security. GCS filed a verified denial stating they were not a proper party to the suit as they did not control the Nightclub, and had no connection with it. In written discovery responses, GCS disclosed that Roger Gearhart was its president, that Pharr Entertainment Complex, LLC. d/b/a GCS in Pharr, and that Pharr Entertainment owned, operated, and was tenant-in-possession of the Nightclub.

Through testimony, Gearhart admitted to being the minority owner of GCS, that Pharr Entertainment d/b/a Graham Central Station, and that he was the minority owner of “this corporation.” Pena, however, never amended his petition to add Pharr Entertainment as a defendant. The court rendered judgment for Pena, and GCS requested findings of fact and conclusions of law, and the record did not reflect any filing by the trial court. GCS appealed, arguing that they were not a proper party to suit, and that the trial evidence was legally and factually insufficient to support the damages awarded by the trial court. The court of appeals affirmed, though it did reduce the judgment by remittitur. GCS then filed a petition for review with the Texas Supreme Court.

Issues: (1) Did the trial court’s failure to file findings of fact and conclusions of law despite GCS’s timely finding both a request and a notice of past due findings constitute reversible error?; (2) Did sufficient evidence exist to hold GCS the owner of the Nightclub?; and (3) did legally sufficient evidence exist to support the damages awarded?

The trial court’s failure to file findings of facts and conclusions of law constituted harmless error. The Texas Supreme Court, therefore, implied a finding by the trial court that GCS owned the Nightclub. Despite this, the Court held that the evidence supported that Pharr Entertainment, not GCS, owned and operated the Nightclub, and the evidence presented was not legally sufficient to support a finding that GCS owned the Nightclub. Therefore, it granted GCS’s petition for review, and reversed and rendered judgment in favor of GCS.

The lower court’s ruling depended on a Gearhart’s use of the word “corporation;” the Texas Supreme Court’s hinged on a reasonable fact-finder’s expectation of pronoun and antecedent use. The court of appeals interpreted testimony by Gearhart – that he was a minority owner of “this corporation” – as an admission of ownership of GCS (Pharr Entertainment was a limited liability company, rather than a corporation). The Texas Supreme Court, however, concluded that, despite the use of the word “corporation,” a reasonable fact-finder would believe that Gearhart’s testimony regarding “this corporation” would refer to Pharr Entertainment – the pronoun’s antecedent. The Court also noted that Pena did not

provide evidence that GCS and Pharr entertainment were engaged in joint enterprise or were alter-egos, or that Gearhart acted as an agent of GCS when signing the Nightclub's lease.

Additionally, testimony by a Nightclub security officer, relied on by the court of appeals, violated the equal inference rule. Although he testified that he was paid by "Graham Central Station," the security guard did not specify whether he was referring to GCS or Pharr Entertainment d/b/a Graham Central Station. The security guard could have meant either with equal probability, thus eliminating the testimony's probative value.

Because Pena had failed to show legally significant evidence holding GCS to be the owner of the Nightclub, GCS owed no duty to provide Pena security or safety under *Timberwalk Apartments v. Cain*, 972 S.W.2d 749 (Tex. 1998). As such, the Court did not reach the issue as to whether legally sufficient evidence existed to support the damages awarded.

State Office of Risk Management v. Carty

No. 13-0639

Case Summary written by Theresa Golde, Staff Member.

Justice Lehrmann delivered the opinion of the Court.

This case arises out of a worker's compensation death benefit claim. Jimmy Carty died as a result of an accident that occurred during training at the Texas Department of Public Safety Training Academy. The state employees' workers' compensation carrier, State Office of Risk Management (SORM), covered Jimmy's medical and funeral costs. The death benefits owed to Jimmy's beneficiaries (his wife, Christy, and their children) were also initiated following his death. A suit against Ringside, Inc. (Ringside) and Kim Pacific Martial Arts (Kim Pacific) later ensued as Christy asserted product liability claims as well as claims under the wrongful death and survival statutes in Texas. Both companies settled; as a result of the third party settlements, SORM was entitled to a subrogation interest (i.e. a right to the recovery for all benefits paid and owed). SORM received a partial satisfaction of its entitled reimbursement from the Ringside settlement. In the settlement with Kim Pacific (which involved a much greater amount), however, SORM intervened to claim its right to subrogation.

After approving the settlement, the district court allocated it among the parties. The apportionment was determined according to the relative ratio of death benefits Christy and the children had already been paid. Christy had no future benefits left to receive from SORM as she had remarried and received all that she was entitled to. The children, however, were still owed future benefits. Having satisfied SORM's reimbursement of all past benefits, the district court held that SORM's recovery for an advance against the children's future benefits would match their share of the settlement.

SORM appealed the district court's decision. Although the Fifth Circuit did not agree with the district court's apportionment noting that it was antiquated, it declined to make a judgment on how to appropriately apportion the settlement when multiple beneficiaries are involved. Current Texas law was unclear on the matter. The Fifth Circuit therefore certified, and the Texas Supreme Court agreed to hear three questions with regard to this ambiguity.

Issue: Of the three questions certified, only question two was addressed as questions one and three were declared moot. Question two considered the following:

- (1) How should section 417.002 of the Texas Labor Code, giving a workers' compensation carrier a right to receive an advance of future benefits from a third party recovery, be calculated when multiple beneficiaries are involved?
- (2) Should the right of the carrier be evaluated on a beneficiary-by-beneficiary basis or alternatively, on a collective recovery basis?

In this case, the relevant provisions fall under Texas Labor Code § 417.002(a)–(c). Focusing in on the word “claimant,” which is not defined under the Act, the Court examines the parties' differing interpretation. The Cartys assert that the word “claimant” applies to each beneficiary. Accordingly, SORM's right to an advance of future benefits should be apportioned based on each beneficiary's share. SORM, on the other hand, contends that all beneficiaries of the employee establish one collective “claimant,” thus arguing in favor of the collective recovery basis for reimbursement.

The Texas Supreme Court held that despite § 417.002's ambiguity the statutory construction lends itself to the collective recovery basis. First, the statutory scheme is meant to fulfill what is considered the “first money” framework, which in other words means that once a “claimant” recovers from a third party tortfeasor the workers' compensation carrier gets the “first money” from the recovery. This is an imperative part of the worker's compensation system as it reduces costs and saves the public money.

Second, following the statutory scheme under § 417.002(a), SORM was able to recover benefits previously paid to all beneficiaries. In calculating this reimbursement, the amount reached included all past payments made, which simultaneously set forth that “claimant” under subsection (a) meant all beneficiaries who received benefits. Thus, the Court reasoned that the word “claimant” in subsection (b) inevitably references the same “claimant.” There was no division made even by the Legislature between a carrier's right to past versus future benefits. Accordingly, the collective recovery framework under subsection (a) involving past benefits should be treated equally under subsection (b) with regard to future benefits.

Finally, the Court acknowledges potential inequities that may derive from this interpretation. Yet, it emphasizes that these inequities are up to the Legislature to solve. Until then, its interpretation hones in not only on the reduced costs this interpretation supports, but also on the consistency of the collective recovery approach with the plain language of the statute.