



**NUMBER 13-18-00065-CV**

**COURT OF APPEALS**

**THIRTEENTH DISTRICT OF TEXAS**

**CORPUS CHRISTI - EDINBURG**

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**ALEJANDRO ZAPATA, INDIVIDUALLY  
AND AS NEXT FRIEND OF YARELY  
ZAPATA, ANTONIO MORALES SR.  
AND IRMA MORALES INDIVIDUALLY  
AND AS NEXT FRIENDS OF ANTONIO  
MORALES JR. AND MIGUEL MORALES,**

**Appellants,**

**v.**

**CITY OF GONZALES,**

**Appellee.**

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**On appeal from the 25th District Court  
of Gonzales County, Texas.**

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**DISSENTING MEMORANDUM OPINION**

**Before Justices Benavides, Hinojosa, and Tijerina  
Dissenting Memorandum Opinion by Justice Tijerina**

For the reasons set forth below, I respectfully dissent.

I agree with the majority that appellants have not raised a fact question as to whether Officer Tunis was responding to an emergency call; however, I disagree that appellants have raised a fact question as to whether Officer Tunis's conduct was reckless.

In determining whether appellants pleaded a proper waiver of immunity, we analyze whether they raised a fact issue as to whether Officer Tunis acted in "conscious indifference" to or "reckless disregard" for the safety of others when he entered the intersection on a red light without slowing as necessary for safe operation. See TEX. CIV. PRAC. & REM. CODE ANN. § 101.055(2); § TEX. TRANSP. CODE ANN. 545.001. Even taking appellants' factual allegations as true as set out in the majority opinion, appellants raise a fact question as to negligence at best but fail to raise a fact question as to whether Officer Tunis's conduct was reckless. Driving through a red light, on its own, does not raise a fact issue regarding recklessness. See *Tex. Dep't of Pub. Safety v. Sparks*, 347 S.W.3d 834, 842 (Tex. App.—Corpus Christi—Edinburg 2011, no pet.); see also *Harris Cty. v. Spears*, No. 14-17-00662-CV, 2018 WL 4571841, at \*7 (Tex. App.—Houston [14th Dist.] Sept. 25, 2018, no pet.) (mem. op.). I would therefore sustain the City's issue and affirm the trial court's judgment granting the City's plea to the jurisdiction.

JAIME TIJERINA,  
Justice

Delivered and filed the  
30th day of January, 2020.