Supreme Court of Texas
January 17, 2014

Galveston Cent. Appraisal Dist. v. TRQ Captain's Landing
No. 07-0010
Case Summary written by Jamie Vaughan, Staff Member.

Chief Justice Hecht delivered the opinion of the Court.

TRQ Captain's Landing, L.P. (TRQ) holds legal title to Captain's Landing Apartments (the Apartments). CD Captain's Landing, LLC (CD) has as its sole member American Housing Foundation (AHF). CD acquired TRQ by purchasing all of its shares. AHF is a non-profit corporation and a CHDO. CHDOs were created by the Cranston-Gonzalez National Affordable Housing Act of 1990 and are entitled to government and private funds for providing affordable housing for low- and moderate-income people. CD applied for an exemption under § 11.182 of the Texas Tax Code the day it acquired TRQ in December. Section 11.182 allows for exemptions for owners of real property who are CHDOs and meet other requirements. The Galveston Central Appraisal District (GCAD) denied the exemption, stating that CD did not own the property. Subsequently, AHF and TRQ sued for declarations that they qualified for the exemption.

The trial court granted summary judgment in favor of GCAD. The appellate court reversed, holding equitable ownership was sufficient to entitle the plaintiffs to the exemption. The case was stayed because of a pending bankruptcy suit but was then reinstated.

Issues: (1) Must a CHDO have legal title to property in order to qualify for an exemption under § 11.182? (2) Was CHDO's application for a § 11.182 exemption timely, when it was filed on the day the property was acquired but not before May 1?

While this matter was stayed, the court decided the case *AHF-Arbors at Huntsville I, LLC v. Walker County Appraisal District*, 410 S.W.3d 831 (Tex. 2012). The facts of this case are similar to the case at hand and the Court held that equitable ownership is sufficient to make a CHDO eligible for a § 11.182 exemption. Therefore, without much discussion, the court adopted that view again here and found the plaintiffs eligible for a § 11.182 exemption because of their equitable ownership.

Regarding the timeliness of the exemption application, the general rule is that applications must be completed by May 1 of the year for which the exemption is sough. However, § 11.436 states that, if a CHDO has newly acquired property and files an application within thirty days of acquiring the property, it is timely regardless of whether it was filed by the May 1 deadline. In this case, because the plaintiffs filed their applications within 30 days of receiving equitable title in the property, the applications were timely. As

such, the Court affirmed the decision of the court of appeals and held in favor of the plaintiffs.

Texas Coast Utilities Commissioner v. Railroad Commission of Texas, et. al.,
No. 12-0102
Case Summary written by Matt McKee, Staff Member.

Boyd, J., delivered the opinion of the Court.

CenterPoint Energy Resources Corporation (CenterPoint) provides gas utility services to the Texas Coastal Region, which consists of forty-seven municipalities. In 2008, CenterPoint informed the municipalities it intended to raise its utility rates. Though thirty-eight of the municipalities approved the increase, nine did not. These nine municipalities formed the Texas Coast Utilities Coalition (Coalition), and collectively appealed the rate increase to the Texas Railroad Commission (Commission). At a hearing on the matter, the Commission approved a $1.2 million rate increase, which was significantly lower than the $2.9 million increase CenterPoint proposed. A particularly contentious element of the rate increase was a cost of service adjustment (COSA), which deducted a number of CenterPoint's expenditures, then recovered those expenses on a "per-customer" basis.

The Coalition contended that the Gas Utility Regulation Act (GURA) does not confer jurisdiction upon the Commission to allow utilities to include COSA, and that COSA allowed CenterPoint to bypass procedural rate increase requirements, depriving municipalities of their jurisdiction. After the Commission determined that it did have authority to allow COSA, the Coalition appealed to the district court, which reversed and remanded the case to the Commission. The Commission subsequently appealed to the Austin Court of Appeals, which reversed the trial court. The Coalition accordingly appealed the case to the Supreme Court of Texas.

The Court first addressed jurisdictional aspects of the Coalition's arguments, noting that while the Commission has no inherent authority, it does have authority to act where the state legislature confers statutory authority. In that light, the Court then addressed the authority GURA confers on the Commission, finding GURA provides municipalities with jurisdiction over utility rates within that municipality and that the Commission has jurisdiction over areas that are not within a municipality's limits. Furthermore, the Commission has appellate jurisdiction to resolve municipalities' utility "rate" issues. The Court found GURA provides the Commission with authority to establish rates pertaining to the utility's direct and indirect expenses, as well as factors "affecting" that utility's ability to provide its services, reaching the conclusion that the COSA charge is a rate.

The Coalition first argued that a state agency cannot derive its power from a statutory definition. The Court did not find this argument persuasive, noting GURA provides the authority to "establish rates," then further defines what constitutes a rate. Additionally, the Coalition argued GURA's Gas Reliability Infrastructure Program (GRIP), which allows a utility to file an interim monthly rate schedule adjustment, indicates a legislative intent that utilities not be able to apply a COSA charge, and that if the legislature intended to allow utilities to apply COSA, there would have been no need for the GRIP provision. The court differentiated the two clauses, however, finding unlike the COSA charge, GRIP allows a utility to file tariff adjustment with the Commission's approval. Moreover, the court noted the GRIP statute confers authority upon the municipality that falls outside of the Commission's jurisdiction. The Coalition additionally contended that the PGA tariffs included in rate adjustment would be unnecessary if utilities can apply COSA provisions. Finding both types of adjustments are statutorily authorized, the court discarded the Coalition's contention. Finally, the Coalition argued that the Commission's rules do not allow it to apply a municipality's approved rates to surrounding areas. The court rejected this argument, finding the Commission's rules simply require the Commission to review such rates rather than allowing them to automatically apply.

Turning to the Coalition's argument that COSA violates GURA, the court first noted that COSA, as well as the Commission's orders, must comply with GURA. Specifically, the Coalition contended that the COSA allows CenterPoint to bypass GURA's notice and hearing procedures, and that COSA disregards the municipalities' jurisdiction over rates implemented within their respective municipality. Addressing its first argument, the Coalition contended that COSA differentiates between a "rate" and a "charge," and under GURA, the Commission must approve both. Though the Court agreed that the Commission must approve COSA's rate, the Court disagreed with the Coalition's argument that CenterPoint must seek the Commission's approval every time that rate changes. Moreover, the Court found that a rate adjustment does not constitute a change in the rate itself, noting such an argument would render the Commission's rate-making authority superfluous. Finally, addressing the Coalition's argument that COSA usurps municipal jurisdiction, the Court noted that the COSA rate is based upon a "test year," which is subject to municipal and Commission approval. The court found the Coalition's argument unpersuasive, however, because a municipality may only appeal a rate's adjustment by bring a rate-making case and showing that the rate's increase is "unjust and unreasonable." Though municipalities must review each rate adjustment, this review does not include a full rate case.

The Court concluded by affirming the Austin Court of Appeal's holding, finding the GURA confers authority on the Commission to approve

CenterPoint's COSA, remanding the case for the trial court to issue orders consistent with its opinion.

Ewing Construction Co., Inc. v. Amerisure Insurance Co.
No. 12-0661
Case summary written by Caleb Segrest, Staff Member.

Justice Johnson delivered the opinion of the Court.

Plaintiff, Ewing Construction (Ewing), contracted with Tuluso-Midway Independent School District (TMISD) to serve as general contractor in renovating buildings and constructing tennis courts, which were to be used to host competitive tennis tournaments. The contract included the agreement that Ewing would construct the courts in a "good and workmanlike manner." After construction was completed, TMISD sued Ewing under both contract and tort theories, claiming that the courts were poorly constructed, resulting in cracking, crumbling, and flaking, all of which rendered the courts unfit for their designated use. Ewing held a policy with Defendant, Amerisure Insurance Company (Amerisure), that included commercial general liability (CGL) coverage. When Ewing tendered its defense in the case to Amerisure, Amerisure denied coverage on the grounds that Ewing's liability fell under the "contractual liability exclusion" of the policy, which stated that "[t]his insurance does not apply to . . . property damage . . . for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages . . . [t]hat the insured would have in the absence of the contract or agreement[.]"

Issue: The following certified question came from the United States Court of Appeals for the Fifth Circuit: "Does a general contractor that enters into a contract in which it agrees to perform its construction work in a good and workmanlike manner, without more specific provisions enlarging this obligation, 'assume liability' for damages arising out of the contractor's defective work so as to trigger the Contractual Liability Exclusion?"

The Court answered the certified question above in the negative. Citing its reasoning in *Gilbert Texas Construction, L.P. v. Underwriters at Lloyd's London*, 327 S.W.3d 118 (Tex. 2010), the court stated that "assumption of liability" means that the insured has assumed a liability for damages that exceeds the liability it would have under the general law. In the present case, though Ewing did contract to construct the tennis courts in a good and workmanlike manner, this agreement did not assume any liability it would not already have under the general law. TMISD's allegations that Ewing failed to perform in a good and workmanlike manner are substantively the same as its claims that Ewing negligently performed under the contract because they contain the same factual allegations and alleged misconduct.

Accordingly, the Court concluded that "a general contractor who agrees to perform its construction work in a good and workmanlike manner, without more, does not enlarge its duty to exercise ordinary care in fulfilling its contract, thus it does not 'assume liability' for damages arising out of its defective work so as to trigger the Contractual Liability Exclusion."

In the Interest of K.N.D., a Child
No. 13-0257
Case Summary written by Jessica Rugeley, Online Edition Editor.

Per Curiam.

The trial court terminated A.D.'s parental rights to K.N.D. and appointed the Department of Family and Protective Services as sole managing conservator. A.D. challenged the sufficiency of the evidence to establish "abuse or neglect" of K.N.D. and of the evidence to terminate in the child's best interest. The court of appeals reversed the termination but upheld the Department's appointment as sole managing conservator. The court of appeals held that there was no evidence o show that K.N.D. had been harmed and that evidence relating to past abuse or neglect of other children is irrelevant.

The Court reversed and remanded, holding that past neglect of other children may be considered and that a court may terminate the parent-child relationship if it finds by clear and convincing evidence that the parent failed to comply with provisions of a court order that "specifically established the actions necessary for the parent to obtain the return of the child. . ." Prior to giving birth to K.N.D., A.D. had been involved in a domestic dispute in which her male roommate knocked her down. A.D.'s female roommate claimed that she and A.D. were prostitutes and the male roommate was their pimp. Furthermore, less than two weeks before giving birth to K.N.D., A.D. relinquished parental rights to her first child because she could not care for the child. The caseworker assigned to A.D.'s first child's case noted that A.D. would say she would comply with agency recommendations but would fail to do so. Thus, the Court held that K.N.D. was removed for abuse or neglect and reversed and remanded for further proceedings.