

Supreme Court of Texas
June 26, 2015

Beeman v. Livingston

No. 13-0867

Case Summary written by Allison Grayson, Online Edition Editor.

JUSTICE JOHNSON delivered the opinion of the Court.

Laura Beeman sued the executive director of TDCJ, Brad Livingston, claiming that Livingston violated Chapter 121 of the Texas Human Resources Code by failing to provide Beeman and another deaf inmate with proper ways of participating in inmate activities and telephone calls. More specifically, Beeman argued “Livingston failed to provide her with reasonable access to the telephone system used by inmates to make telephone calls to family and friends, and failed to provide sign language interpreters to allow her to meaningfully participate in educational, religious, and other programs at the prison.”

In making this allegation, Beeman alleged Livingston acted ultra vires in his failure to provide accommodations, creating an exception to any sovereign immunity Livingston might have as the executive director of TDCJ. In response, Livingston entered a plea to the jurisdiction, “arguing the Code does not clearly and unambiguously waive immunity.”

The trial court denied Livingston’s plea and instead granted a temporary injunction forcing Livingston to provide certain services to Beeman. Thereafter, the court of appeals reversed the claims for want of subject matter jurisdiction.

Issue: Are TDCJ prisons included in the definition of public facilities under Chapter 121 of the Texas Human Resources Code?

In this instance, the Court affirmed the decision by the court of appeals, stating that “[w]hile Chapter 121 is not a model of clarity, [the Court ultimately agreed] with the court of appeals that construing the term ‘public facility’ to include prisons does not reflect legislative intent as expressed in the term’s definition and the statute as a whole.”

Although the statute gives descriptions of what might fall under the definition of a public facility, including college dormitories or other educational facilities, the Court explained that nothing in the statute indicates “that the Legislature also intended to include prisons in the

definition.” Further, if the Legislature intended to include prisons, it would have included prisons in the statute, and could easily do so in the future through an amendment to the Code.

Taking all of this information into consideration, the Court determined that Livingston was subject to sovereign immunity and did not act ultra vires in failing to provide special accommodations to deaf inmates. Therefore, the Court affirmed the decision by the court of appeals.

Royston, Rayzor, Vickery & Williams, LLP v. Lopez

No. 13-1026 & 14-0109

Case Summary written by Allison Grayson, Online Edition Editor.

JUSTICE JOHNSON delivered the opinion of the Court.

Francisco Lopez sought the representation of Royston, Rayzor, Vickery, & Williams, LLP (the firm) in his divorce. The contract between the two parties included an arbitration provision.

After the firm filed for divorce on Lopez’s behalf, the parties were ordered to attend mediation. The parties ultimately settled. Thereafter, Lopez sued the firm “claiming the firm induced him to accept an inadequate settlement.” In response, the firm moved to compel arbitration.

After the trial court denied the firm’s motion, the firm “filed both an interlocutory appeal challenging the denial under the Arbitration Act, and an original proceeding seeking mandamus relief under common law.” The court of appeals affirmed the trial court’s decision and denied mandamus relief.

In its analysis, the court of appeals determined that Lopez’s claims fell within the scope of the agreement. Then, the court examined Lopez’s affirmative defenses to arbitration. Looking at whether the arbitration provision was unconscionable, the court determined that Lopez need only prove the provision was procedurally unconscionable or substantively unconscionable, not both. The court of appeals concluded the provision was unenforceable based on its substantive unconscionability.

“In cause number 13-1026, [the firm sought] relief from the court of appeals’ judgment denying its interlocutory appeal, and in cause number 14-0109, it [sought] mandamus relief directing the trial court to

order arbitration.” In response, Lopez urged the Court to affirm the previous decisions because “(1) the court of appeals correctly determined that an arbitration provision need not be both procedurally and substantively unconscionable to be unenforceable, and this provision [was] substantively unconscionable because it [was] excessively one-sided; (2) the arbitration provision was entered into in the context of Lopez’s agreeing to become a client of the law firm, and given that context it violates public policy; (3) Lopez’s status as a prospective client shifted the burden of proof to [the firm] to establish it met its ethical obligation to explain the effects of the arbitration provision to him and [the firm] did not do so; and (4) the arbitration provision [was] illusory because it [allowed the firm] to avoid arbitration as to its fee disputes while requiring Lopez to arbitrate all his disputes.”

In explaining its reversal of the court of appeals’ decision, the Court stated that arbitration provisions in an attorney-client contract are not “presumptively unconscionable.” Further, the Court argued that parties asserting defenses to arbitration clauses have the burden of proving unconscionability.

Because the provisions in question related to the contract as a whole, the Court refrained from deciding whether the provisions were unconscionable. The Court explained that “challenges relating to an entire contract will not invalidate an arbitration provision in the contract; rather, challenges to an arbitration provision in a contract must be directed specifically to that provision.”

While Lopez argued that the arbitration provision was one-sided because it forced him to arbitrate, but allowed the firm to choose whether to arbitrate or litigate, the Court argued that this was not true. In fact, the Court determined that the “provision equally [bound] both parties to arbitrate claims within its scope and [ensured] that the same rules [applied] to both parties[.]” Therefore, Lopez failed to show the arbitration provision was substantively unconscionable.

Furthermore, in response to Lopez’s urging that the firm failed to fully explain the agreement, the Court declined to require that attorneys explain arbitration provisions in attorney-client employment contracts to prospective clients. The Court explained that prospective clients who sign contracts containing arbitration provisions “are deemed

to know and understand the contracts' content and are bound by their terms on the same basis as are other contracting parties.”

Discussing the idea of illusory promises, the Court stated that “the fact that the scope of an arbitration provision binds parties to arbitrate only certain disagreements does not make it illusory.” Moreover, an arbitration clause is not illusory just because it is one-sided.

Based on the above-mentioned considerations, the Court reversed the court of appeals' decision in cause number 13-1026 and remanded the cause to the trial court. The Court also denied the writ of mandamus in cause number 14-0109.

JUSTICE GUZMAN, joined by JUSTICE LEHRMANN and JUSTICE DEVINE, concurring.

Justice Guzman wrote to “emphasize the need for rules more specifically delineating the means and methods by which attorneys can discharge their ethical responsibilities in this context.” While the Disciplinary Rules do not specifically speak to arbitration agreements, attorneys must generally provide enough information to allow the client to make an informed decision. In her concurrence, Justice Guzman argued that the rulemaking process would be the best forum for achieving more clarity in how best to discharge such responsibilities.

Cantey Hanger, LLP v. Byrd

No. 13-0861

Case Summary written by Allison Grayson, Online Edition Editor.

JUSTICE LEHRMANN delivered the opinion of the Court, in which JUSTICE GUZMAN, JUSTICE BOYD, JUSTICE DEVINE, and JUSTICE BROWN joined.

In 2006, Philip Byrd and Nancy Simenstad filed for divorce. Simenstad was represented in the divorce proceedings by Cantey Hanger. The divorcing couple ultimately settled in 2008 and the trial court entered an agreed divorce decree. “The decree awarded Simenstad three aircraft as her separate property, including a Piper Seminole that had been owned by Lucy Leasing Co., LLC, a company the decree awarded to Byrd.” In addition, the decree “made Simenstad responsible for all ad valorem taxes, liens, and assessments on the aircraft.” The

decree also required the parties to execute any documents necessary for transfer of ownership within ten days.

Byrd, Lucy Leasing, and PGB Air, Inc. (the Respondents) sued Simenstad and Cantey Hanger, alleging that Simenstad and Hanger falsified a bill of sale, which transferred the Piper Seminole to a third party. The Respondents argued that Cantey Hanger “falsified the bill of sale in order to shift tax liability for the Piper Seminole from Simenstad to Byrd in contravention of the decree.”

In response, Cantey Hanger “moved for summary judgment on attorney-immunity grounds, arguing that it owed no duty to Byrd or the other plaintiffs and that as a matter of law it was not liable to the plaintiffs for actions taken in the course and scope of its representation of Simenstad in the divorce proceeding.” The Respondents argued that Cantey Hanger failed to discharge its duties, and therefore, was not protected on attorney-immunity grounds.

The trial court granted the motion for summary judgment and dismissed all claims against Cantey Hanger with prejudice. “The court of appeals reversed as to the fraud, aiding-and-abetting, and conspiracy claims relating to the sale of the plane.” The court of appeals explained its decision stating that the sale of the plane had nothing to do with the divorce decree, and therefore, was outside the scope of Cantey Hanger’s representation of its client.

Issue: Whether “Cantey Hanger [conclusively proved] that its alleged conduct with respect to the sale of the plane was part of the discharge of its duties in representing Simenstad in the divorce proceedings or, instead, was independent of the divorce and foreign to the duties of an attorney.”

In its explanation of the attorney-immunity defense, the Court argued that a general fraud exception to the defense would significantly undercut its purpose. Further it stated that “merely labeling an attorney’s conduct ‘fraudulent’ does not and should not remove it from the scope of client representation or render it ‘foreign to the duties of an attorney.’”

Additionally, the Court explained that an attorney pleading the attorney-immunity defense has the burden to prove the conduct in question fell under the scope of discharging its duties to its client. The defense does not depend on whether or not the wrongful conduct was fraudulent. Here, the Court determined that the alleged conduct fell

under the scope of Cantey Hanger's legal representation of Siminestad. Therefore, the Court reversed the portion of the court of appeals' judgment relating to the fraud claims and reinstated the trial court's judgment.

JUSTICE GREEN joined by CHIEF JUSTICE HECHT, JUSTICE JOHNSON, and JUSTICE WILLETT, dissenting.

Justice Green dissented to explain his position that the attorney-immunity defense must be used to except conduct occurring during litigation. Justice Green argued that the Court's interpretation of the doctrine resulted in "a much broader, more expansive liability protection." Justice Green therefore stated that he would affirm the court of appeals' judgment because Cantey Hanger failed to "establish that its alleged conduct occurred in litigation."

In re David Dow

No. 15-025

Case Summary written by Catharine Hansard, Lead Articles Editor.

PER CURIUM.

Miguel Paredes was convicted of capital murder in 2001 for killing three members of a rival gang. Paredes was sentenced to death, and after raising twenty-nine points of error, the Court of Criminal Appeals confirmed Paredes's conviction.

In 2003, Paredes sought habeas relief in state court, and beginning in 2006, Paredes sought habeas relief in federal court. At each hearing, Paredes instructed his lawyer at the time, Michael Gross, to waive claims for ineffective assistance of counsel and counsel's failure to present mitigating evidence at the punishment phase of his trial. The state court and federal district court in which Paredes applied denied habeas relief, as did the Court of Criminal Appeals and the Court of Appeals for the Fifth Circuit.

In May 2014, Gross notified Paredes that the state set his execution for October 28, 2014. Paredes acknowledged receipt of Gross's notification and informed Gross that, at the time he waived the ineffective counsel claims during his habeas hearings, Paredes had been suicidal and on medication. Around the same time, Paredes contacted David Dow, an experienced capital defense attorney, for last minute

help. Dow received Paredes's letter for help on June 9, and from September 12 to October 14, Dow investigated Paredes's case. On October 21, Dow filed a motion to reconsider denial of habeas relief, a new application for habeas relief, an application to stay Paredes's execution, and statements to explain the untimely filing pursuant to Court of Criminal Appeals Miscellaneous Rule 11-003, a rule that operates to ensure timely filings and deadlines in cases involving execution. The Court of Criminal Appeals denied Dow's motions on October 23, and the Fifth Circuit subsequently denied Dow's motions on October 25. After the United State Supreme Court denied a stay of Paredes's execution, he was executed on October 28.

After appearing before the Court of Criminal Appeals to show cause for why he should not be sanctioned for violating Court of Criminal Appeals Miscellaneous Rule 11-003, the Court of Criminal Appeals held Dow in contempt and, because of his prior violation to the predecessor to Miscellaneous Rule 11-003 in 2010, Dow was also suspended from practicing before the Court of Criminal Appeals for one year. Dow sought mandamus and declaratory relief in the Supreme Court of Texas, claiming that the Court of Criminal Appeals exceeded the scope of its authority. The issue before the Supreme Court of Texas was whether the Court had jurisdiction to grant Mr. Dow such mandamus and declaratory relief.

Dow argued that the Texas Supreme Court had exclusive authority to regulate the practice of law and thus, jurisdiction to grant him mandamus and declaratory relief. The Texas Supreme Court considered the specific situations, according to Article V, § 3(a) of the Texas Constitution, in which it may issue writs of mandamus: (1) when it is "necessary to enforce its jurisdiction" and (2) in cases that the Texas Legislature specifies. TEX. CONST. art. V, § 3(a). The Texas Supreme Court determined that it may only issue a writ of mandamus to a lower court to enforce the Texas Supreme Court's jurisdiction—and the Court of Criminal Appeals is not a lower court. Furthermore, the Texas Supreme Court determined that the Texas Legislature has authorized the Texas Supreme Court to issue writs of mandamus only in circumstances specified under § 22.002(a) of the Texas Government Code, and the statute expressly prohibits the Texas Supreme Court from issuing writs of mandamus to the Court of Criminal Appeals.

The Texas Supreme Court also considered its authority to regulate the practice of law. The Texas Supreme Court determined that its duty to regulate the practice of law is administrative in nature, and under § 22.002(a) of the Texas Government Code, the Texas Supreme Court has the ability to issue writs of mandamus to lower courts that interfere with the disciplinary process. This provision, however, also prevents the Texas Supreme Court from issuing writs of mandamus to the Court of Criminal Appeals. Furthermore, the Texas Supreme Court noted that the Court of Criminal Appeals issued a valid sanction against Dow for his failure to comply with Miscellaneous Rule 11-003, which exists to ensure that pleadings are filed timely in death penalty cases.

Finally, the Texas Supreme Court decided that because declaratory relief only operates to make mandamus relief effective and the Court did not have mandamus jurisdiction, the Texas Supreme Court did not have jurisdiction to grant Dow the declaratory relief he requested.

Greater Hous. P'ship v. Paxton

No. 13-0745

Case Summary written by Jenée Duran, Staff Member.

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

In May 2008, Houston-area resident Jim Jenkins submitted a request to Greater Houston Partnership (GHP) for “a copy of the check register for all checks issued for the year 2007,” basing his request on the Texas Public Information Act (TPIA). Jenkins claimed that GHP was “an organization that spen[t] or [was] supported in whole or in part by public funds,” and as such was “subject to the Public Information Act in the same manner as a governmental body.” GHP functioned much like a chamber of commerce, contracting to help promote the economy of the City of Houston by providing consulting, event planning, and marketing services in line with an “Agreement for Professional Services.”

GHP objected to the request from Jenkins and did not disclose the information he requested, acknowledging that it received public funds from the city, but did not agree that it qualified as a “governmental

body” under the TPIA because the funds were compensation for services provided through an arm’s-length contract with the city. GHP referred the matter to the Texas Attorney General as provided in the TPIA. The Attorney General’s Open Records Division concluded that the GHP was a “governmental body” subject to the TPIA’s disclosure requirements in an informal letter ruling. GHP filed a declaratory-judgment action against the Attorney General in response to its informal ruling, seeking a “declaration that: (1) the Attorney General lacked jurisdiction over the dispute and (2) even if jurisdiction was proper, GHP was not a ‘governmental body’ under the TPIA.” Jenkins also filed an additional request for a copy of GHP’s 2008 “disbursement registers and/or check registers.” The Attorney General closed this second request without a finding and directed a trial court to resolve the suit, in which Jenkins intervened a short time after.

The trial court found that “GHP was a ‘governmental body’ supported by public funds and ordered disclosure of the 2007 and 2008 check registers.” The court of appeals agreed with the trial court and affirmed its judgment, using the *Kneeland* test to conclude GHP qualified as a governmental body under the TPIA, finding that the phrase “supported in whole or in part by public funds” was ambiguous. GHP appealed, and the Supreme Court granted its petition for review to “determine the proper scope of the funding source element of the TPIA’s governmental body definition.”

Issue: Whether “a private entity operating like a chamber of commerce is a ‘governmental body’ subject to public disclosure of its private business affairs under the Texas Public Information Act.”

The Court held that the TPIA could not be interpreted to apply to privately controlled corporations performing services under quid pro quo government contracts, finding that the Act only applied to private entities acting as the functional equivalent of the government. The Court “define[d] ‘supported in whole or in part by public funds’ to include only those private entities or their sub-parts sustained, at least in part, by public funds, meaning they could not perform the same or similar services without public funds.” They reasoned that because GHP did not depend on a public revenue source to survive, it was not sustained even in part by government funds. They reinforced this reasoning by analyzing the construction of the term “supported,” finding that the term was “consistent with the scope and nature of the eleven

other types of entities more clearly described as a ‘governmental body’” in the same provision of the statute. Finally, they reasoned that their narrowly-constructed definition of “supported in whole or in part by public funds” was in-line with the federal act on which the TPIA was based—the Freedom of Information Act. The Court held that because they did not find the TPIA’s language ambiguous, the GHP was not a “governmental body” under the Act, and reversed the court of appeals’ judgment.

JUSTICE BOYD, joined by JUSTICE JOHNSON and JUSTICE WILLETT, dissenting.

Justice Boyd dissented to express his position that the Greater Houston Partnership was supported in whole or in party by public funds, thereby making it a governmental body required to disclose information requested by public information requests. He argued that the words “supported by” were ambiguous, and that he would consider the Attorney Generals constructions of the TPIA’s definition of “governmental body” to be persuasive. Finally, he also argued that he would clarify the *Kneeland* test, which the majority found did not apply to this case, to provide guidance when determining “whether a private entity that provides services to or for the government and is paid with public funds is ‘supported in whole or in part by public funds’” and therefore a governmental body under the Act.