

SUPREME COURT OF TEXAS

Texas Department of Transportation v. Perches

388 S.W.3d 652 (Tex. 2012) · Decided November 16, 2012

SUMMARY

The Supreme Court of Texas held that a concrete guardrail placed according to a roadway plan is generally not a "special defect" under the Texas Tort Claims Act because it defines the roadway rather than obstructing ordinary travel. The court reversed the court of appeals in part, rendered judgment dismissing the claims brought under the Act, affirmed the portion concerning premise-liability claims, and remanded for further proceedings. The decision also addressed appellate jurisdiction based on a conflict among Texas courts of appeals.

CASE DETAILS

COURT	Supreme Court of Texas
JURISDICTION	Texas
DECIDED	November 16, 2012
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Interlocutory appeal from the denial of TxDOT’s immunity-based jurisdictional plea in a Texas Tort Claims Act case.
STANDARD OF REVIEW	Whether a condition is a special defect is a question of law reviewed de novo. The court also considered jurisdiction under the Texas Tort Claims Act de novo.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Texas.
PARTIES	Texas Department of Transportation v. Jose Perches's parents

TOPICS

- premises liability
- interlocutory appeal
- appellate jurisdiction
- statutory interpretation
- standard of review

PRACTICE AREAS

- Texas Tort Claims Act
- sovereign immunity
- premises liability
- appellate jurisdiction

QUESTIONS PRESENTED

1. Whether a concrete guardrail located at the end of a T-intersection and placed as part of the roadway design constitutes a special defect under the Texas Tort Claims Act.

2. Whether the Percheses pleaded facts sufficient to waive sovereign immunity for ordinary premises-liability claims under the Texas Tort Claims Act.
3. Whether the Supreme Court of Texas had jurisdiction over the interlocutory appeal because the court of appeals' decision conflicted with decisions of other courts of appeals.

HOLDINGS

1. A guardrail placed according to the roadway plan cannot constitute a special defect under the Texas Tort Claims Act when it defines the roadway and poses no threat to ordinary users traveling in the normal course.
2. The Percheses did not plead sufficient facts demonstrating a waiver of immunity for their ordinary premises-liability claims, although the trial court had jurisdiction to consider those claims.
3. The Supreme Court had jurisdiction because the court of appeals' holding conflicted with decisions of other courts of appeals regarding whether a guardrail constitutes a special defect.

KEY QUOTATIONS

“We therefore hold that guardrails placed in accordance to plan cannot constitute a special defect under the Act.” (656)

“Special defect jurisprudence rests on the “objective expectations of an ‘ordinary user.’”” (655)

“Guardrails, by their nature, define the roadway, they do not impede it.” (656)

FACTUAL BACKGROUND

Jose Perches was killed while driving through the Bicentennial Underpass in McAllen. At the end of a ramp from westbound U.S. Highway 83, a T-intersection directed westbound drivers to turn left onto Bicentennial Boulevard. Perches missed the turn, struck a concrete guardrail, went over the edge, and fell more than twenty feet to the roadway below. His parents alleged negligent maintenance and implementation of the roadway and traffic-control devices and sought injunctive relief against TxDOT.

PROCEDURAL HISTORY

The Percheses sued TxDOT and several engineering firms after Jose Perches died when his vehicle struck a concrete barrier at an underpass and fell to the roadway below. The trial court denied TxDOT's plea to the jurisdiction based on immunity and severed the claims against TxDOT from those against the engineering firms. The court of appeals affirmed, holding that the pleadings supported a waiver of immunity for special-defect claims and that TxDOT had not preserved its challenge to the requested permanent injunction. The Supreme Court of Texas granted review based on a conflict among courts of appeals concerning whether a guardrail may be a special defect.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The court reversed in part and affirmed in part the court of appeals' judgment, rendered judgment dismissing the claims brought under the Texas Tort Claims Act, and remanded to the trial court for further proceedings consistent with the opinion.

CASES CITED

- State Department of Highways & Public Transportation v. Payne, 838 S.W.2d 235 (Tex. 1992)
- City of San Antonio v. Ytuarte, 229 S.W.3d 318 (Tex. 2007) (per curiam)
- Bannon v. Texas Department of Transportation, 880 S.W.2d 300 (Tex. App.—Waco 1994, writ denied)
- State Department of Transportation v. Barraza, 157 S.W.3d 922 (Tex. App.—El Paso 2005, no pet.)
- Schafer v. Texas Department of Transportation, No. 03-01-00560-CV, 2003 WL 21467077 (Tex. App.—Austin 2003, no pet.)
- University of Texas at Austin v. Hayes, 327 S.W.3d 113 (Tex. 2010) (per curiam)
- Texas Department of Parks & Wildlife v. Miranda, 133 S.W.3d 217 (Tex. 2004)
- Denton County v. Beynon, 283 S.W.3d 329 (Tex. 2009)
- State v. Rodriguez, 985 S.W.2d 83 (Tex. 1999) (per curiam)