In the Cold, Dark Courtroom of Precinct 5

The contributors for this month’s column are from Austin (Linda R. Meltzer), Dallas (Brenda Cubbage and Harold H. Walker, Jr.), Fort Worth (Sterling W. Steves), Lubbock (Roger L. McRoberts), and San Antonio (Kristine Arlitt and U.S. District Judge Fred Biery).

LET’S TALK ABOUT SOMETHING IMPORTANT

This deposition excerpt was submitted by Kristine Arlitt of San Antonio (Kristine practices with Christopher J. Weber).

The deposition was taken in Kerrville in the case of Castlecomb Homeowners Association v. Hexagon Honeycomb Corp. In response to Kristine’s question regarding the terms in a Declaration of Restrictive Covenant burdening the Castlecomb subdivision in Kerrville, the deponent read directly from the declaration:

Q. (By Ms. Arlitt): Just tell the jury how it varies. I mean, it’s a long thing to read.
A. It says ... It has to be permanently affixed to piers or a foundation, have any wheels or axles in the delivery removed, skirted — which mobile homes are skirted or enclosed — shall have a roof pitch of three-twelfths or greater; and shall meet or exceed the standards imposed by blah, blah, which mobile homes are skirted or enclosed — shall have a roof pitch of three-twelfths or greater; and 5, shall meet or exceed the standards imposed by blah, blah, which mobile homes are skirted or enclosed — shall have a roof pitch of three-twelfths or greater; and 5, shall meet or exceed the standards imposed by blah, blah, which mobile homes are skirted or enclosed — shall have a roof pitch of three-twelfths or greater; and 5, shall meet or exceed the standards imposed by...

Q. Now, the “blah, blah, blah, blah, blah, blah, blah” those are the laws of the State of Texas; is that correct?
A. That is correct.
Q. What does gestalt mean?
A. I think gestalt means kind of your gut impression. If I look at yourself, I’m not going to describe you as a 21-year-old man. I’m going to describe you as a distinguished attorney. That’s gestalt.

Q. I’m a little bit disappointed, but thank you.
A. Yeah.

Roger adds: “I would note that the jury’s gestalt determined that the defendant was guilty on all counts.”

CLASSIC TYPOS

Sterling W. Steves of Fort Worth and Brenda Cubbage of Dallas have, for a number of years, coauthored “The Complete Guide to Mechanic’s and Materialman’s Lien Laws of Texas,” published by LexisNexis Matthew Bender.

However, the 2005 cover of the book “presented them with this surprise”: “The Complete Guide to Mechanic’s and Materialman’s Lien Laws of Texas.”

THE EXPERT WITNESS

Harold H. Walker, Jr. of Dallas (Rose Walker, L.L.P.) writes that he could “no longer resist submitting [this] cross-examination snippet” that occurred “in a wrongful death case tried a couple of years ago in Nashville before Chief Judge Robert Echols.”

The case involved the death of a high school student, and Hal and Marty Rose represented the plaintiffs. During the case in chief, “the defendant’s lawyer was trying to score some points on cross-examination by quarreling with Hal’s unflappable economic expert about the discount rate used in his damage calculation,” when this exchange occurred:

Q. You took your total number and reduced it to present value, is that correct?
A. Reduced it to total.
Q. Your final findings, your figure?
A. Reduced it to what did you say?
Q. To present value.
DEPOSITIONS V. TRIALS

A. Yes, present value.
Q. That's because money now is worth more than money 34.5 years from now, is that correct?
A. No. It is because money can earn interest.

Q. Would you rather have a million dollars today or 30 years from now?
A. I am not choosy when it comes to a million dollars. I will take it whenever I get it.

The Court: Let's answer the question if you can?

THE CROSS-EXAMINATION

U.S. District Judge Fred Biery of San Antonio recently tried a robbery case to a jury in which "a related issue was whether a gun found several weeks after the robbery and after a creek bed had drained from recent rains was the gun which had been in the possession of the defendant."

Fred writes that "the defense lawyer, doing the best he could with very little to work with, was cross-examining the law enforcement officer about the issue of when the rain occurred relative to the robbery and the alleged throwing away of the gun," when this exchange took place:

Q. Now, if the records that are compiled by Texas A&M University say that the rain was actually on the 5th, you wouldn't disagree with that, would you?
A. Yes, I would.
Q. You would. You think it was the 4th and the Aggies' weather records are wrong?
A. We're talking about Aggies, sir.

The Court: I knew that was coming.

IN THE COLD, DARK COURTROOM OF PRECINCT 5

Linda R. Meltzer of Austin is a senior claims attorney for Texas Property and Casualty Insurance Guaranty Association, which handles claims on behalf of insolvent property-casualty insurers. She recently received "a most interesting letter from an attorney purporting to assert a subrogation claim."

Linda writes, "In an effort to convince us of the seriousness with which the claim should be viewed, the attorney (who shall remain nameless to protect the guilty) attached a fascinating summary of his client's successes in enforcing assignments, primarily in county and justice courts."

Of his "13-page discourse," this was Linda's favorite part:

Please think about a case styled KClinic, as Assignee of Dianna Rosa v. Elizabeth Mendez ...[.] In that case, Defense attorney(s) from Vial, Hamilton, Kock [sic] and Knox, L.L.P. (A distinctive and productive professional partnership since 1957 and one of the region's largest and most respected law firms which has also achieved national prominence on the strength of its transnational and litigation practice ... ) strongly argued in open court [against KClinic's assignment]. It was a piquant argument, verbally articulated in the cold, dark gray, dimly lit, concrete walled Courtroom of Precinct 5, Place 2 (Please don't expose your insured to a trial in there.) ... Not surprisingly, it again quickly proved to be non-persuasive in contrast to the well reasoned and fundamental assignment principles outlined by KClinic. The tug of time has been powerless to put KClinic's Partial Claims Assignment and its principles out of favor.

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