

SUPREME COURT OF TEXAS

City of Dallas v. Reed

258 S.W.3d 620 (Tex. 2008) · No. No. 07-0469 · Decided May 16, 2008

SUMMARY

The Supreme Court of Texas held that a two-inch elevation difference between traffic lanes was not a special defect under the Texas Tort Claims Act because it was not the same kind or class as an excavation or obstruction and did not present an unusually dangerous condition. The Court further held that the City of Dallas lacked actual knowledge that the condition created an unreasonable risk of harm, so the condition did not support a premises-defect claim. The Court reversed the court of appeals and dismissed the case.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Texas
DECIDED	May 16, 2008
DOCKET	No. 07-0469
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The City appealed an order denying its plea to the jurisdiction in Reed's premises-liability action. The court of appeals affirmed, and the Supreme Court of Texas granted review based on an asserted conflict with prior decisions.
STANDARD OF REVIEW	The existence of a special defect is a question of law reviewed de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	City of Dallas v. Kenneth Reed

TOPICS

- premises liability
- municipal liability
- interlocutory appeal
- appellate jurisdiction
- standard of review

PRACTICE AREAS

- premises liability
- municipal liability
- appellate procedure

QUESTIONS PRESENTED

1. Whether a two-inch elevation difference between traffic lanes is a special defect under the Texas Tort Claims Act as a matter of law.
2. Whether the roadway condition could support a premises-defect claim based on the City's actual knowledge of an unreasonable risk of harm.
3. Whether the Supreme Court of Texas had jurisdiction over the interlocutory appeal because the court of appeals' decision conflicted with prior decisions.

HOLDINGS

1. The Supreme Court of Texas had jurisdiction because the court of appeals' decision was inconsistent with prior decisions of the Supreme Court of Texas in a manner requiring clarification.
2. A two-inch difference in elevation between traffic lanes is not a special defect under the Texas Tort Claims Act because it is not of the same kind or class as an excavation or obstruction and does not present an unusually dangerous condition to ordinary roadway users.
3. The two-inch drop-off did not support a premises-defect claim because the City lacked actual knowledge that the condition created an unreasonable risk of harm at the time of the accident.

KEY QUOTATIONS

“Because we conclude that a two-inch variance in elevation between traffic lanes is not a special defect, we reverse the court of appeals' judgment and dismiss the case.” (620)

“Special defects are defects of the same kind or class as “excavations or obstructions on highways, roads, or streets,”” (622)

“Ordinary drivers, in the normal course of driving, should expect these slight variations on the road caused by normal deterioration.” (622)

“Actual knowledge requires knowledge that the dangerous condition existed at the time of the accident.” (623)

FACTUAL BACKGROUND

Reed was injured in a motorcycle accident while changing lanes on a Dallas roadway with a two-inch elevation variance between traffic lanes. He alleged that the unevenness constituted either a special defect or a premises defect under the Texas Tort Claims Act. A City street inspector knew of the elevation difference and reported the roadway condition to the City, but rated the street condition “C,” or fair, and did not report that the condition presented a potential danger. There were no prior reported accidents or complaints concerning the drop-off.

PROCEDURAL HISTORY

Kenneth Reed sued the City of Dallas for personal-injury damages arising from a motorcycle accident allegedly caused by a two-inch elevation difference between traffic lanes. The trial court denied the City's plea to the jurisdiction. The court of appeals affirmed, holding that Reed had pleaded a cognizable cause of action and that

the condition could constitute a special defect. The Supreme Court of Texas concluded that it had jurisdiction, reversed the court of appeals, and dismissed the case.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The opinion states that the court of appeals' judgment was reversed and the case was dismissed. No remand to the lower court was ordered; the disposition is treated as reversal with dismissal.

CASES CITED

- Harris County v. Eaton, 573 S.W.2d 177, 178-80 (Tex. 1978)
- City of El Paso v. Bernal, 986 S.W.2d 610, 611 (Tex. 1999)
- Gen. Servs. Comm'n v. Little-Tex Insulation Co., 39 S.W.3d 591, 594 (Tex. 2001)
- State v. Rodriguez, 985 S.W.2d 83, 85 (Tex. 1999) (per curiam)
- State Dep't of Highways & Pub. Transp. v. Payne, 838 S.W.2d 235, 237-38 (Tex. 1992)
- State Dep't of Highways & Pub. Transp. v. Kitchen, 867 S.W.2d 784, 786 (Tex. 1993) (per curiam)
- City of Grapevine v. Roberts, 946 S.W.2d 841, 843 (Tex. 1997)
- Porter v. Grayson County, 224 S.W.3d 855, 859 (Tex. App.—Dallas 2007, no pet.)
- The Univ. of Tex.-Pan Am. v. Aguilar, 251 S.W.3d 511 (Tex. 2008) (per curiam)
- City of Corsicana v. Stewart, 249 S.W.3d 412 (Tex. 2008) (per curiam)

OPINION

City of Dallas v. Reed 258 S.W.3d 620

PER CURIAM.

258 S.W.3d 620 (2008) CITY OF DALLAS, Petitioner, v. Kenneth REED, Respondent. No. 07-0469. Supreme Court of Texas. May 16, 2008. Rehearing Denied August 29, 2008.

*621 Thomas P. Perkins Jr., Patricia Medrano, Barbara E. Rosenberg, City Attorney's Office, Dallas, TX, for Pettioner.

Mark A. Ticer, Law Office of Mark Ticer, Dallas, TX, for Respondent. Doreen E. McGookey, City Attorney, Sherman, TX, Darrell G-m Noga, Fee, Smith, Sharp & Vitullo, Dallas, TX, Evelyn Waithira Njuguna, Texas Municipal League, Adam Warren Aston, Assistant Solicitor General, Austin, TX, for Amicus Curiae. PER CURIAM. In this premises liability case, we are asked to decide whether a two-inch difference in elevation between traffic lanes on a roadway constitutes a special defect as a matter of law under the Texas Tort Claims Act. TEX. CIV. PRAC. & REM. CODE § 101.022(b). The court of appeals held this road condition was a special defect, finding the two-inch difference in elevation "an unusual or unexpected danger to normal users of roadways." 222 S.W.3d 903, 909 (quoting State Dep't of Highways & Pub. Transp. v. Payne, 838 S.W.2d

235, 238 (Tex.1992)). Because we conclude that a two-inch variance in elevation between traffic lanes is not a special defect, we reverse the court of appeals' judgment and dismiss the case. Kenneth Reed brought suit against the City of Dallas to recover personal injury damages from a motorcycle accident caused by a two-inch elevation variance on the roadway as he changed lanes. Reed alleges the sharp unevenness between the traffic lanes constitutes either a special defect or a premises defect under the Texas Tort Claims Act. In response, the City filed a plea to the jurisdiction, arguing the two-inch elevation difference between the lanes was not a defect of any kind to waive the City's immunity under the Act. The trial court, however, denied the plea, and the City filed an interlocutory appeal. The court of appeals affirmed the trial court's denial of the plea to the jurisdiction, finding Reed pled a cognizable cause of action. 222 S.W.3d at 909. Before reaching the merits, we must consider the issue of our own jurisdiction. Generally, a court of appeals' decision in an interlocutory appeal is final, unless an exception applies, such as when a court of appeals holds differently from a prior decision of this Court or another court of appeals. TEX. GOV'T CODE §§ 22.225(b), (c); 22.001(a)(2). Decisions that hold differently are defined to include those that have an "inconsistency in their respective decisions that should be clarified to remove unnecessary uncertainty in the law and unfairness to litigants." Id. § 22.225(e). Such a conflict exists here because the court of appeals' opinion is inconsistent with our decisions in *Harris County v. Eaton*, 573 S.W.2d 177, 178-80 (Tex.1978), and *City of El Paso v. Bernal*, 986 S.W.2d 610, 611 (Tex.1999).

*622 Generally, the State of Texas has sovereign immunity from suit unless waived by the Legislature. *Gen. Servs. Comm'n v. Little-Tex Insulation Co.*, 39 S.W.3d 591, 594 (Tex.2001). The Legislature, however, has provided a limited waiver of immunity to suit for tort claims arising from special defects under the Texas Tort Claims Act. TEX. CIV. PRAC. & REM. CODE § 101.022(b). Special defects are defects of the same kind or class as "excavations or obstructions on highways, roads, or streets," *Eaton*, 573 S.W.2d at 179, that present an "unexpected and unusual danger to ordinary users of roadways," *State v. Rodriguez*, 985 S.W.2d 83, 85 (Tex.1999) (per curiam). Where a special defect exists, the State owes the same duty to warn as a private landowner owes to an invitee. *Payne*, 838 S.W.2d at 237. That duty requires the State to use ordinary care to reduce or eliminate an unreasonable risk of harm, which the State knew or reasonably should have known. Id. The existence of a special defect is a question of law, which we review de novo. *State Dep't of Highways & Pub. Transp. v. Kitchen*, 867 S.W.2d 784, 786 (Tex.1993) (per curiam).

The court of appeals held the two-inch drop-off is a special defect as a matter of law because it posed "an unusual or unexpected danger to the normal users of roadways." 222 S.W.3d at 909. This Court, however, has traditionally distinguished special defects by some unusual quality outside the ordinary course of events. Compare *Eaton*, 573 S.W.2d at 178-80 (large hole ten inches deep and nine feet wide covering ninety percent of the road's width was a special defect), with *Bernal*, 986 S.W.2d at 611 (worn or depressed area in a sidewalk with a depth of three inches was

not a special defect); *City of Grapevine v. Roberts*, 946 S.W.2d 841, 843 (Tex. 1997) (partially cracked and crumbled sidewalk step was not a special defect); *Rodriguez*, 985 S.W.2d at 83 (ninety-degree turn in a detour for a road construction project was not a special defect). Not only is the two-inch drop-off here not in the same kind or class as an excavation or obstruction, there is nothing unusually dangerous about a slight drop-off between traffic lanes in the roadway. See, e.g., *Porter v. Grayson County*, 224 S.W.3d 855, 859 (Tex.App.-Dallas 2007, no pet.). Ordinary drivers, in the normal course of driving, should expect these slight variations on the road caused by normal deterioration. Thus, to construe a two-inch drop-off to be within the same kind or class as an excavation or obstruction would "grossly strain[] the definitions of those conditions." *Roberts*, 946 S.W.2d at 843. Because this two-inch drop-off is not a special defect, we must decide whether it is a premises defect. The legal distinction between a premises and special defect lies in the duty owed by the State to the person injured. *Payne*, 838 S.W.2d at 237. If the two-inch drop-off is a premises defect, the City owed Reed the same duty a private landowner owes a licensee. TEX. CIV. PRAC. & REM.CODE § 101.022(a). That duty requires a landowner not to injure a licensee by willful, wanton, or grossly negligent conduct; furthermore, the landowner must use ordinary care either to warn a licensee of, or to make reasonably safe, a dangerous condition of which the owner is aware and the licensee is not. *Payne*, 838 S.W.2d at 237. In determining whether a premises owner has actual knowledge, "courts generally consider whether the premises owner has received reports of prior injuries or reports of the potential danger presented by the condition." *The Univ. of Tex.-Pan Am. v. Aguilar*, 251 S.W.3d 511 (Tex.2008) (per curiam). Here, to prove the City had actual knowledge, Reed submitted the City *623 street inspector's deposition testimony, showing she was aware of the drop-off on the roadway and had reported her findings to the City. Although the street inspector gave her report to the City, the report did not reveal the drop-off's potential danger. On the contrary, the inspector gave the street a "C" rating, which meant the road condition was "fair" at the time of inspection. It was not until after the accident, during a deposition, that the street inspector acknowledged the road could likely receive a poor "D" rating. But, "[a]ctual knowledge requires knowledge that the dangerous condition existed at the time of the accident." *City of Corsicana v. Stewart*, 249 S.W.3d 412 (Tex.2008) (per curiam). No such knowledge exists here. Additionally, there were no reported accidents caused by the two-inch drop-off prior to Reed's motorcycle accident or any complaints about this road condition. Thus, because there is no evidence that the City willfully or negligently caused Reed's injuries, or that it was aware the two-inch drop-off created an unreasonable risk of harm, the two-inch drop-off will not give rise to a premises defect claim. Accordingly, because we conclude that a two-inch difference in elevation between traffic lanes is not in the same kind or class as an excavation or obstruction to be a special defect, and that the City lacked actual knowledge of the allegedly dangerous condition, we grant the petition for review, and, without hearing oral argument, we reverse the court of appeals' judgment and dismiss the case. TEX. R.APP. P. 59.1.

