

## SUPREME COURT OF TEXAS

# Maria Del Carmen Guilbot Serros De Gonzalez v. Miguel Angel Gonzalez Guilbot, Carlos A. Gonzalez Guilbot, and Maria Rosa Del Arenal De Gonzalez

315 S.W.3d 533 (Tex. 2010) · No. 08-0961 · Decided June 11, 2010

### SUMMARY

The Supreme Court of Texas held that hand-delivery of a certified federal remand order to the state court clerk was sufficient to revest the state court with jurisdiction. The Court also held that a tertiary recusal motion under former Texas Civil Practice and Remedies Code section 30.016 means a third or subsequent recusal motion filed by the same party against any judge, not necessarily the same judge. The Court affirmed in part, reversed in part, and remanded for further proceedings concerning the recusal motion against Judge Herman.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                           |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Texas                                                                                                                                                                                                                    |
| WRITING FOR THE COURT | Don R. Willett                                                                                                                                                                                                                            |
| JURISDICTION          | Texas                                                                                                                                                                                                                                     |
| DECIDED               | June 11, 2010                                                                                                                                                                                                                             |
| DOCKET                | 08-0961                                                                                                                                                                                                                                   |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                     |
| PROCEDURAL POSTURE    | Cross-petitions for review from the Fourteenth Court of Appeals, which had held that state-court jurisdiction revested after remand but that the trial-court judgment and sanctions order were void because recusal motions were pending. |
| PRECEDENTIAL VALUE    | Published opinion of the Supreme Court of Texas; binding precedent in Texas.                                                                                                                                                              |
| PARTIES               | Maria Del Carmen Guilbot Serros De Gonzalez, et al. v. Miguel Angel Gonzalez Guilbot, Carlos A. Gonzalez Guilbot, Maria Rosa Del Arenal De Gonzalez                                                                                       |

### TOPICS

subject matter jurisdiction

statutory interpretation

appellate procedure

probate procedure

civil procedure

## PRACTICE AREAS

Civil procedure

Appellate procedure

Probate

Statutory interpretation

## QUESTIONS PRESENTED

1. Whether hand-delivery of a certified federal remand order to the state-court clerk, rather than mailing by the federal clerk, was sufficient to revest the state court with jurisdiction under 28 U.S.C. § 1447(c).
2. Whether a third recusal motion filed by the same party against a different judge is a 'tertiary recusal motion' under the former version of Texas Civil Practice and Remedies Code section 30.016.

## HOLDINGS

1. Hand-delivery of the certified federal remand order to the state-court clerk was sufficient to transfer jurisdiction from the federal court back to the state court under 28 U.S.C. § 1447(c).
2. A tertiary recusal motion is a third or subsequent recusal motion filed by the same party against any judge, not necessarily the same judge targeted by the earlier motions.

## KEY QUOTATIONS

*“We agree with the court of appeals that the hand-filing of a remand order in state court is sufficient to transfer jurisdiction back to state court.”*

*“We disagree with that reading and hold that section 30.016 applies to a third recusal motion filed by the same party against any judge.”*

*“That is, the word “third” in section 30.016(a) refers to the motion, not to the judge.”*

## FACTUAL BACKGROUND

The dispute involved the ownership and control of several food and beverage businesses formerly owned by Miguel Angel Luis Gonzalez y Vallejo. After his death, his wife and several children sued other family members, and the probate court sanctioned the defendants for producing forged stock certificates and set a damages trial. The defendants removed the case to federal court, but the federal court entered an order remanding the case and provided certified copies for expedited hand delivery to the state court. The defendants filed successive motions to recuse three judges but did not appear at the recusal hearing or the subsequent bench trial, after which the probate court entered sanctions and a final judgment awarding approximately \$205 million.

## PROCEDURAL HISTORY

Plaintiffs sued Defendants in a Harris County probate court concerning ownership and control of family businesses. Defendants removed the case to federal court; the federal district court remanded it, and Plaintiffs' counsel hand-delivered certified remand documents to the state-court clerk. After multiple recusal motions were filed, the probate court entered sanctions and a final judgment when Defendants failed to appear. The court of appeals upheld the revesting of state-court jurisdiction but held the sanctions order and judgment void because of the pending recusal motions. The Supreme Court of Texas affirmed in part, reversed in part, and remanded to the court of appeals with instructions.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

The court of appeals was instructed to abate pending a ruling on the motion to recuse Judge Herman. If the motion is denied, it must affirm the trial court's judgment; if the motion is granted, it must reverse the trial-court judgment and remand for further proceedings consistent with the Supreme Court's opinion.

## CASES CITED

- Gonzalez v. Guilbot, 255 F. App'x 770 (5th Cir. 2007)
- Scurlock Oil Co. v. Smithwick, 724 S.W.2d 1 (Tex. 1986)
- In re Whatley, 2006 WL 2257399 (Tex. App.—Houston [14th Dist.] Aug. 8, 2006), superseded by 2006 WL 2948230 (Tex. App.—Houston [14th Dist.] Oct. 13, 2006)
- Quaestor Investments, Inc. v. State of Chiapas, 997 S.W.2d 226 (Tex. 1999) (per curiam)
- Health for Life Brands, Inc. v. Powley, 57 P.3d 726 (Ariz. Ct. App. 2002)
- City of Orange City v. Lot 10, No. 98-1389, 2002 WL 100674 (Iowa Ct. App. Jan. 28, 2002)
- Balestriere Lanza PLLC v. Silver Point Capital, LP, No. 08 Civ. 4731 (GEL), 2008 WL 2557424 (S.D.N.Y. June 26, 2008)
- FKM P'ship, Ltd. v. Board of Regents of the University of Houston System, 255 S.W.3d 619 (Tex. 2008)
- Alex Sheshunoff Management Services, L.P. v. Johnson, 209 S.W.3d 644 (Tex. 2006)
- In re Estate of Nash, 220 S.W.3d 914 (Tex. 2007)
- Hernandez v. Ebrom, 289 S.W.3d 316 (Tex. 2009)
- In re Norman, 191 S.W.3d 858 (Tex. App.—Houston [14th Dist.] 2006)