Appellant's Appeal Dismissed as Moot; Affirmed and Majority and Dissenting and Concurring Opinions filed May 28, 2020.

In The

Fourteenth Court of Appeals

NO. 14-19-00166-CV

HARRIS COUNTY SPORTS & CONVENTION CORPORATION, Appellant/Cross-Appellee

V.

NICOLE FINLAN CUOMO, Appellee/Cross-Appellant

On Appeal from the 165th District Court
Harris County, Texas
Trial Court Cause No. 2014-35933

M A J O R I T Y   O P I N I O N

In this premises liability suit against a governmental unit, the dispositive issue is whether the trial court lacks subject matter jurisdiction due to the failure of notice required by Texas Civil Practice and Remedies Code section 101.101.[1] Initially, the trial court denied the governmental unit's jurisdictional plea but later

[1] Tex. Civ. Prac. & Rem. Code § 101.101(a), (c).

vacated that order and signed an order dismissing all claims with prejudice for lack of jurisdiction. Both sides filed notices of appeal.

First, we conclude that the governmental unit's appeal is moot because it is based on an adverse order that the trial court later vacated. Second, regarding the claimant's cross-appeal, we conclude the trial court did not err in ruling that it lacked subject matter jurisdiction over her claims against the governmental unit. We affirm.

Background

The relevant facts are largely undisputed. On March 9, 2013, appellee/cross-appellant Nicole Finlan Cuomo allegedly sustained injuries when she tripped and fell while walking through the parking lot at Reliant Park (now NRG Park) to attend the Houston Livestock Show and Rodeo. Alleging in her live amended petition that "she was caused to trip by portions of a plastic, interlocking paving grid and erosion control device . . . that was protruding from the ground," Cuomo asserted a premises liability claim against various entities that allegedly owned, occupied, or controlled the premises, including SMG d/b/a SMG Reliant Park and appellant/cross-appellee Harris County Sports and Convention Corporation (HCSCC).[2] HCSCC is a public nonprofit corporation created and organized to aid and act on behalf of Harris County in managing, operating, maintaining, and developing Reliant Park (formerly the Astrodomain Complex).[3] HCSCC, in turn, engaged SMG to manage the day-to-day operations of Reliant Park. Reliant Park is located on property allegedly owned by Harris County.

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[2] Cuomo also named as defendants Harris County and Houston Livestock Show & Rodeo, Inc., but she later nonsuited her claims against those defendants.

[3] *See* Tex. Transp. Code §§ 431.101 *et seq*.

HCSCC filed an "Amended Motion to Dismiss for Lack of Jurisdiction," arguing that Cuomo had not complied with the Texas Tort Claims Act's (TTCA) notice requirements, which as a general rule mandate written notice of a claim to the governmental unit defendant within six months of the incident forming the basis of the claim. *See* Tex. Civ. Prac. & Rem. Code § 101.101(a). The notice must reasonably describe the damage or injury claimed, the time and place of the incident, and the incident. *Id.* The general rule requiring formal notice does not apply when the governmental unit defendant has actual notice. *Id.* § 101.101(c). HCSCC argued that that Cuomo failed to provide formal notice within six months of the incident, and that it otherwise lacked actual notice.

Cuomo filed a response to the motion to dismiss and a separate motion for summary judgment, arguing in both that HCSCC had actual notice of all facts necessary to satisfy the statute, and the trial court therefore had subject matter jurisdiction over Cuomo's claims against HCSCC. In two February 2019 orders, the trial court denied HCSCC's jurisdictional plea and granted Cuomo's motion for summary judgment (the "February Orders"). HCSCC filed a timely notice of appeal from the February Orders.

Approximately one month later, the trial court reconsidered and signed a third order (the "March Order") reaching the opposite result from the February Orders. In the March Order, the trial court determined that Cuomo failed to comply with the TTCA's notice requirements, concluded that the court lacked subject matter jurisdiction over Cuomo's claims against HCSCC, and dismissed Cuomo's claims with prejudice. Thus, the trial court effectively vacated the February Orders and granted the relief requested in HCSCC's plea to the jurisdiction. Cuomo timely appealed the March Order.

Procedural Posture and Jurisdiction

HCSCC appealed the February Orders, which denied HCSCC's plea to the jurisdiction. Because the trial court's March Order effectively vacated the February Orders and dismissed Cuomo's claims for lack of subject matter jurisdiction, HCSCC's appeal from the February Orders is moot, and we dismiss as moot HCSCC's appeal. *See, e.g.*, *Heckman v. Williamson County*, 369 S.W.3d 137, 162 (Tex. 2012) (court lacks jurisdiction over case that has become moot because issues presented have ceased to exist); *Urelift Gulf Coast, L.P. v. Bennett*, No. 14-13-00949-CV, 2015 WL 495020, at *2 (Tex. App.—Houston [14th Dist.] Feb. 5, 2015, no pet.) (mem. op.) (concluding that, by rendering a final judgment that was inconsistent with a prior interlocutory order, the trial court necessarily vacated its prior order).

Cuomo filed a timely notice of appeal relating to the March Order dismissing her claims for lack of jurisdiction. Because the March Order disposed of all claims and all parties on jurisdictional grounds, it is an appealable final order and we have jurisdiction over Cuomo's appeal. *See Deadmon v. Dallas Area Rapid Transit*, 347 S.W.3d 442, 444 (Tex. App.—Dallas 2011, no pet.) (order granting plea to jurisdiction and disposing of all claims is final order).

Standard of Review

Subject matter jurisdiction is a question of law we review de novo. *See Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004). When a plea to the jurisdiction challenges the plaintiff's pleadings, we determine whether the pleadings, construed in the plaintiff's favor, allege facts sufficient to affirmatively demonstrate the trial court's jurisdiction to hear the case. *Id.* If the plaintiff pleaded facts making out a prima facie case and the governmental unit instead challenges the existence of jurisdictional facts, we consider the relevant

evidence submitted. *Id.* When reviewing a plea to the jurisdiction in which the pleading requirement has been met and evidence has been submitted to support the plea that implicates the merits of the case, we take as true all evidence favorable to the plaintiff. *Id.* We indulge every reasonable inference and resolve any doubts in the plaintiff's favor. *Id.*

Analysis

HCSCC is a local government corporation created under the Texas Transportation Code. *See* Tex. Transp. Code § 431.101(a). The purpose of such a corporation is to aid and to act on behalf of one or more local governments to accomplish their governmental purposes. *See id.* § 431.101(a), (c). The Transportation Code defines local government corporations as governmental units, as that term is defined in the TTCA. *See id.* § 431.108(a). As a governmental unit, HCSCC is entitled to governmental immunity from suit unless that immunity is waived. *See Ray Ferguson Interests, Inc. v. Harris Cty. Sports & Convention Corp.*, 169 S.W.3d 18, 22 (Tex. App.—Houston [1st Dist.] 2004, no pet.).

The TTCA waives immunity for certain tort claims, including premises defects, to the extent of liability under the Act. *See Worsdale v. City of Killeen*, 578 S.W.3d 57, 62 (Tex. 2019) (citing Tex. Civ. Prac. & Rem. Code §§ 101.022, 101.025). Here, neither HCSCC's immunity nor the statutory waiver of immunity is at issue. Rather, this appeal focuses solely on satisfaction of the TTCA's notice requirement. *See* Tex. Civ. Prac. & Rem. Code § 101.101.

Under the TTCA, a governmental unit is entitled to receive notice of a claim against it "not later than six months after the day that the incident giving rise to the claim occurred." *Id.* § 101.101(a). The Act provides, in pertinent part:

> (a) A governmental unit is entitled to receive notice of a claim against it under this chapter not later than six months after the day that the

> incident giving rise to the claim occurred. The notice must reasonably describe:
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> (1) the damage or injury claimed;
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> (2) the time and place of the incident; and
>
> (3) the incident. . . .
>
> (c) The notice requirements provided or ratified and approved by Subsection[] (a) . . . do not apply if the governmental unit has actual notice that death has occurred, that the claimant has received some injury, or that the claimant's property has been damaged.

Id. § 101.101(a), (c). Either formal or actual notice is required as a jurisdictional prerequisite to suit. *Worsdale*, 578 S.W.3d at 62, 77.

Cuomo acknowledges in her reply brief on appeal that she failed to comply with subsection (a)'s requirements. Her sole substantive argument on appeal is that HCSCC had actual notice of her claim, thus negating any need to comply with formal notice requirements. *See* Tex. Civ. Prac. & Rem. Code § 101.101(c).

The Supreme Court of Texas has construed the actual notice requirement in a series of decisions beginning with *Cathey v. Booth*, 900 S.W.2d 339, 341 (Tex. 1995). Under *Cathey*, actual notice exists only when the governmental unit has "knowledge of (1) a death, injury, or property damage; (2) the governmental unit's alleged fault producing or contributing to the death, injury, or property damage; and (3) the identity of the parties involved." *Id.* at 341-42. *Cathey*'s second element is the critical issue for today's case, and the supreme court explained after *Cathey* that the governmental unit must have "subjective awareness of its fault, as ultimately alleged by the claimant, in producing or contributing to the claimed injury." *Tex. Dep't of Crim. Justice v. Simons*, 140 S.W.3d 338, 347 (Tex. 2004), *superseded by statute on other grounds as stated in Worsdale*, 578 S.W.3d at 74 n.113 (noting that legislature altered *Simons*'s holding that section 101.101 is not jurisdictional). This standard means that "there must be subjective awareness

connecting alleged governmental conduct to causation of an alleged injury to person or property in the manner ultimately asserted." *Worsdale*, 578 S.W.3d at 65. The standard is subjective, the court stated, because lack of formal notice is excused only by actual, not constructive, notice. *Id*. Knowledge that a death, injury, or property damage has occurred, standing alone, is not sufficient to put a governmental unit on actual notice for TTCA purposes. *City of San Antonio v. Tenorio*, 543 S.W.3d 772, 776 (Tex. 2018).[4] Moreover, to satisfy actual notice requirements, a governmental unit must have the same knowledge it is entitled to receive under the TTCA's formal notice provisions. *Id*. Actual notice is a fact question when the evidence is disputed; however, when the facts are undisputed, courts may determine whether actual notice exists as a matter of law. *Univ. of Tex. Sw. Med. Ctr. at Dallas v. Estate of Arancibia*, 324 S.W.3d 544, 549 (Tex. 2010); *Simons*, 140 S.W.3d at 348.

Cuomo contends that two pieces of evidence, read together, establish that HCSCC had actual notice of her claim. First, Cuomo cites an incident report completed by an SMG employee on the day Cuomo allegedly sustained her injuries. In material part, the incident report states:

> Cuomo stated that she was walking through the parking lot when she stepped up on the cement circle around the oak trees. Cuomo stated

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[4] This rule comports with traditional tort law, which has long held that generally proof of an accident or injury is not by itself proof of negligence or proximate cause. *See, e.g.*, *LMB, Ltd. v. Moreno*, 201 S.W.3d 686, 688 (Tex. 2006) (per curiam); *Thoreson v. Thompson*, 431 S.W.2d 341, 344 (Tex. 1968); *Wells v. Tex. Pac. Coal & Oil Co.*, 164 S.W.2d 660, 662 (Tex. 1942); *Cohen v. Landry's Inc.*, 442 S.W.3d 818, 829 (Tex. App.—Houston [14th Dist.] 2014, pet. denied) (proof of injury is not proof of proximate cause); *H.E. Butt Grocery Co. v. Godawa*, 763 S.W.2d 27, 30 (Tex. App.—Corpus Christi 1988, no writ); *Molina v. Payless Foods, Inc.*, 615 S.W.2d 944, 947 (Tex. App.—Houston [1st Dist.] 1981, no writ); *Sw. Bell Tel. Co. v. McKinney*, 699 S.W.2d 629, 634 (Tex. App.—San Antonio 1985, writ ref'd n.r.e.); *West v. Slaughter*, 384 S.W.2d 185, 188 (Tex. App.—Waco 1964, writ ref'd n.r.e.).

> that she did not plant her foot and when she stepped onto the cement she turned her ankle and fell to the ground.[5]

Second, Cuomo points to one of HCSCC's responses to a request for production. Cuomo requested "all reports, memoranda, documents or materials of any type which specifically indicate a date or occurrence on which you rely for any contention that you had a good faith belief to reasonably anticipate that there was a substantial chance that litigation would ensue concerning any injury or damages claimed on behalf of Plaintiff." In response, HCSCC stated that it "was put on notice of the Plaintiff's anticipation of filing a lawsuit on March 28, 2013. Please see attached letter from Gregg Anderson dated March 28, 2013." Anderson's letter, which was addressed only to SMG and not to HCSCC, stated:

> This firm represents Nicole Cuomo with regard to serious injuries sustained by her on March 9, 2013, at the Reliant Stadium Yellow Parking Lot. Ms. Cuomo has assigned this firm an undivided interest in her claim. . . . Please forward a copy of this letter to your liability insurance company and ask a representative to contact me.

Cuomo contends that the incident report and the March 28, 2013 letter notifying SMG of Cuomo's injuries and requesting SMG to alert its liability insurer together are sufficient to make "SMG (and hence HCSCC) subjectively aware that its alleged fault, as the owner or occupier of the premises, caused her injuries." According to Cuomo, the incident report "establishes that SMG was aware that a condition of the premises caused or contributed to the accident," SMG was HCSCC's agent at the time of the incident, and SMG's knowledge should be imputed to HCSCC. Actual notice may be imputed to a governmental entity by an agent or representative who receives notice of the *Cathey* elements and who is charged with a duty to investigate the facts and report them to a person of sufficient authority. *See Guadalupe Blanco River Auth. v. Schneider*, 392 S.W.3d

[5] (Spelling and grammatical errors normalized).

321, 325 (Tex. App.—San Antonio 2012, no pet.); *City of Wichita Falls v. Jenkins*, 307 S.W.3d 854, 858 (Tex. App.—Fort Worth 2010, pet. denied); *Angleton Danbury Hosp. Dist. v. Chavana*, 120 S.W.3d 424, 427 (Tex. App.—Houston [14th Dist.] 2003, no pet.). In support of her agency argument, Cuomo points to the deposition of HCSCC's corporate representative, who testified that HCSCC hired SMG to maintain the property in question and that SMG reports to HCSCC regularly.

For its part, HCSCC does not dispute its representative's deposition testimony but contends instead that Cuomo did not assert in her response to the motion to dismiss that SMG was HCSCC's agent. Regardless, HCSCC insists that neither the March 28, 2013 letter nor the facts stated in SMG's incident report satisfy the *Cathey* actual notice requirements. Because the parties have briefed the actual notice issue, and mindful of the supreme court's guidance to address the merits of appeals when reasonably possible,[6] we need not detail the parties' competing arguments on the agency question but will presume without deciding that error is preserved and that HCSCC received the information contained in the incident report as well as the March 28, 2013 letter within six months of the incident. Indulging those presumptions, we consider whether Cuomo raised a genuine issue of material fact on actual notice.

Cuomo relies on *Worsdale* to support her contention that "HCSCC knew, through its agent SMG, that a condition of the premises it owned or controlled was alleged to have caused Cuomo's injuries." In *Worsdale*, a driver and his passenger collided with a large dirt mound, which spanned the full width of the road on which the motorists were traveling. *See Worsdale*, 578 S.W.3d at 60. The dirt mound was not marked by any traffic control device, barricade, or other safety

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[6] *See Ditta v. Conte*, 298 S.W.3d 187, 190 (Tex. 2009).

features. Both motorists died in the collision. *Id.* Within days after the accident, the municipal defendant knew that: (1) a crash investigation identified the particular road hazard and the absence of any warning indicators as contributing to the accident; and (2) maintenance of the road was alleged to have been the city's responsibility. *Id.* at 59. The supreme court held that the city had actual notice under *Cathey* because, well within the six month notice deadline, the city "knew of allegations that it was responsible for maintaining a road and that the failure to maintain the road had been identified as a contributing factor to the injuries." *Id.* at 66-67.

The supreme court recently reaffirmed the actual-notice requirements articulated in *Cathey* and *Worsdale*. *See Reyes v. Jefferson County*, 2020 WL 1898542, ---S.W.3d--- (Tex. Apr. 17, 2020) (per curiam). There, Reyes sued Jefferson County for injuries he allegedly sustained when a county police officer collided with Reyes's automobile. *Id.* at *1. Reyes sent a letter to the county's claims administrator, which, among other things, notified the county of Reyes's negligence claim, identified the date of the accident, described it as a "crash," and named the county employee involved. *Id.* The administrator denied the claim and stated, "Our investigation failed to find any negligent conduct on the part of the County or its employees which proximately caused your client's damages." *Id.* The court of appeals held that the county lacked actual notice within the meaning of section 101.101(c) because the county's investigation failed to uncover any negligent conduct, so it had no knowledge "'that it might have been at fault.'" *Reyes v. Jefferson County*, No. 09-18-00236-CV, 2018 WL 5986004, at *3-4 (Tex. App.—Beaumont Nov. 15, 2018) (mem. op.) (quoting *Simons*, 140 S.W.3d at 347-48); *see also Reyes*, 2020 WL 1898542, at *2. The supreme court reversed, noting that actual notice does not require a "confession of fault or actual liability." *Reyes*,

2020 WL 1898542, at *3. Rather, the court held that the county's knowledge of Reyes's allegations that a specifically identified county employee had injured him in a "crash," coupled with the county's claims administrator's acknowledgment, investigation, and denial of his claim, established the county's subjective awareness that Reyes was claiming the county was at fault in the manner ultimately alleged in the lawsuit. *Id.* at *3.

In contrast to *Worsdale* and *Reyes*, in which the court concluded that actual notice was established, the *Worsdale* court distinguished two of its prior opinions where actual notice was lacking. *See City of San Antonio v. Tenorio*, 543 S.W.3d 772 (Tex. 2018); *City of Dallas v. Carbajal*, 324 S.W.3d 537 (Tex. 2010) (per curiam). In *Tenorio*, a robbery suspect attempting to avoid police capture drove the wrong way on a public highway, causing a collision that resulted in grievous bodily injury and death. *See Tenorio*, 543 S.W.3d at 774. The plaintiff sued the City of San Antonio, alleging that the city's police officers were negligent in initiating, continuing, and failing to terminate the high-speed chase. *Id.* The supreme court concluded that a police report noting only that the sole contributing factor was "Fleeing or Evading Police" did not necessarily imply or allege fault on the government's part. *Id.* at 778. Because no evidence assigned putative fault to the police or suggested that the police department subjectively determined "that they were in some manner responsible for the injuries," the plaintiff had not established actual notice. *Id.*

In *Carbajal*, the plaintiff sued the City of Dallas for injuries she sustained after driving onto an excavated road. *Carbajal*, 324 S.W.3d at 538. A Dallas police officer who responded to the accident filed a written report, stating the plaintiff said "she saw the barricades but none were blocking what she thought was a clear way" and indeed "there were no barricades blocking the gap in the road."

Id. The report concluded the plaintiff drove her "vehicle into a gap in the street that was not properly blocked." *Id.* The supreme court held that the incident report was insufficient to prove actual notice, because the report was "no more than a routine safety investigation" that only "describe[d] what apparently caused the accident (missing barricades)" and "did not even imply, let alone expressly state, that the City was at fault."[7] *Id.* at 539.

Today's case is more like *Tenorio* and *Carbajal* than *Worsdale* or *Reyes*. First, and contrary to Cuomo's arguments, the incident report states merely that Cuomo "did not plant her foot" when she stepped onto a cement circle surrounding a tree and turned her ankle. The report describes no facts or allegations identifying any unreasonable hazard or condition and no facts connecting alleged governmental conduct to causation of an alleged injury in the manner ultimately asserted. *Worsdale*, 578 S.W.3d at 65; *Reyes*, 2020 WL 1898542, at *3. As Cuomo acknowledges, the report does not imply, let alone expressly state, that either SMG or HCSCC was at fault. *See Carbajal*, 324 S.W.3d at 539. When a report gives no indication that the governmental unit has been at fault in an incident, the unit has no actual notice as a matter of law. *Simons*, 140 S.W.3d at 345. Our dissenting colleague does not suggest that the incident report supplies evidence supporting a fact question on actual notice.

Second, Cuomo points to the March 28, 2013 letter, which states that she retained counsel, that she sustained injuries on the premises, and that a copy of the letter should be sent to SMG's liability insurance company. In dissent, our colleague agrees with Cuomo that the letter and reasonable inferences flowing therefrom are sufficient to raise a fact question as to the governmental unit's

[7] The report noted missing barricades as a factor but did not say who had failed to erect or maintain the barriers.

alleged fault producing or contributing to the claimed injury. We disagree for several reasons. Like the incident report, the March 28, 2013 letter contains no facts implicating HCSCC's (or any governmental unit's) fault in contributing to the injury. It is silent as to any alleged hazard on the premises and any allegation or assignment of fault. Moreover, a governmental unit's subjective awareness of a request that it forward an attorney's representation letter to a liability carrier does not supply the necessary missing facts, even by inference. Actual notice requires the same knowledge the unit is entitled to receive under the TTCA's formal notice provisions, *Tenorio*, 543 S.W.3d at 776, which is lacking here. Cuomo's request to forward the representation letter to the liability carrier does not give rise to a reasonable inference satisfying *Cathey* because it fails to state the factual basis for the request other than an alleged injury, it fails to articulate any factual allegation placing the unit on notice of its fault, and it does not provide enough factual information about the unit's role in the accident to incentivize it to protect its own interest. *Cf. Reyes*, 2020 WL 1898542, at *3 (among other evidence, letter specifically identifying county employee and describing accident as a "crash" sufficient to establish actual notice). Although the letter alleges an injury, we cannot infer actual notice from subjective knowledge of an injury alone, because that standard is "repugnant to the statute's express language." *Worsdale*, 578 S.W.3d at 71. A representation letter such as this one may provide subjective awareness of *potential* fault because a lawsuit *may* be forthcoming, but that information is insufficient. *See Tenorio*, 543 S.W.3d at 779. That an attorney claims injury and requests communication with a governmental unit's liability insurer, without more, does not equate with or supply a reasonable inference that the unit is subjectively aware of a proximate connection between the alleged injury and the unit's unalleged conduct in creating or controlling an unalleged

unreasonable hazard. The March 28, 2013 letter does nothing to make HCSCC subjectively aware of its alleged fault in contributing to the injury.

Our holding not only comports with controlling supreme court precedent but aligns with numerous intermediate appellate court decisions presenting analogous facts. *See City of Beaumont v. Armstead*, No. 09-15-00480-CV, 2016 WL 1053953, at *7-8 (Tex. App.—Beaumont Mar. 17, 2016, no pet.) (mem. op.) (concluding letter that failed to provide any time or description of the incident or place of the accident was insufficient notice under section 101.101(a); and accident report that failed to imply or state that city was at fault was insufficient notice under subsection (c)); *Tex. Dep't of Crim. Justice v. Thomas*, 263 S.W.3d 212, 218 (Tex. App.—Houston [1st Dist.] 2007, pet. denied) (holding letter describing the injury and date but not the incident was insufficient notice under section 101.101(a); and general counsel's receipt of letter and subsequent investigation was insufficient notice under subsection (c)); *see also City of Houston v. Miller*, No. 01-19-00450-CV, 2019 WL 7341666, at *5-6 (Tex. App.—Houston [1st Dist.] Dec. 31, 2019, no pet.) (mem. op.) (no actual notice because no subjective awareness of alleged fault); *Doe v. City of Dallas*, No. 05-18-00771-CV, 2019 WL 2559755, at *3-4 (Tex. App.—Dallas June 21, 2019, pet. filed) (mem. op.) (same); *Henry v. City of Midland*, No. 11-16-00265-CV, 2018 WL 4201461, at *3 (Tex. App.—Eastland Aug. 31, 2018, no pet.) (mem. op.) (no actual notice because investigation report did not reference that manhole cover was cause of accident or that city's maintenance was cause of accident); *Needham Fire & Rescue Co. v. Balderas*, No. 14-16-00211-CV, 2017 WL 1416219, at *4-5 (Tex. App.—Houston [14th Dist.] Apr. 18, 2017, no pet.) (mem. op.) (holding investigative report that did not indicate firetruck driver's subjective awareness of alleged fault was no evidence of actual notice).

Conclusion

In sum, there is no evidence that HCSCC (or its alleged agent SMG) was subjectively aware of allegations that it was responsible for the parking lot or that HCSCC's (or SMG's) failure to maintain the parking lot was responsible for or contributed to Cuomo's claimed injuries. *See Tenorio*, 543 S.W.3d at 778; *Carbajal*, 324 S.W.3d at 539. We conclude that Cuomo did not establish actual notice under section 101.101(c). HCSCC therefore retains immunity from suit, and the trial court did not err in dismissing Cuomo's claims for lack of subject matter jurisdiction. We overrule Cuomo's third issue on appeal.[8]

We affirm the trial court's order granting HCSCC's plea to the jurisdiction and dismissing Cuomo's claims against HCSCC with prejudice.

/s/ Kevin Jewell
Kevin Jewell
Justice

Panel consists of Chief Justice Frost and Justices Jewell and Spain (Spain, J., dissenting in part and concurring in part).

[8] Due to our disposition, we need not address Cuomo's remaining arguments on appeal.