

**Reversed and Rendered and Memorandum Opinion filed December 9, 2025.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-24-00811-CV**

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**CITY OF HOUSTON, Appellant**

**V.**

**ANNIE GUTIERREZ, ALLEAH DAVILLA AND JAMMIE JIMENEZ,  
Appellees**

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**On Appeal from the 270th District Court  
Harris County, Texas  
Trial Court Cause No. 2023-54189**

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**MEMORANDUM OPINION**

This case arises from an automobile collision. By a single issue on appeal, the City of Houston argues that the trial court erred as a matter of law by denying its traditional motion for summary judgment based on governmental immunity from suit. Because the evidence shows the coming-and-going rule applies as a matter of law to the City employee's collision that occurred during his morning commute, we reverse and render judgment dismissing Appellees Annie Gutierrez, Alleah Davilla

and Jammie Jimenez’s lawsuit against the City.

## I. FACTUAL AND PROCEDURAL BACKGROUND

At approximately 5:30 a.m. one morning, a Chevrolet Silverado truck struck the back of a car in a left-hand-turn lane on Westpark Drive in Houston. City of Houston Fire Chief Mark Griffiths was the driver of the truck, which the City owned. Appellees sued the City alleging personal injuries from the collision. Appellees alleged Griffiths drove negligently while in the course and scope of his City employment at the time of the collision, and thus, the City’s immunity was waived under the Texas Torts Claims Act (“TTCA”). *See* Tex. Civ. Prac. & Rem. Code Ann. § 101.021(1).

The City moved for traditional summary judgment asserting immunity and attached excerpts from Griffiths’s deposition as summary-judgment evidence. Appellees responded to the motion, the City replied, and the motion was set on the trial court’s submission docket. The trial court denied the City’s motion for summary judgment and this appeal followed.

The City’s evidence showed that when this accident occurred, Griffiths was driving from his home. Griffiths was about ten minutes away from the fire station, but planned to go to the gym, then to work. Griffiths was wearing his gym clothes at the time of the accident. Griffiths testified his normal routine was to go to the gym, work out, then put on his uniform and then start work.

Griffiths’s work hours were 6:00 a.m. to 4:00 p.m., Tuesdays through Fridays. Griffiths’s work duties did not include responding to emergencies. Griffiths described his work as training firefighters and quality assurance of incoming calls and complaints. When asked whether he was in the “course and scope” of his employment at the time of the collision, Griffiths answered, “yes.”

In their response to the summary-judgment motion, Appellees filed various exhibits including Griffiths's deposition transcript, a certified crash report, and a Houston Fire Department ("HFD") Crash Information Sheet. The Crash Information Sheet stated as follows:

## **HOUSTON FIRE DEPARTMENT**

### **Crash Information Sheet**

You have been involved in a crash with a Houston Fire Department vehicle. Because the vehicle was proceeding to an emergency, it could not remain at the scene. The police have been notified. If you wish, please remain at the scene until the Police and Fire Investigators have arrived. If you would like more information, call the Houston Fire Department Emergency Operations Center at

**713-884-3143**

When asked about the Crash Information Sheet at his deposition, Griffiths testified that per HFD policy when a chief is involved in an accident, an equal or higher ranked chief must come to the scene to complete an accident report. Griffiths testified he believes the Deputy Chief who arrived at the scene handed the Crash Information Sheet to Appellees as part of normal procedure even though Griffiths was not responding to an emergency and was just driving to work. It is undisputed that Griffiths remained at the accident scene, rather than proceeding to an emergency. It is also undisputed that Griffiths was driving a normal truck and not an emergency vehicle.

## **II. ISSUE PRESENTED AND STANDARD OF REVIEW**

By a single issue on appeal, the City argues it is entitled to immunity under the coming-and-going rule because its employee Griffiths was commuting between home and work, and not in the course and scope of his City employment, when his city-owned truck struck the car. The City argues the trial court erred as a matter of

law when it denied its motion for summary judgment because Appellees failed to raise a genuine issue of material fact that would defeat summary judgment based on immunity.

Governmental immunity is a jurisdictional question that may be raised by motion for summary judgment, and which we review de novo on appeal. *Klein Indep. Sch. Dist. v. Wardlaw*, 693 S.W.3d 610, 614 (Tex. App.—Houston [14th Dist.] 2023, pet. denied) (citing *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004)). To obtain a traditional summary judgment, a movant must produce evidence showing that no genuine issue of material fact exists and that the movant is entitled to judgment as a matter of law. *Id.* (citing *Town of Shady Shores v. Swanson*, 590 S.W.3d 544, 551 (Tex. 2019)). 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.* (citing *Ford Motor Co. v. Ridgway*, 135 S.W.3d 598, 600 (Tex. 2004)). We take as true all evidence favorable to the nonmovant and indulge every reasonable inference and resolve any doubts in the nonmovant's favor. *Id.* (citing *Miranda*, 133 S.W.3d at 228).

### III. ANALYSIS

Appellees argue the Crash Information Sheet and Griffiths's testimony that he was in the course and scope of his employment were sufficient to defeat the City's motion for summary judgment. Appellees argue further that the control an HFD Deputy Chief exercised over Chief Griffiths at the accident scene, as well as the fact that Griffiths was driving a city-furnished take-home vehicle, and was in close proximity to work at the time of the accident also support the conclusion he was in the course and scope of his City employment. Finally, Appellees argue the dual-purpose exception to the coming-and-going rule applies and compels the conclusion that Griffiths was in the course and scope of his employment because he was

traveling to the gym, and then to work. Appellees reason Griffiths was therefore serving both his own interest and his employer's interest at the same time. We disagree with Appellees' position that Griffiths was in the course and scope of his City employment at the time of the collision.

#### **A. TTCA Scope of Employment and the Coming-and-Going Rule**

The TTCA waives a governmental unit's immunity from suit for personal injuries arising from the negligent use of a motor vehicle by an employee acting within the scope of his employment when the employee would be personally liable to the claimant under Texas law. Tex. Civ. Prac. & Rem. Code § 101.021(1). The City of Houston is a governmental unit for purposes of the Act. *Id.* § 101.001(3)(B); *City of Pearland v. Contreras*, No. 01–15–00345–CV, 2016 WL 358612, at \*2 (Tex. App.—Houston [1st Dist.] Jan. 28, 2016, no pet.) (mem. op.). Under the Act, “scope of employment” means the performance of “the duties of an employee's office or employment and includes being in or about the performance of a task lawfully assigned to an employee by competent authority.” Tex. Civ. Prac. & Rem. Code § 101.001(5).

When a vehicle involved in a collision is owned by the driver's employer, a presumption arises that the driver was acting in the course and scope of his employment when the collision occurred. *City of Houston v. Fisher*, No. 14–21–00573–CV, 2023 WL 2322971, at \*3 (Tex. App.—Houston [14th Dist.] Mar. 2, 2023, pet. denied) (mem. op.) (citing *City of Houston v. Carrizales*, No. 01–20–00699–CV, 2021 WL 3556216, at \*4 (Tex. App.—Houston [1st Dist.] Aug. 12, 2021, pet. denied) (mem. op.) and *Molina v. City of Pasadena*, No. 14–17–00524–CV, 2018 WL 3977945, at \*4 (Tex. App.—Houston [14th Dist.] Aug. 21, 2018, no pet.) (mem. op.)). Evidence that the driver was on a personal errand or merely commuting at the time of the accident rebuts the presumption. *Id.* (running a

personal errand); *Lara v. City of Hempstead*, No. 01–15–00987–CV, 2016 WL 3964794, at \*4 (Tex. App.—Houston [1st Dist.] July 21, 2016, pet. ref’d) (mem. op.) (commuting). It is then the plaintiff’s burden to produce other evidence that the driver was in the course and scope of his employment. *Fisher*, 2023 WL 2322971, at \*3.

This Court recently summarized the coming-and-going rule as follows:

Under the coming-and-going rule, an “employee is generally not acting within the scope of [her] employment when traveling to and from work.” *Painter v. Amerimex Drilling I, Ltd.*, 561 S.W.3d 125, 136 (Tex. 2018). The coming-and-going rule reflects that an accident while traveling to and from work does not generally arise from a person’s employment but instead from the risks and hazards inherent to the driving public. *Smith v. Tex. Emp. Ins. Ass’n*, 105 S.W.2d 192, 193 (Tex. [Comm’n Op.] 1937); see *Cameron Int’l Corp. v. Martinez*, 662 S.W.3d 373, 376 (Tex. 2022). “Such travel hazards do not arise out of the business of an employer; thus, the law does not hold the employer liable for injuries resulting from engaging in these risks.” *Cameron*, 662 S.W.3d at 376.

*City of Houston v. Sanchez*, No. 14–23–00152–CV, 2024 WL 3713206, at \*2 (Tex. App.—Houston [14th Dist.] Aug. 8, 2024, no pet.) (mem. op.).

In *Lara*, the First Court of Appeals addressed whether a written policy created a fact issue on whether the coming-and-going rule applied. *Lara*, 2016 WL 3964794, at \*4. The policy stated that City of Hempstead police officers could only drive patrol units outside of Hempstead if the vehicles were being used for official business. *Id.* The plaintiff argued the policy created a fact issue on whether the officer was in the course and scope of his employment when he struck her vehicle in Houston while he was driving to Hempstead to work. *Id.* at \*1, 4. The First Court disagreed because the undisputed evidence from the Hempstead police officer and his supervisor was that the supervisor had authority to issue a vehicle to commute to and from work and had done so despite the general policy. *Id.*

Here, the City’s undisputed evidence showed that under the coming-and-going rule, Griffiths was not conducting the City’s business and was merely commuting when the collision occurred. *See id.* The undisputed evidence showed that the HFD Crash Information Sheet was routinely handed out at the scene of an auto collision. Griffiths was not driving an emergency vehicle, he remained at the scene, and was simply commuting at the time of the accident. Like the inapplicable policy in *Lara*, the generic HFD Crash Information Sheet does not present a genuine issue of material fact in this case granted the undisputed facts.

Further, Appellees cite no case law that compels the conclusion that being approximately ten minutes away from the workplace on a public street while commuting brings an employee within the course and scope of his employment. Instead of being exposed to hazards arising from Griffiths’s HFD employment, Griffiths and Appellees were exposed to the risks and hazards inherent to the driving public when the collision occurred. *See Sanchez*, 2024 WL 3713206, at \*2 (explaining the rationale for the coming-and-going rule).

Nor does the arrival of another HFD chief to complete an accident report raise a fact issue on whether Griffiths was in the course and scope of his employment at the time of the collision. *See id.* at \*3 (holding that commuting city employee’s drive to a fire station from an accident scene in order to make an accident report did not create a fact issue on scope of employment); *see also Williams v. Great W. Distrib. Co. of Amarillo*, No. 12-16-00095-CV, 2016 WL 7322802, at \*4 (Tex. App.—Tyler Dec. 16, 2016, no pet.) (mem. op.) (holding under common law that employee’s call to supervisor and supervisor’s arrival at auto-accident scene did not change fact that driver was not in course and scope of his employment when driving home to have lunch).

Similarly, Griffiths’s conclusory answer that “yes” he was in the course and

scope of his employment does not control over the undisputed evidence that shows he was merely on his morning commute when the accident occurred. *See City of Keller v. Wilson*, 168 S.W.3d 802, 812 (Tex. 2005) (“Similarly, an employee’s testimony that he was in the course and scope of his employment is legally insufficient to support a verdict against his employer if the evidence shows that legal conclusion to be incompetent.”). Griffiths’s answer to this conclusory question remains no evidence of whether he was acting in the course and scope of his employment even when considered in the context of the other factors which Appellees cite to attempt to raise a fact issue. *See Molina v. City of Pasadena*, No. 14-17-00524-CV, 2018 WL 3977945, at \*5 (Tex. App.—Houston [14th Dist.] Aug. 21, 2018, no pet.) (“An employee’s conclusory testimony that he was acting in the course and scope of his employment amounts to no evidence if the contrary is established as a matter of law.”).

## **B. The Dual-Purpose Rule under the Texas Workers Compensation Act**

Finally, Appellees cite workers-compensation case law to argue the dual-purpose exception to the coming-and-going rule compels the conclusion that Griffiths was in the course and scope of his employment because he was traveling to the gym, and then to work. Appellees cite *Texas Mutual Insurance Company v. Jerrols*, 385 S.W.3d 619, 634 (Tex. App.—Houston [14th Dist.] 2012, pet. dismiss’d) and *State Office of Risk Management v. Pena*, 548 S.W.3d 84, 90 (Tex. App.—Corpus Christi 2018, no pet.) in support of this argument but these cases are off-point. Both of these cases discuss the dual-purpose exception to the coming-and-going rule under the Texas Workers Compensation Act. *See* Tex. Labor Code § 401.011(12)(B); *Jerrols*, 385 S.W.3d at 634; *Pena*, 548 S.W.3d at 91. In *Jerrols*, this Court summarized the dual-purpose exception in a workers-compensation case:

[T]he “dual purpose” rule provides that travel encompassing both

business and personal purposes “is in the course and scope of employment only if the business purpose is both a necessary and a sufficient cause for the travel.” *Leordeanu*, 330 S.W.3d at 243. Stated another way, the “dual purpose” rule “does not exclude work-required travel from the course and scope of employment merely because the travel also furthers the employee’s personal interests that would not, alone, have caused him to make the trip.” *Id.* at 244.

*Jerrols*, 385 S.W.3d at 634 (quoting *Leordeanu v. Am. Prot. Ins. Co.*, 330 S.W.3d 239, 243–44 (Tex. 2010)).

Here, Appellees reason Griffiths was in the course and scope of his employment because Griffiths was serving both his own interest (in going to the gym) and his employer’s interest (in driving to work) at the same time when the collision occurred. Assuming without deciding the dual-purpose rule could apply in the TTCA context, the dual-purpose exception could not apply in this particular case because Griffiths’s drive at the time of the collision served no HFD purpose. Griffiths was simply commuting and not serving for HFD at the time by driving to an emergency, for example. Because the evidence shows as a matter of law that Griffiths was not in the course and scope of his employment at the time of the accident, the City is entitled to immunity from suit and we sustain its sole issue on appeal.

#### IV. CONCLUSION

Having sustained the City of Houston’s sole issue on appeal, we reverse the trial court’s order denying summary judgment and render judgment for the City of Houston dismissing Annie Gutierrez, Alleah Davilla and Jammie Jimenez’s claims

based on the City of Houston's governmental immunity from suit.

/s/ Chad Bridges  
Justice

Panel Consists of Chief Justice Christopher and Justices Wilson and Bridges.