Opinion issued August 10, 2023

In The

Court of Appeals

For The

First District of Texas

NO. 01-22-00699-CV

CITY OF HOUSTON, Appellant

V.

MARIAH BUSTAMANTE, INDIVIDUALLY AND A.N.F. OF L.R. AND J.R. MINORS, JOANNA ELISONDO, INDIVIDUALLY AND A.N.F. OF N.E. AND N.P. MINORS, Appellees

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On Appeal from the 270th District Court
Harris County, Texas
Trial Court Case No. 2021-20898

MEMORANDUM OPINION

In this personal injury suit, appellant the City of Houston (the City) appeals the trial court's order denying summary judgment in favor of appellees Mariah Bustamante, individually and as next friend of L.R. and J.R., minors, and Joanna

Elisondo, individually and as next friend of N.E. and N.P., minors, on their negligence claim. In its sole issue, the City contends that the trial court erred because appellees failed to demonstrate a fact issue regarding the City's actual notice of their claim as required to find a waiver of governmental immunity under the Texas Tort Claims Act. We affirm.

Background

On June 16, 2019, appellees were traveling eastbound on Collingsworth Street in Houston, Texas. Houston Fire Department (HFD) Firefighters/Paramedics Travis White and Crystal Ramos, who were responding to a heart problem/chest pain call, were traveling northbound on Broyles Street.

As White proceeded through the intersection of Broyles and Collingsworth Streets, he struck appellees' vehicle driven by Bustamante. Bustamante and her children, L.R. and J.R., and Elisondo and her children, N.E. and N.P., were later transported to Memorial Hermann Hospital for evaluation and treatment.

Houston Police Department (HPD) Officer Adrianna Mares arrived at the scene of the collision and investigated the accident. The Texas Peace Officer's Crash Report charged Bustamante with failure to yield to an emergency vehicle.

On April 8, 2021, appellees sued the City asserting a negligence claim. The City answered and specially excepted to appellees' petition, asserting a general denial and general and affirmative defenses, including governmental and official

immunity. The City asserted, among other things, that appellees failed to provide timely written notice of their claim as required by Texas Local Government Code Section 51.077 and Article IX, Section 11 of the City's Charter.

Appellees later amended their petition. In their second amended petition, they alleged that they were traveling eastbound near the 4100 block of Collingsworth when they approached the intersection of Collingsworth and Broyles Streets. Upon seeing the light turn green, Bustamante proceeded into the intersection. Appellees alleged that White, who was driving an HFD ambulance, drove through the intersection at high speed without slowing or ensuring that all traffic had stopped. Appellees alleged that their vehicle had legally entered the intersection when White failed to yield the right of way and T-boned appellees' vehicle in the middle of the intersection. Appellees alleged that, after the collision, White and Ramos exited the ambulance and were overheard discussing the collision by appellees and other witnesses at the scene. Appellees alleged that White was apologetic and admitted that the wreck was his fault, and that Ramos was overheard telling White, "I told you to stop." Appellees asserted that they timely provided written notice of their claim and damages to the City prior to filing suit, and that the City had actual notice of the accident and appellees' damages.

In their amended answer, the City asserted a general denial and general and affirmative defenses, including governmental and official immunity. The City also

denied that appellees had provided the City with timely written notice of their claims as required under Texas law.

The City subsequently filed a traditional motion for summary judgment on immunity grounds. The City argued that the trial court lacked subject matter jurisdiction over appellees' claim because (1) appellees had failed to provide the City with timely written notice of their claim for damages within ninety days of the damages allegedly sustained as required under Article IX, Section 11 of the City's Charter and (2) White's official immunity and the Texas Tort Claims Act's emergency exception preserved the City's immunity. With respect to its argument premised on a lack of timely written notice, the City argued that the Texas Tort Claims Act's exception to the notice requirement under Section 101.101(c), which applies when the governmental unit has actual notice that the claimant has died or sustained injury or property damage, did not apply because the HPD crash report upon which appellees relied did not state that White was at fault for the collision. The City's summary judgment evidence included White's affidavit, the affidavit of Pat Daniel, the City Secretary and Custodian of Records, the affidavit of Justin Barnes, an HFD District Chief, appellee's discovery responses, and the HPD Crash Report.

Appellees responded to the City's motion for summary judgment arguing that the City failed to provide undisputed factual evidence of every element of its

immunity claim. Appellees argued that (1) video evidence established that the City had notice of appellees' potential claims from the start of the investigation and the City covered up its investigation results in order to shield itself from liability, (2) White was not acting in good faith or exercising a duty in the scope of his employment as required to enjoy official immunity, and (3) the emergency exception did not apply because the evidence showed that White was acting recklessly and violated several laws in responding to the call. Appellees attached Bustamante's declaration, Elisondo's declaration, a witness statement from Maria Cruz, the declaration of Reginald Jones, Officer Mares's body-worn camera recording of the investigation, photographs of the accident scene, video footage from the body-worn camera of the HPD officer who attempted to give Bustamante a citation in the hospital, an HFD General Order on "Safety During Emergency Responses," and HFD guidelines on "Driving HFD Vehicles."[1]

The City later amended its summary judgment motion again, asserting that appellees had failed to provide the City with timely written notice of their claim as required by the City's charter, the City did not have actual notice of appellees' claim

[1] The City removed the case to federal court on the grounds of federal question jurisdiction, asserting that appellees had alleged that the City violated their civil rights and equal protection by engaging in a criminal conspiracy. The federal court remanded the case to state court. In its order, the federal court stated, "Bustamante's response does not refer to a federal statute or constitutional right necessary to establish the federal claim that the City says she asserts."

because the crash report faulted appellees for the collision, and White's official immunity and the Texas Tort Claims Act's emergency exception preserved the City's immunity thereby entitling it to dismissal of appellees' claim.

Following a hearing, the trial court denied the City's motion on September 14, 2022. This interlocutory appeal followed.

Discussion

On appeal, the City contends that the trial court erred in denying its motion for summary judgment because appellees failed to provide the City with formal notice of their personal injury claim within ninety days of their injuries as required by the City's Charter. It further argues that appellees failed to demonstrate a fact issue concerning the City's actual notice of appellees' claims, as required to sustain the waiver of governmental immunity under the Texas Tort Claims Act. Appellees respond that, contrary to the City's assertion, they did not argue in the trial court, nor do they argue on appeal, that the HPD crash report put the City on notice of their claim. Rather, they argue, the evidence relied on by the City at the summary judgment stage is contravened by a video recording and, therefore, a fact issue exists precluding summary judgment. They also assert that the reports created by HPD and HFD were willfully falsified and demonstrate that the City had notice of the claims against it.

A. Standard of Review

Subject matter jurisdiction is essential to a court's power to decide a case. *City of Hous. v. Rhule*, 417 S.W.3d 440, 442 (Tex. 2013); *City of DeSoto v. White*, 288 S.W.3d 389, 393 (Tex. 2009). To establish subject matter jurisdiction, a plaintiff must allege facts that affirmatively demonstrate the court's jurisdiction to hear the claim. *Town of Shady Shores v. Swanson*, 590 S.W.3d 544, 550 (Tex. 2019). Whether a court has subject matter jurisdiction is a question of law. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004).

The lack of subject matter jurisdiction may be raised in a motion for summary judgment. *See Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000). We review a trial court's decision to grant a motion for summary judgment de novo. *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005). Under the traditional summary judgment standard, the movant has the burden to show that no genuine issues of material fact exist and that it is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding*, 289 S.W.3d 844, 848 (Tex. 2009); *Nixon v. Mr. Prop. Mgmt. Co.*, 690 S.W.2d 546, 548 (Tex. 1985). To determine whether there are disputed issues of material fact, we take as true all evidence favorable to the nonmovant and indulge every reasonable inference in the nonmovant's favor. *Nixon*, 690 S.W.2d at 548–49. A defendant is entitled to summary judgment on a plaintiff's personal injury claim if the defendant

can prove as a matter of law that it has a defense to that claim. *Exxon Mobil Corp. v. Rincones*, 520 S.W.3d 572, 593 (Tex. 2017).

B. Applicable Law

Generally, governmental entities, such as the City, are immune from suits seeking to impose tort liability on them. *See City of San Antonio v. Tenorio*, 543 S.W.3d 772, 775 (Tex. 2018). That immunity deprives trial courts of subject matter jurisdiction over such suits, absent a waiver of their immunity. *Id.* The Texas Tort Claims Act (TTCA) contains such a waiver, if notice, as prescribed by statute, is given. *Id.*

Under the TTCA, a governmental unit must be given notice of a claim against it "not later than six months after the day that the incident giving rise to the claim occurred." TEX. CIV. PRAC. & REM. CODE § 101.101(a). This formal notice of claim must describe "(1) the damage or injury claimed; (2) the time and place of the incident; and (3) the incident." *Id.* Claimants must also comply with any time requirements for notice that a city has adopted by charter or ordinance. *See id.* § 101.101(b). Here, the City's Charter requires written notice of a claim be provided to the City within ninety days after the injuries or damages were sustained. *See* HOUS., TEX., CHARTER, art. IX, § 11.

Formal notice of a claim under subsections (a) or (b), however, is not required "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." TEX. CIV. PRAC. & REM. CODE § 101.101(c); *Cathey v. Booth*, 900 S.W.2d 339, 341 (Tex. 1995). For a governmental unit to have actual notice, it must have knowledge of (1) a death, injury, or property damage; (2) the governmental unit's alleged fault producing or contributing to it; and (3) the identity of the parties involved. *See Cathey*, 900 S.W.2d at 341; *see also Tenorio*, 543 S.W.3d at 776 (stating that to have actual notice, governmental unit must have same knowledge it is entitled to receive in formal notice of claim). One of these forms of notice—formal or actual—is required as a jurisdictional prerequisite to suit. *Worsdale v. City of Killeen*, 578 S.W.3d 57, 77 (Tex. 2019). The purpose of the notice requirement is to ensure the prompt reporting of claims to enable governmental units to gather information necessary to guard against unfounded claims, settle claims, and prepare for trial. *Cathey*, 900 S.W.2d at 341. Failure to comply with the notice provision requires dismissal. *See Tenorio*, 543 S.W.3d at 775–76.

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. *Id.* at 776. Actual notice requires that the governmental unit not only have knowledge of some injury but requires it have knowledge of information sufficient to identify the loss ultimately alleged. *Jones v. Bd. of Trs. of Galveston Wharves*, 605 S.W.3d 641, 643 (Tex. App.—Houston [1st Dist.] 2020, no pet.) (citing

Worsdale, 578 S.W.3d at 71). Actual notice may be imputed to a governmental unit when its fault is obvious or an agent charged with a duty to investigate and report to the unit receives notice of the three *Cathey* elements. *Angleton Danbury Hosp. Dist. v. Chavana*, 120 S.W.3d 424, 427 (Tex. App.–Houston [14th Dist.] 2003, no pet.). Thus, an incident that triggers an investigation and accident report will impute such notice where there is evidence to connect the accident to an action or omission by the governmental unit such that it should have known of its potential culpability. *See id.* The agent charged with a duty to investigate need not be a member of the agency which is at fault. *See Worsdale*, 578 S.W.3d at 77. If a governmental unit investigates an accident, whether the information acquired imparted actual notice depends on the particular facts. *Jones*, 605 S.W.3d at 643 (citing *Tenorio*, 543 S.W.3d at 776).

C. Analysis

The City contends that appellees' formal notice of their claim to the City was untimely and that there is no evidence that the City had actual notice of their claim.

1. Formal Notice

The accident in this case occurred on June 16, 2019. Thus, under the TTCA and the City's charter, appellees were required to give the City formal notice of their claim within ninety days after they sustained injuries, or by September 14, 2019. *See* TEX. CIV. PRAC. & REM. CODE § 101.101(b); *See* HOUS., TEX., CHARTER, art. IX, § 11.

The City's summary judgment evidence included the affidavit of Pat Daniel, the City Secretary and Custodian of Records. Daniel averred that the City first received formal written notice of appellees' claim on November 13, 2019—more than sixty days after the deadline for notice had passed. Appellees concede, as they did in the trial court below, that the record contains no evidence that they provided timely formal notice of their claim to the City.

We next address whether there is any evidence that the City had actual notice of appellees' personal injury claim under subsection 101.101(c).

2. Actual Notice

On appeal, the City does not argue that it lacked subjective knowledge of appellees' injuries or the identity of the parties.[2] *See Tenorio*, 543 S.W.3d at 775–76. Rather, the City argues that it lacked subjective knowledge of its alleged fault that produced or contributed to appellees' injuries because the HPD crash report conclusively stated that the accident was caused by Bustamante's failure to yield to the oncoming ambulance. It argues that the report and the underlying investigation conducted by Officer Mares, while not dispositive, provide nothing that would constitute actual notice of appellees' claim to the City.

[2] The HPD crash report identifies appellees and indicates that they were transported by ambulance to Memorial Hermann Hospital following the accident.

The City attached the HPD crash report prepared by Officer Mares following her investigation to its summary judgment motion. Under "Investigator's Narrative Opinion of What Happened," the report states that Unit 1 (White's vehicle) was traveling northbound on Broyles Street en route to a Code 1 Call (heart problem/chest pain), Unit 2 (Bustamante's vehicle) was traveling eastbound on Collingsworth Street, and that Unit 2 failed to yield to White's ambulance and was struck. The report included White's and Bustamante's statements:

- "Mr. White stated he was driving Code One, lights and sirens and was going through the light when he collided with an SUV that was going through the intersection as well."

- "Ms. Bustamante stated she was on Collingsworth and could hear sirens but didn't know where they were coming from but had the green light so she was going through the intersection [and was] hit by an ambulance going through the intersection as well."

The City also attached White's affidavit to its motion. White testified that after he received the heart problem/chest pain call, he turned on the ambulance's lights and siren. White stated:

> I proceeded towards the call going north on Broyles Street at 40 miles per hour in a 35 mile per hour zone. As I approached the intersection of Broyles with Collingsworth, the light changed from green to yellow and I slowed down to 35 miles per hour, and looked both to my right and left, in an attempt to ensure no vehicles were in the intersection. I determined that it was safe to proceed through the intersection. Just before entering the intersection, I perceived Plaintiffs['] car in the intersection coming from the west and proceeding east in the right lane of Collingsworth. I braked in order to try and avoid a collision but, unfortunately, our vehicles collided. . . . I had my overhead lights and siren activated during the entirety of my response.

The City's summary judgment evidence also included the affidavit of HFD District Chief Barnes. It is undisputed that Barnes, who went to the accident scene because the incident involved HFD employees, did not observe the accident. After reciting the statements made in White's affidavit, Barnes testified, "I have reviewed the decisions and actions of Firefighter White while driving to a Heart Problem/ Chest Pain [call] and it is my opinion that Firefighter White took into account multiple factors and was reasonable in his decisions under the conditions and circumstances."

The City argues that appellees' summary judgment evidence—specifically Officer Mares's body-worn camera recording of her investigation (Exhibit 5) and an HPD officer's recording of his interaction with Bustamante at the hospital (Exhibit 10)—contains nothing that would make the City subjectively aware it might be responsible for appellees' injuries. In support of its argument, the City points to the following statements on the investigation recording: (1) when asked by Officer Mares what happened, Bustamante replied, "I don't remember," (2) Elisondo remembered hearing the sirens and telling Bustamante to "speed up, it's coming," and (3) White and Ramos told Officer Mares that the ambulance had its lights and siren on at the time of the collision.

The camera recording of the investigation contains the following additional statements by Ramos, White, and Bustamante:

- When Officer Mares asked Ramos what happened, she replied, "I guess they didn't hear the siren but they had the right of way. . . . I'm not going to say whose fault it was, but we didn't have the right of way." When Officer Mares asked Ramos if the ambulance had its lights and siren on, Ramos replied, "yes, but they didn't hear them until we hit," stating "they were going pretty fast, we were going pretty fast, it just like happened instantly."

- When Officer Mares asked White what happened, he replied, "I went through a red light." When she asked him if he had the ambulance's lights and siren on, he replied that he did.

- When Officer Mares asked Bustamante what happened, she replied, "I don't remember. I just remember that my light was green and I was going and then I got hit. . . . When we were right here [indicating], passing the light, they went and turned on the light and I didn't see the light. If I would have seen the light, I would have stopped at the light."[3]

The recording also includes Officer Mares's call to an on-duty HPD sergeant after obtaining the statements. Officer Mares can be heard telling the sergeant that the ambulance had a red light, the ambulance's siren and lights were activated while

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[3] Exhibit 6 to appellees' summary judgment response is an HFD General Order on "Safety During Emergency Responses." It states in part, as follows: "Stopping at intersections**:** Drivers of Fire Department vehicles shall bring the vehicle to a complete stop during emergency responses for any of the following: . . . • Red traffic lights and Stop signs."

Exhibit 7 contains HFD guidelines on "Driving HFD Vehicles." Section 6.02, Emergency Driving, A. Responding to Incidents, states:

> 1. While engaging in Emergency Driving, drivers are still subject to all state and local traffic laws; however, they may use the lights and sirens to request the right-of-way from other drivers to circumvent traffic laws on a case-by-case basis. When driving with lights and sirens, a driver is not exempt from liability if an accident occurs. The driver has a duty to operate the vehicle with appropriate regard for the safety of all persons and property.

it went through the light, and the ambulance did not stop due to the emergency nature of the call. Officer Mares states that Bustamante had a green light and was driving through the intersection, and that Bustamante said they heard the ambulance but could not see it. Officer Mares then tells the sergeant "[Bustamante] is saying that they [the firefighters] didn't turn their lights on until . . . they were . . . going into the intersection, and the firefighters are saying they had it on. Should I . . . still put [Bustamante] at fault for it?" After receiving an answer, Officer Mares asks the sergeant if he could send another officer to the hospital to give Bustamante a citation so she can finish up at the accident scene.

Exhibit 10 is the body-worn camera recording of the HPD officer who came to the hospital to cite Bustamante for failure to yield the right of way to an emergency vehicle. Bustamante refuses to sign the citation and can be heard telling the officer that the accident was the ambulance's fault. When asked if she is sure, she replies, "Yes, I'm positive."

The City discusses four cases that it contends collectively demonstrate that it did not have the requisite subjective knowledge of appellees' claim to support a finding of actual notice under the TTCA. Three of the cases, however, are readily distinguishable from this case because, among other reasons, the courts' analyses addressed the lack of evidence to show that the governmental unit had actual notice of the plaintiff's injuries rather than its alleged fault in causing the accident. *See*

Jones, 605 S.W.3d at 644 (affirming trial court's dismissal of personal injury claim brought by ship passenger against port because investigative report, which was only evidence relied upon to show actual notice, did not make port subjectively aware that plaintiff had been injured or give port information sufficient to identify loss that plaintiff later asserted in her lawsuit); *City of San Antonio v. Rocha*, No. 04-18-00367-CV, 2018 WL 6517169, at *4–5 (Tex. App.—San Antonio Dec. 12, 2018, no pet.) (mem. op.) (reversing trial court's denial of city's plea to jurisdiction in personal injury suit because city had no actual notice of any injury to plaintiff; crash report prepared by investigating officer stated "[t]here were no injuries in this crash," officer's affidavit stated that plaintiff did not appear to be injured or state she was injured when contacted during investigation, and officer involved in collision provided affidavit testimony that plaintiff declined emergency medical services several times); *Renard v. Park Ten Mun. Utility Dist.*, 794 S.W.2d 956, 958–59 (Tex. App.—Houston [1st Dist.] 1990, no writ) (affirming summary judgment in favor of governmental unit where evidence did not establish that defendants had actual notice that plaintiff, whose car struck large amount of mud in roadway causing him to strike fixed object, had been injured; engineers' affidavit testimony revealed only that accident occurred involving unnamed person whose injuries were not described and did not link runoff of mud to accident and resultant injury).

The City also cites *Needham Fire & Rescue Co. v. Balderas*, No. 14-16-00211-CV, 2017 WL 1416219, at *1 (Tex. App.—Houston [14th Dist.] Apr. 18, 2017, no pet.) (mem. op.). In that case, the plaintiff driver sued the defendants after she sustained personal injuries in a collision with defendant's fire truck. *See id.* at *1. The trial court denied the defendants' plea to the jurisdiction, and the defendants appealed. *See id.*

The Fourteenth Court of Appeals considered whether there was any evidence that the defendants had actual notice of the plaintiff's claim under the TTCA.[4] *See id*. at *3. The plaintiff contended that the defendants had actual notice of her claim based on the following: (1) the chief of the fire department responded to the scene of the collision; (2) the defendants received a copy of the accident report; (3) the report noted that the plaintiff was injured; (4) the report contained a statement by the plaintiff's daughter, a passenger in the plaintiff's vehicle, that "the light turned green. We went and then we were hit by a fire truck"; and (5) the report stated that the plaintiff was charged with failure to yield right of way to an emergency vehicle in an intersection, she was transported to the hospital for possible injuries, and, in

[4] The court concluded that there was no fact issue with respect to whether the defendants had received formal notice under Texas Civil Practice and Remedies Code section 101.101(a). *See Needham Fire & Rescue Co. v. Balderas*, No. 14-16-00211-CV, 2017 WL 1416219, at *3 (Tex. App.—Houston [14th Dist.] Apr. 18, 2017, no pet.) (mem. op.).

the investigator's opinion, the plaintiff's vehicle was a contributing factor. *See id.* at *4.

The court noted that although a letter sent by the plaintiff's attorney stated that witnesses who "fail to appear in the police report . . . will verify they never heard a siren before the wreck occurred," "[the plaintiff] has not shown that [the defendants] had timely notice of this alleged fault." *Id.* at *4. The court also disagreed with the plaintiff's claim that her daughter's statement that the light was green "would clearly have given the fire department notice that at least ONE plaintiff believed the fire truck to be in the wrong." *Id.* Noting that the plaintiff was not charged with running a red light but with failing to yield her right of way—the green light—to an emergency vehicle, the court stated that "[t]he fact that the light was green was the grounds for the charge levelled against [the plaintiff]. It is not evidence that put appellants on notice that more than a year later [the plaintiff] would claim appellants were at fault." *Id.* at *4.

There are several factual similarities between *Balderas* and this case. In both cases (1) the fire department chief responded to the scene, (2) the accident report noted the plaintiff was injured and transported to the hospital, (3) the report contained a statement by one of the vehicle's occupants that the light turned green, the plaintiff proceeded through the intersection, and her vehicle was hit by the fire truck, and (4) the plaintiff was charged with failure to yield the right of way to an

emergency vehicle. However, *Balderas* is distinguishable in a key respect. In that case, there was no evidence showing that the defendants had timely notice of their alleged fault. Here, by contrast, there is some evidence that put the City on notice on the day of the collision that appellees would allege the City was at fault for the accident. In her recorded statement, Bustamante told Officer Mares, "I just remember that my light was green and I was going and then I got hit. . . . When we were right here [indicating], passing the light, they went and turned on the light and I didn't see the light. If I would have seen the light, I would have stopped at the light." In Officer Mares's call to the HPD sergeant, she stated, "[Bustamante] is saying that they [the firefighters] didn't turn their lights on until . . . they were . . . going into the intersection, and the firefighters are saying they had it on. Should I . . . still put her [the driver] at fault for it?" And, in the recording of the HPD officer's conversation with Bustamante in the hospital, Bustamante told the officer she would not sign the citation for failure to yield the right of way to an emergency vehicle because the accident was the ambulance's fault. When the officer asked her if she was sure, she replied, "Yes, I'm positive."

In addition to their own declarations, appellees attached a transcription of the recorded witness statement of Maria Cruz, another driver, and the declaration of Reginald Jones, a local resident.[5] Cruz stated that she was driving up Collingsworth

[5] The crash report does not include a witness statement from Cruz or Jones.

on the day in question and had stopped at the same red light as appellees. Cruz stated that "the EMS vehicle was driving so fast," she did not see the lights and sirens on the ambulance, and she did not think they were on before the collision. Jones stated that he was sitting on the back of his pickup truck twelve to fourteen yards away from where the accident occurred and facing the street. Jones stated that the ambulance was driving "much faster than the speed limit," and it "ran the red light . . . and did not stop." Jones further stated that "[t]he ambulance did not turn on its sirens until just before it hit the black SUV," and that "[t]here was no time for the SUV to react." This evidence shows that the ambulance was driving fast, the driver ran the red light, and the ambulance did not have its siren and lights on until immediately before the collision. The City argues that these statements were obtained after the ninety-day notice deadline had passed and are therefore not evidence of actual notice to the City. However, there is nothing in the record showing that the City objected to these statements and obtained a ruling from the trial court. Having failed to do so, the City did not preserve its complaint on appeal. *See Seim v. Allstate Tex. Lloyds*, 551 S.W.3d 161, 166 (Tex. 2018) (per curiam) ("[A]n obvious defect [in an affidavit or declaration] is one of form and still subject to the rules of error preservation."); *see also Vice v. Kasprzak*, 318 S.W.3d 1, 11 (Tex. App.—Houston [1st Dist.] 2009, pet. denied) ("Failure to secure the trial court's

ruling on the objections to the summary judgment evidence also waives the complaint for appeal.").

An incident that triggers an investigation and accident report will impute actual notice where there is evidence to connect the accident to an action or omission by the governmental unit such that it should have known of its potential culpability. *Chavana*, 120 S.W.3d at 427. "The critical inquiry is the governmental unit's actual anticipation of an alleged claim rather than subjective confirmation of its actual liability." *Worsdale*, 578 S.W.3d at 68. "The issue is not whether the City *should have* made the connection between injury and responsibility as alleged, but whether the City made the connection or had knowledge that the connection had been made.") (emphasis in original). Actual notice requires information sufficient to "alert the governmental unit to something impending." *Id*. at 70; *see Reyes v. Jefferson Cnty*., 601 S.W.3d 795, 798 (Tex. 2020) (per curiam) ("The actual-notice standard does not require proof that the County *believed* it was liable.") (emphasis in original); *Univ. of Tex. Sw. Med. Ctr. at Dall. v. Estate of Arancibia*, 324 S.W.3d 544, 550 (Tex. 2010) (noting that law does not require city's explicit "confession of fault" as this would be insurmountable burden). Here, there is evidence that the City had such information.

Taking all evidence favorable to appellees and indulging every reasonable inference in their favor, we conclude that a genuine issue of material fact exists

regarding whether the City had actual notice of appellees' claim under section 101.101(c) of the TTCA. The trial court did not err in denying the City's motion for summary judgment on immunity grounds. We overrule the City's issue.

Conclusion

We affirm the trial court's judgment.

Amparo Guerra
Justice

Panel consists of Chief Justice Adams and Justices Farris and Guerra.