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From: Law Office of Steven K. Hayes <shayes@stevehayeslaw.com>
Sent: Friday, April 4, 2025 4:00 PM
To: shayes@stevehayeslaw.com
Subject: Second Court Newsletter: Appellate Hall of Fame, A New Summary From the Court, and New Case Summaries

April 4, 2025

Dear Friends:

> ***ANNOUNCEMENT!*** The Appellate Section of the State Bar of Texas is now accepting nominations for the Texas Appellate Hall of Fame. The Hall of Fame posthumously honors advocates and judges who made a lasting mark on appellate practice in the State of Texas. Nominations should be submitted in writing to Jennie Knapp (because some folks' spam filters kick out emails with previously unseen email addresses, replace the following " at " with "@": jennie.knapp at uwlaw.com), and copying the Appellate Section (same rule: txappellatesection at gmail.com) no later than Friday, May 30, 2025.
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> A person is eligible for consideration as a nominee to the Hall of Fame if they have been deceased for at least one year prior to May 30, 2025. Nominations in prior years will not carry over. Nominations should include the nominator's contact information, the nominee's bio or CV, the nominee's photo if available, and all the reasons for the nomination (including the nominee's unique contributions to the practice of appellate law in the State). The more comprehensive the nomination materials, the better. All material included with any nomination will be forwarded to the voting trustees for their consideration in deciding whom to induct as part of this year's Hall of Fame class.
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> Nominations will be considered based upon some or all of the following criteria: written and oral advocacy, professionalism, faithful service to the citizens of the State of Texas, mentorship of newer appellate attorneys, pro bono service, participation in appellate continuing legal education, and other indicia of excellence in the practice of appellate law in the State of Texas.
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> For questions or concerns, email Jennie Knapp (and cc the Appellate Section).

The Court continues producing opinions at a steady pace.

Summary by the Court of a recent opinion

- Criminal (Due Process, Waive Court Reporter Record, Preservation))

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

- Easements (Title, Co-Ownership, Merger, Contemporaneous Transfer Rule, Special Exceptions to Counerclaim)
- Insurance (Premiums, Impossibility, Counterclaims, Good Faith and Fair Dealing, Fraud)
- Parental Rights Termination (Best Interest, Sufficiency)

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

Criminal (Due Process, Waive Court Reporter Record, Preservation):

Morales v. State, No. 02-24-00065-CR (Mar. 27, 2025) (Sudderth, C.J., joined by Kerr and Birdwell, JJ.).

Held: Appellant's complaint that Rule 13.1 of the Texas Rules of Appellate Procedure violates the Fourteenth Amendment's due process clause by allowing a defendant to waive his right to have a court reporter attend and make a record of a punishment hearing was both unpreserved and meritless. Appellant failed to preserve his complaint by objecting to the court reporter's absence on due process grounds (or any other grounds) either at the punishment hearing or in a motion for new trial. Further, because Texas courts have consistently held that the right to have a court reporter attend a court session and make a record of the proceedings is one that may be forfeited, Rule 13.1 does not offend the Fourteenth Amendment by allowing parties to affirmatively waive this right.

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):

Easements (Title, Co-Ownership, Merger, Contemporaneous Transfer Rule, Special Exceptions to Counerclaim)*: Garrick v. Stone*, No. 02-22-00511-CV–"This case involves a dispute concerning title to real property and the validity of certain easements. The dispute arose when Appellant Garrick D. Brown constructed a fence around a strip of land across which Appellee Mathew Robert Stone claimed an easement (the Alleged Easement). Stone sued Brown, seeking both equitable relief—an order requiring Brown to take down the fence—and damages. As the litigation progressed, Stone's claims evolved such that he eventually sought enforcement of various other easements and a declaratory judgment establishing his co-ownership of the Alleged Easement land. Brown asserted various affirmative defenses and counterclaims based on his argument that the easements were invalid because, among other things, they had been extinguished by merger.

The trial court dismissed all of Brown's counterclaims through summary judgment and special exceptions. The trial court also granted Stone summary judgment on his title and easement claims. A jury trial was held on Stone's remaining claims, including nuisance. The jury found in Stone's favor on his nuisance claim and awarded him $6,000 in economic damages plus an additional $250,000 for mental anguish. The trial court signed a final judgment based on the jury's verdict and its prior summary-judgment rulings. In addition to damages, the final judgment granted Stone a permanent injunction granting him full access to the Alleged Easement and prohibiting Brown from building any permanent structures that would obstruct Stone's use of the easement....

On appeal, Brown argues, inter alia, that the trial court erred by granting Stone summary judgment on his title and easement claims. Specifically, he asserts that the trial court erred by concluding (1) that Stone and Brown were co-owners of the Alleged Easement land and (2) that the Alleged Easement had not been extinguished by merger. Because we agree that these conclusions were erroneous, we reverse the trial court's final judgment, summary judgment, and order granting Stone's special exception to Brown's first supplemental counterclaim; render judgment in Brown's favor on the merger issue; and remand the case for a new trial on the remaining issues."

> **Co-ownership**: "Stone's argument that he and Brown are co-owners of the Alleged Easement land is based on the flawed premise that Washington Mutual (through whom Brown claims title) and Accredited (through whom Stone claims title) became co-owners when they each took assignment of a vendor's lien covering this parcel. But this proposition—for which Stone cites no authority—runs counter to established principles governing liens and other interests in property [because the deed, deed of trust, and vendors lien under which Washington Mutual claimed were dates, signed and recorded and few days earlier than the same type of documents under which Accredited claims, .and the contemporaneous transfer rule does not apply because]....the instruments in question

were not reciprocal, nor did they expressly reference or incorporate one another. Indeed, nothing in the record suggests that the instruments' signatories intended them to be treated as part of the same transaction....Washington Mutual...held the superior title in the Alleged Easement Land....and Accredited's successor-in-interest was not vested with title to any interest in the Alleged Easement land when it foreclosed its lien...and could not have transferred any interest to...the party through whom Stone claimed."

Special Exceptions to Counterclaim: "Because the trial court sustained Stone's special exceptions based upon mootness—a defect of a type that amendment cannot cure—it was not required to give Brown an opportunity to replead before dismissing the counterclaim. Under these circumstances, Brown was not required to file a motion for new trial to preserve error....Because the trial court sustained Stone's special exceptions based on its previous ruling that Stone had an ownership interest in the Alleged Easement land—a ruling that we have determined to be erroneous—this ruling was likewise erroneous."

Merger: When a prior owner under whom Brown claims "acquired all of the lots by vendor's lien deed, they came into a single ownership" and the easements were extinguished, because "the merger doctrine as applied to easements is concerned with unification of ownership of separate parcels, not the unification of various estates within the same parcel."

Insurance (Premiums, Impossibility, Counterclaims, Good Faith and Fair Dealing, Fraud)*: Imperial Charters v. Redwood Fire*, No. 02-24-00237-CV–"After Appellant Imperial Charters, LLC failed to pay premiums on an auto insurance contract in 2020, Appellee Redwood Fire and Casualty Insurance Company canceled the policy and, in late 2022, sued Imperial Charters for breach of contract. Imperial Charters responded by asserting the affirmative defense of impossibility of performance due to COVID-19... and—based on Redwood's crediting rather than refunding certain monies—counterclaims for (1) breach of the contractual duty of good faith and fair dealing and (2) fraud. Later, in early 2024, Redwood filed a motion for summary judgment on both its claim and on Imperial Charters' counterclaims. The trial court granted Redwood's motion, awarded Redwood damages and attorney's fees, and ordered Imperial Charters to take nothing on its counterclaims.

Imperial Charters appeals. In two issues, it argues that the trial court erred by (1) granting summary judgment on Redwood's breach of contract claim because there was a fact issue on whether performance was impossible and (2) granting summary judgment that Imperial Charters take nothing on its counterclaims because there was a fact issue on whether Redwood's crediting rather than refunding certain monies constituted a breach of the contractual duty of good faith and fair dealing or fraud. We affirm."

Impossibility: "On appeal, Imperial Charters continues to argue that its business was greatly reduced due to COVID-19.... But Imperial Charters' argument that the destruction or deterioration of a thing necessary for performance excused its contractual obligations fails as a matter of law. Imperial Charters' defense fails because nothing in the insurance contract excused or reduced Imperial Charters' obligation to pay the premiums—not a pandemic, not a downturn in the economy generally, and not a downturn in Imperial Charters' business specifically....Although a global pandemic might not be an occurrence that the parties could have anticipated specifically, a downturn in the economy generally or in Imperial Charters' business specifically was."

Counterclaim (Good Faith and Fair Dealing): "as Redwood pointed out in its motion for summary judgment, the duty of good faith and fair dealing does not apply in the context of calculation or collection of premiums....The duty of good faith and fair dealing arises in the context of claims-handling, not the calculation or collection of premiums."

Counterclaim (Fraud): "Because we can affirm [as to Imperial's Fraud clam] on the [unchallenged on appeal] basis of Redwood's no-evidence grounds, Imperial Charters' challenge to the granting of a traditional summary judgment is moot."

Parental Rights Termination (Best Interest, Sufficiency)*: A.W., M.B., and J.B.*, No. 02-24-00544-CV–"Appellant E.W. (Mother) appeals the trial court's judgment terminating her parental rights to

her three children, A.W. (Anna), M.B. (Max), and J.B. (John).... In a single issue, Mother argues that the evidence was insufficient to support the best-interest finding. We will affirm."

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

Yours,

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