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City of Austin v. Quinlan

Supreme Court of Texas - June 2, 2023 - S.W.3d - 2023 WL 3767092

Restaurant patron brought premises liability action against city and restaurant that operated sidewalk café, arising out of ankle injury sustained when patron fell more than one foot from sidewalk to street.

The 98th District Court denied city's plea to jurisdiction, and city appealed. The Austin Court of Appeals affirmed in part and reversed in part. Petition for review was granted.

The Supreme Court held that:

- Sidewalk café maintenance agreement between restaurant and city did not impose nondiscretionary duty on city, and thus, claims against city did not fall outside "discretionary function" exception to waiver of immunity, under Texas Tort Claims Act;
- City's alleged control over sidewalk café, under agreement, had no bearing on issue whether "discretionary function" exception to city's waiver of governmental immunity applied;
- Statutes governing municipality's authority to issue permit for use of municipal street or sidewalk for public convenience or private use did not impose nondelegable, nondiscretionary duty on city, for which alleged breach fell outside "discretionary function" exception to waiver of immunity; and
- Dismissal of complaint, rather than remand to allow patron opportunity to amend, was appropriate.

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