

Supreme Court of Texas
March 28, 2014

Long v. Castle Tex. Prod. L.P.

No. 11-0161

Case Summary written by Leonardo De La Garza, Staff Member.

JUSTICE GUZMAN delivered the opinion of the Court.

Castle Texas Production L.P. (Castle) operates gas wells in which the Long Trusts have an interest. The Long Trusts sued Castle for breach of joint operating agreement and conversion of gas. Castle counterclaimed and prevailed on amounts owed on joint interest billings. In the 2001 first judgment, the trial court awarded Castle a prejudgment interest without specifying a calculation. The court of appeals, in response, held that the interest should have been calculated pursuant to the parties' joint operating agreement. Thus, the court of appeals remanded to recalculate the interest. On remand, first in March 2005, Castle argued that no new evidence was required for the trial court to recalculate, an argument the trial court rejected. The trial court also denied a Castle's subsequent writ of mandamus and prohibition. In February 2009, the trial court denied Castle's motion for judgment on the record. Afterwards, Castle waived its prejudgment interest claim. That same day, the trial court awarded the original judgment, and the court of appeals affirmed, holding that the prevailing party is entitled to postjudgment interest from the date the original judgment, erroneous or not, was rendered. The Long Trusts' petitioned for review.

Issue: What is the proper accrual date for postjudgment interest when a remand for further proceedings requires further evidentiary proceedings? More specifically, should Castle recover postjudgment interest from the trial court's original 2001 judgment or the final judgment after remand in 2009?

The court held that postjudgment interest accrues from the final judgment date unless the appellate court can or does render the judgment the trial court should have rendered. If the trial court determines that it must reopen the record on remand as it existed at the time of the remand, postjudgment interest will accrue from the subsequent judgment. But, if the court of appeals can or does render the judgment the trial court should have rendered, postjudgment interest accrues from the original, erroneous trial court judgment.

The court looked to the Texas Finance Code, Rules of Appellate Procedure, and case precedent in arriving at its conclusion. The court acknowledged that it had not previously addressed the accrual date for postjudgment interest if a trial court determined it must reopen the record for further evidentiary proceedings on remand, thus rendering multiple judgments during the course of the suit. First, the court noted that under the Texas Finance Code,

postjudgment interest on a money judgment accrues beginning on the date judgment is rendered until judgment is satisfied. The court then examined the term “judgment.” The court interpreted “judgment” to mean final judgment. Furthermore, finality most appropriately pertained to the appeals context. Because there were multiple judgments, however, the court noted that an erroneous trial court judgment is no longer final because it no longer disposes of all parties and claims. Thus, postjudgment interest would accrue from the date of the *final* judgment.

The court also considered the “Can or Does Render” exception, found in Texas Rule of Appellate Procedure 43.3, which provides that, when reversing a trial court’s judgment, the court must render the judgment that the trial court should have remanded, except when (a) remand is necessary for further proceedings, or (b) the interests of justice require a remand for another trial. Turning to case precedent, the court concluded that postjudgment interest accrues from the date of the original trial court judgment if the appellate court remands for entry of judgment consistent with its opinion and the trial court is not required to admit new or additional evidence to enter that judgment. If the trial court does not possess a sufficient record, however, postjudgment interest will only accrue on the final judgment date once the record is sufficient. Here, the court disagreed with Castle’s argument that postjudgment interest should always accrue from the date of the trial court’s first judgment. Furthermore, the court asserted that the trial court should determine whether it must reopen the record on remand based upon the claims and record as of the time of the remand. The court, combining its analysis, established the rule that postjudgment interest accrues from the date of the final judgment (rather than the original, erroneous judgment) unless the appellate court can or does render the judgment the trial court should have rendered. Lastly, the court overruled previous similar court of appeals decisions, *State Department of Highways and Public Transportation v. City of Timpson* and *Gamma Group v. Transatlantic Reinsurance Co.* because those opinions did not properly give effect to the Finance Code and rules of procedure. In doing so, the court followed the majority rule applied in other jurisdictions.

Applying the law, the court considered whether the trial court properly determined new evidence was required at the time of remand. The court found there was insufficient evidence in the record establishing when the Long Trusts received the joint interest billings and the trial court had no duty to deny Castle’s request for prejudgment interest on the existing record. The court agreed with the Long Trusts that the remand required reopening the record for evidence of when the Long trusts received the joint interest billings (since timing was determinative). Thus, the court concluded that the existing record offered insufficient evidence. The court also disagreed with Castle’s argument that the trial court had a duty to deny it recovery of prejudgment interest on the existing record because of a misuse of Texas

Rule of Civil Procedure 270. The court concluded that neither waiver nor severance issues affect its analysis. Ultimately, the court reversed and remanded, holding that postjudgment interest must accrue from the trial court's final judgment in 2009.

Kia Motors Corp. v. Ruiz

No. 11-0709

Case Summary written by Jamie Vaughan, Staff Member.

Justice Lehrmann delivered the opinion of the Court. Justice Boyd did not participate in the decision.

Andrea Ruiz and her daughter, Suzanna, were involved in an automobile accident in their 2002 Kia Spectra. The airbags did not deploy, and as a result, Andrea Ruiz died from her injuries. The Ruiz family sued Kia for defective design of the airbags. The jury found in favor of the Ruizes. On appeal, Kia argued that it was entitled to the statutory presumption of non-liability, that the evidence was insufficient to find a defect, and that the trial court erred in admitting a spreadsheet summarizing airbag warranty claims for other Kia vehicles. The appellate court held that the statutory presumption did not apply, that the evidence was sufficient, and that, if trial court had erred in admitting the spreadsheet, such error was harmless.

Issues:

(1) Does the statutory presumption of non-liability apply to a products liability case based on defective design, where the regulation at issue addresses a safety standard but does not mandate a particular design?

(2) Can evidence be found legally sufficient when it is based on an expert's opinion without reference to a specific defect, and where the expert failed to rule out another potential cause of the defect?

(3) Is it error to admit a document summarizing similar warranty claims, including information that was partially relevant and partially irrelevant, where the court provided a limiting instruction, and if so, can that error be found harmless?

The court first addressed the statutory presumption issue and held that Kia was not entitled to the presumption. Section 82.008 of the Texas Civil Practice and Remedies Code provides that, in a products liability action, there is a rebuttable presumption of non-liability if the manufacturer shows that the design complied with mandatory federal regulations or safety standards. The court noted a three-part test in determining the applicability of the presumption: (1) whether the product complies with the safety standard or regulation; (2) whether the standards were applicable at the time the product was manufactured; and (3) whether the standards governed the risk that caused the harm. The court found that Kia had met the first and

second prongs but not the third because Kia had failed to show that the regulation at issue (the Federal Motor Vehicle Safety Standard (FMVSS) 208) governed the particular risk at issue in this case. In other words, the court held that FMVSS 208 presumed airbag deployment and therefore did not address the risk of airbags failing to deploy. Although the regulation at issue did not mandate a particular design, the court held that Kia's chosen design still had to meet the mandated safety standards, and because it did not, Kia was not entitled to the presumption. Next the court addressed the sufficiency of the evidence issue and found that the evidence was not legally insufficient because the Ruizes had provided more than a scintilla of evidence of the defect such that a reasonable jury would be helped in reaching its verdict. This was because, although Kia contended that the Ruizes failed to show a specific defect and rule out other potential causes for the airbag's failure, the Ruizes' expert was "fairly certain" about the defects and did not rely solely on suspicion or conjecture, and it did not rely solely on the fact that the airbag failed to prove the defect. Finally, the court held that the trial court had erred in admitting a spreadsheet summarizing information related to warranty claims on similar Kia vehicles. The court found that a finding of admissibility on one part of the document does not make admissible otherwise inadmissible information, and such inadmissibility cannot be cured by a limiting instruction. Additionally, the court held that the information in the spreadsheet was not relevant and Kia had not waived its objections. Having found that the trial court erred in its admission of the spreadsheet, the court concluded by holding that the error was not harmless because it was not cumulative, the Ruizes focused on the inadmissible portion of the spreadsheet, and the information was prejudicial. Thus, the court reversed and remanded the case for further consideration.

Bioderm Skin Care, LLC v. Sok

No. 11-0773

Case Summary written by Jessica Rugeley, Online Edition Editor.

Justice Guzman delivered the opinion of the Court.

Veasna Sok brought suit against Bioderm Skin Care and its sole owner, Dr. Quan Nguyen, for vicarious liability of a laser operator's negligence. Sok claims to have suffered second-degree burns after a laser hair removal treatment. In their answer, Bioderm and Dr. Nguyen argued that Sok's claim falls under the Texas Medical Liability Act as a health care liability claim, thus Sok was required to serve an expert report within 120 days of filing her original petition. The defendants moved to dismiss Sok's claim for failure to comply with the expert report requirement. The trial court denied the motion to dismiss and the defendants filed an interlocutory appeal. The court of appeals affirmed.

Issue: Do claims arising out of allegedly improper laser hair removal constitute health care liability claims subject to the Texas Medical Liability Act?

Yes, the Court held that Sok's claim is subject to the Texas Medical Liability Act. The Court initially considered jurisdiction of an interlocutory appeal. The Court held that it had jurisdiction because the courts of appeals have come to conflicting decisions about whether laser hair removal treatments are covered by the Act. Next, the Court considered whether Sok's claims are medical liability claims. There are three elements under the Act: (1) a physician or health care provider must be a defendant; (2) the claim or claims at issue must concern treatment, lack of treatment, or a departure from accepted standards of medical care, or health care, or safety of professional or administrative services directly related to health care; and (3) the defendant's act or omission complained of must proximately cause the injury to the claimant. The parties do not contest causation but only whether Bioderm is a health care provider and whether Sok's claim is for medical or health care.

The Court held that Bioderm is health care providers within the meaning of the Act. A health care provider is one that is directly or indirectly controlled by a physician. As Dr. Nguyen is the sole owner of Bioderm and controls its daily operations, Bioderm is a health care provider. Next, the Court applied the rebuttable presumption that Sok's claim is a health care liability claim because Sok signed a consent form to be treated by a medical professional. In order to rebut this presumption, Sok must establish, under the Act's second element, that her claim does not constitute an alleged departure from accepted standards of medical care or health care. The Court first determined whether expert medical or health care testimony is required to establish the standard of care and breach. The Court found two reasons that expert testimony is required in this case: (1) federal regulations only permit this type of laser to be acquired by a licensed medical professional for supervised use in a medical practice and the FDA classifies this laser as a Class II surgical device, and (2) operation of this laser requires extensive training and experience. Thus, the Court held expert testimony is required to prove or refute Sok's claim that the laser was used improperly. Therefore, the Court reversed the court of appeals because Sok failed to rebut the presumption that the Texas Medical Liability Act applies and thus her failure to serve an expert report within the 120-day requirement precludes her suit.

Crosstex Energy Services, L.P. v. Pro Plus, Inc.

No. 12-0251

Case Summary written by Matt McKee, Staff Member.

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

Crosstex provides natural gas transportation services. After Crosstex hired Pro Plus to construct a compression station, one of the valve gaskets Pro Plus constructed failed, causing roughly \$10 million in property damage. Crosstex subsequently filed suit claiming “general and specific negligence, negligent misrepresentation, breach of implied and express warranty, and breach of contract”; however, Crosstex failed to include a certificate of merit with its filing. Pro Plus’s answer failed to raise the issue of certificate of merit. Though the parties signed a rule 11 agreement, extending expert witness deadlines past the limitations period, Pro Plus “moved to dismiss Crosstex’s claims for failure to attach a certificate of merit to its original petition” after the original limitations period. Crosstex responded, claiming Pro Plus waived its right to dismissal. The trial court dismissed the motion, granting an extension.

On appeal, after determining it had jurisdiction to hear the interlocutory appeal, the First Court of Appeals held that by granting the extension without good cause, the trial court abused its discretion, and that Pro Plus did not raise its rights to move for dismissal.

After granting Crosstex’s petition for review, the Supreme Court of Texas first evaluated whether the First Court of Appeals had jurisdiction to hear the interlocutory appeal, noting that a court’s authority to hear an interlocutory appeal may only be vested statutorily. Though the statute in question allows interlocutory review regarding motions to dismiss, the statute is silent regarding extensions. Because the Court found the extension immaterial to the dismissal ruling’s correctness, “the court of appeals could evaluate the propriety of the trial court’s ruling on the motion to dismiss without entanglement in the appeal of the granted extension,” and therefore did not err in claiming jurisdiction over the motion to dismiss.

Turning to the trial court’s extension, the Court analyzed the following statutory language to determine whether Crosstex was able to use the good cause extension.

The contemporaneous filing requirement of Subsection (a) shall not apply to any case in which the period of limitation will expire within 10 days of the date of filing and, because of such time constraints, the plaintiff has alleged that an affidavit of a third-party licensed . . . professional engineer . . . could not be prepared. In such cases, the plaintiff shall have 30 days after the filing of the complaint to supplement the pleadings with the affidavit. The trial court may, on motion, after hearing and for

good cause, extend such time as it shall determine justice requires.

TEX. CIV. PRAC. & REM. CODE 150.002(c). Finding the passage's final sentence is capable of multiple interpretations depending on whether the Court reads it in isolation, or in the context of the entire passage, the Court determined it must read the final sentence in the context of the entire text, not in isolation. The court expanded on its decision, noting the alternative "approach would thus produce two exceptions: (1) a narrow exception limited to a tight ten-day window and requiring specific allegations, yielding a thirty-day extension; and (2) a broad exception with no limitations other than a court's determination of good cause, allowing extensions 'as justice requires.'" The Court accordingly held that, because Crosstex filed its motion outside of the statute's ten-day window, it could not avail itself of the good cause extension.

The Court next sought to determine whether Pro Plus waived its right to move for dismissal, first analyzing whether § 150.002(e) permits such a waiver. In evaluating the statute's express language, the Court first noted the word "shall" normally imposes a mandatory requirement. In that light, the Court sought to determine whether the legislature created a jurisdictional bar, considering "(1) the plain meaning of the statute; (2) 'the presence or absence of specific consequences for noncompliance'; (3) the purpose of the statute; and (4) 'the consequences that result from each possible interpretation.'" *City of DeSoto v. White*, 288 S.W.3d 389, 393 (Tex. 2009); *Helena Chem. Co. v. Wilkins*, 47 S.W.3d 486, 494 (Tex. 2001). Addressing the first two factors together, the Court found the text does not indicate that failing to file a certificate of merit is a jurisdictional issue because "[m]andatory dismissal language does not, in and of itself, compel the conclusion that a statute is jurisdictional." Finding it not useful in this case, the court skipped the third factor, turning instead to the fourth factor, addressing the implications of other interpretations of the statute. Finding that interpreting § 150.002(e) as jurisdictional would leave a plaintiff's claim vulnerable to attack even after the limitations period, the Court found that § "150.002 imposes a mandatory, but nonjurisdictional, filing requirement."

After examining § 150.002's express language, the Court evaluated Pro Plus's conduct to determine whether Pro Plus waived its right to dismissal through its conduct. Addressing Crosstex's first argument that Pro Plus invoked the judicial process in filing answers, engaging in over 11,000 pages of discovery, and entering a Rule 11 agreement, the Court noted "[a]ttempting to learn more about the case in which one is a party does not demonstrate an intent to waive the right to move for dismissal." *Jernigan v. Langley*, 111 S.W.3d 153, 157 (Tex. 2003) (per curiam). On this argument, the Court ultimately concluded "Pro Plus's conduct falls far short of 'clearly demonstrat[ing]' an intent to waive the right to dismiss under subsection

150.002(e).” See *Jernigan*, 111 S.W.3d at 156. Relatedly, the Court found that Pro Plus was not required to file a special exception for Crosstex’s failure to file a certificate of merit since Crosstex’s failure was an incurable defect.

Finally, the Court addressed Crosstex’s contention that the Rule 11 agreement that Pro Plus signed extended the § 150.002 deadline to file a certificate of merit, finding “that an agreed order dealing with expert report deadlines does not impact [a] separate section[‘s] requirement unless it is specifically mentioned in the agreed order.” Therefore, the Rule 11 agreement did not extend § 150.002’s requirements.

The Court concluded by holding the court of appeal did not erroneously assert jurisdiction, the good cause extension did not apply to Crosstex’s failure to file a certificate of merit, and that Pro Plus did not waive its dismissal rights through its conduct.

Colorado v. Tyco Valves & Controls, L.P.

No. 12-0360

Case summary by Caleb Segrest, Staff Member.

Justice Lehrmann delivered the opinion of the Court.

Tyco Valves & Controls, L.P. (Tyco), and Tyco’s Gimpel Unit in particular, manufactured specialized valves. The Gimpel Unit was located in Tyco’s West Gulf Bank facility in Houston. When Tyco made plans to sell the West Gulf Bank facility, a number of employees entered into a Retention Incentive Agreement (RIA) with Tyco, which offered the Tyco employees an incentive to remain with the company through the facility’s closure. The RIA promised any employee who chose to enter into the agreement (1) a cash bonus and (2) severance pay if they were not offered comparable employment. Tyco sold the Gimpel Unit to Dresser-Rand Company and when seventeen Tyco employees working in the Gimpel Unit (some who had signed the RIA and some who had not but claimed to rely on oral representations) were denied severance, they sued Tyco for breach of contract.

Before the Gimpel Unit was sold to Dresser-Rand Company, Gimpel employees were covered by Tyco’s Severance Plan for U.S. Employees (ERISA Plan), which was undisputedly governed by ERISA. In August of 2006, while plans for closing the West Gulf Bank facility were under way, Tyco’s human resources director created and released a schedule of employee benefits (West Gulf Bank Schedule). In late 2006, Tyco released its plans to sell, rather than relocate the Gimpel Unit. It was at this time that the Gimpel Unit employees entered into the RIA described above. In February of 2007, Tyco formally amended the ERISA Plan with an effective date relating back to December 1, 2006. In the spring of 2007, Tyco agreed to sell and suit followed.

Issues: Are the employees’ breach of contract claims preempted by the Employee Retirement Income and Security Act of 1974 (ERISA)? If the claims are not preempted, then does sufficient evidence exist to prove that (1) Tyco breached

the RIA and (2) that oral agreements to pay severance existed between six of the seventeen plaintiffs—those that did not sign the RIA.

The Court held that ERISA preempts the plaintiffs' breach of contract claims and thus that the plaintiffs should take nothing.

Section 514(a) of ERISA preempts "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" covered by ERISA. State laws that are subject to preemption include not just statutes, but also common-law causes of action like the Gimpel Employees' breach-of-contract claims. Thus, in resolving the preemption issue, the Court must decide whether those claims "relate to" Tyco's ERISA Plan, which itself undisputedly qualifies as an employee benefit plan governed by ERISA.

Essentially, the Court reasoned that the West Gulf Bank Schedule was an informal amendment of the ERISA Plan. Therefore, the plaintiffs' breach of contract claims regarding the RIA (which referenced the severance described in the West Gulf Bank Schedule), "related to" the ERISA Plan, so ERISA preempted the breach of contract claims. In other words, the RIA did not operate independently of the ERISA Plan, so the ERISA Plan preempted the claims relating to the RIA because the claims "related to" the ERISA Plan. The claims of the employees who did not sign the RIA failed because they were simply covered by the ERISA Plan.

"Because the Gimpel Employees' contract claims are preempted, we need not decide whether legally sufficient evidence supports the trial court's findings as to those claims. Although we disagree with the court of appeals' opinion on the preemption issue, we nevertheless agree with the court's judgment that the Gimpel Employees take nothing by their breach-of-contract claims. Accordingly, we affirm the court of appeals' judgment."

In re Ford Motor Co.

No. 12-1000

Case Summary written by Megan Kateff, Staff Member.

Per Curiam.

Saul Morales, the plaintiff in this case, was fleeing the police in his vehicle. The police were following Morales because they suspected he was driving while intoxicated. Morales eventually stopped, and a police officer exited his vehicle—a Ford Crown Victoria—to continue the pursuit on foot. While attempting to handcuff Morales, the officer's Crown Victoria began rolling backward towards them. The vehicle struck the officer, then ran over and came to a rest on top of Morales.

Morales sued Ford Motor Company, the designer and manufacturer of the vehicle, and Ken Stoepel Ford, Inc., the vehicle's seller (collectively "Ford"). Morales alleged that the vehicle had a design defect, which allowed the officer to unintentionally place the gear-shift selector between park and

reverse, causing the vehicle to go into an idle-powered reverse. Ford retained two expert witnesses to testify on behalf of the defense. After both witnesses were deposed, Morales sought additional discovery in the form of corporate-representative depositions from the witnesses' employers. Morales sought these additional depositions in an attempt to expose the alleged bias of each testifying expert in favor of Ford and other automobile manufacturers.

Issue: Are the additional corporate-representative depositions sought by Morales beyond the scope of information that parties may discover about a testifying expert?

Looking to Rules 192.3(e) and 195 of the Texas Rules of Civil Procedure—which define the scope of discovery, enumerate the methods of discovery, and highlight the goal of minimizing undue expense in conducting expert discovery—the Supreme Court of Texas expressed concerns about overly expansive discovery. The court noted that such expansive discovery can permit witnesses to be subjected to harassment and ultimately may discourage experts' willing participation in the litigation process.

While Rule 192.3(e) states that parties may discover information about a testifying expert relating to that expert's bias, the court noted that in this case, the requests in Morales's deposition notices to both witnesses' employers may have gone too far. The notices sought detailed financial and business information for all cases the companies have handled for Ford or any other automobile company from 2000–2011. The court categorized this breadth of information Morales sought as a fishing expedition: the type that the Texas Rules of Civil Procedure are intended to prevent.

The Supreme Court of Texas held the requested discovery as impermissible under the Rules and went on to discuss other opinions consistent with the notion that discovery into the extent of an expert's bias is not without limits, including *In re Weir* and *Olinger v. Curry*. The court also stated that the most probative information regarding the bias of an expert witness will come from the expert witness's own testimony. For an example, court pointed to the testimony of Ford's expert witnesses: One expert witness testified that only five percent of the cases she handles are for plaintiffs, and she had never testified against an automobile manufacturer; Ford's other expert witness testified that about fifty percent of his company's work is done for Ford, he worked for Ford himself, and he had never testified that a vehicle had a design defect in any park-to-reverse case.

Morales argued that the court previously permitted the deposition of an expert's employer in *Walker v. Packer*. There, the Supreme Court of Texas held that deposing an employer's representative was appropriate to “narrowly seek information regarding potential bias,” when extrinsic evidence discovered after the expert's deposition puts the witness's credibility in doubt. The court responded that Rule 195 of the Texas Rules of Civil Procedure—the rule governing in this case—was adopted after the decision in *Walker*. But even if the holding in *Walker* survived the adoption of Rule 195,

the court distinguished the present case, noting that neither experts' credibility was put into doubt after their respective testimonies.

The court conditionally granted Ford's petition for writ of mandamus without hearing oral argument and directed the trial court to vacate its discovery order.