



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

**NO. 02-17-00013-CV
NO. 02-17-00014-CV**

TEXAS JUVENILE JUSTICE
DEPARTMENT F/K/A TEXAS
YOUTH COMMISSION

APPELLANT

V.

PHI, INC.

APPELLEE

FROM THE 235TH DISTRICT COURT OF COOKE COUNTY
TRIAL COURT NO. CV15-00689

DISSENTING OPINION

I would affirm the trial court's ruling and hold that the final—and certainly an essential—act of operating a motor vehicle is securing it for safe non-operation by placing the vehicle in park, engaging the parking brake if

circumstances warrant it, turning the engine off, exiting the vehicle, and, if circumstances warrant it, locking the doors.¹

In this case, the facts are disputed as to whether TJJD's employee Christopher Webb properly secured the van for safe non-operation by placing it into park or engaging the parking brake due to a surface incline that may have warranted it. If Webb did not properly secure the vehicle for safe non-operation prior to ceasing the operation of the vehicle, then his negligent operation of the van is actionable under the TTCA's sovereign-immunity waiver. See Tex. Civ. Prac. & Rem. Code Ann. § 101.021 (West 2016). Accordingly, because I believe a fact issue exists to preclude the granting of TJJD's plea to the jurisdiction, I respectfully dissent.

/s/ Bonnie Sudderth
BONNIE SUDDERTH
CHIEF JUSTICE

DELIVERED: December 21, 2017

¹See Tex. Transp. Code Ann. § 545.404 (West Supp. 2017) (“[A]n *operator* may not leave a vehicle unattended without (1) stopping the engine; (2) locking the ignition; (3) removing the key from the ignition; (4) setting the parking brake effectively; and (5) if standing on a grade, turning the front wheels to the curb or side of the highway.” (emphasis added)).