
LIABILITY - TEXAS

Garza v. Harrison

Supreme Court of Texas - May 24, 2019 - S.W.3d - 2019 WL 2237875 - 62 Tex. Sup. Ct. J. 1149

Parents of suspect shot by off-duty municipal police officer brought cause of action against officer in his individual capacity, and officer filed motion to dismiss under election-of-remedies provision of the Texas Tort Claims Act.

The 80th District Court denied officer's dismissal motion, and officer filed interlocutory appeal. The Houston Court of Appeals affirmed. Officer petitioned for review.

The Supreme Court held that:

- Off-duty police officer was acting within scope of authority that he possessed as peace officer in attempting to make warrantless, extraterritorial arrest, and
- Trial court should have dismissed officer as party under election-of-remedies provision of the Texas Tort Claims Act.

Off-duty police officer, who was in plain clothes and at apartment complex where he lived outside territorial limits of city that employed him, was acting within scope of authority that he possessed as peace officer, and thus within scope of employment under election-of-remedies provision of the Texas Tort Claims Act, when, upon observing narcotics transaction in vehicle parked next to his in apartment complex parking lot, he attempted to make warrantless arrest, though such an arrest may have also benefited owner of apartment complex, for which he worked on part-time basis as courtesy patrol officer; regardless of propriety of officer's actions, in drawing his gun and allegedly firing into car as it attempted to back away with officer clinging to the open driver's door, officer was doing his job as peace officer in trying to make arrest and could not be sued individually in tort.

Trial court should have dismissed as party, under election-of-remedies provision of the Texas Tort Claims Act, a municipal police officer named as defendant in tort action arising from death of suspect whom officer was attempting to arrest, after officer had witnessed the suspect engage in drug transaction in parking lot of apartment complex where officer lived, when officer, in attempt to prevent suspect from driving away while officer was allegedly clinging to open door of suspect's vehicle, had discharged his firearm into vehicle and fatally injured suspect; the record conclusively established that, at time of shooting, officer was acting under valid grant of authority conferred by virtue of his status as peace officer and activated by commission of crime in his presence.

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