

United States Court of Appeals
for the Fifth Circuit

No. 25-20492

United States Court of Appeals
Fifth Circuit

FILED

October 21, 2026

Thomas B. Plunkett, III
Clerk

HARRIET PAYNE; CHARLES PAYNE, JR.; CALVIN PAYNE;
STEPHANIE PAYNE; BETTY MORRISON; KIZZ GOINS; KATANIA
DEARBORNE; ROBERT PAYNE,

Plaintiffs—Appellees,

versus

CITY OF HOUSTON, TEXAS,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:23-CV-4686

Before STEWART, GRAVES, and WILSON, *Circuit Judges*.

PER CURIAM:*

This case arises out of an automobile collision between a police officer rushing to return to the station after responding to an earlier 9-1-1 call and another driver, Charles Payne, who was making a left turn while experiencing a severe medical emergency and under the influence of marijuana. Payne

* This opinion is not designated for publication. See 5TH CIR. R. 47.5.

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died shortly after the crash. Following the accident, members of Payne's family sued the officer's employer, the City of Houston.

This court previously affirmed the district court's denial of the City's motion to dismiss, rejecting along the way the City's reading of the Texas Tort Claims Act (TTCA) and several exceptions to that statute's waiver of governmental immunity. *Payne v. City of Houston, Tex.*, No. 24-20150, 2025 WL 999085 (5th Cir. Apr. 3, 2025). Now, despite undisputed facts largely confirming Plaintiffs' allegations—and disputed facts regarding the officer's breach of duty and proximate cause of the accident—the City returns to challenge the district court's subsequent denial of its motion for summary judgment. We affirm.

I.

On December 26, 2021, Houston Police Department Officer Christopher Cabrera was on duty and driving his patrol car northbound on North Shepherd Drive, a six-lane road with a posted speed limit of 35 miles per hour. Officer Cabrera was driving to a police station to complete an offense report and file charges against an individual he had just arrested and booked into jail pursuant to an earlier 9-1-1 call. Per Houston Police Department policy, he was required to complete this paperwork within two hours of the incident and was approximately 45 minutes from the police station when he left the jail.

While Cabrera drove northbound on North Shepherd Drive, Charles Payne was driving southbound. As Payne crossed the three northbound lanes of traffic to complete a left turn off North Shepherd, Cabrera struck the passenger side of Payne's vehicle. In the seconds leading up to the collision, Cabrera had reached speeds up to 70 miles per hour and had briefly looked down at his laptop. Payne initially survived the collision but died shortly after being transported to Memorial Hermann Hospital. It was later discovered

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that at the time of the collision, Payne, who was diabetic, was in the midst of a heart attack, had elevated blood-sugar levels, and was under the influence of marijuana. However, in his report and deposition testimony, Plaintiffs' retained expert opined that the fatal collision would not have occurred if Cabrera had been driving the speed limit.

Litigation ensued in the wake of the crash. In July 2023, Cabrera sued Payne's estate in Texas state court for Payne's alleged negligence related to the collision. The parties ultimately settled Cabrera's action, and the state court dismissed the suit with prejudice.

In December 2023, Plaintiffs, Payne's spouse and children, filed this suit on Payne's behalf against the City and Cabrera. Plaintiffs brought claims under 42 U.S.C. § 1983 and the TTCA.

Both Cabrera and the City moved to dismiss Plaintiffs' complaint. As relevant here, the City asserted that governmental immunity barred Plaintiffs' TTCA claim. In March 2024, the district court granted Cabrera's motion but denied the City's. The City appealed the denial of its motion on the TTCA claim, and this court affirmed. *Payne*, 2025 WL 999085, at *9. In September 2025, the City moved for summary judgment as to all claims. The district court denied the City's motion without analysis, and the City again appealed.¹

II.

"We review a grant of summary judgment *de novo*, applying the same standard as the district court." *Certain Underwriters at Lloyd's, London v. Axon Pressure Prods. Inc.*, 951 F.3d 248, 255 (5th Cir. 2020) (citing *Rogers v.*

¹ The City thereafter moved in the district court to stay proceedings on Plaintiffs' § 1983 claims pending resolution of this appeal. The district court denied the motion. Those claims proceeded to a jury trial, and the jury found in favor of Plaintiffs.

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Bromac Title Servs., L.L.C., 755 F.3d 347, 350 (5th Cir. 2014)). Summary judgment is appropriate when “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(a). “A genuine dispute of material fact exists ‘if the evidence is sufficient for a reasonable jury to return a verdict for the nonmoving party.’” *Ahders v. SEI Priv. Tr. Co.*, 982 F.3d 312, 315 (5th Cir. 2020) (quoting *Hamilton v. Segue Software Inc.*, 232 F.3d 473, 477 (5th Cir. 2000) (per curiam)). “We construe all facts and inferences in the light most favorable to the nonmov[ant.]” *Murray v. Earle*, 405 F.3d 278, 284 (5th Cir. 2005).

“Typically, a party cannot immediately appeal the denial of summary judgment. But when that denial is ‘of a motion for summary judgment based on [governmental] immunity,’ the ruling ‘is immediately appealable under the collateral order doctrine to the extent that it turns on an issue of law.’” *Wilkerson v. Univ. of N. Tex. ex. rel. Bd. of Regents*, 878 F.3d 147, 154 (5th Cir. 2017) (citations and quotation omitted). When reviewing a denial of summary judgment on immunity grounds, “our jurisdiction is generally limited to examining the *materiality* (i.e., legal significance) of factual disputes the district court determined were genuine, not their genuineness (i.e., existence).” *Argueta v. Jaradi*, 86 F.4th 1084, 1088 (5th Cir. 2023) (emphasis in original) (citing *Joseph v. Bartlett*, 981 F.3d 319, 331 (5th Cir. 2020)). These same principles apply where a district court denies application of “immunity under . . . the Texas Tort Claims Act.” *Wilkerson*, 878 F.3d at 154 (first citing *Cantu v. Rocha*, 77 F.3d 795, 803–04 (5th Cir. 1996); and then citing *McFadden v. Olesky*, 517 S.W.3d 287, 294–95, 298 (Tex. Ct. App. 2017)); see also *Morgan v. Plano Indep. Sch. Dist.*, 724 F.3d 579, 582 (5th Cir. 2013) (holding a district court’s denial of partial summary judgment based on governmental immunity was immediately appealable).

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III.

The City raises three arguments on appeal: first, that the undisputed evidence shows that it is entitled to governmental immunity as a matter of law, and no waiver of governmental immunity applies; second, that the TTCA's election of remedies provision bars Plaintiffs' suit because Payne's estate has already obtained a judgment against Cabrera; and third, that even if there is a waiver of governmental immunity, the TTCA's 9-1-1 exception to the waiver of immunity reinstates the City's immunity. Plaintiffs counter that material fact disputes as to whether a waiver of governmental immunity applies preclude summary judgment. They also assert that the TTCA's election of remedies provision and 9-1-1 exception are inapplicable. We resolve the parties' competing contentions in turn.

In Texas, "[a] political subdivision enjoys governmental immunity from suit to the extent that immunity has not been abrogated by the Legislature." *Tercero v. Tex. Southmost Coll. Dist.*, 989 F.3d 291, 297 (5th Cir. 2021) (quoting *Morgan*, 724 F.3d at 582 n.4). To overcome governmental immunity, a plaintiff must show "that the claim falls within a statutory waiver of immunity." *Rattray v. City of Brownsville*, 662 S.W.3d 860, 865 (Tex. 2023). He must then also negate "any relevant expressed withdrawal of the waiver." *Id.* at 866.

The Texas Legislature has abrogated governmental immunity for:

property damage, personal injury, and death proximately caused by the wrongful act or omission or the negligence of an employee acting within the scope of employment if:

(A) the property damage, personal injury, or death arises from the operation or use of a motor-driven vehicle or motor-driven equipment; and

(B) the employee would be personally liable to the claimant according to Texas law

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TEX. CIV. PRAC. & REM. CODE § 101.021(1). Notwithstanding this general waiver of immunity, the City proffers one provision of the TTCA it contends bars Plaintiffs' suit, and another that arguably excepts the City from the waiver of immunity provided in § 101.021(1). The first states: "A judgment against an employee of a governmental unit shall immediately and forever bar the party obtaining the judgment from any suit against or recovery from the governmental unit." TEX. CIV. PRAC. & REM. CODE § 101.106(d). The second provides that the TTCA's abrogation of immunity "applies to a claim against a public agency that arises from an action of an employee . . . *providing 9-1-1 service or responding to a 9-1-1 emergency call* only if the action violates a statute or ordinance applicable to the action." TEX. CIV. PRAC. & REM. CODE § 101.062(b) (emphasis added). The interplay of these statutes and the factual record in this case drives the outcome of this appeal.

The City first asserts that the evidence shows that Officer Cabrera neither breached a duty of care nor proximately caused the collision with Payne, such that § 101.021(1)'s waiver of immunity never comes into play. Because Plaintiffs did not muster summary judgment evidence substantiating a factual dispute as to breach of duty or proximate causation, the argument goes, the City is entitled to summary judgment with respect to Plaintiffs' TTCA claim. And, even if § 101.021(1) otherwise applies, the City further argues that § 101.106(d) or § 101.062(b) constitutes an "expressed withdrawal of the waiver." *Rattray*, 662 S.W.3d at 866.

To determine whether there is a material factual dispute regarding whether Cabrera breached a duty to Payne, it is necessary to identify the applicable duties.² The Texas Transportation Code supplies two: First, a

² Though Plaintiffs assert that Cabrera breached four distinct duties, they have forfeited their arguments with regard to two of those duties. *See Rollins v. Home Depot USA*,

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vehicle operator “may not drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard for actual and potential hazards then existing,” and must “drive at an appropriate reduced speed if . . . approaching and crossing an intersection.” TEX. TRANSP. CODE § 545.351(b)(1) & (c)(1). Second, the Texas Transportation Code prohibits “reckless driving,” which is defined as “driv[ing] a vehicle in wilful or wanton disregard for the safety of persons or property.” TEX. TRANSP. CODE § 545.401(a).

Based on the record before us, Plaintiffs have shown, at least at the summary judgment stage, that material disputes of fact exist with regard to Cabrera’s breach of these two duties.³ At some point just preceding the collision with Payne, Cabrera was looking down at his computer, and he was speeding, at times reaching up to 70 miles per hour in a 35-mile-per-hour zone, with his emergency lights and siren inactive. And Plaintiffs’ expert witness testified that had Cabrera’s patrol car been traveling at the speed limit, it would not have collided with Payne’s vehicle. These facts are more than enough for a reasonable jury to conclude that Cabrera was negligent and thereby breached a duty to Payne, such that § 101.021(1)’s waiver of immunity applies as to Plaintiffs’ claim against the City. That the City

8 F.4th 393, 397–98 (5th Cir. 2021). First, Plaintiffs did not raise the argument that Cabrera breached a duty to keep a proper lookout in its opposition to the City’s motion for summary judgment. Second, Plaintiffs raise the argument that Cabrera breached a common law duty to drive no faster than a person of ordinary prudence for the first time on appeal. Accordingly, our analysis focuses solely on the two duties that are the subject of Plaintiffs’ preserved arguments.

³ Because “the district court d[id] not specify all the facts that it f[ound] to be in dispute, we ‘conduct[ed] an analysis of the record to determine what issues of fact the district court likely considered genuine.’” *Kovacik v. Villarreal*, 628 F.3d 209, 211 n.1 (5th Cir. 2010) (quoting *Wagner v. Bay City, Tex.*, 227 F.3d 316, 320 (5th Cir. 2000)).

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disputes these facts merely proves the point: Summary judgment is improper in this instance.

Indeed, at the motion to dismiss stage, this court considered these same operative facts and noted that the record showed that Cabrera drove at a “reckless” and “irresponsibly fast” speed. *Payne*, 2025 WL 999085, at *8.⁴ Even though we examined the district court’s denial of the City’s motion to dismiss through a different lens, the evidence essentially has not changed. There are, at least, material disputes of fact regarding whether Cabrera breached a duty owed to Payne.

The same evidence distills to a material factual dispute as to whether Cabrera proximately caused the collision with Payne. Proximate cause requires a showing of both cause in fact and foreseeability. *W. Invs., Inc. v. Urena*, 162 S.W.3d 547, 551 (Tex. 2005). Cause in fact turns on “whether the act or omission was a substantial factor in causing the injury without which the harm would not have occurred.” *Id.* (first citing *Marathon Corp. v. Pitzner*, 106 S.W.3d 724, 727 (Tex. 2003); then citing *IHS Cedars Treatment Ctr. of Desoto, Tex., Inc. v. Mason*, 143 S.W.3d 794, 799 (Tex. 2004)). “If the defendant’s negligence merely furnished a condition that made the injuries possible, there can be no cause in fact.” *Id.* Whether Cabrera’s speeding and inattention were substantial factors in causing Payne’s injuries, or “merely furnished a condition that made the injuries possible,” *id.*, is perhaps the quintessential dispute driving this case. Foreseeability is also “a highly fact-specific inquiry,” and, in this case, it hinges on the disputed question of how the circumstances impacted Cabrera’s driving and level of care. *Stanfield v. Neubaum*, 494 S.W.3d 90, 99 (Tex. 2016); *Doe v. Boys Clubs of Greater Dallas*,

⁴ This court did not consider Plaintiffs’ expert testimony during the City’s prior appeal.

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Inc., 907 S.W.2d 472, 478 (Tex. 1995) (“Foreseeability . . . requires that a person of ordinary intelligence should have anticipated the danger created by a negligent act or omission.” (citing *Nixon v. Mr. Prop. Mgmt. Co.*, 690 S.W.2d 546, 549–50 (Tex. 1985))). Accordingly, summary judgment is inappropriate on the question of proximate cause as well.

In sum, the record evinces a genuine dispute of material fact as to whether Cabrera breached a duty to Payne and proximately caused the collision with Payne’s vehicle. These questions, in turn, implicate the reach of the TTCA’s waiver of governmental immunity as to Plaintiffs’ claim. As a result, the district court properly denied the City’s motion for summary judgment.

The City suggests that § 101.106(d) of the TTCA bars Plaintiffs’ claim as a matter of law and withdraws the above-described waiver of governmental immunity. Under § 101.106(d), “[a] judgment against an employee of a governmental unit shall . . . bar the party obtaining the judgment from any suit against or recovery from the governmental unit.” TEX. CIV. PRAC. & REM. CODE § 101.106(d). To satisfy this standard, the City presented the district court with an agreed order dismissing with prejudice Cabrera’s state court claims against Payne’s estate. But this order, entered after the parties reached a settlement of Cabrera’s claims, is distinguishable from an actual “judgment against” Cabrera. *Indem. Ins. Co. v. City of Garland*, 258 S.W.3d 262, 267–69 (Tex. Ct. App. 2008) (holding that an “agreed order of dismissal did not constitute a ‘judgment against’ [an employee] for purposes of section 101.106(d)”). Section 101.106(d) is simply inapplicable.

Finally, the City invokes the 9-1-1 exception to the State’s waiver of governmental immunity engrafted in TTCA § 101.062(b), as it did in contesting the district court’s denial of the City’s motion to dismiss. As

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before, the City asserts that the exception negates “any relevant expressed withdrawal of the waiver,” *Rattray*, 662 S.W.3d at 866, because Cabrera was still responding to the earlier 9-1-1 emergency call as he sped back to the station to complete paperwork. We rejected this argument then, and we reject it now. *See Payne*, 2025 WL 999085, at *6–8.

Cabrera was not “responding” to a 9-1-1 emergency call at the time of the collision. *Id.*; *see City of Austin v. Choudhary*, No. 03-05-00549-CV, 2006 WL 1649312, at *5–6 (Tex. App. June 16, 2006); *cf. City of Killeen-Killeen Police Dep’t v. Terry*, 712 S.W.3d 101, 102 (Tex. 2025) (raising applicability of § 101.062(b) in a case in which it was “undisputed that the officer . . . was responding to a 9-1-1 call when his cruiser struck [the plaintiff’s] vehicle”); *City of Houston v. Denby*, No. 1-21-CV-422, 2022 WL 3588753, at *1, *5–6 (Tex. App. Aug. 23, 2022) (contrasting *Choudhary* and concluding that emergency medical technicians were still “responding to a 9-1-1 emergency call” when actively providing medical attention in response to a 9-1-1 call). Considering the summary judgment record, which materially conforms to the factual allegations we considered at the motion to dismiss stage, we find no reason to revisit our earlier application of § 101.062(b) to the facts of this case. And the ostensibly “new” Texas cases the City cites for support of its reading of § 101.062(b) do not militate to the contrary. *See Terry*, 712 S.W.3d at 102–03; *Denby*, 2022 WL 3588753, at *5–6.

IV.

Genuine disputes of material fact as to whether Cabrera breached a duty to Payne and proximately caused the collision with Payne’s vehicle implicate the reach of TTCA § 101.021(1)’s waiver of governmental immunity as to Plaintiffs’ claim against the City. Further, based on the summary judgment record, neither § 101.106(d) nor § 101.062(b) of the

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TTCA works to bar Plaintiffs' claim. For these reasons, the district court did not err in denying the City's motion for summary judgment.

AFFIRMED.