

SUPREME COURT OF TEXAS

Delia Pagayon, Michelle Fulton, Alfredo G. Pagayon, Michael G. Pagayon, and the Estate of Alfredo M. Pagayon v. Exxon Mobil Corporation

536 S.W.3d 499 (Tex. 2017) · No. 15-0642 · Decided June 23, 2017

SUMMARY

Justice Boyd concurred in the judgment but declined to join the Court's opinion because it unnecessarily rejected section 317 of the Restatement (Second) of Torts and provided insufficient guidance concerning an employer's duty to control an employee acting outside the scope of employment. The concurrence concluded that Exxon owed no duty under either section 317 or Texas's general duty-balancing test because Exxon neither knew nor should have known of a need to intervene.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Justice Boyd
JURISDICTION	Texas
DECIDED	June 23, 2017
DOCKET	15-0642
DISPOSITION	other
PROCEDURAL POSTURE	Petition for review from the Court of Appeals for the Fourteenth District of Texas. Justice Boyd concurred in the judgment but declined to join the Court's opinion.
PRECEDENTIAL VALUE	Published Texas Supreme Court opinion; the extracted text is a concurring opinion.
PARTIES	Delia Pagayon, Michelle Fulton, Alfredo G. Pagayon, Michael G. Pagayon, The Estate of Alfredo M. Pagayon v. Exxon Mobil Corporation

TOPICS

duty of care negligence vicarious liability personal injury

PRACTICE AREAS

torts

employment law

QUESTIONS PRESENTED

1. Whether an employer owes a duty to control an employee acting outside the scope of employment to prevent harm to a third party under the circumstances presented.
2. Whether the Supreme Court of Texas should reject or adopt section 317 of the Restatement (Second) of Torts as a rule governing an employer's duty to control an employee.

HOLDINGS

1. Under the facts presented, Exxon had no duty to control its employee and prevent the employee from harming a third party.
2. It was unnecessary to decide whether Texas should adopt or reject section 317 because Exxon owed no duty under either section 317 or the general Texas balancing test.

KEY QUOTATIONS

“Exxon thus had no duty under section 317 because it neither knew nor should have known of any “necessity” to intervene and control its employee.” (at 1)

“The Court’s criticisms of section 317 are not trivial, but deciding whether to adopt or reject section 317 is unnecessary here because Exxon owed no duty under either section 317 or the balancing test.” (at 1-2)

“We should strive to define an employer’s duty “by standards sufficiently objective and particular to allow a reasonable assessment of the likelihood that certain behavior may be found to be culpable, and to adjudicate liability with some consistency in the various cases that arise.”” (at 3)

FACTUAL BACKGROUND

The underlying dispute concerned whether Exxon owed a duty to control an employee acting outside the scope of employment in order to prevent injury to a third party. Justice Boyd stated that the events could not even arguably have given Exxon reason to think employee friction might injure store patrons and that the likelihood of the tragic result was slight. The concurrence therefore agreed that Exxon owed no duty under the facts.

PROCEDURAL HISTORY

The case reached the Supreme Court of Texas on petition for review from the Fourteenth Court of Appeals. The provided text is Justice Boyd's concurrence, which agrees with the judgment that Exxon had no duty under the facts to control its employee and prevent harm to a third party, but criticizes the majority's rejection of Restatement (Second) of Torts section 317 and its lack of a sufficiently objective duty standard.

DISPOSITION

other

CASES CITED

- Nabors Drilling, U.S.A., Inc. v. Escoto, 288 S.W.3d 401, 405 (Tex. 2009)
- Loram Maint. of Way, Inc. v. Ianni, 210 S.W.3d 593, 596 n.3 (Tex. 2006)
- Otis Eng'g Corp. v. Clark, 668 S.W.2d 307, 309 (Tex. 1983)
- Kelsey-Seybold Clinic v. Maclay, 466 S.W.2d 716, 720 (Tex. 1971)
- Humble Sand & Gravel, Inc. v. Gomez, 146 S.W.3d 170, 182 (Tex. 2004)
- Praesel v. Johnson, 967 S.W.2d 391, 397-98 (Tex. 1998)
- VanDevender v. Woods, 222 S.W.3d 430, 433 (Tex. 2007)
- PDK Labs. Inc. v. DEA, 362 F.3d 786, 799 (D.C. Cir. 2004) (Roberts, J., concurring)
- Jacobellis v. State of Ohio, 378 U.S. 184, 197 (1964) (Stewart, J., concurring)
- State Farm Fire & Cas. Co. v. Simmons, 963 S.W.2d 42, 50 (Tex. 1998) (Hecht, J., dissenting)
- Twyman v. Twyman, 855 S.W.2d 619, 629 (Tex. 1993) (Hecht, J., dissenting)

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