RECENT STATE CASES OF INTEREST TO CITIES

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TML LEGAL DEPARTMENT
Austin, Texas

The Texas Municipal League (TML) Legal Services Department provides legal assistance to TML member cities. The attorneys answer general questions, participate in educational seminars, prepare handbooks, magazine articles, and written materials, including legal opinions and amicus briefs, and provide support services for the Legislative Department. The Staff also assists with trainings and the TCAA newsletter which contains articles and the case summaries presented in this paper.

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CIVIL SERVICE

City of Houston v. Dunbar, No. 14-21-00570-CV, 2023 WL 3596260 (Tex. App.—Houston [14th Dist.] May 23, 2023, r'hg denied). During a public event on September 11, 2019, at HFD Fire Station 84 featuring Houston Rockets basketball players, district chief Dunbar was present when unauthorized personnel drove the station's high-water emergency vehicle, using its lights and sirens. Assistant fire chief Griffin later filed a complaint of misconduct against Dunbar, resulting in a three-day unpaid suspension following an internal investigation. Dunbar appealed the suspension to the civil service commission, which upheld the suspension, and then to the district court, which ruled in his favor.

The city appealed the district court's decision, arguing that the district court's judgment is erroneous because (1) substantial evidence supported the commission's order to suspend Dunbar, and (2) the commission's order was free from any illegality. In its analysis, the appellate court emphasized the substantial evidence standard, in which the trial court may not substitute its judgment for that of the agency on controverted issues of fact but must affirm administrative findings in contested cases if there is more than a scintilla of evidence to support them. The appellate court determined that there is more than a scintilla of evidence to support the commission's order upholding Dunbar's suspension, siding with the city. A public employer's action can be tainted by illegality if the employer's action is arbitrary or capricious, or a clear abuse of authority. Dunbar's arguments that the commission's decision was tainted by illegality stemmed from alleged notice issues. The court was not persuaded by these arguments, reversed the district court's judgment, and affirmed the commission's order.

Nix v. City of Beaumont, No. 09-22-00042-CV, 2023 WL 4781212 (Tex. App.—Beaumont July 27, 2023) (mem. op.). Nix sued the City of Beaumont in district court, seeking review of the City's Fire Fighters' and Police Officers' Civil Service Commission's order permanently dismissing him from the fire department. The Civil Service Act requires that a petition for review of a commission's order must be filed within 10 days after the date the final decision is received by the firefighter or his or her designee. Here, Nix's attorney filed the petition 15 days after receiving the final decision. The trial court dismissed Nix's petition for review and Nix appealed.

The appellate court affirmed, holding that although the Supreme Court's orders providing deadline extensions related to Covid-19 were in place, those orders did not extend a jurisdictional deadline to file suit so Nix's failure to timely appeal the commission's order deprived the trial court of jurisdiction over the appeal.

City of Houston v. Spann, No. 01-22-00848-CV, 2023 WL 5615801 (Tex. App.—Houston [1st Dist.] Aug. 31, 2023, no pet.) (mem. op.) Fire fighter Spann appealed to the Firefighters' and Police Officers' Civil Service Commission of the City of Houston to reverse a disciplinary action taken against him by the fire department. The commission upheld the disciplinary action and Spann appealed to the district court. Spann filed a motion for summary judgment, arguing that because the commission did not provide him the required 15 days' notice of the hearing, the commission's order upholding the disciplinary action was void. The district court granted the motion and the commission appealed.

The appellate court affirmed, holding that: (1) the Code Construction Act's computation of time rules applied; (2) additional days of notice from previously scheduled and continued hearings could not be counted for the statutorily required notice; and (3) Spann was not required to show prejudice to be entitled to summary judgment because he did not receive the full 15 days' notice.

In re City of Beaumont, No. 09-23-00197-CV, 2024 WL 377833 (Tex. App.—Beaumont Feb. 1, 2024, no pet.) (mem. op.). James Mathews, a firefighter with the City of Beaumont, was suspended indefinitely following his involvement in a vehicle collision, after which he was accused of assaulting the driver of the other vehicle. He appealed his suspension under the Civil Service Act, and the hearing examiner upheld his suspension. Mathews sued the city, challenging the hearing examiner's ruling, and added several constitutional claims to his suit, including an equal protection claim, a retaliation claim, and a claim for declaratory judgment that the city had deprived him of his constitutionally protected interest in employment with the city. The trial court severed Mathews's appeal of the Civil Service Act ruling from his constitutional claims. Then, the city filed a motion for summary judgment in the severed case, relying on res judicata, claims preclusion, and law-of-the-case doctrine based on a ruling from a federal court dismissing Mathews's constitutional claims. The district court denied the city's motion and the city filed a petition for a writ of mandamus in the appellate court challenging the trial court's denial of its motion for summary judgment.

The appellate court denied the city's petition for writ of mandamus, holding that the record the city had provided was too unclear for the court to determine whether Mathews's claims were barred because of the federal court's ruling.

Texas Civil Service Act: City of Beaumont v. Fenter, No. 09-22-00413-CV, 2023 WL 8817684 (Tex. App.—Beaumont Dec. 21, 2023) (mem. op.). Fenter, an EMT with the City of Beaumont, sued the city and the city manager for a declaration that Fenter was a "firefighter" for purposes of the Civil Service Act. Fenter moved for summary judgment for a declaration that he was a firefighter under the Civil Service Act and the trial court granted his motion. The city filed a plea to the jurisdiction, claiming immunity for itself and the city manager. The trial court granted the city's plea with respect to the city but denied it with respect to the city manager. The city appealed.

The appellate court affirmed in part and reversed and remanded in part, holding that the trial court should not have decided Fenter's motion for summary judgment because Fenter's pleadings were insufficient to show that the city manager's immunity from suit was waived based on his ultra vires act of failing to classify Fenter as a firefighter. Because Fenter's pleadings did not affirmatively negate jurisdiction, the court remanded the case to the trial court to allow Fenter to replead.

CLEAN AIR ACT

Tex. Comm'n on Envtl. Quality v. Vecinos Para El Bienestar De La Comunidad Costera, No. 03-21-00395-CV, 2023 WL 4670340 (Tex. App.—Austin July 21, 2023, no pet.) After the Texas Commission on Environmental Quality (TCEQ) issued an air permit to Texas LNG Brownsville, LLC (Texas LNG) for construction of a liquefied natural gas terminal along the Brownsville Ship Channel, the city of Port Isabel sought judicial review under Texas Government Code Sec. 2001.171. In response, TCEQ and Texas LNG filed a joint plea to the jurisdiction arguing the federal National Gas Act (NGA) provided exclusive jurisdiction to review challenges to state agency permits required by federal law for natural-gas terminals to federal courts under 15 U.S.C. § 717r(d)(1). The trial court denied their plea, and TCEQ and Texas LNG appealed to the court of appeals.

The appellate court reversed, holding that although TCEQ issued the order, it was carrying out its responsibility under the federal Clean Air Act to implement federal standards, and under 15 U.S.C. § 717r(d)(1), the United States Fifth Circuit Court of Appeals has exclusive jurisdiction over permit decisions relating to liquefied natural gas facility construction.

ECONOMIC DEVELOPMENT AGREEMENTS

Corsicana Indus. Found., Inc. v. City of Corsicana, 685 S.W.3d 171 (Tex. App.—Waco Jan. 11, 2024, no pet.). The City of Corsicana and Navarro County entered into a sales tax abatement agreement with the developer of a retail center and a retail store that operated a location in the retail center under which the city and county granted the use of portions of the sales taxes generated by the store location to pay for the development of a facility in the retail center to house the store location. The city and county brought a declaratory action against the developer and the retail store, seeking to invalidate sales tax abatement agreements, due to closing of the store location at the retail center. The developer and the store brought counterclaims seeking declaratory relief regarding the city's and county's obligations. The lender for the loan on the facility for the store location, who was named as third-party beneficiary in the agreements, intervened. The trial court granted summary judgment for the city and county. Following the store's Chapter 11 bankruptcy barring it from participating in the appeal and developer's assignment of all of its rights in action and appeal to the lender, the lender appealed, both individually and as assignee of the developer.

The court of appeals affirmed, finding that: (1) that the public purpose, under the Texas constitutional provisions limiting use of governmental resources for public purposes, which authorized grant of sales tax revenue was the opening and continued operation of store location in the center; (2) the closure of the store location extinguished the public purpose of the agreements so after closure, the agreements' predominant purpose was no longer to accomplish a public purpose, and thus, rendered agreements unconstitutional; (3) the city and county did not retain control over sales taxes, and thus, agreements were unconstitutional; and (4) the agreements were unconstitutional at the time they were entered into, and thus, presumption of validity did not apply to the city and county resolutions authorizing them to enter into the agreements.

ELECTIONS

Rodriguez v. Rangel, 679 S.W.3d 890 (Tex. App.—San Antonio Nov. 13, 2023, pet. denied). This case arises from an election dispute where Rodriguez received six more votes than Rangel in an election for city council. At trial, the court ruled that seven votes for Rodriguez were illegally cast and declared Rangel the winner. Rodriguez appealed. The appellate court addressed numerous challenges to the trial evidence and affirmed all but one of the trial court's findings.

In re Coon, No. 09-24-00091-CV, 2024 WL 1134038 (Tex. App.—Beaumont Mar. 15, 2024, no pet.) (mem. op.). Coon and Arthur, two candidates for public office in the City of Conroe, filed petitions for writs of mandamus in the appellate court to compel the city secretary to reject applications of two other candidates to appear on the city ballot. Coon and Arthur contended that the two candidates were not physically present when the city secretary notarized their applications, and that because the applications were not properly notarized, the city secretary had a ministerial duty to reject them. The court denied the petitions, holding that Coon and Arthur had not shown that mandamus relief was warranted.

In re Gerdes, No. 11-23-00283-CV, 2024 WL 187234 (Tex. App.—Eastland Jan. 18, 2024, no pet.) (mem. op.). This case stems from a petition to recall two commissioners from the City of Ranger. One of the commissioners, Samantha McGinnis, was seated on the commission after she ran unopposed, and the city cancelled her election. The other commissioner, Kevan Moize, was appointed to a vacant seat on the commission. In accordance with the city's charter provision which requires the city to call an election no later than 30 days from the time a petition is presented to the commission, Steve Gerdes submitted two petitions to recall McGinnis and Moize. After five months elapsed, Gerdes filed a petition for mandamus requesting the court to order the city to call the election.

The commissioners argued they lacked the authority to call the election because the petitions were defective. Based on the city's charter language, at least one-fifth of the voters who sign the petition must indicate that they voted for the officer at an election. Because neither McGinnis nor Moize was voted for at an election, the commission determined they could not be subject to recall. However, the court disagreed holding that the commissioners, absent an express charter provision, had no authority to refuse to call an election based on their findings that the petitions were defective. Instead, the commissioners were required to call the election, but could have simultaneously sought declaratory relief in district court to determine if the petitions were defective under the terms of the charter.

The commission also argued that the uniform election requirements in Election Code Section 41.001 preempt the city's charter provision regarding the timing of holding a recall election. The next general election date at which the recall election could be held would fall on May 2024. However, McGinnis's and Moize's terms will conclude by then, and the seats will already be on the ballot. Therefore, the city did not need to hold a recall election. The court noted if the commission had ordered the election when it had received the recall petitions, it could have held the recall election in November 2023. For these reasons, the court granted Gerdes's petition, and under its authority in Election Code Section 41.001(b)(3), ordered the city to schedule a special election on the recall of the commissioners not less than 15 days and not more than 30 days from the date its ruling.

EMERGENCY MANAGEMENT

Abbott v. Harris Cnty., 672 S.W.3d 1 (Tex. June 30, 2023). This case addresses the scope and constitutionality of the governor's authority under the Texas Disaster Act to prohibit local governments from imposing mask requirements.

Harris County filed suit against the governor and attorney general, alleging that the governor exceeded his authority under the Texas Disaster Act by issuing an executive order that prohibited local governmental entities and officials from requiring face coverings as part of their COVID-19 mitigation efforts and purported to suspend several laws that county officials relied on to issue such face covering requirements. The trial court denied the defendants' plea to the jurisdiction and granted the county's motion for temporary injunction. On appeal, the Austin Court of Appeals affirmed.

The Supreme Court of Texas granted the defendants' petition for review, and held that: (1) the county had standing to bring seek injunctive relief against the attorney general; (2) the state's appeal was not rendered moot by executive order's expiration; (3) the county judge was governor's designated agent under Disaster Act; (4) the executive orders were valid exercise of the governo''s authority under Disaster Act; and (5) the county was not likely to succeed on merits of its claim that governor lacked authority to issue the executive orders. The court vacated the judgment of the court of appeals, dissolved the temporary injunction, and remanded the case.

(The court reached the same conclusion in the following four separate cases related to the governor's authority to prohibit local mask mandates: *Abbott v. Jenkins*, No. 21-1080, 2023 WL 4278505 (Tex. June 30, 2023); *Abbott v. City of San Antonio*, No. 21-1079, 2023 WL 4278501 (Tex. June 30, 2023); *Abbott v. La Joya Indep. Sch. Dist.*, No. 22-0328, 2023 WL 4278488 (Tex. June 30, 2023); and *Abbott v. Fort Bend Cnty.*, No. 22-1056, 2023 WL 4278491 (Tex. June 30, 2023).)

EMERGENCY ORDERS

Carlin v. Bexar County, et al., No. 04-22-00427-CV, 2023 WL 8793095 (Tex. App.—San Antonio Dec. 20, 2023, no pet.) (mem. op.). Carlin filed a suit against county defendants alleging minimum health standard protocols issued by Bexar County judge regarding masking violated the Texas Religious Freedom Restoration Act (TRFRA). The county defendants filed motions to dismiss on the grounds of sovereign and government immunity and on the grounds that Carlin had not complied with the pre-suit notice provisions under TRFRA. The trial court granted the motions and Carlin appealed.

On appeal, the court rejected Carlin's argument that he did not need to provide notice if the substantial burden on his free exercise of religion was eminent. The appellate court affirmed the grant of the motions and found the trial court did not err in dismissing the claims with prejudice.

Galovelho LLC v. Abbott, No. 05-21-00965-CV, 2023 WL 5542621 (Tex. App.—Dallas Aug. 29, 2023, pet. filed) In March 2020, Galovelho, LLC operated a restaurant in Frisco. During this time when Covid-19 was spreading throughout the state, the governor, Collin County judge, and city of Frisco issued emergency orders that encouraged patrons to avoid eating or drinking at restaurants and bars and, in some cases, limited restaurants to serving patrons via take-out, drive-through, or delivery only. As a result of the emergency orders, Galovelho alleged its restaurant suffered, and it sued the governor, county, and city. After a hearing on a joint plea to the jurisdiction by the governor, county, and city, the trial court determined that: (1) Galovelho's claims were barred by sovereign or governmental immunity and that it lacked standing; (2) it did not have a viable takings claim; and (3) its due process and equal protection claims were moot. Galovelho appealed, but the court of appeals ultimately affirmed the trial court's decision.

The court of appeals reasoned that, with regard to the takings claim, the effect of the emergency orders was neither a categorical (per se) taking nor a taking under the factors outlined in the Supreme Court decision *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104 (1978), because the emergency orders were temporary and did not destroy all economic value in Galovelho's property. In addition, the court concluded that the character of the governmental action (the third factor in Penn Central) was not akin to a physical invasion but instead an example of a regulation that "adjusts the benefits and burdens of economic life to promote the common good."

Addressing Galovelho's equal protection and due process claims, the court agreed that the recission of the emergency orders rendered Galovelho's claims moot. Further, the court disagreed that the exception to the mootness doctrine (for an issue "capable of repetition, yet evading review") applied to the issuance of the emergency orders in this manner because a mere theoretical possibility that Galovelho may be subjected to similar restrictions in the future was insufficient to claim this exception.

EMINENT DOMAIN

City of Dripping Springs v. Lazy W Conservation Dist., No. 03-22-00296-CV May 31, 2024. The City sued landowners to condemn an area in order to place a wastewater line. The landowners sold a picture frame around their property to a Municipal Utility District based in another county to thwart the condemnation. After the commissioners issued an amount to the City and the landowners/MUD, the MUD appealed arguing that the MUD had governmental immunity from suit for condemnation, among other arguments. The trial court agreed and held in favor of the MUD. The City appealed. On appeal, the City argued that political subdivisions do not have governmental immunity from condemnation suits and that the paramount public purpose argument was on the merits, not a jurisdictional issue.

The Third Court of Appeals agreed with the City, remanding the case back to the trial court for review on the merits. *See Hidalgo Cnty. Water Improvement Dist. No. 3 v. Hidalgo Cnty. Irrigation Dist. No. 1*, 669 S.W.3d 178 (Tex. May 19, 2023). The court held that political subdivisions do not have governmental immunity from suit for condemnation. In addition, the paramount public doctrine is not a jurisdictional issue but is something to be reviewed on the merits.

Hidalgo Cnty. Water Improvement Dist. No. 3 v. Hidalgo Cnty. Irrigation Dist. No. 1, 669 S.W.3d 178 (Tex. May 19, 2023). The issue in this case is whether in an eminent-domain proceeding brought by one political subdivision against another, governmental immunity bars such proceeding.

Hidalgo County Water Improvement District No. 3 (Improvement District) offered to purchase a subsurface easement from the Hidalgo County Irrigation District No. 1 (Irrigation District), which rejected the offer. After negotiations failed, the Improvement District filed a condemnation action against the Irrigation District. The Irrigation District filed a plea to the jurisdiction arguing that it had governmental immunity from the condemnation suit and the Legislature had not waived that immunity. The trial court granted the plea and dismissed the suit. The court of appeals affirmed.

The Supreme reversed, holding that governmental immunity does not apply in eminent-domain proceedings and that the Irrigation District is not immune from the Improvement District's condemnation suit. In reaching this conclusion, the court took into consideration the purposes governmental immunity serves, its nature, and the development of the court's immunity and eminent-domain precedent.

EMPLOYMENT

City of Brownsville v. Gamez, No. 13-23-00159-CV, 2024 WL 48185 (Tex. App.—Corpus Christi–Edinburg Jan. 4, 2024, no pet.) (mem. op.). Gamez sued the City of Brownsville under the Texas Commission on Human Rights Act for age and disability discrimination and retaliation based on his transfer and subsequent termination after his position was eliminated for budgetary reasons. The city filed a plea to the jurisdiction, arguing that its governmental immunity was not waived because the city had a nondiscriminatory reason to terminate Gamez, Gamez's cancer did not constitute a disability, and Gamez had not alleged that he had opposed a discriminatory practice as required for a claim of retaliation. The trial court denied the city's plea and the city appealed.

The appellate court affirmed the portion of the trial court's judgment granting the city's plea to the jurisdiction as to Gamez's age and disability discrimination claims, holding that: (1) cancer is not a disability unless it impaired him in some way, which his did not; and (2) another employee with no authority over Gamez asking him when he would retire does not alone constitute evidence of age discrimination. However, the appellate court reversed the portion of the trial court judgment granting the city's plea as to Gamez's retaliation claim and remanded the case to allow Gamez an opportunity to replead, holding that he had not clearly pleaded a retaliation claim but that his petition did not demonstrate incurable defects in his claim.

Tex. Tech Univ. Health Scis. Ctr. – El Paso v. Niehay, No. 22-0179, 671 S.W.3d 929 (Tex. June 30, 2023). This is a case of first impression in which the court determines whether morbid obesity, without an underlying physiological disorder or condition, is an impairment under the Texas Commission on Human Rights Act (TCHRA).

Following her dismissal from medical residency program administered by Texas State University's medical school, the medical resident filed suit against the university, asserting that she was terminated because her morbid obesity was regarded as an impairment, and alleging a claim for unlawful disability discrimination in violation of the TCHRA. The trial court denied the university's plea to the jurisdiction and motion for summary judgment. On appeal, the court of appeal's affirmed, and the Supreme Court granted the university's petition for review.

The Supreme Court determined that (1) the resident's morbid obesity was not an impairment for purposes of her TCHRA disability discrimination claim; (2) morbid obesity does not qualify as an impairment under the TCHRA absent an underlying physiological disorder or condition; and (3) there was no evidence that the resident had a disability as defined by the TCHRA.

Mendoza v. City of Round Rock, No. 03-23-00235-CV, 2024 WL 1642920 (Tex. App.—Austin Apr. 17, 2024, no pet.) (mem. op.). In 2019, Irma Mendoza retired from the city of Round Rock in lieu of termination after the city conducted an internal investigation into complaints it had received about Mendoza. Claiming the city's action against her involved age discrimination in violation of the Texas Commission on Human Rights Act (TCHRA), she filed an administrative charge with the Equal Employment Opportunity Commission (EEOC). After reviewing the charge, the EEOC notified Mendoza it would not investigate further and issued her a right-to-sue letter dated June 10, 2020. In its letter, the EEOC noted it had received her administrative charge on June 2, 2020. Then, on June 9, 2022, Mendoza sued the city. In response, the city filed a plea to the jurisdiction claiming governmental immunity, arguing Mendoza's lawsuit was untimely as she failed to file her lawsuit within two years of submitting her charge to the EEOC. The district court granted the city's plea, and Mendoza appealed thereafter. In affirming the lower court's decision, the court of appeals concluded that although Mendoza claimed a discrepancy with the date on the EEOC letter, there was sufficient evidence in the record to support a finding that Mendoza's administrative charge was submitted to the EEOC on June 2, 2020, and by filing her lawsuit on June 9, 2022, she failed to strictly satisfy the TCHRA procedural requirements.

Harris Ctr. for Mental Health & IDD v. McLeod, No. 01-22-00947-CV, 2024 WL 1383271 (Tex. App.—Houston [1st Dist.] Apr. 2, 2024, pet. filed) (mem. op.). McLeod sued the Harris Center for Mental Health & IDD for disability discrimination under the Texas Commission on Human Rights Act (TCHRA). She alleged that the Harris Center retaliated against her after she decided not to accept an offer to accommodate her disability by transferring to a different clinic. She also claimed Harris Center failed to accommodate her request for consistent lunch breaks. The Harris Center filed a plea to the jurisdiction claiming governmental immunity, a response raising various defenses to McLeod's claims, and a motion for summary judgment. The trial court denied Harris Center's plea to the jurisdiction and motion for summary judgment, and Harris Center appealed.

The appellate court reversed, holding that: (1) the Harris Center was a governmental entity under the TCHRA and therefore was entitled to immunity; and (2) because McLeod did not raise a fact issue regarding whether she engaged in a protected activity for her retaliation claim, her claims did not fall under the TCHRA's waiver of immunity.

Tex. Woman's Univ. v. Casper, No. 02-23-00384-CV, 2024 WL 1561061, (Tex. App.—Fort Worth Apr. 11, 2024, pet. filed). This case presents an issue of first impression: whether, under the election-of-remedies provision in the Texas Commission on Human Rights Act (TCHRA), a plaintiff who has filed a federal action based on allegedly unlawful employment practices is barred from filing a duplicative TCHRA complaint even if she abandons her earlier-filed federal action.

Texas Woman's University (TWU) argued that a plaintiff is barred from filing a duplicative TCHRA complaint and filed a plea to the jurisdiction. Casper contended that the election-of-remedies provision bars a TCHRA complaint only if the earlier-filed federal action remains pending or has been resolved. The trial court denied TWU's plea. TWU filed an interlocutory appeal.

The appellate court determined that under the plain language of the TCHRA's election-of-remedies provision, an "initiated" federal action is what triggers the prohibition on filing a duplicative TCHRA complaint. Because Casper did not dispute that she "initiated" her federal action before filing her TCHRA complaint, and because she did not dispute that both challenged the same allegedly unlawful employment practices, the court reversed the trial court's order. *See* TEX. LAB. CODE § 21.211.

Beebe v. City of San Antonio by & through CPS Energy, 673 S.W.3d 691 (Tex. App.—San Antonio June 14, 2023, pet. denied). A former employee of city-owned CPS Energy (CPS) sued CPS alleging discrimination based on race and disability, retaliation for reporting discriminatory treatment, and harassment based on national origin and disability. CPS filed a plea to the jurisdiction, which the trial court granted.

The appellate court found that: (1) the plaintiff failed to establish disparate treatment because he failed to show an example of a similarly situated coworker not being similarly fired for sexual harassment; (2) the plaintiff presented sufficient evidence to establish a prima facie case for retaliation; (3) CPS presented sufficient evidence for a legitimate, non-discriminatory explanation for the plaintiff's termination; and (4) there was some evidence of a legitimate reason for plaintiff's termination rather than pretext for discriminatory intent. Based on the findings, the appellate court affirmed the trial court's order granting the plea to the jurisdiction.

City of Houston v. Carter, No. 01-22-00453-CV, 2023 WL 3632788 (Tex. App.—Houston [1st Dist.] May 25, 2023, no pet.) (mem. op.). Carter sued the City of Houston when she was sexually harassed at work and then experienced retaliation after being transferred to another location during the sexual harassment investigation. The city filed a combined plea to the jurisdiction and motion for summary judgment, claiming governmental immunity. The trial court denied the city's plea and the city appealed.

The appellate court reversed, holding that: (1) although Carter had exhausted her administrative remedies, she had not established a causal link between her transfer, which was the adverse employment action, and the retaliation she experienced; and (2) Carter had not established a prima facie case of sexual harassment because the conduct was not physically threatening or humiliating and did not unreasonably interfere with her work performance.

City of Pasadena v. Poulos, No. 01-22-00676-CV, 2023 WL 7134974 (Tex. App.—Houston [1st Dist.] Oct. 31, 2023, no pet.) (mem. op.). Poulos sued the City of Pasadena under the Texas Commission on Human Rights Act, Chapter 21 of the Texas Labor Code, asserting claims for hostile work environment, alleging that her supervisor treated her unfavorably compared to her white co-workers. She also asserted claims for retaliation, alleging that she received adverse employment actions such as having leave denied in retaliation for raising the issue of her unfavorable treatment and racial discrimination. The city filed a motion to dismiss, claiming governmental immunity. The trial court denied the motion and the city appealed, arguing that Poulos had not timely filed suit or served the city with process and that her charge of discrimination was not actionable under the TCHRA.

The appellate court reversed in part and affirmed in part, holding that: (1) Poulos's racial discrimination claim was not actionable under the TCHRA because being denied leave on a specific day did not constitute an adverse employment action; (2) Poulos had not made a prima facie case for her hostile work environment claim because she had not shown that the treatment she received was related to her race or that is was so severe and pervasive that it affected a term, condition, or privilege of her employment; and (3) because the city failed to state why Poulos's cause of action for her retaliation had no basis in law in its motion to dismiss, there was no grounds to dismiss the retaliation claim.

Limuel, v. City of Austin, No. 08-23-00041-CV, 2023 WL 5761303 (Tex. App.—El Paso Sept. 6, 2023, no pet.) (mem. op.) Alan Limuel was an employee in the Austin Resource Recovery Department. His tenure at the city was marked by various conflicts and corrective actions, which the city attributes to Limuel's performance or behavioral issues, while Limuel claims they were instances of illegal retaliation. Limuel filed five discrimination charges with the Equal Employment Opportunity Commission (EEOC), alleging sexual harassment, discrimination, and retaliation and ultimately sued the city for retaliation and sexual harassment, representing himself in the action. After pretrial practice, including the dismissal of Limuel's sexual harassment claim on summary judgment, there was a five-day jury trial on the merits of Limuel's claims. At the conclusion of the trial, the jury affirmed some of Limuel's claims, but awarded him zero damages related to emotional distress and other non-economic losses. Discontent with the outcome, Limuel sought to dismiss the jury's damages verdict, arguing that there was no basis for the zero damages awarded. The trial court rejected his motion. Following this, Limuel moved for a new trial, which was also denied by the court, prompting him to appeal.

The appellate court took some time in the opinion to explain that the standards for pro se litigants who represent themselves in court without an attorney dictate that courts must interpret the pleadings of these litigants in a way that ensures they have a fair opportunity to present their case. This principle is grounded in the intention to prevent any miscarriage of justice due to a litigant's lack of legal expertise or representation. However, these litigants must comply with procedural requirements. In his appeal, Limuel challenged a number of aspects of the city's case, including rulings related to evidence, jury selection, disqualification of the city's attorney, improper jury argument, post-trial motions, and overarching constitutional claims. For various reasons, each of Limuel's arguments was overruled, and the trial court's judgment was affirmed.

Moliere v. City of Buffalo, No. 10-22-00391-CV, 2023 WL 6307992 (Tex. App.—Waco Sept. 28, 2023, pet. filed). Gregory Moliere, a City of Buffalo Police Department police officer, violated city policy when he engaged in a high-speed chase with a civilian ride-along in his police vehicle. Subsequently, the Chief of Police issued Moliere a written reprimand, which was placed in his personnel file. Moliere did not appeal the reprimand, and the police chief, in an affidavit, considered the disciplinary action resolved. A few weeks later, the city council voted to terminate Moliere's employment as a police officer with the city.

Moliere filed suit against the city and the mayor, seeking declarations that the city council lacked authority as a Type A general-law municipality to terminate his employment and that the termination of his employment violated the city's policies. The city and the mayor filed a joint plea to the jurisdiction and motion for summary judgment, asserting governmental immunity under the Uniform Declaratory Judgements Act and that the city had the authority to terminate Moliere's employment. The trial court granted the plea. Moliere appealed.

The court of appeals reversed and remanded, concluding that a fact issue exists regarding the authority of the city council to terminate Moliere's employment as a police officer under Section 341.001(a) of the Local Government Code and the city employee manual.

Univ. of N. Tex. Health Sci. Ctr. v. Paul, No. 02-22-00305-CV, 2023 WL 4779480 (Tex. App.—Fort Worth July 27, 2023, no pet.). This is an age-and sex-related employment discrimination case.

Paul, a nontenure-track assistant professor sued the University of North Texas Health Science Center (UNTHSC) after her assistant-professor contract was not renewed. She alleged age discrimination, sex discrimination, and retaliation related to UNTHSC's (1) failure to hire her for the tenure-track position that another younger woman was hired for, (2) failure to promote her to Department chair, and (3) failure to renew her one-year teaching contract. UNTHSC filed a plea to the jurisdiction on sovereign-immunity grounds, which the trial court denied. UNTHSC filed an interlocutory appeal.

The court of appeals reversed the trial court's denial of UNTHSC's plea to the jurisdiction on Paul's sex-discrimination claim related to UNTHSC's nonrenewal of her contract and on her retaliation and age-and sex-discrimination claims related to UNTHSC's failure to hire her for the Department Chair position. However, the court affirmed the trial court's denial of UNTHSC's plea to jurisdiction as to (1) retaliation and age discrimination for the contract renewal and (2) retaliation, age discrimination, and sex discrimination for the failure to hire Paul for the tenure-track position.

City of Pharr v. De Leon, No. 13-23-00033-CV, 2023 WL 8642683 (Tex. App.—Corpus Christi–Edinburg Dec. 14, 2023, no pet.) (mem. op.). DeLeon sued the City of Pharr for employment discrimination, alleging that the city failed to provide reasonable accommodations for his disability. He also sued under the Whistleblower Act, claiming the city terminated him in retaliation for a report he made to the Texas Commission on Environmental Quality (TCEQ) about a wastewater spill, and under the Texas Commission on Human Rights Act (TCHRA), claiming the city denied his appeal of his termination in retaliation for a report he made to the Texas Workforce Commission. The city filed a plea to the jurisdiction and a motion for summary judgment, which the trial court denied. The city appealed.

The appellate court affirmed in part and reversed in part, holding that: (1) DeLeon had alleged a prima facie case of disability discrimination; (2) DeLeon's TCHRA claim failed because the denial of his appeal of his termination did not constitute an adverse employment action within the meaning of the Act; and (3) DeLeon's Whistleblower claim survived because he was entitled to a presumption that his report to the TCEQ was the cause of his termination.

Tex. Workforce Comm'n v. Seymore, No. 02-23-00036-CV, 2024 WL 283688 (Tex. App.—Fort Worth Jan. 25, 2024) (amended mem. op.). The Texas Workforce Commission (Commission) challenged the trial court's denial of its plea to the jurisdiction asserting that Seymore's discrimination and retaliation claims should have been dismissed because there was no evidence that it failed to provide a reasonable accommodation for Seymore's disability, no evidence that it constructively terminated her employment, and no evidence that it paid her less than similarly situated white employees.

The court of appeals reversed finding that: (1) the breakdown of the interactive process was attributable to Seymore as she unilaterally withdrew from the interactive process when she resigned when the accommodation negotiations had been ongoing for seven months; (2) there was no evidence that the Commission forced her to resign so as to create a constructive discharge claim; and (3) Seymore did not establish a prima facie case of race-based disparate-pay discrimination.

Leonard v. City of Burkburnett, No. 02-22-00266-CV, 2023 WL 8940816 (Tex. App.—Fort Worth Dec. 28, 2023, no pet.) (mem. op.). Following the filing of motions for rehearing by both parties, the court withdrew its November 2, 2023, opinion and substituted it with this opinion to clarify its holding on Leonard's claim based on Section 614.023(c) of the Government Code.

Following his termination of employment as a police officer with the city, Leonard filed a lawsuit against the city and two city officials, alleging the following: (1) denial of his rights without due course of law; (2) denial of equal protection under the law; (3) denial of his right to free speech; (4) denial of his right to freely associate and assemble; (5) wrongful termination; (6) denial of his right to petition; (7) violation of section 617.005 of the Government Code because no hearing was held and no one in a position of authority seriously considered his appeal; (8) civil conspiracy; (9) official oppression by the two officials; and (10) violations of the Texas Open Meetings Act. Leonard sought declaratory relief, injunctive relief, mandamus relief, and attorney's fees, but he expressly denied "seeking money damages." The city filed pleas to the jurisdiction, requesting dismissal for lack of subject matter jurisdiction. The trial court granted the pleas, and Leonard appealed.

The appellate court affirmed in part and reversed and remanded in part. Specifically, the court noted that no authority requires a full-blown hearing under Section 617.005 of the Government Code. The court remanded the following claims to the trial court: (1) that the city violated Leonard's rights to free speech and assembly by wrongfully terminating his employment because of his support of civil-service implementation at the police department and related involvement in the police association; and (2) that one of the city officials failed to comply with Section 614.023(c) of the Government before terminating Leonard's employment. The court also remanded the case so that Leonard may be given the opportunity to replead his equal-protection and due-course-of-law claims and the claim that he is entitled to additional rights pursuant to the "formal appeal procedure" delineated in the city's personnel handbook. The court affirmed the remainder of the trial court's judgement.

City of Laredo v. Moreno, No. 04-22-00624-CV, 2023 WL 7005871 (Tex. App.—San Antonio Oct. 25, 2023, no pet.) (mem. op.) This case involves a lot of procedural history. The plaintiff sued the city when he was terminated from his job as the water treatment superintendent, which is subject to the city's civil service rules and regulations. He alleged federal and state due process violations and sought an injunction to be reinstated. The trial court granted the request for a temporary injunction and ordered the city to reinstate the plaintiff. The city filed a plea to the jurisdiction, which the trial court denied. The appellate court affirmed the denial.

Then the trial court extended the preliminary injunction and ordered the plaintiff to pay $5,000 in a bond. The city requested the trial court increase the bond and the trial court denied the city's motion. The city appealed the bond amount and appealed the trial court's further order requiring the city to reinstate the plaintiff.

The appellate court dissolved the trial court's injunction and found: (1) the trial court abused its discretion in granting the plaintiff's request for a temporary injunction to reinstate him because he did not demonstrate an irreparable injury and did not demonstrate why monetary damages would not compensate him; and (2) the city did not demonstrate the amount of the supersedeas bond was improper.

Drew v. City of Houston, 679 S.W.3d 779 (Tex. App.—Houston [1st Dist.] Aug. 1, 2023, no pet.) Drew sued the City of Houston for sexual harassment, retaliation, and constructive discharge after a co-worker tried to kiss her and masturbated in front of her. The co-worker was placed on leave, Drew was reassigned, and several months later Drew resigned her position and filed a complaint with the EEOC. She filed suit against the city eight months later. The city filed a plea to the jurisdiction, claiming that Drew had not exhausted her administrative remedies with the EEOC because she filed her complaint more than 180 days after the incident occurred. The trial court granted the city's plea based on the untimeliness of Drew's complaint, and Drew appealed.

The appellate court affirmed, holding that: (1) the continuing violation doctrine did not apply because there was no evidence in the record to support Drew's claim that the first incident was part of a series of harassment and retaliation incidents that continued into the period of time that would make her EEOC complaint timely; and (2) there was no evidence in the record to support Drew's claim of constructive discharge.

EXTRATERRITORIAL JURISDICTION

Elliott v. City of Coll. Station, 674 S.W.3d 653 (Tex. App.—Texarkana Aug. 31, 2023, pet. filed) Two plaintiffs sued the city, the mayor, and the city manager under Article I Section 2, of the Texas Constitution to challenge the concept of extraterritorial jurisdiction (ETJ), arguing that unless residents of the ETJ can vote, any city regulation in the ETJ is void. The city and its officials filed a plea to the jurisdiction, asserting that the residents lacked standing, their claims were not ripe, and that the suit presented a political question. The trial court granted the plea and the plaintiffs appealed.

The court of appeals discussed in-depth the nature of Texas cities and concluded that the plaintiffs' challenge presents a political question, which the court may not address without violating the separation of powers of doctrine. Accordingly, the court of appeals upheld the trial court's decision.

GOVERNMENTAL IMMUNITY - CONTRACTS

City of Houston v. Aptim Envtl. & Infrastructure, LLC, No. 14-22-00616-CV, 2024 WL 848417 (Tex. App.—Houston [14th Dist.] Feb. 29, 2024, no pet.). Aptim LLC sued the City of Houston for unpaid invoices issued to the city under a contract for flood projects that included two amendments. The city filed a plea to the jurisdiction, claiming that it was immune to suit because the waiver of immunity in Chapter 271, Local Government Code, did not apply to claims arising under the second amendment to the contract because that amendment had been signed by an Aptim representative under its previous corporate name, Aptim Inc., which had been changed to Aptim LLC following a corporate restructuring. The trial court denied the city's plea and the city appealed.

The appellate court affirmed, holding that the failure of Aptim to sign the second amendment to the contract using its current corporate name went to the merits of the case rather than the jurisdiction, and that Aptim had sufficiently pleaded the elements of Chapter 271's waiver of immunity.

City of League City v. Galveston Cnty. Mun. Util. Dist. No. 6, No. 01-23-00007-CV, 2023 WL 8814635 (Tex. App.—Houston [1st Dist.] Dec. 21, 2023, no pet.) (mem. op.). The Galveston County Municipal Utility District No. 6 (the MUD) and the City of League City entered a contract in which the city agreed to make certain payments to the MUD to fund the bonded indebtedness incurred by the MUD in the construction of facilities for a water and sewer system. Under the contract, the MUD agreed to expand the water, sewage, and drainage systems and the city agreed to take title to the improvements in phases, take over the maintenance of them, and make payments. Near the end of the 40-year term of the contract, the MUD issued a series of bonds without seeking approval from the city in contravention of the terms of the contract, and proposed another bond issuance, both of which the city objected to. The city and the MUD reached a settlement agreement over that dispute in which the city agreed to continue making payments to the MUD until 2024 and approved the MUD's bond issuances. A dispute arose over the city's payments to the MUD and the MUD sued the city for underpayment, delayed payments, and a unilateral offset of one payment taken by the city. The MUD sued for declaratory judgment and breach of contract. The city filed a plea to the jurisdiction claiming governmental immunity, which the trial court denied. The city appealed.

The appellate court reversed in part and affirmed in part, holding that: (1) the contract was a contract for goods and services as defined by Chapter 271 of the Local Government Code, so the waiver of immunity in that chapter applied; and (2) the city was immune to a suit seeking declaratory judgment because Chapter 271 does not expressly waive immunity from suit for adjudicating a claim for declaratory relief.

Tex. Disposal Sys., Inc. v. City of Round Rock, No. 03-22-00450-CV, 2023 WL 3727963 (Tex. App.—Austin May 31, 2023, no pet. filed). In November 2021, the city council of the City of Round Rock approved a resolution authorizing the city manager to give Texas Disposal System (TDS) notice that the city would be terminating its franchise agreement for non-residential garbage and recycling collection services effective April 30, 2022, as well as a resolution approving the mayor to execute an agreement with another vendor to be city's single service provider. In accordance with the contract terms, the city provided the 30-day notice of the contract termination in March 2022.

Upon receiving the notice, TDS sued the city and the city manager seeking declaratory and injunctive relief. After the trial court denied the first request, TDS filed an amended petition which included an ultra vires claim against the city manager. After a hearing on the second request for a temporary restraining order the trial court denied TDS's request finding that it had not proven the required elements under the Uniform Declaratory Judgment Act (UDJA). TDS subsequently filed an interlocutory appeal raising two issues. The first issue involved the city's charter provision prohibiting exclusive franchises for public utilities. TDS claimed the city violated its charter by granting an exclusive franchise agreement to the other vendor, which would cause TDS irreparable harm without relief. TDS also claimed the city violated the Texas Open Meetings Act (TOMA) at a July 2021 retreat in which the council first considered possible action regarding commercial garbage collection because the agenda notice was not "sufficiently specific" to give the public notice that it was considering an exclusive franchise agreement. The city responded by challenging the court's subject matter jurisdiction for the claims under the UDJA.

Although the court of appeals determined the trial court had subject matter jurisdiction, it affirmed the trial court's order. The court reasoned that at the time of the hearing on the temporary restraining order, the city had provided the required termination notice under the terms of their contract, and the contract between TDS and the city was no longer in effect. Therefore, TDS failed to establish "probable, imminent, and irreparable injury in the interim that its requested injunctive relief would have prevented."

Travis Cnty. Mun. Util. Dist. No. 10 v. Waterford Lago Vista, LLC, No. 07-23-00182-CV, 2023 WL 8042570 (Tex. App.—Amarillo Nov. 20, 2023, extension of time for filing petition for review granted) (mem. op.). A developer entered into an agreement with the municipal utility district (MUD) to provide for construction of water, sewer, and drainage facilities to serve property owned by the developer and it included rights to reimbursement for costs of the project. The developer defaulted on its loan and on foreclosure, the rights ultimately were assigned to Waterford. Waterford requested reimbursement under the agreement, which the MUD denied because it argued the terms of the agreement regarding assignment were not followed. Waterford sued and the MUD filed a plea to the jurisdiction, arguing there was no waiver of sovereign immunity under Local Government Code Sections 271.151 and 271,152. The trial court denied the plea and the MUD appealed.

In affirming the trial court's denial, the appellate court found: (1) prior cases with similar facts found that sovereign immunity was waived when a governmental entity agrees to reimburse a developer for costs associated with projects like the one in this case and the contract fell into a contract for "goods and services"; and (2) the MUD's argument that Waterford did not have standing to sue was really a capacity to seek reimbursement issue, not a standing issue.

San Jacinto River Auth. v. City of Conroe, No. 22-0649, 2024 WL 1590001 (Tex. Apr. 12, 2024). This case looks at the scope of the statutory waiver of immunity under Chapter 271 of the Local Government Code (Chapter 271) for contractual claims against local government entities.

At issue were contracts that obligated two cities to buy surface water from a river authority. When a dispute over fees and rates arose, the cities stopped paying their complete balances, and the authority sued the cities to recover those amounts. The trial court granted the cities' plea to the jurisdiction, and the court of appeals affirmed on the ground that the authority did not engage in pre-suit mediation as the contracts required. The river authority petitioned for review.

The Supreme Court held that neither the contractual procedures for alternative dispute resolution, which are enforceable against local governments under Section 271.154 of the Local Government Code, serve as limits on the waiver of immunity set out in Section 271.152, nor does the parties' agreement to mediate apply to the authority's claims. The Court also rejected the cities' alternative argument that the agreements did not fall within the waiver because they failed to state their essential terms. Accordingly, the Court reversed and remanded to the trial court for further proceedings to resolve the authority's claims on the merits.

Campbellton Rd., Ltd. v. City of San Antonio by & through San Antonio Water Sys., No. 22-0481, 2024 WL 1590000 (Tex. Apr. 12, 2024). A property developer, which owned 585 acres within city's extra-territorial jurisdiction, brought a breach of contract and declaratory judgment action against the city by and through the city's water utility, arising from utility's agreement with the developer that the utility would provide sewer service for proposed residential developments on the developer's property. The trial court denied the city's plea to the jurisdiction and motion to dismiss for lack of subject matter jurisdiction. On appeal, the San Antonio Court of Appeals reversed and remanded, finding Chapter 271 of the Local Government Code (Chapter 271) did not apply to waive the city's immunity. The developer filed a petition for review.

The Supreme Court reversed and remanded, finding that the following supported waiver of the city's sovereign immunity under Chapter 271: (1) the developer sufficiently pleaded that a written, bilateral contract was formed; (2) the developer sufficiently pleaded that a written, unilateral contract was formed; (3) the contract terms contemplated that the utility had a right to the developer's participation in the project upon contract signing, as would support waiver of city's governmental immunity under the Chapter 271; (4) the contract terms contemplated provision of payment to the developer; and (5) the developer sufficiently pleaded that the contract contemplated provision of services to the utility, as required to trigger waiver of governmental immunity.

Chaudhari P'ship v. AHFC Pecan Park PSH Non-Profit Corp., No. 07-23-00362-CV, 2024 WL 1185132 (Tex. App.—Amarillo Mar. 19, 2024, no pet. filed) (mem. op.). The city, in partnership with a nonprofit, planned to put in housing for the homeless in a hotel. The Chaudhari Partnership (the "Partnership") and the county attorney sued in separate actions. Once the Partnership learned that the county attorney filed a separate lawsuit, the Partnership intervened and nonsuited the action it initiated with prejudice. The city filed a plea to the jurisdiction, which the trial court granted. Only the Partnership appealed.

On appeal, the court found that: (1) the Partnership failed to address the ground implicating that the Partnership had failed to state a cause of action against the city in its cause of action; and (2) the provision of public housing is a governmental function. The appellate court affirmed the trial court's dismissal with prejudice.

San Antonio Water Sys. v. Guarantee Co. of N. Am. USA, No. 08-23-00123-CV, 2024 WL 42357 (Tex. App.—El Paso Jan. 3, 2024, pet. filed) (mem. op.). The San Antonio Water System (SAWS) entered into two separate contracts with Thyssen for the construction of the Mel Waiters Project and the Westpointe Project. GCNA served as the surety for Thyssen on both projects. A dispute arose over the Mel Waiters Project, leading SAWS to sue Thyssen for breach of performance and GCNA for breach of its performance bond obligations. In response, GCNA filed counterclaims related to the Westpointe Project, alleging several breaches of contract by SAWS and additional claims under the Texas Prompt Payment Act. SAWS then filed a plea to the jurisdiction and motion to dismiss GCNA's counterclaims based on governmental immunity. The trial court denied the plea, and SAWS appealed.

Generally, cities have immunity from liability and lawsuits unless that immunity has been waived. Chapter 271 of the Texas Local Government Code contains a limited waiver of governmental immunity for breach of contract claims arising under certain contracts. Even though GCNA was not a signatory to the contract at issue, as an insurer of signatory (Thyssen), GCNA was subrogated to the rights of the insured, and could bring the claims under the contract. Unfortunately for GCNA, the court ultimately held that the terms of the contract were not violated by SAWS as GCNA argued. With regard to Prompt Payment Act counterclaim, it failed as well, due to SAWS not being an "owner" as defined by the Texas Property Code for purposes of GCNA's claims. The court ultimately reversed the trial court's judgment and dismissed GCNA's claims with prejudice.

City of Canton v. Lewis First Monday, Inc., No. 06-23-00027-CV, 2023 WL 4945085 (Tex. App.—Texarkana Aug. 3, 2023, pet. denied) (mem. op.) The plaintiff co-owns property with the city where a flea market operates. The market has an entrance through the historical main gate owned by the city. The city voted to restrict access to the historic main gate to vendors during the flea market and the plaintiff sued for: (1) declaratory judgment for an easement by estoppel; (2) declaratory relief for a taking; and (3) injunctive relief to prevent the city from locking the main gate. The city filed a plea to the jurisdiction, which the trial court denied.

On appeal, the appellate court reversed the trial court and found: (1) the plaintiff had no easement interest in a public roadway; (2) regulating traffic is a municipal governmental function; (3) the Private Real Property Rights Preservation Act only applies in the extraterritorial jurisdiction and the city's act did not take place in the ETJ; and (4) the plaintiff did not have a takings claim because the act took place on city-owned property, the city did not restrict access to the plaintiff's property, and the city did not deny plaintiff a permit. The appellate court vacated the trial court's temporary injunction, reversed the denial of the plea, and rendered judgment for the city.

GOVERNMENTAL IMMUNITY – PROPRIETARY/GOVERNMENTAL

City of League City v. Jimmy Changas, Inc., 670 S.W.3d 494 (Tex. June 9, 2023). This is an interlocutory appeal in which the Supreme Court determined the proper governmental/proprietary dichotomy in a breach-of-contract case.

The City of League City entered into a "Chapter 380 Economic Development Incentives Grant Agreement" with Jimmy Changas, Inc. (Changas) in which the city offered incentives including reimbursements of fees and a percentage of local sales tax payments to Changas to invest $5 million to develop a restaurant facility within the city's entertainment district. After Changas completed the project, the city failed to provide the reimbursements contending that Changas failed to timely submit documentation that it had invested $5 million and created at least 80 full-time jobs. Changas sued the city asserting breach of contract. The court of appeals reversed the trial court's holding, finding that the city engaged in a proprietary function when it entered the contract, and thus, was not immune from suit.

On appeal, the Supreme Court affirmed the appellate court's holding finding that under the Wasson II factors, the city was engaging in a proprietary activity. The court determined that: (1) the city's act of entering into the contract was discretionary; (2) the contract primarily benefited the city residents and not the general public; (3) the city was acting on its own behalf and not on the State's behalf when it entered the contract; and (4) the city's decision to enter into the contract was not related to any governmental function.

City of Huntsville v. Valentine, No. 13-22-00528-CV, 2023 WL 5282954 (Tex. App.—Corpus Christi–Edinburg Aug. 17, 2023, no pet.) (mem. op.) The Valentines sued the City of Huntsville alleging that the city negligently issued a building permit for construction that ended up flooding the Valentines' property with stormwater runoff. The city filed a plea to the jurisdiction claiming governmental immunity and the trial court denied the plea. The city appealed.

The appellate court affirmed, holding that because issuance of a building permit is a governmental rather than proprietary function of a city, the Texas Tort Claims Act would have waived the city's immunity only if the claim arose from property damage caused by the negligent operation of a motor vehicle.

GOVERNMENTAL IMMUNITY - TORTS

City of Austin v. Quinlan, 669 S.W.3d 813 (Tex. June 2, 2023). The issue in this appeal is whether the City of Austin had a legal duty to ensure a sidewalk café, to which it had delegated maintenance responsibilities under a permit, fulfilled its maintenance obligations, thus, waiving its governmental immunity.

A restaurant patron brought premises liability action against the City of Austin and a restaurant that operated a sidewalk café following an ankle injury that was sustained when the patron fell more than one foot from the sidewalk to the street. The trial court denied the city's plea to the jurisdiction and the city appealed. The court of appeals affirmed in part and reserved in part.

The Supreme Court granted the petition for review and reversed, holding that: (1) a sidewalk café maintenance agreement between the restaurant and the city did not impose a nondiscretionary duty on the city, and thus, claims against the city did not fall outside the "discretionary function" exception to waiver of immunity under the Texas Tort Claims Act; (2) the city's alleged control over the sidewalk café, under agreement, had no bearing on the issue of whether the "discretionary function" exception to the city's waiver of immunity applied; (3) the statutes governing a city's authority to issue a permit for use of city street or sidewalk for public convenience or private use did not impose a nondelegable, nondiscretionary duty on a city, for which alleged breach fell outside the "discretionary function" exception to waiver of immunity; and (4) the dismissal of the complaint, rather than remand to allow the patron an opportunity to replead, was appropriate.

CPS Energy v. Elec. Reliability Council of Tex., 671 S.W.3d 605 (Tex. June 23, 2023). This case stems from claims against ERCOT related to Winter Storm Uri.

Action was brought in two separate proceedings against the Electric Reliability Council of Texas (ERCOT)—first by CPS Energy (CPS), a municipally owned electric utility, alleging breach of contract, negligence, gross negligence, negligence per se, breach of fiduciary duty, and violations of Texas Constitution, and second, by Panda Power Companies (Panda) for fraud, negligent misrepresentation, and breach of fiduciary duty—alleging that ERCOT's electricity capacity, demand, and reserves reports misled the power company to invest $2.2 billion in building new power plants.

ERCOT filed a plea to the jurisdiction, arguing that the claims are barred by sovereign immunity and, alternatively, that the Public Utility Commission (PUC) has exclusive jurisdiction over the claim. The trial court denied the plea. ERCOT appealed, asserting that it is a governmental unit entitled to an interlocutory appeal from the denial of a plea to the jurisdiction. ERCOT also sought review by petition for writ of mandamus in the event it is not entitled to an interlocutory appeal. After one court of appeals panel summarily denied mandamus relief, ERCOT filed its petition for writ of mandamus in the Supreme Court to continue the alternative path to review. A different court of appeals panel then held that ERCOT is a governmental unit entitled to take an interlocutory appeal, that the PUC has exclusive jurisdiction over CPS's claims, and that CPS's claims should be dismissed. The Supreme Court granted review.

The Supreme Court determined that: (1) ERCOT is a governmental unit as defined in the Texas Tort Claims Act and thereby entitled to pursue an interlocutory appeal from the denial of a plea to the jurisdiction; (2) the PUC has exclusive jurisdiction over the parties' claims against ERCOT; and (3) ERCOT is entitled to sovereign immunity. Accordingly, in the CPS case, the court affirmed the appellate court's judgment, dismissing CPS's motion to stay the trial court's temporary restraining as moot. In the case related to Panda, the court reversed the court of appeals's judgement and dismissed the case for lack of jurisdiction.

Edney v. City of Waco, No. 13-22-00152-CV, 2023 WL 8270628 (Tex. App.—Corpus Christi–Edinburg Nov. 30, 2023, pet. filed) (mem. op.). Edney sued the city of Waco claiming an illegal search and seizure after he was arrested at a mall for trespass and illegal carrying of a weapon. The city filed a motion to dismiss and a plea to the jurisdiction, claiming governmental immunity for the city and official immunity for the police officers who arrested Edney. The trial court granted the city's motion to dismiss and the city's plea to the jurisdiction, reasoning that the city's governmental immunity had not been waived for Edney's claim. Edney appealed the trial court's grant of the city's motion to dismiss.

The appellate court affirmed, holding that on appeal Edney had only challenged the trial court's grant of the city's motion to dismiss and did not challenge the trial court's grant of the city's plea to the jurisdiction. Because both dispositive motions relied on the city's governmental immunity, the appellate court could not reverse the trial court regardless of whether the grant of the motion to dismiss was proper.

El Paso Water Utilities Sys.-Pub. Serv. Bd. v. Marivani, No. 08-23-00071-CV, 2023 WL 4771207 (Tex. App.—El Paso July 26, 2023, no pet. filed) (mem. op.) Aryan Marivani sued the City of El Paso and the El Paso Water Utilities System-Public Service Board (collectively "EPWU") for negligence after a vehicle being driven by Gabriel Ramirez, an employee of EPWU, collided with Marivani's parked car. EPWU answered the complaint with a plea to the jurisdiction, arguing that the case should be dismissed because Ramirez was commuting home at the time of the collision and was therefore not acting within the scope of his employment. The trial court denied the plea to the jurisdiction, and EPWU appealed. Municipalities generally have immunity from lawsuits unless the immunity has been waived. The Texas Tort Claims Act can provide such an immunity waiver for property damage caused by employee negligence, if the damage is caused by a motor vehicle being operated by an employee who is acting within the scope of their employment. An employee is typically not acting within the scope of their employment while they are commuting to and from work. This rule is known as the "coming-and-going" rule and can apply even when the employee is driving a city-owned vehicle. Exceptions exist if the employee is on a special mission for the employer or performing another service for the employer. Despite driving a company vehicle at the time of the collision, evidence supported the fact that Ramirez was merely commuting home at the time of the collision. Marivani argued that certain company policies might indicate that Ramirez was in his employment scope; however, the court found otherwise, taking pains to analyze and distinguish this case from other relevant cases. Ultimately, the appellate court reversed the trial order denying EPWU's plea and rendered judgment in favor of EPWU.

Town of Little Elm v. Climer, No. 02-23-00250-CV, 2023 WL 8467513 (Tex. App.—Fort Worth Dec. 7, 2023, no pet. filed) (mem. op.). Climer filed a negligence suit under the Texas Tort Claims Act against the Town of Little Elm for injuries he received when he fell from his bicycle on a concrete pathway subject to the town's control, asserting that he did not see the hole in the concrete prior to his fall. In its plea to the jurisdiction, Little Elm stated that it was aware of the condition of the pathway, had closed that section of the pathway to conduct an investigation prior to repairing the pathway, and it had checked the trail weekly and warned users of the condition of the trail. The trial court denied the plea, and Little Elm appealed. The court of appeals reversed the trial court's order, finding that Little Elm's decision to close the damaged portion of the trail and conduct a geotechnical distress investigation prior to repairing the pathway was a discretionary decision protected by governmental immunity. Further, the court determined that Climer's factual allegations did not establish gross negligence as Little Elm presented evidence that it erected barricades to protect the public.

City of Dallas v. Ahrens, No. 10-23-00315-CV, 2024 WL 1573388 (Tex. App.—Waco Apr. 11, 2024, extension for filing petition for review approved) (mem. op.). Following a sniper shooting that resulted in the death of five Dallas police officers, the city contracted with a charitable organization, Assist the Officer Foundation (ATO), to process and distribute mail, including checks and cash, received by the city for the benefit of the families of the officers who were killed. Believing that ATO mishandled the funds, and because ATO refused to release cash they claim to be legally entitled to, Katrina Ahrens and her children sued ATO, the city and others seeking damages in connection with the city's handling of donations sent to the city after her husband's line of duty death.

In its plea to the jurisdiction, the city contended that it was immune from suit arising out of its governmental functions. The city specifically asserted that the complained-of activities, its handling of mail sent to the city, fell within the governmental function of police protection and control. The trial court denied the plea, and the city appealed. The appellate court affirmed the trial court's order, finding when the city entered into an agreement with ATO it engaged in a proprietary function.

Suarez v. Silvas, No. 04-22-00540-CV, 2023 WL 4337717 (Tex. App.—San Antonio July 5, 2023, pet. denied) (mem. op.). This is the third appeal in the case where the city removed councilmember Silvas for violating a charter provision and Silvas sued the city and city employees. The city and city employees filed a plea to the jurisdiction on remand the second time, claiming the trial court should dismiss all of Silvas's claims for attorney's fees and costs under the Texas Tort Claims Act (TTCA) against the city employee defendants and that Silavas did not have a proper Uniform Declaratory Judgment Act (UDJA) claim because her ultra vires claims were moot. The trial court denied the plea and the city and city employees appealed.

On appeal, the appellate court affirmed the denial of the plea and held that: (1) while the city is immune from Silvas's ultra vires claim, the city employees were not because they were acting in their official capacities and therefore were not immune from attorney's fees under the TTCA; and (2) the decision to award attorney's fees under the UDJA is at the discretion of the trial court.

Harris Cnty. v. Deary, No. 01-23-00516-CV, 2024 WL 234755 (Tex. App.—Houston [1st Dist.] Jan. 23, 2024, no pet. filed). Deary sued Harris County under the Texas Tort Claims Act (TTCA) and 42 U.S.C. § 1983 after a county sheriff allegedly slammed her to the ground and arrested her without probable cause. The county filed a plea to the jurisdiction, claiming governmental immunity, and additionally filed a Rule 91a motion to dismiss, claiming Deary's suit had no basis in law and fact. The trial court denied both the plea and the motion, and the county appealed.

The appellate court affirmed in part and reversed in part, holding that: (1) because Deary had alleged only intentional torts in her pleading, the Texas Tort Claims Act did not waive the county's immunity with regard to those claims; (2) a county has no immunity to Section 1983 claims because Section 1983 creates a cause of action against government actors who deprive a plaintiff of their constitutional rights; and (3) even if the trial court erred by denying the Rule 91a motion to dismiss, the appellate court lacked jurisdiction to review that interlocutory order because it did not implicate the court's subject matter jurisdiction.

City of Houston v. Taylor, No. 14-22-00629-CV, 2024 WL 1403949 (Tex. App.—Houston [14th Dist.] Apr. 2, 2024, pet. filed) (mem. op.). Percy Taylor sued the City of Houston after being involved in a collision with a city ambulance. The city claimed immunity under the Texas Tort Claims Act, arguing that the ambulance was responding to an emergency, which if proven, exempts the city from liability. The trial court denied the city's motion for summary judgment and plea to the jurisdiction. The Texas Tort Claims Act may waive immunity for injuries caused by the operation of motor-driven vehicles unless the injury arises from actions taken during emergency responses. The question in this case was whether the ambulance was actively responding to an emergency when the collision occurred. The evidence presented showed conflicting accounts of the situation. The ambulance driver indicated that they were transporting a critically ill patient with possible sepsis to the hospital under emergency conditions with lights and sirens activated. Contradictory testimony and a Houston Fire Department incident report suggested that the patient was stable and that the transportation was at the patient's choice, without emergency lights and sirens. The appellate court affirmed the trial court's decision, finding that factual disputes about the emergency status of the ambulance trip precluded summary judgment. The court concluded that the trial court correctly denied the city's plea to the jurisdiction and MSJ.

City of Houston v. Caro, No. 14-23-00319-CV, 2024 WL 1732278 (Tex. App.—Houston [14th Dist.] Apr. 23, 2024, no pet. filed) (mem. op.). Lucy Caro, a flight attendant, was injured at Bush Intercontinental Airport, which is owned by the City of Houston, when she slipped on water beneath an air conditioning vent. In response to Caro's lawsuit, the City of Houston filed a plea to the jurisdiction, which the trial court denied. On appeal, the city challenged the trial court's denial of its plea to jurisdiction, arguing that it did not have actual knowledge of the hazard, and thereby maintained its immunity under the Texas Tort Claims Act. The court evaluated whether the City of Houston had actual knowledge of the hazard. Evidence showed longstanding issues with condensation at the airport, which were known to city staff. Despite prior observations of water accumulation and temporary remediation measures, no permanent solution was implemented, and no warning signs were present at the time of Caro's fall. The appellate court held that evidence of the city's awareness of the recurring condensation issue, combined with the specific observations made by city staff shortly before Caro's injuries, established a fact issue regarding the city's knowledge of the dangerous condition. The court also found fact issues regarding whether Caro knew about the hazard and whether the city failed in its duty of care. Ultimately, the court affirmed the trial court's decision, holding that the evidence raised sufficient fact issues to deny the city's plea to the jurisdiction, allowing Caro's suit to proceed against the City of Houston for her injuries. The case was remanded for further proceedings concerning the city's knowledge and the adequacy of its remedial actions.

City of Austin v. Kalamarides, No. 07-23-00400-CV, 2024 WL 1422741 (Tex. App.—Amarillo Apr. 2, 2024, no pet.) (mem. op.). The plaintiff sued the city for injuries he suffered in a car accident with a city police officer who was responding to an emergency call. The plaintiff claimed his light was green and that the police officer did not have lights or sirens on. The city claimed the officer did have the vehicle's lights and sirens activated. The city filed a plea to the jurisdiction based on the "emergency exception." The trial court denied the plea.

On appeal, the court reversed and rendered judgment in favor of the city. The court found the city retained its immunity under the emergency response exception because record did not reveal a fact issue as to whether the officer acted in a way that posed a high degree of risk or serious injury to others when responding to an emergency. The video evidence capturing the minutes preceding the collision confirmed that as the officer entered the intersection, she was proceeding slowly, with her vehicle's lights and siren activated.

City of Springtown v. Ashenfelter, No. 02-23-00204-CV, 2024 WL 1792380 (Tex. App.—Fort Worth Apr. 25, 2024, no pet.) (mem. op.). Kalie Ashenfelter sued the City of Springtown after she was involved in an automobile collision with a city police officer. The city appealed the trial court's denial of its combined motion for no-evidence and traditional summary judgment, asserting that it was entitled to immunity based on (1) the police officer's official immunity and (2) the emergency exception to the Texas Tort Claims Act's (TTCA) waiver of immunity. The appellate court affirmed the trial court's order denying the city's combined motion concluding that the city was not entitled to a no-evidence summary judgement and that evidence attached to the city's traditional motion for summary judgement raised a fact issue as to whether governmental immunity was waived.

City of Houston v. Manning, No. 14-23-00087-CV, 2024 WL 973806 (Tex. App.—Houston [14th Dist.] Mar. 7, 2024, pet. filed) (mem. op.). In a case involving a collision between a City of Houston Fire Department truck driven by Wilhelm Schmidt and a car carrying Chelsea Manning and three minors, the appellate court previously affirmed the denial of the city's initial motion for summary judgment on negligence claims. In Manning I, the city argued for immunity, citing the driver's official status and exceptions under the Texas Tort Claims Act (TTCA), but failed to conclusively prove absence of negligence or that the emergency and 9-1-1 exceptions applied. The Supreme Court declined to review the appellate court's decision in Manning I.

This appeal originates from a second summary judgment motion in which the city reiterated its immunity defense, added additional TTCA arguments, and challenged certain plaintiffs' standing. The trial court denied this motion and allowed two additional plaintiffs to join the case, leading to the city's current appeal.

Generally, a city cannot be vicariously liable for the negligent acts of its employees unless its governmental immunity has been waived. The TTCA contains waivers of governmental immunity when the negligence of a city's employee, acting within the scope of their employment, proximately causes personal injury to another person, arising from the use or operation of a motor driven vehicle, if the employee would be personally liable for the injuries. The city argued that Schmidt would not have been liable for the injuries, since he was protected by official immunity, which can protect government employees from liability from lawsuit if at the time of the injury, they were performing discretionary job functions with good faith. As in Manning I, the court in this case held that there were fact questions surrounding Schmidt's good faith and overruled the city on this issue.

There are also exceptions to the TTCA's immunity waiver when an employee is responding to an emergency situation or a 9-1-1 call for assistance, if the employee's actions are essentially reasonable, lawful, and not taken with reckless disregard for the safety of others. The city raised each of these exceptions, but again, the court overruled these issues, pointing to evidence that Schmidt may have been operating the truck recklessly at the time of the collision.

The only issue on which the court found in favor of the city was a standing issue. Two of the claimants who were minors at the time of the collision had reached the age of majority by the time the appeals in Manning I were decided, after which, a Second Amended Petition was filed seeking additional damages for medical expenses by these claimants. Because claims for the medical expenses of minors belong to the minors' parents, the appellate court overruled the trial court on this issue. Ultimately, the court overruled all the city's claims other than the standing issue and remanded the case to the trial court for further proceedings.

Rebeca Garcia v. The City of Austin, No. 14-23-00241-CV, 2024 WL 1326113 (Tex. App.—Houston [14th Dist.] Mar. 28, 2024, no pet.) (mem. op.). Rebeca Garcia and Mike Ramos were in a car when the police, responding to a 9-1-1 call about drug use and a possible gun, commanded them to exit the vehicle. Ramos, after initially complying, became non-compliant and was fatally shot while attempting to drive away. Garcia, who was in the car but not physically injured, sued the City of Austin for negligent infliction of emotional distress, claiming severe shock and emotional distress from witnessing the incident.

The City of Austin filed a plea to the jurisdiction, asserting immunity from Garcia's suit. The trial court granted the plea, dismissing Garcia's suit. Garcia appealed, arguing the trial court erred in granting the plea and that the city did not meet its burden to establish governmental immunity. Generally, a city is protected from liability from lawsuit by governmental immunity, but that immunity may be waived by statute. The Texas Tort Claims Act provides limited waivers of immunity for certain negligent conduct, but it does not waive immunity for injuries arising from intentional torts. Garcia argued that her injuries sounded in negligence; however, neither the trial court nor the appellate court agreed, since the shooting in question was clearly an intentional act. Consequently, the appellate court affirmed the trial court's final judgment, dismissing the case for lack of jurisdiction.

City of Mission v. Aaron Cervantes, No. 13-22-00401-CV, 2024 WL 1326396 (Tex. App.—Corpus Christi–Edinburg Mar. 28, 2024, no pet.) (mem. op.). Cervantes sued the City of Mission under the Texas Tort Claims Act (TTCA) after he was injured on a city-maintained bike path, claiming the city's failure to warn the public of the dangerous condition of the trail was grossly negligent. The city filed a plea to the jurisdiction claiming governmental immunity under the TTCA and the recreational use statute. The city argued that the dangerous condition at issue was not a special defect, so the city owed only a licensee standard of care and therefore the city's immunity was not waived under the TTCA. The trial court denied the city's plea and the city appealed.

The appellate court affirmed the trial court's denial of the city's plea to the jurisdiction, holding that because the city had not produced evidence to negate Cervantes' contention that the dangerous condition at issue was a special defect, it had failed to carry its burden to negate the existence of jurisdictional facts.

City of Dallas v. Mckeller, No. 05-23-00035-CV, 2024 WL 980356 (Tex. App.—Dallas Mar. 7, 2024, no pet.) (mem. op.). In 2019, the City of Dallas was notified through a service request that one of its water meter boxes was missing the lid leaving a hole in the sidewalk. Because the repairs could not be made that day, city staff placed a large orange cone over the hole. However, the cone was later removed by an unknown third party, and Evelyn McKeller sustained injuries when she fell into the hole. McKeller then sued the city on the basis of negligence and premises liability. In response, the city filed a plea to the jurisdiction claiming immunity under the Texas Tort Claims Act (TTCA). After a hearing on the matter, the trial court denied the city's plea to the jurisdiction, and the city appealed.

In its appeal, the city claimed McKeller could not overcome the TTCA's waiver of immunity for the premises liability claim because it had no actual knowledge that the cone had been removed by a third party. The city relied on Texas Civil Practice & Remedies Code Section 101.060 which states a governmental unit retains its immunity for claims based on the removal of a traffic warning device unless the governmental unit fails to correct the removal within a reasonable period of time after having actual notice. The city further argued that the trial court did not have subject matter jurisdiction over McKeller's negligence claim separate from the premises defect claim.

As to the premises liability claim, the court of appeals concluded the city had actual knowledge of the defective condition – an open water meter hole. The court reasoned that McKeller's claim was not based on the failure to replace the cone, and it did not qualify as a "warning device" where it was placed on a sidewalk and not a roadway as required by Section 101.060. As a result, the lower court's denial of the city's plea to the jurisdiction was affirmed. However, as to McKeller's negligence claim, the court of appeals held that because the claim relied on the premises defect in this case, immunity was not waived under the TTCA. For that reason, the court of appeals granted the city's plea to the jurisdiction and rendered judgment dismissing the negligence claim for lack of subject matter jurisdiction.

Alief Indep. Sch. Dist. v. Velazquez, No. 01-22-00444-CV, 2023 WL 3555495 (Tex. App.—Houston [1st Dist.] May 18, 2023, no pet.) (mem. op.). Velazquez sued the Alief Independent School District after he was struck by a vehicle driven by a school cafeteria worker who was on her way to the district office to inquire about her health benefits. The district filed a plea to the jurisdiction, claiming governmental immunity. The trial court denied the plea, and the district appealed.

The appellate court reversed and rendered, holding that the cafeteria worker was not acting within the scope of her employment by driving to ask about her benefits after her shift ended, and therefore the district's governmental immunity was not waived under the TTCA.

Barker v. Sam Houston State Univ., No. 06-22-00076-CV, 2023 WL 4113275 (Tex. App.—Texarkana June 22, 2023, no pet.). Plaintiff filed a suit against her employer when she was injured by a vehicle driven by another employee. The university filed a plea to the jurisdiction and the plaintiff appealed. The appellate court found that although the plaintiff was going to lunch or running an errand when injured and not on the company's clock, her actions were so closely connected to her employment to render it an incident thereto. Therefore, her exclusive remedy was workers' compensation and she could not sue under the Texas Tort Claims Act. The appellate court affirmed the trial court's judgment.

Buchanan v. City of Bogata, 674 S.W.3d 687 (Tex. App.—Texarkana Aug. 4, 2023) Plaintiff sued the city over a car accident with a city employee when she was a passenger in a car. The city filed a plea to the jurisdiction based on lack of notice, which the trial court granted. The appellate court affirmed, finding that: (1) the city did not receive statutory notice under the Tort Claims Act; and (2) the city did not have actual notice because nothing in the police report provided notice to the city that the plaintiff was injured or that her injuries were caused by the employee's negligence.

City of Arlington v. Taylor, No. 02-22-00325-CV, 2023 WL 6631533 (Tex. App.—Fort Worth Oct. 12, 2023, pet. filed) (mem. op.). This is a Texas Tort Claims Act emergency exception case stemming from a motor-vehicle accident.

Taylor sued the City of Arlington after he was involved in a car accident at a four-way intersection with Baskin, a city police officer, who was responding to an emergency call to assist another officer with an occupied stolen vehicle. The city filed a plea to the jurisdiction, which the trial court denied. The city appealed asserting that it was entitled to immunity under the emergency exception to the Texas Tort Claims Act waiver of immunity.

After considering the city's motion for rehearing en banc, the appellate court withdrew its May 18, 2023, memorandum opinion and substituted it with this October 12, 2023, opinion. The appellate court reversed and rendered the judgement dismissing Taylor's claims, finding that Taylor bore the burden of negating the application of the TTCA's emergency exception and had failed to do so.

City of Baytown v. Fernandes, 674 S.W.3d 718 (Tex. App.—Houston [1st Dist.] Aug. 3, 2023). Fernandes sued the City of Baytown for negligence after he was injured on a waterslide at a city-owned waterpark. The City filed a plea to the jurisdiction contending that because Fernandes was engaging in a recreational activity on city-owned land, the TTCA's recreational use statue applied and Fernandes had to plead and prove gross negligence to establish a waiver of governmental immunity. The trial court denied the city's plea.

The appellate court reversed the trial court and dismissed Fernandes's claims for lack of subject matter jurisdiction, holding that: (1) riding down a waterslide constitutes recreational use for the purposes of the recreational use statute; and (2) there was no evidence that the city knew of the danger or that the waterpark's employees acted with conscious indifference to Fernandes's safety. Therefore, Fernandes had not shown the gross negligence that would be required to defeat governmental immunity under the recreational use statute.

City of Corpus Christi v. Nickerson, No. 13-22-00040-CV, 2024 WL 48181 (Tex. App.—Corpus Christi–Edinburg Jan. 4, 2024, pet. filed) (mem. op.). Nickerson sued the City of Corpus Christi under the Texas Tort Claims Act (TTCA) after she was struck by a John Deere tractor operated by a coworker. The city filed a plea to the jurisdiction arguing that the TTCA did not waive the city's immunity with respect to Nickerson's claim because she received worker's compensation benefits under the Texas Workers Compensation Act (TWCA). The trial court denied the plea and the city appealed.

The appellate court reversed, holding that when the TWCA applies, it acts as a bar to the waiver of immunity contained in the TTCA.

City of Corpus Christi v. Rios, No. 13-21-00414-CV, 2023 WL 7851900 (Tex. App.—Corpus Christi–Edinburg Nov. 16, 2023, pet. denied) (mem. op.). Rios sued the City of Corpus Christi under the Texas Tort Claims Act (TTCA) after she was injured in a traffic accident involving a stolen city police vehicle driven by a suspect who had been placed under arrest and left inside the vehicle. The city filed a plea to the jurisdiction arguing that it was protected by governmental immunity, which the trial court denied. The city appealed.

The appellate court reversed and rendered judgment, holding that the officers were performing a discretionary function when they arrested the suspect and placed him in the vehicle, so the officers were entitled to official immunity. Therefore the city's governmental immunity had not been waived.

City of Dallas v. Holmquist, No. 05-23-00276-CV, 2023 WL 6547911 (Tex. App.—Dallas Oct. 9, 2023). Remy Holmquist sued the city of Dallas for negligence after falling into a hole in a grassy area after stepping off a sidewalk in one of the city's parks at night. Holmquist originally claimed the hole was a premise defect under Tex. Civil Practice & Remedies Code Sec. 101.022(a). After the city filed a plea to the jurisdiction, Holmquist amended his petition claiming the hole was a special defect under Sec. 101.022(b). After a hearing, the trial court denied the city's plea, and the city filed an interlocutory appeal.

The court of appeals, in reversing the trial court's order, held that the hole was neither a special defect nor a premise defect where: (1) it was in a grassy area off the walking path not intended for use by pedestrians in the park and Holmquist did not act as an ordinary user when he walked in this area; and (2) Holquist presented no evidence the city had any actual knowledge of the hole or was grossly negligent.

City of Fredericksburg v. Boyer, No. 08-23-00236-CV, 2024 WL 101878 (Tex. App.—El Paso Jan. 9, 2024). Susanna Boyer was injured by a falling branch from a Bradford pear tree maintained by the City of Fredericksburg while walking on a sidewalk. She accused the city of negligence in maintaining the sidewalk and the tree, failing to warn the public about the tree's danger, and not removing or mitigating the hazard. The city filed a plea to the jurisdiction claiming immunity under the Texas Tort Claims Act (TTCA), arguing it lacked actual knowledge of the tree's dangerous condition. The trial court denied the city's plea, so the city appealed.

Generally, cities have immunity from liability and lawsuits unless that immunity has been waived. The TTCA contains a limited waiver of governmental immunity. For premises defects, a city owes the same duty to a claimant that a private person owes to a licensee on private property; therefore, in premises defect cases like this one, the TTCA would waive immunity if the city would be liable under a licensee theory of premises liability. To be successful in her claim, absent willful, wanton, or grossly negligent conduct by the city, Boyer had to prove, among other elements, that the city had actual knowledge of the dangerous condition. Mere hypothetical or constructive knowledge is not sufficient to satisfy this element. Boyer presented expert testimony related to the Bradford pear's species-specific failure profile; however, the court found that the testimony did not rise to the level of actual knowledge on the part of the city. Consequently, the trial court's order was reversed, and the case was dismissed for want of jurisdiction.

City of Hidalgo–Tex. Mun. Facilities Corp. v. Rodriguez, No. 13-23-00163-CV, 2024 WL 119245 (Tex. App.—Corpus Christi–Edinburg Jan. 11, 2024, pet. filed) (mem. op.). Rodriguez sued the City of Hidalgo–Texas Municipal Facilities Corporation (the city) under the Texas Tort Claims Act (TTCA), alleging a premises defect at a city-owned arena that was leased to the school district for which Rodriguez worked after she stepped into a sewage connection point (which she identified as a pothole or protruding steel cover) and fell, injuring her knee. The city filed a plea to the jurisdiction, claiming that: (1) Rodriguez could not identify a dangerous condition as required for a premises defect claim under the TTCA because she was unsure what she tripped over, had not seen it before she tripped, and it was not unreasonably dangerous; and (2) Rodriguez was a licensee and not an invitee, and therefore the city owed her a lower duty of care. The trial court denied the city's plea and the city appealed.

The appellate court affirmed, holding that there were genuine issues of material fact as to: (1) whether the sewage connection point was an unreasonably dangerous condition; and (2) whether Rodriguez was an invitee or a licensee because although she had not paid to be on the premises, the school district for which she worked had paid.

City of Houston v. Branch, No. 01-21-00255-CV, 2024 WL 332993 (Tex. App.—Houston [1st Dist.] Jan. 30, 2024, pet. filed). Branch sued the City of Houston for negligence under the Texas Tort Claims Act (TTCA), claiming negligent operation of a motor vehicle when a golf cart occupied by a city council member rolled forward over Branch's foot, allegedly when the councilmember accidentally hit the gas. The city filed a motion for summary judgment claiming governmental immunity, which the trial court denied. The city appealed.

The appellate court affirmed, holding that Branch had raised a fact issue regarding the application of the TTCA's waiver of immunity for negligent operation of a motor vehicle because if the councilmember hit the gas pedal on the golf cart, even inadvertently, it might constitute operation of a motor-driven vehicle within the meaning of the waiver.

City of Houston v. Bustamante, No. 01-22-00699-CV, 2023 WL 5110982 (Tex. App.—Houston [1st Dist.] Aug. 10, 2023) (mem. op.) Bustamante sued the City of Houstin after she, Elisondo, and their children were injured in a collision with a city emergency vehicle when the vehicle entered an intersection without slowing and struck Bustamante's vehicle. Bustamante gave notice of her claim under the TTCA about five months after the incident. The city filed a motion for summary judgment claiming governmental immunity, arguing that Bustamante had not provided notice of her claim within ninety days as required by the city charter. The trial court denied the city's motion and the city appealed.

The appellate court affirmed, holding that although Bustamante had not provided timely notice as required by the city charter, there was a genuine issue of material fact as to whether city had actual notice of a possible claim against it because the city had undertaken an investigation as a result of the incident, showing that the city had the necessary information to alert it of its potential liability.

City of Houston v. Cruz, No. 01-22-00647-CV, 2023 WL 8938408 (Tex. App.—Houston [1st Dist.] Dec. 28, 2023) (mem. op.) Cruz sued the City of Houston under the Texas Tort Claims Act (TTCA) when the car she was driving collided with a vehicle driven by Jamison, an animal control officer who was responding to a call about an animal bite. Jamison's view was partially blocked by a dump truck, but she proceeded into the intersection and was struck by Cruz's vehicle. The city filed a motion for summary judgment claiming governmental immunity, and the trial court denied the motion. The city appealed, arguing that it was entitled to government immunity because Jamison did not breach a legal duty as required to trigger the wavier of immunity under the TTCA, the TTCA's emergency exception applied because Jamison was responding to an animal bite when the collision occurred, and the TTCA does not waive immunity for negligence per se.

The appellate court affirmed, holding that: (1) there was an issue of fact as to whether Jamison breached a legal duty by proceeding into the intersection with her view partially blocked; (2) the city did not meet its burden to establish the applicability of the emergency exception to the TTCA's waiver of immunity; and (3) negligence per se is not a separate claim, but a method of proving negligence, and because Cruz had adequately alleged negligence under the TTCA she was not required to establish a separate waiver for negligence per se.

City of Houston v. Edwards, No. 01-22-00709-CV, 2023 WL 5021217 (Tex. App.—Houston [1st Dist.] Aug. 8, 2023) (mem. op.) Edwards sued the City of Houston for injuries he received when a city police car driven by a police officer who was rushing to get to another location to assist an officer in a foot pursuit of a suspect collided first with a city fire engine that was responding to a medical emergency and then with her vehicle. Edwards claimed that the emergency-response exception to the Tort Claims Act did not apply because both the fire engine driver and the police officer would not have been entitled to official immunity. The city filed a plea to the jurisdiction, claiming governmental immunity. The trial court denied the plea and the city appealed.

The appellate court reversed, holding: (1) that the fire engine driver was entitled to official immunity because he was acting in his discretion in determining that the need to respond to a medical emergency outweighed the risk of harm to the public; and (2) the police officer was entitled to official immunity because he was acting in his discretion in determining that the need to assist another officer outweighed the risk of harm to the public; and (3) because both employees would have been entitled to official immunity, the emergency-response exception to the TTCA's waiver of immunity to suit applied.

City of Houston v. Flores-Garcia, No. 14-21-00680-CV, 2023 WL 4196541 (Tex. App.—Houston [14th Dist.] June 27, 2023) (mem. op.). Kevin Lancaster, a Senior Plant Operator at the Houston Public Works Department, ran a stop sign while driving a city-owned car, and hit Flores-Garcia's vehicle. On the day of the accident, Lancaster stopped at a convenience store near the collision site for unknown reasons, but stated that it was not related to his job duties. He also could not recall his destination after leaving the store when the accident occurred. Flores-Garcia sued the city for negligence, alleging that Lancaster failed in a number of respects concerning safe driving and that the city's immunity was waived under the Texas Tort Claims Act (TTCA) due to Lancaster acting within the scope of his employment during the collision. The city contested the claim, arguing through a motion for summary judgment that the limited waiver of governmental immunity under the Texas Tort Claims Act did not apply, because Lancaster was not acting within the scope of his employment when the accident happened. The trial court denied the city's motion, and the city appealed.

A governmental unit is typically not liable for the torts of their agents, unless there is a constitutional or statutory waiver of immunity. The TTCA provides such a waiver, allowing for a governmental unit's immunity to be waived in cases of personal injury arising from the negligent use of a motor vehicle by an employee acting within the scope of their employment and when the employee would be personally liable under Texas law. The determination of whether a person is acting within the scope of their employment depends on whether the act causing the injury was in furtherance of the employer's business and for the accomplishment of the objective for which the employee was employed. In cases where a vehicle involved in a collision is owned by the driver's employer, it is generally presumed that the driver was acting within the scope of their employment; however, evidence of the driver being on a personal errand at the time of the accident can rebut this presumption. An action is considered to be outside the scope of employment if it occurs as part of an independent course of conduct not intended by the employee to serve any purpose of the employer. Nonetheless, mixed motives do not necessarily exclude an action from being within the scope of employment if the action also serves a purpose for the employer. In the current case, Lancaster's regular work duties included driving a city-owned vehicle to inspect water complaints and flush hydrants. The city wanted the court to infer that Lancaster was still deviating from his duties after leaving the convenience store, but the court pointed out that they must resolve any doubts in favor of the nonmovant during a motion for summary judgment. The court concluded that the evidence did not definitively establish that Lancaster was on a personal errand at the time of the accident. As such, the court rejected the city's sole issue on appeal, upholding the trial court's decision to deny the city's motion for summary judgment.

City of Houston v. Gomez, No. 14-21-00761-CV, 2023 WL 5535824 (Tex. App.—Houston [14th Dist.] Aug. 29, 2023, pet. filed) On a cold and rainy Christmas Eve, Maria Christina Gomez was involved in a collision with a City of Houston police car driven by Officer Bobby Joe Simmons at an intersection in Houston. At the time, Simmons was responding to a robbery-in-progress call. Gomez sued the city alleging negligence, and the city filed a plea to the jurisdiction asserting governmental immunity. Conflicting testimony exists with regard to certain facts about the collision. According to Simmons, he was driving with his emergency lights activated but no siren and claimed to have been following the speed limit. Gomez disputed Simmons's use of emergency lights. Ultimately, the trial court granted the plea to the jurisdiction dismissing the case, and Gomez appealed.

The appellate court at that time held that the city had not conclusively demonstrated that Simmons acted in good faith and that there were unresolved fact issues related to the emergency exception to waiver of immunity. The trial court's decision was overruled, and the case was remanded for further proceedings. The lower court ultimately denied a supplemental plea filed by the city, leading to the instant appeal. In this appeal, the city raised two issues: (1) that the city established Simmons acted in good faith, and (2) that Gomez failed to raise a genuine issue of material fact regarding Simmons's good faith.

Cities are generally protected from lawsuits by governmental immunity unless that immunity is waived. The Texas Tort Claims Act provides a waiver of governmental immunity for damage or injury caused by an employee's negligent act during the scope of their employment, especially when it involves the use of a motor vehicle. The standard for evaluating official immunity hinges on the officer's good faith and whether a "reasonably prudent officer" in similar circumstances might have acted the same way based on the information available at the time. This assessment considers the necessity of the officer's response and the associated risks, evaluating the urgency and alternative actions available as well as the potential harm and likelihood of adverse outcomes. In this case, the city's evidence failed to conclusively establish Simmons's good faith, as the city's position is based on a disputed fact concerning the use of emergency lights, which was a significant aspect influencing the needs and risk analysis. Given that the city did not definitively prove Simmons acted in good faith, the court upheld the trial court's decision not to dismiss the case. Additionally, in order to reverse the court's earlier opinion on the question of whether the emergency exception applied in this case, the city would have needed to demonstrate that the court's earlier opinion was clearly erroneous. In the prior opinion, the court held that that Gomez, the plaintiff, successfully raised a fact issue defeating the application of the emergency exception to the waiver of governmental immunity. The court highlighted that because the city produced no new evidence to counter Gomez's claim of recklessness by Simmons, the original decision of the court would stand.

Ultimately, the court overruled the city's arguments on appeal and upheld the trial court's judgment denying the plea to the jurisdiction, which essentially means that the case will continue in the trial court, with the city unable to claim governmental immunity at this time.

City of Houston v. Gonzales, 682 S.W.3d 921 (Tex. App.—Houston [14th Dist.] Jan. 18, 2024) (on reh'g). In January 2016, while driving with his training officer, Houston Police Department probationary peace officer Daniel Iwai collided with the rear bumper of another vehicle while responding to a priority-two call for assistance. Jonathan Gonzalez, who was in the other vehicle, sued the city for injuries he sustained in the collision and was awarded $250,000 at the conclusion of trial. Houston raised several issues on appeal, but the only one reached by the court was regarding an abuse of discretion by the trial court for not dismissing the case for lack of jurisdiction.

Generally, cities have immunity from liability and lawsuits unless that immunity has been waived. The Texas Tort Claims Act provides a limited waiver of governmental immunity for torts committed by city employees "acting within the scope of their employment" arising from the operation or use of motor-driven vehicles under certain circumstances. However, an exception to this waiver exists when a city employee is responding to an emergency. To prevail in this case, Gonzales needed to present evidence establishing at least one of the following: (1) the officer was not responding to an emergency, (2) the officer's actions were not in compliance with laws or ordinances applicable to emergency action, or (3) the officer's actions reflected a conscious indifference or disregard for the safety of others. At trial, both sides presented evidence regarding whether or not Iwai was responding to an emergency situation, and although the appellate court found the evidence to be inconclusive on this point, because the trial court rendered judgment for Gonzales, the appellate court held that the lower court's findings were "not factually insufficient" to support the judgment against the city. Ultimately, the appellate court affirmed the trial court's ruling; however, due to a procedural rule, the award to the plaintiff was lowered from $250,000 to $100,000.

City of Houston v. Green, 672 S.W.3d 27 (Tex. June 30, 2023). The primary issue in this case is whether the record contains evidence that a city police officer was driving "with reckless disregard for the safety of others" at the time of the accident.

A motorist brought an action against the city seeking to hold it vicariously liable for a police officer's alleged negligence and independently liable for negligently hiring, training, and supervising the officer following a motor vehicle accident involving the officer while he was responding to an emergency call.

The Supreme Court held that the officer did not act with reckless disregard when the accident occurred, and thus, the emergency exception to waiver of governmental immunity under the Tort Claims Act applied.

City of Houston v. Huff, No. 01-22-00496-CV, 2023 WL 8938406 (Tex. App.—Houston [1st Dist.] Dec. 28, 2023) (mem. op.) Two City of Houston police officers made an improper left turn and struck a vehicle driven by Huff. Huff sued the city asserting negligence under the Texas Tort Claims Act (TTCA). The city filed a motion for summary judgment, claiming governmental immunity because Huff had failed to provide the city timely notice as required by the TTCA and the city's charter. The trail court denied the motion and the city appealed.

The appellate court affirmed, holding that although Huff had not provided formal notice of his claim for personal injury, the city had actual notice of Huff's possible injuries due to Huff lying in the road complaining of injuries and being carried away on a backboard, and the city had actual notice of the officers' alleged fault in contributing to the injury because the city's accident report expressly assigned fault to the officers.

City of Houston v. Ledesma, No. 01-22-00377-CV, 2023 WL 5535668 (Tex. App.—Houston [1st Dist.] Aug. 29, 2023, pet. filed) (mem. op.) Ledesma sued the City of Houston after she was allegedly injured in a collision with a Houston Police Department vehicle driven by Suarez, who was off-duty and travelling to her second job but was wearing an HPD uniform. The city filed a motion under the Texas Tort Claims Act's (TTCA) election-of-remedies provision to dismiss Suarez from the suit, which the trial court granted, and then the city filed a motion for summary judgment claiming immunity under the TTCA, arguing that Suarez was not acting in the scope of her employment at the time of the collision. The trial court granted the motion for summary judgment and Ledesma appealed.

The appellate court reversed the grant of the motion for summary judgment and remanded to the trial court, holding that by moving to dismiss the claims against Suarez under the TTCA's election-of-remedies provision, the city had judicially admitted that Suarez was acting in the scope of her employment. The city filed a motion for en banc rehearing which was denied and a petition to the Supreme Court which was also denied. The city then filed a plea to the jurisdiction in the trial court, the trial court denied the plea, and the city appealed.

The appellate court affirmed, holding that its prior decision had addressed all aspects of the city's arguments concerning the judicial admission issue and so the law-of-the-case doctrine applied. The appellate court denied Ledesma's request for sanctions against the city, holding that although it was a close question whether the city's appeals was frivolous, sanctions were not appropriate under the circumstances.

City of Houston v. Salazar, 682 S.W.3d 911 (Tex. App.—Houston [14th Dist.] Jan. 11, 2024). Sammy Salazar, among others, was in a vehicle which was hit by a patrol car driven by Officer Seidel of the Houston Police Department while he was pursuing another individual. The appellees sued the City of Houston and Officer Seidel for negligence. The city moved for summary judgment, claiming governmental immunity, which the trial court denied, leading to this interlocutory appeal.

Generally, cities have immunity from liability and lawsuits unless that immunity has been waived. The Texas Tort Claims Act provides a limited waiver of governmental immunity for torts committed by city employees "acting within the scope of their employment" arising from the operation or use of motor-driven vehicles if the employee would be personally liable to the claimant under Texas law. Officer Seidel would have official immunity from this suit if he could prove the lawsuit arose from (1) the performance of discretionary duties, (2) undertaken in good faith, (3) provided he was acting in the course and scope of his authority. In this case, the "good faith" element was in question, and to prevail on this element, Officer Seidel needed to show that a reasonably prudent police officer, under the same or similar circumstances, could have believed his actions were justified based on the information he possessed at the time. The city presented evidence related to Seidel's use of sirens and lights throughout his pursuit and other evidence demonstrating his considerations of the needs of the pursuit versus its risks. The appellate court determined that Officer Seidel did establish the affirmative defense of official immunity and therefore reversed the trial court's ruling and dismissed the claims against Houston for lack of subject matter jurisdiction.

City of Houston v. Walker, No. 01-22-00632-CV, 2023 WL 4937495 (Tex. App.—Houston [1st Dist.] Aug. 3, 2023) (mem. op.) Walker sued the City of Houston after her husband died in a collision at an intersection in which he and a car coming in the opposite direction both thought they had green lights. Walker alleged that the collision was caused by the misuse of safety louvers, which are devices designed in traffic lights to deliberately obscure the color of the light until the driver is a certain distance away.

Walker alleged that governmental immunity was waived under the TTCA because her husband's death was caused by a condition of tangible property. The city filed for summary judgment based on governmental immunity, arguing that the TTCA does not waive a government's immunity for discretionary acts and that the TTCA's waiver of immunity for unsafe conditions of personal property is restricted by Section 101.060 of the Act, which generally provides that the TTCA does not waive governmental immunity for claims about the condition of a traffic light unless the city was notified of the condition at issue and failed to correct it within a reasonable time. The trail court denied the city's motion for summary judgment.

The appellate court reversed, holding that the TTCA did not waive immunity for Walker's claims because: (1) the use of the louvers was a discretionary act by the city; and (2) Section 101.060 applied because Walker had not provided any evidence showing that the city was notified of the condition of the traffic light.

City of Houston v. Wilson, No. 01-22-00796-CV, 2023 WL 5615817 (Tex. App.—Houston [1st Dist.] Aug. 31, 2023) (mem. op.) Wilson sued the City of Houston after allegedly being injured in a vehicle collision with Williams, a city employee. The city filed a combined motion to dismiss and motion for summary judgment, claiming immunity under the Texas Tort Claims Act (TTCA) because the city had not received timely formal or actual notice of Wilson's claims. The trial court denied the motion and the city appealed.

The appellate court reversed and rendered judgment dismissing the claims, holding that: (1) although Wilson's claim letter included a date within the ninety day notice period required by the city charter, the letter was not sent in the mail until after the period expired, so the city did not receive timely formal notice of her claims; and (2) because there was no indication at the time of the collision that Wilson was injured and the existence of property damage to the vehicles does not constitute notice of a possible personal injury, the city did not have timely actual notice of Wilson's claims.

City of Houston v. Wilson, No. 14-22-00368-CV, 2023 WL 5368101 (Tex. App.—Houston [14th Dist.] Aug. 22, 2023) (mem. op.) Emmitt Wilson sued the City of Houston following a collision that occurred involving a city fire engine. Engine 43, being driven by Jason Carroll, was responding to a collision and needed to reverse due to heavy traffic. Wilson encountered Engine 43 at an intersection. Wilson, being behind the engine and seeing it reversing, also began reversing but had to stop to avoid hitting another vehicle. Engine 43 continued reversing and collided with Wilson's vehicle. The city sought summary judgment, claiming Carroll was protected by official immunity as he was performing his discretionary duties in good faith at the time of the accident. Because of factual disputes between the parties, the trial court denied the city's motion for summary judgment, resulting in this appeal.

Cites are generally immune from being held liable for an employee's actions unless this immunity is waived. In the context of this case, a potential waiver of immunity is guided by the Texas Tort Claims Act, which stipulates that a governmental unit may be held liable for damage or injury caused by an employee's wrongful act or negligence when operating a motor-driven vehicle, provided the employee would be personally liable according to Texas law. A governmental employee is entitled to official immunity: (1) for the performance of discretionary duties; (2) within the scope of the employee's authority; (3) provided the employee acts in good faith. An action is considered discretionary if it necessitates personal deliberation, decision, and judgment, contrasted with ministerial acts which entail adhering to orders or performing a duty where the employee has no choice. The focus is on whether the employee was performing a discretionary function rather than the discretion involved in potentially wrongful acts during that function or the job description including discretionary duties. The court concluded that Carroll was indeed engaged in discretionary duties at the time of the incident, given the undisputed evidence that he was responding to an emergency and making several critical decisions while navigating to the accident site. Therefore, the appellate court held that the trial court erred in its finding that the city failed to definitively establish that Carroll was undertaking discretionary duties during the collision.

The court then moved on to analyze whether the driver acted in good faith while taking these discretionary decisions. The court outlines that good faith is to be determined based on an objective standard of what a "reasonably prudent fire engine operator" could have believed in similar circumstances, emphasizing that it is not about what any reasonable person would have done but instead focuses on the possible beliefs of a reasonable operator in that profession. The legal framework utilized mandates considering both the "need" and the "risk" aspects of the situation, encompassing factors such as the urgency of the situation, the potential for injury or loss of life, alternative courses of action, the potential for harm caused by the fire engine operator's actions, and whether a reasonably prudent operator would have been aware of the risk of harm. After analyzing the facts, the court found that the city met its burden of proving conclusively that Carrol was acting in good faith at the time of the incident, citing the detailed account provided by Carrol in an affidavit, which clearly addressed both the need and risk sides of the legal balancing test.

Finally, the court analyzed whether Wilson had provided evidence sufficient to raise a question of fact challenging the city's good faith evidence. While Wilson did provide an additional piece of evidence, the court concluded that it failed to rebut the city's proof of good faith. Ultimately, the court decided to reverse the trial court's decision and render a judgment dismissing Wilson's action, effectively siding with the city and concluding that Carroll was protected by official immunity and acting in good faith at the time.

City of Laredo v. Torres, No. 04-22-00453-CV, 2023 WL 6453823 (Tex. App.—San Antonio Oct. 4, 2023) (mem. op.) The plaintiff sued the city on February 18, 2021, for damages for a light pole that fell on him on February 18, 2019. The city filed a plea to the jurisdiction. The trial court denied the city's plea and the city appealed.

The appellate court reversed and found: (1) there was a fact issue about the plaintiff's timely notice of claim letter that identified the plaintiff, his injuries, and that a city lamp post fell on him; (2) the light pole was not a special defect; and (3) the city had no prior knowledge of the light pole as a dangerous condition so the plaintiff could not establish a premises defect.

City of Mesquite v. Wagner, No. 05-22-00826-CV, 2023 WL 3408528 (Tex. App.—Dallas May 12, 2023, pet. filed). After being bitten by an officer's police service dog, Anthony Wagner sued the City of Mesquite asserting a negligence claim under the Texas Tort Claims Act (TTCA). The city denied the allegations of negligence and filed a plea to the jurisdiction raising, among other defenses, governmental immunity. The trial court subsequently denied the city's plea, and the city filed an interlocutory appeal. The city claimed that: (1) the officer was entitled to official immunity which extended to the city; (2) Wagner's injury had not been caused by the use of tangible personal property, as required to invoke a waiver of governmental immunity; (3) the claim did not arise out of negligent acts; and (4) because the officer was responding to an emergency call, the emergency-response exception to the governmental immunity waiver applied.

Affirming the trial court's order, the court of appeals first concluded that the city did not meet its burden to establish that the officer acted in good faith for purposes of official immunity. While the city presented an affidavit explaining the circumstances of the event, the evidence did not show that a reasonably prudent officer faced with the same circumstances could have believed the officer's conduct was justified. The court further held the officer was in possession of the police dog and using him to track burglary suspects when the police dog bit and caused Wagner's injuries; therefore, Wagner's injuries were caused by the officer's use of tangible personal property. To the city's argument that the officer's actions were intentional rather than negligent when using the police dog and excepted from the TTCA's waiver of immunity, the court determined that statements made in the officer's affidavit and his statements in an earlier incident memo raised fact issues about whether the officer was negligent. Lastly, the court concluded that even if the emergency-response exception applied to a situation involving an officer who is responding to a call for assistance, the evidence raised material fact issues as to whether the officer acted with conscious indifference or reckless disregard for Wagner's safety.

City of Uvalde v. Pargas, No. 04-23-00150-CV, 2023 WL 7005872 (Tex. App.—San Antonio Oct. 25, 2023) (mem. op.). The plaintiff sued the city for a premises defect and/or special defect when she fell in a hole and fractured her ankle while walking along FM 1435. The city filed a plea to the jurisdiction on multiple grounds, including that it did not owe a legal duty to the plaintiff because it did not own, control, or maintain the premises where she fell. At the hearing on the city's plea, Texas Department of Transportation's attorney represented that she believed the hole was in TxDOT's right-of-way. The trial court denied the plea.

On appeal, the appellate court found that: (1) there was some evidence that the city controlled the premises because: (a) the agreement between the city and TxDOT still required the city to require repairs of utility services and the hole was from a removed utility pole; and (b) the city made the repair after the plaintiff fell which shows control; (2) the plaintiff failed to present evidence that the city had actual knowledge of the hole for an ordinance premises defect; (3) there was a fact issue about whether the hole was a special defect and the city should have known about it; and (4) the city had a duty to repair the hole if it owned or controlled the land where the special defect is. The appellate court reversed the denial of the plea on the ordinary premises defect claim but affirmed on the other grounds.

Ferebee v. Law Office of Frank Powell, No. 01-22-00681-CV, 2023 WL 5918110 (Tex. App.—Houston [1st Dist.] Sept. 12, 2023) (mem. op. on re'hg.). Powell filed a motion for rehearing after the appellate court issued an opinion on his case against the City of Shenandoah for slander. Among other things, Powell alleged that Ferebee, the city attorney, made defamatory statements about him at a city council meeting. Ferebee filed a motion to dismiss under the Texas Tort Claims Act (TTCA), arguing that because Powell's pleadings affirmatively demonstrated that Ferebee was acting within the scope of his employment and the lawsuit could have been brought against the city, Ferebee was entitled to dismissal of the claims against him under the TTCA's election-of-remedies provision.

The appellate court reversed the trial court, holding that Powell's pleadings affirmatively demonstrated that the city officials, including Ferebee, who were defendants in the original suit were acting within the scope of their employment by making the statements during and after a city council meeting. Powell requested rehearing and the appellate court granted it. On rehearing, the appellate court reversed the trial court, again holding that Powell's pleadings had affirmatively demonstrated that Ferebee was acting within the scope of his employment at the time he made the allegedly defamatory statement.

Franz and South Texas Elderly Services, Inc., v. Interim Police Chief Romero Rodriguez and City of Hidalgo, No. 13-22-00413-CV, 2023 WL 5108966 (Tex. App.—Corpus Christi–Edinburg Aug. 10, 2023) (mem. op.) Franz sued the City of Hidalgo under the TTCA and Rodriguez and Sanchez in their individual capacity after Rodriguez and Sanchez removed a political sign located on Franz's property under the Election Code's prohibition on certain placement of political signs. Franz alleged that Rodriguez and Sanchez had violated 42 U.S.C. Section 1983. The trial court dismissed the individual claims against Rodriguez and Sanchez under Section 106.101(e) of the Texas Tort Claims Act, which requires that an employee be dismissed from a lawsuit that could have been brought against the city. Franz appealed, arguing that the trial court should not have dismissed his Section 1983 claims against the employees individually.

The appellate court affirmed, holding that because Franz had not pleaded any of the elements of a Section 1983 claim, the trial court correctly dismissed the claims under Section 106.101(e) of the Texas Tort Claims Act.

Hall v. City of Jersey Vill., No. 01-22-00452-CV, 2023 WL 3873351 (Tex. App.—Houston [1st Dist.] June 8, 2023) (mem. op.). Hall sued the City of Jersey Village when a golf ball struck her forehead while she was working at a restaurant at a city-owned golf course. The trial court granted the city's plea to the jurisdiction claiming governmental immunity and Hall appealed.

The appellate court reversed, holding that: (1) as to the premises liability claim, the city had provided no jurisdictional evidence negating the waiver of immunity, so the issue was pleading sufficiency and Hall should have been given an opportunity to amend her pleading; and (2) a fact issue existed with regard to whether the person who hit the golf ball that struck Hall did so in his capacity as a city employee.

Hous. Auth. of City of Austin v. Garza, No. 03-22-00085-CV, 2023 WL 4872981 (Tex. App.—Austin July 31, 2023) In 2017, the Housing Authority of the City of Austin (HACA) started a renovation project at one of its apartment complexes to comply with the Americans with Disabilities Act (ADA). As part of the project, HACA contracted with a project developer who subcontracted with S. Cook Construction Company, L.P. (Cook) for construction services. Cook then subcontracted with Specialty Tractor Landscaping, L.L.C. (Specialty Tractor) for landscaping and porch construction services. After the work commenced, Julia Garza, a tenant at the apartment complex, injured herself after stepping on loose dirt concealing thin wooden planks covering landscaping trenches. As a result, Garza sued HACA (and Cook and Specialty Tractor) under the theory of premises liability under the Texas Tort Claims Act (TTCA). Denying HACA's plea to the jurisdiction, the trial court ruled in favor of Garza. Thereafter, HACA filed an interlocutory appeal asserting governmental immunity and arguing Garza failed to present sufficient evidence for her premises-defect claim.

Citing to the Texas Supreme Court, the court of appeals explained that for a premises liability claim where a subcontractor is working, Garza would need to show HACA either (1) had a contractual right or (2) actually exercised control over the means, methods, or details of the independent contractor's work. Because Garza failed to show HACA had a contractual right to control the premises where she fell and only alleged that Cook and Specialty Tractor exercised actual control over the premises, the appellate court concluded HACA's governmental immunity had not been waived under the TTCA and reversed the trial court's order.

Martin v. Vill. of Surfside Beach, No. 14-22-00085-CV, 2023 WL 3476939, (Tex. App.—Houston [14th Dist.] May 16, 2023). On June 28, 2019, Martin was involved in a car accident with Pedro Gutierrez, an employee of the Village of Surfside Beach who was driving a village-owned truck. Martin sued Gutierrez and the village for negligence, claiming that Gutierrez failed to yield the right-of-way. The village argued that it had governmental immunity under the Texas Tort Claims Act because Gutierrez was not acting within the scope of his employment at the time of the accident. The trial court granted the village's plea to the jurisdiction and dismissed Martin's claims, leading to Martin's appeal.

Governmental immunity protects political subdivisions from lawsuits unless immunity has been waived by the legislature. The Texas Tort Claims Act (TTCA) provides a waiver of immunity for cases involving the use of a motor vehicle by an employee within the course and scope of their employment. A presumption exists that a driver is acting within the course and scope of their employment when a collision occurs in an employer-owned vehicle. However, this presumption can be rebutted with evidence of personal errands or actions not in furtherance of the employer's business. Additionally, the "coming-and-going rule" states that employees generally do not act within the course and scope of their employment when traveling to and from work. The village presented a declaration from Gutierrez stating that he was driving home after stopping to do some personal shopping when the collision occurred, which rebutted the presumption that Gutierrez was acting in the course and scope of his employment. Furthermore, the fact that Gutierrez was on call or wearing a village-branded shirt did not establish a connection to the employer's business at the time of the accident. The court held that the evidence demonstrated that Gutierrez was not acting within the course and scope of his employment, thereby concluding that the village's governmental immunity had not been waived. As a result, the trial court lacked jurisdiction over the plaintiff's suit, and the granting of the village's plea to the jurisdiction was not erroneous.

Trevino v. City of San Antonio, No. 04-22-00193-CV, 2023 WL 8607040 (Tex. App.—San Antonio Dec. 13, 2023). A city police officer was pursuing a suspect who stole a truck with activated sirens and emergency lights when the suspect hit the plaintiff's car, injuring the plaintiff and killing a passenger in the plaintiff's car. Plaintiff sued and the city filed a plea to the jurisdiction on three grounds, which the trial court granted. The plaintiff appealed. The appellate court affirmed the trial court because the plaintiff failed to address all grounds for the city's plea to the jurisdiction.

Wheeler v. Law Office of Frank Powell, No. 01-22-00479-CV, 2023 WL 5535670 (Tex. App.—Houston [1st Dist.] Aug. 29, 2023) (mem. op.) The Law Office of Frank Powell sued five employees of the city of Shenandoah alleging defamation based on statements they made during and after a city council meeting, and sued one city employee for defamation based on statements she made on a social media platform. The city employees filed a motion to dismiss under the election-of-remedies provision of the Texas Tort Claims Act (TTCA), arguing that Powell's pleadings affirmatively demonstrated they were acting within the scope of their employment when they made the statements and were therefore entitled to dismissal of the claims. The trial court denied the motion and the city employees appealed.

The appellate court reversed the trial court and rendered judgment dismissing the claims against the five city employees, holding that Powell's pleadings affirmatively demonstrated they were acting within the scope of their employment by making the statements during and after a city council meeting. The appellate court remanded the claim against the final city employee, holding that a fact issue remained as to whether the statements made on the social media platform were made in the scope of that employee's employment.

Wilson v. City of Houston, No. 14-22-00666-CV, 2023 WL 6561249 (Tex. App.—Houston [14th Dist.] Oct. 10, 2023) (mem. op.). Brian Wilson was involved in a collision with a City of Houston fire truck on September 29, 2017. He filed a lawsuit against the City on September 27, 2019, claiming negligence and other causes of action under the Texas Tort Claims Act (TTCA). The city responded with a motion for summary judgment, citing, among other defenses, Wilson's failure to provide timely notice of his claims, as required by the TTCA as well as the city's charter. The trial court granted the city's motion, and Wilson appealed.

The city's charter mandates that written notice of a claim must be given within 90 days of the incident. Wilson attempted to overcome the city's motion by submitting a letter expressing his intent to file a claim, a police report, and various pieces of evidence he claimed showed the city had actual notice of the incident, which the appellate court examined. The court stressed that for the city to have actual notice, it must have subjective awareness of its potential culpability. Ultimately, evidence submitted by Wilson was deemed insufficient to establish actual notice as it did not suggest the city was at fault. Wilson's argument that the city had actual knowledge due to the involvement of its employees and the resulting damages and the fact that city employees knew he was injured was unconvincing, as the accident report charged Wilson with traffic violations rather than attributing fault to the city's fire truck driver. Consequently, the appellate court affirmed the trial court's judgment, dismissing Wilson's lawsuit.

Voorhies v. Town of Hollywood Park, No. 04-22-00658-CV, 2023 WL 7171494 (Tex. App.—San Antonio Nov. 1, 2023) (mem. op.). Plaintiffs sued the city claiming: (1) the city did not use land dedicated "for recreational purposes only" for recreational purposes because it generated revenue by leasing the facility to private individuals for weddings, parties, and other events; and (2) the city's use of the land diminished the value of plaintiffs' property. The city filed a plea to the jurisdiction because its operation of a park was a governmental function and the challenged actions did not constitute a taking of the plaintiffs' property. The trial court granted the plea and the plaintiffs appealed.

The appellate court affirmed and determined: (1) the city's decisions about how, when, and by whom the property may be used are discretionary as part of an enumerated governmental function in operating a civic or community center; (2) the plaintiffs' claims did not state a taking because they did not allege the noise rendered their home unusable or affected their property in a unique way different from the community as a whole; (3) plaintiffs' claims for declaratory relief failed because they only alleged the city violated their own noise ordinances, not that an ordinance was invalid; and (4) the plaintiffs did not have standing to challenge the deed restriction on the city's property.

Texas Department of Transportation v. Sonefeld, No. 07-22-00307-CV, 2023 WL 8856215 (Tex. App.—Amarillo Dec. 21, 2023, pet. denied) (mem. op.) This is a lawsuit over whether a four to six inch deep, six to seven inch wide, and up to two-hundred-foot-long separation in the road is a special defect. The plaintiff was injured when his motorcycle wheel got stuck in the separation on the road. The trial court granted his motion for summary judgment finding the separation was a special defect, and the case proceeded to a jury trial based upon the special defect. TxDOT appealed the verdict on the grounds that the separation was not a special defect.

The appellate court affirmed the judgment and: (1) overruled TxDOT's argument that the defect could have been avoided so it was not an impediment to an ordinary user of the road; and (2) overruled TxDOT's argument that the trial evidence was insufficient to demonstrate the separation existed for so long to reasonably discover the existence of the condition and make the condition reasonably safe.

LAND USE

City of Kyle, et al., v. Lila Knight et al., No. 03-21-00378-CV, 2023 WL 5597360 (Tex. App.—Austin Aug. 30, 2023) This case stems from a development agreement between the city and three landowners for the development and voluntary annexation of 3,268.6 acres of land in Kyle. The individual plaintiffs in the case, Lila Knight, Timothy A. Kay, Helen Brown-Kay as well as Save Our Springs Alliance, Inc., (collectively "SOS") sued the city of Kyle and city officials for, among other things: (1) acting ultra vires in adopting amendments to the city's comprehensive plan and transportation plan; (2) violating statutory and procedural rights granted to SOS under Chapter 211 of the Local Government Code; and (3) unconstitutionally contracting away the council's legislative authority under the terms of the agreement. In response, the city filed a plea to the jurisdiction, a Rule 91a motion to dismiss, and a partial summary judgment motion. With respect to the above-mentioned claims, the trial court denied the city's motions, and this interlocutory followed.

On appeal, the city argued that: (1) the trial court erred in denying the city's plea to the jurisdiction with respect to SOS's claim that the city acted ultra vires in approving the development agreement; and (2) SOS lacked standing to bring the claims. On the standing claim, the city relied on the court of appeals' decision in *Save our Springs Alliance, Inc. v. City of Dripping Springs*, 304 S.W.3d 871 (Tex. App.—Austin, 2010) to support its argument that, like in *Dripping Springs*, SOS, Inc. lacked associational standing. However, the court distinguished the cases, explaining that unlike in Dripping Springs, the evidence in the record showed that SOS, Inc.'s members owned land near, and in some cases, obtained their groundwater through wells adjacent to and near the property that would "very likely increase their exposure to water contamination and pollution." Addressing individual standing, the court of appeals concluded that SOS pleaded sufficient facts showing the individuals also lived close to the property to be developed, and one of the individuals, Mr. Kay, served on the planning and zoning committee and would no longer have discretion over voting decisions because of specific provisions in the development agreement.

The court of appeals also concluded that SOS pleaded sufficient facts showing city officials acted without legal authority in approving the development agreement. Specifically, the agreement included provisions adopting specific amendments to the city's comprehensive and transportation plans in violation of procedural, notice, and hearing requirements under the Open Meeting Act and the city's charter. For those reasons, the court of appeals affirmed the trial court's order denying the city's motions.

City of Dallas v. PDT Holdings, Inc., No. 05-22-00730-CV, 2023 WL 4042598 (Tex. App.—Dallas June 16, 2023, pet. filed). In this case, PDT Holdings, Inc. (PDT) sought to build a duplex on its property in Dallas. After submitting plans showing the building heights and being issued permits to build, PDT was later cited by a city inspector and issued a stop work order because the duplex's parapet height exceeded the city's 36-foot building height restriction. After correcting the violation, the city approved PDT's amended building plans but later issued a second stop work order because the duplex's overall height did not comply with city's Residential Proximity Slope (RPS) ordinance which limited the height to 26 feet. PDT later applied for a variance from the Board of Adjustment on three separate occasions but was denied. Ultimately, the trial court ruled in favor of PDT barring the city's enforcement of the RPS ordinance on the basis of the equitable estoppel doctrine. The city appealed thereafter.

Reversing the trial court, the court of appeals held that the case did not meet the threshold of "an exceptional case where manifest justice demanded departure from the general rule precluding estoppel against a municipality." Although there were factors that weighed in favor of estoppel, PDT failed to establish the doctrine's essential elements including a showing of affirmative misrepresentation on the part of the city and reasonable reliance by PDT on the misrepresentation. The court concluded that nothing in the record suggested the city deliberately calculated to induce PDT's reliance. Rather, the city only mistakenly issued the building permits, and PDT's reliance on those permits was not reasonable because PDT was responsible for reviewing all applicable ordinances, including the RPS ordinance, when it first applied for a building permit. As a result, the court reversed the trial court's judgment and held that PDT was not entitled to relief on the basis of the equitable estoppel doctrine.

City of Live Oak v. Lee, No. 04-23-00022-CV, 2023 WL 4338957 (Tex. App.—San Antonio July 5, 2023) (mem. op.). The city erroneously issued a building permit to a homeowner to build in violation of the city's setback requirements. When the city received notice from the plaintiffs of the error, the board of adjustment issued a variance for the homeowner and the plaintiffs sued. The city filed a plea to the jurisdiction and the trial court denied it. The city appealed.

The appellate court found that: (1) the plaintiffs did not need to obtain a writ of certiorari because they filed their petition within ten days after the date the board granted the variance request; (2) the city was not a proper party; and (3) the city failed to raise the issue of whether attorney's fees were proper in the plea. The appellate court affirmed the plea but the appellate court remanded to the trial court to dismiss the city.

Badger Tavern LP, 1676 Regal JV, and 1676 Regal Row v. City of Dallas, No. 05-23-00496-CV, 2024 WL 1340397 (Tex. App.—Dallas Mar. 29, 2024) (mem. op.). This case stems from a certificate of occupancy issued to Badger Tavern, which operated a cabaret in Dallas called La Zona Rosa. In 2021, Badger Tavern applied to the city of Dallas for a certificate of occupancy record change to rename its business to La Zona Rosa dba Poker House of Dallas. During the approval process, there was some indication that Badger Tavern was changing its business operations from a cabaret to a private membership-based poker club. While the city issued the certificate of occupancy record change, it later sent Badger Tavern two notices that it was in violation of the city's ordinances by failing to obtain the proper certificate of occupancy before changing the use of the property. When Badger Tavern failed to cease operations as a poker club and apply for a new certificate of occupancy, the city sued Badger Tavern seeking injunctive relief.

After a hearing, the trial court granted the city's request, and Badger Tavern appealed. Badger Tavern argued that: (1) the trial court lacked jurisdiction because the city failed to first exhaust its administrative remedies by appealing to the city's Board of Adjustment (BOA); (2) the court erred in granting an injunction under Texas Local Government Code Sections 54.016 (applicable to municipal health and safety ordinances) and 54.018 (an action for repair or demolition of a structure) when the city did not request relief under Section 54.018; and (3) the city failed to present sufficient evidence of a "substantial danger of injury or adverse health impact" to support a temporary injunction under Section 54.016.

In affirming the lower court, the court of appeals concluded that because the city was not alleging an error in a zoning decision but instead was enforcing a zoning ordinance violation by Badger Tavern, it was not required to appeal to the BOA. As for the grounds for injunctive relief, the court held that although the city did not present evidence as required under Section 54.016, it also sought temporary and permanent injunctive relief under Texas Local Government Code Section 211.012(c) (zoning ordinance violations and remedies). Because the record reflected that Badger Tavern changed the use of its property without first obtaining the proper certificate of occupancy and failed to cease operations as such, the evidence was sufficient to support temporary injunctive relief under Section 211.012(c).

City of Rusk, Texas, et al. v. 260 Office Park, Inc., et al., No. 12-22-00312-CV, 2023 WL 5663227 (Tex. App.—Tyler Aug. 31, 2023) (mem. op.) The Rusk Hotel in Rusk, Texas was being renovated and redeveloped. Once complete, the property was to be used for both commercial and residential uses. By September 2021, much of the work had been finished, and the city had issued a temporary certificate of occupancy for four of the second-floor residential units. Soon thereafter, the city enacted an ordinance which restricted residential use in the "Old Town Center" district, where the Rusk Hotel is located, and based on this ordinance, the city took steps to halt the redevelopment work at the hotel. The property owners filed a lawsuit in June 2022 alleging the city violated certain legal requirements in the passage of the ordinance and interfered with their vested property rights. The city filed a plea to the jurisdiction, countering that aspects of the case were either not ripe or were moot, and that the plaintiffs have not exhausted all administrative remedies. The trial court denied the city's plea to the jurisdiction, and the city appealed. In the opinion the court analyzed alleged violations of state law related to local zoning ordinances, vesting issues, and the Texas Open Meetings Act (TOMA). After analyzing whether certain aspects of the property owners' case were moot or ripe, the court ultimately sustained the trial court's denial of the plea to the jurisdiction in part and overruled it in part. The court found that the owners had standing to pursue their TOMA and zoning claims, but that their vesting claims failed for lack of ripeness. Ultimately, the case was remanded back the trial court for further proceedings.

Stone v. Harris County, No. 01-21-00384-CV, 2023 WL 5615812 (Tex. App.—Houston [1st Dist.] Aug. 31, 2023) (mem. op.) Stone sued the City of Houston and Margaret Brown in her official capacity as director of the city's planning department, alleging the planning commission had violated Chapter 212, Local Government Code, by approving a replat that created problems on her property. Stone argued that the city's immunity was waived because Brown's approval of the replat was an ultra vires act. The city filed a plea to the jurisdiction alleging immunity under the Texas Tort Claims Act which the trial court granted, and Stone appealed.

The appellate court affirmed, holding that the city was immune from suit, and that Brown's ultra vires claim failed because while a ministerial duty exists to approve a conforming plat, there is no corresponding ministerial duty to deny a nonconforming plat. Therefore, Brown had not acted without clear authority nor failed to perform a purely ministerial act as would have been required to support a claim that a government official acted ultra vires.

MUNICIPAL COURT

Holda v. City of Waco, No. 07-23-00341-CV, 2023 WL 8939230 (Tex. App.—Amarillo Dec. 27, 2023) (mem. op.). The city seized the plaintiff's animals based on animal cruelty. The plaintiff did not appear at the municipal court hearing to determine if the animals had been cruelly treated and the municipal court issued an order divesting the plaintiff of her ownership of the animals. The plaintiff appealed to the county court and the county court issued a de novo order affirming all of the findings of the municipal court. The plaintiff appealed.

The plaintiff claimed the appellate court had jurisdiction under the federal Servicemembers' Civil Relief Act, which protects servicemembers from default judgment, and that the SCRA preempts the Texas law governing the animal cruelty case. The appellate court rejected the plaintiff's argument that the state law actually conflicts with the federal law because the plaintiff still had the option of filing a bill of review in the state trial court.

State v. Villa, 673 S.W.3d 43 (Tex. App.—Dallas July 18, 2023, pet. granted) After Whitney Villa was convicted of assault by contact and assessed a fine by the city of Mesquite Municipal Court (a municipal court of record), she appealed the judgment to the County Criminal Court of Appeals No. 1. The county court subsequently reversed the municipal court's judgment and remanded the case for a new trial. The municipal prosecutor's office (the State) then appealed the County Criminal Court's order to the Dallas Court of Appeals.

In its opinion, the appellate court reasoned that Texas Government Code Sec. 30.00014(a) only governs an appeal from a municipal court of record to certain courts such as county courts of appeals, but it does not apply to subsequent appeals from these courts to the courts of appeals. Further, appeals to the courts of appeals, which are governed by Sec. 30.00027, only grant an appellant the right to appeal if: (a) the fine assessed against the defendant exceeds $100 and the judgment is affirmed by the appellate court; or (2) the sole issue is the constitutionality of the statute or ordinance on which a conviction is based. Because this case did not fit within these two categories, the court ultimately concluded that it lacked jurisdiction to hear appeals by the State in these instances.

Morris v. City of Midland, No. 11-22-00209-CV, 2023 WL 8262750 (Tex. App.—Eastland Nov. 30, 2023, pet. denied). Paula Morris was fined by the city of Midland's municipal court for multiple city ordinance violations including: (1) illegally parking a trailer or recreational vehicle in a residential area; (2) holding garage sales in excess of what was allowable; and (3) accumulating debris on her property. After failing to pay all the court ordered fines and continuing to violate city ordinances, the city sought a temporary injunction, permanent injunction, and civil penalties in district court. After a number of continuances, the trial court granted the city's request for a temporary injunction, but Morris continued to violate city ordinances and the temporary injunction. Thereafter the city filed a motion for summary judgment, and the trial court granted the city's motion and entered a final judgment for a permanent injunction. Morris subsequently appealed. Morris claimed, among other things, that: (1) the permanent injunction was unconstitutionally vague and violated Rule 683 of the Texas Rules of Civil Procedure; (2) the city failed to make a showing of irreparable harm and the lack of an adequate remedy at law; and (3) the city's nuisance ordinance was invalid.

The court held that because Morris failed to raise her constitutional claim and did not present any objections to the city's nuisance ordinance at trial, she waived appellate review on these issues. To Morris's claim that the permanent injunction violated Rule 683, the court clarified that the rule is only applicable to temporary injunctions. However, the court disagreed that the permanent injunction was unclear, and determined that the injunction clearly stated which activities she was enjoined from committing. Lastly, because the city offered ample evidence that Morris had repeatedly violated city ordinances and caused irreparable harm to her neighbors' use and enjoyment of their property, the court upheld the trial court's permanent injunction.

OPEN MEETINGS ACT

In re City of Amarillo, No. 07-22-00341-CV, 2023 WL 5279473 (Tex. App.—Amarillo Aug. 16, 2023, pet. dismissed) (mem. op.) Voters in Amarillo defeated a bond proposition for expansion of the city's civic center. In response, the city created a three-step plan: (1) create a tax increment reinvestment zone (TIRZ) to fund the improvements; (2) issue tax anticipation notes; and (3) issue 30-year refunding bonds in the future to refinance the debt. The plaintiffs sued seeking to void the ordinances creating the TIRZ and the anticipation notes based on alleged violations of the Open Meetings Act. The case went to bench trial where the court invalidated the ordinances and the anticipation notes and awarded attorneys' fees.

On appeal, the appellate court found: (1) the district court possessed jurisdiction to hear the plaintiff's Open Meetings Act claims; (2) the city's notice regarding the ordinance issuing the anticipation notice failed to substantially comply with the Open Meetings Act because it failed to give the reader adequate notice of the action the city sought to take and therefore the notes were void; (3) the award of attorneys' fees was appropriate; and (4) there was no basis for reversal on the plaintiff's issue that the ordinance did not comply with Government Code section 1431.008(b) because it would not afford plaintiff greater relief than what he had already received. The appellate court affirmed the trial court's judgment.

PROCEDURE

City of Laredo v. Rodriguez, No. 04-24-00093-CV, 2024 WL 950627 (Tex. App.—San Antonio Mar. 6, 2024) (mem. op.). The trial court granted the plaintiff's continuance on the city's plea to the jurisdiction to allow for the taking of pertinent discovery. The city appealed that ruling. The appellate court rejected the city's argument that the appellate court had jurisdiction because of the implicit denial of its plea to the jurisdiction. The appellate court found it did not have jurisdiction to hear the appeal because: (1) the trial court's order was not a final judgment; (2) the trial court did not grant or deny the city's plea to the jurisdiction. Additionally, the city had filed a contemporaneous petition for writ of mandamus, which remained pending.

City of Houston v. Jared Waldhoff, No. 01-22-00825-CV, 2023 WL 5110981 (Tex. App.—Houston [1st Dist.] Aug. 10, 2023) (mem. op.). Waldhoff sued the City of Houston seeking to overturn an administrative decision by the city that he had violated the Houston Airport System Operation Instructions, a decision that resulted in the permanent revocation of his access badge and the loss of his employment. He had entered the secure area of the airport through a nonstandard entrance but contended that it was not relevant because he submitted to a security check by a TSA agent before boarding. A reviewing trial court reversed the decision, reinstated Waldhoff's badge, and issued an order stating that the conclusion that Waldhoff had violated the rule was not supported by substantial evidence nor was it free from legal error. The city appealed the judgment of the trial court, arguing that its administrative decision was supported by substantial evidence.

The appellate court affirmed, holding that the city's argument amounted to a sufficiency of the evidence challenge, but that the city had not addressed the part of the trial court's order stating that the administrative decision was not free from legal error. The appellate court reasoned that the evidentiary basis and the legal basis were independent grounds for the trial court's ruling, so because the city had not challenged the legal basis it had waived any error.

ASC Beverages, LLC v. Tex. Alcoholic Beverage Comm'n, No. 01-22-00297-CV, 2024 WL 628870 (Tex. App.—Houston [1st Dist.] Feb. 15, 2024, pet. filed). ASC Beverages sued the Texas Alcoholic Beverages Commission (TABC) over the City of Houston's denial of a permit to sell alcohol in its package store. TABC filed a plea to the jurisdiction, arguing that because it hadn't denied the permit, there was no justiciable controversy between it and ASC. The trial court granted the plea and ASC appealed.

The appellate court affirmed, holding that a city is not acting as an arm of the TABC in granting or denying a beer and wine license, and that therefore the city's denial of the permit did not create a justiciable controversy between ASC and the TABC.

Union Pacific Railroad v. Anderson Cty., No. 12-23-00152-CV, 2024 WL 739110 (Tex. App.—Tyler Feb. 22, 2024, pet. filed). The City of Palestine and Anderson County filed suit in state court seeking to enforce a state court judgment from 1955 that approved an agreement from 1954 that Union Pacific Railroad maintain a certain number of offices and employees in the city. The parties filed cross-motions for summary judgment regarding the continued validity of the 1954 agreement and 1955 judgment. Union Pacific also argued that the city's arguments were estopped by issue preclusion after a federal court ruling, and that the agreement and judgment were both preempted by the Interstate Commerce Commission Termination Act (ITTCA).

The appellate court reversed the judgment of the trial court and rendered judgment, holding that: (1) the city's arguments were barred by collateral estoppel based on identical litigation in federal court, despite the fact that the previous federal litigation concerned the validity of the agreement while the current litigation concerned the validity of the judgment; and (2) because the requirement that Union Pacific maintain employees and offices related to the movement of property by rail, it was expressly preempted by the ITTCA and therefore the requirement was void.

In re City of McAllen, 677 S.W.3d 746 (Tex. App.—Corpus Christi–Edinburg Sept. 18, 2023) The trial court ordered the mayor and a councilmember of the City of McAllen to personally attend mediation in an ongoing inverse condemnation suit. The city appealed the order. The appellate court reversed, holding that while the trial court does have the authority to require parties to send representatives with full authority to settle the case, it does not have the authority to choose which representatives a party must attend.

PUBLIC INFORMATION ACT

Johnson v. Bastrop Cent. Appraisal Dist., No. 07-23-00173-CV, 2023 WL 6389411 (Tex. App.—Amarillo Sept. 29, 2023, pet. denied) (mem. op.). Johnson requested records from the appraisal district. The appraisal district either failed to provide the information or notify Johnson it was requesting an attorney general opinion and Johnson filed a writ of mandamus, which the trial court denied. The appellate court withdrew its opinion from August 2023 and substituted this one.

In affirming the trial court's denial of the plaintiff's petition for writ of mandamus, the appellate court found that: (1) the plaintiff failed to establish that he requested "public information" from the appraisal district and instead, he requested specific answers to general inquiries; and (2) even accepting the factual allegations in the plaintiff's petition as true, the petition did not present a justiciable controversy between the parties.

PUBLIC UTILITY REGULATORY ACT

In re Disney DTC, LLC N/K/A Disney Platform Distribution, Inc., Hulu, LLC and Netflix, Inc., No. 05-23-00485-CV, 2024 WL 358117 (Tex. App.—Dallas Jan. 31, 2024, mandamus denied). This case stems from a lawsuit in which 31 cities sued streaming providers Disney, Hulu, and Netflix for, among other things, failing to obtain state-issued certificates of franchise and refusing to pay the associated city franchise fees for use of city rights-of-way in providing their services pursuant to Chapter 66 of the Texas Public Utility Regulatory Act (PURA). In response to the lawsuit, the streaming providers filed a motion to dismiss arguing that: (1) cities lack the authority to enforce PURA's franchise requirements against non-franchise holders like Disney, Hulu, and Netflix, and (2) because they do not build or operate facilities in city rights of way, they are not required to obtain state-issued certificates of franchise. After the trial court denied the streaming providers' motion, they filed a writ of mandamus.

In ruling in favor of the streaming providers, the court concluded that although PURA provides cities with a limited cause of action against franchise holders, it does not allow for a cause of action against non-franchise holders. The Public Utilities Commission, through the attorney general, is the only entity authorized to determine who must be a franchise holder and how to enforce compliance for failure to obtain a franchise certificate. Because the streaming providers are not franchise certificate holders, the court held that the denial of the motion to dismiss was an abuse of discretion and ordered the trial court to vacate the denial order and to grant the streaming providers' motion.

PURCHASING

City of Dallas v. Gadberry Constr. Co., Inc., No. 05-22-00665-CV, 2023 WL 4446291 (Tex. App.—Dallas July 11, 2023) This case involves a construction project in which the city of Dallas issued a request for sealed bids. After disqualifying a bidder, Gadberry Construction Company (Gadberry), for lack of experience and mixed reviews from its references, Gadberry sued the city. The trial court, ruling in favor of Gadberry, denied the city's plea to the jurisdiction and granted a temporary injunction based on Sec. 252.061 of the Texas Local Government Code. The city subsequently appealed, arguing that Sec. 252.043(f) grants cities the authority to reject any and all bids for procurement contracts and Gadberry failed to establish a waiver of immunity. Because the city's bid documents specifically notified bidders that it reserved the right to reject bidders for lack of experience for equivalent projects within the past three years and the city rejected Gadberry's bid for that reason, the court determined the city did not violate the competitive bidding requirements of Chapter 252 and reversed the trial court's order.

TAKINGS

ATI Jet Sales, LLC v. City of El Paso, 677 S.W.3d 180 (Tex. App.—El Paso July 5, 2023). The City of El Paso filed an original application for a tax warrant against ATI Jet Sales in July 2020 due to tax delinquency for the years 2017 to 2019, amounting to $487,271.67. Consequently, Aircraft N277AL was seized. The city voluntarily returned Aircraft N277AL and moved to nonsuit ATI Jet Sales from the warrant case. In April 2021, ATI Jet Sales filed a lawsuit against the city alleging an unlawful taking and seeking a declaratory judgment that the seizure was unlawful, and the city filed a plea to the jurisdiction. The trial court dismissed the case due to lack of jurisdiction. ATI Jet Sales appealed, challenging the city's plea to the jurisdiction regarding the collection of taxes, which ATI Jet Sales claimed amounted to an unlawful taking by the city. ATI Jet Sales also argued that the city exceeded its statutory authority, thereby waiving its governmental immunity. The crux of the appeal was jurisdictional, centering on whether the city acted lawfully in its tax collection practices, alleging that the city illegally seized property owned by one taxpayer, the entity ATI Jet West, in satisfaction of delinquent taxes owed by another taxpayer, ATI Jet Sales. The court disagreed, finding that inaccuracies on the appraisal roll did not absolve ATI Jet Sales of its tax liability and that the city acted within the bounds of its taxing authority. Additionally, the court found that ATI Jet Sales failed to raise a fact issue as to whether the city acted lawfully in the collection of taxes, which defeated its takings claim and its governmental-immunity waiver.

Capps v. City of Bryan, 685 S.W.3d 165 (Tex. App.—Waco Jan. 11, 2024). Landowner brought action against the city for inverse condemnation, alleging that (1) the city committed a new taking when it constructed a new electric transmission line outside of the areas of a right-of-way easement previously granted to city and across the landowner's property in which he owned full interest at the time and (2) the city abandoned original easement when the old transmission line was removed. The trial court granted the city's plea to the jurisdiction in part finding that the landowner did not have standing to bring an inverse condemnation action against the city. The landowner filed an interlocutory appeal.

The court of appeals reversed and remanding finding that the landowner had standing to bring an inverse condemnation proceeding based on allegations of a taking and damages to property he owned.

City of Lake Jackson v. Adaway, No. 01-22-00033-CV, 2023 WL 3588383 (Tex. App.—Houston [1st Dist.] May 23, 2023) (mem. op.). Property owners sued the City of Lake Jackson, asserting that the city took certain flood mitigation actions that caused their properties to flood. The owners brought claims for constitutional takings, nuisance, trespass, negligence, and a statutory taking under Chapter 2007, Gov't Code. The city claimed that because the owners had not shown causation, they had failed to allege a claim for which governmental immunity had been waived. The trial court denied the city's plea to the jurisdiction and the city appealed.

The appellate court affirmed in part, reversed and rendered in part, and reversed and remanded in part. As to the constitutional takings claim, the court held that the owners sufficiently pleaded that the city acted with the intent necessary to state a takings claim, the owners produced evidence to raise a fact question on the element of proximate cause, and the public-necessity exception to the waiver was an affirmative defense rather than a jurisdictional defect. As to the nuisance and trespass claims, the court held that because the owners had stated a viable takings claim, they had stated viable trespass and nuisance claims. As to the claims of negligence, the court held that the waiver of immunity in the Texas Tort Claims Act did not apply because there was no fact question with regard to whether the motor-driven equipment had caused the flooding. As to the statutory takings claim, the court held that Chapter 2007 did not apply to an action by a city.

Selinger v. City of McKinney, No. 05-23-00180-CV, 2024 WL 260500 (Tex. App.—Dallas Jan. 24, 2024) (mem. op.). Developer Stephen Richard Selinger sued the City of McKinney after his plat application to subdivide his 82-acre property into 331 lots was denied. His plans included construction of necessary sewer infrastructure including a package treatment plant, and because the tract of land was not served by the city's water and sewer services, Seliger would contract with a special utility district to supply water to the subdivision. However, the city's subdivision ordinance required developments in the extraterritorial jurisdiction to connect to the city's water and sewer systems and to pay water and sewer impact fees, approximately $482,000 in his case. After declining to alternatively enter into a facilities agreement with the city which would include waivers to some of the city's subdivision ordinance requirements and require him to pay the impact fees if and when the city's water and sewer transmission lines were extended to the development, the city denied Selinger's plat application. Seliger then sued the city arguing, among other things, that the city's actions constituted an illegal taking of his property. However, the trial court ruled in favor of the city, issuing 118 findings of fact and 30 conclusions in law supporting its judgment. Selinger subsequently appealed the court's decision.

The court of appeals held that based on the factual findings at trial, the city's exaction of impact fees did not constitute a compensable taking. In so holding, the court concluded that the city's impact fees bore an essential nexus to the substantial advancement of a legitimate government interest because (1) the city had developed a capital improvements plan based on extensive engineering and land use studies, and (2) had established a formula which determined Selinger's projected impact to the city's water and sewer systems. In addition, the impact fees were roughly proportional to the projected impact of Selinger's proposed development. To Selinger's claim that that the city's exaction lacked the required essential nexus and rough proportionality because he never intended to use the city's water and sewer systems in his development, the court stated that his unilateral decision did not impact the city's exclusive right to provide water service to properties (like Selinger's) located within its certificate of convenience and necessity (CCN). The city also offered evidence at trial that Selinger's property would likely become more marketable with reliable city utilities. For those reasons, the court of appeals affirmed the lower court's decision.

Consol. Towne E. Holdings, LLC v. City of Laredo, 675 S.W.3d 65 (Tex. App.—San Antonio July 12, 2023) Consolidated Towne East Holdings, LLC ("Consolidated") sued the city to develop land in the city's extraterritorial jurisdiction. Consolidated sought water and sewer services from the city as part of its proposed development. The city required annexation before it would provide the services. Consolidated sued on the grounds that the city's precondition for water and sewer services amounts to an unconstitutional taking and that denial of services is an ultra vires act by the city manager and the city's director of utilities. The trial court granted the city's summary judgment motion and dismissed Consolidated's claims. Consolidated appealed.

The appellate court affirmed and dismissed the case without prejudice, finding: (1) the case was not ripe because whether annexation costs are roughly proportional to their asserted purposes is not ripe for resolution until those costs are authoritatively set; (2) Consolidated's declaratory judgment claim on the city ordinance requiring annexation likewise failed because it was premature; and (3) Consolidated's ultra vires claim failed because the city manager and director of utilities had authority in the city's ordinances to deny providing water and sewer services to Consolidated.

Rivera v. San Antonio Water Sys., No. 04-22-00309-CV, 2023 WL 3609233 (Tex. App.—San Antonio May 24, 2023, pet. denied) (mem. op.). This case has some complicated facts surrounding the plaintiffs' claims. Ultimately, some individuals sued the San Antonio Water System (SAWS) because of damage to a park when SAWS's contractor was performing sewer work at the park, claiming: (1) inverse condemnation; (2) waiver pursuant to the Texas Tort Claims Act (the "TTCA"); and (3) waiver under the Texas Uniform Declaratory Judgments Act (the "UDJA"). The trial court granted SAWS's plea to the jurisdiction and the plaintiffs appealed.

The appellate court affirmed, finding: (1) the plaintiffs did not provide SAWS notice of the claim required by the TTCA; (2) because the damages alleged by plaintiffs are at best the accidental or negligent result of SAWS's purported failure to supervise, mitigate, or mediate the contractor's work, there is no public benefit, and the properties cannot be said to be taken or damaged for public use; and (3) the individual who conveyed the park to the city does not have a declaratory judgment claim because the deed is not an ordinance or statute that provides a limited waiver of immunity.

TAXATION

City of Castle Hills v. Robinson, No. 04-22-00551-CV, 2024 WL 819619 (Tex. App.—San Antonio Feb. 28, 2024) (mem. op.). The city filed maintenance liens against the Robinson's property before he obtained ownership and eventually sued along with other taxing entities filed suit against Robinson to recover delinquent property taxes. Robinson counter-claimed against the city, claiming the city had failed to notify her of and the previous owners of the code violations and maintenance liens and that her constitutional rights were violated by the failure to provide proper notice. The city filed a motion for summary judgment on the grounds that the trial court lacked jurisdiction over the counterclaims as well as non-jurisdictional grounds, which the trial court denied.

Affirming the denial of the city's motion, the appellate court interpreted the summary judgment motion on jurisdiction as a plea to the jurisdiction and addressed only those arguments. The court addressed some of the city's arguments and dismissed them because the plaintiff did not make claims against which the city argued. On the federal constitutional claims, the court determined that the city did not support its argument that Robinson could not establish the claims as a matter of law with any citations to evidence in the record. As for the statute of limitations argument, the court determined that since the pleadings only contained federal claims, the statute of limitations was not a jurisdictional requirement.

Wommack v. City of Lone Star, No. 06-23-00086-CV, 2024 WL 367601 (Tex. App.—Texarkana Feb. 1, 2024) (mem. op.). A councilmember sued the city for injunctive relief for violating state law when the city adopted its tax rate. The trial court dismissed his case without a hearing on the date the defendants filed their answer and a specific denial. The councilmember appealed. On appeal, the court determined that the councilmember was entitled to notice and a hearing before the trial court dismissed the appeal because the trial court misconstrued the specific denial as a Rule 91 motion to dismiss. The appellate court reversed the trial court's judgment and remanded the matter for further proceedings.

Rodriguez v. City of El Paso, No. 08-23-00004-CV, 2023 WL 6319337 (Tex. App.—El Paso Sept. 28, 2023) (mem. op.). The City of El Paso sued Eldon and Maria Rodriguez in October 2020 for unpaid property taxes from 2018 and 2019 and any other year taxes that became overdue during the case's duration. In September 2021, while the city's case was still pending, the defendants initiated a separate lawsuit to contest the valuation of their property by the El Paso Central Appraisal District for 2020 and 2021. This move halted the city's ongoing tax collection case. The city intervened in the defendants' valuation case, challenging the court's right to hear it. The court sided with the city and dismissed the defendants' valuation challenge. In July 2022, the city resumed its tax delinquency case, now including taxes from 2020 and 2021 which had also become overdue. The defendants argued that they had paid the 2018 and 2019 taxes and that their property was uninhabitable and worthless in 2020 and 2021. They provided a partial payment receipt and other supporting documents. While the city conceded the receipt of payment, they clarified that the provided check bounced due to insufficient funds. Ultimately, the trial court granted the city's motion for summary judgment, ordering payment of unpaid taxes for 2018-2021 and authorizing the seizure of the property to cover the debt.

Defendants appealed the trial court's ruling, asserting that the city and county appraisal district wrongly denied their 2018 and 2019 tax payments and raised issues related to tax notifications and property valuation, claiming genuine material fact issues that should prevent a summary judgment in the city's favor. Reviewing the record, the appellate court held that the city stated a prima facie case for a suit to collect delinquent taxes, which shifted the burden to the defendants to show that they have paid all taxes, penalties, and interest that would be due or that there is another defense. The defendants raised five issues against the city, including payment, lack of notice, overvaluation of the property, and two claims related to rejected protests. The court rejected each of defendants' arguments in turn and affirmed the trial court's judgment.

Jones v. Whitmire, No. 14-23-00550-CV, 2024 WL 1724448 (Tex. App.—Houston [14th Dist.] Apr. 23, 2024). The dispute centers on whether the City of Houston's City Council correctly allocated ad valorem tax revenues to the Dedicated Drainage and Street Renewal Fund (Drainage Fund) as mandated by the city's charter. Taxpayers James Robert Jones and Allen Watson contested that the city council underfunded the Drainage Fund by applying incorrect methodology to calculate the required allocation. The city disagreed, resulting in lengthy litigation. Houston's Charter requires an allocation to the Drainage Fund based on proceeds from $0.118 per $100 of the city's ad valorem tax levy, adjusted for debt service for certain bonds. The Taxpayers argued that the city council allocated significantly less than what was required, while the city council contended that their allocation methodology was aligned with the charter and influenced by another charter provision which limits growth in tax revenue collections (Revenue Cap). After the case was escalated to the Texas Supreme Court and remanded back, the trial court ruled in favor of the city. The Taxpayers appealed, disputing the council's methodology, arguing that it deviated from the charter's directives. The appellate court in this case sided with the Taxpayers, determining that the city's methodology of allocating funds to the Drainage Fund was incorrect. The court ruled that the full 11.8 cents per $100 of taxable property value should be allocated to the Drainage Fund before deducting debt service obligations, and without the application of the Revenue Cap to the allocation formula. The appellate court reversed the trial court's decision, instructed the city to follow the charter's explicit allocation formula, and enjoined the city from using an incorrect methodology. The Taxpayers' request for mandamus relief was denied as they obtained an adequate remedy by appeal.

TEXAS CITIZENS PROTECTION ACT

Conrad v. Joiner, No. 01-22-00450-CV, 2023 WL 4356187 (Tex. App.—Houston [1st Dist.] July 6, 2023) (mem. op.). Joiner, mayor of Kemah, Texas, sued Conrad for defamation based on a series of critical Facebook posts, billboards, and posted signs alleging that Joiner had abused power, violated the Texas Open Meetings Act, acted ultra vires as mayor, and engaged in criminal activity. Conrad moved to dismiss the suit under the Texas Citizens Protection Act and the trial court denied the motion.

The appellate court reversed, holding that because Joiner's claims were in reaction to Conrad's exercise of free speech, the burden then shifted to Joiner to present evidence to show a prima facie case of defamation. Joiner had not presented evidence to show actual malice, so Conrad was entitled to dismissal of the claims against him under the TCPA.

TEXAS MEDICAL LIABILITY ACT

City of Alvin v. Fields, No. 01-22-00572-CV, 2023 WL 4003522 (Tex. App.—Houston [1st Dist.] June 15, 2023) (mem. op.). Fields was injured when the ambulance in which she was being transported was struck by a truck at an intersection after the ambulance driver entered the intersection at a yellow light to avoid jostling Fields. Fields sued the city, claiming the city's governmental immunity had been waived under the Texas Tort Claims Act. The city filed a plea to the jurisdiction claiming governmental immunity and a motion to dismiss under the Texas Medical Liability Act. The trial court denied both, and the city appealed.

The appellate court affirmed the trial court's denial of the city's plea to the jurisdiction, holding that because Fields stated she was experiencing whiplash immediately after the accident, a fact issue existed as to whether the city had actual knowledge of Fields's claim. The appellate court reversed the trial court's denial of the city's motion to dismiss, holding that because the accident occurred while Fields was in an ambulance receiving care, the Texas Medical Liability Act applied to the claim, and therefore Fields would have had to file an expert report addressing standard of care, breach, and causation.

UNIFORM DECLARATORY JUDGMENT ACT

City of Kemah v. Joiner, No. 01-23-00105-CV, 2023 WL 8041040 (Tex. App.—Houston [1st Dist.] Nov. 21, 2023) (mem. op.). Carl Joiner, the former mayor of the City of Kemah, sued the city for a declaratory judgment compelling the city to release the results of an investigative report relating to Joiner's conduct in a renovation and expansion project for city hall and related infrastructure. Joiner, as mayor, saw the report but the city chose not to release the report to the public. The city filed a plea to the jurisdiction, claiming governmental immunity and challenging Joiner's standing to sue. The trial court denied the plea and the city appealed

The appellate court reversed and remanded, giving Joiner an opportunity to replead. The appellate court held that: (1) the Uniform Declaratory Judgment Act provides a waiver of immunity only for challenges to the validity of an ordinance or statute; (2) the Texas Open Meetings Act provides a waiver of immunity only for suits brought by mandamus or injunction; and (3) the Public Information Act provides a waiver of immunity only for suits brought by a district or county attorney or the attorney general. Therefore, Joiner had not met his burden to show a waiver of immunity.

UTILITY FEES

City of Pasadena v. APTVV, LLC, No. 01-20-00287-CV, 2023 WL 8814640 (Tex. App.—Houston [1st Dist.] Dec. 21, 2023, pet. filed) (mem. op.). Two apartment owners sued the City of Pasadena and two city officials seeking the repayment of fees paid to the city through a third-party utility and trash-collection billing. The third party added a 25 percent fee on nonresidential bills for trash-collection, which was then forwarded to the city in exchange for the exclusive right to collect trash in the city. The apartments owners alleged that the fee was an impermissible tax. The city moved for dismissal claiming government immunity and pointing to the failure of the apartment owners to identify a statutory waiver of immunity. The trial court denied the city's motion and the city appealed.

The appellate court affirmed, holding that the apartment owners were not required to show a statutory waiver of immunity because no legislative consent to sue is needed when a plaintiff seeks reimbursement of an unlawful tax.

WHISTLEBLOWER ACT

City of Valley Mills v. Chrisman, No. 13-22-00144-CV, 2023 WL 7851699 (Tex. App.—Corpus Christi–Edinburg Nov. 16, 2023, pet. denied) (mem. op.). Chrisman and Troxell sued the City of Valley Mills under the Whistleblower Act, claiming they were terminated in retaliation for making a police report alleging that city officials stole their deer feeders that they had installed on city property. The city filed a plea to the jurisdiction claiming governmental immunity, which the trial court denied. The city appealed.

The appellate court reversed, holding that because Chrisman and Troxell knew that personal deer feeders were not permitted on city property, they could not show that the police report they made was in good faith. Therefore, their Whistleblower Act claim failed and the city's governmental immunity was not waived.

WORKERS COMPENSATION

City of Stephenville v. Belew, No. 11-22-00273-CV, 2024 WL 968970 (Tex. App.—Eastland Mar. 7, 2024). In 2014, Michael Belew, a firefighter and EMT for the City of Stephenville, passed away after developing pancreatic cancer. His spouse and legal beneficiaries (the Belews) applied for workers' compensation death benefits under the Texas Workers' Compensation Act (TWCA), asserting Michael's cancer originated from his service as a city firefighter. To apply for the death benefit, a claimant proceeds through a benefits review conference, a contested-case hearing, and an appeal, if applicable, through the Texas Department of Insurance's Division of Workers' Compensation (TDI-DWC). During the contested hearing stage of the proceedings, a TDI-DWC officer determined that Michael had sustained a qualifying injury in the form of an occupational disease during the course of his employment with the city. The hearing officer relied on the "Firefighter's Presumption" in Texas Government Code Chapter 607 which allows state governments to shift the burden of proving causation from a claimant to an employer. The officer also relied on a similar decision in which a firefighter suffered from pancreatic cancer and was determined to be eligible for workers' compensation benefits. After appealing the administrative decision, the TDI-DWC upheld the hearing officer's decision, and the city appealed to the district court.

The city argued that the presumption did not apply in Michael's case, because pancreatic cancer did not meet the requirements under Section 607.055. The district court ruled in favor of the Belews, and the city appealed to the court of appeals. At the time of Michael's death, the "Firefighter's Presumption" statute required a claimant to show that: "the cancer was known to be associated with fire fighting or exposure to heat, smoke, radiation, or a known or suspected carcinogen … or a type of cancer that may be caused by exposure to heat, smoke, radiation, or a known or suspected carcinogen as determined by the International Agency for Research on Cancer [IARC]."

After a thorough analysis of the statutory construction and plain meaning of the language, the court of appeals concluded that for the "Firefighter's Presumption" to apply, Section 607.055 required a claimant to show by exclusively relying on IARC materials and determinations, a general causal link between the cancerous condition originating from the course and scope of the person's employment and the specific exposures listed in the statute (heat, smoke, radiation, or a known suspected carcinogen). Ultimately, because the Belews failed to establish this causal link, providing no evidence of IARC determinations, the court held that Michael did not sustain a compensable injury under Texas Government Code Chapter 607. The court further held that the "Firefighter's Presumption" did not apply to the pancreatic cancer Michael developed. As a result, the court reversed the trial court's decision and rendered judgment in favor of the city.