

THIRTEENTH COURT OF APPEALS OF TEXAS, CORPUS CHRISTI–
EDINBURG

**Rogelio Rodriguez v. Nicolas Golarte d/b/a Talk N Talk Wireless &
Satellites**

No. 13-18-00680-CV · No. No. 13-18-00680-CV · Decided December 3, 2020

SUMMARY

The Thirteenth Court of Appeals of Texas considered whether the trial court properly granted a plea to the jurisdiction after entering a summary judgment order and whether the order disposed of claims added in an amended petition. The court held that the negligent misrepresentation and fraud claims survived the summary judgment order, that the trial court retained plenary power over those claims, and that granting the plea to the jurisdiction was erroneous. The judgment was reversed and remanded.

CASE DETAILS

COURT	Thirteenth Court of Appeals of Texas, Corpus Christi–Edinburg
WRITING FOR THE COURT	Justice Nora L. Longoria; Chief Justice Contreras; Justice Longoria; Justice Perkes
JURISDICTION	Texas
DECIDED	December 3, 2020
DOCKET	No. 13-18-00680-CV
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Rodriguez appealed from the trial court's order granting Talk N Talk's plea to the jurisdiction after the trial court had previously granted Talk N Talk's affirmative and no-evidence motion for summary judgment, severed the claims against Talk N Talk, and later set aside a default judgment.
STANDARD OF REVIEW	The court reviewed the plea to the jurisdiction and the existence of subject matter jurisdiction de novo because those issues presented questions of law. It also applied the Texas standards governing finality of orders, amended pleadings, and expiration of plenary power.
PRECEDENTIAL VALUE	Published memorandum opinion according to the supplied metadata; the opinion itself is labeled a memorandum opinion.

PARTIES

Rogelio Rodriguez v. Nicolas Golarte d/b/a Talk N Talk Wireless & Satellites

TOPICS

subject matter jurisdiction

summary judgment

pleadings

final judgment rule

appellate jurisdiction

PRACTICE AREAS

civil procedure

appellate procedure

personal injury

negligence

QUESTIONS PRESENTED

1. Whether the trial court's summary judgment order disposed of Rodriguez's negligent misrepresentation and fraud claims that were added by amended petition before the order was signed.
2. Whether Rodriguez's amended petition was untimely and therefore could not add claims that survived the summary judgment order.
3. Whether the trial court retained plenary power over the surviving claims when it granted Talk N Talk's plea to the jurisdiction.
4. Whether the court of appeals had jurisdiction over the appeal from the 2018 plea to the jurisdiction.

HOLDINGS

1. The negligent misrepresentation and fraud claims survived the summary judgment order because neither the motion, the order, nor the record showed that the trial court intended to dispose of those newly added claims.
2. The amended petition was timely because the March 2016 docket control order nullified the prior summary judgment submission date, and Talk N Talk neither objected to the amendment nor showed surprise or prejudice.
3. Because the negligent misrepresentation and fraud claims survived the summary judgment order, the trial court retained plenary power over those claims when it granted Talk N Talk's plea to the jurisdiction.

KEY QUOTATIONS

"In the absence of evidence of the trial court's intent to dispose of the claims added in Rodriguez's amended petition, we find that those claims survived the order granting summary judgment." (9)

"Having determined that Rodriguez's claims for negligent misrepresentation and fraud survived summary judgment, we find that the trial court still had plenary power over those remaining claims." (11)

FACTUAL BACKGROUND

Rodriguez brought a personal injury suit against Talk N Talk arising from alleged negligence and gross negligence. After the summary judgment motion had been set for submission, the trial court entered a docket

control order setting the case for trial, and Rodriguez amended his petition to add negligent misrepresentation and fraud claims. The trial court then granted Talk N Talk's summary judgment motion and severed the claims against it, but the order did not mention the newly added claims. At a later hearing, the trial court acknowledged that it had ruled only on the claims presented in the summary judgment motion and did not know how the amended claims should be treated.

PROCEDURAL HISTORY

Rodriguez filed a personal injury action alleging negligence and gross negligence against Talk N Talk and later amended his petition to add negligent misrepresentation and fraud claims. The trial court granted Talk N Talk's summary judgment motion and severed the claims against it, but the order did not expressly address the newly added claims. After Rodriguez moved for a new trial, the trial court denied the motion while indicating that it had ruled only on the claims before it in the summary judgment motion. The trial court later entered and set aside a default judgment, then granted Talk N Talk's plea to the jurisdiction on the ground that its plenary power had expired. The court of appeals reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded for proceedings consistent with the opinion. Pending motions were dismissed as moot.

CASES CITED

- Bland Indep. Sch. Dist. v. Blue, 34 S.W.3d 547, 554 (Tex. 2000)
- Tex. Dep't of Parks & Wildlife v. Miranda, 133 S.W.3d 217, 226, 228 (Tex. 2004)
- Farm Bureau Cty. Mut. Ins. Co. v. Rogers, 455 S.W.3d 161, 163–64 (Tex. 2015) (per curiam)
- Lehmann v. Har-Con Corp., 39 S.W.3d 191, 192–93, 195 (Tex. 2001)
- Cont'l Airlines, Inc. v. Kiefer, 920 S.W.2d 274, 276–77 (Tex. 1996)
- Ferguson v. Ferguson, 338 S.W.2d 945, 947 (Tex. 1960)
- Goswami v. Metropolitan Sav. & Loan Ass'n, 751 S.W.2d 487, 490 (Tex. 1988)
- J.G. v. Murray, 915 S.W.2d 548, 550 (Tex. App.—Corpus Christi–Edinburg 1995, orig. proceeding)
- Greenhalgh v. Serv. Lloyds Ins. Co., 787 S.W.2d 938, 939 (Tex. 1990)
- In re Gillespie, 124 S.W.3d 699, 702 (Tex. App.—Houston [14th Dist.] 2003, orig. proceeding)
- Custom Corps., Inc. v. Sec. Storage, Inc., 207 S.W.3d 835, 839 (Tex. App.—Houston [14th Dist.] 2006, no pet.)
- State ex rel. Latty v. Owens, 907 S.W.2d 484, 486 (Tex. 1995) (per curiam)