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## City of Roswell v. Hernandez-Flores

**Court of Appeals of Georgia - October 28, 2022 - S.E.2d - 2022 WL 15654230**

Pedestrian filed negligence suit against city, seeking to recover for multiple permanent injuries sustained when she was struck on the sidewalk by a fleeing suspect's vehicle after it swerved to avoid tire-deflating spikes deployed by a city police officer.

Asserting sovereign immunity, city moved for summary judgment. The trial court denied city's motion. City appealed.

The Court of Appeals held that:

- Officer was not actively using his patrol car at the time pedestrian was injured, so as to waive city's immunity;
- Officer's storage of spikes in the trunk of his patrol car was not a use of a motor vehicle that would waive city's immunity; and
- Officer was not using patrol car as a vehicle when he was positioned behind it and deploying spikes, so as to waive city's immunity.

City police officer was not actively using his patrol car at the time pedestrian was injured by fleeing suspect's vehicle after it swerved to avoid tire-deflating spikes deployed by officer, and thus officer's conduct involving a motor vehicle was insufficient to waive city's sovereign immunity from pedestrian's negligence suit, even though officer's patrol car had been involved in his monitoring of the pursuit of the suspect on his radio and his travel to intersection at which he deployed spikes; patrol car had already been parked on the side of the road when pedestrian was injured.

City police officer's storage of tire-deflating spikes in the trunk of his patrol car was not a use of a motor vehicle within the meaning of statute waiving city's sovereign immunity for losses arising out of claims for the negligent use of a vehicle, and thus did not waive city's immunity from pedestrian's negligence suit seeking to recover for injuries sustained when she was struck by a fleeing suspect's vehicle after it swerved to avoid such spikes; it was officer's actual use of spikes that allegedly led suspect's vehicle to injure pedestrian, not the location in which spikes were stored, and thus officer's allegedly tortious conduct did not originate in or flow from the storage of spikes in the patrol car, and such storage was not the direct cause of pedestrian's injuries.

City police officer was not using his parked patrol car as a vehicle when he was positioned behind it and deploying tire-deflating spikes, within the meaning of statute waiving city's sovereign immunity for losses arising out of claims for the negligent use of a vehicle, and thus statute did not apply to waive city's immunity from pedestrian's negligence suit seeking to recover for injuries sustained when she was struck by a fleeing suspect's vehicle after it swerved to avoid such spikes; patrol car was parked and analogous to a static prop, and its presence at the scene did not directly contribute to accident, in that suspect allegedly swerved to avoid spikes, not the patrol car.

Statutes that provide for a waiver of sovereign immunity, such as the provision waiving immunity of

local government entities for a loss arising out of claims for the negligent use of a motor vehicle, are in derogation of the common law and thus are to be strictly construed against a finding of waiver.

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