

FALL 2021 NEWSLETTER

LOCAL GOVERNMENT CASE LAW UPDATE

By Stephen D. Henninger

Obasogie v. Harris County Hospital District, No. 14:19-00316-CV, 2021 Tex.App. LEXIS 2392 (Tex. App.—Houston [14th Dist.] March 30, 2021).

This suit was brought by a former employee of the Harris County Hospital District, alleging breach of verbal contract, as well as tort claims of defamation, and intentional infliction of severe punishment. The Hospital District filed a plea to the jurisdiction, which the district court granted. The plaintiff then appealed. On appeal, the plaintiff first contended that the trial court improperly found the District was entitled to governmental immunity because the Hospital District was engaging in proprietary functions, rather than governmental ones. As such, plaintiff argued the Hospital District could not assert the defense of governmental immunity. The Court of Appeals rejected this argument, noting that the proprietary/governmental function distinction only applies to municipalities. Other local governmental entities such as counties, school districts, and the like, perform only governmental functions. As such, the Hospital District, which is not a municipality, cannot perform proprietary functions and was entitled to assert the defense of governmental immunity.

The Court of Appeals then went on to note that the Texas Tort Claims Act provides a limited waiver of governmental immunity for cases involving the use of motor-driven vehicles, premises defects, and injuries arising from conditions or uses of property. The plaintiff's lawsuit did not allege any facts implicating these three areas of potential liability. Instead, the plaintiff had alleged two intentional tort causes of action. Neither one of those causes of action implicate the three areas in which immunity has been waived. Further, the Texas Tort Claims Act specifically retains governmental immunity for any claims based upon alleged intentional torts. As such, the Hospital District was immune from plaintiff's claims and they have been properly dismissed.

In regards to plaintiff's breach of contract claim, the Court of Appeals found that the plaintiff had failed to state a cause of action within the waiver of immunity provided by Chapter 271 of the TEXAS LOCAL GOVERNMENT CODE for breach of contract claims against governmental entities. Specifically, that statute defines contracts as, "a written contract stating the essential terms of the agreement for providing goods or services to a local governmental entity that is properly executed on behalf of the local governmental entity". Plaintiff's suit, however, was based on a purported verbal contract. As such, it did not fit the definition of contract under the statute, and did not fall within him the waiver of governmental immunity for contract claims provided by Chapter 271 of the LOCAL GOVERNMENT CODE.

Sean Self v. West Cedar Creek Municipal Utility District, No. 12-20-00082-CV, 2021 Tex.App. LEXIS 66 (Tex.App.--Tyler Jan. 6, 2021).

This case involves a tort and breach of contract lawsuit brought by a homeowner against the West Cedar Creek Municipal Utility District for property damages following the failure of a sewage system that caused plaintiff's home to be flooded with sewage. The plaintiff had entered

into a written contract with the Municipal Utility District in 2012, for the provision of water and sewage services. After sewage backed into the home in April 2015, the District made some repairs to the sewage system. Subsequently, in September 2016, a considerable amount of sewage backed up into the plaintiff's home. Plaintiff filed suit against the West Cedar Creek Municipal Utility District asserting negligence claims based on the alleged negligent use of motor-driven equipment, as well as, among other claims, a breach of contract claim. The Utility District filed a plea to the jurisdiction based on governmental immunity, which the trial court granted. Plaintiff then appealed. On appeal, the plaintiff argued the trial court had improperly dismissed his claims because he had properly alleged damages caused by the negligent operation or use of motor-driven equipment by the Utility District, specifically a motor-driven water pump that was part of the sewage drainage system. The Court of Appeals noted that Section 101.021 of the Texas Tort Claims Act waives governmental immunity for property damage caused by the negligent operation of motor-driven equipment. Motor-driven equipment has been held to include motor-driven-pumps. The Court of Appeals went on to note that the Texas Tort Claims Act requires there to be some nexus between the operation of the motor-driven equipment and the plaintiff's alleged injuries. The motor-driven equipment used must actually cause the injury for governmental immunity to be waived.

The evidence in the case was that the flooding of the sewage into the plaintiff's home was caused when a plastic coupler that was part of the sewage system failed. This plastic coupler was not, itself, a piece of motor-driven equipment. Plaintiff argued, however, that the couplers, valves, and the motor-driven water pump were all part of one system, functioning together as a unit. Plaintiff thus argued that the plastic coupler was part of a motor-driven pump system that is indistinguishable from the pump itself for purposes of liability under the Tort Claims Act. In response, the Utility District argued the flooding was caused by the failure of the plastic coupler, not the motor-driven pump, and therefore immunity was not waived. The Court of Appeals rejected plaintiff's argument and accepted the argument of the Utility District.

The Court of Appeals noted that the evidence showed the motor-driven pump was the only motorized component of the entire residential sewage collection system. Moreover, the only component of the system that failed was the plastic coupler, which is not part of a motor-driven piece of equipment. The Court of Appeals noted that the evidence further demonstrated that if the coupler breaks, whether the motor-driven pump is on or not, sewage would flow out to the ground or back through the sewage line and into the house. In other words, the flooding of the plaintiff's house would have occurred regardless of the operation of the motor-driven pump. As such, the court found the plaintiff's damages were not caused by use or operation of motor-driven equipment, governmental immunity was not waived, and the claim was properly dismissed.

The plaintiff also brought a breach of contract claim, alleging he had entered into a contract for goods and services with the Utility District for the provision of sewage service, and the District had breached the contract by failing to properly maintain and operate the sanitary sewer and water system. The Court of Appeals noted that Section 271 of the TEXAS LOCAL GOVERNMENT CODE provides a limited waiver of governmental immunity for written contracts for the provision of goods or services to a local governmental entity. Plaintiff claimed that the contract had required him to provide a service cleanout, backflow prevention device, a vacuum breaker, and a cutoff valve. As such, plaintiff argued that he had provided goods to the Utility District in the contract. The Court of Appeals disagreed, noting that the provision of those

devices by the plaintiff under the contract was for the *plaintiff's* benefit, as that was required for him to be provided water and sewage services by the Utility District. The Court of Appeals found any benefit the District received was indirect, and was insufficient to satisfy the statute. As such, the Utility District was immune from the plaintiff's breach of contract claim.