

IN THE SUPREME COURT OF TEXAS

=====
No. 98-0679
=====

WARREN LEE TUNE, PETITIONER

v.

TEXAS DEPARTMENT OF PUBLIC SAFETY, RESPONDENT

=====
ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE SECOND DISTRICT OF TEXAS
=====

Argued on October 6, 1999

JUSTICE HECHT, concurring.

I join the Court's opinion and write merely to clarify three points.

First: the issue regarding the court of appeals' jurisdiction results from a 1985 statutory recodification that has largely been overlooked.

The 1891 amendments to the Texas Constitution created the courts of civil appeals sitting in districts and gave them

appellate jurisdiction co-extensive with the limits of their respective districts, which shall extend to all civil cases of which the District Courts or County Courts have original or appellate jurisdiction, under such restrictions and regulations as may be prescribed by law¹

Enabling legislation passed the next year provided in relevant part:

The appellate jurisdiction of the courts of civil appeals shall extend to civil cases within the limits of their respective districts:

¹ Tex. S.J. Res. 16, 22d Leg., R.S., 1891 Tex. Gen. Laws 197, 198-199.

- (1) Of which the district court has original or appellate jurisdiction.
- (2) Of which the county court has original jurisdiction.
- (3) Of which the county court has appellate jurisdiction when the judgment or amount in controversy shall exceed one hundred dollars exclusive of interest and costs.²

This provision was codified in the 1925 Texas Revised Civil Statutes both as article 1819³ and as article 2249.⁴

In 1929, article 1819 was amended as follows to apply the \$100 limitation to all cases:

The appellate jurisdiction of the Courts of Civil Appeals shall extend to all civil cases within the limits of their respective districts of which the District Courts and County Courts have or assume jurisdiction when the amount in controversy or the judgment rendered shall exceed One Hundred Dollars exclusive of interest and costs.⁵

However, no corresponding amendment was ever made to article 2249.⁶ In 1936, the court of civil appeals held in *Stavelly v. Stavelly* that article 1819 did not limit the jurisdiction conferred by article

² Act approved Apr. 13, 1892, 22d Leg., 1st C.S., ch. 15, § 5, 1892 Tex. Gen. Laws 25, 26.

³ TEX. REV. CIV. STAT. art. 1819 (1925) (“Jurisdiction defined.—The appellate jurisdiction of the Courts of Civil Appeals shall extend to civil cases within the limits of their respective districts:

1. Of which the district courts have original or appellate jurisdiction.
2. Of which the county court has original jurisdiction, or of which the county court has appellate jurisdiction when the amount in controversy or the judgment rendered shall exceed one hundred dollars, exclusive of interest and costs.”).

⁴ TEX. REV. CIV. STAT. art. 2249 (1925) (“To Court of Civil Appeals.—An appeal may be taken to the Court of Civil Appeals from every final judgment of the district court in civil cases, and from every final judgment in the county court in civil cases of which the county court has original jurisdiction, and from every final judgment of the county court in civil cases in which the court has appellate jurisdiction, where the judgment or amount in controversy exceeds one hundred dollars exclusive of interest and costs.”).

⁵ Act approved Mar. 2, 1929, 41st Leg., R.S., ch. 33, § 1, 1929 Tex. Gen. Laws 68.

⁶ A technical amendment to article 2249 in 1927 inserted after the words “An appeal” the words “or Writ of Error”, which had been inadvertently omitted in the 1925 codification. Act approved Feb. 21, 1927, 40th Leg., R.S., ch. 52, § 1, 1927 Tex. Gen. Laws 75.

2249, and thus the \$100 limitation did not apply in all cases.⁷ But in 1942, this Court observed in dicta in *Harbison v. McMurray* that the two statutes “must be read in conjunction” and that article 1819 “has effect to restrict the appellate jurisdiction of the Courts of Civil Appeals in certain civil cases.”⁸ While we did not discuss the \$100 limitation in article 1819, we did conclude that the court of civil appeals had jurisdiction over a habeas corpus appeal brought by a witness who had been held in contempt, fined \$100, and jailed. No other court appears to have addressed the conflict in the two statutes.

In 1981, when the courts of civil appeals were changed to courts of appeals, article 1819⁹ and article 2249¹⁰ were re-enacted without substantive change. In 1985 both statutes were recodified. Article 1819 became section 51.012 of the Texas Civil Practice and Remedies Code, which states:

In a civil case in which the judgment or amount in controversy exceeds \$100, exclusive of interest and costs, a person may take an appeal or writ of error to the court of appeals from a final judgment of the district or county court.¹¹

Article 2249 became section 22.220(a) of the Texas Government Code, which states in part:

Each court of appeals has appellate jurisdiction of all civil cases within its district of which the district courts or county courts have jurisdiction when the

⁷ 94 S.W.2d 545, 548 (Tex. Civ. App.—Eastland 1936, writ dismissed).

⁸ 158 S.W.2d 284, 287 (Tex. 1942).

⁹ Act of June 1, 1981, 67th Leg., R.S., ch. 291, § 38, 1981 Tex. Gen. Laws 761, 780 (“The appellate jurisdiction of the Courts of Appeals shall extend to all civil cases within the limits of their respective districts of which the District Courts and County Courts have or assume jurisdiction when the amount in controversy or the judgment rendered shall exceed One Hundred Dollars (\$100) exclusive of interest and costs . . .”).

¹⁰ Act of June 1, 1981, 67th Leg., R.S., ch. 291, § 55, 1981 Tex. Gen. Laws 761, 785 (“An appeal or Writ of Error may be taken to the Court of Appeals from every final judgment of the district court in civil cases, and from every final judgment in the county court in civil cases of which the county court has original jurisdiction, and from every final judgment of the county court in civil cases in which the court has appellate jurisdiction, where the judgment or amount in controversy exceeds one hundred dollars exclusive of interest and costs.”).

¹¹ Act of May 17, 1985, 69th Leg., R.S., ch. 959, § 1, 1985 Tex. Gen. Laws 3242, 3280.

amount in controversy or the judgment rendered exceeds \$100, exclusive of interest and costs.¹²

Although the Legislature intended the recodification of article 2249 to be without substantive change,¹³ the extension of the \$100 limitation to all cases was plainly substantive and must be treated as such.¹⁴ Thus, after 1985 the court of appeals' jurisdiction must be limited to cases in which the judgment or amount in controversy exceeds \$100, exclusive of interest and costs, as the Court holds, although those courts' jurisdiction had never been held to be so limited before.¹⁵ Statements in cases to the contrary are incorrect.¹⁶

Second: Section 411.174 of the Government Code requires an applicant for a license to carry a concealed handgun to pay a nonrefundable application and license fee of \$140, but nothing in the statute explains the basis for the charge. It could be to reimburse the State for its costs in processing an application, or it could be to ensure that applicants are serious about qualifying for a license, or the Legislature may have had some other purpose altogether. Nothing in the statute indicates that the State considers a license to be worth \$140, but I agree with the Court that an applicant's willingness to pay the fee indicates that he or she thinks the license is worth at least that much. I would not say for licenses in general, however, that any fee charged is much evidence of its value to the applicant. The fee for a driver's license is \$24,¹⁷ but surely its value is far greater than that to

¹² Act of May 17, 1985, 69th Leg., R.S., ch. 480, § 1, 1985 Tex. Gen. Laws 1720, 1730.

¹³ EX. GOV'T CODE § 1.001(a).

¹⁴ *Fleming Foods of Texas, Inc. v. Rylander*, 6 S.W.3d 278, 286 (Tex. 1999).

¹⁵ *See Texas Dep't of Pub. Safety v. Barlow*, 992 S.W.2d 732, 739 (Tex. App.—Waco 1999, pet. filed).

¹⁶ *In re S.G., Jr.*, 935 S.W.2d 919, 923 n.3 (Tex. App.—San Antonio 1996, writ dismissed w.o.j.); *Texas Dep't of Pub. Safety v. Levinson*, 981 S.W.2d 5, 7 (Tex. App.—San Antonio 1998, pet. dismissed by agr.).

¹⁷ EX. TRANSP. CODE § 521.421(a).

most drivers. It seems to me harder to put a value on a license to carry a concealed handgun than to put a value on a driver's license, but the fact that a great many people are not only willing but anxious to pay the \$140 fee shows that the license is worth more than that to them.

Third: For me there is another consideration, which is that the State's principal interest in this case is not to obtain revenue but to assure that only persons qualified by statute be permitted to carry a concealed handgun. That interest is worth more than \$100.

Nathan L. Hecht
Justice

Opinion delivered: July 6, 2000