



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

NO. 02-16-00249-CV

ARLINGTON INDEPENDENT
SCHOOL DISTRICT

APPELLANT

V.

T.P. AS NEXT FRIEND OF R.T., A
MINOR

APPELLEE

FROM THE 17TH DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NO. 017-280435-15

MEMORANDUM OPINION¹

The narrow question in this interlocutory appeal from the denial of Appellant Arlington Independent School District's (AISD) jurisdictional plea is whether Appellee T.P. as next friend of R.T., a minor, invoked the trial court's subject-matter jurisdiction by alleging facts establishing a waiver of AISD's

¹See Tex. R. App. P. 47.4.

immunity from suit under the Texas Tort Claims Act (TTCA). See Tex. Civ. Prac. & Rem. Code Ann. § 51.014(a)(8) (West Supp. 2016), § 101.021 (West 2011). We hold that T.P. did so. Therefore, we will affirm.

R.T. was standing in the aisle of a school bus that was traveling at approximately five miles per hour when the driver suddenly applied the brakes to avoid colliding with another bus. The abrupt stop caused R.T. to be thrown forward and to hit her head and arm against the windshield, cracking it. T.P. subsequently filed the underlying lawsuit against AISD, averring generally and specifically that AISD's bus driver's negligence had proximately caused R.T.'s alleged injuries and damages. T.P. also pleaded that the trial court "has subject matter jurisdiction over this claim against [AISD] under the [TTCA] because the Texas Legislature waived [AISD's] sovereign immunity for claims involving personal injury caused by the negligence of its school bus driver pursuant to § 101.021(1) of the Texas Civil Practice & Remedies Code." The trial court denied AISD's motion for summary judgment and plea to the jurisdiction, which disputed that T.P. had alleged a claim for which AISD's immunity from suit was waived.

Focusing exclusively on only the specific, numbered allegations contained in the portion of T.P.'s pleading complaining that AISD was negligent, AISD argues in seven issues that the trial court erred by denying its plea to the jurisdiction because T.P. failed to plead a claim within the TTCA's limited waiver of immunity for claims involving the use or operation of a motor vehicle.

Specifically, AISD contends in its first, second, fourth, and fifth issues that T.P.'s first, second, fourth, and fifth numbered negligence allegations merely implicate AISD's alleged failure to direct, control, or supervise the students on the school bus.² See *Goston v. Hutchison*, 853 S.W.2d 729, 733 (Tex. App.—Houston [1st Dist.] 1993, no writ) (reasoning that “when the allegations of negligence are related to the direction, control, and supervision of the students, the suit is barred; when the allegations of negligence are related to the negligent use of the motor vehicle itself, the suit is not barred”). In its third and sixth issues, AISD argues that T.P.'s third and sixth numbered allegations merely refer to provisions of the transportation code that do not clearly waive AISD's immunity from suit.³ See *Wichita Falls State Hosp. v. Taylor*, 106 S.W.3d 692, 696 (Tex. 2003) (reasoning that statutory waiver of immunity must be clear and unambiguous). And in its seventh issue, AISD argues that the TTCA does not waive immunity for

²Allegation (1) states that AISD was negligent for “[f]ailing to make sure all students, including Plaintiff’s minor child, were properly seated and secured before operating the bus or accelerating from a bus stop.” Allegation (2) states that AISD was negligent for “[f]ailing to keep proper order and security on the school bus in question.” Allegation (4) states that AISD was negligent for “[f]ailing to keep a proper look out for the students on the bus during the bus driver’s operation of the vehicle.” Allegation (5) states that AISD was negligent for “[f]ailing to provide adequate personnel on the school bus in question to maintain the safety and securing of the passengers during the operation of the bus.”

³Allegation (3) states that AISD was negligent for “[o]perating a motor vehicle at a speed greater than is reasonable and prudent under the conditions and having regard for actual and potential hazards then existing, in violation of TEX. TRANS. CODE § 545.351(b)(1).” Allegation (6) states that AISD was negligent for “[o]perating a motor vehicle in a wilful or wanton disregard for the safety of Plaintiff in violation of TEX. TRANS. CODE § 545.401.”

any injuries arising from an intentional tort.⁴ See Tex. Civ. Prac. & Rem. Code Ann. § 101.057(2) (West 2011) (stating the same). A proper application of the standard of review and controlling authority resolves the appeal against AISD.

Governmental immunity protects political subdivisions of the State, including school districts like AISD, from lawsuits for money damages unless immunity has been waived. *Reata Constr. Corp. v. City of Dallas*, 197 S.W.3d 371, 374 (Tex. 2006). The TTCA provides a limited waiver of immunity for personal injuries that are proximately caused by the negligence of an employee acting within the scope of her employment if the personal injuries “arise[] from the operation or use of a motor-driven vehicle.” Tex. Civ. Prac. & Rem. Code Ann. § 101.021(1); see *id.* § 101.051 (West 2011) (except as to motor vehicles, exempting school districts from TTCA’s waiver of governmental immunity). To demonstrate a waiver under this part of the TTCA, a plaintiff must show a nexus between the operation or use of the motor-driven vehicle and the plaintiff’s injuries. *Dallas Area Rapid Transit v. Whitley*, 104 S.W.3d 540, 543 (Tex. 2003). This nexus requires more than mere involvement of property; rather, the vehicle’s operation or use must have *actually caused* the injury. *Id.* The operation or use of a motor vehicle thus “does not cause injury if it does no more than furnish the condition that makes the injury possible.” *Id.* (quoting *Dallas Cty. Mental Health*

⁴T.P. acknowledges that she has not alleged any intentional torts against AISD, but AISD apparently felt compelled to raise this issue because R.T. testified at her deposition that she thought the bus driver had intentionally tried to injure her by applying the brakes when she stood up.

& *Mental Retardation v. Bossley*, 968 S.W.2d 339, 343 (Tex.), *cert. denied*, 525 U.S. 1017 (1998)).

In a suit against a governmental unit, the plaintiff must affirmatively demonstrate the trial court's subject-matter jurisdiction by alleging a valid waiver of immunity. *Whitley*, 104 S.W.3d at 542; *Williams v. City of Baytown*, 467 S.W.3d 566, 571 (Tex. App.—Houston [1st Dist.] 2015, no pet.). Significantly, in determining whether this burden has been satisfied, we construe the pleadings liberally in the claimant's favor and look to the pleader's intent. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004); see Tex. R. Civ. P. 45 (requiring pleadings to be construed "so as to do substantial justice"). If a plea to the jurisdiction challenges the existence of jurisdictional facts, we consider relevant evidence submitted by the parties when necessary to resolve the jurisdictional issues that have been raised. *Miranda*, 133 S.W.3d at 227.

The substance of AISD's individual issues is certainly well taken, but the problem with AISD's approach is that, contrary to the standard of review, it strictly construes T.P.'s pleadings and disregards her overall intent instead of liberally construing T.P.'s pleadings with an eye toward her intent. T.P. alleged that R.T. sustained injuries and damages when the person driving the school bus that R.T. was riding in brought the bus to an abrupt stop, causing R.T., who was standing in the aisle, to launch forward and to strike her head against the windshield. R.T. testified in her deposition that when the bus started off, the driver was looking in the rear-view mirror instead of where she was driving. The bus driver stated in

her affidavit that she suddenly applied the brakes to avoid colliding with another school bus. Taken together, and liberally construing T.P.'s pleadings and looking to her intent, T.P. claims that she was thrown into the windshield and injured because the bus driver was not looking where she was driving and had to suddenly apply the brakes to avoid colliding with another bus. Thus, according to T.P.'s allegations and the jurisdictional evidence, the school bus did not simply furnish the condition that made R.T.'s alleged injuries possible, nor did it merely play some irrelevant tangential role in her alleged injuries; rather, T.P. alleged that AISD's operation or use of the school bus *actually caused* R.T.'s injuries. See *Whitley*, 104 S.W.3d at 543. This is sufficient to state a claim within the TTCA's limited waiver of immunity for claims involving the use or operation of a motor vehicle.⁵ See Tex. Civ. Prac. & Rem. Code Ann. § 101.021(1)(A), (B).

Each of the cases that AISD relies upon is inapposite because, unlike in this case, the required nexus between the operation or use of the motor-driven vehicle and the plaintiff's injuries was missing. See *Breckenridge ISD v. Valdez*, 211 S.W.3d 402, 405 (Tex. App.—Eastland 2006, no pet.) (plaintiff sustained injuries after being left alone in a hot bus); *Montoya v. Houston ISD*, 177 S.W.3d 332, 334 (Tex. App.—Houston [1st Dist.] 2005, no pet.) (plaintiff sustained injuries after falling from the emergency exit of a moving school bus); *Goston*,

⁵No doubt, AISD will argue that R.T. was contributorily negligent by standing in the aisle when the bus was moving, but that is an appropriate issue for the factfinder's resolution, not the trial or appellate court's in a jurisdictional plea.

853 S.W.2d at 731 (plaintiffs sustained injuries in automobile accident after school bus dropped them off at a non-designated stop); *Luna v. Harlingen Consol. ISD*, 821 S.W.2d 442, 443 (Tex. App.—Corpus Christi 1991, writ denied) (plaintiff sustained injuries while waiting at a school bus stop); *Heyer v. N. E. ISD*, 730 S.W.2d 130, 130 (Tex. App.—San Antonio 1987, writ ref'd n.r.e.) (plaintiff sustained injuries while waiting at a school bus stop); *Estate of Garza v. McAllen ISD*, 613 S.W.2d 526, 527 (Tex. Civ. App.—Beaumont 1981, writ ref'd n.r.e.) (plaintiff sustained injuries after being stabbed while riding on a school bus).

T.P. invoked the trial court's subject-matter jurisdiction by alleging facts establishing a waiver of AISD's governmental immunity from suit under the TTCA. Accordingly, we overrule AISD's seven issues and affirm the trial court's order denying AISD's plea to the jurisdiction.

/s/ Bill Meier
BILL MEIER
JUSTICE

PANEL: WALKER and MEIER, JJ., and KERRY FITZGERALD (Senior Justice, Retired, Sitting by Assignment).

DELIVERED: February 9, 2017