

Affirmed and Opinion filed December 30, 1999.



In The

Fourteenth Court of Appeals

NO. 14-98-00660-CV

**ALMA AGUILAR, Individually and as Next Friend of MARIO OBREGON, a minor,
and ROSA MARTINEZ, Individually and as Next Friend of ELIZABETH
RODRIGUEZ, Appellants**

V.

HARRIS COUNTY, TEXAS, Appellee

=====
**On Appeal from the 215th District Court
Harris County, Texas
Trial Court Cause No. 96-02493**
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OPINION

In this sovereign immunity case, Alma Aguilar, individually and as next friend of Mario Obregon, a minor, and Rosa Martinez, individually and as next friend of Elizabeth Rodriguez, a minor, appeal a summary judgment entered in favor of Harris County, Texas (the "County"), on the ground that the affirmative defense of sovereign immunity was invoked solely on a finding of official immunity for a governmental employee. We affirm.

Background

On April 7, 1995, Harris County Deputy Constable Romeo Chapa was involved in a collision with a vehicle in which Obregon and Rodriguez were traveling. Appellants filed suit against Chapa and the County for personal injuries and property damage. Chapa filed a motion for summary judgment asserting the defense of official immunity, which the trial court denied but the appeals court rendered in his favor. *See Chapa v. Aguilar*, 962 S.W.2d 111 (Tex. App.–Houston [1st Dist.] 1997, no writ).

The County then filed a motion for summary judgment on the ground of sovereign immunity based on Chapa being protected by official immunity. Appellants' summary judgment response argued that sustaining the County's sovereign immunity based on Chapa's official immunity was inconsistent with the waiver provisions of the Texas Tort Claims Act (the "Act").¹ The trial court granted a take-nothing summary judgment in favor of the County.

Standard of Review

A summary judgment may be granted if the summary judgment evidence shows that, except as to the amount of damages, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law on the issues expressly set out in the motion or response. *See* TEX. R. CIV. P. 166a(c). Summary judgment may be granted if a defendant disproves at least one element of each of the plaintiff's claims or establishes all elements of an affirmative defense to each claim. *See American Tobacco Co., Inc. v Grinnell*, 951 S.W.2d 420, 425 (Tex. 1997). In reviewing a summary judgment, we take as true all evidence favorable to the nonmovant and indulge every reasonable inference and resolve any doubts in the nonmovant's favor. *See Rhone-Poulenc, Inc. v. Steel*, 997 S.W.2d 217, 223 (Tex. 1999).

Sovereign Immunity

Appellants' sole point of error argues that: (1) granting summary judgment on the affirmative defense of sovereign immunity, based solely upon a finding of official immunity for Chapa, the County's

¹ *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 101.001-101.009 (Vernon 1997 & Supp. 1999).

employee, is inconsistent with the sovereign immunity waiver provisions of Section 101.021(2) of the Act; and (2) the holding of *DeWitt*² to the contrary is incorrect because it relieves governmental entities from any responsibility for the acts of their employees, which was not the intent of the Legislature. We disagree.

A municipality in Texas is immune from tort liability for its own acts and those of its agents unless the Act waives immunity. *See City of Amarillo v. Martin*, 971 S.W.2d 426, 427 (Tex. 1998). The limited waiver of sovereign immunity is set out in section 101.021 of the Act. *See DeWitt, v. Harris County*, 904 S.W.2d 650, 652 (Tex. 1995). Under that section, a governmental unit is liable for personal injury and death caused by a condition or use of tangible personal or real property if the governmental unit would, were it a private person, be liable to the claimant according to Texas law. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 101.021(2) (Vernon 1997).

However, a governmental unit is liable under respondeat superior only if the governmental unit's employee would be liable. *See DeWitt*, 904 S.W.2d at 654. The governmental unit, were it a private person, would be entitled to assert any affirmative defenses its employee has to liability. *See id.* Official immunity is such an affirmative defense. *See City of Lancaster v. Chambers*, 883 S.W.2d 650, 653 (Tex. 1994). Official immunity protects individual officials whereas sovereign immunity protects governmental entities. *See DeWitt*, 904 S.W.2d at 653. Whether the Act waives sovereign immunity in a given case does not affect whether the governmental employee may assert official immunity as a defense. *See id.* Thus, if official immunity protects a governmental unit's employee, then the governmental unit retains its sovereign immunity and is likewise not liable under section 101.021(2). *See id.* at 654.

In the present case, it is undisputed that Chapa is protected from liability by official immunity. *See Chapa*, 962 S.W.2d at 115. Because Chapa is protected by official immunity, the County, as his employer, is also protected from liability for Chapa's negligence, if any, by sovereign immunity. *See DeWitt*, 904 S.W.2d at 654. Because appellants' point of error thus demonstrates no error by the trial court in granting summary judgment in accordance with prevailing immunity law, it is overruled. Accordingly, the judgment of the trial court is affirmed.

² *See DeWitt v. Harris County*, 904 S.W.2d 650 (Tex. 1995).

/s/ Richard H. Edelman
Justice

Judgment rendered and Opinion filed December 30, 1999.

Panel consists of Justices Hudson, Edelman, and Frost.

Do not publish — TEX. R. APP. P. 47.3(b).