

Affirmed and Opinion Filed December 4, 2017



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-16-01506-CV

**CITY OF DALLAS, Appellant
V.
MATTHEW A. LAMB, Appellee**

**On Appeal from the 162nd Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-15-05319**

MEMORANDUM OPINION

Before Justices Bridges, Fillmore, and Stoddart
Opinion by Justice Bridges

The City of Dallas appeals the trial court's denial of its plea to the jurisdiction in the underlying case involving a collision between a Dallas police vehicle and Matthew Lamb's vehicle. In two issues, the City argues the trial court erred in denying its plea to the jurisdiction, and the City is immune from suit because its officer is entitled to official immunity. We affirm the trial court's order denying the City's plea to the jurisdiction.

According to her affidavit, Dallas police officer Valerie Womack was working on September 21, 2014, at approximately 2:45 a.m. when she was "assigned to respond to a major non-freeway accident call, which is a Code 1 emergency call that does not require lights and siren." Womack "approached the intersection of Taylor Street and Malcolm X Blvd., stopped at the stop sign and observed the intersection to be clear of traffic." Seeing no vehicles approaching northbound or southbound, Womack entered the intersection. Womack "recognized

that there was some risk when an officer makes a decision to proceed through an intersection after stopping when visibility can be somewhat obscured by a building.” Lamb’s vehicle “appeared suddenly in the intersection” and collided with Womack. The police report stated the accident was caused when Womack “failed to yield [right of way] at the clearly posted stop sign.”

In May 2015, Lamb filed his original petition alleging against the City claims of negligence, injury by motor vehicle, and respondeat superior. The City filed a plea to the jurisdiction in which it argued it was immune from suit because Womack was entitled to official immunity. Specifically, the City argued Womack, a governmental employee, was entitled to official immunity because (1) she was performing discretionary duties, (2) within the scope of her authority, and (3) she acted in good faith.

In his response, Lamb argued there was a fact issue on each of the three elements of official immunity. Among other things, Lamb argued the element of good faith was defined as “if a reasonably prudent officer, under the same or similar circumstances, could have believed that the need to immediately proceed in such a manner outweighed a clear risk of harm to the public in light of clearly established law and the information possessed by the official at the time the conduct occurred.” Lamb argued there was a fact issue “whether or not Officer Womack’s actions of not yielding the right of way to another motor vehicle, endangering that driver’s life and health, so as to respond to a call was acting like a reasonably prudent officer.” In making this argument, Lamb noted the Code 1 call to which Womack was responding was “the least of importance and as stated by Defendants is a no lights, no sirens situation.”

Following a hearing on the City’s plea, the trial court concluded good faith had not been shown as a matter of law. In reaching this conclusion, the trial court relied on Womack’s affidavit in which she stated she saw no vehicles approaching but also stated “that visibility was

obstructed by a building.” The trial court reasoned that a prudent officer “might well have been concerned” about the obstruction. Following a further hearing on the City’s motion to reconsider, at which the City introduced Womack’s dash cam video showing that she did stop at the stop sign before entering the intersection, the trial court again denied the City’s plea. The trial court stated “the video convince[d the trial court] even more that [Womack] stopped at the stop sign, then she proceeded. But she obviously couldn’t have looked both ways and proceeded because there’s no reaction from her until the impact. If she had slammed brakes because she saw him, something like that. But it appears from the video that she just wasn’t looking that way at all.” This interlocutory appeal followed.

In two related issues, the City argues the trial court erred in denying its plea to the jurisdiction, and the City is immune from suit because its officer is entitled to official immunity. Specifically, the City argues it conclusively established that Womack was entitled to official immunity because she was performing a discretionary act in good faith and within the scope of her employment at the time of the accident. Further, the City argues Lamb failed to plead and present evidence creating a fact question on the issues of whether Womack’s actions were discretionary or whether Womack’s response to the Code 1 call was in good faith.

Official immunity protects government employees from personal liability. *Univ. of Houston v. Clark*, 38 S.W.3d 578, 580 (Tex. 2000). 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. *Id.* Official immunity is an affirmative defense; thus the defendant has the burden to establish all of its elements. *Id.*

The legislature has enacted a limited waiver of sovereign immunity. A governmental unit (including a city acting in its governmental capacity) may be liable for, among other things, the wrongful act or omission or negligence of an employee arising from the operation or use of

motor-driven vehicles or equipment if the “employee would be personally liable to the claimant according to Texas law.” *See* TEX. CIV. PRAC. & REM. CODE ANN. § 101.021(1)(B) (West 2011). If a governmental employee is entitled to official immunity, however, he would not be “personally liable . . . according to Texas law,” and the statute does not waive the sovereign or governmental immunity of his employer. *City of Dallas v. Brooks*, 349 S.W.3d 219, 224 (Tex. App.—Dallas 2011, no pet.). In other words, if official immunity shields a governmental employee from liability, his governmental employer remains immune from vicarious liability for his actions. *See Clark*, 38 S.W.3d at 580 (citing *DeWitt v. Harris Cnty.*, 904 S.W.2d 650, 653 (Tex.1995)); TEX. CIV. PRAC. & REM. CODE ANN. § 101.021. A valid immunity defense defeats the trial court’s subject-matter jurisdiction and thus is properly asserted in a plea to the jurisdiction. *Tex. Dep’t of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 225–26 (Tex. 2004); *City of Dallas v. Blanton*, 200 S.W.3d 266, 270 (Tex. App.—Dallas 2006, no pet.). We review the trial court’s ruling on a plea to the jurisdiction under a de novo standard. *Miranda*, 133 S.W.3d at 228.

When, as in this case, a plea to the jurisdiction challenges the existence of jurisdictional facts, the trial court must consider relevant evidence submitted by the parties when necessary to resolve the jurisdictional issues raised. *Id.* at 227; *Gipson v. City of Dallas*, 247 S.W.3d 465, 469 (Tex. App.—Dallas 2008, pet. denied). If the evidence creates a fact question regarding the jurisdictional issue, then the trial court cannot grant the plea to the jurisdiction, and the fact issue will be resolved by the fact-finder. *Miranda*, 133 S.W.3d at 227–28. If the relevant evidence is undisputed or fails to raise a fact question on the jurisdictional issue, the trial court rules on the plea to the jurisdiction as a matter of law. *Id.* at 228. In reviewing the evidence presented in support of the plea to the jurisdiction, we take as true all evidence favorable to the nonmovant. *Id.* We indulge every reasonable inference and resolve any doubts in the nonmovant’s favor. *Id.*

This procedure “generally mirrors that of a summary judgment under Texas Rule of Civil Procedure 166a(c),” and the burden is on the governmental unit to meet the summary judgment standard of proof. *Id.* This standard protects the plaintiffs from having to put on their case simply to establish jurisdiction. *Id.*

Texas uses an objective standard to test good faith in official immunity cases. *Brooks*, 349 S.W.3d at 227. In the context of a pursuit case, an officer acts in good faith if “a reasonably prudent officer, under the same or similar circumstances, could have believed that the need to immediately apprehend the suspect outweighed a clear risk of harm to the public in continuing the pursuit.” *Id.* (quoting *City of Lancaster v. Chambers*, 883 S.W.2d 650, 654 (Tex. 1994)). Under *Chambers*, good faith depends on how a reasonably prudent officer could have assessed both the need to which an officer responds and the risks of the officer’s course of action, based on the officer’s perception of the facts at the time of the event. *Wadewitz v. Montgomery*, 951 S.W.2d 464, 467 (Tex. 1997) (applying *Chambers* good faith balancing test in context of emergency response case) (citing *Chambers*, 883 S.W.2d at 656). The “need” aspect of the test refers to the urgency of the circumstances requiring police intervention. *Wadewitz*, 951 S.W.2d at 467. In the context of an emergency response, need is determined by factors such as the seriousness of the crime or accident to which the officer responds, whether the officer’s immediate presence is necessary to prevent injury or loss of life or to apprehend a suspect, and what alternative courses of action, if any, are available to achieve a comparable result. *Id.* The “risk” aspect of good faith, on the other hand, refers to the countervailing public safety concerns: the nature and severity of harm that the officer’s actions could cause (including injuries to bystanders as well as the possibility that an accident would prevent the officer from reaching the scene of the emergency), the likelihood that any harm would occur, and whether any risk of harm would be clear to a reasonably prudent officer. *Id.*

Here, Womack's affidavit stated she was responding to a major non-freeway accident call, which is a Code 1 emergency call that does not require lights and siren. Womack "approached the intersection of Taylor Street and Malcolm X Blvd., stopped at the stop sign and observed the intersection to be clear of traffic." Womack saw no vehicles approaching northbound or southbound, and she entered the intersection. After stopping, Womack's vision was "somewhat obscured by a building." Lamb's vehicle "appeared suddenly" and collided with Womack's vehicle. The police report stated the accident was caused when Womack "failed to yield [right of way] at the clearly posted stop sign." Vehicles traveling to left and right were not required to stop at the intersection. As Womack's dash cam video shows, she stopped at the stop sign beside a building that partially obstructed her view of traffic coming from the left, and she did not slow down as she accelerated through the intersection until Lamb's vehicle collided with her. As the trial court stated, "it appears from the video that [Womack] just wasn't looking" in the direction from which her view was obscured. We conclude the evidence raised a fact issue whether a reasonably prudent officer, under the same or similar circumstances, could have believed that the need to immediately respond to a Code 1, no lights no siren, call outweighed a clear risk of harm to the public in continuing, without looking for oncoming traffic, through an intersection where her visibility was obscured. *See Wadewitz*, 951 S.W.2d at 467 (concluding City did not provide conclusive evidence of officer's good faith under *Chambers* standard where officer's view was blocked by large truck stopped in road but officer crossed three lanes of traffic and collided with plaintiff's oncoming car). Thus, the City failed to establish Womack was entitled to official immunity as a matter of law, and the trial court did not err in denying the City's plea to the jurisdiction. We overrule the City's first and second issues.

We affirm the trial court's order denying the City's plea to the jurisdiction.

/David L. Bridges/
DAVID L. BRIDGES
JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

CITY OF DALLAS, Appellant

No. 05-16-01506-CV V.

MATTHEW A. LAMB, Appellee

On Appeal from the 162nd Judicial District
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Trial Court Cause No. DC-15-05319.

Opinion delivered by Justice Bridges.

Justices Fillmore and Stoddart participating.

In accordance with this Court's opinion of this date, the trial court's order denying the City of Dallas' plea to the jurisdiction is **AFFIRMED**.

It is **ORDERED** that appellee MATTHEW A. LAMB recover his costs of this appeal from appellant CITY OF DALLAS.

Judgment entered December 4, 2017.