

**Reversed and Rendered and Memorandum Opinion filed July 22, 2025.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-24-00312-CV**

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**CITY OF HOUSTON, Appellant**

**V.**

**MARAUNJANIQUE SMALLWOOD, Appellee**

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**On Appeal from the 125th District Court  
Harris County, Texas  
Trial Court Cause No. 2023-03472**

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**MEMORANDUM OPINION**

In this interlocutory appeal, appellant the City of Houston (“the City”) appeals the denial of its motion for summary judgment in the lawsuit filed by appellee Maraunjanique Smallwood (“Smallwood”). In two issues, the City argues the trial court lacks subject-matter jurisdiction because of (1) the emergency exception to waiver of immunity under the Texas Torts Claims Act (“TTCA”), and (2) the official immunity of Houston Fire Department (“HFD”) Captain Edwin Moncivais (“Moncivais”). Because we conclude that the City established that the emergency

exception applies and Smallwood failed to raise a fact issue, we reverse the trial court's order and render judgment granting the City's motion for summary judgment and dismissing Smallwood's claims.

## **I. BACKGROUND**

On April 2, 2021, Moncivais was driving an ambulance to his HFD station, accompanied by paramedic Stuart Whisler ("Whisler"), when Whisler "noticed a significant amount of flames bellowing out of building located approximately seven city blocks away from our location." Based on the location of the flames, Moncivais "knew that the flames would be in a highly populated residential area." Moncivais listened to the radio and did not hear any communications concerning a response to the fire, indicating it had not yet been reported, and he rolled down the ambulance's windows to listen for the sound of responding units but did not hear any sirens or see any emergency lights. Moncivais believed their assistance "would be necessary to preserve the life of the residents and properties in the area." Moncivais thus decided to drive the ambulance towards the fire and attempt to locate it.

In his attempt to locate the fire, Moncivais drove north on Live Oak Street, "which is a very narrow street, with one north bound and one south bound lane." As Moncivais approached the corner of Southmore Street and Live Oak Street, he encountered two firetrucks with their lights and sirens activated attempting to turn south onto Live Oak Street from Southmore Street, but the ambulance's position and presence prevented the firetrucks from having ample room to maneuver the turn. The firetrucks activated their airhorns several times, indicating to Moncivais that they were requesting vehicles in their path yield the right of way immediately. At this point, Moncivais reversed the ambulance to allow for the passage of the firetrucks and in doing so struck Smallwood's vehicle, which was behind the ambulance in the same lane of travel on Live Oak Street.

In 2023, Smallwood filed a lawsuit against the City, asserting negligence claims. In her live pleading, Smallwood alleges that she and Moncivais were both traveling north on Live Oak Street when Moncivais “backed without safety” and collided with Smallwood’s vehicle.

The City filed a traditional motion for summary judgment, arguing in relevant part that the emergency exception to the waiver of immunity in the TTCA preserved the City’s governmental immunity, and thus the trial court lacked subject-matter jurisdiction over Smallwood’s lawsuit against it. The City attached to its motion the Officer’s Crash Report of the collision and Moncivais’s affidavit.

Smallwood filed a response to the City’s motion and argued that the emergency exception did not apply because Moncivais’s actions leading up to the collision were not in compliance with the applicable laws in Texas Transportation Code Chapter 546. In support, Smallwood attached her answers to interrogatories and the same crash report.

On April 10, 2024, the trial court signed an order denying the City’s motion for summary judgment. This interlocutory appeal followed. *See* Tex. Civ. Prac. & Rem. Code Ann. § 51.014(8); *Town of Shady Shores v. Swanson*, 590 S.W.3d 544, 549 (Tex. 2019).

## **II. DISCUSSION**

In its first issue, the City argues the trial court lacks subject-matter jurisdiction over Smallwood’s lawsuit because the emergency exception applies to the TTCA’s waiver of immunity.

### **A. STANDARD OF REVIEW**

Subject-matter jurisdiction is necessary to a court’s authority to decide a case. *Tex. Ass’n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 443 (Tex. 1993). A

plaintiff must allege facts affirmatively showing the trial court has subject-matter jurisdiction, *id.* at 446, and a party may challenge the lack of subject-matter jurisdiction by filing a plea to the jurisdiction or by other means, including, as here, by motion for summary judgment. *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000); *see also Buzbee v. Clear Channel Outdoor, LLC*, 616 S.W.3d 14, 21 (Tex. App.—Houston [14th Dist.] 2020, no pet.). Because subject-matter jurisdiction is a question of law, we review the court’s ruling de novo. *Tex. Dep’t of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004); *City of Brazoria v. Ellis*, No. 14-14-00322-CV, 2015 WL 3424732, at \*3 (Tex. App.—Houston [14th Dist.] May 28, 2015, no pet.) (mem. op.).

To obtain a traditional summary judgment based on lack of jurisdiction, a movant must produce evidence showing that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. *See Swanson*, 590 S.W.3d at 551 (citing Tex. R. Civ. P. 166a(c)). The nonmovant may raise a genuine issue of material fact by producing more than a scintilla of evidence establishing the existence of the challenged element. *Id.* We take as true all evidence favorable to the nonmovant and indulge every reasonable inference and resolve any doubts arising from such evidence in the nonmovant’s favor. *See Miranda*, 133 S.W.3d at 228.

Our primary objective in construing statutes is to give effect to the Legislature’s intent. *Molinet v. Kimbrell*, 356 S.W.3d 407, 411 (Tex. 2011). The plain meaning of the text is the best expression of legislative intent. *Id.* We read statutes contextually to give effect to every word, clause, and sentence because every word or phrase is presumed to have been intentionally used with a meaning and a purpose. *Fort Worth Transp. Auth. v. Rodriguez*, 547 S.W.3d 830, 838 (Tex. 2018); *see Lippincott v. Whisenhunt*, 462 S.W.3d 507, 509 (Tex. 2015) (per curiam) (“We presume the Legislature included each word in the statute for a purpose and that

words not included were purposefully omitted.”).

## **B. APPLICABLE LAW**

A municipality is a political subdivision of the state that is immune from suit for the tortious conduct of its officers and employees unless the municipality’s common law immunity is waived. *City of Mesquite v. Wagner*, No. 23-0562, \_\_\_ S.W.3d \_\_\_, \_\_\_, 2025 WL 1271294, at \*2 (Tex. May 2, 2025) (per curiam); *City of Lancaster v. Chambers*, 883 S.W.2d 650, 658 (Tex. 1994). The TTCA provides a limited waiver of immunity for suits against any “governmental unit,” Tex. Civ. Prac. & Rem. Code Ann. § 101.021, “including any city,” *id.* § 101.001(3)(B), for personal injury caused by the wrongful act or omission or the negligence of an employee acting within his scope of employment if the personal injury or death arises from the operation or use of a motor-driven vehicle or motor-driven equipment. *Id.* § 101.021(1).

Additionally, the TTCA includes an exception to this waiver of immunity:

This chapter does not apply to a claim arising . . . from the action of an employee while responding to an emergency call or reacting to an emergency situation if the action is in compliance with the laws and ordinances applicable to emergency action, or in the absence of such a law or ordinance, if the action is not taken with conscious indifference or reckless disregard for the safety of others.

*Id.* § 101.055(2). The plaintiff bears the burden of negating the applicability of this emergency exception. *City of San Antonio v. Maspero*, 640 S.W.3d 523, 529 (Tex. 2022); *see City of San Antonio v. Hartman*, 201 S.W.3d 667, 672 (Tex. 2006).

### **1. Responding To An Emergency Call Or Reacting To An Emergency Situation**

Smallwood did not dispute in the trial court that Moncivais was responding to an emergency call or reacting to an emergency situation. *See* Tex. Civ. Prac. & Rem.

Code Ann. § 101.055. Instead, Smallwood only argued that a fact issue existed “as to whether or not . . . Moncivais [w]as *properly responding* to an emergency call – e.g., using flashing lights and sirens – at the time he backed into [Smallwood’s] vehicle.” (emphasis added). Nevertheless, to obtain summary judgment, the City as the movant must produce evidence showing that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. *See* Tex. R. Civ. P. 166a(c); *City of Houston v. Sauls*, 690 S.W.3d 60, 70 (Tex. 2024).

The City’s motion for summary judgment argued that Moncivais was responding to an emergency call *or* reacting to an emergency situation, and thus the emergency exception applied. *See* Tex. Civ. Prac. & Rem. Code Ann. § 101.055(2); *City of Austin v. Powell*, 704 S.W.3d 437, 457 (Tex. 2024) (“[T]he emergency exception . . . is expressly limited to responding to an emergency call or reacting to an emergency situation . . . .”) (internal quotation marks omitted). The TTCA does not define the terms “emergency call” or “emergency situation.” *See* Tex. Civ. Prac. & Rem. Code Ann. § 101.001.

The word “emergency” is defined as “an unforeseen combination of circumstances or the resulting state that calls for immediate action.” *City of Houston v. Chourng*, No. 14-24-00251-CV, 2025 WL 1187191, at \*5 (Tex. App.—Houston [14th Dist.] Apr. 24, 2025, no pet. h.) (mem. op.) (citing *Emergency*, Merriam-Websters.com, <https://www.merriam-webster.com/dictionary/emergency>); *Jefferson County v. Hudson*, No. 09-11-00168-CV, 2011 WL 3925724, at \*3 (Tex. App.—Beaumont Aug. 25, 2011, no pet.) (mem. op.) (citing Webster’s Third New International Dictionary, 741 (2002)). And Texas courts have given the term “emergency” a broad, though not unlimited, interpretation. *See Tex. Dep’t of Pub. Safety v. Zakir*, 665 S.W.3d 884, 891 (Tex. App.—Houston [14th Dist.] 2023, no pet.); *see also* Tex. Gov’t Code Ann. § 311.011; *City of Houston v. Cruz*, No. 01-

22-00647-CV, 2023 WL 8938408, at \*9 (Tex. App.—Houston [1st Dist.] Dec. 28, 2023, no pet.) (mem. op.) (concluding that an animal enforcement officer was not reacting to an emergency situation when she was responding to a nondescript dog bite call and collided with a vehicle).

Similarly, the TTCA does not define “responding to” an emergency call or “reacting to” an emergency situation. *See* Tex. Civ. Prac. & Rem. Code Ann. § 101.001. Because these terms are not defined in the statute, we give each its ordinary meaning. *City of San Antonio v. Hartman*, 201 S.W.3d 667, 672 n.19 (Tex. 2006); *City of Pasadena v. Kuhn*, 260 S.W.3d 93, 99 (Tex. App.—Houston [1st Dist.] 2008, no pet.); *see* Tex. Gov’t Code Ann. §§ 311.011(a) (“Words and phrases shall be read in context and construed according to the rules of grammar and common usage.”), 312.002 (providing that “words shall be given their ordinary meaning” “unless connected with and used with reference to a particular trade or subject matter or is used as a word of art . . . .”); *Rattray v. City of Brownsville*, 662 S.W.3d 860, 871 (Tex. 2023) (“[W]e construe the statutory text reasonably—and this approach, happily and perhaps unsurprisingly, often yields reasonable answers.”); *Jaster v. Comet II Const., Inc.*, 438 S.W.3d 556, 563 (Tex. 2014) (explaining that the court may look to dictionary definitions, among other sources, to ascertain the ordinary meaning of statutory terms). Merriam-Webster’s Dictionary defines “react” in part as: “to change in response to a stimulus.” *React*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/react> (last visited July 6, 2025).

Moncivais’s affidavit submitted in support of the City’s summary-judgment motion provides that he was seeking to respond to “a significant amount of flames” “in a highly populated residential area” and that he knew “an immediate response would be necessary to preserve the life of the residents and properties in the area”

based on his training and experience. Moncivais listened for radio chatter regarding the fire and did not hear any communications “that would lead us to believe that the emergency was reported or that there was an emergency response in progress.” In sum, Moncivais’s affidavit provides that he knew there was an evolving fire nearby in potentially a highly populated residential area when he encountered two firetrucks with their lights and sirens on. Moncivais further states that he reversed the ambulance because the “emergency fire trucks needed to respond to the fire in order to preserve the life of the residents and to protect the properties in the area” and because he “was unable to move [the ambulance] in any other direction but backwards.”

This evidence established that Moncivais was reacting to an emergency situation when he reversed the ambulance and collided with Smallwood. As no evidence raised a material fact question on the issue, we conclude that the City’s evidence established that Moncivais was reacting to an emergency situation when he reversed the ambulance and collided with Smallwood. *See Hartman*, 201 S.W.3d at 673 (“[B]ecause the [TTCA] creates governmental liability where it would not otherwise exist, we cannot construe the emergency exception to exclude emergencies the Legislature might have intended to include.”); *Tex. Dep’t of Pub. Safety v. Little*, 259 S.W.3d 236, 239 (Tex. App.—Houston [14th Dist.] 2008, no pet.) (“*Hartman* places the burden on the plaintiff to produce sufficient evidence to raise a fact issue concerning whether the government employee was responding to an emergency.”); *see, e.g., Green v. City of Friendswood*, 22 S.W.3d 588, 594 (Tex. App.—Houston [14th Dist.] 2000, pet. denied) (concluding that affidavit supported summary judgment based on the emergency exception because the affidavit was “clear, positive and direct,” “free from inconsistencies,” and “could have been readily controverted”); *City of Coll. Station v. Kahlden*, No. 10-12-00262-CV, 2014

WL 1269026, at \*5 (Tex. App.—Waco Mar. 27, 2014, pet. denied) (mem. op.) (concluding that officer was reacting to an emergency when he witnessed a near collision because of the presence of boots on the road, determined that this was an emergency, and took action in response to it); *see also Payne v. City of Houston, Tex.*, No. 24-20150, 2025 WL 999085, at \*6 (5th Cir. Apr. 3, 2025) (“Every case we have come across in the car wreck context interprets the ‘emergency situation’ to be an exigent circumstance separate from the collision.”).

The legislature’s attention to emergency contexts without greater specificity reflects a recognition that it cannot—and, perhaps more to the point, that the [emergency governmental employee] cannot—predict and plan in advance for every possible emergency. Likewise fruitless would be any attempt to delineate every way [an emergency governmental employee] might permissibly react in an emergency situation.

*Powell*, 704 S.W.3d at 454. The underlying public policy supporting this immunity is based on the need to balance the safety of the public with the need for prompt responses to police, fire, and medical emergencies. *City of Amarillo v. Martin*, 971 S.W.2d 426, 429 (Tex. 1998).

By imposing a double standard for liability, one for emergency vehicle operators in emergency situations and one for civilian drivers, the Legislature has placed a heavier burden on the civilian drivers. Several policy considerations support this heavier burden. First, emergency vehicle operators typically face more exigent circumstances than do civilian drivers. Emergency vehicle operators are charged with protecting the public’s health, safety, and property, and a few minutes or even seconds can make the difference between life and death.

*City of Amarillo v. Martin*, 971 S.W.2d 426, 431 (Tex. 1998).

## **2. Laws & Ordinances Applicable To Emergency Action**

Smallwood argues only that the emergency exception does not apply here because Moncivais failed to comply with the applicable laws in Transportation Code

Chapter 546 by not using the ambulance's lights when it reversed. Smallwood points to the crash report and her answer to an interrogatory to raise a fact issue as to whether the ambulance's lights and siren were not on.

First, we must determine whether Moncivais's actions were governed by any applicable law or ordinance applicable to emergency action. *See Powell*, 704 S.W.3d at 452. If so, then the jurisdictional question is only whether there is a fact issue as to his compliance with those laws. *See id.* “[W]hile statutes that *specifically* govern emergency action are relevant where a plaintiff attacks governmental immunity in the emergency context, generally applicable traffic rules are not.” *Id.*

Texas Transportation Code Chapter 546 is a specific body of rules and regulations that govern the operation of emergency vehicles. *Id.* Specifically, Transportation Code § 546.001 enumerates specific conduct that the operator of an authorized emergency vehicle may take that would otherwise violate traffic laws, including proceeding past a red signal or stop sign, exceeding a maximum speed limit, and disregarding a regulation governing movement or turning in specified directions. Tex. Transp. Code Ann. § 546.001; *Maspero*, 640 S.W.3d at 530–31. When a governmental employee is engaged in this conduct permitted by § 546.001, the Transportation Code requires that the emergency vehicle's operator must use, at the discretion of the operator in accordance with policies of the department or the local government that employs the operator, audible *or* visual signals that meet the pertinent requirements of Transportation Code §§ 547.305 and 547.702. Tex. Transp. Code Ann. § 546.003; *Green*, 22 S.W.3d at 593.

However, the Transportation Code permits the conduct enumerated in § 546.001 *only* when “(1) responding to an emergency call; (2) pursuing an actual or suspected violator of the law; (3) responding to but not returning from a fire alarm; (4) directing or diverting traffic for public safety purposes; or (5) conducting a police

escort.” Tex. Transp. Code Ann. § 546.002(b). By implication, the audible or visual signals are required when engaged in conduct enumerated in § 546.001 if the employee is (1) responding to an emergency call; (2) pursuing an actual or suspected violator of the law; (3) responding to but not returning from a fire alarm; (4) directing or diverting traffic for public safety purposes; or (5) conducting a police escort. *See id.*; *Maspero*, 640 S.W.3d at 530 (“Section 546.003 applies to officers while ‘engaging in conduct permitted by section 546.001,’ not while engaging in pursuit of a fleeing suspect.”).

In her petition, Smallwood alleged that Moncivais failed to: (1) keep a proper lookout, (2) obey the instructions of any official traffic sign applicable thereto placed in accordance, (3) take proper measures to control his vehicle, and (4) control the vehicle’s speed. Smallwood does not specifically allege that Moncivais disregarded a regulation governing movement or turning in specified directions. *See* Tex. Transp. Code Ann. § 546.001; *see also id.* § 545.415(a) (“An operator may not back the vehicle unless the movement can be made safely and without interference with other traffic.”); *Powell*, 704 S.W.3d at 452–53 (“Laws that specifically regulate emergency responses further indicate that generally applicable traffic laws are inapplicable to emergency responses.”). In any event, as noted, § 546.002 limits the application of the conduct permitted by section 546.001(4). Tex. Transp. Code Ann. § 546.002(b); *Powell*, 704 S.W.3d at 453; *Zakir*, 665 S.W.3d at 892. Of these scenarios listed in § 546.002, the only one that could arguably apply here is “responding but not returning from a fire alarm.” But there is no evidence or allegation that Moncivais was responding to “a fire alarm”; instead, Moncivais’s affidavit states that he “heard no sounds of sirens, nor did we see any emergency lights.” And later, when Moncivais reversed the ambulance and struck Smallwood’s vehicle, Moncivais was responding to the firetrucks’ sirens and need for the right of

way on the road.

Nevertheless, even if we assume, without deciding, that Moncivais undertook conduct permitted by §§ 546.001 and 546.002, we would conclude that the City presented evidence that Moncivais complied with the laws applicable to emergency action. This is because when an emergency governmental employee is engaged in this conduct permitted by § 546.001, the Transportation Code requires that the emergency vehicle's operator must use, at the discretion of the operator in accordance with policies of the department or the local government that employs the operator, "audible *or* visual signals" that meet the pertinent requirements of Transportation Code §§ 547.305 and 547.702. Tex. Transp. Code Ann. § 546.003; *Green*, 22 S.W.3d at 593.

(a) An authorized emergency vehicle may be equipped with a siren, exhaust whistle, or bell:

(1) of a type approved by the department; and

(2) that emits a sound audible under normal conditions at a distance of at least 500 feet.

(b) The operator of an authorized emergency vehicle shall use the siren, whistle, or bell when necessary to warn other vehicle operators or pedestrians of the approach of the emergency vehicle.

Tex. Transp. Code Ann. § 547.702(a)–(b).

Moncivais's affidavit provides:

With my emergency lights activated, and due to the pending emergency vehicle in front of me, I placed my Medical Unit in reverse, which activated the reverse lights and warning sound on the back of the unit. . . . There were no vehicles in the roadway behind Ms. Smallwood, and Ms. Smallwood did not yield the right of way, nor did she respond to the ensuing emergency vehicles lights, siren[,] and airhorns.

Smallwood argues she raised an issue of fact as to whether the ambulance had

its lights and sirens on because of the crash report contained an unchecked box for “Pol., Fire, EMS on Emergency (Explain in Narrative if checked).” However, this evidence does not raise a rational inference that the ambulance did not have audible signals on when Moncivais reversed and collided with Smallwood’s vehicle, and there is no additional evidence to support such a conclusion. *See id.* §§ 546.003, 547.702(a)–(b); *see also Martinez v. United States*, 806 Fed. App’x 293, 296 (5th Cir. 2020) (“[I]t is uncontroverted that Agent Rocha was responding to an emergency call with his emergency lights activated. Although he did not activate his sirens, Agent Rocha’s conduct in this regard was in accordance with Texas law.”); *Hernandez v. United States*, No. 1:17-CV-00087, 2018 WL 4103015, at \*5 (S.D. Tex. July 2, 2018) (mem. op. & order) (“The statute . . . requires only audible *or* visual signals, not both.”).

Smallwood also points to her answer to an interrogatory in support of her argument that she raised a fact issue, but “[a]nswers to interrogatories may be used only against the responding party.” Tex. R. Civ. P. 197.3. Because answers to interrogatories can be used only against the party answering them, a party cannot rely on its own answers to raise a fact issue. *See id.*; *Morgan v. Anthony*, 27 S.W.3d 928, 929 (Tex. 2000); *Yates v. Fisher*, 988 S.W.2d 730, 731 (Tex. 1998). Additionally, we note that Smallwood’s answer to an interrogatory question provides only that the ambulance did not have its sirens on, and it is silent as to whether the ambulance emitted audible noises as it reversed.

### **3. Conscious Indifference Or Reckless Disregard**

Because Moncivais’s actions were not covered by the statutes that specifically govern emergency action, it was Smallwood’s burden to raise an issue of fact as to whether Moncivais was reckless when he reversed the ambulance. *See Tex. Civ. Prac. & Rem. Code Ann. § 101.055(2)*; *Powell*, 704 S.W.3d at 452; *Maspero*, 640

S.W.3d at 529. “Under the Transportation Code, reckless driving consists of driving a vehicle in ‘willful or wanton disregard for the safety of persons or property.’” *Maspero*, 640 S.W.3d at 531 (quoting Tex. Transp. Code Ann. § 545.401(a)). This requires conscious indifference or subjective awareness of an extreme risk. *Id.* Further, recklessness reflects more than a momentary judgment lapse and instead requires a showing that the driver committed an act he knew or should have known posed a high degree of risk of serious injury. *Id.*

Here, Moncivais’s affidavit provides his ambulance was blocking the path of two firetrucks that had their lights and sirens on and that he was unable to move the ambulance anywhere but backwards. Moncivais states that he surveyed his surroundings and checked his rearview mirrors and “noticed that there were no cars behind me.” Moncivais also asked Whisler to check that the path behind the ambulance was clear, and Whisler confirmed that it was. Moncivais states that he reversed the ambulance “in a slow speed of approximately 2-5 miles per hour” with the reverse lights and the warning sounds on the back of the ambulance on. According to Moncivais, the ambulance contacted Smallwood’s vehicle after about five feet and that Smallwood, unbeknownst to Moncivais, had pulled her vehicle close enough behind the ambulance to avoid reflection in the ambulance’s mirrors. Moncivais’s affidavit further provides that he weighed the need to reverse versus the risks of reversing and determined that the need to clear the path for the firetrucks was “paramount” “in order to preserve the life of the residents and to protect the properties in the area and that “[t]here was no risk of harm associated with my decision to move out of the way of the emergency vehicles.”

This uncontroverted evidence establishes that Moncivais exercised care for the safety of other motorists when he reversed the ambulance, and there is no evidence that he knew or should have known that reversing the ambulance under the

circumstances here posed a high degree of serious injury. *See* Tex. Civ. Prac. & Rem. Code Ann. § 101.055(2); Tex. Transp. Code Ann. § 545.401(a). Viewing the evidence in the light most favorable to Smallwood, we conclude that Smallwood failed to raise a fact issue as to whether Moncivais’s actions reflected conscious indifference or reckless disregard for the safety of others. *See Maspero*, 640 S.W.3d at 532; *see, e.g., Quested v. City of Houston*, 440 S.W.3d 275, 286 (Tex. App.—Houston [14th Dist.] 2014, no pet.) (concluding that there was no evidence of reckless disregard or conscious indifference when officer considered the need to quickly reach a scene versus the risks to others and determined that the need outweighed the risks, considering the traffic and weather conditions, and officer was careful to watch for other drivers and pedestrians); *City of Pasadena v. Kuhn*, 260 S.W.3d 93, 99–100 (Tex. App.—Houston [1st Dist.] 2008, no pet.) (concluding that the evidence did not show the officer’s actions were taken with reckless disregard or conscious indifference when the officer activated lights and siren and slowed down before entering an intersection).

We conclude the City established the TTCA’s emergency exception applies to Smallwood’s claims against the City as a matter of law and that Smallwood failed to raise a fact issue as to whether the City’s immunity was waived. *See Hartman*, 201 S.W.3d at 672–73; *see, e.g., White*, 624 S.W.3d at 36. We thus sustain the City’s first issue.<sup>1</sup>

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<sup>1</sup> Because the City’s first issue is dispositive, we need not address its second issue arguing that the trial court lacked subject-matter jurisdiction because of Moncivais’s official immunity. *See* Tex. Civ. Prac. & Rem. Code Ann. § 101.021; Tex. R. App. P. 47.4; *DeWitt v. Harris County*, 904 S.W.2d 650, 653–54 (Tex. 1995).

### III. CONCLUSION

We reverse the trial court's order and render judgment granting the City's motion for summary judgment and dismissing Smallwood's claims.

/s/ Brad Hart  
Justice

Panel consists of Justices Wise, Jewell, and Hart.