shayes@stevehayeslaw.com

From: Law Office of Steven K. Hayes <shayes@stevehayeslaw.com>
Sent: Friday, January 31, 2025 4:26 PM
To: shayes@stevehayeslaw.com
Subject: Second Court Newsletter: New Summary from the Court, New Opinions

January 31, 2025

Dear Friends:

We have an opinion summary from the Court this week, and more opinions from the Court, as well.

Summary by the Court of a recent opinion

- *Criminal Law (Jury Charge, Good-Conduct-Time Instruction, Preservation, Egregious Harm)*

Recent opinions issued by the Court in civil cases cover the following issues

- *Forcible Detainer (Title Issues)*
- *Jurisdiction (Receivership, Appellate Attorney Fees)*
- *Mandamus (Failure to Rule)*
- *Parental Child Relationship (Grandparent Possession and Access, Standing)*
- *Summary Judgment (Contract, Ambiguity, Parol Evidence, Fact Issue)*

Summary by the Court of a recent opinion:

Criminal Law (Jury Charge, Good-Conduct-Time Instruction, Preservation, Egregious Harm):

Garcia v. State, No. 02-24-00149-CR (Jan. 23, 2025) (Birdwell, J., joined by Bassel and Womack, JJ.).

Held: A defendant does not suffer egregious harm from a punishment charge's unpreserved erroneous inclusion of an outdated good-conduct-time instruction when the punishment charge also contains the standard curative language, with which the jury is presumed to have complied and the record does not show otherwise; the punishment-phase evidence makes it unlikely that the good-conduct-time reference caused any harm; and neither party mentions good-conduct time during closing arguments.

Recent opinion issued by the Court in a civil case covers the following issues (footnotes omitted in all summaries unless otherwise stated. All names in suits involving minors are aliases unless otherwise noted):

Forcible Detainer (Title Issues)*: O'Dwyer v. Peters,* No. 02-24-00193-CV–"Appellant Rachel O'Dwyer, Trustee of Aussie-Tex Freehold Ventures Trust #0082 (the Trustee) appeals from the trial court's dismissal of her forcible detainer action. The property at issue had been conveyed to the Trustee by James and Mary Dresser (collectively Grantors), the parents of Appellee Jessica Peters. After the conveyance, the Trustee moved to evict Jessica and her husband, Appellee Christopher Peters, from the property. Appellees asserted that the justice court—and the county court on appeal—had no jurisdiction because the Trustee's claim was so intertwined with an issue

of title that the claim could not be resolved without deciding the title issue. Because we hold that no issue of title needs to be decided before resolving the question of immediate possession, we will reverse....Here, Appellees do not claim to hold title under any deed, and the evidence shows that they do not. There is no dispute in the record that the deed conveying the property to Grantors did not convey any interest to Appellees. There is also no dispute in the record that the Lady Bird deed—which had conveyed to Jessica a remainder interest in the property—contained a reservation clause with an unrestricted right to convey the property to a third party. There is also no dispute in the record that Grantors executed a deed conveying the property to the Trustee.... In other words, Appellees are not claiming an ownership interest in the property under any deed....Further, nothing in the record indicates that Appellees had purchased all or part of the property from Grantors such that Appellees had a present, irrevocable ownership interest at the time of the conveyance to the Trustee....Regardless of whether Appellees succeed in the district court suit [as to certain agreements they have alleged exist], nothing in the record before this court raises a dispute about who currently holds title to the property."

Jurisdiction (Receivership, Appellate Attorney Fees)*: Moore v. Allstate*, No. 02-24-00117-CV–"This is the third appeal in this case. Following a determination that it lacked jurisdiction, the trial court denied Appellant Caleb Moore's request for additional attorney's fees associated with defending preceding appeals by Appellee Allstate County Mutual Insurance Company (Allstate). Moore now appeals, and we reverse....Allstate failed to timely pay [a] judgment [on an uninsured/underinsured motorist policy suit brought by Hill, who was involved in a car wreck], and Hill applied for a turnover order and for the appointment of a receiver to collect on the judgment. The trial court granted Hill's application and appointed Caleb Moore (Moore) as receiver....Moore argues that the trial court erred by concluding that it did not have jurisdiction to make a ruling on his request for appellate attorney fees associated with the receivership. We agree with Moore—the trial court had continuing jurisdiction. We confine the scope of our discussion to the issue of the trial court's jurisdiction and do not address whether Moore is entitled to additional attorney's fees....Here, although the judgment was duly satisfied because Allstate remitted payment to Moore, the trial court did not conclude the receivership.... As a result, when the trial court granted Moore's request for fees, it did not forfeit its jurisdiction nor foreclose its ability to consider his subsequent requests for post-judgment participation....Beyond that, new circumstances related to the receivership—a second appeal—required Moore's response and participation....Likewise, our mandate did not address the costs of Moore's receivership, and we conclude that the trial court retained jurisdiction to grant relief on this issue."

Mandamus (Failure to Rule)*: Van Shaw*, No. 02-25-00024-CV–"Relator Van Shaw has filed a petition for writ of mandamus to compel respondent the Honorable Thomas Lowe, Judge of the 236th District Court of Tarrant County, to rule on five pending motions that respondent heard in January, April, and December 2024 but on which he still has not signed a written order. We conditionally grant relief and direct respondent to sign, and produce to this court, written orders for all five motions....Appellate courts have granted mandamus relief when trial courts have not ruled for anywhere from six to eleven months....Despite the claims in Shaw's petition, Shaw's own record indicates that the trial court may have already ruled on "all the motions" subject to this proceeding. Regardless, if the trial court has ruled on all or any of the motions, no written orders have been provided. As the trial is set for February 3, 2025, and because the act of committing an order to writing and signing it is a ministerial duty of the trial court, we hold that respondent in this instance has had a reasonable amount of time to both rule on the motions and provide written orders of the rulings, and that mandamus relief is thus appropriate."

Parental Child Relationship (Grandparent Possession and Access, Standing)*: In re A.G.*, No. 02-24-00548-CV–"In this mandamus action, A.G. (Mother)... complains of the trial court's denial of her plea to the jurisdiction, which alleged that Y.P. (Grandmother) lacked the required standing to file a suit for possession of and access to J.G. and A.G. Mother argues that the trial court abused its discretion by denying her plea because Grandmother did not meet her burden to show standing under any provision of the Family Code. We conditionally grant Mother's mandamus

petition." Because Mother is still alive, Grandmother does not having standing under Family Code Section 102.003(a)(13). Also, because "none of these concerns [of Grandmother in her unsworn declaration concerning the children's mental health if she wasn't appointed sole managing conservator or have possession and access, what would happen if Mother's previous husband contacted the children again, and that the children didn't bathe once when they visited Mother]—two of them speculative and one past—constitute either a specific risk or one that existed when the petition was filed; thus, they are insufficient to overcome the fit-parent presumption....Grandmother did not show standing under Section 102.004." "We [also] conclude that Grandmother did not show sufficient supporting facts to rise to the level of significant impairment....Having appropriately considered the pleadings and evidence, we hold that Grandmother did not, as a matter of law, establish standing under Section 153.432 to assert her claim for possession of and access to the children."

Summary Judgment (Contract, Ambiguity, Parol Evidence, Fact Issue)*: McDevitt v. Hill*, No. 02-24-00020-CV–"This is an appeal from summary judgment granted in favor of Appellee Sarah Hill's breach of contract suit against Appellant David McDevitt. In two issues, Appellant argues that the trial court erred by (1) granting summary judgment because issues of fact existed regarding the loan's repayment terms and maturity date and (2) awarding attorney's fees for work performed on nonsuited claims and applying an incorrect pre-judgment interest rate. We reverse on Appellant's first issue.

- Ambiguity: "We begin our analysis with the Acknowledgment's express language. Looking at the four corners of the Acknowledgment, it contains the amount to be loaned; however, the loan's maturity date, interest rate, and repayment terms are absent. As such, there are uncertainties in the interpretation of the missing terms in the Acknowledgment. Only where a contract is ambiguous may a court consider the parties' interpretation and admit extraneous evidence to determine the true meaning of the instrument....On its face, the Acknowledgment has ambiguities because it is silent on several material terms. Appellee argues that a default contract interpretation rule should apply, which makes the loan due on demand....We have held that if no time for payment of a debt is stated in a note, then it is a demand note."
- Parol Evidence: "Appellant's evidence in our case contradicts the loan being due on demand by providing that the repayment was tied to specific liquidation events. Next, we look at whether such evidence can be considered. Undeniably, the parol evidence rule precludes incorporation of any prior or contemporaneous agreements that address the same subject matter and are inconsistent with the written contract.... However, in this case, Appellant's declaration does not vary from the language on the face of the written Acknowledgment but provides context....evidence of oral discussions between Appellant and Appellee outside of the Acknowledgment of how and when the loan would be repaid can serve to inform the Acknowledgment's text. 2014 WL 1272220 at *3. Thus, we conclude that Appellant's declaration does not create ambiguity or variability but provides surrounding facts and circumstances for the complete agreement and the parties' true intentions without running afoul of the parol evidence rule."
- Fact Issue: "Having held that, in this instance, Appellant's summary judgment evidence does not violate the parol evidence rule, his declaration controverts Appellee's characterization of the Acknowledgment....If a contract is subject to two or more reasonable interpretations after applying the pertinent rules of construction, the contract is ambiguous and creates a fact issue on the parties' intent....Here, we are left with two parties who have divergent but reasonable interpretations of the Acknowledgment's material terms. Accordingly, there remains a fact issue."

All for now. Y'all stay safe and well. Have a great weekend!

Yours,

Steve Hayes

Law Office of Steven K. Hayes
777 Main Street, Suite 340
Fort Worth, Texas 76102
shayes@stevehayeslaw.com; 817/371-8759; www.stevehayeslaw.com