

# IN THE SUPREME COURT OF TEXAS

=====  
No. 96-0994  
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RICHARD L. SHEPHERD, M.D., AND  
ALLAN GRAHAM, M.D., PETITIONERS

v.

LAHOMA LEDFORD, RESPONDENT

=====  
ON APPLICATION FOR WRIT OF ERROR TO THE  
COURT OF APPEALS FOR THE SECOND DISTRICT OF TEXAS  
=====

*- consolidated with -*

=====  
No. 96-1243  
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TRANSAMERICAN NATURAL GAS CORPORATION,  
SOUTHWEST TEXAS SERVICES, INC.,  
L.T.V. ENERGY PRODUCTS D/B/A WILSON MANUFACTURING,  
CONTINENTAL EMSCO COMPANY D/B/A WILSON MANUFACTURING,  
WILSON-WICHITA, INC. D/B/A WILSON MANUFACTURING, AND  
DANA CORPORATION D/B/A WILSON MANUFACTURING, PETITIONERS

v.

NANCY RODRIGUEZ FUENTES, RESPONDENT

=====  
ON APPLICATION FOR WRIT OF ERROR TO THE  
COURT OF APPEALS FOR THE FOURTH DISTRICT OF TEXAS  
=====

**Argued on April 23, 1997**

JUSTICE BAKER delivered the opinion of the Court, in which JUSTICE GONZALEZ, JUSTICE ENOCH, JUSTICE SPECTOR, and JUSTICE ABBOTT join.

JUSTICE HECHT, joined by CHIEF JUSTICE PHILLIPS and JUSTICE OWEN, concurring in part and dissenting in part.

JUSTICE HANKINSON not sitting.

In these two cases we consider whether former Family Code section 1.91(b)<sup>1</sup> conflicts with Medical Liability and Insurance Improvement Act (“MLIIA”) section 10.01 or Texas Civil Practice and Remedies Code section 16.003. We hold that section 1.91(b), as it existed before the 1995 amendment, does not conflict with either section 10.01 of the MLIIA or section 16.003 of the Texas Civil Practice and Remedies Code. Accordingly, we affirm the court of appeals’ judgment in *Shepherd v. Ledford*,<sup>2</sup> and reverse the court of appeals’ judgment in *Transamerican v. Fuentes*.

## I. BACKGROUND

### A. *Shepherd v. Ledford*

*Shepherd v. Ledford* involves a wrongful death and survival claim for medical malpractice. Lahoma Ledford sued Drs. Richard Shepherd and Allan Graham for the wrongful death of her alleged common-law husband, John Ledford. The medical malpractice action resulted from the doctors’ treatment of Mr. Ledford for a heart condition. The jury found for Mrs. Ledford on both causes of action. The trial court rendered judgment on the verdict on the wrongful death claim. However, the trial court partially granted the defendants’ motion for judgment notwithstanding the verdict on the survival claim.

Affirming the trial court in part, the court of appeals held that section 1.91(b) did not bar Mrs. Ledford’s cause of action. The court reasoned that section 1.91(b) conflicted with the medical malpractice two-year statute of limitations for wrongful death in section 10.01 of the MLIIA. The court then determined that section 10.01 supplanted section 1.91(b) of the Family Code and held that Mrs. Ledford had two years to bring a wrongful death action as the decedent’s wife. Additionally, the court of appeals reversed the trial court’s judgment notwithstanding the verdict on the survival claim. The court of appeals determined that Mrs. Ledford did have standing to assert the survival

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<sup>1</sup> All references to section 1.91(b) of the Family Code are to section 1.91(b) as it existed before the 1995 amendments and the 1997 recodification. Although we acknowledge that the issues presented in these two cases are unlikely to reoccur because of the amendment, the apparent conflict between the statutes as it affects these parties and others similarly situated is important to the jurisprudence of the state.

<sup>2</sup> While the court in *Shepherd* misapplied section 1.91(b), we affirm its judgment on other grounds.

action on behalf of Mr. Ledford's estate. However, the court of appeals reversed and remanded the case for a new trial because the district judge did not disqualify a biased juror. 926 S.W.2d 405.

### **B. *Transamerican v. Fuentes***

*Transamerican v. Fuentes* involves a wrongful death claim for ordinary negligence. On October 15, 1993, Nancy Rodriguez Fuentes filed this wrongful death action as Julio Fuentes's alleged common-law spouse. Mr. Fuentes was killed in a drilling rig accident on October 16, 1991. The trial court granted the defendants' motion for summary judgment, and Mrs. Fuentes appealed. The court of appeals reversed the summary judgment and remanded the case for trial, holding that Mrs. Fuentes had two years to bring a wrongful death action as Mr. Fuentes's common-law wife. 933 S.W.2d 624.

## **II. APPLICABLE LAW**

### **A. Family Code Section 1.91**

When Mrs. Ledford and Mrs. Fuentes filed suit, section 1.91 provided that:

(a) In any judicial, administrative, or other proceeding, the marriage of a man and woman may be proved by evidence that:

(1) a declaration of their marriage has been executed under Section 1.92 of this code; or

(2) they agreed to be married, and after the agreement they lived together in this state as husband and wife, and they represented to others that they were married.

(b) A proceeding in which a marriage is to be proved under this section must be commenced not later than one year after the date on which the relationship ended or not later than one year after September 1, 1989, whichever is later.

TEX. FAM. CODE §1.91(b).

Legislative history shows that section 1.91(b)'s one year time limit was a compromise

alternative to completely abrogating common-law marriages in Texas. *See Russell v. Russell*, 865 S.W.2d 929, 932 (Tex. 1993). The Texas Legislature has had a long history of “grudging” tolerance of common-law marriages. *See Russell*, 865 S.W.2d at 931. Thus, the Legislature intended for section 1.91(b) to strictly limit parties’ ability to prove a common law marriage. *See Riley v. State*, 849 S.W.2d 902, 903 (Tex. App--Austin 1993, pet. ref’d).

#### **B. MLIIA Section 10.01**

The MLIIA provides: “Notwithstanding any other law, no health care liability claim may be commenced unless the action is filed within two years from the occurrence . . . .” TEX. REV. CIV. STAT. art. 4590i, §10.01. Section 10.01 is the exclusive statute of limitations for medical malpractice claims. *See Bala v. Maxwell*, 909 S.W.2d 889, 892-93 (Tex. 1995). In *Bala*, the Court concluded that the phrase “notwithstanding any other law” clearly evinced the Legislature’s unequivocal intent that section 10.01 govern when its time limitations conflicts with another law. *See Bala*, 909 S.W.2d at 892-93.

#### **C. Wrongful Death Act**

An action to recover damages for wrongful death is for the exclusive benefit of the deceased’s surviving spouse, children, and parents. *See TEX. CIV. PRAC. & REM. CODE* §71.004(a); *see also Rose v. Doctors Hosp.*, 801 S.W.2d 841, 846 (Tex. 1990); *Garza v. Maverick Mkt., Inc.*, 768 S.W.2d 273, 276 (Tex. 1989); *Brown v. Edwards Transfer Co.*, 764 S.W.2d 220, 222 (Tex. 1988). Furthermore, to bring suit under the Wrongful Death Act, a party is required to prove that he or she was the deceased’s spouse, child, or parent. *See TEX. CIV. PRAC. & REM. CODE* §71.004(a); *See also Garza*, 768 S.W.2d at 275-76; *Brown*, 764 S.W.2d at 220.

#### **D. Survival Statute**

The Survival Statute provides that only a personal representative, administrator, or heir may sue on behalf of an estate. *See TEX. CIV. PRAC. & REM. CODE* §71.021(b). A person who dies intestate with no children leaves all of his or her estate to his or her spouse as sole heir. *See Tex. PROB. CODE* §§ 37, 38(b)(2). The Wrongful Death Act expressly authorizes the surviving spouse

to bring suit on behalf of all wrongful death beneficiaries. However, the Survival Statute is silent about whether and when a spouse may bring a survival claim. *Compare* TEX. CIV. PRAC. & REM. CODE §71.004(b) *with* TEX. CIV. PRAC. & REM. CODE §71.021(b).

This Court has determined that generally, personal representatives of the decedent's estate are the only people entitled to sue to recover estate property. *See Frazier v. Wynn*, 472 S.W.2d 750, 752 (Tex. 1971). However, circumstances can exist when an heir may have standing to bring suit on behalf of the decedent's estate. Heirs at law can maintain a survival suit during the four-year period the law allows for instituting administration proceedings if they allege and prove that there is no administration pending and none necessary. *See Frazier*, 472 S.W.2d at 752.

A family settlement agreement is an alternative method of administration in Texas that is a favorite of the law. *See In re Estate of Hodges*, 725 S.W.2d 265, 267 (Tex. App--Amarillo 1986, writ ref'd n.r.e.); *Estate of Morris*, 577 S.W.2d 748, 755-56 (Tex. Civ. App.--Amarillo 1979, writ ref'd n.r.e.) Under section 37 of the Probate Code, when a person dies leaving a will, all of the estate devised or bequeathed by the will immediately vests in the devisees or legatees, subject to payment of the decedent's debts. The beneficiaries of an estate are free to arrange among themselves for the distribution of the estate and for the payment of expenses from that estate. *See* TEX. PROB. CODE § 37; *see also Pitner v. United States*, 388 F.2d 651, 656 (5th Cir. 1967); *Estate of Hodges*, 725 S.W.2d at 267.

Section 37 also provides that when a person dies intestate, all of his estate shall vest immediately in his heirs at law, subject to payment of the debts of the estate. *See* TEX. PROB. CODE § 37. If the deceased has no children or their descendants, the surviving spouse is entitled to all of the personal estate. *See* TEX. PROB. CODE § 38(b)(2).

### **III. ANALYSIS**

#### **A. *Shepherd v. Ledford***

##### **1. Limitations Period**

Because Mrs. Ledford alleged a common-law marriage, as opposed to a formal marriage, she was required to prove the elements of an informal marriage within one year from the time the relationship ended. *See* TEX. FAM. CODE §1.91(b). The apparent conflict arises, however, because the statute of limitations for medical negligence is two years. *See* TEX. REV. CIV. STAT. art. 4590i, §10.01; *Bala*, 909 S.W.2d at 893.

Affirming the trial court's judgment, the court of appeals held that section 1.91(b) impermissibly reduced the time Mrs. Ledford had to file her wrongful death suit. The court reasoned that because section 1.91(b) required her to file the wrongful death lawsuit within one year of Mr. Ledford's death and the limitations for a medical malpractice wrongful death claim is two years under section 10.01, section 1.91(b) necessarily conflicted with section 10.01. We disagree.

We hold that section 1.91(b) of the Family Code does not conflict with section 10.01 of the MLIIA. When the one-year time period in section 1.91(b) expires, the party asserting an informal marriage is barred only from proving the marriage's existence. *See Mossler v. Shields*, 818 S.W.2d 752, 754 (Tex. 1991).

Mrs. Ledford did not have to file her medical liability claim within one year of Mr. Ledford's death. Rather, she only had to initiate a proceeding to prove the requisite elements of an informal marriage within one year of his death. *See* TEX. FAM. CODE §1.91(a)&(b). There are legal procedures available for common-law spouses in Mrs. Ledford's situation. For example, Mrs. Ledford could have filed a Proceeding to Declare Heirship to establish the existence of her common-law marriage. *See* TEX. PROB. CODE §48(a). Or she could have filed the wrongful death claim within one year of Mr. Ledford's death and established the existence of the common-law marriage at trial. The choice was hers, as long as she initiated a proceeding to prove her informal marriage within the one-year time limit. *See* TEX. FAM. CODE §1.91(b); *Mossler*, 818 S.W.2d at 754.

Accordingly, we reject the court of appeals' conclusion that section 1.91(b) provided an independent limitations mechanism that directly conflicted with section 10.01. Rather, we hold that section 1.91(b) simply estops a person from claiming that he or she is informally married unless

he or she starts a proceeding to establish an informal marriage within section 1.91(b)'s one year time limit. Consequently, the person would be unable to assert standing to sue under the Wrongful Death Act.

This holding is compatible with *Mossler*. In *Mossler*, the petitioner filed a second divorce action after the trial court dismissed with prejudice the initial divorce proceeding. *See Mossler*, 818 S.W.2d at 754. We held that the dismissal with prejudice of Mrs. Mossler's first suit estopped her from bringing a second suit for divorce. We then held that section 1.91 prevented Mrs. Mossler from claiming that a common-law marriage existed in the second proceeding, achieving the same result as estoppel based upon a dismissal with prejudice. *See Mossler*, 818 S.W.2d at 754. We specifically noted that public policy supported our decision because the Legislature approved barring stale claims of an informal marriage by enacting the one-year time limit in section 1.91(b) of the Family Code. *See Mossler*, 818 S.W.2d at 754. Therefore, under the law, Mrs. Ledford was required to begin a proceeding to prove an informal marriage within one year from the time the marriage ended.

## **2. The Stipulation**

We have held that section 1.91(b) required Mrs. Ledford to begin a proceeding to prove her common-law marriage within one year limit of Mr. Ledford's death, or forfeit the opportunity to establish her standing to bring suit under the Wrongful Death Act. However, under the specific facts of this case, her failure to comply with section 1.91(b) does not bar her wrongful death claim.

Mrs. Ledford sued on November 15, 1991. Despite the fact that she had not complied with section 1.91(b), the court entered an order, which reflected the parties agreement, stating that the parties "stipulated and agreed . . . that Lahoma Ledford and John Ledford had a valid common-law marriage, prior to and at the time of John Ledford's death."

A stipulation is "an agreement, admission, or concession made in a judicial proceeding by the parties or their attorneys respecting some matter incident thereto." *Ortega-Carter v. American Int'l Adjustment*, 834 S.W.2d 439, 441-42 (Tex. App.--Dallas 1992, writ denied). Counsel for both

parties signed the stipulation and thereby judicially admitted that Mr. and Mrs. Ledford were common-law spouses. The trial court accepted the stipulation and thus it became conclusive on the existence of the Ledfords' common-law marriage. *See Herschbach v. City of Corpus Christi*, 883 S.W.2d 720, 733 (Tex. App.--Corpus Christi 1994, writ denied) (citing *Hennigan v. I.P. Petroleum Co., Inc.*, 858 S.W.2d 371, 372 (Tex. 1993)) (stating that a "true judicial admission is a formal waiver of proof usually found in . . . the stipulations of the parties."). Therefore, because the defendants judicially admitted facts that establish Mrs. Ledford's standing to bring a wrongful death action as Mr. Ledford's surviving spouse, they are estopped from now claiming to the contrary. *See Herschbach*, 883 S.W.2d at 733.

Consequently, the stipulation relieved Mrs. Ledford of her burden to prove her common law marriage, something she would not have been able to prove otherwise, and she had standing to bring the wrongful death action. Accordingly, section 1.91(b) does not apply in this case.

### **3. Survival Suit**

Defendants' final contention is that that the court of appeals erred in holding that Mrs. Ledford had standing to bring the survival claim on behalf of Mr. Ledford's estate. They assert that Mrs. Ledford lacks standing to sue as Mr. Ledford's heir because she did not plead and prove that no administration was pending or necessary. Defendants contend that when Mr. Ledford died he owed more than the minimum two debts to qualify for an informal estate administration. *See TEX. PROB. CODE* § 178(b).

Mrs. Ledford's evidence showed that Mr. Ledford owned no real property and had no children. Therefore, his personal estate vested immediately in Mrs. Ledford, his surviving spouse. *See TEX. PROB. CODE* § 38(b)(2). Mrs. Ledford testified that by the time of trial all Mr. Ledford's debts had been paid. She also testified that she made an agreement with other family members permitting her to take the minimal assets of Mr. Ledford's estate as his only heir. Defendants did not controvert this evidence.

The evidence shows that the family had resolved the estate's disposition and that all debts

were paid. Accordingly, no administration was necessary for it would have served no purpose. We see no reason why the *Pitner* rationale approving no administration when the devisees under a will make an agreement to distribute the estate and pay the bills does not apply with equal force in the situation where the heirs of an intestate decedent make an agreement to distribute the estate and pay the bills. *See Pitner*, 388 F.2d at 656. Thus, the *Pitner* rationale applies here, where the decedent owned only personal property, and that property vested immediately in Mrs. Ledford. Accordingly, we hold that under the facts and because of the family agreement, no formal administration was necessary. *See In re Estate of Hodges*, 725 S.W.2d at 267; *Estate of Morris*, 577 S.W.2d at 755-56. We conclude the court of appeals correctly determined that Mrs. Ledford had standing to sue on behalf of Mr. Ledford's estate.

#### **4. Juror Disqualification**

We now turn to Mrs. Ledford's complaint that the court of appeals erred in remanding the case for trial because the trial court did not disqualify an allegedly biased prospective juror. Drs. Shepherd and Graham contend that the trial court abused its discretion in refusing to strike the prospective juror for cause.

A prospective juror who admits bias or prejudice is disqualified to serve as a juror. *See* TEX. GOV'T CODE §62.105(4); *Compton v. Henrie*, 364 S.W.2d 179, 182 (Tex. 1963). When a trial court refuses to disqualify a juror for bias or prejudice, the complaining party must show that the error was harmful. To do this, the party, before exercising its peremptory challenges, must advise the trial court that "the court's denial of the challenges for cause would force the party to exhaust its peremptory challenges and, that after exercising its peremptory challenges, specific objectionable jurors would still remain on the panel." *Goode v. Shoukfeh*, 943 S.W.2d 441, 452 (Tex. 1997); *Hallett v. Houston N.W. Med. Ctr.*, 689 S.W.2d 888, 890 (Tex. 1985).

During voir dire, defendants' counsel elicited statements from three consecutive prospective jurors that none of them could be fair to the defendants because of the results of medical treatment experienced by family members. Defense counsel asked prospective juror Caudill if she could

consider the facts objectively and in a neutral way. She replied, "I don't think so." Next, counsel asked prospective juror Somerville: "You feel that based upon your past experience, you could not be fair and objective in looking at the medical facts as they have been testified to so that both sides start out evenly in this case; is that correct ma'am?" In response, Somerville responded, "That is true." Immediately following this exchange, counsel began to ask the following question of the jury panel, and venireperson Guerra responded:

COUNSEL: Is there anybody else, after we've listened to this-

GUERRA: *I feel the same way.* . . . My dad died of a heart attack also. I just don't like to talk about it because it brings back bad memories. But yeah, I think it would have a--I would have a problem with that.

COUNSEL: [A]s a result of that, you feel that Mrs. Ledford would be--you would feel for her and put her--sort of put her ahead of the defense in this case . . . ?

GUERRA: I think so. Like I said, my dad was--after that, for a long, he was in a coma, so I seen [sic] him suffer a lot, and I know what it did to me.

The trial court granted Shepherd's motion to strike Caudill and Somerville for cause. However, despite defendants' showing that Guerra was biased and that they would be forced to use a peremptory strike on Guerra that they would otherwise have used on another specific objectionable juror, the trial court refused to strike Guerra for cause.

The court of appeals correctly held that Guerra was disqualified as a matter of law. Guerra expressed his bias, and the trial court should have granted the defendants' motion to strike Guerra for cause. Accordingly, we affirm the court of appeals' judgment and remand this case to the trial court.

## ***B. Transamerican v. Fuentes***

### **1. Limitations--Wrongful Death**

“A person must bring suit not later than two years after the day the cause of action accrues in an action for injury resulting in death.” TEX. CIV. PRAC. & REM. CODE §16.003(b). As we have explained, section 1.91(b) sets the time limit in which a proceeding to prove an informal marriage must be brought. Thus, for the same reasons discussed above, section 1.91(b) does not supplant or conflict with the two-year statute in section 16.003(b).

It is undisputed that Mrs. Fuentes and Mr. Fuentes were never formally married and never filed a declaration of informal marriage. Thus, the only way Mrs. Fuentes could assert standing to bring this suit under the Wrongful Death Act is if she proved she was Mr. Fuentes’s common-law surviving spouse. *See* TEX. CIV. PRAC. & REM. CODE §71.004(a).

Mrs. Fuentes had to initiate a proceeding to prove that she was Mr. Fuentes’s common-law surviving spouse within one year of his death. *See* TEX. FAM. CODE §1.91. However, Mrs. Fuentes did not initiate a proceeding to prove her common-law marriage within section 1.91(b)’s one-year requirement; therefore, she is barred from offering any proof of that relationship.

The purpose of the Wrongful Death Act is “to provide a means whereby surviving spouses, children, and parents can recover” for the loss of their family member. *Garza*, 768 S.W.2d at 275. Because section 1.91(b) bars Mrs. Fuentes from proving her standing as Mr. Fuentes’s surviving spouse, she cannot maintain her wrongful death action against Transamerican.

## **III. CONCLUSION**

### ***A. Shepherd v. Ledford***

While we affirm the court of appeals’ judgment in this case, we disapprove of the court of appeals’ determination that Family Code section 1.91(b) conflicts with MLIIA section 10.01. Section 1.91(b) is a time limit for bringing a proceeding to prove the requisite elements of a common-law marriage. However, because the parties stipulated to the Ledfords’ common-law

marriage, Mrs. Ledford had standing to bring a wrongful death claim without meeting section 1.91(b)'s requirements. Furthermore, Mrs. Ledford, as Mr. Ledford's sole heir, also has standing to assert his survival action.

Because the trial court erroneously refused to disqualify venireperson Guerra, despite his apparent bias, we remand this case to the trial court for proceedings consistent with this opinion.

***B. Transamerican v. Fuentes***

Mrs. Fuentes had no standing to file a wrongful death claim because she did not file a proceeding to prove the existence of a common-law marriage within section 1.91(b)'s time limit. Therefore, she is barred from maintaining her wrongful death claim against Transamerican. Accordingly, we reverse the court of appeals' judgment and render judgment that Mrs. Fuentes take nothing.

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James A. Baker, Justice

OPINION DELIVERED: January 29, 1998