

Supreme Court of Texas
June 19, 2015

Boeing Co. v. Paxton

No. 12-1007

Case Summary written by Allison Grayson, Online Edition Editor.

JUSTICE DEVINE delivered the opinion of the Court, in which CHIEF JUSTICE HECHT, JUSTICE GREEN, JUSTICE WILLETT, JUSTICE GUZMAN, JUSTICE LEHRMANN, and JUSTICE BROWN joined.

In 1995, Boeing chose Kelly Air Force Base in San Antonio as its new “commercial refit facility for servicing heavy-lift military aircraft.” In response, the City of San Antonio created the Greater Kelly Development Authority as a means of facilitating Kelly Air Force Base’s transition. The Greater Kelly Development Authority was “later renamed the Port Authority of San Antonio” (the Port).

In 1998, Boeing leased property at Kelly Air Force Base improved by the Port using funds borrowed from the city. The lease made Boeing the Port’s largest tenant.

After completion of the lease, Robert Silvas, a former Boeing employee, “submitted a Public Information Act (PIA) request to the Port for various Boeing corporate information, including the lease.” After filing a redacted version of the information requested by Silvas, Boeing filed objections with the Attorney General for the redacted material. In its objections, Boeing asserted “that the information withheld [was] competitively sensitive information regarding its overhead costs at Kelly that would give advantage to its competitors.”

The Attorney General concluded that none of the information Boeing sought to redact was exempt under the Public Information Act. Further, the trial court agreed with the Attorney General, ordering the Port to provide the redacted information to Silvas. The court of appeals affirmed the trial court’s decision.

Issues: Does the PIA require “a governmental body to raise and argue any applicable disclosure exception to the Attorney General as a prerequisite to judicial review?” Further, is the withheld information “competitively sensitive information . . . that would give advantage” to Boeing’s competitors, and therefore subject to exemption under the PIA?

While the Court stated that the PIA generally does require a governmental body to raise specific exceptions prior to judicial review, the rule does not apply “when the requested information implicates another person’s privacy or property interests.” Additionally, when a third party’s interests are involved, a governmental body need not raise exceptions regarding the interests of another person before the Attorney General. Therefore, “the Port was not required to raise the exception before the Attorney General” because either the government or the private party may invoke an exception to protect its privacy and property interests.

In addition to the Court’s discussion on exceptions to the PIA, the Court acknowledged the possibility for Boeing’s competitors to use the redacted information in question. The Court determined that the “undisputed evidence [allowed] only a single logical inference—that the information at issue ‘if released would give advantage to a competitor or bidder.’” Further, the Court held that Boeing had the right to protect its privacy and property interests, and therefore, reversed the court of appeals’ judgment.

JUSTICE BOYD, dissenting.

Although Justice Boyd agreed that “persons who are not governmental bodies may assert section 552.104 of the Texas Public Information Act as an exception to mandatory disclosure of information in which they have a privacy or property interest,” he argued that Boeing did not “conclusively [establish] that the exception applies to the information at issue in this case.”

Explaining his position, Justice Boyd stated that Boeing’s evidence in support of its arguments was “too hypothetical and speculative to establish that the release of its information” would give any advantage to its competitors.” Further, he urged that a party seeking to utilize the exception must show a specific competitor who would gain an advantage through such information.

Suarez v. City of Texas City

No. 13-0947

Case Summary written by Katherine Koll, Staff Member.

JUSTICE GUZMAN delivered the opinion of the Court.

This premises liability case was brought against Texas City (City) for the deaths of petitioner's husband and twin daughters at a man-made peninsula off the coast of Texas City into Galveston Bay (Dike). The Dike had been closed for two years due to damage sustained from Hurricane Ike and had only been re-opened for a month before the tragedy occurred. The Suarez family paid the entrance fee and the two nine-year-olds, still dressed in street clothes, entered the water and shortly thereafter were pulled into deeper water and were unable to stay afloat. Despite the father's rescue attempts, the father and daughters died. There were no signs in the area that prohibited swimming or warned of any dangers. The mother brought a claim under the Tort Claims Act and the Wrongful Death Statute alleging the City had actual and constructive knowledge of the dangerous conditions that were created due to artificial and natural conditions on the beach. Therefore, governmental immunity was waived.

The City filed a plea to the jurisdiction on the basis that immunity was not waived under the Tort Claims Act because the family was a recreational user, and under the circumstances the City did not owe a duty. The trial court denied the plea, and the City subsequently filed an interlocutory appeal on the same basis. The court of appeals granted the appeal on the basis that there was insufficient evidence the City had subjective awareness of the dangerous conditions.

Issue: Did the municipality waive its governmental immunity under the Tort Claims Act, limited by the recreational use statute, when it failed to warn recreational users of dangers on the man-made peninsula?

The Court acknowledged that by applying the recreational use statute in this case, liability is limited to claims of gross negligence because of recreational users' status as trespassers. In order to adequately show gross negligence, there must be objective evidence of an extreme degree of risk and that the City knew of the risk, but proceeded with conscious indifference. The Court, assuming *arguendo*

that there was an extreme risk, did not find sufficient evidence that the City was aware of the risk at the time of the accident. The only evidence offered was circumstantial and did not rise to the requisite level of reasonable support for its conclusion. Without evidence of gross negligence, the City retained its immunity from suit and the claim was properly dismissed for want of jurisdiction.

State v. Naylor

No. 11-0114, No. 11-0222

Case Summary written by Pedro Leyva, Staff Member.

JUSTICE BROWN delivered the opinion of the Court, in which CHIEF JUSTICE HECHT, JUSTICE GREEN, JUSTICE JOHNSON, and JUSTICE BOYD joined.

Angelique Naylor and Sabina Daly were married in Massachusetts in 2004. A few years later Naylor filed for divorce in Travis County. The two women were operating a business and raising a child together. At the time of the Court's decision, Texas did not recognize same-sex marriages.

The trial court orally granted an ostensible divorce. It recognized that divorce may not be available to same-sex couples in Texas so the record stipulated that the judgment "[was] intended to be a substitute for . . . a valid and subsisting divorce," and "[was] intended to dispose of all economic issues and liabilities as between the parties whether they divorced or not."

The day following the judgment, the state filed a petition seeking to limit the divorce actions to persons of the opposite sex who are married to one another. The state also raised a plea to the jurisdiction urging the court to dismiss Naylor's petition. The state argued that the court lacked jurisdiction to render a divorce, but could declare the marriage void under Chapter 6 of the Family Code.

Both Daly and Naylor objected to the state's intervention alleging it had filed its petition late. Naylor also argued that Texas law is unconstitutional to the extent it withholds the remedy of divorce. The trial court held a hearing on the contested intervention but decided that the attempted intervention had come too late and therefore did not rule on the motion.

The court of appeals dismissed the state's appeal for want of jurisdiction. It held the intervention untimely and found no basis for appellate standing.

Issue: Did the state have standing in order to appeal the trial court's decision in granting an ostensible divorce?

The Supreme Court of Texas agreed with the court of appeals that the state lacked standing to appeal the trial court's decision. The State raised three arguments regarding its right to appeal the disputed divorce decree:

1. At the trial court, the state argued it had timely intervened and so it was a party to the case.
2. At the appellate level, the state alleged standing both as a timely intervenor and under the virtual-representation doctrine.
3. At the Supreme Court Texas, the state contended that various equitable considerations also provide a basis for appellate standing.

With regard to the first argument, the Court held that a party that intervenes after the judgment is too late unless the judgment has been set aside. In this case, the Supreme Court held that the oral announcement of the divorce by the trial court judge served as a binding judgment. Therefore, the state was not a party to the case that could appeal the final judgment.

The state's next argument was that it was deemed to be a party under the doctrine of virtual representation. This doctrine serves as an exception to the rule that only parties of record may file an appeal. This doctrine requires that the appellant establish: (1) it is bound by the judgment; (2) its privity of estate, title, or interest appears from the record; and (3) there is an identity of interest between the appellant and a party to the judgment. The Court found that the state was not bound in any way by this judgment because it in no way affected the state and that the state had not established identity of interest because none of the parties were advocating on behalf of the state.

The state then asked the Court to find an equitable basis for appellate standing in light of the importance of the issues before the Court. The Court found that the state identified no equitable doctrine that might allow for standing and cited no precedent in which the Court

allowed a third party to appeal without first satisfying the elements of the doctrine of virtual representation. The Court emphasized that Texas courts “allow post-judgment intervention only upon careful consideration of any prejudice the intervenor might suffer if intervention is denied, any prejudice the existing parties will suffer as a consequence of untimely intervention, and any other circumstance that may militate either for or against the determination.” Therefore, even before the Court could have decided whether to grant the intervention or not, the state needed to have established standing to present its argument on appeal, which it failed to do.

The Supreme Court of Texas further stated that even if the state had standing to entertain its petition, it found no abuse of discretion in the trial court’s decision not to consider the untimely petition. The Court also found that the state had multiple opportunities to intervene which would have required little effort, but chose not to do so until after the judgment was rendered. The state could have asked the trial court to set the judgment aside, but it did not do so. The state’s only argument was that the trial court lacked jurisdiction over the petition.

The state also sought mandamus relief from the trial court’s adjudication of the divorce petition. In order for a non-party to raise a mandamus challenge it must have a “justiciable interest” in the judgment. The Court did not decide whether or not the state had a justiciable interest because it held that the state’s petition failed on the merits. The state filed the petition for a writ of mandamus directly with the Supreme Court of Texas without first presenting it to the court of appeals. While this is an option, the petition must include a compelling reason why the petition was not first presented to the court of appeals. The Court held that the state thinking it had standing and the fact that presenting the writ to the court of appeals would have been futile were not compelling reasons, and therefore, the petition failed.

The Court refused to decide the constitutional issues raised by the state because the state did not have standing and neither the trial court nor the court of appeals addressed the merits of the constitutional issues raised.

JUSTICE BOYD, concurring.

Justice Boyd’s concurrence emphasized the fact that the state of Texas is not bound by the divorce decree rendered by the trial court.

The State's arguments were simply not decided because it lacked standing in the case. If the State would have had standing, it is possible that Naylor and Daly are neither married nor divorced. The concurrence also talked about how courts cannot rely on equity to create standing for the state on appeal.

JUSTICE WILLETT, joined by JUSTICE GUZMAN and JUSTICE DEVINE, dissenting.

Justice Willett's dissent took a different approach to how equity can create standing for the state. In his view, equities should be balanced differently than the majority balanced them and he would "allow the [A]ttorney [G]eneral to make his argument that Texas law imposes an absolute jurisdictional constraint and constitutionally prohibits a judge not only from performing a same-sex marriage but also from dissolving one." The dissent also argued that the state of Texas has an inherently justiciable interest in defending the constitutionality of its laws and the Attorney General should have been allowed to intervene to defend Texas law against perceived constitutional attack.

JUSTICE DEVINE, dissenting.

In his dissent Justice Devine argued that the traditional concept of marriage, heterosexual marriages, does not violate the United States Constitution. The dissent also concluded that the trial court was prohibited by state law from granting a divorce decree and could have only declared the marriage void or dismissed the case. The dissent argued that there is no fundamental right to marriage and therefore rational basis review should be applied to Texas marriage laws.