



**NUMBER 13-19-00236-CV**

**COURT OF APPEALS**

**THIRTEENTH DISTRICT OF TEXAS**

**CORPUS CHRISTI - EDINBURG**

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**THE CITY OF KINGSVILLE,**

**Appellant,**

**v.**

**ERMELINDA DOMINGUEZ,**

**Appellee.**

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**On appeal from the 105th District Court  
of Kleberg County, Texas.**

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## **MEMORANDUM OPINION**

**Before Chief Justice Contreras and Justices Longoria and Hinojosa  
Memorandum Opinion by Justice Hinojosa**

Appellant Ermelinda Dominguez sued appellee the City of Kingsville (the City) for negligence after a City fire truck collided with the vehicle she was driving.<sup>1</sup> The City filed a plea to the jurisdiction on the basis of governmental immunity, which the trial court

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<sup>1</sup> Dominguez also sued Oscar Mendiola, but she later non-suited her claims against him.

denied. In one issue, the City argues that the trial court erred in denying its plea to the jurisdiction because the City established the applicability of the emergency response exception to the waiver of immunity in the Texas Tort Claims Act (TTCA). We reverse and render.

## I. BACKGROUND

In her live pleading, Dominguez alleged that Oscar Mendiola, while operating a City fire truck, failed to yield the right of way at a signal light which resulted in a collision with Dominguez's vehicle. Dominguez alleged that the City's immunity from suit was waived by the TTCA because the claim involved personal injury and property damages caused by the negligent operation or use of a motor-driven vehicle. See TEX. CIV. PRAC. & REM. CODE ANN. § 101.021(1).

The City answered suit and later filed a plea to the jurisdiction. In its plea, the City argued that its immunity from suit was not waived by the TTCA, and, therefore, the trial court lacked subject matter jurisdiction over Dominguez's suit. Specifically, the City argued that the emergency response exception to the statutory waiver of immunity applied in this case. See *id.* § 101.055(2). The City supported its plea with Mendiola's deposition testimony and the official accident report. Dominguez filed a response, which was also supported by Mendiola's deposition testimony and deposition exhibits.

The jurisdictional record establishes the following. Mendiola was driving a City fire truck southbound on Fourteenth Street in Kingsville, Texas, in response to a medical emergency. The fire truck's siren and emergency lights were both activated. Mendiola was travelling behind an ambulance, which proceeded through the intersection with

Caesar Avenue. As Mendiola approached the intersection, he “scanned” the traffic to make sure it was safe for him to proceed. Mendiola observed that all vehicles at the intersection were stopped. He specifically recalled that Dominguez’s vehicle, which was facing eastbound on Caesar Avenue, was stopped. Mendiola maneuvered the fire truck into the turn lane so he could get around a stopped vehicle in his lane. Mendiola then proceeded into the intersection, believing that all traffic was yielding in response to his siren and emergency lights. As he entered the intersection, Mendiola saw Dominguez’s vehicle moving from his right. Mendiola steered the fire truck to the left and applied the brakes, but he was unable to avoid colliding with Dominguez’s vehicle. Mendiola believed he was travelling around twenty-five miles per hour as he entered the intersection. The posted speed limit at the location was thirty-five miles per hour. Mendiola acknowledged in his deposition testimony that the City’s Fire Department guidelines required that he come to a complete stop at all stop signs and red lights.

According to the official accident report, the investigating officer concluded that Mendiola was facing a red light and failed to yield the right of way to Dominguez. The officer also concluded that Dominguez “disregarded an Emergency Vehicle while operating emergency lights.” The officer did not issue a citation to either driver.

After a non-evidentiary hearing, the trial court signed an order denying the City’s plea to the jurisdiction. This interlocutory appeal followed. See *id.* § 51.014(a)(8) (permitting interlocutory appeal of an order denying a governmental unit’s plea to the jurisdiction).

## II. STANDARD OF REVIEW

A plea to the jurisdiction is a dilatory plea; its purpose is “to defeat a cause of action without regard to whether the claims asserted have merit.” *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000). The plea challenges the trial court’s subject matter jurisdiction over a pleaded cause of action. *Tex. Dep’t of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004). Subject matter jurisdiction is a question of law; therefore, when the determinative facts are undisputed, we review the trial court’s ruling on a plea to the jurisdiction de novo. *Id.* Governmental immunity<sup>2</sup> deprives a trial court of jurisdiction over lawsuits in which the State’s political subdivisions have been sued, unless immunity is waived by the Legislature. *Id.*; *Mission Consol. Indep. Sch. Dist. v. Garcia*, 372 S.W.3d 629, 636 (Tex. 2012). Therefore, governmental immunity is properly asserted in a plea to the jurisdiction. *Miranda*, 133 S.W.3d at 225–26.

A plaintiff has the burden to affirmatively demonstrate the trial court’s jurisdiction, which encompasses the burden of establishing a waiver of a governmental entity’s immunity from suit. *Town of Shady Shores v. Swanson*, 590 S.W.3d 544, 550 (Tex. 2019). “When a defendant challenges jurisdiction, a court ‘is not required to look solely to the pleadings but may consider evidence and must do so when necessary to resolve the jurisdictional issues raised.’” *Id.* (quoting *Bland Indep. Sch. Dist.*, 34 S.W.3d at 555). This is true even when the jurisdictional issue intertwines with the merits of the case. *Id.*

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<sup>2</sup> Governmental immunity is a common law doctrine protecting governmental entities from suit, similar to sovereign immunity. *Travis Cent. Appraisal Dist. v. Norman*, 342 S.W.3d 54, 57–58 (Tex. 2011). While sovereign immunity protects the State and its various agencies from suit, governmental immunity protects the State’s political subdivisions, such as cities, counties, and school districts, from suit. *Id.* As a political subdivision, the City is generally protected from suit by governmental immunity.

When, as here, a plea to the jurisdiction challenges the existence of jurisdictional facts, the standard of review mirrors that of a summary judgment, meaning that all the evidence is reviewed in the light most favorable to the plaintiff to determine whether a genuine issue of material fact exists. *Id.* In the face of an evidentiary challenge, the plaintiff has the burden to present sufficient evidence to create a genuine issue of material fact regarding the jurisdictional issue. *Id.* at 552. If the evidence raises a fact issue regarding jurisdiction, the plea cannot be granted, and a fact finder must resolve the issue. *Miranda*, 133 S.W.3d. at 227–28. On the other hand, if the evidence is undisputed or fails to raise a fact issue, the plea must be determined as a matter of law. *Garcia*, 372 S.W.3d at 635; *Miranda*, 133 S.W.3d at 228.

### III. EMERGENCY RESPONSE EXCEPTION

#### A. Applicable Law

The TTCA provides a limited waiver of governmental immunity for:

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

TEX. CIV. PRAC. & REM. CODE ANN. § 101.021(1); see *id.* § 101.025(a) (providing that sovereign immunity to suit is waived and abolished to extent of liability created by the TTCA). Exempted from this waiver of immunity are claims included in the TTCA’s “emergency response exception” that arise

from the action of an employee while responding to an emergency call or reacting to an emergency situation if the action is in compliance with the laws and ordinances applicable to emergency action, or in the absence of such a law or ordinance, if the action is not taken with conscious indifference or reckless disregard for the safety of others[.]

*Id.* § 101.055(2). The policy underlying this “emergency response exception” to the TTCA’s limited waiver of immunity is “to balance the safety of the public with the need for prompt responses to police, fire, and medical emergencies.” *City of Amarillo v. Martin*, 971 S.W.2d 426, 429 (Tex. 1998); *City of San Angelo Fire Dep’t. v. Hudson*, 179 S.W.3d 695, 699 (Tex. App.—Austin 2005, no pet.). “Imposing liability for a mere failure in judgment could deter emergency personnel from acting decisively and from taking calculated risks” and would “allow for judicial second guessing of the split-second and time-pressured decisions emergency personnel are forced to make.” *Hudson*, 179 S.W.3d at 699.

The law governing the operation of emergency vehicles is found in Chapter 546 of the transportation code. See TEX. TRANSP. CODE ANN. ch. 546. When responding to an emergency call, an operator of an emergency vehicle may “proceed past a red or stop signal or stop sign, after slowing as necessary for safe operation[.]” *Id.* §§ 546.001, .002(b)(1). Generally, in such a situation, the emergency vehicle’s emergency lights and siren must be activated. *Id.* § 546.003. Compliance with Chapter 546, however, does not relieve a driver of an emergency vehicle from “the consequences of reckless disregard for the safety of others.” *Id.* § 546.005(2).

The plaintiff bears the burden to establish that the emergency response exception does not apply. *Quested v. City of Houston*, 440 S.W.3d 275, 284 (Tex. App.—Houston

[14th Dist.] 2014, no pet.). The plaintiff must present evidence that raises a fact issue showing that the governmental employee (1) was not responding to an emergency call or reacting to an emergency situation; or (2) failed to comply with the applicable law or acted with reckless disregard for the safety of others. See *id.*; see also TEX. CIV. PRAC. & REM. CODE ANN. § 101.055(2); TEX. TRANSP. CODE ANN. § 546.005(2).

## **B. Analysis**

The parties' arguments in this appeal focus on whether there is evidence that Mendiola acted recklessly. "A governmental entity is liable for damages resulting from the emergency operation of an emergency vehicle if the operator acted recklessly; that is, if the operator 'committed an act that the operator knew or should have known posed a high degree of risk of serious injury' but did not care about the result." *Perez v. Webb County*, 511 S.W.3d 233, 236 (Tex. App.—San Antonio 2015, pet. denied) (quoting *Martin*, 971 S.W.2d at 430); see *City of San Antonio v. Hartman*, 201 S.W.3d 667, 672 n.19 (Tex. 2006) (noting that "reckless disregard" has been interpreted to require proof that a party knew the relevant facts but did not care about the result).

The City argues that the evidence establishes that Mendiola acted to minimize the risk to others as he entered the intersection, thereby demonstrating that Mendiola "clearly did care about the result" of his actions. Dominguez responds that Mendiola's actions of entering the intersection against a red light without stopping was evidence of recklessness.

It is undisputed that Mendiola was responding to an emergency call and that he activated the truck's siren and emergency lights. See TEX. TRANSP. CODE ANN.

§§ 546.002(b)(1), .003. Prior to travelling through the intersection, Mendiola confirmed that the cross-traffic had stopped and was yielding to the fire truck. Mendiola specifically recalled observing that Dominguez’s vehicle was stopped. Further, he proceeded through the intersection at a speed below the posted speed limit. While every case presents a unique factual scenario, we note that Mendiola’s actions in this case are strikingly similar to a number of other cases where Texas courts have concluded that an emergency responder did not act recklessly. See *Tex. Dep’t of Pub. Safety v. Sparks*, 347 S.W.3d 834, 841–42 (Tex. App.—Corpus Christi–Edinburg 2011, no pet.) (officer was responding to an emergency call with his lights and siren activated, he “slowed or stopped as he reached the intersection,” and entered intersection “cautiously”); *City of Pasadena v. Kuhn*, 260 S.W.3d 93, 99–100 (Tex. App.—Houston [1st Dist.] 2008, no pet.) (officer was responding to emergency, had activated his emergency lights and siren, and slowed down before proceeding through intersection); *Hudson*, 179 S.W.3d at 700–01 (driver activated the truck’s emergency lights, siren, and air horn, was driving below the speed limit as he approached the intersection, and entered the intersection without stopping after looking both ways and observing that traffic had yielded to his fire truck); *Smith v. Janda*, 126 S.W.3d 543, 545–46 (Tex. App.—San Antonio 2003, no pet.) (ambulance driver was responding to emergency with lights and siren activated, “slowed down and looked around” as he approached intersection and entered intersection after “seeing that all traffic had stopped or yielded to him”); see also *City of San Antonio v. Reyes*, No. 04-16-00748-CV, 2017 WL 3701772, at \*3 (Tex. App.—San Antonio Aug. 23, 2017, no pet.) (mem. op.) (officer slowed his patrol car when he approached traffic lights, engaged his



emergency lights and sirens at all times, and proceeded through intersection only after visually checking for traffic). Further, the fact that Mendiola violated department policy by not coming to a complete stop prior to entering the intersection is not evidence of recklessness. *See Hudson*, 179 S.W.3d at 700–01; *see also City of Laredo v. Varela*, No. 04-10-00619-CV, 2011 WL 1852439, \*3–5 (Tex. App.—San Antonio May 11, 2011, no pet.) (mem. op.) (holding that an officer’s failure to adhere to policy requiring emergency vehicles to come to complete stop did not raise fact issue as to whether officer acted with reckless disregard for the safety of others).

We conclude that the undisputed facts do not demonstrate that Mendiola committed an act that he knew or should have known posed a high degree of risk of serious injury but did not care about the result. *See Perez*, 511 S.W.3d at 236. Rather, by travelling at a speed below the speed limit, activating his siren and emergency lights and confirming that the cross-traffic was yielding, Mendiola was not acting with reckless disregard to others. Because the jurisdictional record fails to raise a fact issue regarding recklessness, the City retains its immunity from suit pursuant to the TTCA’s emergency response exception. *See TEX. CIV. PRAC. & REM. CODE ANN. § 101.055(2); Miranda*, 133 S.W.3d. at 227–28. We sustain the City’s sole issue.

#### **IV. CONCLUSION**

We reverse the trial court’s order denying the City’s plea to the jurisdiction and render judgment dismissing Dominguez’s suit for want of subject matter jurisdiction.

LETICIA HINOJOSA  
Justice

Delivered and filed the  
28th day of May, 2020.