

SUPREME COURT OF TEXAS

Pedernal Energy, LLC v. Bruington Engineering, Ltd.

536 S.W.3d 487 (Tex. 2017) · No. 15-0123 · Decided April 28, 2017

SUMMARY

The Supreme Court of Texas held that Texas Civil Practice and Remedies Code section 150.002 requires dismissal when a plaintiff fails to timely file a certificate-of-merit affidavit, but permits the trial court to determine whether dismissal is with or without prejudice. The Court concluded that the trial court did not abuse its discretion by dismissing Pedernal Energy’s claims without prejudice after it nonsuited and refiled its claims with an expert affidavit.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Justice Phil Johnson; Chief Justice Hecht; Justice Green; Justice Willett; Justice Guzman; Justice Lehrmann; Justice Boyd; Justice Brown
JURISDICTION	Texas
DECIDED	April 28, 2017
DOCKET	15-0123
DISPOSITION	reversed
PROCEDURAL POSTURE	Bruington brought an interlocutory appeal from the trial court's refusal to dismiss Pedernal's claims with prejudice under Texas Civil Practice and Remedies Code section 150.002. After the court of appeals reversed and ordered dismissal with prejudice, the Supreme Court of Texas granted review.
STANDARD OF REVIEW	Statutory construction is reviewed de novo. The trial court's choice whether to dismiss with prejudice under section 150.002(e) is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion of the Supreme Court of Texas
PARTIES	Bruington Engineering, Ltd. v. Pedernal Energy, LLC

TOPICS

- statutory interpretation
- motions to dismiss
- civil procedure
- commercial litigation
- remedies

PRACTICE AREAS

civil procedure

statutory interpretation

professional negligence

commercial litigation

remedies

QUESTIONS PRESENTED

1. Whether Texas Civil Practice and Remedies Code section 150.002(e) requires dismissal with prejudice when a plaintiff fails to file a certificate-of-merit affidavit with the original petition.
2. Whether section 150.002(e) gives the trial court discretion to dismiss without prejudice or with prejudice, and whether the trial court abused that discretion by dismissing Pedernal's claims without prejudice.
3. Whether the expert affidavit filed with Pedernal's amended petition was sufficiently deficient to require dismissal with prejudice.

HOLDINGS

1. Section 150.002(e) requires dismissal of claims when the plaintiff fails to file the required affidavit, but it does not require dismissal with prejudice. The statute gives the trial court discretion to dismiss with or without prejudice.
2. The trial court did not abuse its discretion by dismissing Pedernal's claims without prejudice. A dismissal with prejudice is discretionary and must be based on guiding rules or principles rather than arbitrary or unreasonable action.
3. Even assuming the affidavit was deficient because it failed to address every theory of recovery or adequately connect negligence to damages, those deficiencies did not require dismissal with prejudice and did not establish an abuse of discretion.

KEY QUOTATIONS

"The first sentence requires dismissal, but does not specify whether it is to be with or without prejudice." (at 8)

"It is only if the Legislature intended the first sentence to reference dismissal without prejudice that the second sentence has meaning by expressly authorizing trial courts to dismiss with prejudice." (at 8)

"Pedernal's failure to file an expert affidavit with its original petition was not, by itself, evidence that the allegations in its petition lacked merit or mandated the sanction of dismissal with prejudice." (at 12)

"But, the record does not conclusively demonstrate that Pedernal's claims lacked merit, or that the trial court's decision violated any guiding rules and principles and therefore was an abuse of discretion." (at 15)

FACTUAL BACKGROUND

Pedernal's predecessors hired Schlumberger entities to perform fracturing operations on a gas well in Zapata County, and Bruington served as project engineer. The fracturing operation allegedly damaged the well and formation, leading Pedernal to sue Schlumberger and Bruington for damages based on allegedly substandard

engineering services. Pedernal did not file a certificate-of-merit affidavit with its original petition, but after nonsuiting Bruington it refiled the claims with an expert affidavit.

PROCEDURAL HISTORY

Pedernal initially sued Bruington for damages arising from allegedly deficient engineering services without filing the certificate-of-merit affidavit required by section 150.002. Pedernal nonsuited Bruington, later refiled the claims with an affidavit, and the trial court dismissed the claims without prejudice. The court of appeals first held that dismissal was required because the affidavit was not filed with the original petition, then, after remand, reversed again and ordered dismissal with prejudice. The Supreme Court reversed the second court-of-appeals judgment and reinstated the trial court's dismissal without prejudice.

DISPOSITION

reversed

CASES CITED

- Crosstex Energy Servs., L.P. v. Pro Plus, Inc., 430 S.W.3d 384, 389–91, 395 (Tex. 2014)
- Tex. Mut. Ins. Co. v. Ruttiger, 381 S.W.3d 430, 452 (Tex. 2012)
- Columbia Med. Ctr. of Las Colinas, Inc. v. Hogue, 271 S.W.3d 238, 256 (Tex. 2008)
- TGS-NOPEC Geophysical Co. v. Combs, 340 S.W.3d 432, 439, 441 (Tex. 2011)
- Entergy Gulf States, Inc. v. Summers, 282 S.W.3d 433, 443 (Tex. 2009)
- Walker v. Gutierrez, 111 S.W.3d 56, 62 (Tex. 2003)
- CTL/Thompson Tex., LLC v. Starwood Homeowner's Ass'n, Inc., 390 S.W.3d 299, 301 (Tex. 2013)
- Samlowski v. Wooten, 332 S.W.3d 404, 409–10 (Tex. 2011)
- In re Pirelli Tire, L.L.C., 247 S.W.3d 670, 676, 679 (Tex. 2008)
- Iliff v. Iliff, 339 S.W.3d 74, 81 (Tex. 2011)
- In re United Servs. Auto. Ass'n, 307 S.W.3d 299, 307 (Tex. 2010)
- Rusk State Hosp. v. Black, 392 S.W.3d 88, 97 (Tex. 2012)
- Bruington Eng'g, Ltd. v. Pedernal Energy, L.L.C., 403 S.W.3d 523, 532 (Tex. App.—San Antonio 2013, no pet.)
- Bruington Eng'g, Ltd. v. Pedernal Energy, L.L.C., 456 S.W.3d 181, 189–90 (Tex. App.—San Antonio 2014)