City of Houston v. Denby

Court of Appeals of Texas, First District, Houston

August 23, 2022, Opinion Issued

NO. 01-21-00422-CV

Reporter
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CITY OF HOUSTON, Appellant v. KATHY DENBY, Appellee

Prior History: [*1] On Appeal from the 113th District Court, Harris County, Texas. Trial Court Case No. 2020-83496.

Counsel: For City of Houston, Appellant: Christy Martin.

For Kathy Denby, Appellee: Laura Byrd Herring, Jillian Schumacher, Edward Tredennick, Kelsey Smith.

Judges: Panel consists of Justices Kelly, Goodman, and Guerra.

Opinion by: Peter Kelly

Opinion

MEMORANDUM OPINION

Kathy Denby's elderly mother was injured while being transported from her home to an ambulance, and she later died from her injuries. Denby filed a survival claim against the City of Houston (the "City"). The City appeals from the trial court's order denying both its motion to dismiss Denby's lawsuit for failure to file a compliant expert report under the Texas Medical Liability Act and its motion for summary judgment asserting governmental immunity.

Because the Legislature's waiver of governmental immunity does not extend to Denby's claims, we must reverse the trial court's judgment and render judgment dismissing Denby's suit.

Background

Kathy Denby's mother, Elizabeth Dott, was 94 years old in July 2020. Dott had 24-hour caregivers due to an elevated risk for falls, but she was otherwise independent. When Dott experienced breathing difficulties, Denby's husband called [*2] 9-1-1 to transport Dott to an emergency room for medical care. Both Kathy and her husband believed that Dott's breathing difficulty was not a "life or death emergency," but they reasoned that, in light of the COVID-19 pandemic, Dott would receive medical care more promptly if she were transported by ambulance.

After an evaluation, the emergency medical technicians ("EMTs") who had been dispatched to Dott's home decided to transport her to a nearby hospital for further evaluation and care. The EMTs unloaded a stretcher from the ambulance, which was parked on the street near Dott's inclined driveway. The EMTs rolled the stretcher up the sloped driveway to the front door. Dott, who was alert and responsive, was strapped onto the stretcher in a seated, upright position. The EMTs rolled the stretcher, which was adjusted to an elevated position, down the driveway. When the stretcher approached the bottom of the driveway, the EMTs began rolling the stretcher sideways before clearing the uneven tip of the curb. Both Dott, who was strapped to the stretcher, and the stretcher fell sideways onto the ground. Dott suffered a broken thumb and a bleeding head wound, and she became unresponsive. She [*3] was transported to a hospital with a trauma center rather than the nearby hospital originally intended. Dott never regained consciousness, and she died eight days later.

About six months later, Denby filed suit against the City of Houston alleging a statutory survival action for medical malpractice and a statutory survival action for gross negligence.[1] Kathy served two expert reports to satisfy the Texas Medical Liability Act (TMLA).[2] In the first report, Dr. Stephen Saris opined that Dott's fall from the stretcher caused a closed head injury, which led to

[1] Denby later amended her petition to allege statutory survival actions for medical malpractice and for "negligent and willful and wanton conduct."

[2] *See* TEX. CIV. PRAC. & REM. CODE §§ 74.001-.507

intracranial bleeding and caused her death. The second report was authored by John B. Everlove, an expert in paramedic care. Everlove averred that he was familiar with the operation of the stretcher used to transport Dott, the Stryker Power-Pro XT stretcher, and "the applicable standard of care for prehospital personnel as it relates to patient movement, transportation, medical assessment, trauma assessment, and overall management of [a] patient like Ms. Dott during the subject event." Evermore explained the standards applicable to operation of the Stryker stretcher, and he opined that EMS personnel grossly deviated from the standard of care by transporting Dott in [*4] an upright and elevated position, by dropping the stretcher and righting it with her still strapped in, and by other acts and omissions occurring after the fall. Evermore further opined that the EMTs could have foreseen the risk of transporting her in the manner in which they did because they rolled the stretcher up the driveway, thus becoming familiar with its slope and curb before moving Dott. Evermore concluded that the EMTs acted in reckless disregard for Dott's care.

The City filed a combined motion to dismiss under the TMLA and traditional motion for summary judgment asserting that Denby's claims were barred by governmental immunity. The City argued that Denby was required to comply with both the Texas Tort Claims Act (TTCA) and the TMLA because the TMLA does not waive governmental immunity. As to the TMLA, the City asserted that Denby's expert reports did not identify the relevant standards of care and that the stated standard of care for use of the stretcher was impermissibly conclusory.

As to the TTCA, the City sought summary judgment arguing that its immunity had not been waived because the City did not specifically authorize the use of the Stryker stretcher to transport [*5] Dott, a fact the City maintains is necessary to prove the statutory waiver of immunity for use of tangible personal property. The City also argued that even if Dott's injury had been caused by the EMTs' use of tangible personal property, it nevertheless retained immunity under the statutory 9-1-1 emergency exception. The City supported its summary judgment motion with Denby's responses to interrogatories and requests for admission, and with the Saris and Everlove expert reports.

Denby responded with (1) an affidavit and photograph from her husband, who witnessed the incident; (2) the "Investigators Inquest/Hospice Death Report" from the Harris County Institute of Forensic Sciences; and (3) a supplemental expert report from Everlove. The City replied that Everlove's supplemental report was not competent summary judgment evidence because it was not sworn. Denby then filed a motion for leave to file a supplemental affidavit, which was a notarized copy of Everlove's supplemental expert report. After a non-evidentiary hearing, the trial court entered an order denying the City's motion to dismiss under the TMLA and motion for summary judgment and stating that it had "considered Defendant's [*6] Motion, Plaintiff's Response, and the declarations and exhibits submitted in support thereof . . . ."

The City appealed.

Analysis

On appeal, the City challenges the trial court's ruling on both the motion to dismiss and the motion for summary judgment. The motion for summary judgment asserted governmental immunity. We address the trial court's ruling on the summary judgment first because governmental immunity deprives a trial court of subject-matter jurisdiction. *See Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 224 (Tex. 2004). Because this issue is dispositive of the appeal, we do not reach the City's challenge to the sufficiency of the expert reports.

The City raised the defense of governmental immunity in its motion for summary judgment, which the trial court denied. On appeal, the City argues that the trial court erred by denying its motion for summary judgment because even if Denby had established a valid waiver of immunity under the TTCA, the exception to the waiver of liability found in section 101.062 of the Texas Civil Practice and Remedies Code ("9-1-1 Emergency Service") applies, and the City therefore retains immunity. We agree.

A. Standards of review

We apply a de novo standard of review to statutory construction, rulings on motions for summary judgment, and determinations of governmental immunity. [*7] *Garza v. Harrison*, 574 S.W.3d 389, 400 (Tex. 2019) (statutory construction); *Lujan v. Navistar, Inc.*, 555 S.W.3d 79, 84 (Tex. 2018) (summary judgment); *Harris Cnty. Hosp. Dist. v. Tomball Reg'l Hosp.*, 283 S.W.3d 838, 842 (Tex. 2009) (governmental immunity).

When construing a statute, our primary objective is to

give effect to the Legislature's intent. *Liberty Mut. Ins. Co. v. Adcock*, 412 S.W.3d 492, 494 (Tex. 2013). "The 'surest guide to what lawmakers intended' is the enacted language of a statute." *Youngkin v. Hines*, 546 S.W.3d 675, 680 (Tex. 2018) (quoting *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 463 (Tex. 2009)). When statutory language is unambiguous, we accord the words used their common meaning unless a different meaning is apparent from the text or the common meaning leads to an absurd or nonsensical result. *Youngkin*, 546 S.W.3d at 680; *Lippincott v. Whisenhunt*, 462 S.W.3d 507, 509 (Tex. 2015). "We presume the Legislature included each word in the statute for a purpose and that words not included were purposefully omitted." *Lippincott*, 462 S.W.3d at 509. "We must avoid adopting an interpretation that 'renders any part of the statute meaningless.'" *City of Dall. v. TCI W. End, Inc.*, 463 S.W.3d 53, 55-56 (Tex. 2015) (quoting *Crosstex Energy Servs., L.P. v. Pro Plus, Inc.*, 430 S.W.3d 384, 390 (Tex. 2014)).

The party moving for traditional summary judgment must show that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *Eagle Oil & Gas Co. v. TRO-X, L.P.*, 619 S.W.3d 699, 705 (Tex. 2021). "When a governmental unit, as the movant, raises the affirmative defense of governmental immunity and challenges the trial court's subject-matter jurisdiction in a summary-judgment motion, it must establish that it is entitled to governmental immunity as a matter of law." *City of Hous. v. Carrizales*, No. 01-20-00699-CV, 2021 WL 3556216, at *3 (Tex. App.—Houston [1st Dist.] Aug. 12, 2021, pet. denied) (mem. op.). "Once the governmental unit conclusively [*8] establishes its entitlement to governmental immunity, the burden shifts to the non-movant to present evidence sufficient to create a fact issue on at least one element of either the affirmative defense or an exception to that defense." *Id.* "If the non-movant cannot meet his burden, the suit is barred because of governmental immunity, and summary judgment is proper." *Id.*

II. Governmental immunity

Governmental immunity, like sovereign immunity from which it is derived, exists to protect political subdivisions, such as municipalities, from suit and liability for monetary damages. *Mission Consol. Indep. Sch. Dist. v. Garcia*, 253 S.W.3d 653, 655, 655 n.2 (Tex. 2008). Governmental immunity deprives a trial court of subject matter jurisdiction over lawsuits in which the State's political subdivisions have been sued unless immunity is waived by the Legislature. *See Mission Consol. Indep. Sch. Dist. v. Garcia*, 372 S.W.3d 629, 636 (Tex. 2012); *Miranda*, 133 S.W.3d at 225-26. "We interpret statutory waivers of immunity narrowly, as the Legislature's intent to waive immunity must be clear and unambiguous." *See Mission Consol.*, 253 S.W.3d at 655 (citing TEX. GOV'T CODE § 311.034). Thus, we initially focus exclusively on the statute permitting a party to sue the state, without regard to evidence of injury or the need for a party to have a remedy for a violation of his rights.[3] *See id.*

The Legislature has expressly waived immunity to the [*9] extent provided by the Texas Tort Claims Act. *See Mission Consol.*, 253 S.W.3d at 655; *see* TEX. CIV. PRAC. & REM. CODE §§ 101.001-.109 (TTCA). As relevant to this appeal, the TTCA generally waives governmental immunity for "personal injury and death so caused by a condition or use of tangible personal or real property if the governmental unit would, were it a private person, be liable to the claimant according to Texas law." TEX. CIV. PRAC. & REM. CODE § 101.021(2).

Despite the general waiver of governmental immunity, the Legislature has provided exclusions and exceptions from the applicability of the TTCA. *See id.* §§ 101.051-.067 (Subchapter C. Exclusions and Exceptions). When a statutory exception or exclusion in the TTCA applies, a general waiver of immunity under the statute is not effective, and the governmental entity retains its immunity. *See id.* §§ 101.021, 101.062; *City of Hous. v. Hussein*, No. 01-18-00683-CV, 2020 WL 6788079, at *6 (Tex. App.—Houston [1st Dist.] Nov. 19, 2020, pet. denied) (mem. op.).

The statutory exception at issue in this appeal is section 101.062, the "9-1-1 Emergency Service" exception, which provides that the TTCA

> applies to a claim against a public agency that arises from an action of an employee of the public agency or a volunteer under direction of the public agency and that involves providing 9-1-1 service or responding to a 9-1-1 emergency call **only if the**

[3] "The doctrine of sovereign immunity is contrary to the modern concept that individuals should have a remedy for every legal wrong, even if it is committed by the government." *Hartke v. Fed. Aviation Admin.*, 369 F. Supp. 741, 745 (E.D.N.Y. 1973) (internal citations omitted). In some cases, sovereign immunity will deny a party a remedy even when the facts clearly show wrongdoing by a state actor. *See id.*

> **action violates a statute or ordinance applicable to the action**.

Id. § 101.062(b) (emphasis [*10] added).

III. The TTCA generally waives immunity for misuse of tangible personal property.

Denby alleged subject-matter jurisdiction existed because her mother's injury and death were caused by City employees' misuse of the stretcher, which is tangible personal property. The City asserts that it merely made the stretcher available for the EMTs to use, and merely making property available for use does not demonstrate waiver of immunity under the TTCA. The City maintains that absent express authorization from a high-ranking City employee to use the Stryker stretcher to transport Dott, it cannot be held to have used the stretcher and waived its immunity.

Under the TTCA, a governmental unit may be liable for personal injury and death caused by a condition or use of tangible personal property, if a private entity in the same position as the governmental unit would be liable to the claimant under Texas law. *Id.* § 101.021(2). The Supreme Court of Texas has repeatedly stated that a "governmental unit does not 'use' property within the meaning of the [TTCA] when it merely allows someone else to use it." *Rusk State Hosp. v. Black*, 392 S.W.3d 88, 97 (Tex. 2012) (concluding that state hospital did not "use" plastic bag, within meaning of TTCA, by providing it to patient [*11] who later suffocated with bag over his face); *see Tex. Dep't of Crim. Just. v. Rangel*, 595 S.W.3d 198, 202-03 (Tex. 2020) (concluding that jail "used" chemical agent, within meaning of TTCA, to obtain compliance from bellicose inmates because duty warden specifically authorized and ordered use of chemical agent in accordance with jail's use-of-force plan); *Harris Cnty. v. Annab*, 547 S.W.3d 609, 611, 615 (Tex. 2018) (concluding that county did not "use" firearm, within meaning of TTCA, when off-duty deputy constable shot woman with personal firearm in fit of road rage).

In this case, the EMTs used the Stryker stretcher to transport Dott to the ambulance, and the misuse of the stretcher is alleged to be the proximate cause of Dott's injuries and, consequentially, her death. The EMTs were on duty and performing their job-related duties, and the stretcher is tangible personal property. Assuming without deciding that Dott's injury and death were caused by the use of tangible personal property, we nevertheless conclude that the City retains immunity because even if immunity is waived under the general provision of the TTCA, it is not waived under the 9-1-1 Emergency Service exception to the general waiver of immunity.

IV. The 9-1-1 Emergency Service Exception applies because the EMTs were responding to a 9-1-1 emergency [*12] **call**.

The City argues that the 9-1-1 Emergency Service exception to the waiver of immunity applies here because Denby called 9-1-1 seeking treatment and transportation for her mother, who was experiencing difficulty breathing, and the transportation of Dott down the driveway was part of the EMTs' response to the 9-1-1 call. Denby argues that the 9-1-1 Emergency Service exception does not apply in this case. She asserts that section 101.062(b) only applies to an action involving "providing 9-1-1 service or responding to a 9-1-1 emergency call," and "[w]hen the EMTs wheeled Mrs. Dott down her driveway, they were not acting under the pressure of an emergency response."

Section 101.062(b) provides that the TTCA

> applies to a claim against a public agency that arises from an action of an employee of the public agency or a volunteer under direction of the public agency and that involves providing 9-1-1 service or **responding to a 9-1-1 emergency call** only if the action violates a statute or ordinance applicable to the action.

TEX. CIV. PRAC. & REM. CODE § 101.062(b) (emphasis added).

To determine what is meant by "responding to a 9-1-1 emergency call," we begin with the language of the statute. *See Youngkin*, 546 S.W.3d at 680. Section 101.062 does not define "9-1-1 emergency call," but it provides that "9-1-1 [*13] service" has the meaning assigned by section 771.001 of the Texas Health & Safety Code, which defines "9-1-1 service" as "communications service that connects users to a public safety answering point through a 9-1-1 system." TEX. CIV. PRAC. & REM. CODE § 101.062(a) ("9-1-1 Emergency Service"); TEX. HEALTH & SAFETY CODE § 771.001(6) ("Definitions"; "9-1-1 service"). Considering the language of the statutes, we conclude that a "9-1-1 emergency call" is a call placed to a 9-1-1 service. *See Youngkin*, 546 S.W.3d at 680 (quoting *Entergy Gulf States*, 282 S.W.3d at 463) (statutory language is "surest guide to what lawmakers intended").

While nothing in the statute requires that the employee or volunteer be acting under the pressure of an emergency response, case law offers insight into how courts have decided whether the employee's action was in response to a 9-1-1 emergency call. In *City of Austin v. Choudhary*, No. 03-05-00549-CV, 2006 WL 1649312, at *1 (Tex. App.—Austin June 16, 2006, no pet.) (mem. op.), parents filed suit after an arson investigator leaving an investigation site ran over their small child, who was playing outside. The arson investigator had completed his investigation and left the site, and then he returned to take additional photographs. *Id.* at *4. The injury occurred when he later left the site for the second time. *Id.* The court of appeals concluded that the 9-1-1 Emergency Service exception did not apply because there was no allegation that the arson investigator was responding [*14] to a 9-1-1 call at the time of the accident. *Id.* The court of appeals explained:

> No emergency existed at the time [the arson investigator] struck A.C. with his truck. The fires that were set earlier in the day had been extinguished. All fire department and police personnel had left the scene. [The arson investigator] had already issued a citation and completed his investigation. [The arson investigator] was in the process of leaving the trailer park when the accident occurred; there is nothing in the record that suggests he was leaving in response to another emergency.

Id. at *3.

In *Choudhary*, the motor vehicle accident occurred after the agency's employees' response to the 9-1-1 emergency call had ended. The arson investigator had concluded his investigation, and other emergency personnel had left the scene of the fire. In this case, after evaluating Dott, the EMTs decided to transport her by ambulance to a hospital for evaluation and treatment. Unlike *Choudhary*, nothing in the summary judgment evidence indicates that the response to the 9-1-1 call had ended before the tip-over accident. Thus, the actions of the EMTs in rolling Dott down the driveway were part of their response to Denby's 9-1-1 call.

In his summary-judgment [*15] affidavit, Denby's husband averred that Dott was alert, oriented, responsive, and in stable condition, and although he "did not believe that she was in a life-threatening situation," he and his wife decided to call 9-1-1. This is not evidence that the EMTs had concluded ***their*** response to the 9-1-1 call before the stretcher tipped over. These statements refer to Denby's husband's state of mind and perception of Dott's condition before the 9-1-1 call was placed. But section 101.062(b) concerns the response to a 9-1-1 call, which necessarily happens after the call.

We conclude that Denby's claim arose from the action of employees "responding to a 9-1-1 emergency call." *See id.*

V. The exclusion to the exception found in section 101.062 does not apply because Denby did not allege the violation of a statute or ordinance applicable to the action.

Section 101.062(b) provides an exclusion to the exception to the TTCA. When a claim arises from an action of an agency employee or volunteer responding to a 9-1-1 emergency call and the action violates a statute or ordinance applicable to the action, then the TTCA applies as it normally does. *See* TEX. CIV. PRAC. & REM. CODE § 101.062(b). Denby alleges that the TTCA applies as it normally does because the City violated section 773.009 of the Texas Health and Safety Code ("Limitation on Civil [*16] Liability"), which provides:

> A person who authorizes, sponsors, supports, finances, or supervises the functions of emergency room personnel and emergency medical services personnel is not liable for civil damages for an act or omission connected with training emergency medical services personnel or with services or treatment given to a patient or potential patient by emergency medical services personnel if the training, services, or treatment is performed in accordance with the standard of ordinary care.

TEX. HEALTH & SAFETY CODE § 773.009 ("Limitation on Civil Liability").

We must determine whether section 773.009 of the Texas Health and Safety Code is "a statute or ordinance applicable to the action" as required by section 101.062 of the Texas Civil Practice and Remedies Code. Again, we begin with the language of the statute. *See Youngkin*, 546 S.W.3d at 680. Section 101.062 does not define "action," but the word is used more than once in section 101.062(b). Section 101.062(b) provides that the TTCA

> applies to a claim against a public agency that arises from **an action** of an employee of the public agency or a volunteer under direction of the public agency and that involves providing 9-1-1 service or

> responding to a 9-1-1 emergency call only if **the action** violates a statute or ordinance applicable to **the action**.

TEX. CIV. PRAC. & REM. CODE § 101.062(b) (emphasis added).

When interpreting a statute, we do not look at words in isolation; instead, we [*17] consider the meaning of the words used in the context of the remainder of the statute. *See TGS-NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432, 441 (Tex. 2011). In section 101.062(b), the word "action" is first used to modify a "claim against a public agency" as one arising from an "action" of an employee or volunteer. TEX. CIV. PRAC. & REM. CODE § 101.062(b). A "claim against a public agency" is further modified by the clause "that involves providing 9-1-1 service or responding to a 9-1-1 emergency call." *Id.* Thus, section 101.062(b) applies to a "claim" that both arises from an action of an employee or volunteer and involves providing 9-1-1 service or responding to a 9-1-1 emergency call. *Id.* The entirety of the preceding clause is further modified by the words "only if the action violates a statute or ordinance applicable to the action." *Id.*

Section 101.062(b) establishes that the TTCA applies to the type of claim described by that section but only "if the action violates a statute or ordinance applicable to the action." *Id.* In the context of this section the second and third use of the word "action" refer to the initial use of the word "action." *See id.* Thus, under section 101.062(b), the TTCA applies to claims arising from an action of an employee or volunteer if the action of the employee or volunteer violates a statute or ordinance applicable to the action [*18] of the employee or volunteer.

Other courts of appeals have applied section 101.062 in consonance with this interpretation. In *City of San Antonio v. Girela*, No. 04-10-00649-CV, 2011 WL 721484, at *1 (Tex. App.—San Antonio Mar. 2, 2011, no pet.) (mem. op.), the father of Patricia Matthews called 9-1-1 because she was having trouble breathing. *Id.* When the ambulance arrived thirty minutes later, the paramedics transported Matthews to a hospital, where she was pronounced dead. *Id.* Her father sued the City of San Antonio, which claimed immunity based on the 9-1-1 Emergency Services exception in section 101.062 of the TTCA. *Id.* He alleged that the paramedics removed an oxygen mask Matthews had been using before their arrival, failed to use a gurney to transport her to the ambulance, and delayed her transportation to the hospital. *Id.* at *2. The father also alleged that the paramedics violated several sections of the Texas Health and Safety Code. *Id.*

> Specifically, Girela asserts the responding paramedics in this case violated sections 773.050, 773.061, and 773.063 of the Texas Health and Safety Code.
>
> . . . .
>
> All three statutes are located in Chapter 773 of the Texas Health and Safety Code, otherwise known as the "Emergency Health Care Act." Among other things, Section 773.050, entitled "Minimum Standards," addresses staffing requirements for emergency medical services vehicles, and requires the executive commissioner of the Texas Health [*19] and Human Services Commission to set minimum standards for emergency medical services vehicles and emergency medical services personnel. Section 773.061, entitled "Disciplinary Actions," generally provides for the revocation, suspension, or non-renewal of licenses and certificates of emergency medical services personnel, and for the reprimand of such personnel by the Department of State Health Services. Section 773.063, entitled "Civil Penalty," generally provides that the attorney general, district attorney, or county attorney may bring a civil action to compel compliance with chapter 773, and that a person who violates the chapter or a rule adopted under the chapter is liable for a civil penalty in addition to other remedies.

Id. at *2-3 (internal citations omitted).

The court of appeals held that the city retained immunity under the 9-1-1 Emergency Services exception because none of the statutes cited by Girela governed the actions of the paramedics in removing Matthews's oxygen mask, failing to use a gurney to take her to the ambulance, or delaying her transport to the hospital. *Id.* at *3.

In *Schronk v. City of Burleson*, 387 S.W.3d 692 (Tex. App.—Waco 2009, pet. denied), a husband sued for wrongful death after emergency medical technicians employed by the city were unable to resuscitate his wife with an automatic [*20] external defibrillator (AED). 387 S.W.3d at 697. The husband had called 9-1-1 when his wife suffered a cardiac arrest, but the responding EMTs discovered that "the AED's battery was too weak to administer a defibrillating shock." *Id.* The wife was taken to a hospital, where she was pronounced dead on

arrival. *Id.*

The husband alleged that the city was liable for wrongful death because, among other things, it had violated section 779.003 of the Texas Health and Safety Code. *See id.* at 698; *see also* TEX. HEALTH & SAFETY CODE § 779.003 ("Acquisition, Maintenance, and Inspection of Automated External Defibrillator"). Section 779.003 requires a "person or entity that owns or leases an automated external defibrillator" to "maintain and test the automated external defibrillator according to the manufacturer's guidelines." TEX. HEALTH & SAFETY CODE § 779.003(1).

The city filed a plea to the jurisdiction asserting sovereign immunity. *Schronk*, 387 S.W.3d at 698. Schronk responded to the plea with deposition testimony from firefighters who stated that the AED had not been maintained in accordance with the manufacturer's guidelines. *Schronk*, 387 S.W.3d at 705. The court of appeals stated that the city's "maintenance of the AED is directly involved with its response to 9-1-1 calls." *Id.* at 713. Because Schronk presented evidence that the city "failed to maintain the AED in accordance with the manufacturer's guidelines," the [*21] court of appeals concluded that there was a disputed material fact "regarding whether an action of a [c]ity employee that involved responding to a 9-1-1 call violated a statute applicable to the action." *Id.* The court of appeals, therefore, held that the trial court had erred by granting the city's plea to the jurisdiction. *Id.* at 714.

In this case, Denby alleged that the culpable action of the EMTs was the improper use of the stretcher to transport Dott from the house to the ambulance. Denby argues that the EMTs violated section 773.009 of the Texas Health and Safety Code and that, in light of this violation and the language of section 101.062(b), the City is not entitled to immunity under the 9-1-1 Emergency Services exception to the TTCA. Section 773.009 provides:

> A person who authorizes, sponsors, supports, finances, or supervises the functions of emergency room personnel and emergency medical services personnel is not liable for civil damages for an act or omission connected with training emergency medical services personnel or with services or treatment given to a patient or potential patient by emergency medical services personnel if the training, services, or treatment is performed in accordance with the standard of ordinary care.

TEX. HEALTH & SAFETY CODE § 773.009. But this statute does not govern the [*22] use of a stretcher or how EMTs transport patients to an ambulance. *See id.* As in *Girela*, the City here retains its immunity under the 9-1-1 Emergency Services exception to the TTCA.

Moreover, even if we concluded that the EMTs acted in a way that breached the standard of ordinary care, we could not say section 773.009 was "violated." *See* TEX. HEALTH & SAFETY CODE § 773.009. Black's Law Dictionary defines "violation" as "1. An infraction or breach of the law; a transgression," and "2. The act of breaking or dishonoring the law; the contravention of a right or duty." VIOLATION, Black's Law Dictionary (11th ed. 2019). Falling below a standard of ordinary care does not contravene section 773.009: it creates a circumstance in which a "person who authorizes, sponsors, supports, finances, or supervises the functions of . . . [EMTs]" may be held liable for civil damages for "an act or omission connected with . . . services or treatment given to a patient or potential patient" by the EMTs. *See* TEX. HEALTH & SAFETY CODE § 773.009.

We conclude that the City retained immunity under section 101.062(b) of the Texas Civil Practice and Remedies Code. We hold that the trial court erred by denying the City's motion for summary judgment.

Conclusion

We reverse the trial court's order denying the City's motion for summary judgment, and we render judgment dismissing Denby's [*23] suit for lack of subject-matter jurisdiction. Because of this disposition, it is not necessary to consider the City's remaining arguments. *See* TEX. R. APP. P. 47.1.

Peter Kelly

Justice