

## **Boerjan v. Rodriguez**

No. 12-0838

Case summary written by Kimberly Grinnan, Staff Member.

Per Curiam.

A mother, father, and child from Mexico hired Jose Maciel, a “coyote,” to provide them transport to Houston or New Orleans. En route, after picking up additional passenger Vasquez-Lara, Maciel unlocked a gate to a private ranch and drove on to the premises. An employee of Defendant ranch operator stopped Maciel, questioned his presence on the ranch, and wrote down his license plate number. In response, Maciel fled at a high speed over an unlit caliche road. The parties dispute the following facts: the Defendants claim the employee followed Maciel’s dust trail then stopped to wait for another employee, while the Plaintiffs, relying on passenger Vasquez-Lara’s testimony, claim the first employee initiated the chase and followed Maciel at high speeds. Maciel’s truck rolled, and the family and Vasquez-Lara, all of whom were crouching on the floor in the back, were ejected from the vehicle. The family was killed; Vasquez-Lara was injured. The Rodriguezes, the deceased mother’s parents, brought claims against the Defendant ranch operators (Mestena Operating, Mestena Inc., and Mestena Uranium) and their employee (Boerjan) for wrongful death, negligence, gross negligence, assault, negligent entrustment, retention, and supervision. In response to Plaintiffs’ claims, all Defendants filed summary judgment motions asserting that the unlawful acts doctrine barred all claims, and two Defendants filed a no-evidence summary judgment motion. The trial court granted all the motions and rendered final judgment dismissing all of Plaintiffs’ claims. The court of appeals reversed the summary judgment based on the unlawful acts doctrine and the no-evidence summary judgment on both negligence and gross negligence.

Issues: (1) Was the court of appeals correct in reversing summary judgment based on the unlawful acts doctrine and in reversing the no-evidence summary judgment for negligence and gross negligence? (2) For negligence, did the court of appeals apply the proper standard of care, and for gross negligence, does a genuine issue of material fact exist to support the court of appeals’ reversal on the no-evidence summary judgment?

As to the first issue, the Court held that the court of appeals properly reversed summary judgment because, based on the Court’s recent precedent, the unlawful acts doctrine cannot provide a basis for summary judgment. As to the negligence claim, the court of appeals found that the employee owed a duty of reasonable care not to injure the family by allegedly engaging in a high-speed case. The Court, however, held that the court of appeals erred in holding that Defendants owed decedents an ordinary negligence duty; in fact, Defendants owed decedents only a duty to avoid injuring them willfully or wantonly, or through gross negligence. The Court therefore reversed that part of the court of appeals’ judgment.

As to the second issue—no-evidence summary judgment on gross negligence—which only the Defendant employee and Defendant Mestena Uranium

joined, the Court found that no issue of material fact existed to support the court of appeals' reversal of summary judgment. Evidence in the record existed to support that the Defendant employee followed the trespassing vehicle, but the Court found that simply following a trespasser's truck was not the sort of objective risk that would give rise to gross negligence. Therefore, the Court reversed, finding a no-evidence summary judgment on gross negligence proper. The court remanded to trial because Defendants Mestena Operating and Mestena, Inc. joined only the motion based on the unlawful acts doctrine, which the Court affirmed. Those Defendants will therefore face all remaining claims, while no claims remain against Defendant employee and Defendant Mestena Uranium.

***French v. Occidental Permian Ltd.***

No. 12-1002

Case Summary written by Allison Grayson, Staff Member.

Chief Justice Hecht delivered the opinion of the Court.

The collective petitioners owned the royalty interest from two oil and gas leases and Occidental Permian Ltd. owned the working interest. The first lease included a royalty on gas equal to one-eighth of the gas sold, while the second lease included a royalty of one-fourth of the net proceeds of the gas, after subtracting the cost of manufacturing the gas.

In 1954, several leases formed the Cogdell Canyon Reef Unity. In that agreement, the royalty owners agreed to give the working interest complete discretion in conducting the operations, including the injection of natural gas into the field. Further, the group decided that no royalties would be paid on that natural gas. In addition, the agreement between the parties assigned the cost of this operation to the working interest, not including any already taken on by the royalty interests.

Occidental Permian Ltd. began flooding carbon dioxide into the Cogdell Canyon Reef Unity in 2001, which the royalty owners were never charged for. Prior to this, the casinghead gas produced contained less carbon dioxide and was processed at the Fuller Gasoline Plant. This process was a postproduction expense shared between the parties. French, the petitioner, received royalties based on the value of the natural gas liquids, as well as the residual gas net of the processing costs.

Occidental Permian Ltd. contracted with Kinder Morgan to process the gas with the higher carbon dioxide content. This process resulted in a certain amount of residual gas, which Kinder Morgan used itself. Occidental Permian Ltd. paid a fee for this process, but did not charge anything to French. French was paid a royalty for the natural gas liquids, but did not receive a royalty for the amount given to Kinder Morgan or any of the residual gas. French sued Occidental Permian Ltd. for failure to pay the royalties on the processing contract with Kinder Morgan.

Issue: Whether certain expenses are considered production costs or postproduction costs. French contended that Kinder Morgan's compensation was not a postproduction expense. The trial court awarded French the underpaid royalties, however, the court of appeals reversed. The court of appeals disagreed with the claim that processing carbon dioxide was a production expense.

On appeal, the Texas Supreme Court stated that the lease agreements served as a basis for the agreement between the parties. Turning to the lease agreements, the Court determined that the only evidence of market value resulted after the processing was complete. Additionally, the Court looked to its decision in *Humble Oil & Refining Co. v. West* in determining that French was not entitled to a royalty based on the value of the carbon dioxide produced.

The Court held that Occidental Permian Ltd.'s process of removing the carbon dioxide was a postproduction expense because it was not required to complete this process under the agreement. The Court further explained that the process was unnecessary for continued oil production. As such, the Court held that French should share the cost of the process because the agreement gave Occidental Permian Ltd. discretion to conduct the operation as it thought necessary. For these reasons, the Court affirmed the judgment from below.

### **Cardiac Perfusion Svcs., Inc. v. Hughes**

No. 13-0014

Case Summary written by Catharine Hansard, Staff Member.

Per Curiam.

Michael Joubran founded Cardiac Perfusion Services, Inc. (CPS) and served as the officer and director of the company. Joubran hired Randall Hughes as the company's first employee, and one year thereafter, Joubran offered to allow Hughes to purchase ten percent of the company's shares. Hughes accepted the offer and purchased the shares for \$25,000. Upon Hughes's purchase, Joubran retained an interest as majority shareholder, and Hughes gained an interest as minority shareholder in CPS.

As a result of Hughes's purchase, the parties entered into a written buy-sell agreement. The agreement set forth the procedures for buying and selling the shares, as well as limitations on the transferability of the shares. In the event a shareholder severed his employment with CPS, the agreement restricted the transferability of the shares, requiring the remaining shareholder to purchase the other shareholder's interest. Furthermore, the parties were to calculate the purchase price according to the "book value" of the shares based on the preceding fiscal year.

In August 2006, Joubran and Hughes were involved in a dispute, and Hughes severed his employment with CPS. Upon Hughes's departure from CPS, Joubran sued him for breach of fiduciary duties and tortious interference with a contract.

Joubran also claimed that the court should reduce the amount he owed to purchase Hughes's interest in accordance with the buy-sell agreement by the amount in damages Hughes's wrongful conduct caused CPS. Hughes filed a counterclaim against Joubran for breach of fiduciary duties as officer and director of CPS and as majority shareholder. Hughes specifically alleged that Joubran "wrongfully squeezed [him] out of the organization."

A jury found that Joubran's claims against Hughes failed, because Hughes did not tortuously interfere with the contract or breach his fiduciary duties. The jury also held that Hughes failed on his counterclaim, because Joubran and Hughes did not have a relationship that would warrant a breach of "informal" fiduciary duty, which the appellate court deemed as a duty that arises from a "purely personal relationship of trust and confidence." *Ritchie*, \_\_\_ S.W.3d \_\_\_, citing *Meyer v. Cathey*, 167 S.W.3d 327, 330-31 (Tex. 2005). Furthermore, the jury found that Joubran suppressed payments to Hughes, provided himself with "excessive contributions" from CPS's corporate funds, improperly used CPS's funds to pay for personal matters and compensate family members, wrongfully lowered the value of Hughes's stock in CPS, and prevented Hughes from reviewing CPS's books and records. Based on the jury's finding, the court held that Joubran engaged in "oppressive conduct to the rights of Hughes" and rejected Joubran's claim that his purchase price of Hughes's shares should be the book value set forth in the buy-sell agreement. Instead, the court issued a buy-out order, requiring Joubran to purchase Hughes's shares for \$300,000, an amount the jury deemed to be "fair value."

Issue: Whether the trial court's buy-out remedy for Joubran engaging in oppressive conduct toward Hughes as a shareholder in CPS was appropriate.

In its analysis, the Texas Supreme Court relied on *stare decisis* to determine that a buy-out order was not only an inappropriate remedy, but was also an unavailable remedy for Hughes. The court previously determined that shareholder oppression is not available as a cause of action under common law and, instead, is only available under the Texas Business Organizations Code. *Ritchie v. Rupe*, \_\_\_ S.W.3d \_\_\_ (Tex. 2014). Furthermore, in *Ritchie*, the court clarified that the only remedy available under the Texas Business Organizations Code is rehabilitative receivership. *Ritchie*, \_\_\_ S.W.3d at \_\_\_. Based on the court's holding in *Ritchie*, Hughes could not specifically claim shareholder oppression. Thus, the Court reversed the trial court's buy-out order, holding that such a remedy was not available for Hughes.

Ultimately, the Court affirmed the trial's court's judgment that Hughes did not tortuously interfere with the contract or breach his fiduciary duties and that Joubran and Hughes did not have a relationship that would warrant a breach of informal fiduciary duty. In reversing the lower court's buy-out order, however, the Court speculated that even though Hughes did not have a remedy under shareholder oppression, he might have a remedy under an alternate legal theory. The court noted that section 21.563(c) of the Business Organizations Code allows a minority shareholder to recover equitable relief by pursuing a derivative action for a

breach of fiduciary duty. In an effort to promote justice, the court exercised discretion and remanded the case to allow Hughes to advance his claim and seek redress under the appropriate legal theory.

***Danet v. Bhan***

No. 13-0116

Case Summary written by Shelby Hall, Staff Member.

Per Curiam.

Plaintiffs, Danet and Kranz, filed this suit against Bhan, seeking appointment as child's joint managing conservators. The child was removed from the biological mother, Bhan, in 2006 by the Texas Department of Family and Protective Services. The child, who was seven months old at the time, has lived with Danet and Kranz ever since and has bonded significantly with his foster family. Bhan's past conduct included drug use, a criminal record, failure to provide stability in the home, and abandonment of the child. Some of her more recent behavior included failures to visit, inconsistent communication with the child, and other misconduct, such as sneaking into the Houston Children's Museum on a visit. At trial, the jury found that appointing Bhan as the child's conservator would significantly impair the child's physical health or emotional development. Subsequently, the trial court appointed Danet and Kranz as the child's sole managing conservators. The court of appeals reversed the trial court, finding that there was insufficient evidence to support the jury's conclusion that Danet and Kranz overcame the legal presumption in favor of appointing the child's biological parent as sole conservator.

Issue: Whether there was sufficient evidence to support the jury's conclusion that Danet and Kranz overcame the presumption in favor of Bhan.

When determining issues of conservatorship, the best interest of the child is always the primary consideration of the court. Additionally, the law creates a presumption in favor of the child's parents as sole managing conservators unless the court finds that appointing the parents would result in an impairment of the child's physical health or emotional development. The Texas Supreme Court overruled the court of appeals; finding that the evidence of Bhan's past and recent conduct, when taken together, constituted enough evidence to establish a pattern suggesting Bhan's custody would impair the child's physical or emotional well-being. The case has been remanded to the court of appeals for factual sufficiency review.