

**Supreme Court of Texas**  
**February 26, 2016**

***TV Azteca, et al. v. Ruiz***

No. 14-0186

Case summary written by Ben Agee, Staff Member.

JUSTICE BOYD delivered the opinion of the Court.

Facts: Gloria Trevino Ruiz (Trevino) is a Texas resident who was once a well-known recording artist in Mexico. During the late 1990s, Trevino was accused of subduing underage girls and convincing them to engage in sexual relations with her manager. After some time in jail, Trevino was eventually acquitted of all charges, and moved to Texas with her family.

In the later 2000s, TV Azteca and other media in Mexico (the broadcasters) began running stories reliving the scandal that had once surrounded Trevino. The broadcasters are all residents or corporations in Mexico. The broadcasters aired their programming in Mexico, but because of the nature of broadcast waves, over one million Texas residents were able to receive their programming. The broadcasters took advantage of this “spill over” broadcasting by producing some of their programming in Texas, selling airtime to Texas advertisers, and proactively distributing their programs in Texas.

Trevino claimed that the broadcasters defamed her with their stories recanting the scandal, and filed a suit in Texas. The broadcasters filed a special appearance that challenged the trial court’s personal jurisdiction over them. After the appellate court held that Texas did have personal jurisdiction over the broadcasters, the Supreme Court of Texas decided to hear the case as one of first impression.

Issue: Whether a broadcast originating outside of Texas but seen by Texans can create personal jurisdiction over a nonresident.

Analysis: The Court began by noting that a case is heard in a Texas court if that court has both subject-matter and personal jurisdiction. The broadcasters did not challenge subject-matter jurisdiction in their appearance, so the Court only analyzed the challenge to personal jurisdiction.

In order for Texas’s long-arm statute to allow Texas to have jurisdiction over a nonresident tortfeasor, the tortfeasor must be shown

to have had minimum contacts with Texas, and the jurisdiction must not violate any traditional notions of fair play or substantial justice. In regard to minimum contacts with the state, the Court held that because the broadcasters made intentional efforts to serve Texas, they effectively subjected themselves to the laws of Texas. The Court noted that the broadcasters regularly conducted business in Texas by selling airtime to Texas companies, producing shows in Texas, and distributing programs both foreign and domestic in Texas. Because the broadcasters deliberately made efforts to serve Texas, they met the requirements for minimum contacts. Additionally, the Court held that the defamation claim arose directly from the broadcasters' minimum contacts with Texas.

With respect to maintaining fair play and substantial justice, the Court found that the broadcasters voluntarily did business in Texas. That finding led to a holding that it was reasonable to expect an entity, which voluntarily does business in Texas, to adhere to the laws of Texas.

Holding: The Court held that because the broadcasters made minimum contacts with Texas, and because trying them in Texas would not violate any notions of fair play or substantial justice, the trial court had personal jurisdiction over the broadcasters. Accordingly, the Court affirmed the ruling of the appellate court and remanded the case to the trial court to commence the action.

***Apache Deepwater, LLC v. McDaniel Partners, Ltd.***

No. 14-0546

Case summary written by Kathryn Almond, Staff Member

JUSTICE DEVINE delivered the opinion of the Court.

In 1953, Hugh W. Ferguson, Jr., assigned four oil and gas leases to L.H. Tyson in a single instrument. The leases included represented 35/64 mineral interest in the two surveys covered by the leases. Twenty years later, two of the leases expired for lack of production. Apache acquired the remaining two leases in 2009 as Tyson's successor-in-interest. Because the production in the other two leases ceased long before, Apache only acquired the 3/64 mineral interest acquired from the remaining leases. Apache sent a division order to Ferguson's successor-in-interest, McDaniel Partners, Ltd., stating the production payment should now be 1/16 of 3/64 of 7/8, which would reflect the

expiration of the expired leases. McDaniel responded with a request for a division order calculating the production payment under the assignment's original equation. McDaniel sued when Apache only paid for the  $\frac{3}{64}$  interest rather than the original  $\frac{35}{64}$  interest.

The trial court rendered a take-nothing judgment against McDaniel. The court held the production payment was reserved from each lease separately and extinguished upon the expiration of each lease to the extent it was a burden on production to that lease. Thus, the court concluded Apache's division order was correct. McDaniel appealed, and the appellate court reversed the trial court's decision. The appellate court reasoned that the assignment did not contemplate the adjustment, and McDaniel was entitled to  $\frac{1}{16}$  of  $\frac{35}{64}$  of  $\frac{7}{8}$  production payment. Apache appealed.

Issue: How to calculate a production payment reserved in the assignment of four oil and gas leaseholds.

The Texas Supreme Court reversed the decision of the appellate court and rendered judgment that McDaniel take nothing. The Court reasoned that the dispute hinged on interpretation of the assignment. McDaniel argued that the assignment reserved a fixed production payment of 3% production without regard to termination of any of the leases. Apache argued that the assignment instead tied the working interest in the leases; thus, when any lease terminates, only the respective burden of the production payment from the remaining lease can be paid—0.26% in this case.

The Court began by agreeing with the courts below that nothing in the assignment was ambiguous. The Court also agreed with the appellate court that analysis of the production payment, as though it was an overriding-royalty interest, was correct as there was no meaningful difference between the two in this case. Thus, where there is a single lease, a production will not survive termination of the leasehold unless there is an express agreement otherwise. Apache analogized the situation to the partial-lease failure where a portion of the leased acreage is released back to the lessor, and thus the interests terminate as to the released portion.

In reviewing the appellate court's decision, the Court only agreed that the assignment fixed the amount of the production payment and the volume of oil to the assignor, not the rate at which the payment was to be delivered. The Court interpreted the agreement as having two

parts: (1) the fractional share of production Apache must pay, and (2) the total amount of money and production to be received before the interest terminates. The Court considered each provision “with reference to the whole instrument.” In the assignment, there were four separate leases, and each lease was described individually. Because the explanatory phrase following the production payment tied the 1/16 reservation to the interest in the “respective” leases, the Court interpreted the agreement as applying to each lease separately. Thus, without any express language to the contrary, the termination of an oil and gas lease also terminates the production payment in the assignment. Therefore, the Court reversed the decision of the court of appeals, concluding that the trial court rendered the correct judgment in the case—that McDaniel take nothing.

***Cardwell v. Whataburger Restaurants LLC***

No 14-1019

Case summary written by Jonae Chavez, Staff Member.

**PER CURIAM.**

Cardwell (Petitioner) sued her employer, Whataburger Restaurants (Respondent) to recover damages from an injury that occurred on-the-job. Respondent moved to compel arbitration based on the Employee Handbook. Petitioner raised several defenses, including an argument that the arbitration agreement was unconscionable and illusory on several theories.

The trial court denied Respondent’s motion based on findings of fact and conclusions of law. However, the trial court also based its ruling on only some of Petitioner’s unconscionability arguments, the trial court’s own views on arbitration, and some of their own research. The trial court failed to discuss all of Petitioner’s unconscionability arguments as well as the argument that the arbitration was illusory.

On appeal, Respondent argued that the trial court’s refusal to compel arbitration was an abuse of discretion. Petitioner argued that all of the other unconscionability arguments she raised required the trial court to deny arbitration. The court of appeals set out all of the parties’ arguments, but only addressed the grounds that the trial court gave for its ruling. The court of appeals concluded that the trial court had abused its discretion and remanded the case with instructions for the

trial court to order arbitration. The court of appeals did not address the Petitioner's many arguments and stated, "[A]s the trial court did not base its determination of unconscionability on those grounds, we need not consider them."

Petitioner now argues that she raised other grounds to deny arbitration that the court of appeals did not address. The Supreme Court held that because Petitioner's arguments were briefed by both parties, the court of appeals "must hand down a written opinion that . . . addresses every issue raised and necessary to final disposition of the appeal." Therefore, the Supreme Court granted Petitioner's petition for review, reversed the court of appeal's holding, and remanded the case to the court of appeals for further proceedings.

***In the Interest of J.Z.P. and J.Z.P., Minor Children***

No. 14-1072

Case summary written by Jeryn Crabb, Staff Member.

**PER CURIAM.**

The 2009 divorce decree between Vicky De La Cruz and Josue Pena gave De La Cruz the exclusive right to determine the primary residence of the couple's two children and ordered Pena to pay \$585.56 in monthly child support. After De La Cruz moved from Amarillo to Lubbock with her children for work, Pena moved to modify the divorce decree to obtain the right to determine where the children reside and reduce his child support.

Pena obtained an order allowing alternative service after unsuccessfully serving De La Cruz at an address provided by Pena's attorneys. The process server posted the notice on the door and on July 25, 2016, two days after the return of service was filed, the trial court granted Pena's petition to modify. Copies of the order were only sent to Pena and his attorneys.

After the trial court's plenary jurisdiction had expired, De La Cruz filed a "Motion to Reopen and to Vacate Order" requesting that the matter be reopened, based on the fact that neither she nor her attorneys were given notice of Pena's motion to modify. In an affidavit attached to the order, De La Cruz stated she never lived at the address where the citation was posted, and Pena knew this because he knew her correct address and picked their children up from that correct address several

times. The affidavit also stated that De La Cruz was unaware of the modification until September 16, 2013. Pena did not deny that he knew De La Cruz's correct address or that De La Cruz did not receive notice, his sole opposition was that De La Cruz did not notify him or the trial court of her new address. The trial court denied the motion. The court of appeals dismissed De La Cruz's appeal for want of jurisdiction because her motion did not extend post-judgment deadlines to run from the date she received notice of the order.

Issue: Should De La Cruz's motion requesting relief from the trial court's order on grounds that she had not been served with the citation and had not learned of the trial court's order until a few days before her motion was filed have extended post-judgment deadlines?

The Court determined that justice requires that the trial court and the court of appeals treat De La Cruz's motion as extending post-judgment deadlines. The Court reasoned this because Rule 71 of the Texas Rules of Civil Procedure require that when a party mistakenly designates a plea or pleading, if justice requires it, the court must treat the plea as if it has been properly designated, and courts are supposed to acknowledge the substance of the relief sought despite the formal styling of the plea. De La Cruz's motion plainly requested relief from the trial court's order on the grounds that neither she nor her attorney's had been given notice. De La Cruz's motion was timely filed and De La Cruz was entitled to an extension of the time for appeal.

The Court granted De La Cruz's petition for review and without oral argument reversed the judgment of the court of appeals and remanded the case to that court for further proceedings.

### ***McMillen v. Tex. Health & Human Servs. Comm'n***

No. 15-0147

Case summary written by Austin De Boer, Staff Member

PER CURIAM.

Michael McMillen (McMillen) brought suit against the Texas Health and Human Services Commission (Commission) and its Executive Commissioner, Kyle L. Janek, when the Commission terminated him from his position as deputy counsel for the Office of the Inspector General within the Commission. McMillen alleged a violation of the Whistleblower Act, claiming that the Commission terminated him

based on his report of the Commission's actions about the practice of obtaining payments from individual recipients of Medicaid benefits that lacked legal justification.

The 261st Judicial District Court, Travis County, denied Commission's plea to the jurisdiction; Commission appealed. The Third Court of Appeals reversed. McMillen filed a petition for review that gave rise to the case at issue.

Issue: Whether a state employee made an alleged report of a legal violation to an appropriate law-enforcement authority as necessary to remove state-entity immunity under the Texas Whistleblower Act.

Under the Whistleblower Act—Tex. Gov't Code Ann. § 554.002(b)—a reported-to authority is appropriate if it is a part of a state or local government entity or the federal government that the employee in good faith believes is authorized to (1) regulate under or enforce the law alleged to be violated in the report; or (2) investigate or prosecute a violation of criminal law.

Here, the Office of the Inspector General of the Commission was responsible “for the investigation of fraud and abuse in the provision of health and human services and the enforcement of state law relating to the delivery of those services.” Therefore, the Commission has power beyond internal discipline to enforce the law allegedly violated under Tex. Gov't Code Ann. § 531.102(a).

Therefore, McMillen reported to an appropriate law-enforcement authority. Without hearing oral arguments, the Court granted the petition for review, reverses the court of appeal's judgment, and remands the case to the court of appeals for further proceedings.