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A number of civil cases accepted for state high court's review

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After ruling on 168 petitions for leave to appeal on March 25, the Illinois Supreme Court has granted petitions for leave to appeal in six civil cases (in addition to two family law and one tax case). Confirming that for the vast majority of civil cases the Illinois Appellate Court is the court of last review, the Supreme Court accepted 3.5% of civil matters presented to it for review this term.

Among the cases added to its docket include two more guns rights cases to the one it took last fall, *Guns Save Life Inc., et al., v. Zahra Ali*, which considers Cook County's tax on ammunition. In these consolidated cases, *Easterday v. Vill. of Deerfield*, 2020 IL App (2d) 190879, the court will consider the village's ban on assault weapons and high-capacity magazines. The case involves the interplay between the Firearm Conceal Carry Act, the Firearm Owners Identification Card Act, the home rule authority to enact certain regulations on firearms, among other statutory, state constitutional and procedural arguments.

The court also took review of *Armstead v. Nat'l Freight, Inc.*, 2020 IL App (3d) 170777, which was discussed in this space on Dec. 9, 2020. As if the procedural windings of that case could not get any more involved, after the circuit court's judgment in favor of the defendant was initially reversed, the court upon rehearing then affirmed the judgment. The court initially overlooked the collateral estoppel argument made by the appellees. The original opinion from a 2017 appeal of a 2016 case was issued on Jan. 17, 2019, before rehearing was granted on May 28, 2019. The opinion on rehearing was issued on Nov. 20, 2020.

Few Supreme Court terms would be complete without a medical malpractice case, and the court will hear *Bailey v. Mercy Hosp. & Med. Ctr.*, 2020 IL App (1st) 182702, which will consider whether the trial court erred in refusing to give the jury instructions proposed by plaintiff, first for informed consent, IPI 105.07.01, and, second, when it refused to give plaintiff's non-pattern instruction on the loss of chance doctrine. The plaintiff alleged that the physicians failed to timely diagnose and treat patient for sepsis or toxic shock syndrome. The appellate court vacated the jury verdict in favor of the defendants and ordered a new trial.

Rule 224 petitions may get another shot before the court, after the last petition for leave to appeal on the issue that was granted, *Tirio v. Dalton*, was dismissed as improvidently granted. In *Dent v. Constellation NewEnergy, Inc.*, 2020 IL App (1st) 191652, the Supreme Court will consider whether the circuit court erred in sua sponte dismissing the petition filed by plaintiffs in which they sought to discover the identity of those that allegedly defamed the Super Bowl winner and thereby caused contracts with the defendants to be terminated. The circuit court, relying on *Low Cost Movers, Inc. v. Craigslist, Inc.*, 2015 IL App (1st) 143955, found that a Rule 224 petition was inappropriate because the plaintiffs knew of one defendant to sue and thus the petition did not comply with the rule. The appellate reversed the dismissal of the petition.

The court also took a tort immunity case, *Schultz v. St. Clair Cty.*, 2020 IL App (5th) 190256. The 5th District Appellate Court, in a split decision, held that the Tort Immunity Act, 745 ILCS 10/4-102, immunized the

county from liability for an alleged failure to provide proper emergency dispatching services and that the Emergency Telephone System Act, 750 ILCS 750/15.1, did not provide an exception to that blanket immunity.

Always important to note are not just the grants, but the denials. Of particular note is the denial of the petition in *Ryan v. Country Mutual Insurance Company*, 2020 IL App (5th) 190206-U. The appellate court, in a split decision with a dissent written by then Justice David Overstreet of the Illinois Appellate Court, now Justice Overstreet of the Illinois Supreme Court, reversed the grant of summary judgment in favor of an insurance producer on the two-year statute of limitations and the doctrine set forth in *Krop v. American Family*, 2018 IL 122556. The appellate court held that though the declaration page of the policy was clear because the policies of insurance themselves were not in the record "it was impossible for the [trial] court to determine whether the policy contained contrary provisions, failed to define important terms, or was otherwise ambiguous enough that the plaintiffs reasonably could not have been expected to understand what type of coverage they had just by reading it." Had Overstreet been allowed to participate (which for obvious reasons he could not), the outcome of this petition might have been different as he asserted in dissent that it was the plaintiff's burden to show that the exception to *Krop* applied, not the defendant's burden to show that it did not.

In another case discussed in this space, this time on Jan. 27, 2021, the Supreme Court denied the petition in *Klein-Koziol v. M-J-T-J Contractors & Builders, Inc.*, 2020 IL App (1st) 192380-U, in which the appellate court held that a settlement between the plaintiff and third-party defendant employer was in good faith despite being for only $10,000 and only requiring a 30% waiver of the $903,232.31 workers' compensation lien in the event of settlement and no waiver at all in the event of a verdict.

What cases the Illinois Supreme Court chooses to take and what the justices decline to take is necessary and important to follow to understand the development and direction of Illinois law.
