

SUPREME COURT OF TEXAS

In re Baylor Medical Center at Garland

280 S.W.3d 227 (Tex. 2008) · No. No. 06-0491 · Decided August 29, 2008

SUMMARY

The Supreme Court of Texas held that a trial court may reconsider and vacate an order granting a new trial at any time before final judgment is entered. The Court overruled *Porter v. Vick* and abated the mandamus proceeding so the successor trial judge could reconsider whether to reinstate the jury verdict or grant a new trial.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Justice Scott Brister; Chief Justice Jefferson; Justice Hecht; Justice O’Neill; Justice Wainwright; Justice Green; Justice Medina; Justice Willett; Justice Brister; Justice Johnson
JURISDICTION	Texas
DECIDED	August 29, 2008
DOCKET	No. 06-0491
DISPOSITION	other
PROCEDURAL POSTURE	Baylor sought mandamus relief from a trial court order granting the plaintiffs a new trial after a jury verdict for Baylor. After successive trial judges vacated and reinstated the new-trial order, Baylor petitioned the Supreme Court of Texas for relief.
STANDARD OF REVIEW	Mandamus review; the opinion addresses whether the trial court clearly lacked power to vacate or reconsider a new-trial order.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Texas; precedential and expressly overruling <i>Porter v. Vick</i> .
PARTIES	Baylor Medical Center at Garland v. Tammy Williams, Steve Williams

TOPICS

- motion for new trial
- writ of certiorari
- appellate procedure
- civil procedure
- evidence

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Baylor was required to file a new mandamus petition in the court of appeals after the successor trial judge reconsidered the challenged order.
2. Whether a trial court may vacate or reconsider an order granting a new trial after the period in which plenary power over the original judgment would have expired.
3. Whether the mandamus proceeding should be abated for the current successor judge to reconsider the prior judge's new-trial order.

HOLDINGS

1. Baylor was not required to begin again in the court of appeals because the current proceeding was a continuation of the earlier proceeding concerning the same order, and Baylor had been misled into believing the first proceeding was moot.
2. The proceeding must be abated to allow the successor judge to reconsider the predecessor's decision.
3. A trial court may reconsider and vacate an order granting a new trial at any time before a final judgment is entered while the case remains pending. The court overruled *Porter v. Vick* to the extent it imposed a contrary deadline.

KEY QUOTATIONS

“Mandamus will not issue against a new judge for what a former one did.”

“As with any other order, a trial court should be able to reconsider a new trial order as long as a case is still pending.”

“When a new trial is granted, the case stands on the trial court’s docket “the same as though no trial had been had.””

“Accordingly, the trial court should then have the power to set aside a new trial order “any time before a final judgment is entered.””

FACTUAL BACKGROUND

Tammy and Steve Williams brought a medical-malpractice action against Baylor Medical Center at Garland. A jury found for Baylor, and the trial court entered a take-nothing judgment. Eighty-two days later, the trial judge granted the Williamses a new trial after further hearings, allegedly relying on juror affidavits prohibited by the rules. During the mandamus proceeding, the presiding trial judge changed twice, resulting in successive reconsideration, vacatur, and reinstatement of the new-trial order.

PROCEDURAL HISTORY

The jury found for Baylor, and Judge Joe Cox signed a take-nothing judgment. Eighty-two days later, Cox granted the Williamses a new trial. Baylor unsuccessfully sought mandamus relief in the court of appeals. After

Judge Cox left office, the Supreme Court abated the proceeding under Texas Rule of Appellate Procedure 7.2 so successor Judge Nancy Thomas could reconsider the order. Thomas first vacated the new-trial order and reinstated the judgment, then reconsidered and reinstated the new-trial order; Judge Jim Jordan subsequently succeeded Thomas. The Supreme Court held that the proceeding could continue in that court, overruled *Porter v. Vick*, and abated the proceeding for Judge Jordan to reconsider the order.

DISPOSITION

other

REMAND INSTRUCTIONS

The Supreme Court abated the mandamus proceeding for current trial Judge Jim Jordan to reconsider whether to enter judgment on the jury verdict or grant a new trial.

CASES CITED

- *State v. Olsen*, 360 S.W.2d 402, 403 (Tex. 1962)
- *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 129 (Tex. 2004)
- *Republican Party of Texas v. Dietz*, 940 S.W.2d 86, 94 (Tex. 1997)
- *Porter v. Vick*, 888 S.W.2d 789, 789-90 (Tex. 1994)
- *Fulton v. Finch*, 346 S.W.2d 823, 826 (Tex. 1961)
- *Mathes v. Kelton*, 569 S.W.2d 876, 878 (Tex. 1978)
- *Transamerican Leasing Co. v. Three Bears, Inc.*, 567 S.W.2d 799, 800 (Tex. 1978)
- *Wilkins v. Methodist Health Care Sys.*, 160 S.W.3d 559, 563 (Tex. 2005)
- *Fruehauf Corp. v. Carrillo*, 848 S.W.2d 83, 84 (Tex. 1993)
- *Arkoma Basin Exploration Co. v. FMF Assocs. 1990-A, Ltd.*, 249 S.W.3d 380, 391 (Tex. 2008)
- *Check v. Mitchell*, 758 S.W.2d 755, 756 (Tex. 1988)
- *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241 (Tex. 1985)
- *In re Luster*, 77 S.W.3d 331, 334-36 (Tex. App.—Houston [14th Dist.] 2002, mand. denied)
- *U.S. Xpress Enters., Inc. v. J.B. Hunt Transp., Inc.*, 320 F.3d 809, 817-18 (8th Cir. 2003)
- *Toole v. Baxter Healthcare Corp.*, 235 F.3d 1307, 1315 (11th Cir. 2000)