

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

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-