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From: Law Office of Steven K. Hayes <shayes@stevehayeslaw.com>
Sent: Monday, March 10, 2025 5:24 PM
To: shayes@stevehayeslaw.com
Subject: Second Court Newsletter: New Opinion Summary from the Court, New Case Summaries

March 10, 2025

Dear Friends:

Sorry for the delayed release. Last Friday's work was put on hold so I could participate and speak in the SBOT MCLE *Becoming An Appellate Lawyer* Practicum in Houston. I had a lot of fun, and really enjoyed the question and answer sessions. If SBOT MCLE reprises this course, or its sister course about becoming a trial lawyer, I highly recommend them.

The Court had another busy week this week, on all sorts of rather interesting, and sometimes tragic, stuff:

Summary by the Court of a recent opinion

- Search Warrant (Probable Cause, Affidavit, Conclusory)

Recent opinion issued by the Court in a civil case covers the following issues

- Arbitration (Bank Account Ownership, Settlement)
- Family Law (Annulment, Legal and Factual Sufficiency, Attorney Fees, Stipulation, Reasonable and Necessary)
- Negligence (Fire Alarm/Suppression Systems, Jury Verdict, JNOV, New Trial)
- Parent Child Relationship (Modification, Primary Residence, Social Media Posts, Preservation, New Trial)
- Parent Child Relationship (Mandamus, Parentage, Genetic Testing, Same-Sex Divorce, Hearing)
- Parental Rights Termination (Continuance, Factual Insufficiency)

Summary by the Court of a recent opinion (footnotes omitted in all summaries):

Search Warrant (Probable Cause, Affidavit, Conclusory):

Staley v. State, No. 02-23-00053-CR (Mar. 6, 2025) (Kerr, J., joined by Womack, J.; Walker, J., concurs with opinion).

Held: Because the search-warrant affidavit at issue did not allege any factual connection—a nexus—between the offense under investigation and any of Appellant's electronic devices, the warrant affidavit lacked probable cause for the seizure and search of Appellant's electronic devices, and the trial court erred by denying Appellant's pretrial motion to suppress evidence discovered on those devices. The trial court's failure to grant Appellant's suppression motion was not harmless error.

Concurrence: Sometimes following the law can lead to a seemingly unjust result. The relevant law is unequivocal in the protection it affords to the citizenry and in the appropriate process it demands for law enforcement's search and seizure. Conclusory, boilerplate language in a search-warrant

affidavit—without specific facts that connects the item to be searched to the alleged offense—is insufficient to establish probable cause.

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):

Arbitration (Bank Account Ownership, Settlement)*: Frost Bank v. Sturdi Packaging*, No. 02-23-00383-CV–"This is an interlocutory appeal from an order denying arbitration in a lawsuit that arose from a dispute regarding the ownership of Sturdi Packaging, Inc. and its accounts with Frost Bank and Frost Brokerage Services, Inc. (collectively, Frost).
After receiving competing claims from Craig McAlpine and Chemcraft (Pty) Ltd. regarding Sturdi's ownership, Frost froze Sturdi's accounts and declared that they would "remain frozen until Frost receive[d] a court order" resolving the dispute or the parties reached an agreement regarding the accounts' ownership. In an effort to resolve the dispute to Frost's satisfaction, Sturdi and its successor in interest, Sturdi Forest, L.P. (collectively, the Sturdi Appellees), sued Chemcraft.... Although the Sturdi Appellees' original petition did not assert any substantive claims against Frost, it named both Frost Bank and Frost Brokerage as defendants "in rem only." Chemcraft, acting both on its own behalf and derivatively on behalf of Sturdi, filed counterclaims against Sturdi Forest and third-party claims against Craig.
After a successful mediation, the Sturdi Appellees, Chemcraft, and Craig announced that they had reached a confidential settlement agreement. But this settlement agreement did not end the litigation; it merely shifted its focus. Frost learned that, despite the settlement, the Sturdi Appellees did not intend to seek the dismissal of the entire lawsuit; rather, they planned to assert substantive claims against Frost. As a result, Frost anticipatorily filed a motion to compel arbitration and, subject thereto, an original counterclaim and crossclaim for declaratory relief. Then, as Frost had anticipated, the Sturdi Appellees amended their petition to assert claims against Frost. They later amended it again to assert new claims against Chemcraft for breach of the settlement agreement and fraud."
After a hearing, the trial court signed an order denying Frost's motion to compel arbitration of (1) the Sturdi Appellees' claims against Frost and (2) Frost's claims against the Sturdi Appellees and Chemcraft. Because the arbitration provision at issue covers all of these claims and parties and because Frost has not waived the right to compel arbitration, we will reverse the trial court's order."

- Direct Benefits Estoppel: "Having rejected Chemcraft's arguments that it lacked actual knowledge of the BAA and did not seek or obtain direct benefits thereunder, we conclude that direct-benefits estoppel applies. Therefore, the trial court's order denying arbitration cannot be upheld on the grounds that Chemcraft was not subject to the BAA's arbitration provision."

Family Law (Annulment, Legal and Factual Sufficiency, Attorney Fees, Stipulation, Reasonable and Necessary)*: Singh v. Kaur*, No. 02-24-00023-CV–"On the basis of fraud, the trial court annulled the marriage of Appellant Rupinder Singh (Husband) and Appellee Manpinder Kaur (Wife). In two issues on appeal, Husband complains that the trial court abused its discretion because (1) the evidence was legally and factually insufficient to support the annulment and (2) the evidence was insufficient to support the reasonableness of the attorney's fees awarded to Wife. We affirm in part and reverse in part."

- Attorney Fees (Stipulation): "[I]n the hearing, the trial court stated that Husband's attorney stipulated to the Wife's attorney's fees being reasonable and necessary. However, in our review of the entire record, we do not find such a stipulation. It appears that Husband's attorney indeed agreed to the fee amount and the qualifications of Wife's attorney,... but he did not expressly stipulate whether the fees were reasonable and necessary. It was the trial court—not Husband's attorney—that stated the fees were purportedly reasonable and necessary.....Just because the parties may have stipulated that Wife's attorney incurred "just over $23,000" in fees does not mean that they stipulated to the reasonableness of the

attorney's fees....There was no evidence offered, however, regarding whether the fees incurred by Wife's attorney were reasonable and necessary. The issue is not insufficient documentation of the expended hours and incurred cost, but rather the reasonableness of the value of the requested fees. Here, the evidence does not provide insight into the expertise required for the services; the fee customarily charged for similar services; the time limitations; or the experience, reputation, and ability of the lawyer.

Negligence (Fire Alarm/Suppression Systems, Jury Verdict, JNOV, New Trial)*: Ames, et al, v. FSC Rosehill*, No. 02-24-00260-CV–"After a fire at the Rose Hill Apartments [caused by a lightning strike], tenants of the apartments filed suit against Appellees FSC Rosehill Associates, LLC, Westwood Residential Company, and Taylor Land Two Company for their damages. The trial court dismissed all the claims of a group of Plaintiffs and dismissed the remaining Plaintiffs' claims for negligence per se, gross negligence, premises liability, and mental anguish, leaving only a negligence claim. A jury found in favor of Appellees on Appellants'... negligence claim, and the trial court rendered judgment in accordance with the jury's verdict. Appellants filed a motion for judgment notwithstanding the verdict and a motion for new trial, and the trial court denied both motions. In two issues, Appellants argue that the trial court erred by denying their motions. We affirm."

Parent Child Relationship (Modification, Primary Residence, Social Media Posts, Preservation, New Trial)*: O.S and U.S.*, No. 02-23-00158-CV–"Appellant A.H. (Mother) and Appellee I.S. (Father) divorced in 2014, and they were appointed as joint managing conservators of their two sons—O.S. (Owen) and U.S. (Uriah)—with Mother having the exclusive right to determine the children's primary residence. In the years that followed, Mother remarried, then after separating from her new spouse, she and the children began living with L.W.B. (Partner).... Both Mother and Father petitioned to modify the custody order based on the changed circumstances, and the trial court—after hearing evidence of each parent's alleged misdeeds, of Owen's medical issues, of Uriah's educational arrangements, and of Partner's background and social-media posts—found that the children's best interest would be served by giving Father the exclusive right to decide their primary residence, their education, and their invasive medical procedures.
Mother challenges this modification, raising three issues. Her primary complaint is that there was insufficient evidence to support the modification because no reasonable factfinder could have believed Father or taken Partner's social-media posts seriously. Therefore, Mother reasons, the modification must be attributable to the trial court's unconstitutional "punishment" of her based on Partner's transgender identification and exercise of his right of free speech. But such allegations merely seize on a tangential hot-button issue in an attempt to avoid the trial court's credibility determinations. The trial court heard conflicting evidence of two imperfect parents, and it acted within its discretion based on its assessment of the witnesses' credibility. As for Mother's remaining two appellate issues, one—a challenge to the trial court's time-management rules—is not preserved, and the other—a challenge to the denial of Mother's motion for new trial—lacks a legal basis [since "her evidence was not newly discovered," and "much of [it] was inadmissible...and...would have been inadmissible even it if had been offered at the original trial]. Accordingly, we will affirm."

Parent Child Relationship (Mandamus, Parentage, Genetic Testing, Same-Sex Divorce, Hearing)*: C.B.*, No. 02-25-00026-CV–"This original proceeding arises from a same-sex divorce that includes a suit affecting the parent–child relationship (SAPCR).... Relator C.B.... filed this original proceeding seeking mandamus relief on due-process grounds from the trial court's orders (1) requiring genetic testing to determine the parentage of R.R.B., a child borne by H.B. (Mother) during her marriage to Relator; (2) adjudicating R.R.B.'s parentage; and (3) dissolving temporary orders governing Relator's rights to possess and access R.R.B. Although we conclude that Relator is not entitled to mandamus relief from the trial court's order requiring genetic testing, we grant her mandamus relief from the order adjudicating parentage and dissolving the temporary orders, and we direct the trial court to hold a properly noticed hearing on these issues."

Parental Rights Termination (Continuance, Factual Insufficiency)*: L.I.*, No. 02-24-00445-CV– "Appellant I.I. (Mother) appeals from an order terminating her parental rights to L.I. (Lacy).... In two issues, Mother argues that (1) the trial court abused its discretion by denying her motion for continuance and (2) the evidence was factually insufficient to support the trial court's best-interest finding. We will affirm."

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

Yours,

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