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Litigation - Suit Achieves Successful Outcome in Challenge to City's Governmental Immunity

A City police officer observed a driver commit a traffic offense. The officer pulled his patrol car behind the driver's vehicle and activated his overhead emergency lights. The driver, intending to turn into a gas station on the left side of the highway, drove into a left turn lane on Highway 146. While the driver was stopped in the turning lane, the officer stopped his vehicle behind the driver's vehicle and approached it. The officer discovered the driver had an outstanding arrest warrant, handcuffed him and placed him in the back seat of the police car. A second police officer subsequently arrived and parked his police car behind the first police car with the emergency overhead lights of both police cars activated.

Within minutes after the arrest, a truck drove into the back of the rear patrol car and pushed it into the back of the first police car in which the arrestee was seated. The arrestee was injured and taken to a local hospital. At the time of the collision, neither officer was inside either of the police cars.

The arrestee sued the municipal employer of the police officers and the driver of the truck, claiming negligence. The City claimed it was protected from suit and liability by its governmental immunity and filed a motion for summary judgment and plea to jurisdiction asserting governmental immunity. The City's motion and plea was supported by (1) excerpts from the arrestee's deposition, (2) excerpts from the truck driver's deposition, (3) an affidavit from a Galveston County Deputy Sheriff who investigated the accident, (4) an affidavit from the City Secretary, and (5) an affidavit from the arresting officer.

The trial court held a hearing on several motions filed by the arrestee, including a second motion for continuance of the City's jurisdictional challenge and a motion to compel the arresting officer's deposition. The City argued the officer's deposition was not necessary for the District Court to resolve the jurisdictional challenge before it. The District Court, however, directed the parties to reach an agreement to depose the officer and extended the discovery deadline to allow for the deposition.

Approximately three months later, the trial court signed an order denying the City's plea to jurisdiction. The order reflected that the parties informed the court the officer's deposition did not occur and the District Court, therefore, concluded discovery was incomplete. The City took an interlocutory appeal of the District Court's order denying the City's jurisdictional challenge.

Legal Issues

The City contended the trial court erred in denying its plea to jurisdiction because (1)

Litigation - Suit Achieves Successful Outcome in Challenge to City's Governmental Immunity, Continued

the arrestee did not allege or establish facts demonstrating he complied with the Texas Tort Claims Act's notice of claim provision; (2) the arrestee did not allege or establish facts demonstrating his injury was the result of a city employee's wrongful act, omission, or negligence, or that it resulted from the operation or use of a motor vehicle; (3) the City is not liable to the arrestee because its police officers are entitled to individual immunity; and (4) the contemplated discovery was irrelevant to the jurisdictional issue.

The Fourteenth Court of Appeals held that that the arrestee's injuries were not caused by any officer's operation or use of a police vehicle. The Appellate Court, thus, reversed the District Court's order and rendered judgment in the City's favor, dismissing the arrestee's lawsuit.

As to the discovery issue raised, the arrestee argued the City's plea to jurisdiction should be denied because the City refused to present the arresting officer for deposition even though it relied, in part, upon his affidavit to support the plea.

In discussing the District Court's denial of the City's plea to jurisdiction, the Court of Appeals determined the plea should not have been denied for this reason. The Court of Appeals explained that the facts relating to the use of the patrol cars were undisputed and nothing could be gained from deposing the arresting officer which could change this determinative fact. The Court of Appeals concluded no additional discovery was needed to determine that, as a matter of law, the City was entitled to governmental immunity because the arrestee's injuries were not caused by any operation or use of the patrol vehicles.

Significance of the Decision

In addition to achieving dismissal of the claims against the City, this decision has broader implications in development of the law regarding governmental immunity for two important reasons.

It is now clear that, for a claimant to obtain any waiver of a governmental unit's immunity; his injury must be *caused by use of a vehicle*. Mere negligence which does not result in an injury *caused by a vehicle* does not satisfy the requirement the Texas Legislature has enacted regarding claims against governmental entities.

Additionally, this case establishes that a trial court should not permit a claimant to subject a governmental entity or a public servant to unnecessary burdens of discovery in litigation which is irrelevant to an immunity analysis when liability cannot result due to governmental immunity.

***City of Kemah v. Vela*, 149 S.W.3d 199 (Tex.App.— Houston [14th Dist.] 2004, no pet.)**