

FOURTH COURT OF APPEALS OF TEXAS

Victor Ramos v. City of Laredo

No. 04-17-00099-CV · No. No. 04-17-00099-CV · Decided March 28, 2018

SUMMARY

In this concurring opinion, Justice Marialyn Barnard discusses a potential unintended consequence of Texas Civil Practice and Remedies Code section 101.106(e), which permits dismissal of a governmental employee from a suit. The opinion expresses concern that a governmental entity might then avoid liability by arguing that the employee was outside the course and scope of employment, but concludes that the City of Laredo's judicial admission precluded that argument in this case.

CASE DETAILS

COURT	Fourth Court of Appeals of Texas
WRITING FOR THE COURT	Marialyn Barnard; Karen Angelini; Rebeca C. Martinez
JURISDICTION	Texas
DECIDED	March 28, 2018
DOCKET	No. 04-17-00099-CV
DISPOSITION	other
PROCEDURAL POSTURE	Concurring opinion in an appeal from a take-nothing judgment entered by the 111th Judicial District Court of Webb County, Texas.
PRECEDENTIAL VALUE	Published concurring opinion
PARTIES	Victor Ramos v. City of Laredo

TOPICS

- municipal liability
- statutory interpretation
- municipal law
- civil procedure

PRACTICE AREAS

- municipal liability
- torts
- civil procedure

QUESTIONS PRESENTED

- Whether section 101.106(e) of the Texas Civil Practice and Remedies Code can produce the unintended consequence of allowing a governmental entity to obtain dismissal of its employee and then avoid liability by asserting immunity or disputing course and scope of employment.

KEY QUOTATIONS

“A governmental entity should not be permitted to demand that its employee be dismissed from a lawsuit under section 101.106(e) of the Code and then, after the employee is dismissed from the lawsuit, attempt to assert immunity or otherwise avoid liability by arguing the employee was not within the course and scope of his employment.” (-2-)

FACTUAL BACKGROUND

The City of Laredo sought to have its employee dismissed from the lawsuit under section 101.106(e) of the Texas Civil Practice and Remedies Code. After the employee was dismissed, the City could potentially seek to avoid liability by asserting immunity or arguing that the employee was not acting within the course and scope of employment; according to the concurrence, the City's judicial admission prevented that result in this case.

PROCEDURAL HISTORY

The underlying action resulted in a take-nothing judgment. The City sought dismissal of its employee under section 101.106(e) of the Texas Civil Practice and Remedies Code, and the concurrence discusses the potential consequence of the City later asserting immunity or denying that the employee acted within the course and scope of employment.

DISPOSITION

other

CASES CITED

- Franka v. Velasquez, 216 S.W.3d 409, 413 (Tex. App.—San Antonio 2006), rev'd, 332 S.W.3d 367 (Tex. 2011)

OPINION

PER CURIAM.

Fourth Court of Appeals San Antonio, Texas CONCURRING OPINION No. 04-17-00099-CV Victor RAMOS, Appellant v. CITY OF LAREDO, Appellee From the 111th Judicial District Court, Webb County, Texas Trial Court No. 2015CVT003985 D2 Honorable Susan D. Reed, Judge Presiding Opinion by: Rebeca C. Martinez, Justice Concurring Opinion by: Marialyn Barnard, Justice Sitting: Karen Angelini, Justice Marialyn Barnard, Justice Rebeca C. Martinez, Justice Delivered and Filed: March 28, 2018 I write separately to point out my concern about a potential unintended consequence of section 101.106(e) of the Texas Civil Practice & Remedies Code (“the Code”).

The take-nothing judgment entered in the underlying cause is the “untenable” result this court forecasted could occur in Franka v. Velasquez, 216 S.W.3d 409, 413 (Tex. App.—San Antonio 2006), rev'd, 332 S.W.3d 367 (Tex. 2011). A governmental entity should not be permitted to

demand that its employee be dismissed from a lawsuit under section 101.106(e) of the Code and then, after the employee is dismissed from the lawsuit, attempt to assert immunity or otherwise avoid liability by arguing the employee was not within the course and scope of his employment.

Fortunately, the City's judicial Concurring Opinion 04-17-00099-CV admission precludes it from capitalizing on that approach in this case. This case does, however, demonstrate the need for the Legislature to consider amending the statute to prevent what must be an unintended consequence.

Marialyn Barnard, Justice -2-