

COURT OF APPEALS FOR THE EIGHTH DISTRICT OF TEXAS AT EL PASO

Texas Tech University Health Sciences Center–El Paso v. Philip E. Mohrman, Individually and as Representative of the Estate of Robert K. Borst

Texas Tech Univ. Health Sciences Ctr.–El Paso v. Mohrman · No. 08-25-00088-CV · Decided December 22, 2025

SUMMARY

The Eighth Court of Appeals of Texas affirmed the denial of Texas Tech University Health Sciences Center–El Paso’s plea to the jurisdiction and motion to dismiss in a medical negligence action. The court held that counsel’s sworn statement that a Texas Tort Claims Act notice was properly mailed created a presumption of receipt, while the governmental entity’s evidence denying receipt rebutted the presumption but left a fact issue. Because TTUHSC did not conclusively establish noncompliance with the written notice requirement of Texas Civil Practice and Remedies Code section 101.101(a), the court remanded for further proceedings.

CASE DETAILS

COURT	Court of Appeals for the Eighth District of Texas at El Paso
WRITING FOR THE COURT	Lisa J. Soto; Salas Mendoza, Chief Justice; Palafox, Justice; Lisa J. Soto, Justice
JURISDICTION	Court of Appeals for the Eighth District of Texas, El Paso
DECIDED	December 22, 2025
DOCKET	08-25-00088-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Interlocutory appeal by a governmental entity from an order denying its plea to the jurisdiction and motion to dismiss in a medical-negligence action.
STANDARD OF REVIEW	The court reviewed the jurisdictional question de novo. When the existence of jurisdictional facts is challenged, the review mirrors traditional summary-judgment practice: the governmental entity bears the initial burden to conclusively establish its affirmative defense; if it does so, the burden shifts to the plaintiff to raise a fact issue. The court takes as true evidence favorable to the plaintiff, draws reasonable

	inferences in the plaintiff's favor, and resolves doubts in the plaintiff's favor.
PRECEDENTIAL VALUE	Published opinion of the Court of Appeals for the Eighth District of Texas; designated as a memorandum opinion in the source.
PARTIES	Texas Tech University Health Sciences Center–El Paso v. Philip E. Mohrman, Individually and as Representative of the Estate of Robert K. Borst

TOPICS

interlocutory appeal subject matter jurisdiction affirmative defenses evidence statutory interpretation

PRACTICE AREAS

civil procedure appellate procedure governmental immunity medical negligence evidence

QUESTIONS PRESENTED

1. Whether TTUHSC conclusively established that Mohrman failed to provide timely written notice of his claim as required by Texas Civil Practice and Remedies Code section 101.101(a).
2. Whether evidence that counsel properly mailed the statutory notice, combined with the governmental entity's denial of receipt, created a fact issue regarding actual receipt of timely notice.

HOLDINGS

1. A sworn statement that a Texas Tort Claims Act notice was properly addressed, postage prepaid, and mailed gives rise to a common-law mailbox-rule presumption that the notice was received in due course. A governmental entity's sworn denial of receipt rebuts the presumption but does not eliminate the underlying mailing evidence; instead, the evidence creates a fact issue for the factfinder regarding receipt.
2. TTUHSC was not entitled to relief because it did not conclusively establish that Mohrman failed to comply with the written-notice requirement.

KEY QUOTATIONS

“Accordingly, we conclude that (1) Mundie’s sworn statement that notice of Mohrman’s claim was properly mailed to TTUHSC gave rise to a presumption that TTUHSC received the notice in due course; (2) Webster’s sworn statement that TTUHSC did not receive the notice rebutted this presumption; and (3) a fact issue remains as to whether TTUHSC actually received timely notice of Mohrman’s claim under § 101.101(a).” (11)

“In the absence of evidence conclusively showing that Mohrman failed to comply with § 101.101(a)’s written notice requirement, we conclude that TTUHSC was not entitled to relief under its § 101.101 affirmative defense and the trial court thus correctly denied its plea to the jurisdiction and motion to dismiss.” (11)

FACTUAL BACKGROUND

Robert K. Borst was treated by physicians affiliated with Texas Tech University Health Sciences Center–El Paso while hospitalized at University Medical Center in November and December 2017. Mohrman alleged that Borst suffered an adverse reaction to Bactrim but was given the medication again, causing complications, kidney failure, and death. Mohrman’s former counsel declared that he mailed written notices of claim to TTUHSC and UMC on or about April 5, 2018, while TTUHSC’s associate general counsel declared that TTUHSC had no record of receiving the notice before February 2019.

PROCEDURAL HISTORY

Mohrman sued Texas Tech University Health Sciences Center–El Paso and University Medical Center in November 2019. TTUHSC asserted that Mohrman failed to provide timely written notice under section 101.101(a) of the Texas Tort Claims Act and later filed a plea to the jurisdiction and motion to dismiss. The trial court denied the motion, and TTUHSC brought an interlocutory appeal under Texas Civil Practice and Remedies Code section 51.014(a)(8).

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The case is remanded to the trial court for further proceedings consistent with the opinion.

CASES CITED

- Tex. Tech Univ. Health Sciences Ctr.–El Paso v. Niehay, 671 S.W.3d 929, 935 (Tex. 2023)
- Univ. of Tex. M.D. Anderson Cancer Ctr. v. McKenzie, 578 S.W.3d 506, 514 (Tex. 2019)
- Prairie View A&M Univ. v. Chatha, 381 S.W.3d 500, 515 (Tex. 2012)
- State v. Navarrette, 656 S.W.3d 681, 691 (Tex. App.—El Paso 2022, no pet.)
- Town of Shady Shores v. Swanson, 590 S.W.3d 544, 550 (Tex. 2019)
- State v. Lueck, 290 S.W.3d 876, 884 (Tex. 2009)
- Tex. Dep’t of Transp. v. Lara, 625 S.W.3d 46, 52 (Tex. 2021)
- Mission Consol. Indep. Sch. Dist. v. Garcia, 372 S.W.3d 629, 635 (Tex. 2012)
- Tex. Health & Hum. Servs. Comm’n v. Pope, 674 S.W.3d 273, 280–81 (Tex. 2023)
- Taylor v. Tolbert, 644 S.W.3d 637, 645 (Tex. 2022)
- Colquitt v. Brazoria Cnty., 324 S.W.3d 539, 541 (Tex. 2010) (per curiam)
- Needham Fire & Rescue Co. v. Balderas, No. 14-16-00211-CV, 2017 WL 1416219, at *2–3 (Tex. App.—Houston [14th Dist.] Apr. 18, 2017, no pet.) (mem. op.)
- Adams v. City of Dallas, No. 05-14-01143-CV, 2015 WL 7280893, at *2 (Tex. App.—Dallas Nov. 18, 2015, no pet.) (mem. op.)

- *City of San Antonio v. Rocha*, No. 04-18-00367-CV, 2018 WL 6517169, at *3 (Tex. App.—San Antonio Dec. 12, 2018, no pet.) (mem. op.)
- *Crow v. City of San Antonio*, 294 S.W.2d 899, 901–03 (Tex. App.—San Antonio 1956), rev’d on other grounds, 301 S.W.2d 628, 629 (Tex. 1957)
- *Pan Am. Bank of Brownsville v. Nowland*, 650 S.W.2d 879, 884 (Tex. App.—San Antonio 1983, writ ref’d n.r.e.)
- *Southland Life Ins. Co. v. Greenwade*, 159 S.W.2d 854, 856–57 (Tex. 1942)
- *Tex. Dep’t of State Health Servs. v. Gonzalez*, No. 13-14-00259-CV, 2014 WL 7205332, at *4 (Tex. App.—Corpus Christi Dec. 18, 2014, no pet.) (mem. op.)
- *Unifund CCR, LLC v. Rice*, No. 14-21-00386-CV, 2022 WL 17099874, at *3 (Tex. App.—Houston [14th Dist.] Nov. 22, 2022, no pet.) (mem. op.)
- *McEndree v. Volke*, 634 S.W.3d 413, 421 (Tex. App.—Eastland 2021, no pet.)
- *Tex. Dep’t of Transp. v. Bagg*, No. 08-23-00148-CV, 2024 WL 4533568, at *8 n.6 (Tex. App.—El Paso Oct. 21, 2024, pet. denied) (mem. op.)
- *Univ. of Tex. Rio Grande Valley v. Oteka*, 715 S.W.3d 734, 744 (Tex. 2025)
- *S.C. v. M.B.*, 650 S.W.3d 428, 449 (Tex. 2022)
- *Thomas v. Ray*, 889 S.W.2d 237, 238 (Tex. 1994)
- *Kelly v. Brenham Floral Co.*, No. 01-12-01000-CV, 2014 WL 4219448, at *3 (Tex. App.—Houston [1st Dist.] Aug. 26, 2014, no pet.) (mem. op.)
- *Sudduth v. Commonwealth County Mutual Insurance Co.*, 454 S.W.2d 196, 196–98 (Tex. 1970)
- *Office of the Attorney Gen. v. Scott*, No. 02-14-00316-CV, 2015 WL 4043259, at *3 (Tex. App.—Fort Worth July 2, 2015, no pet.) (mem. op.)
- *Gen. Motors Corp. v. Saenz*, 873 S.W.2d 353, 359 (Tex. 1993)
- *Matter of Marriage of Crist*, 661 S.W.3d 623, 629 (Tex. App.—El Paso 2023, no pet.)
- *Davis v. City of San Antonio*, 752 S.W.2d 518, 519 (Tex. 1988)
- *Canutillo Indep. Sch. Dist. v. Olivares*, 917 S.W.2d 494, 498 (Tex. App.—El Paso 1996, no writ)
- *McKinney v. Freestone Cnty.*, 291 S.W. 529, 531 (Tex. Comm’n App. 1927)
- *United States v. Stinson*, 197 U.S. 200 (1905)