

Supreme Court of Texas
September 18, 2015

Lawson v. City of Diboll

No. 15-037

Case Summary written by Petrus Wassdorf, Staff Member.

PER CURIUM.

The Diboll Youth Baseball League is allowed to hold its games at Old Orchard Park, owned and operated by the City of Diboll, free of charge to the league or its spectators. Petitioner attended the opening day of the youth baseball season with 1,500 other spectators. Upon exiting the baseball complex with family and other spectators Burns tripped on a hollow pipe protruding several inches out of the middle of the walkway and was injured. This premises defect suit followed claiming that the City of Diboll breached its duty of ordinary care by “failing to provide a safe walkway passage free of obstacles.”

At the trial court the City asserted that the recreational use statute raised the liability standard necessary to invoke the immunity waiver of the Texas Torts Claims Act. The trial court denied the plea, which was taken up on interlocutory appeal by the Court of Appeals for the Twelfth District of Texas. The appeals court granted the plea to the jurisdiction, because the petitioner’s activities at the park constituted “recreation,” and dismissed the case for lack of subject matter jurisdiction.

Issue: Whether the petitioner’s activities at the park constituted “recreation” under the Texas Torts Claims Act.

The Court relied upon its recent plurality decision in *University of Texas at Arlington v. Williams*, decided after the decision of the Twelfth Court of Appeals, in which it determined that activities such as the ones that the petitioner was engaged in do not qualify under the recreational use section. The Court held in *Williams* that “neither watching a competitive-sporting event nor related acts of egress are encompassed in the recreational use statute’s definition of ‘recreation.’” The City attempted to factually distinguish *Williams* but the Court dismissed those distinctions

focusing instead on the type of activity, and its relationship to, activities expressly set out in the recreational use statute or “appreciation of the natural world.” For these reasons the Supreme Court of Texas reversed the judgment of the Twelfth Court of Appeals and remand the case to the trial court.

Office of the Attorney Gen. v. Weatherspoon

No. 14-0582

Case Summary written by Will Wassdorf, Staff Member.

PER CURIAM.

While an assistant attorney general assigned to the Child Support Division of the Office of the Attorney General (OAG), Ginger Weatherspoon alleged that senior attorneys attempted to coerce her to falsify an affidavit. She believed that this action constituted subornation of perjury, abuse of official capacity, and official oppression. OAG policy dictates that an employee should report potential criminal violations to the division chief who then refers the matter to the Office of Special Investigations. Weatherspoon alleges that she followed this policy but that she was nonetheless retaliated against, resulting in her discharge. Weatherspoon sued the Office of the Attorney General under the Whistleblower Act for retaliatory discharge. The Whistleblower Act (the Act) waives the state’s immunity from suit for retaliatory discharge in certain circumstances. In a plea to the jurisdiction the OAG argued that Weatherspoon’s allegations were insufficient to waive immunity. The trial court denied the plea and the Court of Appeals for the Fifth District affirmed.

The Supreme Court of Texas reversed the decision of the court of appeals and dismissed the case based on its holding in *Tex. Dep’ of Human Servs. v. Okoli*, which the Court decided after the appellate decision in the case at hand. The Court pointed out that the Act protects an employee who makes a good faith report of a violation of the law to an appropriate law enforcement authority. The Court held in *Okoli* that a policy requiring the reporting of violations to supervisors who subsequently forward complaints to the appropriate law enforcement authority is not sufficient for a good faith belief that the supervisors are in fact

themselves an appropriate law enforcement authority. Instead, the law enforcement authority reported to must have outward-looking powers. Because none of the reported-to supervisors had outward-looking law enforcement authority they could not be an appropriate law enforcement authority under the Act. The Court also rejected the argument that following the OAG's policy of reporting criminal violations to division chiefs did not leave her without a protected way to report the violations because the Act protects exactly these types of actions and the OAG could not rely on an internal policy to act contrary to law. Weatherspoon further argued that the OAG is an appropriate law enforcement authority because the OAG has some capacity to enforce certain laws. The Court reasoned, however, that simply because some OAG divisions have law enforcement authority did not transform the OAG as a whole into an appropriate law enforcement authority.

The Court held that because Weatherspoon's reports did not meet the requirements of the Whistleblower Act, the OAG's immunity from suit remained intact and the Court dismissed the case.