

## **Appealing To The Public**

*Alisa Stewart, Individually, and as Next Friend for Sarah Stewart and Korey Stewart, Minors v. Columbia Medical Center of McKinney Subsidiary, L.P., D.B.A. North Central Medical Center of McKinney, Columbia North Texas Subsidiary, G.P., L.L.C., Cause No. 05-06-00157-CV  
In the Fifth Court of Appeals, Dallas, Texas*

### **Teaching Materials**

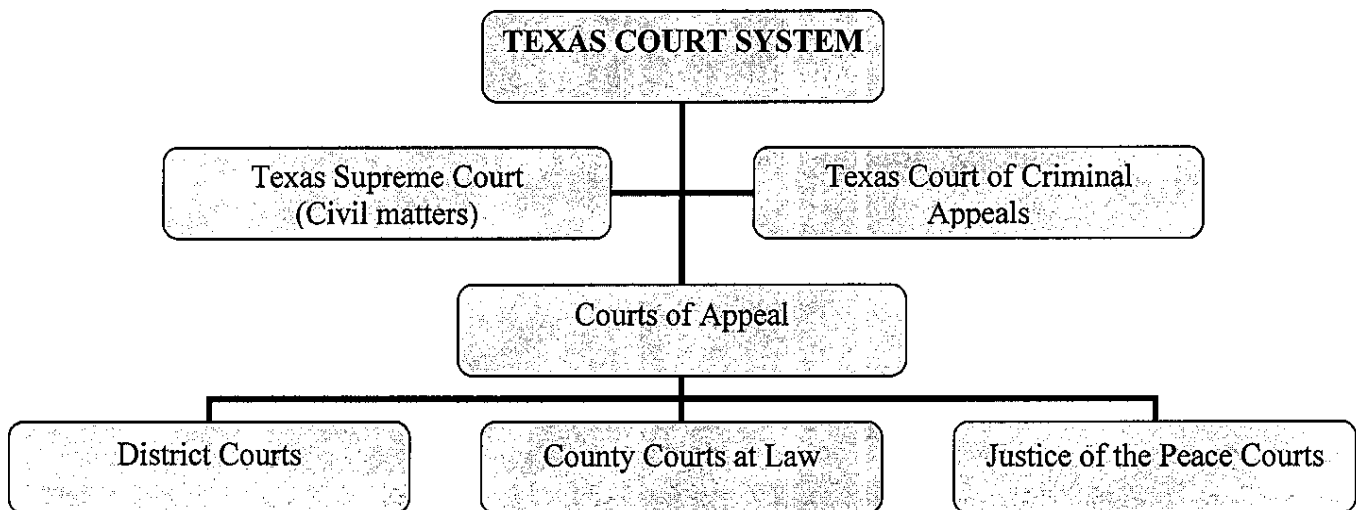
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## Overview

The case being argued to the Court of Appeals is the appeal of a summary judgment granted in favor of a hospital. On May 16, 2002, the plaintiff, Alisa Stewart and her friend Amy Wingfield were shot by Ms. Wingfield's husband in the parking lot of the hospital where they worked in McKinney, Texas. Ms. Wingfield was killed and Ms. Stewart was seriously injured. Ms. Stewart later filed a lawsuit against the owners of the hospital, alleging that the hospital was negligent in its failure to have adequate security in the parking lot. The trial court granted judgment in favor of the hospital, finding that the law did not recognize a negligence claim under the circumstances. Ms. Stewart has appealed this decision and claims that it should be overturned.

## The Court of Appeals

The Fifth District Court of Appeals is one of fourteen courts of appeals in Texas. These courts of appeals hear and rule on both civil and criminal appeals from the district courts and county courts at law in their region. The Fifth District Court of Appeals' region includes Dallas, Collin, Grayson, Hunt, Rockwall, Van Zandt, and Kaufman counties. The district courts and county courts at law are the "trial" courts where evidence is presented to juries and judges. A diagram describing the Texas court system is below.



When a party to a lawsuit or criminal case disagrees with the outcome of their case in a trial court, they have a right to appeal to the courts of appeals and ask that the outcome in the trial court be overturned or revised. The court of appeals is required to make a decision on all cases appealed to it. It makes a decision based on the information in the "record," which includes copies of all the items, including evidence and legal documents, filed with the trial court and transcripts of the testimony given in court. The court of appeals does not consider any information, evidence, or testimony on appeal unless it was in the "record" from the trial court. The record includes all papers filed in the case, the transcripts of what happened in court and all

exhibits that were entered. After the court of appeals has considered a case, the court of appeals may send the case back to the trial court for another trial or additional proceedings. The court of appeals may also reverse the trial court's judgment and issue a new or corrected judgment. Alternatively, if the court of appeals determines that the trial court's judgment is correct, the court of appeals can affirm the judgment.

If a party disagrees with the decision of the court of appeals, they can ask that either the Texas Supreme Court (in civil cases) or the Texas Court of Criminal Appeals (in criminal cases) hear another appeal. Unlike the courts of appeals, the Texas Supreme Court and the Texas Court of Criminal Appeals can choose whether to hear the appeal. Once the Texas Supreme Court or the Texas Court of Criminal Appeals decides a case, that decision is final in Texas and no additional appeals exist. Under certain limited circumstances, a party can try to appeal a final ruling by the Texas Supreme Court or the Texas Court of Criminal Appeals to the United States Supreme Court in Washington, D.C. In those situations, the United States Supreme Court can choose whether to hear the appeal or not. For more information regarding the Fifth District Court of Appeals, you can visit their website at [www.5thcoa.courts.state.tx.us](http://www.5thcoa.courts.state.tx.us).

### **The Panel**

The Fifth District Court of Appeals is made up of thirteen justices, including one chief justice. Each case is assigned to three justices on the Court of Appeals, often referred to as the "Panel." In certain special circumstances, cases may be heard "en banc" meaning all thirteen of the justices participate. This case has been assigned to a typical three-judge panel. Following the argument, each case is assigned to one of the justices on the panel to write the opinion. At times, other justices may write concurring opinions that agree with the decision or dissenting opinions that disagree with the opinion. For additional information and biographies of the thirteen justices, you can visit <http://www.5thcoa.courts.state.tx.us/AboutCourt.htm>.

### **The Parties**

Ms. Stewart filed this lawsuit on her own behalf for the injuries that she suffered and as "Next Friend" for her two children, Sarah and Korey. "Next Friend" is a legal term that designates when a person brings a claim on behalf of a minor child, who could not otherwise bring the claim themselves. The claims that Ms. Stewart brings for her two children are for the harm they suffered as a result of having their mother injured so badly during the attack. Because Ms. Stewart and her children are the parties appealing the judgment of the trial court they are called the "Appellants." Here, they will be referred to simply as "Ms. Stewart."

There are two separate entities that own and operate the hospital where this attack occurred, and they were both named as defendants in the lawsuit. Columbia Medical Center of McKinney, Subsidiary, L.P., d/b/a North Central Medical Center and Columbia North Texas Subsidiary, G.P., L.L.C. are the technical names of the companies that own and operate the hospital in McKinney, Texas. The hospital is commonly known as the North Central Medical Center. Because the defendants won in the district court and are not appealing the district court's judgment, these parties are called the "Appellees." For simplicity, these entities will be referred to in these materials as the "Hospital."

### **The Attorneys**

Each party is represented by an attorney or attorneys. The attorneys will argue the case for their clients to the Court of Appeals. In this case, Ms. Stewart is represented by Darrell L. Keith. The hospital is represented by Jeffrey F. Wood and John M. Inabnett.

### **The Oral Argument**

The appeal will be heard before the Panel on November 8, 2006, at Lake Highlands High School. Ms. Stewart's attorney will have twenty (20) minutes for the initial argument. Then, the attorney for the Hospital will have twenty (20) minutes for argument, and Ms. Stewart's attorney will have five (5) minutes for any rebuttal argument. During this time, the attorneys will present their arguments and the justices will ask questions of the attorneys. Typically, the attorneys are the sole representatives of the parties present at the oral argument. Only rarely do the parties attend, and it is unlikely they will be present on November 8, 2006.

### **The Briefs**

When an appeal is filed, each party files a legal document called a brief that explains its positions and presents the arguments to the court of appeals. In this case, Ms. Stewart filed the initial brief to begin the appellate process. The Hospital then filed a brief in response, arguing its legal positions as Appellee. These briefs are available for review and downloading at [www.dallasbar.org/appealing](http://www.dallasbar.org/appealing).

The briefs not only set out the parties' legal arguments, they also refer the Court of Appeals to other cases that have been decided by other courts faced with similar issues. These other cases are known as "precedent." Under the legal principle of "stare decisis," which means "to abide by or adhere to," a court must follow the precedent set by a higher court. So, the Court of Appeals must follow the decisions of the Texas Supreme Court and prior decisions of the Court of Appeals itself. The District Courts must follow prior decisions of the Texas Supreme Court and all the Courts of Appeals. The decisions are published and available for parties to use in their briefs. Because the law of Texas is not exactly the same as the law in other states, precedent from other states is not binding on the Court of Appeals, although decisions from other states can be used as persuasive authority for a point.

### **The District Court Proceeding**

This matter was heard in June 2005 before the Honorable Curt Henderson, Judge of the 219<sup>th</sup> District Court of Collin County, Texas (the "District Court"). The District Court granted what is called a "summary judgment" in favor of the Hospital. A summary judgment is an order from the court that summarily disposes of a case based on the law before it is heard by a jury. In our court system, the judges decide issues of law, while juries decide issues of fact. If the facts are undisputed, a court can rule on the law and grant summary judgment. However, where the facts are in dispute, a jury must determine which facts are true.

Here is an example. First, assume that there is a law that said you can sue your neighbor for walking across your grass if he is wearing golf shoes. Now, assume that you sue your neighbor and the facts are not disputed that he walked across your grass wearing golf shoes. A court could grant summary judgment in your favor because there is no factual dispute and the law recognizes your claim. Likewise, if the evidence was undisputed that your neighbor walked across your grass, but was wearing tennis shoes, summary judgment would be granted by the court in favor of your neighbor because the law does not permit you to sue if he was wearing tennis shoes. However, assume that you say your neighbor was wearing golf shoes, but he says they were tennis shoes. Now, there is a factual dispute that must be heard by a jury. In this example, a court would have to deny summary judgment and allow the case to go to trial. Whether you would ultimately win depends on whether the jury believes he was wearing golf shoes or tennis shoes.

In this case, the District Court determined that there were no disputed issues of fact and that the Hospital could not be sued for what happened to Ms. Stewart. Ms. Stewart has appealed that decision to the Court of Appeals.

### **The Standard of Review**

Because the Court of Appeals bases its decisions on the “record” created in the District Court, it has to follow a certain “standard of review.” The “standard of review” varies depending upon what type of issue is on appeal. In cases where summary judgment has been granted and the only issue to be reviewed is the District Court’s application of the law, the Court of Appeals reviews cases “de novo.” “De novo” is a Latin term for “anew” and means that the Court of Appeals will look at all the issues again and come to its own decision. In contrast, sometimes decisions of the district courts will be reviewed based on an “abuse of discretion” standard. In those situations, the district court will have heard the evidence and seen the witnesses live, and its decisions will be given greater deference by the Court of Appeals. To abuse its discretion, a district court must have acted in an arbitrary or unreasonable manner or without reference to the guiding legal principles.

### **The Undisputed Facts**

In this case, the underlying facts are not in dispute. On May 16, 2002, Ms. Stewart and her friend Amy Wingfield went to lunch. Both worked as pediatric nurses in the North Central Medical Office building. They returned from lunch and parked in the parking lot of the Hospital. Ms. Wingfield’s husband, Raymond, had been waiting in the parking lot with a sniper rifle. He shot and killed Ms. Wingfield and shot and seriously wounded Ms. Stewart after she went to Ms. Wingfield’s aide.

### **The Disputed Issues**

Following the shooting, Ms. Stewart sued the Hospital, alleging that it was negligent in failing to provide sufficient security in the parking lot. The Hospital filed a motion for summary judgment, arguing that law did not permit Ms. Stewart to maintain a claim against the Hospital.

Ms. Stewart argued to the District Court that her claim was valid. In order to understand the issues in dispute, you must first understand the legal elements of a claim for negligence.

Negligence is a failure to exercise reasonable care in doing something. People fail to use reasonable care all the time, but not all negligence can be the basis for a lawsuit. In order to sue someone for their negligence, you must show that they owe you a duty, that they breached that duty and that it caused you damage. In order to establish the existence of a duty, you must show that there is a risk of injury that is foreseeable. The question of whether there is a duty is typically one of law for the court, not one of fact for a jury.

The key issue here is whether the Hospital owed a duty to Ms. Stewart to prevent her injuries. Ms. Stewart argues that the Hospital owed her a duty under two theories. First, she asserts that the Hospital had assumed a duty to protect her because it had voluntarily undertaken to provide security in the parking lot. Second, she argues that a duty arose because the shooting was foreseeable. The Hospital, in contrast, argues that no duty exists. Moreover, the Hospital asserts that even if a duty exists, Ms. Stewart cannot establish a claim for negligence because the Hospital's actions did not cause her injury. The District Court agreed with the Hospital and dismissed Ms. Stewart's case. Ms. Stewart has asked the Court of Appeals to overrule the District Court's decision.

#### **A. Assumed Duty of Care**

Ms. Stewart first argues that the Hospital owed her a duty to protect her because it had voluntarily undertaken to provide security in the parking lot. The Hospital had a Security Management Plan that provided security guards in and around the parking lot at the Hospital. These security guards were asked to open locked vehicles, escort people to their cars, and challenge suspicious persons, among other things. Ms. Stewart argues that because the Hospital had undertaken the task of providing security, it had a duty to protect her. She further argues that the Hospital failed to do so because Mr. Wingfield testified that he waited in the parking lot before the shooting for 30 to 45 minutes and that he would not have done that if a security guard was present. To support her argument, Ms. Stewart points to cases where an assumed duty has been found. For example, where a railroad voluntarily placed a flashing light at a railroad crossing, it assumed a duty to keep the light in working order.

The Hospital does not disagree with the facts, but argues that the law does not recognize a duty in this instance. The Hospital argues that it does not have a duty to protect Ms. Stewart from unforeseen criminal acts of others. Although the Hospital recognizes that in some cases a person can assume a duty by voluntarily undertaking an activity, it argues that those cases don't apply here because a third parties' criminal conduct is involved. The Hospital argues that those cases only apply where the injury comes directly from the voluntarily undertaken activity. For example, if the railroad failed to maintain the flashing light it voluntarily put up and injury occurred because the light was not flashing, a duty will be assumed. However, the Hospital asserts that where a third party's criminal acts were involved a different standard governs. That standard, according to the Hospital, is whether or not the other parties' crime was foreseeable.

## **B. Foreseeability**

As noted, the Hospital argues that in order to find that they owed a duty to protect Ms. Stewart, she must show that the shooting was foreseeable. According to the Hospital, Texas law requires Ms. Stewart to show that there have been similar acts of violent crime at or close to the Hospital. To be foreseeable, these acts must also have taken place near the time of the shooting and must have been publicized so that the Hospital was aware of them. This requirement, according to the Hospital, comes from the Texas Supreme Court's decision in the *Timberwalk* case. The Hospital argues that because there were no prior acts and the Hospital had no way of knowing that Mr. Wingfield was planning the shooting, it was not foreseeable and no duty to protect Ms. Stewart existed.

Ms. Stewart argues, however, that the shooting was foreseeable. She recognizes that the Texas Supreme Court has decided that foreseeability requires similar acts of violent crime. However, she essentially requests that the Court of Appeals apply a different standard. Ms. Stewart argues that foreseeability, and therefore a duty to protect, should be established where the nature and character of the property suggest a crime may occur. Here, Ms. Stewart suggests that the Hospital parking lot is a place where crime should be expected because it is open 24-hours a day and serves mentally ill patients. Ms. Stewart points the Court of Appeals to a California Supreme Court case with similar facts where a doctor was shot in a hospital parking lot. The California Supreme Court decided that prior similar criminal acts were not required to establish foreseeability. Ms. Stewart urges the Court of Appeals to adopt the California Supreme Court's reasoning.

In response, the Hospital argues that the California Supreme Court's decision is not binding in Texas courts and that the Texas Supreme Court's decision in *Timberwalk* must be followed by this Court.

## **C. Causation**

In order to establish a claim for negligence, Ms. Stewart must not only establish the existence of a duty to protect, she must show that the Hospital's failure to protect her was the cause of her injury. The Hospital argues that summary judgment on Ms. Stewart's claims was appropriate because she cannot establish that the Hospital caused her injury. Instead, the Hospital relies on a theory known as "intervening or superseding cause," which relieves the Hospital of fault if a third party's criminal conduct intervenes to cause the injury. The Hospital points the Court to several other cases that have considered "intervening or superseding cause" and suggests that the deliberate and calculating way in which the shooting occurred requires the Court of Appeals to decide that his actions were the intervening cause. The Hospital argues that even if it had more security measures in place in the parking lot, Mr. Wingfield may still have shot his wife and Ms. Stewart.

In contrast, Ms. Stewart alleges that Mr. Wingfield's criminal actions should not be considered an intervening cause of Ms. Stewart's injuries. She asserts that if more security had been present, Mr. Wingfield would not have shot the women. At the very least, she argues that the shooting would not have happened in the parking lot of the Hospital. If Mr. Wingfield had

shot his wife elsewhere, it is unlikely that Ms. Stewart would have been there to have been shot. As a result, Ms. Stewart asserts that the Hospital's lack of security was the cause of her injury.

#### **D. Factual Issues**

As a final argument, Ms. Stewart argues that the matters at issue here – duty, foreseeability, and causation – are all mixed questions of law and fact that should not be disposed of on summary judgment. Instead, she argues that the jury should have been able to determine whether the shooting was foreseeable.

In contrast, the Hospital argues that these issues are all issues of law for the court. The Hospital asserts that the determination of whether a duty exists is a legal question governed by clear precedent that says she is not entitled to bring her claim.

#### **The Decision and Opinion**

After the attorneys present their arguments, the Panel may take several months to decide the appeal. The Court of Appeal's decision and any opinions written by the justices will be made available for review and downloading at [www.dallasbar.org/appealing](http://www.dallasbar.org/appealing). In addition, the opinion can be accessed using the case number and related information at [www.5thcoa.courts.state.tx.us](http://www.5thcoa.courts.state.tx.us). It is also possible to register your email address for updates on the case. When the final opinion is handed down by the Court of Appeals, or other things happen in the case, an email from the Court of Appeals to you will provide such details. To register for email updates, send an email from your email account to [caseinfo@courtstuff.com](mailto:caseinfo@courtstuff.com) and type "Subscribe 05-05-00923-CR" in the regarding line.

#### **Questions and Additional Information**

For additional information regarding these teaching materials or related information, please feel free to contact:

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