



State of Kansas

*Office of Judicial Administration*

*Kansas Judicial Center*

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*Topeka, Kansas 66612-1507*

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Greensburg Case Summaries

August 30, 2011

**Appeal No. 102,744: *Lawrence Hamel v. W. Dennis Hamel and Leona Newell, Co-Trustees of the Arthur Hamel Living Trust***

This is an appeal and cross-appeal by siblings from a decision of the Rooks County District Court denying a challenge of the actions of the co-trustees following Arthur Hamel's death in June 2004. Following a trial to the court, Lawrence Hamel's status as a beneficiary of the trust was terminated pursuant to a "no-contest" clause in the trust terminating beneficiary status to anyone questioning the actions of the named co-trustees. On appeal, plaintiff Lawrence Hamel asks whether the district court's disinheritation of him as a beneficiary violates public policy; whether the disinheritation "due to his request to interpret the Trust and/or challenge the trustees' actions and inactions is in error;" whether the sale of property to one of the beneficiaries was proper; whether the trial court erred in not finding that the living trust terminated immediately upon Arthur Hamel's death; whether the district court's decision conforms with provisions of the Kansas Uniform Trust Code; and whether Lawrence Hamel is entitled to an award of attorney's fees and related costs if successful on appeal. The co-trustees in a cross-appeal contend the district court erred by failing to treat the plaintiff as if he had predeceased his father and its finding that the co-trustees failed to account for trust expenditures in good faith.

**Appeal No. 103,527: *State v. Manuel Ultreras***

Ultreras appeals his Ford County convictions of three counts of aggravated battery, which arose from a Dodge City bar fight that resulted in injuries to three patrons by the defendant, who was working behind the bar. Injured by blows from a baton wielded by Ultreras were Victor Urbina-Gonzales, Victor's older brother, Oscar Urbina, and Miguel Mendoza. The three were struck during a struggle to remove the two brothers from the bar because Victor, then a minor, was observed taking a sip of his brother's vodka drink. On appeal, appellant contends a statute the defense calls the "Kansas Stand Your Ground" statute should be construed to place the burden of proof on the state to establish that the defendant's use of force was not justified, or alternatively that the district court improperly considered the defendant's failure to retreat when analyzing whether the defendant was justified in his actions. The defense further contends that there was insufficient evidence to support the counts involving Mendoza and Oscar Urbina; that the court should have given a so-called "unanimity" instruction regarding whether the defendant was convicted on blows against Victor occurring inside or outside the bar; and whether the

defense should have been allowed to cross-examine Victor and Oscar regarding their failure to honor their subpoenas, and whether the lack of cross-examination requires reversal.

**Appeal No. 102,140: *State v. Juan Garcia***

This is a Petition for Review of a Court of Appeals decision affirming a Morton County denial of the defendant's motion to withdraw his guilty plea to aggravated battery. He contends on appeal that he entered the guilty plea under the mistaken belief that his criminal history would result in a range of sentences between 50 and 60 months imprisonment, but, in fact, his criminal history score placed him in a sentencing range of 114 to 128 months. The sentence imposed was 128 months imprisonment. The Court of Appeals hearing panel affirmed in a 2-1 decision after concluding that the district court did not abuse its discretion in denying the motion to withdraw the plea. One of the Court of Appeals judges who heard the appeal, Hon. Steve Leben, would have remanded the case to the district court to reconsider Garcia's motion to withdraw the plea.

**Appeal No. 103,938: *Debra L. Miller, Secretary of Transportation, v. Lawrence Preisser and Tracy Chambers***

This is an appeal in a Pratt County eminent domain proceeding in which the Secretary and the landowners disputed the amount of damages created to a 2.77 acre parcel of ground at the intersection of 130<sup>th</sup> Ave. and US-54/400 in Pratt County. The condemnation was part of a KDOT highway project to convert portions of US-54 from a partially access controlled highway to a fully access controlled facility, the latter being a highway in which no private drives or public roads will connect directly with it at grade level. The acreage adjoins an approximate 78-acre tract that is owned by Preisser, a portion of which also was condemned for the highway, but for which no appeal from the appraisers' award of \$69,495 was taken. The value of the taking of the 2.77-acre parcel was set at \$108,000 as the basis of the appeal. The landowners now contend that the value of the two condemnations should be considered together, giving the landowners an opportunity to present evidence as to the most advantageous use of the property. They also contend that the court erred in determining that the change in access to the property caused by the construction project should be compensable. The Secretary successfully contended at the district court that they should be considered separately, since no appeal was taken from the amount awarded for the larger tract.

**Appeal No. 101,766: *Donald R. Rucker and Barbara L. Rucker v. Earl R. Delay et al.***

This is a Petition for Review of a Court of Appeals decision affirming a Barber County District Court ruling in a quiet title action involving mineral royalty rights to a tract of land now owned by the Ruckers. The Ruckers filed a quiet title action against the DeLays in which the Ruckers successfully contended that a provision in a 1924 deed to the property which attempted to reserve a royalty interest to successors to the property owner violated the rule of against perpetuities, which holds in short that a rule cannot be perpetual or without an end. The Delays, on the other hand, contend they owned 60 percent interest in the minerals under the land, arguing

the 1924 deed's provision granted successors mineral, not royalty rights, and thus did not violate the rule against perpetuities. The Court of Appeals affirmed the district court, in deference to previous Supreme Court decisions adhering to the rule against perpetuities, but encouraged the DeLays to ask the Supreme Court to review its decision to determine whether the application of the rule as applied to royalty interest should be changed.

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