



## Opinion Summaries February 18, 2022

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### Opinions

#### GOVERNMENTAL IMMUNITY Texas Tort Claims Act

*Maspero v. City of San Antonio*, \_\_\_ S.W.3d \_\_\_, \_\_\_ Tex. Sup. Ct. J. \_\_\_ (Tex. Feb. 18, 2022) [19-1144]

At issue in this case is whether the City of San Antonio's governmental immunity is waived under the Texas Torts Claims Act for a police officer's use or operation of a patrol car while in pursuit of a fleeing suspect. In 2012, Kimberly Kory, a San Antonio police officer, was participating in an investigation of a drug-trafficking operation and was in vehicular pursuit of a fleeing suspect, David Rodriguez. In his attempt to evade apprehension, Mr. Rodriguez's vehicle collided with the Masperos' vehicle, resulting in the Masperos' injuries and the death of two of their children. The Masperos sued the City, asserting Section 101.021 of the Tort Claims Act waived the City's immunity because their injuries arose from Officer Kory's operation or use of a motor-driven vehicle. In response, the City filed a plea to the jurisdiction, claiming the Masperos' injuries were too attenuated from the officer's use of a motor vehicle to trigger Section 101.021 and that in any event, Section 101.055, the Act's emergency exception, rendered the Act inapplicable to the Masperos' claims. The trial court granted the City's plea, and the court of appeals reversed, holding the Act waived the City's immunity.

The Supreme Court reversed, holding that the Act's emergency exception applied as a matter of law. Under Section 101.055, the Tort Claims Act does not apply to—and thus does not waive immunity from—a claim arising from an employee's action while reacting to an emergency situation (1) if the action complied with the laws and ordinances applicable to emergency action, or (2) in the absence of

such a law or ordinance, if the action was not reckless. It was undisputed that Officer Kory was reacting to an emergency situation. The Court held that Officer Kory's alleged failure to comply with internal department policies did not equate to a failure to comply with "laws and ordinances" and that her alleged failure to use her siren at the time of the collision neither violated the Transportation Code nor had a causal nexus to the Masperos' injuries. The Court further held that the Masperos had failed to raise a fact issue that Officer Kory acted with conscious indifference or reckless disregard for the safety of others during the pursuit. Because Section 101.055 foreclosed the Act's application, the Court did not address whether Section 101.021 would otherwise have waived the City's immunity. Finally, the Court rejected the court of appeals' holding that an independent, common-law ground existed to waive the City's immunity on the Masperos' claim for negligent implementation of policy. Because the City is immune from suit, the Court dismissed the case for lack of jurisdiction.

## **GOVERNMENTAL IMMUNITY**

### **Official Immunity**

*City of San Antonio v. Riojas*, — S.W.3d —, 2022 WL — (Tex. Feb. 18, 2022) [20-0293].

At issue in this case is what a governmental defendant must show to demonstrate a law-enforcement-officer's good faith for purposes of establishing the officer's official immunity from suit when the plaintiff's injuries occurred in the context of routine traffic management.

While driving on an interstate highway, San Antonio police officer Tristan activated his emergency lights to warn approaching motorists of a traffic slowdown ahead. Behind Officer Tristan and three lanes to the left of him, plaintiff Riojas wrecked his motorcycle after the car in front of him stopped abruptly. Riojas sued the City, claiming that Officer Tristan acted negligently by turning on his emergency lights and that the lights caused Riojas' accident.

The City filed a plea to the jurisdiction, arguing that its governmental immunity from suit had not been waived. Riojas argued that the City's immunity was waived by Section 101.021(1) of the Texas Tort Claims Act. A main issue in the case was whether Officer Tristan "would be personally liable" to Riojas under Section 101.021(1)(B) or whether his actions were protected by official immunity. In order for the doctrine of official immunity to apply, the City was required to prove that Officer Tristan was acting in good faith when he turned on his emergency lights. The trial court denied the City's plea, and the court of appeals affirmed.

The court of appeals reasoned that under *Wadewitz v. Montgomery*, 951 S.W.2d 464 (Tex. 1997), in order to prove Officer Tristan's good faith, the City was required to show that Officer Tristan balanced the need for action against the potential risks

of taking it before activating his emergency lights. The court then concluded that Officer Tristan's affidavit failed to meet the *Wadewitz* need-risk balancing test.

The Supreme Court held that the court of appeals had applied the wrong test. *Wadewitz* and other cases applying the need-risk balancing test had involved a high-speed pursuit or some other emergency action carrying an inherent risk of harm to the public. The Court explained that in *Telthorster v. Tennell*, 92 S.W.3d 457 (Tex. 2002), it had expressly limited the need-risk-balancing requirement to the emergency-response context and held that when a routine law-enforcement activity is at issue, the governmental defendant is only required to show that a reasonably prudent officer faced with the same circumstances could have believed his conduct was justified. Officer Tristan's affidavit met that test, and Riojas did not present any conflicting evidence. Accordingly, the Court reversed the judgment of the court of appeals and dismissed Riojas' claims against the City for lack of jurisdiction.