

**Affirmed and Memorandum Opinion filed August 3, 2010.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-09-00634-CV**

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**THE CITY OF MISSOURI CITY, TEXAS, Appellant**

**V.**

**BRENDA PASSANTE, GLORIA ROBINSON, NORMA YOUNG, AND SANDRA HENRY, Appellees**

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**On Appeal from the 268th District Court  
Fort Bend County, Texas  
Trial Court Cause No. 06-DCV-147263**

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**MEMORANDUM OPINION**

Appellant, The City of Missouri City, Texas (“Missouri City”), filed this interlocutory appeal from the trial court’s denial of its Plea to the Jurisdiction and Motion for Summary Judgment. Finding no error, we affirm.

**FACTUAL AND PROCEDURAL BACKGROUND**

**I. The Wreck and Subsequent Investigation**

On the afternoon of Sunday, December 12, 2004, Missouri City police officer Nicolas Krupa was on patrol in a marked Missouri City Police Department patrol car.

Officer Krupa was driving east on Cartwright Road when he heard Missouri City police officer Russell Terry's call that he needed assistance in dealing with the arrest of car theft suspects.<sup>1</sup> According to Officer Krupa, upon receipt of a call for assistance from another police officer, all available police units "are directed to immediately proceed to assist the officer in danger."<sup>2</sup> In addition, responding officers are directed to continue responding "until notified that the situation is rendered safe." Also, responding to an "officer assist" call constitutes a "Priority One Response" under Missouri City Police Department policies. Officer Krupa also testified a responding officer is required to maintain radio silence to keep the radio free for the officer in need of assistance to communicate with dispatch and responding officers regarding the status of the situation. As a result, Officer Krupa did not contact the Missouri City Police Department dispatcher prior to the crash at issue in this appeal. In addition, Officer Krupa testified he never received an order from the dispatcher to go to Detective Terry's assistance and it was unlikely the dispatcher knew his location or even that he was responding to Detective Terry's call for assistance.

At the time Officer Krupa heard Detective Terry's call for assistance, he estimated he was four to five miles from Detective Terry's location. While Officer Krupa testified he believed he might be the closest officer to Detective Terry, he also testified that he had no knowledge as to the location of the other on-duty Missouri City police officers. According to Officer Krupa, within ten seconds of receiving Detective Terry's call for assistance, he decided to initiate a Priority 1 response, turned on his emergency lights and siren, and increased his speed to five to ten miles per hour over the forty miles per hour

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<sup>1</sup> In December 2004, Russell Terry was a Missouri City police officer. Subsequent to that time, he was promoted to detective. To avoid confusion, we will refer to Terry as Detective Terry throughout the remainder of this opinion. Detective Terry had engaged in a pursuit of the suspects in the stolen vehicle. Eventually the stolen vehicle came to a stop, the driver fled, leaving two suspects in the vehicle. Detective Terry broadcast his call for assistance due to his concerns over (1) a single officer handling multiple suspects, and (2) the potential reaction to the situation by a gathering crowd of local citizens.

<sup>2</sup> While the Missouri City Police Department's policies on response to calls as well as pursuits are found in the appellate record, there is no written policy on the procedure for responding to an "officer assist" call in that record.

speed limit (i.e. to forty-five to fifty miles per hour) on Cartwright Road. Officer Krupa testified he wanted to drive faster but that traffic conditions on Cartwright Road prevented him from doing so. Officer Krupa also testified that once he had turned on his emergency lights and siren, they remained on up to the collision at issue in this litigation.

Officer Krupa testified traffic was moderate to light on Cartwright Road<sup>3</sup> as he proceeded east. Officer Krupa passed through several intersections on Cartwright, two of which had stoplights, without incident. Officer Krupa testified he approached the intersection with Meadow Creek travelling in the inside or left lane of eastbound Cartwright. As Officer Krupa approached the intersection, cars on both the eastbound and westbound sides were stopped at the intersection. According to Officer Krupa, there were about five cars stopped in the outside or right lane of eastbound Cartwright ahead of him. Officer Krupa testified he could not be certain that these vehicles were not blocking his line of sight to any traffic that might have been on northbound Meadow Creek as he approached the intersection. Officer Krupa testified he did not see any cars moving on Meadow Creek. As he approached the intersection, Officer Krupa testified that he slowed the speed of his vehicle “considerably so [he] could safely traverse the intersection.”<sup>4</sup> Officer Krupa testified that he “looked to [his] left and looked to [his] right before entering the intersection in an effort to assure that [he] could enter and proceed through the intersection safely as I continued to utilize my siren and emergency lights to warn traffic of the approach of my emergency vehicle.” Officer Krupa testified he did not have the red light. Finally, Officer Krupa testified that he did not see appellee Brenda Passante’s vehicle until she struck his police vehicle in the intersection. As a result of the collision with Passante’s vehicle, Officer Krupa’s police vehicle flipped three times, crossing the median

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<sup>3</sup> Cartwright Road is a four lane road. It has two lanes of traffic going in each direction divided by a raised median.

<sup>4</sup> Officer Krupa testified he never came to a complete stop and does not know how much time it would have delayed him in arriving at Detective Terry’s location if he had come to a complete stop at the intersection.

in the process, then hit the car driven by appellee Gloria Robinson, finally coming to rest upside down on the westbound side of Cartwright Road. All drivers and occupants of the three vehicles were taken to various hospitals, Passante via LifeFlight helicopter. The extent of the injuries is not disclosed by the record.

During her deposition, Passante testified she was stopped at the red light at the intersection of Meadow Creek and Cartwright. According to Passante, the light changed to green, and at that point she proceeded into the intersection. According to Passante, she did not see Officer Krupa's patrol car, did not see flashing emergency lights or hear a siren prior to the crash. Finally, Passante testified that she did not remember any details of the accident.

There were several witness statements taken as part of either Department of Public Safety Trooper Kerry Barton's initial investigation of the accident or Missouri City's investigation into the accident that ultimately resulted in Officer Krupa being disciplined by the Missouri City Police Department.

Catherine Claire Duyka reported she was driving eastbound on Cartwright when she saw a marked police car go by her at a high rate of speed. Duyka reported she did not observe any lights nor hear any sirens from the police car. However, Duyka did inform the investigators that she saw the police car's emergency lights come on as it entered the intersection of Cartwright and Meadow Creek. According to Duyka, the eastbound traffic light on Cartwright was red and she believed the vehicle driven by Passante had the green light.

Mokhtari Robabeh saw the police car going eastbound on Cartwright. According to Robabeh, the police car did not appear to be speeding because she was able to nearly catch up with the police car. Robabeh did not observe the police car using its flashing emergency lights and she did not hear a siren. Robabeh saw the police car and Passante's vehicle collide however she was not sure which vehicle hit the other. She also observed the police car flip three times and land in the westbound lanes of Cartwright. Finally,

Robabeh reported that she did not observe the police car driving at a high rate of speed “because I was on the telephone with my daughter and I told her I don’t understand how the police car could have flipped over when it wasn’t going very fast.”

Brian Michalic and Allen Lancelin were both travelling westbound on Cartwright in separate vehicles and had stopped at the traffic light. Both reported the police car approached the intersection with emergency lights and siren on. They also informed the investigators that it was obvious to them that the police car was not going to stop at the intersection.

Tacoma Kuyinu was behind the police car as it entered the intersection. According Kuyinu, the traffic light was red for the police officer when he entered the intersection. Kuyinu also reported that the police officer had his emergency lights on and was intermittently using his air horn when he entered the intersection.

Officer Krupa’s patrol car was equipped with a video recording device that begins recording when the emergency lights are activated. Officer Krupa testified that the video machine was operating at the time he entered the intersection. Two Missouri City police officers, Larry Brown and Stephen Cook, were assigned to remove the videotape from the machine in Officer Krupa’s damaged patrol car. When Officers Brown and Cook could not get the machine to power up following the crash, they removed the videotape by disassembling the machine.<sup>5</sup> The videotape was eventually removed and a copy was entered into evidence. The copy consists of a very brief segment showing the patrol car moving along what would appear to be Cartwright Road and a single vehicle moving out of the police car’s way. The videotape does not show any of the actual crash or the moments leading up to the crash. The quality of the recording is poor. Based on an affidavit given by Officer Brown, Missouri City argues the wreck damaged the tape and the recording of

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<sup>5</sup> Missouri City Police Sergeant Michael Berezin stated in his report following the crash that Officer Cook was selected to work on retrieving the videotape because he had “electronics training from his prior military experience” and Officer Brown was selected because he had a “background as a video technician.”

the entire episode. Appellees contend there is no evidence the tape was damaged and the brief recording is evidence that Officer Krupa was only using his emergency lights and siren intermittently as he proceeded to assist Detective Terry.

Trooper Barton investigated the accident. Trooper Barton concluded Officer Krupa contributed to the accident because he disregarded a stop and go signal. He also concluded Passante contributed to the accident by failing to yield the right of way to an emergency vehicle. Trooper Barton also performed a speed calculation based on the skid marks at the scene and concluded Officer Krupa was driving at approximately 32.5 miles per hour at the time of the collision. Trooper Barton testified that no citations were issued as a result of the crash.

The Missouri City Police Department has a written policy addressing a police officer's response to calls for service. The policy begins:

All police personnel operating city-owned police department vehicles shall exercise due regard for the safety of all persons. No task, call, or incident justifies disregard for public safety. Further, the public expects its officers to demonstrate exemplary driving behavior. All police department personnel who operate police vehicles shall respond to calls for service within the priority call response procedures as set forth in this policy.

The policy then established different levels of response only one of which is relevant to this appeal:

1. Priority 1 – This is an emergency response and requires the use of emergency lights, siren, headlights, and other available equipment as appropriate (e.g. spot light, public address system).

The response policy also established that

[w]hen responding Priority 1 or Priority 2, the officer is allowed to exceed the posted speed limit as long as the officer does not create an unreasonable risk to life or property. The officer is also allowed to proceed past a red or stop signal after slowing as necessary for safe operation (TRC 546.001). All officers must remember that in an emergency response the officer is not relieved from the duty to operate the vehicle with appropriate regard for the

safety of all persons or from the consequences of reckless disregard for the safety of others (TRC 546.005). An officer's emergency response should not create a substantial risk for the public at large...

The Missouri City Police Department conducted an investigation of the collision and concluded Officer Krupa's "speed at the time of the accident did not allow [him] to properly clear the intersection." The accident review board further concluded Officer Krupa was negligent and contributed to the accident. The reviewing lieutenant accepted the findings and added that while Officer Krupa was authorized to travel priority one and disregard the stop and go signal, he was still not relieved from the duty to operate the vehicle with the appropriate regard for the safety of all persons. The Missouri City chief of police accepted the findings and disciplined Officer Krupa with three points<sup>6</sup> and a written reprimand.

In addition to Officer Krupa's affidavits, Missouri City also submitted the affidavits of two other Missouri City police officers in support of its contention it was entitled to governmental immunity: Captain Larry Capps and Detective Terry. Both Captain Capps and Detective Terry accepted without question Officer Krupa's testimony (1) that he had turned on his emergency lights and siren at the beginning of his response and kept them on until the collision; and (2) that he had the green light as he entered the intersection of Cartwright and Meadow Creek. Based on that testimony, both Captain Capps and Detective Terry opined that a reasonably prudent officer might have believed his actions were justified under the same or similar circumstances as those faced by Officer Krupa.

Alfred E. Moore, a retired police officer and chief of police, prepared a lengthy affidavit and also gave a deposition as Passante's expert. Chief Moore opined that no reasonably prudent police officer, when faced with the same or similar circumstances as Officer Krupa, would have decided to pass through a red light without stopping; nor would

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<sup>6</sup> The disciplinary significance of three points is not explained in the appellate record.

they run a priority one police response using emergency equipment on an intermittent basis.

## **II. Notice of Claims and Procedural History**

Missouri City's charter, section 2.06, has a notice provision that requires notice via affidavit of a claim within thirty days of the date of the event. According to the Missouri City charter, the notice must contain the details of the accident, the amount of damages, the residence of the claimant on the date of the claim and for six months prior, as well as the names and addresses of all witnesses.

Passante served a written notice of claim letter on Missouri City on December 23, 2004, well within the thirty day Missouri City requirement. However, Passante's letter was not in affidavit form and did not meet all of the content requirements listed above. It is undisputed that the Robinson appellees did not serve a written notice on Missouri City within the thirty days.

Despite the lack of affidavit notices to Missouri City, the appellate record contains a January 4, 2005 letter to Passante's attorney from Fleetwood Claim Services, Inc. Passante attached this letter to her response to Missouri City's Plea to the Jurisdiction and Motion for Summary Judgment. The letter provides, in part, "[w]e are the claims representatives that have been assigned by the Texas Municipal League-Intergovernmental Risk Pool to assist with the liability investigation and handling of this claim on behalf of their Fund Member, the City of Missouri City."

Passante and the Robinson appellees filed separate suits against Missouri City.<sup>7</sup> These separate suits were consolidated and Missouri City eventually filed its Plea to the Jurisdiction and Motion for Summary Judgment, which the trial court denied. This interlocutory appeal followed.

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<sup>7</sup> The Robinson appellees also filed suit against Passante.



## DISCUSSION

In this interlocutory appeal, Missouri City contends the trial court erred when it denied Missouri City's Plea to the Jurisdiction and Motion for Summary Judgment. Missouri City raises three issues in support of that contention. First, Missouri City argues the trial court should have dismissed appellees' lawsuits because it is immune from liability because Officer Krupa is entitled to official immunity for his actions leading up to the December 12, 2004 wreck. In its second issue, Missouri City argues it is immune from liability because Officer Krupa did not act with conscious indifference or reckless disregard for the safety of others while responding to Detective Terry's call for assistance. Finally, in its third issue, Missouri City asserts appellees' lawsuits should have been dismissed because appellees did not meet Missouri City's notice requirements. We address each contention in turn.

### I. The Standard of Review

We review a trial court's ruling on a plea to the jurisdiction *de novo*. *City of Pasadena v. Belle*, 297 S.W.3d 525, 528 (Tex. App.—Houston [14th Dist.] 2009, no pet.) (citing *Tex. Dept. of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 228 (Tex. 2004)). A defendant's plea may challenge either the plaintiffs' pleadings or the existence of jurisdictional facts. *Id.* When, as here, the defendant challenges the existence of jurisdictional facts, we must consider the relevant evidence submitted by the parties. *Id.* If that evidence raises a fact issue as to jurisdiction, the defendant's plea must be denied because the issue must be resolved by the trier of fact. *Id.* However, if the relevant evidence is undisputed or fails to present a jurisdictional fact issue, the plea should be granted as a matter of law. *Id.* In reviewing the evidence, we are required to assume the truth of all evidence that favors the nonmovant, in this case, the plaintiffs-appellees. *Id.*

## II. Official Immunity

Missouri City, as a municipality and political subdivision of the State, cannot be liable for an employee's acts unless its governmental immunity has been waived. *Id.* at 529 (citing *City of Lancaster v. Chambers*, 883 S.W.2d 650, 658 (Tex. 1994)). Under the facts of this case, the only possible waiver is found in section 101.021 of the Texas Tort Claims Act (the "TTCA"), which provides, in relevant part:

A governmental unit in the state is liable for ... 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 (Vernon 2005).

The parties agree appellees' claims arise from the use of a motor vehicle. They also agree Officer Krupa was acting within the scope of his employment when he responded to Detective Terry's call for assistance. The parties' dispute is focused on whether Officer Krupa could "be personally liable to the claimant[s] under Texas law." According to Missouri City, Officer Krupa could not be personally liable under Texas law because the evidence conclusively proved he responded to Detective Terry's call for assistance in good faith and therefore he retained his official immunity. Missouri City's argument then continues by asserting that since Officer Krupa retained his official immunity, he could not be personally liable to the plaintiffs according to Texas law and as a result, Missouri City has not waived its governmental immunity.

Official immunity is an affirmative defense and therefore the burden rests on the defendant, Missouri City, to establish all elements of that defense. *Id.* at 530. Under that defense, a government employee may be immune from a lawsuit that arises from (1) the

performance of discretionary duties (2) in good faith, (3) provided he was acting in the course and scope of his authority. *Id.* In appellant's first issue, only good faith is in dispute.

In this context, "good faith" is defined as a standard of objective legal reasonableness that disregards the police officer's subjective state of mind. *Id.* (citing *Wadewitz v. Montgomery*, 951 S.W.2d 464, 466 (Tex. 1997)). Therefore, an officer has the burden to prove that a reasonably prudent officer might have believed his actions were justified under the same or similar circumstances. *Id.* To rebut an officer's prima facie showing of good faith, a plaintiff must establish that no reasonable person in the defendant's position could have thought the facts were such that they justified the defendant's actions. *Id.*

The good faith standard of reasonableness is subject to a balancing test that weighs the *need* for the officer's actions against the *risks* entailed by such conduct based on the officer's perception of the facts at the time of the event. *Wadewitz*, 951 S.W.2d at 467. The need aspect of the balancing test refers to the urgency of the circumstances requiring police intervention and requires an evaluation of the following factors: (1) the seriousness of the crime or accident the officer is responding to, (2) whether the officer's immediate presence is necessary to prevent injury or loss of life or to apprehend a suspect, and (3) what alternative courses of action, if any, are available to achieve a comparable result. *Id.* The risk aspect refers to the countervailing public safety concerns and requires an evaluation of the following factors: (1) the nature and severity of the harm the officer's actions could cause (including injuries to bystanders as well as the possibility that the officer may not reach the scene of the original emergency), (2) the likelihood that any harm would occur, and (3) whether the risk of harm would be clear to a reasonably prudent officer. *Id.* To obtain summary judgment, a police officer's proof must sufficiently address these need/risk factors. *Telthorster v. Tennell*, 92 S.W.3d 457, 462 (Tex. 2002). An expert giving testimony regarding good faith must discuss what a reasonable officer

could have believed based on the officer's perception of the facts at the time of the event, and this must be substantiated with reference to both the "need" and "risk" balancing test. *City of Pasadena*, 297 S.W.3d at 531 (citing *Wadewitz*, 951 S.W.2d at 466–67). In addition, the facts of the case may require the expert to provide a continuing assessment of the "need" and "risk" factors because emergency responses and police pursuits may involve rapidly changing circumstances. *Id.* (citing *University of Houston v. Clark*, 38 S.W.3d 578, 582–83 (Tex. 2000)).

Under this analysis, a reviewing court must first determine whether the appellant governmental unit met its initial burden to conclusively prove the police officer's good faith. Only when it has been determined that the governmental unit met this burden, does the analysis turn to the evidence submitted by the nonmovant to determine if there is genuine issue of material fact on the issue of good faith. *Id.* For purposes of our resolution of Missouri City's first issue, we will assume without deciding that Missouri City met its initial burden and turn to an examination of whether the evidence submitted by the parties raises a genuine issue of material fact. We conclude that it does.

First, the various witness statements, Passante's deposition testimony, as well as the video from Officer Krupa's police vehicle, raise a genuine issue of material fact as to whether Officer Krupa used his emergency lights and siren continuously or used them intermittently and turned them on only as he entered the intersection of Cartwright and Meadow Creek.<sup>8</sup> If it was the latter, it would be too late to warn motorists on Meadow Creek, such as Passante, of his approach and the need to yield the right of way to him.

We also conclude the various witness statements, Passante's deposition testimony, and the investigation of Trooper Barton, raise a genuine issue of material fact on whether

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<sup>8</sup> While Missouri City argues the video was damaged as a result of the wreck and therefore has no impact on the good faith analysis, we disagree. Instead, we believe there is a fact issue as to whether the video shows only a portion of Officer Krupa's emergency response (1) because the remainder of the video was damaged as a result of the wreck or Officers Brown and Cook's efforts to retrieve the tape; or (2) because Officer Krupa was only using his emergency lights and siren intermittently.

Officer Krupa had the green light as he approached the intersection of Cartwright and Meadow Creek.

Officer Krupa testified there were several cars in the outside lane of eastbound Cartwright that were stopped at the intersection of Cartwright and Meadow Creek. In addition, Officer Krupa admitted that he did not see Passante's vehicle prior to the crash. We conclude this evidence creates a fact issue as to whether or not those vehicles may have blocked Officer Krupa's vision as he approached the intersection.

Because there are many fact issues surrounding Officer Krupa's decision to respond to Detective Terry's call for assistance in the manner he did, we hold the trial court did not err in denying Missouri City's Plea to the Jurisdiction and Motion for Summary Judgment based on official immunity. *City of Pasadena*, 297 S.W.3d at 534. We overrule Missouri City's first issue.<sup>9</sup>

### **III. Emergency Exception/Recklessness**

In its second issue, Missouri City contends it established as a matter of law that Officer Krupa did not act recklessly and appellees' evidence did not create a genuine issue of material fact on that issue. We disagree.

The TTCA waives immunity from liability and suit in a number of circumstances. *City of San Antonio v. Hartman*, 201 S.W.3d 667, 671–72 (Tex. 2006). However, the Act includes a subchapter entitled "Exceptions and Exclusions" listing circumstances in which the waiver of immunity does not apply. *Id.* One of these exceptions is found in section 101.055(2) governing emergency situations. This section provides that the TTCA "does not apply to a claim arising ... from the action of an employee while responding to an emergency situation if the action is in compliance with the laws and ordinances applicable

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<sup>9</sup> Because there are fact issues underlying the question of whether Officer Krupa acted in good faith when he responded to Detective Terry's call for assistance, we need not reach Missouri City's challenge to the affidavit testimony of Passante's expert witness, Chief Moore. *See City of San Antonio v. Garcia*, 974 S.W.2d 756, 758 (Tex. App.—San Antonio 1998, no pet.) (declining to examine adequacy of controverting summary judgment affidavit in light of disputed fact issues).

to emergency action, or in the absence of such law or ordinance, if the action is not taken with conscious indifference or reckless disregard for the safety of others ...” Tex. Civ. Prac. & Rem. Code Ann. § 101.055(2).

The law applicable here is found in section 546.005 of the Texas Transportation Code, which provides that while a driver of an emergency vehicle has a duty to drive “with appropriate regard for the safety of all persons,” he is not relieved of “the consequences of reckless disregard for the safety of others. *Smith v. Janda*, 126 S.W.3d 543, 545 (Tex. App.—San Antonio 2003, no pet.) (quoting Tex. Transp. Code Ann. § 546.005). Therefore, a governmental entity is immune from suits to recover damages resulting from the emergency operation of an emergency vehicle unless the operator of the vehicle acted recklessly; that is, committed an act the operator knew or should have known posed a high degree of risk of serious injury. *Green v. Alford*, 274 S.W.3d 5, 22–23 (Tex. App.—Houston [14th Dist.] 2008, pet. filed).

Having reviewed the evidence submitted by the parties, we conclude there is a genuine issue of material fact as to whether Officer Krupa’s conduct in responding to Detective Terry’s call for assistance rises to the level of recklessness. Officer Krupa’s affidavit testimony reveals that he was subjectively aware that “exceeding the posted speed limit increases the likelihood of a collision” and in the event of a collision, could cause more severe damage and injury. His testimony also demonstrates that Officer Krupa was subjectively aware “that proceeding through a red light or stop sign without coming to a complete stop and waiting increases the risk of a collision with a vehicle that is traveling through the intersection.” In his testimony, Officer Krupa then listed several factors that he believed reduced the risk of becoming involved in a collision during his response to Detective Terry’s call for assistance. Among these was his testimony that he “was driving a marked, easily recognizable police patrol vehicle and operating emergency lights and a siren at the time of the accident.” In addition, both Captain Capps and Detective Terry recognized the risks involved in Officer Krupa’s decision to respond to Detective Terry’s

call for assistance. Then, relying on the same factors cited by Officer Krupa, including his testimony that he operated his emergency lights and siren throughout his response to Detective Terry's call for assistance, they opined that Officer Krupa's conduct was not reckless. As discussed above in dealing with Missouri City's first issue, we have determined there are fact issues on: (1) Officer Krupa's use of his emergency lights and siren; (2) whether Officer Krupa had the green light as he approached the intersection; and (3) whether his vision was blocked by traffic on Cartwright Road. Therefore, since there are fact issues on whether or not Officer Krupa's conduct was reckless, we overrule Missouri City's second issue. *City of Pasadena*, 297 S.W.3d at 534–35; *see Green*, 274 S.W.3d at 26.

#### **IV. Notice**

In its third issue, appellant contends both appellees failed to meet the notice requirement under the TTCA. In addition to arguing she met Missouri City's 30-day notice deadline, Passante contends Missouri City had actual notice. The Robinson appellees contend Missouri City had actual notice and also argue the Missouri City 30-day notice requirement is unreasonable.

Section 101.101(a) provides that a governmental unit is entitled to notice of a claim within six months of the date of the underlying incident. The notice must describe the damage or injury claimed, the time and place of the incident, and the incident. Tex. Civ. Prac. & Rem. Code Ann. § 101.101(a). The purpose of the notice provision is to ensure that claims are promptly reported so that a governmental entity may investigate the merits of a claim while the facts are fresh and conditions remain substantially the same. *Tex. Dep't of Criminal Justice v. Simons*, 140 S.W.3d 338, 344 (Tex. 2004). Section 101.101(b) allows a city to provide for its own notice requirements. Tex. Civ. Prac. & Rem. Code Ann. § 101.101(b). These requirements must be reasonable. *City of Houston v. Torres*, 621 S.W.2d 588, 591 (Tex. 1981).

Finally, section 101.101(c) provides an exception to the formal notice requirement if the governmental unit has actual notice. Tex. Civ. Prac. & Rem. Code Ann. § 101.101(c). Under this exception, “actual notice” requires that a governmental unit have knowledge of the information it is entitled to be given under section 101.101(a) and a subjective awareness that its fault produced or contributed to the claimed injury. *Brazoria County v. Colquitt*, 282 S.W.3d 582, 586 (Tex. App.—Houston [14th Dist.] 2009, pet. filed). Actual notice is normally a question of fact, which if disputed will preclude summary judgment. *Wesela v. The University of Texas Medical Branch at Galveston*, 899 S.W.2d 292, 294 (Tex. App.—Houston [14th Dist.] 1995, no writ).

We conclude the evidence establishes that there is at least a fact issue on whether Missouri City had actual notice as required by the TTCA. It is undisputed that Missouri City had actual notice that the wreck occurred, that it involved a Missouri City police vehicle, and that people were injured as a result of the wreck. The summary judgment evidence includes the fact that, as a result of his investigation, Trooper Barton concluded that Officer Krupa contributed to the wreck because he disregarded a stop and go signal. In addition, the Missouri City Police Department conducted an investigation of the collision and concluded Officer Krupa’s “speed at the time of the accident did not allow [him] to properly clear the intersection.” The accident review board further concluded Officer Krupa was negligent and contributed to the accident. The Missouri City chief of police accepted the investigation’s findings, disciplined Officer Krupa, and issued a written reprimand to him. Finally, the appellate record contains a January 4, 2005 letter to Passante’s attorney from Fleetwood Claim Services, Inc. The letter provides, in part, “[w]e are the claims representatives that have been assigned by the Texas Municipal League-Intergovernmental Risk Pool to assist with the liability investigation and handling of this claim on behalf of their Fund Member, the City of Missouri City.” Collectively, this information leads us to conclude that there is a fact issue on whether Missouri City had actual notice. Since there is a fact issue on whether Missouri City had actual notice for



purposes of section 101.101(c) of the TTCA, we overrule Missouri City's third issue on appeal.<sup>10</sup>

### CONCLUSION

Having overruled Missouri City's issues on appeal, we affirm the trial court's denial of Missouri City's Plea to the Jurisdiction and Motion for Summary Judgment and remand this case to the trial court for further proceedings consistent with this opinion.

/s/     John S. Anderson  
          Justice

Panel consists of Chief Justice Hedges and Justices Anderson and Christopher.

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<sup>10</sup> Because we have determined there is a fact issue on whether Missouri City had actual notice, we need not address Missouri City's challenges to the content and timeliness of appellees' notice letters or the Robinson appellees' contention that Missouri City's written notice requirements are unreasonable.