Affirmed and Opinion Filed June 22, 2026

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-24-00712-CV

CITY OF DALLAS; CITY OF ABILENE; CITY OF ALLEN; CITY OF AMARILLO; CITY OF ARLINGTON; CITY OF AUSTIN; CITY OF BEAUMONT; CITY OF CARROLLTON; CITY OF CEDAR PARK; CITY OF DENTON; CITY OF FARMERS BRANCH; CITY OF FORT WORTH; CITY OF FRISCO; CITY OF GARLAND; CITY OF GRAND PRAIRE; CITY OF HOUSTON; CITY OF HUNTSVILLE; CITY OF IRVING; CITY OF LEWISVILLE; CITY OF LUBBOCK; CITY OF MCKINNEY; CITY OF MESQUITE; CITY OF NACOGDOCHES; CITY OF PEARLAND; CITY OF PLANO; CITY OF ROWLETT; CITY OF SAN ANGELO; CITY OF SUGAR LAND; CITY OF TYLER; CITY OF WACO; AND CITY OF WICHITA FALLS, Appellants
V.
DISNEY DTC, LLC N/K/A DISNEY PLATFORM DISTRIBUTION, INC.; HULU, LLC; AND NETFLIX, INC., Appellees

On Appeal from the 14th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-22-09128

MEMORANDUM OPINION

Before Chief Justice Koch, Justice Goldstein, and Justice Lewis
Opinion by Justice Goldstein

Appellants, thirty-one cities in the State of Texas (Cities), appeal from a final judgment entered after the trial court entered an order granting a Rule 91a motion to dismiss filed by appellees Disney DTC, LLC n/k/a Disney Platform Distribution,

Inc., Hulu, LLC, and Netflix, Inc. (Streaming Providers). In one issue, the Cities assert that the trial court erred in granting the motion to dismiss. We affirm.

BACKGROUND

The facts are well known to the parties and set forth more fully in *In re Disney DTC, LLC* [*Disney I*], No. 05-23-00485-CV, 2024 WL 358117, at *1 (Tex. App.—Dallas Jan. 31, 2024) (orig. proceeding). Briefly, the Cities sued the Streaming Providers, alleging that under the Public Utilities Regulatory Act (PURA), the Streaming Providers must pay each City five percent of their gross revenue from operations in that City. The Cities requested declaratory relief under the Texas Uniform Declaratory Judgments Act (UDJA) to the effect that the Streaming Providers were violating the PURA by failing to obtain a state-issued certificate of franchise authority and failing to pay franchise fees to the Cities. The Cities also filed claims for trespass and unjust enrichment on the theory that the Streaming Providers had wrongfully entered and used the public rights-of-way by delivering video content without obtaining certificates of franchise authority, without authorization from the Cities, and without paying franchise fees.

The Streaming Providers filed a Rule 91a motion to dismiss. *See* TEX. R. CIV. P. 91a. They argued that streaming providers like themselves were not required to obtain franchise licenses because they do not construct or operate facilities on public rights-of-way and the Cities cannot enforce PURA's franchise obligations on non-

franchise holders. The trial court denied the motion to dismiss, and the Streaming Providers sought mandamus relief from this Court.

A panel of this Court conditionally granted mandamus relief. *Disney I*, 2024 WL 358117, at *1. We explained that the PURA does not contain a "clearly implied cause of action for municipalities to sue non-franchise holders." *Id.* at *3. We further held that the PURA grants exclusive franchising authority to the Public Utilities Commission, and the Cities thus had no authority to compel the Streaming Providers to obtain a certificate of franchise authority through the UDJA. *Id.* at *4. Finally, we concluded that the Cities' claims for trespass and unjust enrichment were based on their argument that the Streaming Providers should be deemed franchise holders, and thus should "rise and fall together with the PURA claims." *Id.* at *5. Having agreed with the Streaming Providers, we entered an order directing the trial court to vacate its denial of the Rule 91a motion and to enter an order granting it.

Our opinion issued on January 31, 2024. We gave the trial court until March 5, 2024 to comply with our order, lest the writ issue. On February 14, 2024, the Cities filed a motion for rehearing and a motion for en banc reconsideration in this Court. On March 5, 2024, the panel that issued the mandamus opinion denied the motion for rehearing, and the en banc court denied the motion for reconsideration. On April 1, 2024, the trial court complied with our order and entered an order granting the Streaming Providers' Rule 91a motion to dismiss and a final judgment against the Cities on their claims.

On April 2, 2024, the Cities filed in this Court an emergency motion to extend the conditional writ deadline. The Cities explained that, due to our denial of their motions for rehearing and en banc reconsideration, they intended to seek mandamus relief from the Texas Supreme Court. To that end, they said that on March 20, they filed a motion for a limited stay of entry of final judgment in the trial court to give them an opportunity to file their mandamus petition in the Supreme Court. The hearing on that motion took place on April 1, and the trial court presumably[1] denied the motion and entered final judgment later that day. In the emergency motion to extend the conditional writ deadline, the Cities acknowledged that the trial court had already granted the motion to dismiss and entered final judgment, which they argued would moot any relief they sought from the Supreme Court if the trial court's plenary power were to expire. *See Elec. Reliability Council of Tex., Inc. v. Panda Power Generation Infrastructure Fund, LLC*, 619 S.W.3d 628, 634–35 (Tex. 2021). On

[1] We say "presumably" because the Cities in this case filed an appendix in lieu of a clerk's record under the new Appellate Rule 34.5a, *see* TEX. R. APP. P. 34.5a, but did not include a copy of the trial court's docket in the appendix. We therefore do not know whether the trial court entered an order denying the motion for limited stay or whether it was implicitly denied when the trial court entered the order granting the Streaming Providers' Rule 91a motion to dismiss and the final judgment. For the purposes of this appeal, that is a distinction without a difference, since an implicit denial has the same legal effect as an explicit one. Nevertheless, we include this practice tip for appellate practitioners before this Court of the potential value of the docket sheet.

Unlike Rule 34.5, which sets forth the required contents of the clerk's record, Rule 34.5a does not require that the party filing an appendix include a docket sheet. *Compare* TEX. R. APP. P. 34.5a(e)–(f) *with* TEX. R. APP. P. 34.5(a)(3). Although the trial court's docket sheet rarely impacts the outcome of an appeal, it is often useful because it provides context to the items that appear in the clerk's record. From the docket sheet, we can glean the dates of trial court filings, hearings, and orders that were excluded from our record. It is also the docket sheet that often gives us cause to question whether a supplement to the record should be made. *See* TEX. R. APP. P. 34.5(c) (providing that any party, the trial court, or this court, can request supplementation of the clerk's record).

April 3, we granted the emergency motion and extended the trial court's deadline to comply with our mandamus order to May 5, 2024. On April 4, the Cities filed in the trial court a motion to vacate order of dismissal and final judgment and for limited stay. They attached our extension order to that motion and made the same argument to the trial court—namely, that the final judgment would moot any mandamus relief they could seek from the Supreme Court. On April 15, the trial court entered an order denying the motion to vacate. On April 30, 2024, the Cities filed a motion to modify, correct, or reform the final judgment and, in the alternative, motion for new trial. That motion was presumably[2] denied or overruled by operation of law.

On May 3, 2024, the Cities filed a petition for writ of mandamus in the Supreme Court. They also filed an emergency motion for temporary stay to "stay the effectiveness of the Final Judgment to allow [the Supreme Court] to consider the merits of the Cities' petition for writ of mandamus." The Streaming Providers filed a response, arguing that the mandamus proceeding was moot. The Supreme Court denied the motion for stay and the petition for writ of mandamus, explaining that "without regard to the merits, [the Cities] have an adequate remedy by appeal."

On June 10, 2024, the Cities filed their notice of appeal from the April 1 final judgment.

[2] No order appears in our appendix in lieu of clerk's record. *See supra*, note 1.

DISCUSSION

I. THE PARTIES' ARGUMENTS

The Cities raise one issue on appeal—that the trial court erred in granting the motion to dismiss. The Cities argue that they "pled valid legal claims against the Streaming Providers based on the Cities' express rights of action, as recognized by PURA, the UDJA, Texas common law, and the Texas Constitution." The Cities further contend that the Texas Supreme Court "concluded, as urged by the Streaming Providers, that the Cities have an adequate remedy on appeal by pursuing review of the final judgment in this Court." Thus, they argue that "[t]o the extent the [trial] court's final judgment was based on this Court's prior holding that the Cities have no express rights of action against Streaming Providers . . . , this conclusion was reached in error as a matter of law and should be reversed under a de novo review."

In response, the Streaming Providers assert that the Cities' appeal is barred by the doctrines of the law of the case and horizontal stare decisis. They argue that this Court disposed of the Cities' appellate arguments on their merits in *Disney I*, and the Cities should not be allowed to reassert those arguments in this appeal.

In their reply brief, the Cities argue that the Streaming Providers are equitably estopped from relying on the law-of-the-case doctrine and stare decisis because the Streaming Providers took a contrary position in their opposition to the Cities' mandamus proceeding in the Supreme Court. The Cities also argue that applying these doctrines would violate the Supreme Court's order denying their mandamus

petition on grounds that the Cities have an adequate appellate remedy. We address these issues in turn.

II. APPLICABLE LAW

The "law of the case" doctrine is defined as that principle under which questions of law decided on appeal to a court of last resort will govern the case throughout its subsequent stages. *Briscoe v. Goodmark Corp.*, 102 S.W.3d 714, 716 (Tex. 2003). By narrowing the issues in successive stages of the litigation, the law of the case doctrine is intended to achieve uniformity of decision as well as judicial economy and efficiency. *Id.* The doctrine is based on public policy and is aimed at putting an end to litigation. *Id.*

Under the law-of-the-case doctrine, a decision rendered in a former appeal is generally binding in a later appeal of the same case. *Paradigm Oil, Inc. v. Retamco Operating, Inc.*, 372 S.W.3d 177, 182 (Tex. 2012). The doctrine may apply even when the appeal does not reach the court of last resort. *See id.* at 182 (stating that decision by court of appeals becomes law of case in trial court and court of appeals even when petition for review denied by higher court); *City of Houston v. Precast Structures, Inc.*, 60 S.W.3d 331, 338 (Tex. App.—Houston [14th Dist.] 2001, pet. denied) (holding that when losing party accepts remand instead of furthering appeal, court of appeals decision becomes law of the case). "Although an original proceeding is not an 'appeal,' the law of the case doctrine applies when an issue has been resolved on the merits in a prior mandamus proceeding[.]" *In re United*

Services Auto. Ass'n, 521 S.W.3d 920, 927 (Tex. App.—Houston [1st Dist.] 2017, no pet.) (citing *B S P Mktg., Inc. v. Standard Waste Sys., Ltd.*, No. 05-03-00518-CV, 2004 WL 119235, at *1–2 (Tex. App.—Dallas Jan. 27, 2004, no pet.) (mem. op.)).

The law-of-the-case doctrine is not an absolute bar to reconsideration of the same issue in a second appeal. *Briscoe*, 102 S.W.3d at 716. Rather, the doctrine is flexible and provides courts of appeals with discretion to reconsider an issue depending on the particular circumstances surrounding the case. *Id.* One exception to the doctrine is where an appellate court's original decision is clearly erroneous, in which case the original decision is not binding in a subsequent appeal. *Id.* In addition, the doctrine does not necessarily apply when either the issues or the facts presented in successive appeals are not substantially the same as those involved in the first appeal. *Entergy Corp. v. Jenkins*, 469 S.W.3d 330, 337 (Tex. App.—Houston [1st Dist.] 2015, pet. denied); *see, e.g.*, *Diaz v. Multi Serv. Tech. Sols. Corp.*, No. 05-17-00462-CV, 2018 WL 6521916, at *4 (Tex. App.—Dallas Dec. 12, 2018, no pet.) (mem. op.) (declining to apply law-of-the-case doctrine because record showed for the first time in subsequent appeal that party did not exist when suit was filed, precluding a finding of misidentification).

III. ANALYSIS

A. Whether the Law-of-the-Case Doctrine Applies

The Cities argue that they "pled valid legal claims against the Streaming Providers based on the Cities' express rights of action, as recognized by PURA, the

UDJA, Texas common law, and the Texas Constitution." We disposed of these issues in *Disney I*. As to the PURA claims, we concluded that "we conclude the statute does not provide municipalities with an express cause of action against non-franchise holders." *Disney I*, 2024 WL 358117, at *2. Regarding the UDJA claims, which included the Cities' request that the Streaming Providers' conduct violates the Gift Clause of the Texas Constitution, we explained that the UDJA "does not confer jurisdiction on a trial court but rather makes declaratory judgment available as a remedy for a cause of action already within the court's jurisdiction." *Id.* at *4. Thus, we held that "[w]ithout a predicate cause of action, the [Cities'] declaratory relief claim fails." *Id.* Finally, we held that the Cities' common law claims for unjust enrichment and trespass are "based on their argument that relators should be deemed franchise holders" and therefore "rise and fall together with the PURA claims." *Id.* at *5.

The issues and facts presented are substantially the same as in the mandamus proceeding. *See Entergy Corp.*, 469 S.W.3d at 337. We held in the mandamus proceeding that the trial court erred in denying the Streaming Providers' Rule 91a motion to dismiss, instructed the trial court to vacate that order and enter an order granting the motion, and the trial court did as we instructed. *Disney I*, 2024 WL 358117, at *5. The trial court did as we instructed, and nothing else changed in the interim. To reconsider the issues disposed of in *Disney I* would be to undermine the purposes of the doctrine. *See Briscoe*, 102 S.W.3d at 716 (Tex. 2003) (explaining

that the law-of-the-case doctrine is intended to achieve uniformity of decision, judicial economy and efficiency, and "putting an end to litigation").

The Cities urge us to exercise our discretion in declining to apply the doctrine in this appeal on the ground that our decision in *Disney I* was "clearly erroneous." *See id.* (appellate courts can review prior decisions that are clearly erroneous). We decline the invitation. Having reviewed the panel's decision in *Disney I*, the motions for rehearing and en banc reconsideration filed by the Cities in that case, the prior panel's order denying the motion for rehearing, and the en banc Court's order denying the motion for reconsideration, we conclude that the "clearly erroneous" exception does not apply.

The Cities also argue that applying the doctrine runs afoul of the Supreme Court's order denying mandamus relief in *Disney I*. They argue that if the Supreme Court had intended this Court "to robotically rubberstamp its prior decision without further thought, there would have been no point in requiring the Cities to return to this Court following a final judgment; the supreme court would have simply deemed this current appeal futile given this case's unique procedural posture and then granted or denied review." Thus, the Cities conclude that the Supreme Court "clearly signaled that this Court could and should take a closer look."

We reject this argument. As the Cities acknowledged in their motion to extend the deadline for the trial court's compliance in *Disney I*, a final judgment on the

merits generally moots a pending interlocutory appeal or mandamus petition.[3] *See Panda Power*, 619 S.W.3d 628, 635–36. This is because orders subject to interlocutory appeal or mandamus merge into the final judgment, which can be appealed from. *See id.* at 636. The Supreme Court has held that "[a]ny ruling on the merits of a moot issue constitutes an advisory opinion, which we lack jurisdiction to issue." *See Interest of J.J.R.S.*, 627 S.W.3d 211, 225 (Tex. 2021). So it should come as no surprise that the Court denied the Cities' petition in *Disney I*.

Further, we decline the Cities' invitation to read into the Supreme Court's order an implicit ruling that this Court must revisit the issues raised in *Disney I*. Generally, unless the Supreme Court's issues an opinion with its order to deny a mandamus petition, its "failure to grant a petition for writ of mandamus is not an adjudication of, nor even a comment on, the merits of a case in any respect, including whether mandamus relief was available." *In re AIU Ins. Co.*, 148 S.W.3d 109, 119 (Tex. 2004). Here, the order denying the Cities' petition *was* a comment on whether mandamus relief was available—the Court's statement that the Cities had an adequate appellate remedy was tantamount to a holding that mandamus relief was *not* available. *See In re Rogers*, 690 S.W.3d 296, 302 (Tex. 2024) (mandamus relief available only to correct a clear abuse of discretion or violation of a duty imposed

[3] There are exceptions to this general rule for void orders and non-appealable post-judgment orders. *See In re Florey*, 329 S.W.3d 854, 857 (Tex. App.—Eastland 2010) (orig. proceeding) (void orders); *Rushmore Loan Mgmt. Servs., LLC v. Harris Cnty.*, No. 01-19-00758-CV, 2021 WL 3501704, at *3 (Tex. App.—Houston [1st Dist.] Aug. 10, 2021, no pet.) (mem. op.) (non-appealable post-judgment orders). No such exception applies in this case.

by law when there is no adequate appellate remedy). The order went no further. It did not define the scope of that appellate remedy, nor did it preclude the application of the law-of-the-case doctrine. *AIU Insurance* instructs us not to read more into a denial of a mandamus petition than what is there, and we cannot and do not ignore that instruction.

Finally, the Cities argue that we should reconsider *Disney I* because of a recent case from one of our sister courts. In *City of McAllen v. State*, the Austin Court of Appeals considered the constitutionality of legislative amendments to the PURA enacted in 2017 and 2019.[4] 706 S.W.3d 503, 506 (Tex. App.—Austin 2024), pet. granted, jdgm't vacated sub nom. *State v. City of McAllen*, No. 24-1060, 2026 WL 1614384 (Tex. June 5, 2026). The Texas Supreme Court determined that the Cities failure to name the proper defendant deprived it and the lower courts of jurisdiction over the action. *City of McAllen*, 2026 WL 1614384, at *3.

We have held that the law-of-the-case doctrine "does not prevent a court from reconsidering its earlier decision if there has been a change in the controlling law between the time of the first and second determinations." *See City of Dallas v. Jones*, 331 S.W.3d 781, 785 (Tex. App.—Dallas 2010, pet. dism'd). We have no intervening change in the law to bar the application of the law-of-the-case doctrine.

[4] Relevant here, SB 1152, enacted in 2019, amended Chapter 66 of the Utilities Code "to provide that a provider of both telecommunications and cable services, together with any member of the provider's 'affiliated group . . . , need only pay the greater of the sums of compensation otherwise due from the provider and any member of its affiliated group." TEX. UTIL. CODE ANN. § 66.005(d); *see also* TEX. LOC. GOV'T CODE ANN. § 283.051(d).

We decline to revisit *Disney I* in light of *City of McAllen* as that judgment has been vacated by lack of jurisdiction and by implication, the appellate court had no jurisdiction to issue the opinion.[5]

We conclude that the law-of-the-case doctrine applies in this case. We must now consider whether the Streaming Providers should be estopped from relying on it.

B. Whether the Streaming Providers Should Be Estopped from Relying on the Law-of-the-Case Doctrine

The Cities argue that the Streaming Providers are judicially estopped and quasi-estopped from relying on the law-of-the-case doctrine. We disagree.

Generally, judicial estoppel is "a common law doctrine that prevents a party from assuming inconsistent positions in litigation." *George Fleming and Fleming & Assocs., L.L.P. v. Wilson*, 694 S.W.3d 186, 191 (Tex. 2024). It "precludes a party who successfully maintains a position in one proceeding from afterwards adopting a clearly inconsistent position in another proceeding to obtain an unfair advantage." *Ferguson v. Bldg. Materials Corp. of Am.*, 295 S.W.3d 642, 643 (Tex. 2009). For

[5] We were not asked about, and we do not decide, the interplay between PURA and local government provisions for right of way fees. The *McAllen* Court having determined it lack jurisdiction over the merits declined to harmonize the constitutional Gift Clauses with the provisions of at least two statutory constructs, PURA and the Texas Local Government Code right of way fee provisions. We are constrained by the law of the case and our record to determine that the entirety of the argument before us presents no more than the distinction between franchise holders and non-franchisees. As wisely noted, "[p]erhaps, if the case is revived in a justiciable posture, some of the time and effort expended over the last nine years will not have gone entirely to waste. *City of McAllen*, 2026 WL 1614384, at *4. We were not favored with such a procedural posture, and therefore clarity, if any, is required by either the legislature or the Supreme Court to ultimately decide open questions related to streaming providers unfettered free use of the municipal rights of way, how they fit in to identified statutory constructs and whether the same are affiliates within applicable definitions, among others.

judicial estoppel to apply, a party must show that "(1) the opposing party made a sworn, inconsistent statement in a prior judicial proceeding; (2) the opposing party making the statement gained some advantage by it; (3) the statement was not made inadvertently or because of mistake, fraud, or duress; and (4) the statement was deliberate, clear, and unequivocal." *Galley v. Apollo Associated Servs., Ltd.*, 177 S.W.3d 523, 528–29 (Tex. App.—Houston [1st Dist.] 2005, no pet.) (citing *Swilley v. McCain*, 374 S.W.2d 871, 875–76 (Tex. 1964)).

Quasi-estoppel is an affirmative defense that "precludes a party from asserting, to another's disadvantage, a right inconsistent with a position previously taken." *Samson Expl., LLC v. T.S. Reed Props., Inc.*, 521 S.W.3d 766, 778 (Tex. 2017). "The doctrine applies when it would be unconscionable to allow a person to maintain a position inconsistent with one to which he acquiesced, or from which he accepted a benefit." *Id.* There are two elements of quasi estoppel: conduct that is inconsistent and unconscionable. *ATC Indoor DAS LLC v. MM CCM 48M Leasing, LLC*, No. 05-24-00769-CV, 2026 WL 265487, at *4 (Tex. App.—Dallas Jan. 29, 2026, no pet.) (mem. op.).

Although they have different elements, both judicial estoppel and quasi-estoppel require an inconsistency between a party's prior position and its current position in the same litigation. The Cities argue that the Streaming Providers' prior inconsistent statement came from its response to the Cities' motion for temporary stay filed in conjunction with the Cities' petition for writ of mandamus in the

Supreme Court. In that filing, the Streaming Providers argued that the motion for temporary stay should be denied in part because the Cities "have an adequate remedy at law in the form of an appeal from final judgment" and "nothing prevents [the Cities] from appealing that judgment to the Court of Appeals." The Cities argue that these statements are inconsistent with the Streaming Providers' current position that the law-of-the-case doctrine prevents us from reconsidering the Cities' issues.

We disagree.[6] *Disney I* became the law of the case for this Court and the trial court. *See Paradigm Oil*, 372 S.W.3d at 182 (Tex. 2012). But the Supreme Court is not barred from reviewing *Disney I* merely because it previously denied the Cities' petition for writ of mandamus. *See City of Houston v. Jackson*, 192 S.W.3d 764, 769 (Tex. 2006) ("[T]he 'law of the case' doctrine in no way prevents this Court from considering legal questions that are properly before us for the first time."). The Supreme Court can still exercise its discretion to grant a petition for review from this opinion. Thus, the Streaming Providers' prior position that the Cities had an adequate appellate remedy is not inconsistent with its current position that the law-of-the-case doctrine prevents *us* from reconsidering *Disney I*. In both positions, the Streaming Providers maintain that the Cities are entitled to one ruling from this

[6] The Cities cite us to no authority, and we have found none, holding that the quasi-estoppel and judicial estoppel can bar the application of the law-of-the-case doctrine. For the purposes of this appeal, we assume without deciding that they can.

Court, and potentially one ruling from the Supreme Court, should it decide to exercise its discretion to review our ruling.

The mootness doctrine prevented the Supreme Court from reviewing the issues in the first case, and the law-of-the-case doctrine prevents us from reconsidering the issues in this case. But the Cites' appellate remedies still include the right to petition the Supreme Court for review and are therefore still adequate.

We conclude that the Streaming Providers are not estopped from relying on the law-of-the-case doctrine.

CONCLUSION

Disney I became the law of the case in this Court. We conclude it was not clearly erroneous and that the Streaming Providers are not estopped from asserting the law-of-the-case doctrine. We decline to exercise our discretion to reconsider the issues raised in *Disney I,* when the original panel and this Court en banc did not. Accordingly, we affirm the trial court's judgment.

/Bonnie Goldstein/
BONNIE LEE GOLDSTEIN
JUSTICE