

TENTH COURT OF APPEALS OF TEXAS

Sheree Freeman and Phillip Freeman v. City of Waxahachie, Texas

No. 10-19-00379-CV (Tex. App.—Waco Oct. 20, 2021) · No. No. 10-19-00379-CV · Decided October 20, 2021

SUMMARY

The Tenth Court of Appeals affirmed the trial court's grant of the City of Waxahachie's plea to the jurisdiction in a premises-liability action arising from injuries allegedly caused by a defective drainage inlet. The court held that the appellants failed to provide notice within the 60-day period required by the City's charter and did not establish incapacity, equitable estoppel, or actual notice sufficient to excuse the deficiency. The court overruled the appellants' sole issue and did not reach the remaining governmental-immunity arguments.

CASE DETAILS

COURT	Tenth Court of Appeals of Texas
WRITING FOR THE COURT	Per curiam; Tom Gray, Chief Justice; Justice Johnson; Justice Rose
JURISDICTION	Texas
DECIDED	October 20, 2021
DOCKET	No. 10-19-00379-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Freemans appealed the trial court's grant of the City of Waxahachie's plea to the jurisdiction in their negligence and gross-negligence action arising from injuries allegedly caused by a defective drainage inlet.
STANDARD OF REVIEW	The disposition of a plea to the jurisdiction is reviewed de novo. When the plea challenges jurisdictional facts, the court considers relevant evidence, takes as true evidence favorable to the nonmovant, indulges reasonable inferences in the nonmovant's favor, and resolves the plea as a matter of law if the evidence is undisputed or fails to raise a fact question.
PRECEDENTIAL VALUE	published
PARTIES	Sheree Freeman, Phillip Freeman v. City of Waxahachie, Texas

TOPICS

subject matter jurisdiction

civil procedure

municipal law

negligence

appellate procedure

PRACTICE AREAS

civil procedure

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constitutional law

appellate procedure

QUESTIONS PRESENTED

1. Whether the City charter's sixty-day pre-suit notice requirement was unconstitutional under the Texas Constitution's Open Courts Clause.
2. Whether Sheree Freeman's alleged incapacity raised a fact question excusing compliance with the sixty-day notice requirement.
3. Whether the City had actual notice of the claim sufficient to excuse written pre-suit notice under the Texas Tort Claims Act.
4. Whether the trial court properly granted the City's plea to the jurisdiction.

HOLDINGS

1. The City's charter provision requiring written notice within sixty days was a valid and enforceable jurisdictional prerequisite to suit.
2. The Freemans' evidence concerning Sheree Freeman's injuries, immobility, medication, and dependence on her husband did not raise a fact question excusing the untimely notice.
3. The City did not have actual notice sufficient to excuse the Freemans' untimely written notice.

KEY QUOTATIONS

“she was not required to do “an impossible thing.”” (at 9)

“A governmental unit has actual notice under the TTCA if it has subjective knowledge of (1) a death, injury, or property damage; (2) the governmental unit’s fault that produced or contributed to the death, injury, or property damage; and (3) the identity of the parties involved.” (at 10)

FACTUAL BACKGROUND

Sheree Freeman alleged that she was injured on December 31, 2016, when her foot slipped into a curb opening and drainage inlet on Buffalo Creek Drive in Waxahachie. She alleged that the City had constructed and maintained the roadway and drainage system negligently and that the drainage inlet contained dangerous construction defects. The City charter required written notice of a claim within sixty days, but the Freemans did not notify the City until March 24, 2017, eighty-three days after the incident. Sheree Freeman asserted that her injuries rendered her immobile and unable to provide notice during the sixty-day period.

PROCEDURAL HISTORY

The Freemans sued the City under the Texas Tort Claims Act, alleging injuries caused by a dangerous condition in a City roadway and drainage system. The City filed a plea to the jurisdiction asserting, among other grounds,

failure to provide timely pre-suit notice. The trial court granted the plea, and the Tenth Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Suarez v. City of Texas City, 465 S.W.3d 623, 632 (Tex. 2015)
- Dallas Area Rapid Transit v. Whitley, 104 S.W.3d 540, 542 (Tex. 2003)
- Texas Department of Parks & Wildlife v. Miranda, 133 S.W.3d 217, 227-28 (Tex. 2004)
- City of San Antonio v. Tenorio, 543 S.W.3d 772, 775-78 (Tex. 2018)
- City of Dallas v. Carbajal, 324 S.W.3d 537, 537-39 (Tex. 2010)
- Cathey v. Booth, 900 S.W.2d 339, 341 (Tex. 1995) (per curiam)
- Fitts v. City of Beaumont, 688 S.W.2d 182, 184-85 (Tex. App.—Beaumont 1985, writ ref'd n.r.e.)
- Schautteet v. City of San Antonio, 702 S.W.2d 680, 682 (Tex. App.—San Antonio 1985), writ ref'd n.r.e., 706 S.W.2d 103 (Tex. 1986) (per curiam)
- Borne v. City of Garland, 718 S.W.2d 22, 24 (Tex. App.—Dallas 1986, writ ref'd n.r.e.)
- Yancy v. United Surgical Partners International, Inc., 236 S.W.3d 778, 785-86 (Tex. 2007)
- Barnes v. City of Hillsboro, 504 S.W.2d 939, 942 (Tex. Civ. App.—Waco 1973, no writ)
- City of Waxahachie v. Harvey, 255 S.W.2d 549, 551 (Tex. Civ. App.—Waco 1953, writ ref'd n.r.e.)
- City of White Settlement v. Super Wash, Inc., 198 S.W.3d 770, 774-75 (Tex. 2006)
- Texas Department of Criminal Justice v. Simons, 140 S.W.3d 338, 347-48 (Tex. 2004)