**Reversed and Rendered and Memorandum Opinion filed October 20, 2020.**


**In The**

# Fourteenth Court of Appeals

**NO. 14-19-00953-CV**

**HARRIS COUNTY HOSPITAL DISTRICT D/B/A HARRIS HEALTH SYSTEM, Appellant**

**V.**

**DOROTHY PEAVY, Appellee**

**On Appeal from the 133rd District Court**
**Harris County, Texas**
**Trial Court Cause No. 2019-16413**

## M E M O R A N D U M  O P I N I O N

In this premises liability suit against a governmental unit, we must decide whether the trial court lacked subject matter jurisdiction due to the claimant's failure to show that the governmental unit had actual knowledge of the alleged premises defect, which is required to waive the governmental unit's immunity. We conclude the trial court erred in denying the governmental unit's plea to the jurisdiction. We reverse and render judgment that the plaintiff's case be dismissed.

## Background

According to the original petition, on March 6, 2017, Dorothy Peavy sustained injuries when she fell on the premises of Lyndon B. Johnson Hospital, which is a part of the Harris County Hospital District ("HCHD"). Peavy asserted a premises liability claim against HCHD, which allegedly owned, occupied, or controlled the premises. In particular, Peavy alleged that she tripped and fell on the lip of a door brace, which "posed an unreasonable risk of harm as the door brace was not level with the floor and there was no warning or indication that it was protruding from the floor."

HCHD filed a plea to the jurisdiction, arguing that: (1) Peavy had not complied with the formal notice requirements of the Texas Tort Claims Act ("TTCA") and HCHD otherwise lacked actual notice of Peavy's claim;[1] and (2) HCHD lacked actual knowledge that the dangerous condition existed at the time of the accident.[2]

In response to HCHD's plea, Peavy argued that jurisdiction existed because HCHD had actual notice of all facts necessary to satisfy the notice-requirement statute, and HCHD had constructive knowledge of the alleged premises defect. Peavy did not attach any evidence purporting to establish HCHD's knowledge of the alleged defect before the incident occurred.

The trial court denied HCHD's jurisdictional plea, which HCHD now challenges by interlocutory appeal.[3]

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[1] *See* Tex. Civ. Prac. & Rem. Code § 101.101(a), (c).

[2] *See id.* §§ 101.021-.22.

[3] *See id.* § 51.014(a)(8).

## Standard of Review

Subject matter jurisdiction is a question of law we review de novo. *See Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004). When a plea to the jurisdiction challenges the plaintiff's pleadings, we determine whether the pleadings, construed in the plaintiff's favor, allege facts sufficient to affirmatively demonstrate the trial court's jurisdiction to hear the case. *Id.* If the plaintiff's pleaded facts make out a prima facie case and the governmental unit instead challenges the existence of jurisdictional facts, we consider the relevant evidence submitted. *Id.* When reviewing a plea to the jurisdiction in which the pleading requirement has been met and evidence has been submitted to support the plea that implicates the merits of the case, we take as true all evidence favorable to the plaintiff. *Id.* We indulge every reasonable inference and resolve any doubts in the plaintiff's favor. *Id.*

## Analysis

### A. Applicable law

Governmental immunity protects political subdivisions of the State from lawsuits for damages. *See Reata Constr. Corp. v. City of Dallas*, 197 S.W.3d 371, 374 (Tex. 2006). Hospital districts, like HCHD, have such immunity. *See Martinez v. Val Verde Cty. Hosp. Dist.*, 140 S.W.3d 370, 371 (Tex. 2004). Accordingly, HCHD is entitled to governmental immunity from suit unless that immunity is waived. *See Seamans v. Harris Cty. Hosp. Dist.*, 934 S.W.2d 393, 395 (Tex. App.—Houston [14th Dist.] 1996, no writ).

The TTCA waives immunity from suit for certain tort claims, including premises defects, to the extent of liability under the act. *See Worsdale v. City of Killeen*, 578 S.W.3d 57, 62 (Tex. 2019) (citing Tex. Civ. Prac. & Rem. Code

§§ 101.022, 101.025). Section 101.021(2) of the act provides that a governmental unit is liable for "personal injury and death so caused by a condition or use of tangible personal or real property if the governmental unit would, were it a private person, be liable to the claimant according to Texas law." Tex. Civ. Prac. & Rem. Code § 101.021(2). But the TTCA limits a governmental unit's duty for ordinary premises defects to "the duty that a private person owes to a licensee on private property, unless the claimant pays for the use of the premises." *Id.* § 101.022(a).[4]

This duty requires that a landowner not injure a licensee by willful, wanton, or grossly negligent conduct, and that the owner use ordinary care either to warn a licensee of, or to make reasonably safe, a dangerous condition of which the owner is aware and the licensee is not. *Tarrant Reg'l Water Dist. v. Johnson*, 572 S.W.3d 658, 664 (Tex. 2019); *State Dep't of Highways & Pub. Transp. v. Payne*, 838 S.W.2d 235, 237 (Tex. 1992) (op. on reh'g); *Tex. S. Univ. v. Mouton*, 541 S.W.3d 908, 915 (Tex. App.—Houston [14th Dist.] 2018, no pet.). Absent willful, wanton, or grossly negligent conduct, a licensee must prove the following elements to establish the breach of duty owed to her:

> (1) a condition of the premises created an unreasonable risk of harm to the licensee; (2) the owner actually knew of the condition; (3) the licensee did not actually know of the condition; (4) the owner failed to exercise ordinary care to protect the licensee from danger; [and] (5) the owner's failure was a proximate cause of injury to the licensee.

*Payne*, 838 S.W.2d at 237. Therefore, if HCHD can show there was no evidence of one of these elements, its plea to the jurisdiction should be granted. *See Univ. of Tex.-Pan Am. v. Aguilar*, 251 S.W.3d 511, 512, 514 (Tex. 2008) (per curiam).

[4] Peavy does not allege that she paid for use of the premises, so we analyze her claim using a licensee standard.

## B. Discussion

In its plea to the jurisdiction, HCHD argued that it had no actual knowledge of the alleged defect at the time of Peavy's accident. *See Univ. of Tex. at Austin v. Hayes*, 327 S.W.3d 113, 117 (Tex. 2010) (per curiam); *City of Stafford v. Svadlenak*, No. 14-18-00089-CV, 2018 WL 3734021, at *2 (Tex. App.—Houston [14th Dist.] Aug. 7, 2018, pet. denied) (mem. op.) (to establish a waiver of governmental immunity under the TTCA, licensee must show, *inter alia*, that the premises owner had actual knowledge of the dangerous condition at the time of the incident). "Although there is no one test for determining actual knowledge that a condition presents an unreasonable risk of harm, courts generally consider whether the premises owner has received reports of prior injuries or reports of the potential danger presented by the condition." *Aguilar*, 251 S.W.3d at 513.

The only evidence of the fall is from an incident report written shortly after the accident. The incident report included a verbal statement from Peavy: "I was walking through the clinic and all of a sudden, my foot stopped as if something grabbed it. I then fell to the floor landing on my left knee and then hitting the right side of my face on the floor." Several witnesses who assisted Peavy after the fall provided statements, though none of them saw Peavy fall. One witness stated: "I did not see her fall, however I can say that there was nothing on the floor and the floor was dry, she spilled the coffee." Additionally, the officer who wrote the incident report stated:

> On 03/06/2017 the Harris Health System Department of Public Safety responded to a slip and fall on the 1st floor. Upon arrival to the scene, Security observed that the incident occurred at the entrance to the clinics juxtapose[d] [to] the rest rooms across from Electrical room #1-SA 11 003. Officer Rose observed a light brown liquid on the floor next to the victim. Officer Rose learned that the liquid on the floor was the coffee in which the victim was drinking. The area was

> checked and no objects [were] found, however Officer Rose did notice[] that the victim was wearing a[n] oversized clog type shoe black in color. The patient was placed in a wheelchair and taken to the Emergency Center where she was triage[d] and treated. Ms. Peavy's son (Timothy Peavy) was informed of the incident and escorted to the Emergency Center to join his mother.

HCHD contends, as it did below, that nothing in the incident report indicates that Peavy fell as a result of any defect in or on the floor, and Peavy's statement in the report does not mention a "door brace." To further support its argument that it lacked actual knowledge of the alleged defect at the time Peavy fell, HCHD attached affidavits from Victoria Duncan, the Administrative Director of Risk Management and Patient Safety, and from Jon Hallaway, the Program Director of Security and Parking. Both Duncan and Hallaway attested to having reviewed their respective department's records for the five years preceding Peavy's fall and finding "no reports or notifications of any incident, fall, near fall, trip, or slip, or injury attributable to the door brace (floor strike plate) located in the hallway on the first floor at or near the entrance to the clinics past the information desk at Lyndon B. Johnson Hospital."

Given HCHD's evidence, it then became Peavy's burden to raise an issue of material fact as to waiver of governmental immunity and, hence, jurisdiction. *See Sampson v. Univ. of Tex. at Austin*, 500 S.W.3d 380, 393 (Tex. 2016). In the trial court, Peavy contended that a single piece of evidence showed that HCHD had knowledge of the premises defect.[5] According to Peavy, "[t]he affidavit of Tim Peavy provides evidence that there was indeed a protrusion on the floor." However, Peavy did not attach any affidavit from Tim Peavy, nor is there any other evidence in the record establishing HCHD's knowledge of the alleged defect.

[5] Peavy has not filed an appellee's brief in our court. Thus, our discussion of Peavy's arguments is based on her trial court filings.

On this record, Peavy has not raised a genuine issue of material fact showing that HCHD actually knew of the alleged defect, and thus she has not overcome the challenge to the trial court's subject matter jurisdiction. *See id.* at 397; *Hayes*, 327 S.W.3d at 118; *see also City of Wylie v. Taylor*, 362 S.W.3d 855, 864 (Tex. App.—Dallas 2012, no pet.) ("In this case, it is undisputed that no direct evidence was offered that the City had actual knowledge the drainage pipe was damaged prior to the damage to the Taylors' home. We conclude the Taylors failed to raise a fact issue regarding the City's knowledge of a dangerous condition.").

We sustain HCHD's third issue. Because we conclude that Peavy's claims are barred by immunity, we do not address HCHD's remaining issues on appeal challenging formal or actual notice. *See* Tex. R. App. P. 47.1.

**Conclusion**

The trial court erred by denying HCHD's plea to the jurisdiction. We reverse the trial court's order and render judgment dismissing Peavy's suit for want of jurisdiction.

/s/ Kevin Jewell
Justice

Panel consists of Justices Christopher, Jewell, and Hassan.