

SUPREME COURT OF TEXAS

City of Denton v. Brian Rushing, Calvin Patterson and Kevin Marshall

City of Denton v. Brian Rushing, Calvin Patterson and Kevin Marshall, 570 S.W.3d 708 (Tex. 2019) · No. 17-0336 · Decided March 15, 2019

SUMMARY

The Texas Supreme Court held that a city's policies and procedures manual, including an on-call compensation policy, did not create a unilateral contract waiving governmental immunity under Local Government Code § 271.152. The manual contained a broad disclaimer stating that its contents "do not in any way constitute the terms of a contract of employment," which negated any contractual intent. Distinguishing **City of Houston v. Williams** (where a city ordinance created a contract), the court ruled that employee handbooks with express disclaimers cannot form enforceable contracts for purposes of immunity waiver. The city's plea to the jurisdiction should have been granted because no valid written contract existed.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	John P. Devine
JURISDICTION	Texas
DECIDED	March 15, 2019
DOCKET	17-0336
DISPOSITION	reversed
PROCEDURAL POSTURE	Interlocutory appeal from order denying plea to the jurisdiction and alternative motion for summary judgment
STANDARD OF REVIEW	De novo review of jurisdictional plea
PRECEDENTIAL VALUE	published
PARTIES	City of Denton v. Brian Rushing, Calvin Patterson, and Kevin Marshall

TOPICS

[sovereign immunity](#)[contracts](#)[employment law](#)[municipal law](#)[subject matter jurisdiction](#)

PRACTICE AREAS

Government Law

Municipal Law

Employment Law

Contracts

QUESTIONS PRESENTED

1. Whether Policy 106.06 of the City of Denton's Policies and Procedures Manual constitutes a unilateral contract subject to the statutory waiver of governmental immunity under Local Government Code section 271.152.
2. Whether the Manual's general disclaimer negates any contractual intent.
3. Whether the 2013 revisions to Policy 106.06 were properly executed by the City Council, affecting the waiver of immunity.

HOLDINGS

1. Policy 106.06 does not create a unilateral contract because the Manual's disclaimer expressly negates any contractual intent. Therefore, the statutory waiver of immunity under section 271.152 does not apply.

KEY QUOTATIONS

"The contents of this manual do not in any way constitute the terms of a contract of employment and should not be construed as a guarantee of continued employment with the City of Denton. Employment with the City of Denton is on an at will basis. This means that the employment relationship may be terminated at any time by either the City or the employee for any reason not expressly prohibited by law. Any oral or written statements by anyone, (except individual written employment agreements specifically authorized by the City Council) to the contrary are invalid and should not be relied upon by any prospective or existing employee. The City of Denton reserves the right to alter or amend the contents of this manual at any time without notice." (at 2)

"We accordingly reverse the court of appeals' judgment affirming the denial of the City's plea to the jurisdiction and render judgment dismissing the case." (at 9)

FACTUAL BACKGROUND

Brian Rushing, Calvin Patterson, and Kevin Marshall are full-time hourly employees in the City of Denton's Utilities Department, entitled to overtime pay under the FLSA. They worked uncompensated on-call shifts between 2011 and 2015. Policy 106.06 of the City's Policies and Procedures Manual defined on-call periods and compensation. The Manual contained a disclaimer stating that its contents do not constitute a contract of employment and that employment is at-will. The City Manager amended Policy 106.06 in 2013, but the City Council did not approve the changes.

PROCEDURAL HISTORY

The trial court denied the City's plea to the jurisdiction. The court of appeals affirmed the denial. The Texas Supreme Court granted the City's petition for review.

DISPOSITION

reversed

CASES CITED

- City of Houston v. Williams, 353 S.W.3d 128 (Tex. 2011)
- Light v. Centel Cellular Co. of Tex., 883 S.W.2d 642 (Tex. 1994)
- Marsh USA Inc. v. Cook, 354 S.W.3d 764 (Tex. 2011)
- Tooke v. City of Mexia, 197 S.W.3d 325 (Tex. 2006)
- Cty. of Dallas v. Wiland, 216 S.W.3d 344 (Tex. 2007)
- Williams v. First Tenn. Nat'l Corp., 97 S.W.3d 798 (Tex. App.—Dallas 2003, no pet.)
- Werden v. Nueces Cty. Hosp. Dist., 28 S.W.3d 649 (Tex. App.—Corpus Christi 2000, no pet.)
- Gamble v. Gregg Cty., 932 S.W.2d 253 (Tex. App.—Texarkana 1996, no writ)
- Apache Deepwater, LLC v. McDaniel Partners, Ltd., 485 S.W.3d 900 (Tex. 2016)
- J.M. Davidson, Inc. v. Webster, 128 S.W.3d 223 (Tex. 2003)
- Fort Worth Indep. Sch. Dist. v. City of Fort Worth, 22 S.W.3d 831 (Tex. 2000)
- City of San Antonio v. Frizzell, 91 S.W.2d 1056 (Tex. 1936)
- Byrd v. City of Dallas, 6 S.W.2d 738 (Tex. 1928)
- Parviz-Khyavi v. Alcon Labs., Inc., 395 S.W.3d 376 (Tex. App.—Dallas 2013, pet. denied)
- Paniagua v. City of Galveston, 995 F.2d 1310 (5th Cir. 1993)