Supreme Court of Texas
April 25, 2014

In re Whataburger Restaurants LP
No. 11-0037
Case Summary written by Jessica Rugeley, Online Edition Editor.

Per Curiam.

Plaintiffs, collectively Acuna, sued Whataburger for injuries sustained in a fight outside of an El Paso Whataburger restaurant. During jury selection, a questionnaire was used that asked the potential jurors if they had ever been party to a lawsuit. Four potential jurors answered that they had been and one was chosen for the jury. The jury rendered a 10-2 verdict in favor of Whataburger after trial. One juror incorrectly answered that she had not been party to a lawsuit because she did not understand that her previous credit card collection suits and bankruptcy action constituted a lawsuit. The trial court found that this juror's mistake was material and resulted in probable injury, meriting a new trial. Whataburger filed a writ of mandamus, arguing that the trial court abused its discretion in granting a new trial.

Issue: Did the trial court abuse its discretion in finding that the juror's misinformation caused probable injury?

The Court held that the trial court abused its discretion in finding probable injury. To grant a new trial for juror misconduct, the trial court must find that the movant established (1) that misconduct occurred, (2) it was material, and (3) probably caused injury. The Court held that the movant did not show any evidence of injury. Defense counsel argued that, had he known of this juror's history with lawsuits, he would have moved to strike her from the panel. However, defense counsel did not strike the other potential jurors that had been a party to a lawsuit and there is no evidence as to why this juror would have been treated differently. Therefore, the Court held that the trial court abused its discretion and ordered the trial court to withdraw its order and render judgment on the verdict.

Long v. Griffin
No. 11-1021
Case Summary written by Jessica Rugeley, Online Edition Editor.

Per Curiam.

The Griffins sued the Long Trusts for various claims involving oil and gas ventures. The Griffins' attorney filed an affidavit supporting the Griffins' request for attorney's fees using the lodestar method. "The affidavit indicated the Griffins' two attorneys spent 644.5 hours on the suit for a total fee of $100,000 based upon their hourly rates. Further, the affidavit segregated the time spent on each claim,

with 30% spent on the assignment claim. But the affidavit indicated the assignment issue was inextricably intertwined with claims on which the attorneys spent 95% of their time." The trial court awarded the Griffins $35,000 in attorney's fees. The court of appeals modified the judgment but affirmed. The Supreme Court of Texas reversed and remanded to redetermine attorney's fees. The trial court then awarded the Griffins $30,000 in attorney's fees and the court of appeals modified the judgment to accrue interest from the original, erroneous judgment.

Issues: The Long Trusts petitioned this Court for review, asserting that (1) no legally sufficient evidence supports the amount of the attorney's fee award, and (2) postjudgment interest should accrue from the final judgment in 2009.

The Court held that there was no legally sufficient evidence to support the attorney's fee award and thus did not get to the second issue. The affidavit supporting the attorney's fees was insufficient under the lodestar method because it only provided generalities. The lodestar method requires evidence "of the services performed, who performed them and at what hourly rate, when they were performed, and how much time the work required." Thus, under the lodestar method, the Griffins failed to allege legally sufficient evidence to support the amount of attorney's fees the trial court awarded because they failed to present evidence indicating the time expended on the specific tasks for which attorney's fees may be recovered. The Court reversed and remanded for a redetermination of attorney's fees.

In re Health Care Unlimited, Inc.
No. 12-0410
Case Summary written by Jessica Rugeley, Online Edition Editor.

Per Curiam.

The estate and survivors of Belinda Valdemar (Valdemar's Survivors) sued Relator Health Care Unlimited, Inc. (HCU) and its employee, Edna Gonzalez, after Valdemar died from injuries sustained in an automobile accident. Valdemar was the passenger in a vehicle driven by Gonzalez, and Valdemar's Survivors argued that HCU was vicariously liable as Gonzalez was within the scope of her employment at the time of the accident. The jury found that HCU was not vicariously liable because Gonzalez was not acting in an employment capacity at the time of the accident. Valdemar's Survivors moved for a mistrial, claiming that the presiding juror engaged in juror misconduct by talking to an HCU employee during breaks while the jury was deliberating. The trial court treated the motion for mistrial as a motion for new trial and granted a new trial. The court of appeals denied the petition for mandamus relief.

Issue: Did the trial court abuse its discretion by granting a new trial?

The Court held that the trial court abused its discretion by granting a new trial. To warrant a new trial based on jury misconduct, the movant must establish that (1) the misconduct occurred, (2) it was material, and (3) it probably caused

injury. Misconduct occurred when the juror communicated with an HCU employee during the trial. The Court held, however, that no evidence established that the misconduct probably caused injury. The juror and employee claimed that they discussed food preparations for an upcoming church retreat, a matter unrelated to the trial. Voicemails between the two supported this claim. The movant failed to establish any evidence that the communications concerned the trial and probably caused injury. Thus, the Court ordered the trial court to render judgment on the verdict.

Sawyer v. E.I. du Pont De Nemours and Co.
No. 12-0626
Case Summary written by Jessica Rugeley, Online Edition Editor.

Chief Justice Hecht delivered the opinion of the Court.

E.I. du Pont created a wholly owned subsidiary, DTI. Most of the employees were protected by a collective bargaining agreement (CBA) that gave them the right to transfer to other jobs rather than go to the DTI subsidiary. The employees would get an identical CBA, pay, and benefits at the subsidiary. The employees were worried that du Pont would sell the subsidiary so DuPont and the union agreed that the employees would be given a deadline to decide whether to move to DTI. Du Pont assured the employees that those who decided to stay would be subject to further bargaining. Du Pont allegedly assured the Unit employees, to persuade them to move to DTI, that DuPont would keep DTI, even though, unbeknownst to the employees, DuPont had already discussed selling DTI. Almost all of the employees moved to DTI and the subsidiary was subsequently sold. The employees sued du Pont for fraudulently inducing them to terminate their employment and accept employment with DTI by misrepresenting that DTI would not be sold. The 5th Circuit certified two questions to the Supreme Court of Texas.

Issues: (1) Under Texas law, may at-will employees bring fraud claims against their employers for loss of their employment?

(2) If the above question is answered in the negative, may employees covered under a 60-day cancellation-upon-notice collective bargaining agreement that limits the employer's ability to discharge its employees only for just cause, bring Texas fraud claims against their employer based on allegations that the employer fraudulently induced them to terminate their employment?

First, the Court held that at-will employees may not bring fraud claims for loss of employment because Texas has long protected at-will employment status and does not require good faith and fair dealing. At-will means at-will. Second, the employees cannot bring fraud claims based on allegations that the employer fraudulently induced them to terminate their employment because the employees are bound by the CBA. The CBA mandated that employees could only be discharged for just cause and listed procedures for employees to appeal termination. The

employees effectively have a constructive discharge claim and thus are bound by the CBA.

Rio Grande Valley Vein Clinic v. Yvette Guerrero
No. 12-0843
Case Summary written by Jessica Rugeley, Online Edition Editor.

Per Curiam.

Guerrero alleges that she suffered burns from receiving laser hair removal treatments at Rio Grande Valley Vein Clinic (RGV Clinic). She sued RGV Clinic for negligence. RGV Clinic asserted the Medical Liability Act, requiring Guerrero to serve an expert witness report within 120 days. Guerrero failed to do so and Rio Grande filed a motion to dismiss. The trial court denied the motion to dismiss and the court of appeals affirmed.

Issue: Does the Medical Liability Act apply to lawsuits stemming from injury caused by laser hair removal treatments?

The Court held that, as in *Bioderm Skin Care LLC v. Sok*, the Medical Liability Act applies. Under the Medical Liability Act, a health care liability claim must satisfy three elements: (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 or 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. Additionally, the Medical Liability Act "creates a rebuttable presumption that a patient's claims against a physician or health care provider based on facts implicating the defendant's conduct during the patient's care, treatment, or confinement" are health care liability claims. Guerrero does not dispute that there is a rebuttable presumption that her claim is a health care liability claim, but the issue is whether she rebutted the presumption. Guerrero only challenges the second element of the Medical Liability Act. "Because the RGV Clinic's laser is a regulated surgical device that may only be acquired by a licensed medical practitioner for supervised use in her medical practice, the testimony of a licensed medical practitioner is required to prove or refute Guerrero's claim that use of the device departed from accepted standards of health care." Guerrero argues that she need not prove that there was a departure from accepted standards of medical care because she was treated by a nurse, not a physician. The Court noted, however, that a patient-physician relationship can exist even when the physician deals indirectly with the patient. Therefore, Guerrero was required to supply an expert witness report to prove or refute her claim that RGV Clinic breached the required standard of care. The Court reversed the court of appeals and remanded to the trial court to consider RGV Clinic's request for attorney's fees and costs.