

**Supreme Court of Texas**  
**April 1, 2016**

***Caffe Ribs, Inc. v. Texas***

No. 14-0193

Case summary written by Alicia McCullar, Staff Member.

JUSTICE DEVINE delivered the opinion of the Court.

In 1995, Caffe Ribs, Inc. (Caffe) purchased property from Paul Revere Variable Annuity Insurance Company (Revere). The purchased property's soil and groundwater, however, were contaminated. Caffe, Revere, and a previous owner of the property agreed that Revere would continue to remediate the contamination. During its efforts to clean the property, the State notified Caffe in 2003 of its intention to condemn the property as part of its I-10 expansion project. At first the notification did not affect cleanup of the property and efforts continued to delineate and remediate the contaminated areas. In 2004, the Texas Commission on Environmental Quality (TCEQ) required installation of at least four additional groundwater monitoring wells to more fully delineate the contamination. Revere and the previous owner could not comply with this requirement because, in part, the State's condemnation interfered with the current wells and prevented installation of new wells until after construction was complete. Without these additional wells, TCEQ refused to approve subsequent plans for remediation presented by Revere and the previous owner.

In 2005, the State initiated condemnation proceedings against Caffe. Neither party could agree to a valuation of the property, so they went to trial for the first time. This opinion, however, concerned the evidence excluded in the second trial. On remand—the second trial—the State's expert testified that it would take up to eight years to fully delineate the contamination, complete cleanup, and obtain regulatory approval or closure. The State's expert testimony further indicated that the value of the property should be discounted at an 18% rate over the eight-year holding period. Contrarily, Caffe's expert witness testified that, notwithstanding the State's announcement to use the property as a stormwater detention pond, the cleanup project could have received regulatory closure in as little as one year.

The State moved to exclude Caffè's expert testimony claiming that the testimony was both unreliable and amounted to a claim for "announcement damages." The trial court granted the State's motion holding that exclusion was required by the "project influence rule." Despite attempts to proffer testimony concerning the State's role in delaying the property's remediation, the trial court allowed mere brief summaries of the testimony and sustained the State's objections to oral testimony on the subject. The court of appeals affirmed the trial court's exclusionary holding stating, "even if the trial court abused its discretion in excluding [Caffè's experts'] proffered testimony, the exclusion was harmless."

ISSUE: Did the trial court abuse its discretion by excluding evidence concerning the government's role in delaying a condemned property's environmental cleanup prior to taking?

Because the trial court, under the project-influence rule, excluded the testimony, the Court began its analysis by defining the project-influence rule. Impending condemnation can impact the market value of property in one of two ways: an inflationary effect (project enhancement) or a deflationary effect (condemnation blight). The project-influence rule is intended to remove these components from the property's market-value determination. Thus, any change in value, following a government announcement intending to take the property, must be excluded from an adequate award of compensation. The Court ruled that the use of an evidentiary exclusion to prevent the distorting effect of the project on the market value of the property is not proper. A proper jury instruction allowing the jury to account for the result of the State's condemnation, instead, produces compensation that serves the purpose of the project-influence rule. Therefore, the Court held that the trial court abused its discretion when it excluded the expert testimony.

Additionally, the Court found that Caffè sought to recover the hypothetical price of the property on the date of the State's *de jure* taking and distinguished this case from its prior holding in *Westgate*. Without direct restriction on the use of property, targeting property for condemnation does not result in a *de facto* taking. Since Caffè did not assert that the condemnation announcement amounted to a *de facto* taking, the State's reliance on *Westgate* was misplaced. Also, the State contended that Caffè's expert testimony was unreliable because it contradicted proven facts. The Court stated that an expert's testimony

is unreliable only if it contradicts actual, undisputed facts. Caffè's expert testimony, at least, shows that the State bears some responsibility for the delay in cleanup, and the "proved facts" relied on by the State indicated that Revere and the previous owner were solely responsible for the delay. Therefore, the Court found that Caffè's expert testimony was not contrary to actual, undisputed facts.

Lastly, the Court held that the exclusion of evidence was harmful, reversible error. Evidence of the holding period was crucial to the one issue before the jury—the property's value. Exclusion of the evidence was exploited by the State and gave the jury a false impression that a potential buyer would be responsible for the property's cleanup. The exclusion was thus harmful. The Court reversed the decision of the court of appeals and remanded the case to the trial court for a new trial.

***Wasson Interests, Ltd. v. City of Jacksonville, Tex.***

No. 14-0645

Case Summary written by Adam J. Ondo, Staff Member.

JUSTICE BROWN delivered the opinion of the Court.

In 2009, Wasson Interests, Ltd. (WIL) became the lessee of a piece of property owned by the City of Jacksonville. WIL violated the terms of the lease, earning it an eviction notice from the city. WIL then signed a reinstatement agreement with the city. WIL reportedly adjusted its practices to be in compliance with the reinstatement agreement. The city, however, sent another eviction notice in 2011, alleging that the reinstatement agreement had been violated. WIL proceeded to sue for breach of contract.

The trial court granted summary judgment in favor of the city. It based its decision on the city's invocation of governmental immunity. The court of appeals then affirmed, explaining that WIL was incorrect in its belief that the proprietary–governmental dichotomy—the theory that a municipality's immunity only extends to actions taken in furtherance of the interests of the state, not just the municipality's own inhabitants—applied to contracts claims. The court of appeals concluded that immunity was the default rule in contracts claims, which means a waiver would be required; no such waiver existed in this case. WIL appealed to the Supreme Court of Texas.

The Court began by elucidating the theory of sovereign immunity as applied to municipalities. A municipality's immunity is derived from the state's sovereign immunity. Accordingly, a municipality's immunity only extends to actions that are done "as a branch of the state." These actions are called "governmental actions." If a municipality's actions are performed "primarily for the benefit of those within the corporate limits of the municipality," they are "proprietary actions" and are, therefore, not covered by the immunity the municipality derives from the state. *Gates v. City of Dallas*, 704 S.W.2d 737, 739 (Tex. 1986). This proprietary–governmental dichotomy is usually applied in tort actions. The Court noted that no breach of contract claim had ever been decided under the proprietary–governmental dichotomy. However, WIL argued that based on the theory behind the dichotomy, there is no reason to apply it to tort claims but not contract claims

The Court then articulated the role of the judiciary in cases involving immunity. Courts are to determine the applicability of immunity and delineate its boundaries. Only if immunity is applicable must courts defer to the legislature, relying on a waiver of immunity to hear the suit.

The Court proceeded to demarcate the boundaries of immunity in breach of contracts claims against municipalities, addressing each of the city's arguments in turn. First, the Court explained that applying the dichotomy to this situation does not run counter to the purposes of immunity. The Court went so far as to point out that it had previously recognized the dichotomy in the contract claims context before. *See Gates*, 704 S.W.2d at 739. Second, the Court analyzed the purpose of Chapter 271 of the Local Government Code, which provides a legislative waiver of immunity for municipalities in some specific contract claims scenarios. The city believed that this meant that immunity is the default for contract claims against municipalities. However, Chapter 271's waiver only applies in cases where there is immunity; the proprietary–governmental dichotomy determines if the city receives any immunity for its actions in the first place. The city's final argument, which was that the dichotomy was unmanageable in the contract claims context, was rebutted with the assertion that the legislature can define specific functions as proprietary or governmental, as it did in the Texas Tort Claims Act.

Because the trial court did not originally apply the dichotomy, the case was remanded so that the parties could present evidence as to whether the city's actions were proprietary or governmental. The trial court was instructed to then determine whether or not the city received immunity based on the proprietary–governmental dichotomy.

***In the Interest of J.R., a Child***

No. 15-0308

Case Summary written by Will Wassdorf, Staff Member.

PER CURIAM.

Petitioner's parental rights were terminated in a government-initiated parental rights termination suit. Petitioner, the child's father, was incarcerated at the time of trial and appealed from the termination of his parental rights. The father's appointed counsel subsequently filed a motion to withdraw and an *Anders* brief, having concluded that the appeal was frivolous. The appeals court dismissed the appeal and allowed the attorney to withdraw but instructed the attorney to inform the father of his right to file a pro se petition for review. Petitioner filed a handwritten petition for review arguing that he "basically never got" the requested court appointed attorney and raised issues of ineffectiveness of counsel. In response to the Texas Supreme Court's opinion in *In re P.M.*, \_\_\_ S.W.3d \_\_\_ (Tex. 2016), the Court remands to the trial court for appointment of counsel, instructing the trial court to report back on that appointment within thirty days.

***Janvey v. Golf Channel, Inc.***

No. 15–0489,

Case summary written by Justin Stevens, Staff Member.

JUSTICE GUZMAN delivered the opinion of the Court.

R. Allen Stanford perpetrated a multi-billion dollar Ponzi scheme by selling fraudulent high-yield certificates of deposit to investors, defrauding investors out of more than \$7 billion by the time the Securities and Exchange Commission discovered Stanford's actions in 2009. At issue in this case are the payments Stanford made to Golf Channel, Inc. before his assets were seized and placed into receivership. The court-appointed receiver sued Golf Channel, Inc. to recover the

funds Stanford paid under a media-advertising agreement the two parties entered into. In particular, the receiver alleged that the payments were made with intent to defraud Stanford's creditors.

The trial court granted Golf Channel, Inc.'s motion for summary judgment on the grounds that even though fraudulent intent was established because Stanford operated a Ponzi scheme, the exchange of value was reasonably equivalent because the transaction was at arm's length, in good faith, at fair market value, and in the ordinary course of business. On appeal, the Fifth Circuit certified the issue to the Supreme Court of Texas, asking "what showing of value under Texas Uniform Fraudulent Transfer Act (TUFTA) is sufficient for a transferee to prove the elements of the [good-faith] affirmative defense?"

For the Supreme Court of Texas the issue in this case, whether Stanford's payments to Golf Channel could have been rescinded and the funds returned to Stanford's estate, turned on the proper construction of the relevant provisions in TUFTA. Relying on the legislative intent supporting TUFTA, the Court concluded that the "reasonably equivalent value" element of the good-faith affirmative defense under TUFTA can be fulfilled by showing that the "transferee fully performed under a lawful, arm's-length contract for fair market value, provided consideration that had objective value at the time of the transaction, and made the exchange in the ordinary course of the transferee's business." Further, the Court held that when analyzing whether the good-faith affirmative defense under TUFTA is available, a deciding court should conduct the "same 'value' and 'reasonably equivalent value' analysis . . . regardless of whether the debtor was operating a Ponzi scheme or a legitimate enterprise."

### ***In the Interest of P.M., a Child***

No. 15-0171

Case Summary written by Frances Tubb, Staff Member.

#### **PER CURIAM.**

In 2011, the Department of Family and Protective Services sought to terminate a mother's parental rights with her five year-old-daughter because of alleged drug use and abuse at the hands of the child's father. The district court ordered termination of the relationship in a bench trial, finding it was required to serve the child's best interest. The

mother appealed, and the court of appeals ruled that the trial court incorrectly denied her a jury. At the new trial, a jury also determined termination of the parent-child relationship protected the best interests of the child. The court of appeals affirmed the decision.

The court appointed attorney sought to withdraw from the case. The court of appeals abated the case so that the district court could hold a hearing to determine if good cause existed to allow the attorney to withdraw from the case. Both parties, mother and attorney, indicated a desire for the relationship to end. The trial court recommended the withdrawal of the attorney. The court of appeals granted the motion. The mother then sought appointment of new counsel, and the court of appeals transferred the motion to this Court.

Issue:

(1) Does an indigent parent's right to an attorney ad litem, during the course of a case to terminate the parent-child relationship, extend to the Supreme Court?

Citing section 107.013 and .016 of the Texas Family Code, the Court concluded that the right to counsel extends to all proceedings in this Court. Section 107.013(a)(1) establishes the right of an indigent parent to receive court appointed counsel in a case to sever the parent-child relationship. The right is later expanded upon in section 107.016(2), which provides that the appointed counsel will continue to serve until one of several conditions is met. One of those conditions includes the date that all appeals concerning a final order terminating parental rights are exhausted. The court compares this situation to other instances where exhaustion of appeals was deemed to include the Supreme Court. Through this comparison, the court determined that the right to counsel in proceedings aimed at terminating a parent-child relationship includes all proceedings in this Court.

Although the right to counsel extends to proceedings in this Court, an attorney appointed by the court may only withdraw for good cause. Good cause does not equate to mere dissatisfaction or the belief that future appeals will not be successful. If withdrawal is granted, courts must ensure that the withdrawal of an attorney will not result in foreseeable prejudice. The court of appeals may rule on the motion to withdraw, or it may send the motion to the trial court. Here, the Court holds that the trial court's recommendation and the appellate court's

acceptance of that recommendation did not abuse their discretion. This Court grants both the attorney's motion and the mother's motion.

***In re Stacy Bent***

NO. 14-1006

Case summary written by Zirwa Baseer Sheikh, Staff Member.

JUSTICE BROWN delivered the opinion of the Court.

In order to protect the constitutional right to a trial by jury, trial courts are required to provide litigants with “an understandable, reasonably specific explanation” for ordering a new trial and setting aside a jury verdict. This threshold is met when the trial court's reason is legally appropriate and specific enough to indicate that the trial court came to a decision based on concrete articulated reasons from the circumstances and facts of the case at hand. After a new trial is ordered with these requirements, appellate courts are granted the power to review the merits of the new trial order and grant mandamus relief if the record does not support the trial court's decision and rationale for ordering a new trial.

Here, the court of appeals ruled that the trial court abused its discretion in ordering a new trial, and Stacy and Mark Bent appealed, requesting the Supreme Court to uphold the trial court's new-trial order. While the Court is asked to review the scope of the court of appeals' authority to review, and re-weigh evidence considered by the trial court, the Court refuses to address the issue, holding instead that it was unnecessary, and concluding that the bases for the trial court's order for a new trial did not meet the requirements.

This case involves a homeowner's policy for damages sustained as a result of Hurricane Ike in September 2008. After several claims, and a dispute on the policy payout, the Bents sued USAA for breach of their homeowners' policy and violations of the Texas Insurance Code. During this litigation, the Bents were also informed that pursuant to a city ordinance, they were now required to have a home rebuilt one foot above the floodplain on which it currently sat. The case between the Bents and USAA went to trial in which the jury concluded that USAA did not breach the homeowners' policy but did violate Chapter 541 of the Insurance Code. The jury awarded damages to the Bents. The trial court, however, granted the Bents' motion for a new trial based on five

findings: “(1) the jury’s finding that USAA did not breach the homeowners’ policy was contrary to the great weight and preponderance of the evidence; (2) USAA violated the trial court’s order in limine regarding the Bents’ failure to seek a variance from the relevant Piney Point Village city ordinance; (3) the evidence did not support the jury’s award for the diminished value of the Bents’ home; (4) the jury improperly failed to award appellate attorney’s fees; and (5) the jury’s finding as to mental-anguish damages was not supported by a finding that USAA ‘knowingly’ violated the Insurance Code, a predicate for which both sides failed to argue.”

Because the court of appeals granted a writ of a mandamus, the Bents sought relief from the Supreme Court, arguing in favor of the trial court’s decision for a new trial.

Justice Brown first explains that while trial courts might have the discretion to grant new trials, their discretion is not limitless. A trial judge’s decision to grant the motion for a new trial requires a specific explanation of why he is choosing to set aside a jury verdict and is having the case retried. Any vagueness in explaining why a motion for new trial is made goes against the transparency of the legal system and contradicts the principles of justice and fairness. Moreover, Justice Brown outlines the holding in *In re United Scaffolding* and explains the two requirements that a trial court must meet so as to refrain from abusing its discretion in ordering a new trial: (1) the stated reason granting a new trial must be legally appropriate; and (2) the stated reason must be specific and articulated from facts and circumstances of the case at hand. Essentially the trial court is to provide a “cogent and reasonably specific explanation” of its reasoning for granting a new trial. An order for a new trial based on factual sufficiency review must show that the trial judge reviewed the facts and circumstances at hand and was able to explain within reason how the evidence, or the lack thereof, undermined the jury’s findings. Justice Brown further goes on to explain that the court of appeals has the power to evaluate the merits of a new trial order via mandamus review to determine if the trial court’s reasons for granting the motion are supported by the record. The merits review of the trial order is limited to the abuse-of-discretion standard.

After a through review of the precedent, Justice Brown rejects the first four of the trial court’s findings, one-by-one, for granting a new trial, finding the reasoning to be insufficient:

(1) The Supreme Court held that the first basis for granting a new trial, where the trial judge held that the jury's finding that USAA did not breach the homeowners' policy was against the great weight and preponderance of the evidence, was an explanation insufficient on its face, holding that the "explanation suggests a muddled legal- and factual- sufficiency evaluation of the evidence."

(2) In rejecting the second basis for a new trial, the Court concluded that the evidence indicated that USAA did not violate the limine order and that much of the evidence directly contradicts the trial court's basis for ordering a new trial.

(3) The trial court based its third reason for ordering a new trial on evidence that that jury's \$150,000 award for the Bent home's diminished value was not supported by the evidence. In rejecting this contention Justice Brown discusses how the trial court's explanation does not make any reference to the evidence to support the conclusion, but claims merely that the jury's award "seem[ed] arbitrary." The Court concludes that "arbitrary" does not meet the standard for a reasonably specific explanation of the reasoning that led the court to grant a new trial.

(4) The trial court's final reason to order a new trial was due to the jury's failure to award the Bents appellate attorney's fees, finding this oversight to be erroneous and against the overwhelming weight of the evidence. The trial court based its judgment on statute 541 of the Insurance Code that mandates attorney's fees. The Court held that the failure to award attorney's fees under a mandatory fee statute cannot be in and of itself a reason for which a new trial is legally appropriate. While the trial court reasons that an award of attorney's fees is supported by "overwhelming" evidence, the Court holds this basis to be insufficient and holds that the trial judge failed to show how the evidence supported the finding for attorney's fees.

Justice Brown concluded that the trial court failed to render any basis for why a new trial was necessary and the reasons stipulated for a new trial were facially insufficient. The Supreme Court of Texas concluded that the trial court abused its discretion and the court of appeals acted appropriately in granting mandamus relief directing the trial court to enter judgment on the jury's verdict.

***Hous. Belt & Terminal Ry. Co. v. City of Hous.***

No. 14-0459

Case Summary written by Molly Neace, Staff Member.

JUSTICE BROWN delivered the opinion of the Court.

In 2011, the City of Houston enacted an ordinance, which would help to improve the city's drainage. Under the ordinance, charges would be imposed on benefitted properties within the city to recover costs from the initial drainage system and fund future system improvements. Benefitted property consisted of property on which the drainage service was made available. Calculations of the charges were based on a specified rate per square footage of impervious surface on each benefitted property. Impervious surface contained the areas of property that did not readily absorb water. These areas were to be determined using digital map data or similar reliable data. The ordinance also gave the city's Director of Public Works and Engineering, Daniel Krueger, authority to administer the ordinance provisions but limited to the ordinance's terms.

Shortly after the ordinance's enactment, the railroad petitioners received notices from Krueger for charges to their properties, which amounted to approximately \$3 million annually. Based on Krueger's determination, all the railroad properties were benefitted, and nearly the entire surface was impervious. He made his determination using aerial images, looking to see if areas of the properties appeared green or brown, rather than digital map data. Using this approach, Krueger determined that roughly 93 million square feet of the properties were impervious. However, the railways pointed out that when using digital map data only 72,364 square feet of the properties were impervious. The railways filed requests for verification and correction. Once denied, they filed suit against Krueger alleging that he acted ultra vires, or without legal authority.

The City of Houston responded filing a plea to the jurisdictions based on governmental immunity. With this, it hoped to protect Krueger from liability based on his status as a government employee. The trial court sustained the plea. However, governmental immunity does not bar ultra vires claims. A government officer may act outside their legal authority by exceeding the limits of their granted authority and thereby assuming liability. Thus, the railroads filed an

interlocutory appeal. Ultimately, the court of appeals concluded that the railroads pleaded a viable ultra vires claim for Krueger's determination of the benefitted properties but not for the determination of the impervious surface. Both parties cross-appealed, and the Texas Supreme Court granted review.

ISSUE: Whether a lawsuit complaining of a government officer's exercise of limited discretion by alleging that the officer acted without legal authority is a viable ultra vires claim.

The city argued that because Krueger had some discretion under the ordinance, his governmental immunity barred any ultra vires claims. The Court, however, held that governmental immunity only protects absolute discretion, which has no constraints on the exercise of judgment. Therefore, the railroads needed to provide proof that Krueger acted without legal authority or beyond his discretion.

First, the railroads pleaded that several of their properties were not benefitted because they did not use the city's drainage system and, instead, flowed into natural bayous not owned by the city. To qualify as benefitted property, the drainage service must be available, and the drainage must flow into the city utility system. The Court found that just because Krueger had some discretion to determine what constituted benefitted property, it did not mean he was able to make determinations that conflicted with provisions of the ordinance. Therefore, the ultra vires claims for the benefitted property determination were viable because Krueger acted ultra vires in classifying several of the railroads' properties as benefitted without consulting the ordinance's definition.

Second, the railroads pleaded that Krueger improperly determined the impervious surface on the properties by using aerial images. The railroads only needed to allege Krueger acted outside his discretion by using an unreliable or dissimilar method than digital map data. Ultimately, the Court concluded that the ultra vires claims for the impervious surface determination were viable because the railroads evidenced inconsistencies in the square footage outcomes making it possible that Krueger's approach was unreliable.

Both the railroads' pleadings affirmatively alleged that Krueger acted without legal authority in determining the benefitted property and impervious surface. Therefore, the ultra vires claims were both viable. The Court reversed the court of appeal's decision in part and

remanded the case back to the trial court to consistently proceed with its opinion.

JUSTICE LEHRMANN filed a concurring opinion.

Justice Lehrmann agreed with the majority that the railroads alleged viable ultra vires claims. She wrote separately to elaborate on the Court's characterization of governmental immunity. The Texas Supreme Court has addressed how some aspects of subject-matter jurisdiction apply to governmental immunity, like when the defense can be raised. However, the Court has yet to examine other aspects, like whether governmental immunity renders a final judgment against the entity void and open to reconsideration. Many issues about the nature of governmental immunity remain unresolved.

***Hegar v. Texas Small Tobacco Coalition***

No. 14-0747

Case summary written by Laura Parton, Articles Editor.

JUSTICE WILLETT delivered the opinion of the Court.

During the 1990s, several tobacco companies settled their lawsuits with the State of Texas and agreed to pay approximately \$500 million annually for smoking-related Medicaid costs. HB 3536 imposed a tax to recover these Medicaid costs from non-settling manufacturers. In reversing the court of appeals' decision, the Court held that House Bill 3536 (HB 3536), passed by the Texas Legislature in 2013, did not violate the Equal and Uniform Clause of the Texas Constitution.

The original settlement ended extensive litigation in which Texas sued several of the largest tobacco companies claiming, "that these companies knowingly misrepresented their products as safe and targeted minors in their advertisements." Defendants settled these claims nation-wide, agreeing to make annual payments and limit the marketing of their tobacco products in exchange for states waiving "their claims against the defendants as well as future claims arising from the sale or use of tobacco products." Many states joined a Master Settlement Agreement, but Texas did not. Instead, Texas settled its claim individually in the Texas Comprehensive Settlement Agreement and Release.

In Texas's settlement agreement, the settling manufacturers promised to reimburse public health expenditures by paying an initial payment of \$725 million to Texas, making payments in perpetuity, and to not oppose any state initiatives to impose higher penalties for tobacco sales to minors or minors in possession of tobacco products. Texas waived all past claims as well as any future claims based, directly or indirectly, on "the use of or exposure to Tobacco Products manufactured in the ordinary course of business."

As for the non-settling manufactures and subsequent participating manufacturers, Texas passed HB 3536, imposing a tax of approximately \$0.55 and \$0.15 per cigarette pack respectively. Manufacturers, retailers, and distributors (the Coalition) who fall under the tax classifications in HB 3536 brought suit, claiming that it unconstitutionally discriminated against non-settling manufacturers. The trial court granted summary judgment for the Coalition, "declaring the tax unconstitutional under both the Texas Constitution and the United States Constitution." The court of appeals affirmed, but only addressed the Equal and Uniform Clause claim under the Texas Constitution.

The Equal and Uniform Clause reads: "Taxation shall be equal and uniform." Since that requirement pertains to taxation "*within*" classes, and not "*between*" classes, the Court has recognized a two-pronged test for the constitutionality of statutory tax classifications. First, there exists a "strong presumption" of validity. Second, the tax classifications are subject merely to rational basis review, thus the Legislature need only "show that the classifications reasonably relate to the purpose of the tax."

The court of appeals, in looking for differences between the settling and non-settling manufacturers, focused on the subject matter of the tax and not the entity being taxed. Since both groups of manufacturers make identical tobacco products, the court held that imposing a tax on one identical class would be unconstitutional. This departed from the Court's precedent, which clearly stated: "the Equal and Uniform Clause generally only prohibits unequal or multiform taxes that are imposed on members of the same class *of taxpayers*." The Equal and Uniform Clause is concerned with taxpayers, and though the analysis of the subject matter may be helpful in discerning one taxpayer from another, it is the entity, not the products, that pay taxes. The

Legislature may rely on differences in products for classifications, but they may also rely on differences in profits or methods of conducting business. This list of permissible differences is not exhaustive, indeed the Legislature is granted discretion as long as the differences are “real, not fanciful.”

The Court held that the tax classification set forth in HB 3536 was rationally and reasonably related to the Legislature’s purpose for enacting the tax for two reasons. First, the settling manufacturers have been bearing a \$500-million-per-year burden that their non-settling counterparts have not. Second, the settling manufactures have been encumbered by restrictions on their marketing strategy that the non-settling manufacturers have not been subjected to. These differences warrant the tax classifications of HB 3536, and the Court did not find persuasive the Coalition’s argument that the settlement should not be considered.

Finally, the Legislature articulated several legitimate state interests being served by the tax. The tax allows the state to recover tobacco-related health costs from those manufactures that are not paying in yearly by the terms of the settlement agreement. Further the tax prevents “non-settling manufacturers from undermining this state’s policy of reducing underage smoking by offering cigarettes and cigarette tobacco products at prices that are substantially below the prices of cigarettes and cigarette tobacco products of other manufacturers.”

***Ex Parte N.C.***

No. 15-0184

Case summary written by Jordan Stevens, Staff Member.

**PER CURIAM**

N.C, the petitioner, was an inmate in a state prison who filed a petition to expunge criminal records. The trial court denied N.C’s petition, N.C. then appealed the court’s decision. However, N.C failed to include two filings that are required by Chapter 14 of the Texas Civil Practice and Remedies Code §§ 14.002(a), 14.004. The appellate court, therefore, dismissed N.C.’s action without notice or an opportunity for N.C. to cure the Chapter 14 filing defects in his petition, stating in a footnote that N.C. could file a motion for rehearing within fifteen days.

N.C. then timely filed a motion for rehearing, asserting that his filing indeed satisfied the Chapter 14 requirements. The court of appeals then issued a letter stating, “Unless [N.C.] files an affidavit or declaration ‘relating to previous’ filings within 30 days from the date of this letter, [N.C.’s] motion for rehearing will be denied.” The court of appeals, again by letter, confirmed receipt of N.C.’s declaration. However, the court of appeals stated that the declaration must be accompanied by a certified copy of N.C.’s inmate trust account statement, and that N.C. must file the copy within 21 days of the letter or his motion would be denied.

Issue: Was N.C. entitled to a motion for rehearing after having complied with the court’s instructions?

The Texas Supreme Court held that he was, stating that courts of appeal must give an inmate an opportunity to cure a Chapter 14 filing defect in an appellate proceeding, through an amended filing, before the court can dismiss the appeal. Therefore, the Court reversed the court of appeals’ judgment and remanded the case to the court of appeals.

### ***Campbell v. Wilder***

No. 14-0379

Case summary written by David Miles, Staff Member.

CHIEF JUSTICE HECHT delivered the opinion of the Court.

The petitioners in this case were all parties to divorce proceedings who filed uncontested affidavits of indigency in lieu of paying court costs as permitted by Rule 145 of the Texas Rules of Civil Procedure. Uncontested affidavits of indigency are conclusive as a matter of law, and a person who has filed such an affidavit may not be charged court costs unless the party’s suit results in a monetary judgment that is sufficient to cover the costs.

The respondent in this case is the Tarrant County District Clerk. Despite the fact that the petitioners filed uncontested affidavits of indigency, and the judgments from their respective divorce proceedings did not account for court costs, the Clerk sent notices to each of them informing them that if they did not pay their court costs, the sheriff would seize property to enforce the judgments.

The trial court granted the petitioners a temporary injunction preventing the District Clerk from billing any court costs to parties who had filed an affidavit of indigency. A divided court of appeals reversed

the trial court’s judgment on the grounds that the trial court did not have jurisdiction. The Supreme Court of Texas took the case to resolve the issue of jurisdiction and whether the injunction was overly broad.

“Section 65.023(b) [of the Texas Civil Practice and Remedies Code] provides that ‘[a] writ of injunction granted to stay proceedings in a suit or execution on a judgment must be tried in the court in which the suit is pending or the judgment was rendered.’” The District Clerk, relying on *Evans v. Pringle*, 643 S.W.2d 116 (Tex. 1982), argued that the trial court did not have jurisdiction “[b]ecause a bill of costs is a process issued under a judgment, and each of the Petitioners was a party to his or her own divorce decree . . . .”

The Court stated that the test to determine whether a court has jurisdiction under Section 65.023(b) can be found in *Carey v. Looney*, 251 S.W. 1040 (Tex. 1923). The test is whether relief can be granted independent of the judgment.

After expressly overruling *Evans* and upholding *Carey*, the Court held that Section 65.023(b) does not apply and the trial court had proper jurisdiction. The Court came to this conclusion because the “[p]etitioners complain[ed] that they were billed costs they did not incur. They challenge[d] the District Clerk’s actions and his policy; they [did] not challenge a word of the judgments in their cases.”

Additionally, the Court held that the injunction was a proper remedy because any remedy at law would require successive suits by individual plaintiffs, and the single injunction can prevent a “systematic policy that contravenes the law.”

Finally, the Court held that the injunction was not overbroad because the order “tracks the language of Rule 145,” and “[i]t does not restrain the District Clerk from any lawful activity . . . .”

***Lira v. Greater Houston German Shepherd Dog Rescue, Inc.***

No. 14-0964

Case summary written by Kylie Rahl, Staff Member.

**PER CURIAM.**

Alfonso Lira and his sister, Lydia Lira, owned a German shepherd named Monte Carlo, whom they raised as a family pet for seven years. While Monte was living at Lydia’s home, he escaped through an open garage door. Lydia made many attempts at searching for Monte and

learned he was in the possession of the Greater Houston German Shepherd Dog Rescue (GHGSDR). The City of Houston's animal control department first picked up Monte the day after he escaped from Lydia's house. Three days later, the animal control department reached out to local dog rescue organizations to see if anyone would accept Monte. GHGSDR responded and a volunteer agreed to foster Monte. Upon learning GHGSDR was in possession of Monte, Lydia immediately contacted the volunteer to ask for Monte's return, but the volunteer refused. After additional requests for Monte's return with no success, the Liras sued GHGSDR, asserting a claim for conversion. They also sought a declaratory judgment that they were the owners, and an injunction ordering his return.

Issue: Did the city's ordinances divest the Liras of their ownership rights in Monte after the city's animal control department held him for three days and then transferred him to a rescue organization?

Pet dogs are recognized as property in the eyes of the law. Under common law, one who finds lost property cannot retain it against a claim by the property's true owner. In addition, there is no common-law authority holding that dog owners' property rights are lost because their dogs escape and cannot be located for a few days. Because common law does not extinguish ownership rights, the Court turned to whether the city's ordinances divested the Liras of their right to recover possession of Monte.

The Court construed the city ordinances with the goal of discerning the intent of the city council. The city ordinance provided that a stray shall be impounded for three days at the animal control center upon arrival. The Court discussed multiple definitions of the word "impound" and concluded that the term does not suggest a transfer of ownership or the loss of the owner's rights to the return of his property. Furthermore, the ordinance provided that if a dog was not redeemed or sold by the city, the dog may be placed for adoption through a private nonprofit humane shelter. Nothing in the ordinance states or implies that a dog awaiting adoption in a private shelter has been divested of the ownership rights of the original owner. As a result, when construing the ordinances either individually or as a whole, the Court concluded the Liras were not expressly or impliedly divested of their ownership rights to Monte. Thus, the Court held Monte belonged to the Liras and enjoined GHGSDR to return him to his owner.

***C.S.F. v. Texas Department of Family and Protective Services***

No. 15-0546

Case summary written by Morgan Shell, Staff Member.

PER CURIAM.

This Court considers whether the petitioner C.S.F., a pro se indigent parent, has a statutory right to appointed counsel for a petition for review from a government-initiated parental rights termination suit. The proceedings were initiated when the Department of Family and Protective Services issued a report after the child was hospitalized for mental health issues. The Department subsequently placed the child into a treatment facility and initiated proceedings to terminate C.S.F.'s parental rights. The Court of Appeals affirmed the trial court's termination of both parents' rights, which prompted C.S.F., past the time for filing, to file a petition for review, a motion for extension of time, and an indigency affidavit.

The Court held that in government-initiated parental rights termination proceedings, the indigent parent's right to counsel extends until all appeals are exhausted and that C.S.F. should be allowed counsel to pursue any proceeding available in this Court. Due process requires the right to effective counsel in parental rights termination suits, which extends to parent's pursuit of an appeal. Concluding that C.S.F. may pursue any argument with assistance of counsel, the Court referred the case to the trial court for the appointment of counsel for C.S.F., requiring the trial court to report such appointment to the Court within thirty days.

***In re M.N, V. W., and Z.W.***

No. 15-0531

Case summary written by Petrus Wassdorf, Staff Member.

PER CURIAM.

This case was brought to determine whether the petitioner, a pro se indigent parent, has a right to appointed counsel to pursue discretionary review of a government initiated termination of parental rights. After abatement, the Supreme Court of Texas decided *In re P.M.*,

\_\_\_ S.W.3d \_\_\_ (Tex. 2016). In light of that decision this case is referred to the trial court for appointment of counsel, which is to be reported to the Supreme Court of Texas within thirty days. This case is abated until further notice.

***McLean v. Livingston***

No. 15-0100

Case summary written by Jana L. Simons, Staff Member.

PER CURIAM.

The present case is before the Supreme Court of Texas on Petition for Review from the Court of Appeals for the Tenth District of Texas.

The plaintiff, a state-prison inmate, sought declaratory judgment regarding his claim of mandatory release. Authorities representing the Texas Department of Criminal Justice (TDCJ) did not release him, although he claimed, “he was eligible for mandatory release under Texas Code of Criminal Procedure § 42.18.” Consequently, the inmate sought declaratory judgment in favor of his release. The district court dismissed the case on a jurisdictional matter asserted by the TDCJ. On appeal from the district court’s dismissal regarding his claims under the Uniform Declaratory Judgments Act, McLean also filed an affidavit regarding his inability to pay court costs.

Chapter 14 of the Texas Civil Practice and Remedies Code requires that “if an inmate files an action in an appellate court and declares an inability to pay costs, the inmate must make two required Chapter 14 filings: (1) a separate affidavit or declaration identifying prior actions filed pro se, and (2) a certified copy of the inmate’s trust account statement showing any account activity in at least the prior six months.” The inmate in this case failed to sufficiently comply with these requirements by not filing the prerequisite trust documents. Therefore, the court of appeals dismissed his case as frivolous because the plaintiff did not comply with the requirement of § 14.004. McLean, however, amended his filing to comply with the requirements, but the court of appeals denied a motion for rehearing, and the plaintiff subsequently petitioned the Supreme Court of Texas for review.

Issue: The question for the Court is whether or not the appellate court must allow the inmate, under Chapter 14, the ability to remedy

deficient filings prior to dismissal. The Court noted that Texas courts of appeals currently stand divided on this issue.

The Court cited its own authority on a similar matter as well as Texas Rule of Appellate Procedure 44.3 which states “[a] court of appeals must not . . . dismiss an appeal for formal defects or irregularities in appellate procedure without allowing a reasonable time to correct or amend the defects or irregularities.” The Court emphasized its policy favoring allowing cases to be decided on the merits and allowing and permitting an inmate an opportunity to cure defective filings in order to “safeguard[] inmates’ ‘access to the courts given their unique circumstances,’ and ensuring that courts of appeals dismiss claims only after reviewing the required Chapter 14 filings or after the inmate fails to cure.”

The Court therefore held that the appellate court must permit the inmate to remedy the deficiency in the Chapter 14 filings—which he did—prior to dismissal. As a result, the case was remanded for consideration on the merits.

### ***Clint Indep. Sch. Dist. v. Marquez***

No. 14-0903

Case summary written by Aaron Powell, Staff Member.

JUSTICE BOYD delivered the opinion of the Court.

A group of parents sued the Clint Independent School District (the district), alleging that the district’s funding scheme had unconstitutionally neglected certain economically disadvantaged schools in the district. The parents cited two provisions in the Texas Constitution as the basis for their petition.<sup>1</sup> The trial court dismissed the parent’s claims concluding that the Education Code required the parents to exhaust their administrative remedies by appealing to the Commissioner of Education before seeking relief in the courts. The trial court cited a key provision in the Education Code providing that “a person may appeal in writing to the commissioner if the person is aggrieved by . . . actions or decisions of any school district board of trustees that violate . . . the school laws of this state . . . .”<sup>2</sup> The court of appeals reversed, reasoning that constitutional provisions are separate

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<sup>1</sup> Tex. Const. art. VII § 1 (requiring an “adequate,” “suitable” system for the “general

<sup>2</sup> TEX. EDUC. CODE § 7.057(a).

from the Education Code—and are therefore not “school laws of this state”—so § 7.057(a) did not give the Commissioner jurisdiction over the parent’s claims. The exhaustion requirement did not apply.

The Court reversed. While the parent’s petition technically alleged only two causes of action, both arising from the Texas constitution, the Court explained that “[t]he nature of the claims, rather than the nomenclature, controls, and artful pleadings cannot circumvent statutory jurisdictional prerequisites.” The real basis of the petition, the Court concluded, was defiance of “the Constitution’s mandates *by violating the requirements of the Education Code* [emphasis in original].” The Court noted that the alleged constitutional violations necessarily entailed alleged violations of several provisions in the Education Code.<sup>3</sup> The Court noted precedent to the effect that “persons complaining about the ‘management of the school system’ or the ‘administration of school laws’ must exhaust their administrative remedies before courts can exercise jurisdiction.” As such, in the absence of an exception to this general rule, dismissal was appropriate.

The Court turned to four exceptions that the parents argued all applied to exempt their petition from the exhaustion requirement. The Court rejected each. The parents first urged that the Commissioner did not possess exclusive jurisdiction over claims for constitutional violations. They cited a footnote in a prior Texas Supreme Court case, which explained that “[b]ecause of the nature of” the employees’ federal constitutional claims, “prior resort to the administrative process is not usually required.”<sup>4</sup> The Court delineated various splits in the courts of appeals over this footnote, eventually concluding that when a petition alleges *solely* violations of federal or state constitutional rights, the Commissioner is not authorized to hear the appeal. But where—as here—the constitutional claim is “ancillary to and supportive of” a claim resulting from violations of school laws, § 7.057(a) “requires the Commissioner to hear the appeal first, unless another exception to the exhaustion requirement applies.”

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<sup>3</sup> See, e.g., TEX. EDUC. CODE § 39.102 (requiring each district to satisfy financial accountability standards and other criteria); *id.* at § 44.010 (requiring the Texas Education Administration to analyze each district’s budget “to determine whether all legal requirements have been met”).

<sup>4</sup> *Tex. Educ Agency v. Cypress–Fairbanks Indep. Sch. Dist.*, 830 S.W.2d 88, 91 n.3 (Tex. 1992).

The parents further argued that § 7.057(a–1) applied to exempt their petition from the exhaustion requirement. The provision reads: “A person is not required to appeal to the commissioner before pursuing a remedy under a law outside of Title 1 or [Title 2] or to which Title 1 or [Title 2] makes reference or with which Title 1 or [Title 2] requires compliance.”<sup>5</sup> However, the Court explained that the argument failed for the same reason as the first: the alleged constitutional violations necessarily entailed alleged violations of Title 2 of the Education Code. Thus, the parents were not pursuing claims that exist “outside” Title 2. The constitution imposes a duty on the legislature, which in turn enacted Title 2 of the Education Code to meet its mandate. Title 2, not the constitution, is the basis of the school district’s obligation. Because the parents’ basic claims were for violations of Title 2, § 7.057(a–1) did not apply to exempt the claims from the exhaustion requirement.<sup>6</sup>

The Court next rejected the parents’ argument that the exhaustion requirement did not apply because they were seeking injunctive relief. The parents cited a case where the Court upheld a temporary injunction issued by a trial court prior to the plaintiff seeking relief from the Commissioner.<sup>7</sup> The Court upheld the injunction, rather than permit the plaintiff to suffer “irreparable harm” in its absence.<sup>8</sup> That case, however, only passed on the trial court’s jurisdiction to issue temporary—rather than permanent—injunctive orders. Because the parents in this case sought permanent injunctive relief, however, the case was inapposite.

Finally, the Court rejected the parents’ argument that, because they brought only pure questions of law before the Court, the exhaustion requirement did not apply. Affirming the rule, but disagreeing with the parents’ premise, the Court concluded that a host of factual issues bore directly on the resolution of the case: this was not a pure question of law. The parents’ claims implicated “a wide array of complicated financial matters including teacher and staff salaries, maintenance costs, utility costs,” and other factual issues.

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<sup>5</sup> TEX. EDUC. CODE § 7.057(a–1).

<sup>6</sup> *See id.* § 7.057(a)(2).

<sup>7</sup> *Houston Fed’n of Teachers, Local 2415 v. Houston Indep. Sch. Dist.*, 730 S.W.2d 644 (Tex. 1987).

<sup>8</sup> *Id.* at 646.

The general rule is that parties must seek relief from the Commissioner before filing a petition in court when the basis of the claim arises from the “school laws of this state.”<sup>9</sup> Unless an exception applies, a district court lacks jurisdiction to adjudicate in advance of a claim to the Commissioner. No exception existed in this case, so the Court affirmed dismissal of the petition.

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<sup>9</sup> TEX. EDUC. CODE § 7.057(a)(2)(A).