



NUMBER 13-17-00183-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

CITY OF EDINBURG,

Appellant,

v.

MELINDA BALLI,

Appellee.

**On appeal from the 93rd District Court
of Hidalgo County, Texas.**

MEMORANDUM OPINION

**Before Justices Rodriguez, Benavides, and Longoria
Memorandum Opinion by Justice Rodriguez**

In this interlocutory appeal, appellant City of Edinburg (the City) challenges the denial of its plea to the jurisdiction concerning the personal injury suit brought by appellee Melinda Balli. We reverse and render.

I. BACKGROUND

Balli alleges that on May 19, 2014, she was struck by a vehicle as she used a crosswalk near the Hidalgo County Courthouse. According to her petition, the pedestrian traffic light displayed a “walk” signal for pedestrians when she began to cross North 10th Street. At the same time, the vehicle traffic light at the intersection displayed a green left-turn arrow, indicating that drivers had a protected left turn onto North 10th, across the crosswalk. Cesar Pulido turned left at the intersection and struck Balli.

Balli filed suit against Pulido for negligent driving, and she sued the City, Hidalgo County, and the Texas Department of Transportation (TxDOT) for various forms of negligence related to the traffic signals. Balli subsequently nonsuited Hidalgo County and TxDOT, and Pulido does not participate in the City’s appeal.

Balli supplemented her petition to elaborate on her allegations against the City. She alleged that in April of 2001, the City entered into a Municipal Maintenance Agreement with the State of Texas, in which the City undertook the duty “to make changes in the design and operation of the highway traffic signal(s) as it may deem necessary” The City further assumed the obligation to provide and maintain traffic lights at various intersections, including the intersection where Balli was injured.

According to Balli’s petition, the City was aware of the problem with the traffic signals due to a similar collision on January 17, 2012. She reported that in the prior collision, the traffic lights at the intersection displayed conflicting “walk” and left turn signals, and a driver turned left and struck a pedestrian. Balli claimed that the City became aware of the problem with the traffic lights when the police investigated the prior collision.

Balli alleged that despite the City's awareness, the City failed to resolve the problem with its real property and thereby breached its duties. The City was purportedly negligent in failing to properly sequence or program its traffic lights, failing to adequately maintain its traffic lights, failing to provide safe crossing, failing to reprogram the traffic lights within a reasonable time after notice of previous incidents, and instead allowing a malfunction to persist. Balli alleged that the City's negligent acts and omissions were a proximate cause of the collision and Balli's resulting injuries. Balli further asserted negligence per se, in that the City allegedly violated two laws enacted for public safety: the Texas Manual on Uniform Traffic Control Devices section 4D.05(F)(1)(2) and City of Edinburg Resolution No. 01-1611.

The City filed a plea to the jurisdiction arguing that the traffic lights were not malfunctioning, so as to cause a waiver of immunity under the Texas Tort Claims Act (TTCA). Instead, the City asserted that the lights were working exactly as intended by TxDOT, which originally designed the traffic lights to simultaneously display "walk" and left-turn signals. The City further argued that Balli's complaint related to the design of the roadway, which was a matter of discretion for which there is no waiver of immunity.

The City attached multiple exhibits to substantiate its plea, and Balli responded with proof of her own. After reviewing the evidence, the trial court denied the City's plea. This interlocutory appeal followed.

II. IMMUNITY

By its sole issue, the City argues that it retained immunity (1) because the traffic lights were functioning as intended at the time of Balli's injury, and therefore they did not

constitute a wrongful “condition” of real property, and (2) because Balli complains of a discretionary decision concerning the design of the roadway.

A. Standard of Review

We review the disposition of a jurisdictional plea de novo. *Suarez v. City of Tex. City*, 465 S.W.3d 623, 632 (Tex. 2015). It is the plaintiff’s initial burden to affirmatively demonstrate the court’s jurisdiction by alleging a valid waiver of immunity. *Dallas Area Rapid Transit v. Whitley*, 104 S.W.3d 540, 542 (Tex. 2003). We assume the truth of the jurisdictional facts alleged in the pleadings unless the defendant presents evidence to negate their existence. *Tex. Dep’t of Pub. Safety v. Sparks*, 347 S.W.3d 834, 837 (Tex. App.—Corpus Christi 2011, no pet.). After the government-defendant asserts and supports with evidence that the trial court lacks subject matter jurisdiction, we simply require the plaintiffs, when the facts underlying the merits and subject matter jurisdiction are intertwined, to show that there is a disputed material fact regarding the jurisdictional issue. *Tex. Dep’t of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 228 (Tex. 2004).

In our review, we take as true all evidence favorable to the nonmovant, indulge every reasonable inference, and resolve any doubts in the nonmovant’s favor. *Suarez*, 465 S.W.3d at 633. If the evidence creates a fact question regarding jurisdiction, the plea must be denied pending resolution by the fact finder. *Id.* However, if the relevant evidence is undisputed or fails to raise a question of fact on the jurisdictional issue, the plea to the jurisdiction may be ruled on as a matter of law. *City of El Paso v. Collins*, 483 S.W.3d 742, 755 (Tex. App.—El Paso 2016, no pet.); see *Suarez*, 465 S.W.3d at 633.

B. Applicable Law

A person may appeal from an interlocutory order of a district court that grants or denies a plea to the jurisdiction by a governmental unit. TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(8) (West, Westlaw through 2017 1st C.S.).

The TTCA provides a limited waiver of immunity for personal injury caused by a condition of real property if the governmental unit would, were it a private person, be liable to the claimant according to Texas law. *Id.* § 101.021(2) (West, Westlaw through 2017 1st C.S.); *Tex. A&M Univ. v. Bishop*, 156 S.W.3d 580, 583 (Tex. 2005). The TTCA also creates exceptions to this waiver of immunity.

For one, the governmental unit remains immune to claims arising from the condition of a traffic signal unless the condition is not corrected by the governmental unit within a reasonable time after notice. TEX. CIV. PRAC. & REM. CODE ANN. § 101.060(a)(2) (West, Westlaw through 2017 1st C.S.). When our supreme court has interpreted “condition” in the context of road signs and signals, it has found a waiver of immunity “only in those situations in which the sign or signal was either (1) unable to convey the intended traffic control information, or (2) conveyed traffic control information other than what was intended.” *Tex. Dep’t of Transp. v. Garza*, 70 S.W.3d 802, 807 (Tex. 2002); *Tex. Dep’t of Transp. v. Olivares*, 316 S.W.3d 89, 100 (Tex. App.—Houston [14th Dist.] 2010, no pet.). Thus, in this context, the term “condition” refers exclusively to “something ‘wrong’ with the traffic sign or signal such that it would require correction after notice.” *City of Grapevine v. Sipes*, 195 S.W.3d 689, 695 (Tex. 2006) (quoting *Garza*, 70 S.W.3d at 807) (editorial marks omitted).

For another, the governmental unit also remains immune from suits arising from its discretionary acts and omissions. *Garza*, 70 S.W.3d at 806; see TEX. CIV. PRAC. & REM. CODE ANN. § 101.056(2) (West, Westlaw through 2017 1st C.S.). The TTCA does not waive the State’s sovereign immunity from suit for claims involving roadway design, because roadway design is a discretionary act. *Tex. Dep’t of Transp. v. Ramirez*, 74 S.W.3d 864, 866 (Tex. 2002) (per curiam). “In other words . . . immunity is preserved for the negligent discretionary formulation of policy, but not for the negligent implementation of the policy at the operational level.” *Guadalupe–Blanco River Auth. v. Pitonyak*, 84 S.W.3d 326, 342 (Tex. App.—Corpus Christi 2002, no pet.); *Olivares*, 316 S.W.3d at 100.

C. Discussion

The City contends that the traffic lights did not present a wrongful “condition,” under the meaning of the TTCA, because the simultaneous display of “walk” and left-turn signals was exactly what was intended. According to the City, the sequencing of the traffic lights was originally programmed by TxDOT, and the lights were operating according to TxDOT’s intended design on the day of Balli’s injury. The City asserts that it assumed responsibility for the lights in 2012, and the City has not changed the lights’ programming since that time. The City reasons that because the lights “convey[ed] the intended traffic control information,” *cf. Garza*, 70 S.W.3d at 807, the traffic lights do not qualify as a wrongful condition of real property for which immunity would be waived. *Cf. TEX. CIV. PRAC. & REM. CODE ANN. §§ 101.021(2), 101.060(a)(2).*

To demonstrate these points, the City attached multiple exhibits to its plea, including an agreement with TxDOT whereby the City assumed responsibility for the lights in August of 2012. The City also attached an affidavit and a deposition transcript from

Ponciano Longoria, the director of the City's Public Works Department. Longoria's affidavit attested that after the City assumed control over the lights, the City decided not to alter their design or programming. In his deposition, Longoria agreed with Balli's counsel that on the day of the collision, the system was working as the City intended:

Counsel for Balli: . . . In other words, there was a—the system was set up so that a left turn signal allowed vehicular movements into and across the crosswalk on 10th Avenue at the same time that pedestrians attempting to use that very crosswalk would have seen a walking person signal indication?

Longoria: Yes.

Counsel for Balli: And that's how the City of Edinburg meant for that system to work there, correct?

Longoria: Correct.

Counsel for Balli: . . . In May of 2014, that is exactly how the system was set up, correct?

Longoria: At the time, yes, it was.

Counsel for Balli: Okay. It is still set up that way. The only difference now is that there is a sign that says, turning traffic must yield to pedestrians?

Longoria: Correct.

The record contains similar testimony by Lazaro Ayala, who was the City's traffic safety crew chief at the time of the collision:

Counsel for Balli: Okay. Do you know of other—when you were there recently, did you notice that the left turn signal for traffic coming east on University was—was displayed at the same time that there was a walk signal given for pedestrians?

Ayala: Yes.

Counsel for Balli: Okay. Is it supposed to be that way?

Ayala: Yes.

Based on Longoria's and Ayala's testimony that the traffic lights were functioning as intended, we conclude that the City carried its initial burden by negating the "condition" component of Balli's proposed waiver of immunity. See *Miranda*, 133 S.W.3d at 228. The burden therefore shifted to Balli to introduce evidence supporting the existence of a fact issue. See *id.*

Balli directs our attention to portions of the record which discuss the conflict between the "walk" signal and the protected left-turn signal, as well as the hazard that this conflict allegedly created. But this evidence does not show that the traffic signals displayed anything other than the information that was intended by the responsible governmental units—instead, this evidence simply attacks the wisdom of that intent and the discretionary design choices to which it led. See *Garza*, 70 S.W.3d at 807. Thus, Balli's complaint "implicates the adequacy of" the traffic control programming chosen by the designers of the intersection and adopted by the City, which remains "a discretionary design decision for which immunity is not waived." See *Olivares*, 316 S.W.3d at 101; *Tex. Dep't of Transp. v. Sanchez*, 75 S.W.3d 24, 28–29 (Tex. App.—San Antonio 2001, pet. denied) (finding that TxDOT's decisions in programming traffic signals were a discretionary matter, for which immunity was retained).

Balli has not produced any evidence that would create a fact issue concerning the existence of a "condition" in real property, which was Balli's lone basis for a waiver of immunity. See *Miranda*, 133 S.W.3d at 228. Because Balli has not carried her burden regarding jurisdiction, we agree with the City that its plea to the jurisdiction should have been granted. See *Suarez*, 465 S.W.3d at 633; *Collins*, 483 S.W.3d at 755.

We sustain the City's issue.

III. CONCLUSION

We reverse the judgment of the trial court and render judgment dismissing Balli's suit with prejudice.

NELDA V. RODRIGUEZ
Justice

Delivered and filed the 9th
day of November, 2017.