

SUPREME COURT OF TEXAS

Zachry Construction Corporation v. Texas A&M University

Zachry Construction Corp. v. Texas A&M Univ., 298 S.W.3d 617 (Tex. 2009) · No. No. 07-1050 · Decided November 20, 2009

SUMMARY

The Supreme Court of Texas withdrew its order granting review and denied the petitions for review as improvidently granted in litigation arising from the 1999 Texas A&M bonfire collapse. Because Texas A&M University had settled with the plaintiffs, it was a settling person whose proportionate responsibility could be submitted to the jury, making the responsible-third-party issue moot.

CASE DETAILS

COURT	Supreme Court of Texas
JURISDICTION	Texas
DECIDED	November 20, 2009
DOCKET	No. 07-1050
DISPOSITION	dismissed
PROCEDURAL POSTURE	Zachry Construction Corporation and Scott-Macon, Ltd. petitioned for review of a court of appeals judgment reversing the trial court and rendering judgment dismissing all claims against Texas A&M University. While the petitions were pending, Texas A&M settled with the plaintiffs, making it a settling person whose responsibility was required to be submitted to the jury under Texas law. The Supreme Court of Texas withdrew its order granting review as improvidently granted and denied the petitions for review.
PRECEDENTIAL VALUE	Published precedential opinion, limited to the mootness-based disposition and statutory effect of settling-person status; the court did not decide the merits of the sovereign-immunity or responsible-third-party issue.
PARTIES	Zachry Construction Corporation, Scott-Macon, Ltd. v. Texas A&M University

TOPICS

- mootness
- appellate procedure
- civil procedure
- personal injury
- wrongful death

PRACTICE AREAS

civil procedure

appellate procedure

construction law

personal injury

wrongful death

QUESTIONS PRESENTED

1. Whether Texas A&M University's percentage of responsibility had to be submitted to the jury as a responsible third party despite its sovereign-immunity objections.
2. Whether the issue became moot after Texas A&M settled with the plaintiffs and became a settling person whose percentage of responsibility was required to be determined by the jury.

HOLDINGS

1. Because Texas A&M became a settling person, the issue of whether it should be submitted to the jury as a responsible third party was moot; the Supreme Court therefore withdrew its order granting review as improvidently granted and denied the petitions for review without reaching the merits of the court of appeals' decision.

KEY QUOTATIONS

“Accordingly, without reference to the merits of the court of appeals' decision, we withdraw our order granting the petitions as improvidently granted and deny the petitions for review.” (298 S.W.3d at 618)

FACTUAL BACKGROUND

The case arose from the 1999 collapse of the Texas A&M bonfire structure, which injured several students and killed others. Injured students and family members of deceased students sued Texas A&M University and entities involved in planning and constructing the structure, including Zachry Construction Corporation and Scott-Macon, Ltd. The plaintiffs later settled with and dismissed their claims against Texas A&M, changing the University's status to that of a settling person under Texas proportionate-responsibility law.

PROCEDURAL HISTORY

The plaintiffs sued Texas A&M University and other entities following the 1999 bonfire collapse. After the plaintiffs nonsuited their claims against Texas A&M, Zachry and Scott-Macon sought to have the University designated as a responsible third party for allocation of responsibility. The trial court rejected Texas A&M's sovereign-immunity arguments, but the court of appeals reversed and rendered judgment dismissing all claims against the University. During review in the Supreme Court of Texas, Texas A&M entered into a master settlement agreement with the plaintiffs, rendering the responsible-third-party issue moot.

DISPOSITION

dismissed

OPINION

PER CURIAM.

298 S.W.3d 617 (2009) ZACHRY CONSTRUCTION CORPORATION, et al., Petitioners, v. TEXAS A & M UNIVERSITY, Respondent. No. 07-1050. Supreme Court of Texas. Argued September 8, 2009. Decided November 20, 2009. Ben Taylor (argued), Michael C. Steindorf III, J. Jeffery Richardson, Fulbright & Jaworski L.L.P., Dallas, TX, Robert D. Brown, Donato Minx & Brown, P.C., Houston, TX, for Zachry Construction Corporation.

Randy A. Nelson, John B. Kronenberger, Thompson Coe Cousins & Irons LLP, Dallas, TX, for Scott-Macon, Ltd. J. Mike Johanson, Chris M. Volf, Johanson & Fairless, LLP, Sugar Land, TX, for Texas Aggie Bonfire Committee. James C. Ho, Solicitor General of Texas (argued), Beth Ellen Klusmann, Assistant Solicitor General, Kristofer S. Monson, Austin, TX, for Texas A & M University.

PER CURIAM. We granted review in this personal-injury and wrongful-death case to determine whether Texas A & M University (TAMU) is a responsible third party whose percentage of responsibility must be submitted to the trier of fact. TEX. CIV. PRAC. & REM. CODE § 33.003(4).[1] The plaintiffs have settled and dismissed their claims against TAMU, and the parties now agree that the trial court may submit TAMU's percentage of responsibility to the jury as a "settling person."

Accordingly, without reference to the merits of the court of appeals' decision, we withdraw our order granting the petitions as improvidently granted. This case arose out of the TAMU bonfire collapse that occurred in 1999. Several injured students and family members of students who were killed in the collapse sued TAMU and others involved in the planning and construction of the bonfire structure, including Zachry Construction Corp. (Zachry) and Scott-Macon, Ltd. (Scott-Macon).

The plaintiffs subsequently non-suited their claims against TAMU, and Zachry and Scott-Macon filed separate cross-actions and third-party petitions seeking to have TAMU designated as a responsible third party so that its percentage of responsibility could be submitted to the jury. Zachry and Scott-Macon contend they did not intend to impose actual party status or liability on the University; rather, they sought to have TAMU listed on the jury verdict form for a determination of its proportionate responsibility.

TAMU challenged its designation as a responsible third party on sovereign immunity grounds. The trial court rejected TAMU's arguments, but the court of appeals reversed and rendered judgment dismissing all claims against TAMU. 236 S.W. 3rd 801. *618 Zachry and Scott-Macon filed petitions for review in this Court. Shortly after briefing on the merits was completed, the University entered into a master settlement agreement with the plaintiffs.

We granted the petitions for review, but before oral argument TAMU filed a motion to dismiss the case as moot. According to TAMU, because the University is now a "settling person," the issue of

whether it will be placed on the jury verdict form is now moot. TAMU's status as a "settling person" is not in dispute. Pursuant to section 33.003(3) of the Texas Civil Practice and Remedies Code, the jury is required to make a determination of proportionate responsibility as to "each settling person."

Therefore, in light of the University's status as a "settling person," and without reference to the merits of the court of appeals' decision, we withdraw our order granting the petitions for review as improvidently granted and deny the petitions for review. Justice WILLETT did not participate in the decision. NOTES [1] Former section 33.003 provides that the trier of fact shall determine the percentage of responsibility of (1) each claimant; (2) each defendant; (3) each settling person; and (4) each responsible third party who has been joined under Section 33.004.

Act of May 4, 1995, 74th Leg., R.S., ch. 136, § 1, 1996 Tex. Gen. Laws 971, 972, amended by Act of June 1, 2003, 78th Leg., R.S., ch. 204, § 3.03, 2003 Tex. Gen. Laws 847, 855 (current version at TEX. CIV. PRAC. & REM.CODE § 33.003). All citations to section 33.003 in this opinion refer to this version of the statute.