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SUPREME COURT OF TEXAS
BLAKE A. HAWTHORNE, CLERK

CAUSE NO. 22-0585

IN THE SUPREME COURT OF TEXAS

TEXAS DEPARTMENT OF TRANSPORTATION,
Petitioner,
v.

MARK SELF AND BIRGIT SELF,
Respondents and Cross-Petitioners.

On Petition for Review from the Second Court of Appeals,
Fort Worth, Texas; Cause No. 02-21-00240-CV

RESPONDENTS AND CROSS-PETITIONERS' ORAL ARGUMENT EXHIBITS

November 30, 2023

INDEX

EXHIBIT NUMBER	DESCRIPTION
1	Texas Civil Practice and Remedies Code, Section 101.021
2	*LeLeaux v. Hamshire-Fannett Indep. Sch. Dist.*, 835 S.W.2d 49 (Tex. 1992)
3	*Ryder Integrated Logistics, Inc. v. Fayette Cnty.*, 453 S.W.3d 922 (Tex. 2015)
4	*PHI, Inc. v. Texas Juvenile Justice Department*, 593 S.W.3d 296 (Tex. 2019)

EXHIBIT “1”

Vernon's Texas Statutes and Codes Annotated
Civil Practice and Remedies Code (Refs & Annos)
Title 5. Governmental Liability
Chapter 101. Tort Claims (Refs & Annos)
Subchapter B. Tort Liability of Governmental Units (Refs & Annos)

V.T.C.A., Civil Practice & Remedies Code § 101.021

§ 101.021. Governmental Liability

Currentness

A governmental unit in the state is liable for:

(1) property damage, personal injury, and death proximately caused by the wrongful act or omission or the negligence of an employee acting within his scope of employment if:

(A) the property damage, personal injury, or death arises from the operation or use of a motor-driven vehicle or motor-driven equipment; and

(B) the employee would be personally liable to the claimant according to Texas law; and

(2) personal injury and death so caused by a condition or use of tangible personal or real property if the governmental unit would, were it a private person, be liable to the claimant according to Texas law.

Credits

Acts 1985, 69th Leg., ch. 959, § 1, eff. Sept. 1, 1985.

V. T. C. A., Civil Practice & Remedies Code § 101.021, TX CIV PRAC & REM § 101.021
Current through the end of the 2023 Regular and Second Called Sessions of the 88th Legislature.

End of Document

EXHIBIT “2”

835 S.W.2d 49
Supreme Court of Texas.

Joyce LeLEAUX, Individually and as Next Friend of Monica LeLeaux, a Minor, and Monica LeLeaux, By and Through Next of Friend, Joyce LeLeaux, Petitioners,
v.
HAMSHIRE–FANNETT INDEPENDENT SCHOOL DISTRICT and Darrell Bill, Respondents.

No. D–0503.
|
April 29, 1992.
|
Rehearing Overruled Sept. 23, 1992.

Synopsis
Personal injury action was brought against school district and bus driver to recover for injury sustained by high school student on school band trip when she entered school bus through emergency rear door and hit her head on top of door frame. The District Court No. 260, Orange County, Buddie J. Hahn, J., granted summary judgment for defendants, and appeal was taken. The Beaumont Court of Appeals, 798 S.W.2d 20, Ronald L. Walker, C.J., affirmed. The Supreme Court, Hecht, J., held that: (1) student's injury did not arise from "operation or use" of bus such that district's governmental immunity was waived under Tort Claims Act, and (2) bus driver was statutorily immune from liability to student.

Affirmed.

Cook, J., dissented and filed opinion in which Gammage, J., joined.

Doggett, J., dissented and filed opinion in which Mauzy, J., joined.

West Headnotes (7)

[1] **Carriers** Transportation related to schools

Injury sustained by high school student on school band trip when she entered school bus through emergency rear door and hit her head on top of door frame did not arise out of school district's or its driver's "operation or use" of bus such that district's governmental immunity from liability was waived under Tort Claims Act, notwithstanding student's argument that district was negligent because of its practice of regularly loading and unloading band students and instruments through emergency rear doors and assertion that driver was negligent by telling students it was all right to use emergency rear door for getting on and off bus where bus was not in operation, driver was not aboard, no students were aboard, bus was nothing more than place where student happened to injure herself, and manner in which school district employees loaded and unloaded students had nothing to do with student's injury. V.T.C.A., Civil Practice & Remedies Code §§ 101.001 et seq., 101.001(2)(B), 101.021, 101.025, 101.051.

55 Cases that cite this headnote

[2] **Education** Immunity in general

School district, a governmental unit, is immune from liability for student's injury unless that immunity has been waived by Tort Claims Act. V.T.C.A., Civil Practice & Remedies Code §§ 101.001 et seq., 101.001(2)(B), 101.025, 101.051.

17 Cases that cite this headnote

[3] **Automobiles** Government; Immunity and Waiver Thereof

Phrase "arises from" in Tort Claims Act section regarding state governmental unit liability for property damage, personal injury, and death proximately caused by wrongful act or omission or negligence of employee acting within his scope of employment if the property damage,

personal injury, or death arises from operation or use of motor-driven vehicle or motor-driven equipment requires nexus between injury negligently caused by governmental employee and operation or use of motor-driven vehicle or piece of equipment. V.T.C.A., Civil Practice & Remedies Code §§ 101.001 et seq., 101.021.

150 Cases that cite this headnote

[4] **Automobiles** Government; Immunity and Waiver Thereof

Required operation or use for waiver of governmental immunity is that of employee under Tort Claims Act section regarding state governmental unit liability for property damage, personal injury, and death proximately caused by wrongful act or omission or negligence of employee acting within his scope of employment if the property damage, personal injury, or death arises from operation or use of motor-driven vehicle or motor-driven equipment. V.T.C.A., Civil Practice & Remedies Code §§ 101.001 et seq., 101.021.

169 Cases that cite this headnote

[5] **Carriers** Transportation related to schools

When injury occurs on school bus but does not arise out of use or operation of bus, and bus is only setting for injury, governmental immunity for liability is not waived. V.T.C.A., Civil Practice & Remedies Code §§ 101.001 et seq., 101.021.

26 Cases that cite this headnote

[6] **Education** Duties and liabilities in general

Public Employment State, local, and other non-federal personnel in general

School bus driver was "professional employee" as defined in section of Education Code regarding personal liability of professional employee of school district where his employment required certification and involved exercise of judgment or discretion. V.T.C.A., Education Code §§ 21.174(b)(3), 21.912, 21.912(d).

6 Cases that cite this headnote

[7] **Education** Duties and liabilities in general

Public Employment Particular torts

Bus driver was immune under Education Code from liability to high school student who was injured on school band trip when she entered school bus through emergency rear door and hit her head on top of door frame, notwithstanding student's argument that bus driver had duty to instruct students regarding safest means of getting off bus and failed to do so, where student was not getting off bus when she was injured, student was trying to close emergency door, student did not suggest that bus driver had duty to instruct students in correct procedures for closing door, and no requirements imposed on school bus drivers contained in record mandated instructions for closing emergency doors. V.T.C.A., Education Code §§ 21.174(b)(3), 21.912, 21.912(b, d).

16 Cases that cite this headnote

Attorneys and Law Firms

***50** Dale K. Hanks, Beaumont, for petitioners.

John E. Haught, Louis M. Scofield, Jr., Beaumont, for respondents.

OPINION

HECHT, Justice.

Monica LeLeaux, a sixteen-year-old high school junior, hit her head while trying to close the back door of a school bus. She and her mother sued the owner of the bus, the Hamshire–Fannett Independent School District, and the bus driver for damages. The trial court granted summary judgment for defendants, and the court of appeals affirmed. 798 S.W.2d 20. We affirm the judgment of the court of appeals.

Monica's accident occurred on a school band trip, the events of which we summarize here based solely upon Monica's deposition testimony. She and the other band members had

traveled in school buses to another school to compete in a marching contest. Once they finished, Monica and some of her schoolmates, along with the band director, stayed to watch other bands perform. At some point Monica returned to the bus she had ridden to the contest. The bus was parked and empty, and the rear emergency door was open. Monica did not open it, and she does not know who did. She and a friend, J.R. Thompson, sat together on pillows in the rear doorway of the bus, dangling their feet out the back, talking. No one else was in the bus while they were there.

When Monica and J.R. heard students coming toward the bus, they both jumped down to the ground. J.R. went around to the front of the bus to meet the kids coming back from the contest. Monica picked up her pillow, which had fallen to the ground when she jumped down, and threw it back into the bus. She then grabbed the seats or something else at the rear of the bus and jumped back up into the emergency doorway so that she could close the door. Although the door can be closed from the outside, Monica could not reach it from the ground well enough to shut it. She does not know why J.R. did not close the door, nor does she recall exactly why she decided to close the door, unless it was to protect the students' personal articles on ***51** the bus from being taken. Neither the driver nor anyone else was on the bus, and the engine was not running. Whatever her reason for shutting the door, Monica did not jump back into the bus to take her seat.

Monica had gotten in and out of the bus through the rear door on prior occasions and knew how tall it was. She had never hit her head before. This time, however, as she jumped up into the rear doorway, she stood up, mistakenly thinking she was inside the door, and hit her head on the top of the door frame. She bent over in one of the seats, laughing, as she sometimes did in response to pain. J.R. heard her, entered the front of the bus and ran back to where she was. About that time, the bus driver came up, got on the bus, and started the engine. When he did, a buzzer signaled that the back door was open. The driver told Monica to close the door, but as she reached out to do it, she passed out. J.R. told her later that she had fallen to the ground, and that he had picked her up and carried her to the front of the bus, where she tried to stand up but passed out again. The next thing she remembered was the band director standing over her.

[1] **[2]** **[3]** **[4]** The school district, a governmental unit, is immune from liability for Monica's injury unless that immunity has been waived by the Texas Tort Claims Act. *See* Tex.Civ.Prac. & Rem.Code §§ 101.001(2)(B), 101.025, 101.051. As it pertains to this case, that Act provides:

> A governmental unit in the state is liable for:
>
> (1) property damage, personal injury, and death proximately caused by the wrongful act or omission or the negligence of an employee acting within his scope of employment if:
>
> (A) the property damage, personal injury, or death arises from the operation or use of a motor-driven vehicle or motor-driven equipment; and
>
> (B) the employee would be personally liable to the claimant according to Texas law....

Tex.Civ.Prac. & Rem.Code § 101.021. This waiver of immunity is a limited one. A school district is not liable for a personal injury proximately caused by a negligent employee unless the injury "arises from the operation or use of a motor-driven vehicle or motor-driven equipment." *Id.* The phrase, "arises from", requires a nexus between the injury negligently caused by a governmental employee and the operation or use of a motor-driven vehicle or piece of equipment. While the statute does not specify whose operation or use is necessary —the employee's, the person who suffers injury, or some third party—we think the more plausible reading is that the required operation or use is that of the employee. This requirement is consistent with the clear intent of the Act that the waiver of sovereign immunity be limited.[1]

We have recently held that " '[o]peration' refers to 'a doing or performing of a practical work,' ... and 'use' means 'to put or bring into action or service; to employ for or apply to a given purpose'...." *Mount Pleasant Indep. Sch. Dist. v. Estate of Lindburg,* 766 S.W.2d 208, 211 (Tex.1989) (citations omitted). The bus in this case was not in operation; it was parked, empty, with the motor off. The driver was not aboard; there were no students aboard. The bus was not "doing or performing a practical work"; it was not being "put or [brought] into action or service"; it was not being "employ[ed] or appl[ied] to a given purpose". The bus was nothing more than the place where Monica happened to injure herself.

Monica argues that the school district was negligent in its operation and use of ***52** school buses because of its "practice of regularly loading and unloading the band students and their instruments through the emergency rear doors of school buses." She further asserts that on the day of the

accident the bus driver was negligent in his operation and use of the bus by "specifically telling the students it was all right for them to use the emergency rear door for getting on and off the bus." Assuming as we must in the context of summary judgment that the district and driver were negligent as Monica argues, her injury did not, as a matter of law, arise from such use. Although we agree with Monica's contention that "[t]here is no sound reason why the acts of loading and unloading students on and off school buses should not be considered a part of the transportation process", the manner in which school district employees loaded and unloaded students had nothing to do with Monica's injury. When Monica bumped her head she was not being loaded onto the bus or unloaded from it; she was not returning to her seat, or putting something on the bus, or retrieving an article from the bus, or preparing to leave. According to her own testimony, she was simply jumping up into the bus to try to close a door that she has no idea who opened. This conduct did not arise from permission to load and unload through the door.

[5] When an injury occurs on a school bus but does not arise out of the use or operation of the bus, and the bus is only the setting for the injury, immunity for liability is not waived. *See Hopkins v. Spring Indep. Sch. Dist.,* 736 S.W.2d 617, 619 (Tex.1987) (school district was not liable for failing to provide adequate medical care to a student with cerebral palsy who suffered convulsions on board a school bus); *Luna v. Harlingen Consol. Indep. Sch. Dist.,* 821 S.W.2d 442, 445 (Tex.App.—Corpus Christi 1991, writ denied) (school district was not liable for injuries two children sustained when they were struck by a vehicle while waiting at a bus stop for a school bus); *Naranjo v. Southwest Indep. Sch. Dist.,* 777 S.W.2d 190, 192–193 (Tex.App.—San Antonio 1989, writ denied) (school district was not liable for injuries students sustained while working on a privately owned vehicle in an auto mechanics class); *Heyer v. North East Indep. Sch. Dist.,* 730 S.W.2d 130, 132 (Tex.App.—San Antonio 1987, writ ref'd n.r.e.) (school district was not liable when a student waiting on a bus was injured by a vehicle, owned and operated by another student, which the district permitted on the premises); *Pierson v. Houston Indep. Sch. Dist.,* 698 S.W.2d 377, 380 (Tex.App.—Houston [14th Dist.] 1985, writ ref'd n.r.e.) (school district was not liable for students injured by an explosion resulting from an attempt to light a smoke-producing device on board a homecoming parade float); *Estate of Garza v. McAllen Indep. Sch. Dist.,* 613 S.W.2d 526, 528 (Tex.Civ.App.—Beaumont 1981, writ ref'd n.r.e.) (school district was not liable when one student stabbed another with a knife while riding on a school bus). Because the record establishes that Monica's injury did not arise out of the school district's or its driver's operation or use of the school bus, we hold that the school district is immune from liability in this case.

[6] **[7]** We must also consider whether the bus driver, Darrell Bill, may be liable for Monica's injury. Section 21.912 of the Education Code provides in pertinent part:

> (b) No professional employee of any school district within this state shall be personally liable for any act incident to or within the scope of the duties of his position of employment, and which act involves the exercise of judgment or discretion on the part of the employee, except in circumstances where professional employees use excessive force in the discipline of students or negligence resulting in bodily injury to students.
>
> (c) This section is not applicable to the operation, use, or maintenance of any motor vehicle.
>
> (d) "Professional employee," as used in this section, includes superintendents, principals, classroom teachers, supervisors, counselors, and any other person whose employment requires certification and an exercise of discretion.

***53** Inasmuch as we have held that Monica's injury did not arise out of the operation or use of the bus, and maintenance of the bus is not involved, section 21.912 is applicable, and Bill is not liable to Monica if he is a "professional employee" and his actions involve the exercise of judgment or discretion.[2]

Bill's employment requires certification. Section 21.174(b)(3) of the Education Code requires school districts to "employ school bus drivers certified in accordance with standards and qualifications promulgated jointly by the State Board of Education and the Texas Department of Public Safety as required by law...." Bill's employment, driving a school bus, certainly involves an exercise of judgment or discretion. Accordingly, Bill is a "professional employee" as defined by section 21.912(d) of the Education Code.

Bill's actions involved the exercise of judgment and discretion customary in his employment as a bus driver. Monica appears to argue that Bill had a duty to instruct students regarding the safest means of getting off the bus, and that he failed to do so. Even if Monica's argument is correct, it is irrelevant. Monica was not getting off the bus when she was injured; she was trying to close the emergency door. Monica does not suggest that Bill had a duty to instruct students in the

correct procedures for closing the door. The record contains extensive requirements imposed on school bus drivers, and none mandate instructions for closing emergency doors. On the record before us, we conclude that Bill was statutorily immune from liability to Monica.

* * * * * *

Having concluded that the trial court properly granted summary judgment for defendants, we affirm the judgment of the court of appeals.[3]

Dissenting opinion by COOK, J., joined by GAMMAGE, J.

Dissenting opinion by DOGGETT, J., joined by MAUZY, J.

COOK, Justice, dissenting.

Because a fact issue remains regarding whether Monica's injury arose from the operation or use of the school bus, I dissent.

The Court relies on the following facts in deciding that, as a matter of law, the injury did not arise from the driver's use of the bus. First, at the time of Monica's injury, the bus was parked, empty, with the engine off. Second, neither the driver nor any other students were aboard. I fail to see how these facts foreclose the possibility that the injury arose from the driver's use of the bus.

In *Mount Pleasant Independent School District v. Lindburg,* 766 S.W.2d 208 (Tex.1989), the Court held that " 'use' means 'to put or bring into action or service; to employ for or apply to a given purpose'...." *Id.* at 211 (citation omitted). A jury could conclude that a "given purpose" of the bus was to provide a place for band students to await the end of the competition. Therefore, by leaving the bus open for students to enter, the driver could have been "employing" the bus for a given purpose. The fact that the driver was away from the bus does not establish, as a matter of law, that the bus was not being employed for a given purpose. His presence at the time of the injury is irrelevant.

For the above reasons, I believe a fact issue remains regarding whether the injury arose from the use or operation of the bus. Therefore, I dissent.

GAMMAGE, J., joins in this opinion.

***54** DOGGETT, Justice, dissenting.

Once again the majority has rewritten a statute to suit its fancy. *See Rose v. Doctors Hosp. Facilities,* 801 S.W.2d 841, 852 (Tex.1990) (Doggett, J., dissenting); *Amberboy v. Societe de Banque Privee,* 831 S.W.2d 793, 798 (Tex.1992) (Doggett, J., concurring and dissenting). Representing a significant revision of the Texas Tort Claims Act, today's opinion effectively redrafts the statute as follows:

> the property damage, personal injury or death arises from the [*employee's*] operation or use of a motor-driven vehicle or motor-driven equipment....

Tex.Civ.Prac. & Rem.Code § 101.021(1)(A), *as modified by* page 51. By adding one new word that the Legislature never chose to include in its enactment, the majority bars Monica's recovery. This "legislative" action by the majority has no legitimate basis in either law or public policy.

The perceived need to interject the word "employee's" into the waiver provision as enacted by the Legislature has two asserted bases. The first is:

> The phrase, "arises from", requires a nexus between the injury negligently caused by a governmental employee and the operation or use of a motor-driven vehicle or piece of equipment.

Id. at 51. "Nexus," a term not found in the statute, means a "connection" or "link." Webster's Ninth New Collegiate Dictionary 797 (1989). Phrases are like links in a chain—they connect what comes immediately before with what comes immediately after. Rather than taking the links in order, the majority uses "arises from" to connect the words following ("operation or use") with another term ("employee's") some distance away in the chain. "Arises from" does require a nexus, between the two phrases on either side: "the property damage, personal injury, or death" and the "operation or use of a motor-driven vehicle or motor-driven equipment."

Proof of this connection, however, is not enough. The statute also requires that the "property damage, personal injury, and death [be] proximately caused by the ... negligence of an employee acting within the scope of employment." Tex.Civ.Prac. & Rem.Code § 101.021(1). This Court recognized the two-fold nature of the required showing in *Mount Pleasant Indep. Sch. Dist. v. Lindburg,* 766 S.W.2d 208, 211 (Tex.1989):

> In order for a claim to fall within the limited waiver of sovereign immunity, the finder of fact must determine that the damages suffered were "proximately caused by the act or omission or the negligence of an employee ... [and arose] from the operation or use of a motor-driven vehicle...." Tex.Civ.Prac. & Rem.Code Ann. § 101.021.

(Bracketed language and ellipses in the original).

The second asserted basis for modifying the statutory language is that "[t]his requirement is consistent with the clear intent of the Act that the waiver of sovereign immunity be limited." At 51. The two-prong test of the statute as written limits the scope of the waiver: if there is no negligence by an employee, there is no liability; if the injury does not arise from operation or use of a motor vehicle, no waiver occurs. Today's "nexus" serves to limit the waiver beyond the legislative intent embodied by its choice of language. The Legislature modified "negligence" with the phrase "of an employee." It did not similarly limit "operation or use." Ordinarily this court does not "insert additional words into a statutory provision." *Hunter v. Fort Worth Capital Corp.,* 620 S.W.2d 547, 552 (Tex.1981); *see also Damon v. Cornett,* 781 S.W.2d 597, 599 (Tex.1989) (refusing to insert the word "former" before "member of the Legislature" in interpreting Texas Constitution). It is thus not surprising that the majority cites no authority for this latest bit of judicial intrusion.[1]

In addition to its legislative handiwork the majority offers a number of excuses ***55** for barring Monica's recovery. Despite having concluded that the governmental employee must be using or operating the school bus, the court nonetheless proceeds to analyze situations that exclusively involve the use of the bus by students. The majority concedes that " '[t]here is no sound reason why the acts of loading and unloading students on and off school buses should not be considered a part of the transportation process.' " At 52. The opinion nevertheless focuses on *why* Monica was using the bus rather than *whether* she was using it. Apparently Monica would be able to maintain suit had she entered the bus for certain purposes suggested by the majority: "returning to her seat, or putting something on the bus, or retrieving an article from the bus, or preparing to leave." *Id.* at 52. Why should it matter under this statute if she got on the bus to fetch her coat or to close the door? Drawing such fine distinctions is supported by neither statute, precedent, nor logic, and is certainly not appropriate in a summary judgment context.

The majority emphasizes that "[t]he bus was parked, empty.... [and] nothing more than the place where [injury occurred]." The Texas Tort Claims Act does not require that the vehicle being used also be in motion nor that the conductor yell "All aboard." What the majority is really saying is that Monica's injury is unrelated to the bus. But clearly, without the bus there would have been no injury. The relationship between the injury and the vehicle clearly meets the traditional definition of cause in fact, recited time and time again by the Texas courts—"a substantial factor in bringing about the injury and without which no harm would have occurred." *Havner v. E–Z Mart Stores, Inc.,* 825 S.W.2d 456 (Tex.1992); *Missouri Pac. Ry. Co. v. American Statesman,* 552 S.W.2d 99, 103 (Tex.1977). In none of the cases relied upon by the court was the physical injury actually caused by contact with the bus.[2]

Even under today's rewriting of the statute, Monica should be entitled to present her claims to a Texas jury. Monica's injuries are not segregated in this record. They do not all appear to stem from the blow to her head:

> The bus driver came up, got on the bus, and started the engine. When he did, a buzzer signaled that the back door was open. The driver told Monica to close the door, but as she reached out to do it, she passed out. [She was told by a fellow student] that she had fallen to the ground.

At 51. At the time of the fall, the ignition of the bus was engaged. Had the door not been open, and had Monica not been instructed by the driver, a governmental employee, to close it, she would not have sustained the fall. By reciting these critical facts but failing to discuss their legal effect, the majority revises the record to fit the theory of disposition it has created. Contrary to ***56** *Mount Pleasant,* 766 S.W.2d at 211, the majority has taken a question of fact and decided it as a matter of law.

Without prejudging how a jury would evaluate Monica's conduct, I believe it should also have the opportunity to evaluate the driver's conduct in permitting students to use the emergency exit contrary to his training. Although perhaps unable to anticipate every type of conduct in which a busload of students may engage, a driver does have a responsibility to ensure passenger safety by applying job training[3] and enforcing clearly defined governmental policies. Regrettably, today's action denies any jury consideration of whether an act or omission of the driver in the use of a vehicle was one cause of the student's injuries. There is simply no summary judgment evidence showing that as a matter of law Monica's conduct was the sole cause of the accident.

Why she may not seek redress under today's opinion is a mystery that has only one explanation. The true message of the majority is that there is no need to trouble jurors in Orange County with the tale of a giggling girl when some judges in Austin can save them the bother and immunize the government from the claims of whomever it injures. Those with confidence in the jury system must reject the majority's "suspicion and distrust of the concept of ordinary Texans, constituting a cross-section of their individual communities, assembling as a jury to make difficult determinations." *Reagan v. Vaughn,* 804 S.W.2d 463, 491 (Tex.1991) (Doggett, J., concurring and dissenting). The Texas Tort Claims Act should be interpreted reasonably to protect the public, rather than misconstrued to prohibit jury consideration of facts subject to conflicting interpretations.

MAUZY, J., joins in this dissenting opinion.

All Citations

835 S.W.2d 49, 77 Ed. Law Rep. 565

Footnotes

1 The one case the dissent by Justice Doggett cites to the contrary, *Smith v. University of Texas,* 664 S.W.2d 180 (Tex.App.—Austin 1984, writ ref'd n.r.e.), is not. In *Smith,* a volunteer track official alleged that he had been injured by university employees' use of track equipment and facilities. The court held "that a fact issue exists as to whether the University's employee ... [was] negligent in the use of such tangible property by failing to properly supervise the same in the conduct of the shot-put event." *Id.* at 188. The negligent use in *Smith* was that of the government employee, just as we conclude it must be to be actionable under the Tort Claims Act. The bus driver was not present when Monica hurt herself, nor does she claim that he should have been, or that he should have been supervising her at the time.

2 The exception in section 21.912(b) does not apply in this case. Although the language of that exception is not entirely clear, we have held that it applies only to discipline of students. *Hopkins v. Spring Indep. Sch. Dist.,* 736 S.W.2d 617, 618–619 (Tex.1987); *Barr v. Bernhard,* 562 S.W.2d 844, 849 (Tex.1978).

3 The dissent by Justice Doggett contends that the "true message" of the Court's opinion is that we have no confidence in the jury system. *Post,* at 56. We neither say nor imply anything of the sort. The issue here is not whether a jury is capable of deciding a case like this—it certainly is—but whether the Tort Claims Act permits such a case to go to the jury.

1 Nor has this limitation been previously read into the waiver of sovereign immunity contained in section 101.021(2), which provides that a governmental unit may be liable for "personal injury and death so caused by a condition or use of tangible personal or real property...." For example, in *Smith v. University of Texas,* 664 S.W.2d 180 (Tex.App.—Austin 1984, writ ref'd n.r.e.), an injury sustained from a shot-put thrown at an athletic meet was found actionable under the Tort Claims Act. Rejecting the University's argument that the harm was caused not by an employee's use of the property but by the nonemployee who threw the shot-put, the court held "that a fact issue exists as to whether the University's employee ... [was] negligent in the use of tangible property by failing to properly supervise the same in the conduct of the shot-put event." *Id.* at 188. Monica has levied precisely the same claim here—that the bus driver was negligent in the use of the school bus by failing to properly supervise the manner in which students entered and exited.

2 In *Hopkins v. Spring Indep. Sch. Dist.,* 736 S.W.2d 617 (Tex.1987), the injuries did not arise from the use of a motor vehicle but from a seizure a student suffered as a result of a head injury sustained earlier in the day at school after she was pushed into a stack of chairs. *Id.* at 617, 619. Similarly, in *Estate of Garza v. McAllen Indep. Sch. Dist.,* 613 S.W.2d 526 (Tex.Civ.App.—Beaumont 1981, writ ref'd n.r.e.), the student's knife injuries were unrelated to the bus. In *Naranjo v. Southwest Indep. Sch. Dist.,* 777 S.W.2d 190 (Tex.App.—San Antonio 1989, writ denied), the court found that the "plaintiff was not injured by the motor vehicle itself. Rather, his injury was the result of the gasoline which spattered from the cup in his hand." *Id.* at 192. In *Pierson v. Houston Indep. Sch. Dist.,* 698 S.W.2d 377 (Tex.App.—Houston [14th Dist.] 1985, writ ref'd n.r.e.), the injury did not arise from the use of a motor vehicle but from igniting a gun powder-like substance with a cigarette while on a trailer bed pulled by a truck. *Id.* at 379.

3 Although HFISD trains its bus drivers to restrict rear exit use solely to emergencies and requiries that they instruct their passengers on the safest means of departing, Monica and other band members had been regularly permitted to use

the rear door for ingress and egress. On the day of the accident, the driver explicitly told the students they could make careful use of this entryway.

End of Document

EXHIBIT “3”

KeyCite Yellow Flag - Negative Treatment
Declined to Extend by City of San Antonio v. Maspero, Tex., February 18, 2022

453 S.W.3d 922
Supreme Court of Texas.

RYDER INTEGRATED LOGISTICS, INC., Petitioner,
v.
FAYETTE COUNTY, Texas, Respondent

No. 13–0968
|
OPINION DELIVERED: February 6, 2015
|
Rehearing Denied March 13, 2015

Synopsis

Background: Driver of tractor-trailer filed suit against owner of trailer and estate of operator of 18-wheeler that collided with tractor-trailer for personal injuries, emotional distress, and lost wages. Trailer owner filed third-party claim against county based on assertion that accident was due to negligence of deputy sheriff in use of cruiser during traffic stop of tractor-trailer. The 166th Judicial District Court, Bexar County, Barbara Hanson Nellermoe, J., granted county's plea to jurisdiction on grounds of governmental immunity, and corporation appealed. The San Antonio Court of Appeals, 414 S.W.3d 864, affirmed. Review was granted.

Holdings: The Supreme Court held that:

[1] deputy sheriff was "using" his cruiser at time of collision within meaning of Texas Tort Claims Act (TTCA);

[2] owner adequately alleged negligence; and

[3] owner adequately alleged that physical and emotional injuries sustained by driver of tractor-trailer "arose from" county deputy sheriff's purportedly negligent use of cruiser, as required for county to waive governmental immunity from suit; and

[4] Move Over Act did not apply to operator of 18-wheeler who was approaching deputy who had driven onto berm and was repositioning cruiser to face oncoming traffic.

Reversed and remanded.

West Headnotes (25)

[1] **States** Necessity of waiver or consent
States Actions against state agencies or officers as actions against state

A unit of state government is immune from suit and liability unless the state consents.

11 Cases that cite this headnote

[2] **Municipal Corporations** Actions

Governmental immunity defeats a court's jurisdiction.

34 Cases that cite this headnote

[3] **Municipal Corporations** Pleading

Where a government entity challenges jurisdiction on the basis of immunity, the plaintiff must affirmatively demonstrate the court's jurisdiction by alleging a valid waiver of immunity.

53 Cases that cite this headnote

[4] **Pleading** Plea to the Jurisdiction

When a plea to the jurisdiction challenges the pleadings, the court determines if the pleader has alleged facts that affirmatively demonstrate the court's jurisdiction to hear the cause, and in doing so, the court construe the pleadings liberally in favor of the plaintiff, and look to the plaintiff's intent.

39 Cases that cite this headnote

[5] **Pleading** Questions of law and fact

Where the pleadings generate a fact question regarding a jurisdictional issue, a court cannot sustain a plea to the jurisdiction.

21 Cases that cite this headnote

[6] **Municipal Corporations** Nature and grounds of liability

Texas Tort Claims Act (TTCA) provides a limited waiver of governmental immunity. Tex. Civ. Prac. & Rem. Code Ann. § 101.021.

8 Cases that cite this headnote

[7] **Appeal and Error** Jurisdiction

Appeal and Error Pleading

An appellate court reviews jurisdiction and pleading sufficiency de novo.

4 Cases that cite this headnote

[8] **Automobiles** Counties

County deputy sheriff was "using" his cruiser, within meaning of Texas Tort Claims Act (TTCA), when 18-wheeler collided with tractor-trailer that was subject of routine traffic stop, as required for county to waive its governmental immunity from liability on transportation corporation's third-party claim against county, in tractor-trailer driver's action against corporation and estate of driver of 18-wheeler for personal injuries, emotional distress, and lost wages; during traffic stop, cruiser's headlights and high-beam spotlight were illuminated, as were its emergency lights, deputy repositioned cruiser so that it faced oncoming traffic, and collision occurred while deputy was repositioning cruiser. Tex. Civ. Prac. & Rem. Code Ann. § 101.021.

1 Case that cites this headnote

[9] **Automobiles** Government; Immunity and Waiver Thereof

Given the Legislature's preference for a limited immunity waiver, under the Texas Tort Claims Act (TTCA), the court will strictly construe the requirement for the waiver of immunity from liability for damages arising out of the governmental entity's use of a motor-driven vehicle. Tex. Civ. Prac. & Rem. Code Ann. § 101.021.

17 Cases that cite this headnote

[10] **Automobiles** Government; Immunity and Waiver Thereof

In order for a governmental entity to have waived its immunity from liability for damages arising out of the use of a motor vehicle, under the Texas Tort Claims Act (TTCA), the government employee must have been actively operating the vehicle at the time of the incident. Tex. Civ. Prac. & Rem. Code Ann. § 101.021.

13 Cases that cite this headnote

[11] **Automobiles** Government; Immunity and Waiver Thereof

In order for a governmental entity to have waived its immunity from liability for damages arising out of the use of a motor vehicle, under the Texas Tort Claims Act (TTCA), the vehicle must have been used as a vehicle, and not, e.g., as a waiting area or holding cell. Tex. Civ. Prac. & Rem. Code Ann. § 101.021.

5 Cases that cite this headnote

[12] **Automobiles** Government; Immunity and Waiver Thereof

In order for a governmental entity to have waived its immunity from liability for damages arising out of the use of a motor-driven vehicle, under the Texas Tort Claims Act (TTCA), the tortious act alleged must relate to the government employee's operation of the vehicle rather than to some other aspect of the employee's conduct; in other words, even where the plaintiff has alleged a tort on the part of a government driver, there is no immunity waiver absent the negligent or otherwise improper use of a motor-driven vehicle. Tex. Civ. Prac. & Rem. Code Ann. § 101.021.

28 Cases that cite this headnote

[13] **Automobiles** Government; Immunity and Waiver Thereof

Where the motor-driven vehicle itself is only the setting for a government employee's wrongful conduct, any resulting harm will not give rise to a claim for which immunity is waived under the Texas Tort Claims Act (TTCA). Tex. Civ. Prac. & Rem. Code Ann. § 101.021.

2 Cases that cite this headnote

[14] **Negligence** Breach of Duty

"Negligence" is the breach of a legal duty.

[15] **Municipal Corporations** Police and fire

Public Employment Law enforcement personnel

A peace officer's flawed execution of policy gives rise to a colorable negligence claim.

1 Case that cites this headnote

[16] **Automobiles** Counties

Transportation corporation's allegations that, during routine traffic stop involving one of its tractor-trailers, county deputy sheriff breached legal duty by failing to follow proper protocols and procedures in moving his motor vehicle to face oncoming traffic, while headlights, high-beam spotlight, and emergency lights were illuminated, that such use of cruiser "blinded and distracted" driver of 18-wheeler, and caused him to strike rear of tractor-trailer, adequately stated third-party claim against county for negligence, as required for county to have waived governmental immunity from liability under Texas Tort Claims Act (TTCA), in action by driver of tractor-trailer against corporation and estate of driver of 18-wheeler for personal injuries, emotional distress, and lost wages. Tex. Civ. Prac. & Rem. Code Ann. § 101.021.

2 Cases that cite this headnote

[17] **Courts** Determination of questions of jurisdiction in general

The court does not require the plaintiff to put on its case simply to establish jurisdiction and, for that reason, proper jurisdictional analysis should not involve a significant inquiry into the substance of the claims.

2 Cases that cite this headnote

[18] **Automobiles** Government; Immunity and Waiver Thereof

A plaintiff can demonstrate that the harm "arises from" a government agent's negligent use of a motor-driven vehicle, as required for the government entity to waive its governmental immunity from suit under the Texas Tort Claims Act (TTCA), by demonstrating proximate cause. Tex. Civ. Prac. & Rem. Code Ann. § 101.021.

13 Cases that cite this headnote

[19] **Automobiles** Counties

Transportation corporation adequately alleged that physical and emotional injuries sustained by driver of corporation's tractor-trailer "arose from" county deputy sheriff's purportedly negligent use of cruiser, as required for county to have waived immunity from liability on corporation's third-party claim for negligence, under Texas Tort Claims Act (TTCA) in driver's action against corporation and estate of operator of 18-wheeler that collided with tractor-trailer; corporation alleged that, during routine traffic stop of tractor-trailer, deputy repositioned cruiser to face oncoming traffic, that cruiser's headlights, high-beam spotlight, and emergency lights were activated, that operator of 18-wheeler was blinded by lights, which caused him to veer into tractor-trailer, and that reasonable peace officer could have foreseen that driving westbound near an eastbound shoulder at night—with headlights and emergency lights illuminated—might confuse drivers, disrupt traffic, and lead to collision such as one that ultimately occurred. Tex. Civ. Prac. & Rem. Code Ann. § 101.021.

2 Cases that cite this headnote

[20] **Negligence** "But-for" causation; act without which event would not have occurred

Negligence Foreseeability

The components of proximate cause are "cause in fact" and foreseeability.

38 Cases that cite this headnote

[21] **Municipal Corporations** Trial, judgment, and review

Because proximate cause is ultimately a question for a fact-finder, on a plea to the jurisdiction based on governmental immunity, under the Texas Tort Claims Act (TTCA), the court need only determine whether the petition creates a fact question regarding the causal relationship between the government employee's conduct and the alleged injuries. Tex. Civ. Prac. & Rem. Code Ann. § 101.021.

7 Cases that cite this headnote

[22] **Negligence** "But-for" causation; act without which event would not have occurred

Negligence Substantial factor

"Cause in fact" as a component of proximate cause is essentially but-for causation; in other words, a tortious act is a "cause in fact" if serves as a substantial factor in causing the injury and without which the injury would not have occurred.

39 Cases that cite this headnote

[23] **Negligence** Foreseeability

"Foreseeability," as a component of proximate cause, requires only that the injury be of such a general character as might reasonably have been anticipated, and that the injured party should be so situated with relation to the wrongful act that injury to him or to one similarly situated might reasonably have been foreseen.

17 Cases that cite this headnote

[24] **Negligence** Remoteness and attenuation; mere condition or occasion

When an alleged cause is geographically, temporally, or causally attenuated from the alleged effect, that attenuation will tend to show that the alleged cause did no more than furnish the condition that made the effect possible.

11 Cases that cite this headnote

[25] **Automobiles** Violation of traffic regulations

Move Over Act, which required drivers to change lanes or reduce speed when approaching stationary emergency response vehicle, did not apply to driver of 18-wheeler who was driving on east-bound lane of highway and approached county deputy sheriff who had driven onto berm and was repositioning cruiser to face east-bound traffic. Tex. Transp. Code Ann. § 545.157(a)(1).

***925** On Petition for Review from the Court of Appeals for the Fourth District of Texas, Stone, Catherine, Judge

Attorneys and Law Firms

Keith Kendall, Davidson, Troilo, Ream & Garza, Ryan G. Anderson, Law Offices of Ryan G. Anderson, PLLC, San Antonio, for Petitioner.

Charles S. Frigerio, Law Offices of Charles S. Frigerio, P.C., San Antonio, for Respondent.

Opinion

***926** PER CURIAM

This sovereign-immunity dispute relates to the deadly collision of two eighteen-wheeled commercial trucks. Petitioner Ryder Integrated Logistics, Inc., alleges the collision was caused by a Fayette County deputy sheriff and seeks redress pursuant to section 101.021 of the Civil Practice and Remedies Code. The section provides a waiver of governmental immunity when an injury "arises from the operation or use" of a vehicle by a government employee. Tex. Civ. Prac. & Rem. Code § 101.021(1)(A). Fayette County maintains that the alleged harm did not arise from a

government employee's vehicle use, and thus that the County remains immune from suit. The trial court sustained the County's plea to the jurisdiction, and the court of appeals affirmed. After reviewing the pleadings, we conclude Ryder has alleged an injury arising from the deputy sheriff's vehicle use. Accordingly, we reverse the judgment of the court of appeals and remand to the trial court for further proceedings.

I

The relevant facts are largely undisputed. The collision occurred during the course of an otherwise routine traffic stop on Interstate 10 in rural Fayette County. Deputy Sheriff Randy Thumann stopped Ralph Molina for a minor traffic violation at around 3:00 in the morning. Molina parked his eighteen-wheeler on the shoulder just right of the eastbound lanes, and Thumann pulled up behind him. When Molina's truck began rolling backward toward Thumann's cruiser, Thumann repositioned his vehicle. He drove up the grassy berm to his right and then turned his cruiser so that it faced eastbound traffic, though it remained in the grass to the right of the shoulder. The cruiser's headlights and high-beam spotlight were illuminated, as were its emergency lights.

Within seconds of the cruiser turning to face oncoming traffic, and while Thumann was still repositioning it, an eastbound Ryder eighteen-wheeler driven by Roberto Solis, Sr., veered right and clipped the back of Molina's trailer. The collision caused Solis's truck to overturn and ignite. Solis did not survive the fire.

Molina subsequently sued Ryder and Solis's estate, alleging that Molina sustained personal injury, emotional distress, and lost wages as a result of the negligence of Ryder and Solis. Ryder then filed this third-party claim against Fayette County, alleging that Thumann's negligence caused the accident. Specifically, Ryder alleges that Solis was blinded or distracted by the cruiser's headlights, which the County concedes were directed at oncoming traffic. Ryder seeks its own damages in addition to reimbursement from the County for any recovery by Molina.

After answering Ryder's petition, the County raised a plea to the jurisdiction, arguing the accident had not arisen from the use of a vehicle such that jurisdiction might be established under section 101.021. The trial court sustained the plea. The court of appeals affirmed, holding that "the claim of distraction [by the headlights] seems to be more properly classified as a condition that made the accident possible than as the actual cause of the accident itself." *Ryder Integrated Logistics, Inc. v. Fayette Cnty.*, 414 S.W.3d 864, 869 (Tex.App.–San Antonio 2013).

II

[1] **[2]** **[3]** "A unit of state government is immune from suit and liability unless the state consents." ***927** *Dall. Area Rapid Transit v. Whitley,* 104 S.W.3d 540, 542 (Tex.2003) (citing *Tex. Dep't of Transp. v. Jones,* 8 S.W.3d 636, 638 (Tex.1999)). Governmental immunity defeats a court's jurisdiction. *Id.* Where a government entity challenges jurisdiction on the basis of immunity, "the plaintiff must affirmatively demonstrate the court's jurisdiction by alleging a valid waiver of immunity." *Id.* (citing *Tex. Dep't of Criminal Justice v. Miller,* 51 S.W.3d 583, 587 (Tex.2001)) (other citations omitted).

[4] **[5]** "When a plea to the jurisdiction challenges the pleadings, we determine if the pleader has alleged facts that affirmatively demonstrate the court's jurisdiction to hear the cause." *Tex. Dep't of Parks & Wildlife v. Miranda,* 133 S.W.3d 217, 226 (Tex.2004) (citing *Tex. Ass'n of Bus. v. Tex. Air Control Bd.,* 852 S.W.2d 440, 446 (Tex.1993)). In doing so, "[w]e construe the pleadings liberally in favor of the plaintiff[ ] and look to the pleader['s] intent." *Id.* (citing *Tex. Air Control Bd.,* 852 S.W.2d at 446). Where the pleadings generate a "fact question regarding the jurisdictional issue," a court cannot sustain the plea to the jurisdiction. *Id.* at 228.

[6] **[7]** The asserted source of waiver is the Texas Tort Claims Act ("TTCA"). "The TTCA provides a limited waiver of governmental immunity." *Alexander v. Walker,* 435 S.W.3d 789, 790 (Tex.2014) (citing Tex. Civ. Prac. & Rem. Code § 101.023). In relevant part, the statute indicates:

> A governmental unit in the state is liable for:
>
> (1) property damage, personal injury, and death proximately caused by the wrongful act or omission or the negligence of an employee acting within his scope of employment if:
>
> (A) the property damage, personal injury, or death arises from the operation or use of a motor-driven vehicle or motor-driven equipment; and

(B) the employee would be personally liable to the claimant according to Texas law; and

(2) personal injury and death so caused by a condition or use of tangible personal or real property if the governmental unit would, were it a private person, be liable to the claimant according to Texas law.

Tex. Civ. Prac. & Rem. Code § 101.021. The issue before this Court is whether Ryder has alleged harm arising from the use of Thumann's vehicle such that immunity might be waived under subsection (1)(A). The courts below concluded Ryder has not done so. We review jurisdiction and pleading sufficiency de novo. *Miranda,* 133 S.W.3d at 226.

A

[8] **[9]** **[10]** **[11]** We first consider Ryder's allegations regarding use of the vehicle. Given the Legislature's preference for a limited immunity waiver, we strictly construe section 101.021's vehicle-use requirement. *See LeLeaux v. Hamshire–Fannett Indep. Sch. Dist.,* 835 S.W.2d 49, 51 (Tex.1992) (emphasizing the limited nature of TTCA waiver). To begin with, a government employee must have been actively operating the vehicle at the time of the incident. *See id.* at 52 (finding no waiver where no government employee was present when student sustained injury in school bus). Moreover, the vehicle must have been used as a vehicle, and not, e.g., as a waiting area or holding cell. *See, respectively, id.* (explaining that unsupervised students were not using parked bus as a vehicle when they chose to meet there to talk); *City of Kemah v. Vela,* 149 S.W.3d 199 (Tex.App.–Houston [14th Dist.] 2004, pet. denied) (finding no use where plaintiff was injured while sitting in parked police cruiser).

***928** **[12]** **[13]** In addition, the tortious act alleged must relate to the defendant's operation of the vehicle rather than to some other aspect of the defendant's conduct. In other words, even where the plaintiff has alleged a tort on the part of a government driver, there is no immunity waiver absent the negligent or otherwise improper use of a motor-driven vehicle. For example, a driver's failure to supervise children at a bus stop may rise to the level of negligence, but that shortcoming cannot accurately be characterized as negligent operation of the bus. *See generally Mount Pleasant Indep. Sch. Dist. v. Estate of Lindburg,* 766 S.W.2d 208 (Tex.1989). Similarly, a police officer may commit assault in his cruiser, and that assault may constitute a tort, but it is not tortious use of a vehicle. *See generally Hernandez v. City of Lubbock,* 253 S.W.3d 750 (Tex.App.–Amarillo 2007, no pet.). Where the vehicle itself "is only the setting" for the defendant's wrongful conduct, any resulting harm will not give rise to a claim for which immunity is waived under section 101.021. *LeLeaux,* 835 S.W.2d at 52.

In light of these principles, the record reveals that Ryder has indeed challenged a government employee's vehicle use. There is no genuine dispute that Thumann was operating the cruiser at the time of the alleged injury. The County does not deny that the vehicle was approaching eastbound traffic as the two trucks collided. The County even concedes that Thumann was in the process of "relocating" his cruiser. The County appears to argue that the use of headlights alone cannot constitute the operation or use of a vehicle. But Thumann was not just operating the headlights—he was driving the car.

[14] **[15]** **[16]** Ryder has also adequately alleged negligence. Negligence is the breach of a legal duty. *Nabors Drilling, U.S.A., Inc. v. Escoto,* 288 S.W.3d 401, 404 (Tex.2009). Ryder contends Thumann breached a legal duty when he "failed to follow proper ... protocols and procedures in moving his motor vehicle," and then "blinded and distracted Mr. Solis, [d]eceased, causing him to strike the rear of the Molina 18–wheeler." Ryder makes several other arguments, as well, but this allegation is sufficient for present purposes. It is well established that a peace officer's flawed execution of policy gives rise to a colorable negligence claim. *See State v. Terrell,* 588 S.W.2d 784, 788 (Tex.1979) ("[I]f ... an officer or employee acts negligently in carrying out that policy, government liability may exist...."). This is precisely what Ryder has alleged here.

[17] We express no opinion as to Thumann's actual culpability, and we reject the County's request that we hold Thumann's actions non-negligent as a matter of law. We do not require the plaintiff to "put on [its] case simply to establish jurisdiction." *Bland Indep. Sch. Dist. v. Blue,* 34 S.W.3d 547, 554 (Tex.2000). For that reason, proper jurisdictional analysis should "not involve a significant inquiry into the substance of the claims." *Id.* Yet the County implicitly asks us to undertake as much, and to assume a role the Legislature has expressly reserved for the finder of fact. *See* Tex. Civ. Prac. & Rem. Code § 33.003 (establishing fact-finder's role). We decline to do so.

B

[18] **[19]** The question, then, is whether the alleged harm arose from Deputy Thumann's arguably negligent use of the cruiser. The statute itself does not define "arises from." We have defined this standard as a "nexus between the operation or use of the motor-driven vehicle or equipment and a plaintiff's injuries." *Whitley,* 104 S.W.3d at 543 (citations omitted). We ***929** have also described the threshold as something more than actual cause but less than proximate cause. *See Utica Nat'l Ins. Co. of Tex. v. Am. Indem. Co.,* 141 S.W.3d 198, 203 (Tex.2004) (" '[A]rise out of' means ... there is but[-]for causation, though not necessarily direct or proximate causation."). Accordingly, a plaintiff can satisfy the "arising from" standard by demonstrating proximate cause. This is particularly appropriate in the context of the TTCA, which only reaches injuries "proximately caused by the wrongful act or omission or the negligence of an employee." Tex. Civ. Prac. & Rem. Code § 101.021(1).

[20] **[21]** The components of proximate cause are cause in fact and foreseeability. *W. Invs., Inc. v. Urena,* 162 S.W.3d 547, 551 (Tex.2005). Because proximate cause is ultimately a question for a fact-finder, we need only determine whether the petition "creates a fact question" regarding the causal relationship between Thumann's conduct and the alleged injuries. *Miranda,* 133 S.W.3d at 228; *see also Ark. Fuel Oil Co. v. State,* 154 Tex. 573, 280 S.W.2d 723, 729 (1955) ("Question[s] of causation such as proximate cause are normally treated as questions of fact unless reasonable minds cannot differ.").

[22] We can readily dispense with the first component of proximate cause. Ryder alleges that Thumann's vehicle served as a cause in fact of the collision. Cause in fact is essentially but-for causation. In other words, a tortious act is a cause in fact if serves as "a substantial factor in causing the injury and without which the injury would not have occurred." *Del Lago Partners, Inc. v. Smith,* 307 S.W.3d 762, 774 (Tex.2010) (citation omitted). The allegations easily satisfy the standard. Ryder pleads that by directing the cruiser's lights toward eastbound traffic, Thumann caused Solis's errant driving. Ryder thus contends that the collision—and any associated harm—would not have occurred absent Thumann's decision to drive his car toward oncoming traffic.

[23] The allegations are also sufficient to generate a fact issue regarding the second prong of proximate cause. Foreseeability requires only "that the injury be of such a general character as might reasonably have been anticipated; and that the injured party should be so situated with relation to the wrongful act that injury to him or to one similarly situated might reasonably have been foreseen." *Nixon v. Mr. Prop. Mgmt. Co.,* 690 S.W.2d 546, 551 (Tex.1985) (quoting *Carey v. Pure Distrib. Corp.,* 133 Tex. 31, 124 S.W.2d 847, 849 (1939)) (emphasis and citations omitted). According to Ryder, a reasonable peace officer could have foreseen that driving westbound near an eastbound shoulder at night—with headlights and emergency lights illuminated—might confuse drivers, disrupt traffic, and lead to a collision much like the one that ultimately occurred. And the alleged harm is of the very character that might reasonably have been anticipated. Upon consideration of these allegations, a reasonable juror might find the requisite nexus between the use of Thumann's vehicle and any injuries suffered by Molina and Ryder.

[24] The court of appeals held otherwise, concluding that "Thumann's use of his vehicle when turning around merely furnished the condition that made Solis's death possible." *Ryder,* 414 S.W.3d at 871. We have indeed held that "the operation or use of a motor vehicle 'does not cause injury if it does no more than furnish the condition that makes the injury possible.' " *Whitley,* 104 S.W.3d at 543 (quoting *Dall. Cnty. Mental Health & Mental Retardation v. Bossley,* 968 S.W.2d 339, 343 (Tex.1998)). "When an alleged cause is geographically, temporally, or ***930** causally attenuated from the alleged effect, that attenuation will tend to show that the alleged cause did no more than furnish the condition that made the effect possible." *City of Dall. v. Hillis,* 308 S.W.3d 526, 532 (Tex.App.–Dallas 2010, pet. denied) (citing *Bossley,* 968 S.W.2d at 343). But as we have explained, the allegations suggest that Thumann's operation of his cruiser might not have been attenuated from the alleged injuries.

In holding that Thumann's use of the cruiser "merely furnished [a] condition," the court of appeals relied on *Texas Department of Public Safety v. Grisham,* 232 S.W.3d 822 (Tex.App.–Houston [14th Dist.] 2007, no pet.). The plaintiff in that case had been injured while driving when he moved into the left lane of an interstate highway, striking a vehicle stranded there. *Id.* at 824. He apparently changed lanes only because a police car was parked, with emergency lights activated, on the right shoulder. *Id.* The plaintiff argued that the officer should have known drivers would change lanes, and that his alleged negligence caused the collision and associated injuries. *Id.* at 825. The court of appeals rejected the argument, holding that a parked vehicle is not in use for the purpose of the TTCA, and explaining that the "cruiser parked on the right shoulder with the lights activated

merely furnished the condition" that made the plaintiff's injury possible. *Id.* at 827.

Although we express no opinion as to the substance of the *Grisham* panel's analysis, we decline to follow its reasoning here. The critical question in *Grisham* was whether the use of emergency lights alone renders a parked cruiser in "operation or use" for the purpose of the TTCA waiver. We need not resolve that issue today, as it is undisputed that Thumann was driving—and thus operating—his vehicle at the time the accident occurred. As a consequence, Ryder has alleged an injury arising from the tortious operation or use of a vehicle.

C

[25] Finally, the County insists that Solis's ostensibly "illegal actions" preclude any liability and require dismissal of Ryder's tort claims. More specifically, the County complains that Solis failed to comply with the state's "Move Over Act," which requires drivers to change lanes or reduce speed when approaching an emergency response vehicle. *See* Tex. Transp. Code § 545.157. We are not persuaded. The statutory provision applies only where a driver is approaching a "stationary authorized emergency vehicle." *Id.* § 545.157(a)(1). Yet the emergency vehicle at issue here was not stationary. Even the County does not deny that the cruiser was moving toward eastbound traffic when Solis approached the scene. Consequently, the Move Over Act does not apply.

More importantly, the County misrepresents the governing standard. The County's argument presumes that Ryder's recovery is barred by its agent's own wrongful conduct. This might be true in a pure contributory-negligence regime. *See* Restatement (Second) of Torts § 467 (1965). Yet Texas abandoned this "all-or-nothing system" in 1973. *Dugger v. Arredondo,* 408 S.W.3d 825, 830 (Tex.2013). With our current proportionate-liability system, the state "abrogated former common law doctrines that barred a plaintiff's recovery because of the plaintiff's conduct." *Id.* at 832. A fact-finder must instead "determine the percentage of responsibility, stated in whole numbers" of each party. *See* Tex. Civ. Prac. & Rem. Code § 33.003. Based on this determination, recovery is precluded only "if [the plaintiff's] percentage of responsibility is greater than 50 percent." *Id.* § 33.001. ***931** If his contribution to the alleged harm is 50% or less, he is entitled to fractional recovery. *Id.* § 33.012. This is true even where the plaintiff violates the law. *Dugger,* 408 S.W.3d at 832. Accordingly, the alleged infraction does not preclude this action.

* * *

For the reasons stated herein, we conclude Ryder has alleged an injury arising from the use of a vehicle for the purpose of section 101.021 of the Civil Practice and Remedies Code. Therefore, and without hearing oral argument, we reverse the judgment of the court of appeals and remand the case to the trial court for further proceedings. Tex. R. App. P. 59.1.

All Citations

453 S.W.3d 922, 58 Tex. Sup. Ct. J. 309

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EXHIBIT “4”

593 S.W.3d 296
Supreme Court of Texas.

PHI, INC., Petitioner,
v.
TEXAS JUVENILE JUSTICE DEPARTMENT, f/k/a Texas Youth Commission, Respondent

No. 18-0099
|
Argued January 31, 2019
|
OPINION DELIVERED: April 26, 2019

Synopsis

Background: Provider of helicopter-transport services brought negligence suit against State Juvenile Justice Department, alleging that, by and through its employees, Department had breached its duty to maintain and safely operate its vehicle, causing damages to provider's helicopter when cargo van collided with helicopter in hospital parking lot. Department filed a plea to the jurisdiction and a motion for summary judgment. The 235th District Court, Cooke County, No. CV15-00689, Janelle M. Haverkamp, J., denied the plea and the motion. Department took interlocutory appeal. The Fort Worth Court of Appeals, Elizabeth Kerr, J., 537 S.W.3d 707, reversed and rendered, and appeal was taken.

Holdings: The Supreme Court, Blacklock, J., held that:

[1] Department employee's failure to set emergency brake on cargo van, which subsequently rolled into grounded helicopter, qualified as "operation or use" of vehicle within meaning of Tort Claims Act section, waiving sovereign immunity for property damage arising from operation or use of motor vehicle;

[2] Tort Claims Act section, waiving sovereign immunity for property damage arising from operation or use of motor vehicle, does not explicitly require that the operation or use be "active" or that it be ongoing at time of incident;

[3] close temporal proximity between employee's allegedly negligent parking of van, van's beginning to roll, and subsequent collision between van and grounded helicopter satisfied the "active operation of vehicle at time of incident" inquiry under Act;

[4] Court of Appeals erred by rigidly requiring "active" operation "at the time of the incident" as if those were elements of Act; and

[5] operation of vehicle included making sure it did not roll away after it was parked within meaning of Act.

Reversed and remanded.

West Headnotes (25)

[1] **Appeal and Error** On motions relating to pleadings

Appeal and Error On motion for judgment

For purposes of appellate jurisdiction over interlocutory orders, the Court of Appeals had jurisdiction over trial court's denial of the combined plea to the jurisdiction and motion for summary judgment, regardless of how trial-court pleading was styled, because the substance of the pleading was to raise sovereign immunity, which implicated subject-matter jurisdiction, in action brought by helicopter owner against State Juvenile Justice Department, who asserted that sovereign immunity under Tort Claims Act barred owner's claim for damage to its grounded helicopter by Department's unoccupied cargo van, which had rolled backwards down incline into helicopter. Tex. Civ. Prac. & Rem. Code Ann. § 101.001 et seq.

7 Cases that cite this headnote

[2] **Municipal Corporations** Capacity to sue or be sued in general

States Nature and scope of immunity in general

States Actions against state agencies or officers as actions against state

Sovereign immunity protects the State of Texas and its agencies and subdivisions from suit and liability.

5 Cases that cite this headnote

[3] **States** Necessity of waiver or consent

States Actions against state agencies or officers as actions against state

States Particular agencies, boards, and commissions

State Juvenile Justice Department is an agency of the State, and thus, sovereign immunity bars suits against the Department unless the legislature has waived its immunity. Tex. Civ. Prac. & Rem. Code Ann. § 101.001(3)(A); Tex. Hum. Res. Code Ann. § 201.002.

[4] **Pleading** Plea to the Jurisdiction

Procedurally, the assertion of sovereign immunity implicates the trial court's jurisdiction and is properly asserted in a plea to the jurisdiction.

11 Cases that cite this headnote

[5] **Pleading** Plea to the Jurisdiction

Parties may submit evidence at the plea-to-the-jurisdiction stage, and the trial court's review generally mirrors the summary judgment standard.

[6] **Pleading** Questions of law and fact

If evidence at the plea-to-the-jurisdiction stage creates a fact question regarding the jurisdictional issue, then trial court cannot grant the plea to the jurisdiction, and the fact issue will be resolved by the fact finder.

2 Cases that cite this headnote

[7] **Pleading** Plea to the Jurisdiction

Pleading Questions of law and fact

If the relevant evidence at the plea-to-the-jurisdiction stage is undisputed or fails to raise a fact question on the jurisdictional issue, the trial court rules on the plea to the jurisdiction as a matter of law.

3 Cases that cite this headnote

[8] **Appeal and Error** Pleading

Trial court's ruling on plea to the jurisdiction is reviewed de novo on appeal.

1 Case that cites this headnote

[9] **Automobiles** Government; Immunity and Waiver Thereof

By Tort Claims Act's requiring that the damage arise from operation or use of vehicle in order to waive sovereign immunity, Act requires a nexus between the damage negligently caused by governmental employee and the operation or use of motor-driven vehicle. Tex. Civ. Prac. & Rem. Code Ann. § 101.021(1)(A).

13 Cases that cite this headnote

[10] **Automobiles** Government; Immunity and Waiver Thereof

To waive immunity under the Tort Claims Act based on property damage arising from operation of motor vehicle, nexus between the damage and operation of motor-driven vehicle requires more than mere involvement of property, and instead, the use or operation must have actually caused the damage. Tex. Civ. Prac. & Rem. Code Ann. § 101.021(1)(A).

7 Cases that cite this headnote

[11] **Negligence** Possibility of multiple causes

There may be more than one proximate cause of an accident.

2 Cases that cite this headnote

[12] **Pleading** Questions of law and fact

At plea-to-the-jurisdiction stage of proceedings, fact issue as to whether accident "arose from" State Juvenile Justice Department employee's failure to set emergency brake on unoccupied cargo van, which subsequently rolled into grounded helicopter, thereby damaging it, satisfied the "arises from" requirement in Tort Claims Act section, waiving sovereign immunity for property damage arising from operation or use of motor vehicle. Tex. Civ. Prac. & Rem. Code Ann. § 101.021(1)(A).

[13] **Statutes** Plain Language; Plain, Ordinary, or Common Meaning

Statutes Context

Statutes Relation to plain, literal, or clear meaning; ambiguity

In construing words in statute, courts must look to the plain meaning of statutory text unless a different meaning is apparent from the context or the plain meaning leads to absurd or nonsensical results.

4 Cases that cite this headnote

[14] **Statutes** Plain language; plain, ordinary, common, or literal meaning

Statutes Extrinsic Aids to Construction

If statute is clear and unambiguous, courts apply its words according to their common meaning without resort to rules of construction or extrinsic aids.

2 Cases that cite this headnote

[15] **States** Mode and sufficiency of waiver or consent

Waivers of sovereign immunity must be clear and unambiguous.

3 Cases that cite this headnote

[16] **Automobiles** States

State Juvenile Justice Department employee's failure to set emergency brake on unoccupied cargo van, which subsequently rolled into grounded helicopter, thereby damaging it, qualified as "operation or use" of vehicle within meaning of Tort Claims Act section, waiving sovereign immunity for property damage arising from operation or use of motor vehicle; ensuring van would not roll away was integral part of the "operation or use" of vehicle. Tex. Civ. Prac. & Rem. Code Ann. § 101.021(1)(A).

4 Cases that cite this headnote

[17] **Statutes** Construction as written

Ordinary citizens should be able to rely on plain language of a statute to mean what it says.

2 Cases that cite this headnote

[18] **Automobiles** Government; Immunity and Waiver Thereof

In general, courts should strive to give simple words like "operation" and "use" a simple construction, rather than converting them into terms of art intelligible only to experts in the case law applying Tort Claims Act section, waiving sovereign immunity for property damage arising from operation or use of motor vehicle. Tex. Civ. Prac. & Rem. Code Ann. § 101.021(1)(A).

2 Cases that cite this headnote

[19] **Automobiles** Government; Immunity and Waiver Thereof

Tort Claims Act section, waiving sovereign immunity for property damage arising from operation or use of motor vehicle, requires that the injury arise from the operation or use of motor-driven vehicle, but it does not explicitly require that the operation or use be "active" or that it be ongoing at time of incident. Tex. Civ. Prac. & Rem. Code Ann. § 101.021(1)(A).

17 Cases that cite this headnote

[20] **Statutes** Absent terms; silence; omissions

No court has the authority, under the guise of interpreting a statute, to engraft extra-statutory requirements not found in a statute's text.

7 Cases that cite this headnote

[21] **Automobiles** States

Court of Appeals did not err in considering whether there was active operation at time of incident when determining if Tort Claims Act section, waiving sovereign immunity for property damage arising from operation or use of motor vehicle, applied and waived State Juvenile Justice Department's immunity with respect to negligence claim brought by owner of helicopter, alleging that Department employee failed to set emergency brake on unoccupied cargo van, which subsequently rolled into grounded helicopter, thereby damaging it; if securing a vehicle so it would not roll away was the final act of driving, then it was no stretch to consider it part of the "active operation or use" of vehicle. Tex. Civ. Prac. & Rem. Code Ann. § 101.021(1)(A).

[22] **Automobiles** States

Close temporal proximity between State Juvenile Justice Department employee's allegedly negligent parking of cargo van, cargo van's beginning to roll, and subsequent collision between van and grounded helicopter satisfied the "active operation of vehicle at time of incident" inquiry under Tort Claims Act section, waiving sovereign immunity for property damage arising from operation or use of motor vehicle. Tex. Civ. Prac. & Rem. Code Ann. § 101.021(1)(A).

[23] **Automobiles** Government; Immunity and Waiver Thereof

Whether government vehicle was in "active" operation "at the time of the incident" is an important consideration in determining whether an alleged injury arises from the operation or use of a vehicle under Tort Claims Act section, waiving sovereign immunity for property damage arising from operation or use of motor vehicle. Tex. Civ. Prac. & Rem. Code Ann. § 101.021(1)(A).

6 Cases that cite this headnote

[24] **Automobiles** Government; Immunity and Waiver Thereof

Although Court of Appeals did not err in considering whether there was active operation at time of incident when determining if Tort Claims Act section, waiving sovereign immunity for property damage arising from operation or use of motor vehicle, applied, Court did err by rigidly requiring "active" operation "at the time of the incident" as if those were elements of Act; by doing so, Court held plaintiff's claims to a stricter standard than the one provided by the legislature. Tex. Civ. Prac. & Rem. Code Ann. § 101.021(1)(A).

1 Case that cites this headnote

[25] **Automobiles** States

Operation of vehicle included making sure it did not roll away after it was parked as that term was used in Tort Claims Act section, waiving sovereign immunity for property damage arising from operation or use of motor vehicle, for purposes of negligence claim brought by owner of helicopter, alleging that State Juvenile Justice Department employee failed to set emergency brake on unoccupied cargo van, which subsequently rolled into grounded helicopter, thereby damaging it. Tex. Civ. Prac. & Rem. Code Ann. § 101.021(1)(A).

***299** On Petition for Review from the Court of Appeals for the Second District of Texas, Kerr, Elizabeth Sturdivant, Judge

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Opinion

Justice Blacklock delivered the opinion of the Court.

An unoccupied cargo van rolled backwards down an incline into a grounded ***300** helicopter. Fortunately, no one was harmed, though the helicopter may never be the same. Since the State of Texas owned the van, the legal issue before the Court in this interlocutory appeal is whether sovereign immunity bars the helicopter owner's claim. The court of appeals concluded that it did, over a dissent. Because we conclude that portions of the claim should have been allowed to proceed, we reverse the judgment of the court of appeals and remand the case to the trial court.

I. Factual and Procedural Background

Petitioner is PHI, Inc., a private company that provides medical helicopter services. Respondent is the Texas Juvenile Justice Department, an agency of the State of Texas. The factual summary below comes from evidence the parties submitted while litigating the Department's combined plea to the jurisdiction and motion for summary judgment, from which this appeal arises.

PHI owned a helicopter that flew to a hospital, the North Texas Regional Medical Center in Gainesville, Texas. The helicopter landed on a ground-level pad at the hospital. While the helicopter crew was securing a patient and preparing for takeoff, Christopher Webb, a Department employee, arrived at the hospital parking lot driving a fifteen-passenger van owned by the Department. Webb dropped off two passengers and parked the van on an incline near the helicopter. There was evidence that Webb pulled into a parking space, put the transmission in park, turned off the ignition, removed the key, and exited the van without setting the emergency brake.

As Webb walked away from the van toward the medical center entrance, the van began rolling. The van crashed into the helicopter. A PHI paramedic then used the emergency brake to secure the van after finding he could not put it in park. A Department supervisor arrived at the scene later and claimed he saw the vehicle with the shifter in the park position. A post-accident inspection found that the van's shifter bushings and shift lever were worn in a manner preventing the vehicle from going fully into park or the ignition from going fully into the locked position. However, the parties point to no evidence in the record before us that Webb was aware of the worn gear-shift mechanism. A local police officer investigated the accident. His report states that the accident occurred after the driver placed the vehicle in park and identifies factor "54" as contributing to the accident. Factor 54 is "Parked and Failed to Set Brakes." Webb filled out an accident report wherein he stated that he placed the van in park, but he did not dispute the police officer's finding that he failed to use the emergency brake. Hours before the accident, another Department employee complained to a Department vehicle-control officer that he didn't feel comfortable driving the van on the highway because it was "running rough." Because of this complaint, the officer submitted a work order for a tune-up.

PHI sued the Department. It alleged the Department breached its duty to act with ordinary care in maintaining and operating the van when its employees:

- failed to maintain the van when it knew or should have known the shifter bushings and shift levers were so badly worn that they would not allow the van to go fully into park or allow the ignition to go fully into the proper locked position;
- drove the van when it was not in a safe condition to be on the road;
- parked the van on an incline when Webb knew or should have known ***301** that the van would not stay in park; and
- failed to engage the emergency brake when parking the vehicle.

[1] The Department filed a combined plea to the jurisdiction and motion for summary judgment. The trial court denied the plea and summary-judgment motion. The Department took an interlocutory appeal. *See* Tex. Civ. Prac. & Rem. Code § 51.014(a)(8).[1] In a divided opinion, the court of appeals reversed and rendered a take-nothing judgment. 537 S.W.3d 707, 716 (Tex. App.—Fort Worth 2017). The court of appeals reviewed the record evidence and relevant case law and concluded that sovereign immunity protects the Department

from PHI's claims. Specifically, the court reasoned that the Tort Claims Act's waiver of sovereign immunity for operation or use of a motor vehicle, Tex. Civ. Prac. & Rem. Code § 101.021(1)(A), did not apply because this provision is limited to cases where the vehicle was in "active" operation or use "at the time of the incident," 537 S.W.3d at 716 (citing *Ryder Integrated Logistics, Inc. v. Fayette Cty.*, 453 S.W.3d 922, 927 (Tex. 2015) (per curiam)). The court held that these elements were not present because the van did not begin to roll toward the helicopter until Webb had pulled into a parking space, turned off the ignition, removed the key, locked the door, and exited the van. *Id.* The court also rejected PHI's claims alleging negligent maintenance of the van, holding that "maintenance is neither operation nor use under the [Tort Claims Act]." *Id.* at 713.

The dissenting justice reasoned that "operation" of the vehicle extends to safely securing it at the end of a trip and that "the facts are disputed as to whether [Webb] properly secured the van for safe non-operation by placing it into park or engaging the parking brake due to a surface incline that may have warranted it." *Id.* at 716 (Sudderth, C.J., dissenting).

II. Analysis

A. Sovereign Immunity

[2] **[3]** Sovereign immunity protects the State of Texas and its agencies and subdivisions from suit and liability. *Travis Cent. Appraisal Dist. v. Norman*, 342 S.W.3d 54, 57–58 (Tex. 2011). The Department is an agency of the State of Texas. *See* Tex. Hum. Res. Code § 201.002; Tex. Civ. Prac. & Rem. Code § 101.001(3)(A). Sovereign immunity therefore bars suits against the Department unless the Legislature has waived its immunity. *Hall v. McRaven*, 508 S.W.3d 232, 238 (Tex. 2017); *Reata Constr. Corp. v. City of Dallas*, 197 S.W.3d 371, 374 (Tex. 2006).

The Legislature may waive sovereign immunity by statute. *Fed. Sign v. Tex. S. Univ.*, 951 S.W.2d 401, 405 (Tex. 1997). It has enacted a limited waiver of immunity for certain tort claims in the Tort Claims Act. *See* ***302** Tex. Civ. Prac. & Rem. Code §§ 101.001–.109. The Legislature has also provided that "[i]n order to preserve the legislature's interest in managing state fiscal matters through the appropriations process, a statute shall not be construed as a waiver of sovereign immunity unless the waiver is effected by clear and unambiguous language." Tex. Gov't Code § 311.034. In determining whether a statute waives sovereign immunity, we have similarly stated that, to ensure legislative control over the waiver decision, a waiver of sovereign immunity must be clear and unambiguous. *Tooke v. City of Mexia*, 197 S.W.3d 325, 328–29, 333 (Tex. 2006).

[4] **[5]** **[6]** **[7]** **[8]** Procedurally, the assertion of sovereign immunity implicates the trial court's jurisdiction and is properly asserted in a plea to the jurisdiction. *Hous. Belt & Terminal Ry. v. City of Houston*, 487 S.W.3d 154, 160 (Tex. 2016); *Rusk State Hosp. v. Black*, 392 S.W.3d 88, 91 (Tex. 2012). Parties may submit evidence at the plea-to-the-jurisdiction stage, and the trial court's review generally mirrors the summary judgment standard. *Sampson v. Univ. of Tex.*, 500 S.W.3d 380, 384 (Tex. 2016). "If the evidence creates a fact question regarding the jurisdictional issue, then the trial court cannot grant the plea to the jurisdiction, and the fact issue will be resolved by the fact finder. However, if the relevant evidence is undisputed or fails to raise a fact question on the jurisdictional issue, the trial court rules on the plea to the jurisdiction as a matter of law." *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 227–28 (Tex. 2004); *see also Klumb v. Hous. Mun. Emps. Pension Sys.*, 458 S.W.3d 1, 8 (Tex. 2015). The trial court's ruling on the plea is reviewed de novo on appeal. *Klumb*, 458 S.W.3d at 8.

B. "Operation or Use of a Motor-Driven Vehicle"

The parties agree that the only possible statutory basis for a waiver of the Department's sovereign immunity is section 101.021(1)(A) of the Tort Claims Act, which provides that "[a] governmental unit in the state is liable for ... property damage ... proximately caused by the wrongful act or omission or the negligence of an employee acting within his scope of employment if ... the property damage ... arises from the operation or use of a motor-driven vehicle ...." Tex. Civ. Prac. & Rem. Code § 101.021(1)(A). The parties' principal dispute concerns whether the damage to the helicopter arose from the "operation or use" of the van.

[9] **[10]** We focus first on PHI's claim that Webb caused the accident by failing to apply the emergency brake. PHI contends that the van was parked on an incline and that Webb failed to use the emergency brake, precipitating the accident. As a preliminary matter, to establish a waiver of immunity under its emergency-brake theory of negligence, PHI must first establish that the alleged damage "arises from" Webb's failure to set the emergency brake. By requiring that the

damage "arises from" the operation or use of the vehicle, the statute "requires a nexus between the injury negligently caused by a governmental employee and the operation or use of a motor-driven vehicle." *LeLeaux v. Hamshire–Fannett Indep. Sch. Dist.*, 835 S.W.2d 49, 51 (Tex. 1992). We have, perhaps unhelpfully, described this standard as "something more than actual cause but less than proximate cause." *Ryder*, 453 S.W.3d at 929. In any event, "[t]his nexus requires more than mere involvement of property." *Dall. Area Rapid Transit v. Whitley*, 104 S.W.3d 540, 543 (Tex. 2003). Instead, the use or operation "must have actually caused the injury." *Tex. Nat. Res. Conservation Comm'n v. White*, 46 S.W.3d 864, 869 (Tex. 2001).

***303** **[11]** **[12]** With respect to PHI's emergency-brake allegations, the "arises from" causation element requires that Webb's negligent failure to engage the emergency brake "actually caused" the collision between van and helicopter. *White*, 46 S.W.3d at 868. Although much of PHI's evidence and argument concerns mechanical defects in the van, there was also some evidence that Webb's failure to deploy the emergency brake after parking on an incline caused the accident. For example, the officer who investigated the accident concluded that the failure to deploy the brake was a contributing factor to the collision, even though, as the Department argues, there was also evidence that a worn gear-shift mechanism was a cause of the accident. Of course, there may be more than one proximate cause of an accident. *E.g.*, *First Assembly of God, Inc. v. Tex. Utils. Elec. Co.*, 52 S.W.3d 482, 493 (Tex. App.—Dallas 2001). We conclude that a fact issue remains as to whether the accident "arose from" the failure to set the emergency brake. At this stage of the proceedings, no more is required to satisfy section 101.021(1)(A)'s "arises from" requirement.

[13] **[14]** **[15]** **[16]** We turn now to whether Webb's failure to engage the emergency brake qualifies as "operation or use" of the vehicle. Tex. Civ. Prac. & Rem. Code 101.021(1)(A). As with any statute, in construing the words "operation or use" we must look to the plain meaning of statutory text "unless a different meaning is apparent from the context or the plain meaning leads to absurd or nonsensical results." *Molinet v. Kimbrell*, 356 S.W.3d 407, 411 (Tex. 2011). "If a statute is clear and unambiguous, we apply its words according to their common meaning without resort to rules of construction or extrinsic aids." *In re Estate of Nash*, 220 S.W.3d 914, 917 (Tex. 2007). Also informing this analysis is our recognition, noted above, that waivers of sovereign immunity must be clear and unambiguous. With respect to the Tort Claims Act, we noted in *Ryder* that, "[g]iven the Legislature's preference for a limited immunity waiver, we strictly construe section 101.021's vehicle-use requirement." 453 S.W.3d at 927. More generally, "[w]e have repeatedly affirmed that any purported statutory waiver of sovereign immunity should be strictly construed in favor of retention of immunity." *Prairie View A & M Univ. v. Chatha*, 381 S.W.3d 500, 513 (Tex. 2012).

[17] **[18]** "Use" or "operation" are nothing if not common, everyday words. "[O]rdinary citizens should be able to rely on the plain language of a statute to mean what it says," particularly when the statute uses ordinary words like "use" and "operation." *Fitzgerald v. Advanced Spine Fixation Sys.*, 996 S.W.2d 864, 866 (Tex. 1999). While the multiplicity of possible fact-patterns and the vagaries of litigation can create complexity, in general courts should strive to give simple words like "operation" and "use" a simple construction, rather than converting them into terms of art intelligible only to experts in the case law applying the Tort Claims Act. We have previously defined "use" as "to put or bring into action or service; to employ for or apply to a given purpose." *Mount Pleasant Indep. Sch. Dist. v. Estate of Lindburg*, 766 S.W.2d 208, 211 (Tex. 1989). We have defined "operation" as referring to "a doing or performing of a practical work." *Id.* These definitions are undoubtedly correct but not particularly enlightening here, other than to reinforce that these words should be given their everyday meaning.

In terms of the everyday experience of driving, we think it self-evident that ensuring your car will not roll away after you leave it, including engagement of the emergency brake when necessary, is an ***304** integral part of the "operation or use" of a vehicle. It seems no less a part of driving than any other act by which the driver controls the vehicle. We agree with the dissenting justice in the court of appeals that "the final—and certainly an essential—act of operating a motor vehicle is securing it for safe non-operation by placing the vehicle in park, engaging the parking brake if circumstances warrant it, turning the engine off, [and] exiting the vehicle." 537 S.W.3d at 716 (Sudderth, C.J., dissenting). PHI's allegation that Webb negligently performed this "essential" and "final" aspect of driving the van fits squarely within the textual parameters of section 101.021(1)(A).

If we were writing on a clean slate, there would be little more to say. But of course we are not, so we must examine prior cases interpreting the "operation or use" requirement. Our

application of the statute to these peculiar facts is consistent with this precedent, although some explanation is required.

In *LeLeaux*, a school bus took students from the defendant school district to a marching band contest. The students watched other bands perform. The school bus was "parked [and] empty, with the motor off." 835 S.W.2d at 51. A student jumped onto the rear of the bus and hit her head. *Id.* We held that the injury did not arise out of the operation or use of the bus because the bus "was nothing more than the place where Monica happened to injure herself" and was "only the setting for the injury." *Id.* at 51–52. Here, by contrast, the Department's van was not simply the venue of the injury. The van itself rolled away and collided with the helicopter, and PHI alleges this happened because of the driver's negligent failure to make sure the van did not immediately roll away after he exited it. The bus *driver* in *LeLeaux* had nothing to do with the accident, whereas PHI's allegation is that the van *driver* caused the accident by negligently performing the final act of driving, which is making sure the vehicle he just finished driving wouldn't roll away.

LeLeaux suggested that the result might have been different on slightly different facts. It agreed with the plaintiffs that "the acts of loading and unloading students" could be viewed as "part of the transportation process," but that on the facts presented "the manner in which school district employees loaded and unloaded students had nothing to do with Monica's injury." *Id.* at 52. But here, the manner in which Webb operated his vehicle led directly to the damages PHI sustained, provided that PHI can ultimately establish, as alleged, that the failure to use the emergency brake actually caused the accident. Again, the van here was not merely the place where the injury occurred; as alleged by PHI, the van's operation and use are directly, causally linked to the accident and the damages sustained.

Our application of the Tort Claims Act today is also consistent with *Ryder*, though one passage from that case merits explanation. In *Ryder*, two large trucks collided. Molina, the driver of one truck, was injured, and Solis, the driver of the other truck, was killed. A deputy sheriff employed by the defendant county was in the process of pulling over Molina's truck. The deputy had his car facing traffic with his lights on, and the lights allegedly blinded and distracted Solis. Molina sued Ryder, the owner of the truck Solis was driving, and Ryder filed a third-party claim against the county. 453 S.W.3d at 926. We held that the motor-vehicle exception waived immunity. We emphasized that the deputy's vehicle was still in use and under his operation when the accident occurred. *Id.* at 928. In distinguishing *LeLeaux*, we stated that "a government employee must ***305** have been actively operating the vehicle at the time of the incident." *Id.* at 927. Relying on this statement, the Department argues that because Webb had exited the van and was not "*actively* operating the vehicle *at the time of the incident*," *Ryder* bars PHI's claims. The court of appeals agreed with this argument and based its ruling almost entirely upon this statement from *Ryder*. 537 S.W.3d at 714, 716.

[19] **[20]** The text of section 101.021(1)(A) requires that the injury "arises from the operation or use of a motor-driven vehicle." Tex. Civ. Prac. & Rem. Code § 101.021(1)(A). The statute does not explicitly require that the operation or use be "active" or that it be ongoing "at the time of the incident." Nevertheless, the Department contends that *Ryder* effectively added these two additional requirements to the requirements already found in the statutory text. Under this reasoning, it is not enough for the injury to arise from the operation or use of a vehicle. The operation or use must also be (1) active and (2) ongoing at the moment of the accident. Frankly, the Department's error—and that of the court of appeals—is understandable given *Ryder*'s broad statement that "a government employee must have been actively operating the vehicle at the time of the incident." 453 S.W.3d at 927. But no court has the authority, under the guise of interpreting a statute, to engraft extra-statutory requirements not found in a statute's text. *Kia Motors Corp. v. Ruiz*, 432 S.W.3d 865, 872 (Tex. 2014); *Combs v. Roark Amusement & Vending, L.P.*, 422 S.W.3d 632, 637 (Tex. 2013).

[21] **[22]** The court of appeals did not err in *considering* whether there was "active operation at the time of the incident" when applying section 101.021(1)(A). Such an inquiry contributed to the outcome in *Ryder* and remains an important inquiry, even in this case. If securing a vehicle so it will not roll away is the final *act* of driving, then it is no stretch to consider it part of the "active operation or use" of a vehicle. As for whether the operation or use occurred "at the time of the incident," it is true that Webb was not parking the van at the very moment it rolled away, but it is undisputed that he had just exited the vehicle when it started rolling. The close temporal proximity between Webb's allegedly negligent parking, the van beginning to roll, and the collision with the helicopter satisfies the concerns underlying *Ryder*'s statement that the driver must have been "actively operating the vehicle at the time of the incident." 453 S.W.3d at 927.

[23] **[24]** The Department's error—and that of the court of appeals—lies not in treating the disputed sentence from *Ryder* as an important part of the analysis but in treating it like statutory text. In context, *Ryder*'s emphasis on active operation of the vehicle served primarily to distinguish that case from our earlier decision in *LeLeaux*, where the bus was not only empty but was nothing more than the physical place where the accident occurred. The sentence was not intended to replace the statute or add elements to it, nor could it have done so. The statute itself—and only the statute—provides the governing rule of decision. *Ryder* correctly suggests that whether a government vehicle was in "active" operation "at the time of the incident" is an important consideration in determining whether an alleged injury arises from the operation or use of a vehicle. But a single sentence from that opinion is not itself the rule of decision. That role is reserved for the statute, which asks whether the injury "arises from the operation or use of a motor-driven vehicle." Tex. Civ. Prac. & Rem. Code § 101.021(1)(A). By rigidly requiring "active" operation "at the time of the incident" as if those were elements of the statute—even in a case where ***306** application of those elements yields a result that conflicts with a common-sense reading of the statutory text—the court of appeals held PHI's claims to a stricter standard than the one provided by the Legislature. Although this error was understandable given the wording of *Ryder*, it was error nonetheless.

[25] Under the unusual facts presented in this case, PHI has alleged injury arising from operation or use of the vehicle even though the driver was not behind the wheel at the moment the accident happened. While Webb had turned off and exited the van before it collided with the helicopter, the statute does not require in every case that the driver be in the vehicle at the precise time of the collision. The statute requires that the accident arise from the use or operation of the vehicle, and as explained above, we conclude that this language covers the allegations in question because "operation" of a vehicle includes making sure it does not roll away after it is parked.

The Department also contends that while the Act waives immunity for "use" of a vehicle, there is no waiver for *failures* to use. As the Department sees it, PHI alleges a non-actionable failure to use the emergency brake rather than an active misuse of the vehicle. Under this reasoning, failing to apply the parking brake—or any other mechanism of the vehicle—could never amount to use or operation of the vehicle. True, "[t]his Court has never held that mere non-use of property can support a claim under the Texas Tort Claims Act." *Kerrville State Hosp. v. Clark*, 923 S.W.2d 582, 584 (Tex. 1996). But we cannot agree with the Department that failing to engage the appropriate brake on a vehicle is a non-actionable failure to use the vehicle. Taking the Department's reasoning to its logical conclusion would mean that a driver who rear-ends the car in front of him engages in a non-actionable failure to use the brake. Correctly using the brakes is perhaps the most important part of the safe operation of a multi-ton steel object. The reasonable reader of section 101.021(1)(A) would not envision the hyper-literal distinction the Department draws between "use" and "non-use" of a car's various components. Again, as the dissenting court of appeals justice reasoned, making sure a vehicle does not roll away when you are done with it is an essential part of the operation or use of the vehicle. Correctly using the parking brake is just as much a part of "using" or "operating" the vehicle as any other function by which a driver controls the vehicle.

For these reasons, the court of appeals erred in rejecting PHI's claims related to Webb's allegedly negligent failure to apply the parking brake so the van would not roll away.[2]

III. Conclusion

We reverse the court of appeals' judgment and remand the case to the trial ***307** court for further proceedings consistent with this opinion.

All Citations

593 S.W.3d 296, 62 Tex. Sup. Ct. J. 851

Footnotes

1 For purposes of appellate jurisdiction over interlocutory orders, the court of appeals had jurisdiction over the denial of the combined plea to the jurisdiction and motion for summary judgment, regardless of how the trial-court pleading was styled, because the substance of the pleading was to raise sovereign immunity, which implicates subject-matter jurisdiction. *See Harris Cty. v. Sykes*, 136 S.W.3d 635, 638 (Tex. 2004) ("If the trial court denies the governmental entity's claim of no jurisdiction, whether it has been asserted by a plea to the jurisdiction, a motion for summary judgment, or otherwise,

the Legislature has provided that an interlocutory appeal may be brought."); *Tex. Dep't of Criminal Justice v. Simons*, 140 S.W.3d 338, 349 (Tex. 2004) ("Thus, an interlocutory appeal may be taken from a refusal to dismiss for want of jurisdiction whether the jurisdictional argument is presented by plea to the jurisdiction or some other vehicle, such as a motion for summary judgment.").

2 In addition to alleging that Webb was negligent in unsuccessfully parking the van, PHI alleged the Department negligently maintained the van as an alternative basis for waiver of sovereign immunity. The court of appeals rejected this theory of waiver. 537 S.W.3d at 713. In both its petition for review and its principal brief, PHI couches its negligent-maintenance allegations as alternative grounds for reversal and states that the Court "need not reach the issue" if it reverses on the negligent-parking allegations. We decline to reach the negligent-maintenance allegations because PHI does not ask us to do so if we rule for it on the negligent-parking allegations, which we have done. While we reverse the court of appeals' judgment on other grounds, we do not thereby comment on its disposition of PHI's negligent-maintenance allegations.

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