Steven K. Hayes

Attorney at Law

777 MAIN STREET
PHONE: 817/371-8759 SUITE 600 shayes@stevehayeslaw.com
FAX: 817/394-4436 FORT WORTH, TEXAS 76102 www.stevehayeslaw.com

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Dear Friends:

I missed a week or two, and the Fifteenth continued to issue opinions, so there are a few here today.

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

Discovery (Depositions, State)
Plea to the Jurisdiction (Bar Admission, Equal Protection, Inference of Discrimination, Waiver)
Plea to the Jurisdiction (Contract)
Plea to the Jurisdiction (Law of the Case)
Plea to the Jurisdiction (Sovereign Immunity, Whistleblower Act, Civil Rights Title VII Retaliation)
Plea to the Jurisdiction (Sovereign Immunity, Crime Victims Compensation Act)
Plea to the Jurisdiction (Pet Seizure and Euthanasia, Health and Safety Code, Cash Appeal Bond)
Vehicle Dealer Licensing (Agency Rehearing, Due Process, Misrepresentations of Judicial Review Procedures, Remand)

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

Discovery (Depositions, State): *In re Google, LLC*, 15-24-00087-CV, 15-24-00090-CV– "Relator Google, LLC has filed two petitions for writ of mandamus, complaining that trial courts in Midland County and in Victoria County abused their discretion by failing to compel the deposition of the State of Texas in

enforcement actions against Google.... In the Midland case, Google also sought to compel the deposition of the Office of the Attorney General in the alternative. Because Google is entitled to depose the State of Texas, we grant relief in part in both proceedings to allow a deposition of the State to go forward, while reserving for the respective trial courts to decide the scope and parameters of those depositions. We also deny Google's alternative request in the Midland case to compel a deposition of the Office of the Attorney General."

> Dissent: "For over a century, no rule of procedure was ever written or construed to authorize oral depositions of "the State of Texas." Until recently, no one ever tried. I would not recognize such an innovation here. Every topic sought in the proposed deposition must be disclosed under Rule 194 without a request from anyone, without any work-product objection, and without subjecting "the State" or its attorneys to cross-examination under oath.... Since Google has other adequate legal remedies without this unprecedented deposition, I would deny relief....The Court orders a deposition of the State because Rule 199 "by its very terms" provides that a party may take the testimony of "any person or entity."... But the use of the word "any" here is ambiguous in scope and breadth; it can mean "a" (I don't have any choice), "some" (I don't have any more witnesses), or "every" (any lawyer should know that). Yet we "must avoid taking literalism too literally and adopting a wooden construction foreclosed by the legal text's context."..... In the context here, "any" cannot mean "every" because there have always been rules barring many kinds of depositions an eager attorney might request. For example, Texas law does not allow a party to depose apex officials,... or opposing counsel,... or consulting experts,... or persons facing criminal charges on the same facts,… at least not without prior proof of necessity or some other exception. The general rule stated in Rule 199 has never been construed to overrule these and other specific historical exceptions to it."

Plea to the Jurisdiction (Bar Admission, Equal Protection, Inference of Discrimination, Waiver)*: Members of the Texas Board of Law Examiners v. Sonnenschein*, No. 15-24-00001-CV-"The question here is whether an applicant for admission to the Texas Bar, who was not qualified under Texas rules to sit for the bar exam or for admission without it, must nevertheless be allowed to do so because two years earlier the Board granted a waiver to an applicant of a different race who was

unqualified for the same reasons. Because no equal protection claim arises from application of uniform state rules when no evidence raises an inference of discrimination, we grant the Board's plea to the jurisdiction and render judgment dismissing the case....[A] a suit alleging the Board violated a claimant's constitutional rights "is a sufficient ultra vires allegation to survive a plea to the jurisdiction."…. But because "immunity from suit is not waived if the constitutional claims are facially invalid," we must examine the merits of Sonnenschein's claims to the extent necessary to determine whether they are facially invalid."

Subsequent Plea to the Jurisdiction: "Sonnenschein challenges our jurisdiction to hear the Board's objection to jurisdiction, alleging that it raises the same grounds as in the prior appeal and thus is barred as "substantively a motion to reconsider." When a trial court denies a plea to the jurisdiction, a 20-day deadline for filing an interlocutory appeal applies,... and cannot be extended by moving to reconsider or filing an amended plea that is substantively the same.....in this case, the Board timely and successfully pursued the first appeal [from the trial court's denial of its plea to the jurisdiction], Sonnenschein was ordered [by the court of appeals on the appeal of that denial] to supplement her response on remand, and the Board timely filed this appeal arguing her supplementary pleadings and evidence are insufficient [and its plea to the jurisdiction on remand should have been granted]. We have jurisdiction to consider whether the district court erred a second time on a different record based on different pleadings and evidence."

Equal Protection (approved and accredited law school): "Because Sonnenschein graduated from a law school that was neither ABA-approved nor accredited by California's accrediting agency, the Board did not deny her equal protection of the law under this [Texas] Rule" that "specifically require agency accreditation, not mere "registration" or legal permission to take an out-of-state exam."

Equal Protection (online learning): "Rule 13 governing "Applicants from Other Jurisdictions" does [;distinguish between in-person and online learning for law school graduates]; it contains a blanket exclusion of legal degrees earned primarily online or through distance-learning conducted from schools outside Texas....Reading the online-disqualifier in context, we agree with the Board that it applies to all law degrees from jurisdictions outside Texas, whether domestic or foreign. The Board did not deny Sonnenschein equal protection of

the law under this Rule because her legal degree from an "other jurisdiction" took place primarily online."

Waiver: "Sonnenschein's amended petition alleged that the Board unconstitutionally denied her request for a waiver despite previously granting waivers to seven white graduates of unaccredited out-of-state law schools. But she was not "similarly situated" to those applicants, as the record shows all but one of them attended out of- state in-person law schools, not out-of-state online schools that fall within the disqualifier in Rule 13.... The Board also introduced evidence of fourteen requests for waivers from out-of-state graduates of online and/or unaccredited law schools since 2004, all but one of which were denied or withdrawn. Sonnenschein pleaded and the Board conceded that one white male graduate of an unaccredited, online school was granted a waiver in 2017, two years before her waiver was denied. The Board alleged this was simply a mistake. On remand, Sonnenschein presented no evidence suggesting that explanation was a pretext for discrimination, and for several reasons we believe the record does not support such an inference here."

Plea to the Jursidiction (Contract, Services)*: Rio Vista v. Johnson County SUD*, No. 15-24-00065-CV-"This is an interlocutory appeal from the trial court's order denying the City of Rio Vista's plea to the jurisdiction. The Johnson County Special Utility District sued the City for breach of a contract settling water service boundary disputes between the parties. The City argues, among other things, that the contract does not waive the City's immunity because it is not a contract "stating the essential terms of the agreement for providing goods or services" to the City. Tex. Loc. Gov't Code § 271.151(2)(A). We agree that the parties' agreement does not fall within the scope of Section 271.152's waiver of immunity. We therefore reverse the trial court's order and render judgment dismissing the District's claims."

Contract (Services, Waiver of Immunity): "The District's sole basis for claiming waiver of the City's governmental immunity is that its agreement with the City waives the City's immunity under Chapter 271 of the Texas Local Government Code....A "contract subject to this subchapter" [and waiving governmental immunity] means "a written contract stating the essential terms of the agreement for providing goods or services to the local governmental entity that is properly executed on behalf of the local governmental entity." Id.

§ 271.151(2)(A)....The District argues that both (1) the emergency connection provision and (2) the notice and consent provision of the Interlocal Agreement qualify as "services" to the City. We disagree....[But] the second sentence [in the provision] states...an emergency connection has been in place "for many years." This provision does not promise any construction or water services; the only "benefit" stated is that the two parties "will work together to plan" for an updated connection in the future. Such an agreement is unenforceable under Chapter 271 because it lacks essential terms....We agree with the City that the notice and consent provision does not qualify as a "service" as contemplated under Chapter 271. As an initial matter, the notice and consent provision applies equally to both parties, and therefore the notice requirement is not necessarily a service that the District provides to the City....Further, any advance notice the District would provide to the City...in the future is, at best, an attenuated, indirect benefit of the parties' agreement settling their 2005 boundary dispute. Such an indirect benefit is insufficient to waive immunity."

Plea to the Jurisdiction (Law of the Case)*: Eriksen v. Nelson*, No. 15-24-0001-CV-59–"This is the third appeal arising from a suit brought by a group of candidates, including appellant Roy Eriksen, challenging a provision in the Texas Election Code that requires political candidates nominated by the convention process to either pay a filing fee or submit a signature petition in order to appear on the general election ballot (the "filing-fee-or-petition requirement"). On appeal, Eriksen contends that the trial court erred in granting the Secretary of State's plea to the jurisdiction and dismissing his suit. Applying the doctrine of law of the case, we conclude that Eriksen has failed to plead a claim for which sovereign immunity is waived. Consequently, we affirm the trial court's judgment."

Plea to the Jurisdiction (Sovereign Immunity, Whistleblower Act, Civil Rights Title VII Retaliation)*: Texas A & M v. Reeves*, No. 15-24-00069-CV–"This interlocutory appeal arises from a dispute about whether the Legislature has waived immunity for an employee to sue a state university for alleged retaliation in response to reporting wrongful conduct in the workplace.

Appellees Jeffrey Richmond Reeves and Tom David Grimm, appearing pro se, brought suit alleging that Appellant Texas A&M University Department of Transportation, Parking Services Department ("University") violated the Texas Whistleblower Act and Title VII of the Civil Rights Act when it retaliated against them for reporting misconduct by University personnel.

The University filed a plea to the jurisdiction seeking to dismiss these and other claims filed by Appellees. The trial court granted the motion as to all of Reeves's claims except the Whistleblower Act and Title VII claims. The record does not reflect that the trial court ruled on the plea as to Grimm's claims. The University then filed this appeal challenging the trial court's denial of its plea as to Reeves's Whistleblower Act and Title VII claims....

Because Reeves's pleadings fail to sufficiently allege facts establishing that the University's sovereign immunity was waived for his Whistleblower Act and Title VII claims, we reverse the trial court's order with respect to those claims. However, because Reeves's pleadings do not affirmatively negate the existence of jurisdiction as to these claims, we remand to the trial court to give Reeves an opportunity to amend his pleadings."

Plea to the Jurisdiction (Sovereign Immunity, Crime Victims Compensation Act)*: Caver v. Attorney General*, No. 15-24-0001-CV-"Appellant Alan Scott Caver sued Appellee Office of the Attorney General of Texas (the "Attorney General"), alleging that the Attorney General improperly denied his request for compensation under the Crime Victims Compensation Act ("CVCA") and bringing other related claims. The Attorney General filed a plea to the jurisdiction seeking to dismiss the case on the ground that sovereign immunity bars Caver's claims. The trial court granted the plea, and Caver filed this appeal challenging the trial court's decision as to the CVCA claim….Because we conclude that Caver has sufficiently demonstrated that the Attorney General's sovereign immunity to suit is waived for his CVCA claim, we reverse the trial court's order granting the Attorney General's plea to the jurisdiction as to that claim and remand to the trial court for further proceedings."

Plea to the Jurisdiction (Pet Seizure and Euthanasia, Health and Safety

Code, Cash Appeal Bond)*: State v. Tabdili*, 15-24-00015-CV–"In this interlocutory appeal, appellant the State of Texas appeals the trial court's denial of its plea to the jurisdiction. After a Travis County Justice Court ordered appellee Hamid Tabdili's dog to be humanely euthanized because the dog caused serious bodily injury to a person, Tabdili attempted to appeal to the Travis County Court at Law by filing a civil cash appeal bond (Appeal Bond). The State filed a plea to the jurisdiction in which it alleged the County Court at Law lacked jurisdiction because Tabdili failed to also file a notice of appeal as required by section 822.0424 of the Health and Safety Code. We hold that Tabdili's cash appeal bond was a bona fide attempt to invoke the appellate jurisdiction of the County Court at Law and affirm the trial court's denial of the plea to the jurisdiction."

Vehicle Dealer Licensing (Agency Rehearing, Due Process, Misrepresentations of Judicial Review Procedures, Remand)*: AFLOA v. Texas Department of Motor Vehicles*, No. 15-24-00003-CV–"Appellant AFLOA, LLC appeals from a final [trial court] order affirming the Texas Department of Motor Vehicles (DMV) October 18, 2022 Order on Rehearing. See Tex. Occ. Code § 2301.751. AFLOA requests that we reverse the trial court's order affirming the DMV's order revoking its vehicle-dealer license and assessing a civil penalty as sanctions for violations of applicable laws and regulations....We hold that [in order to give the trial court jurisdiction to review the DMV's final order] AFLOA was required to file a motion for rehearing with the DMV [after the DMV modified its earlier order pursuant to a motion for rehearing AFLOA filed as to that earlier order] as a prerequisite to seeking judicial review of the DMV's final order. We further hold that the DMV's misrepresentation of the proper procedures to seek judicial review of an adverse order [by sending a letter which misled AFLOA to believe the DMV Order on Reharing would become final unless AFLOA appealed to the trial court in 30 days] violated AFLOA's right to due process under these circumstances. We therefore vacate the DMV's order and remand to the agency to afford AFLOA an opportunity to seek rehearing."

All for now. Y'all stay safe and well and have a good week.

Best regards.

Yours,

Steve Hayes

Law Office of Steven K. Hayes
500 Main Street
Suite 340
Fort Worth, Texas 76102
Phone: 817/371-8759
E-mail: shayes@stevehayeslaw.com
www.stevehayeslaw.com