

# Dallas Bar Association

presents



# APPEALING

---

to the

---

# PUBLIC

Monday, September 15th, 2014  
12:00-1:45pm  
(Belo Mansion)

Monday, September 15th, 2014  
12:00-1:45pm  
(Belo Mansion)

*City of Dallas v. Diane Sanchez et al., Cause No. 05-13-01651-CV*  
*Fifth District Court of Appeals*

**Case Summary**

The Facts.....2

The Trial Court Proceeding.....2

The Appeal.....2

The Attorneys.....3

The Oral Argument.....3

Fifth District Court of Appeals.....3

The Legal Standard.....3

The Disputed Issues.....4

The Decision and Opinions.....5

## **The Facts**

On November 16, 2012, a Dallas 911 dispatcher received a call requesting assistance for Matthew Sanchez's drug overdose. The 911 dispatcher received the address for the apartment where the overdose occurred. After the dispatcher confirmed to the caller that responders were en route, the call somehow disconnected. About ten minutes earlier, a Dallas 911 dispatcher had received a call reporting a drug overdose at the same apartment complex at which Matthew overdosed. But the earlier call came from a different telephone number, and the caller referred to a different apartment number. The emergency responders mistakenly believed that the two calls involved the same overdose. So they assisted with the overdose at the other apartment but left the apartment complex without assisting Matthew. Matthew was found dead in his apartment seven hours after the 911 call reporting his overdose.

## **The Trial Court Proceeding**

Matthew's mother, Diane Sanchez, acting on her own behalf and as the representative of Matthew's estate, joined with Arnold Sanchez (Matthew's father) in suing the City of Dallas for negligence resulting in Matthew's death. In particular, the Sanchezes claimed that the City was negligent because (1) it misused its computer and phone systems; (2) its phone system malfunctioned; (3) it failed to properly train its 911 dispatchers; and (4) its employees failed to follow proper procedures.

Prior to trial, the City of Dallas filed a motion asking the court to dismiss the Sanchezes' suit. In order to hear the case, the trial court must have jurisdiction over its subject matter. The City claimed that the trial court did not have subject-matter jurisdiction because the Sanchezes' case was precluded by governmental immunity—a rule that prohibits certain types of lawsuits against cities. The trial court agreed with the City in part and disagreed in part. The court held that governmental immunity precluded the Sanchezes from suing the City over its alleged misuse of its equipment, its alleged failure to properly train its 911 dispatchers, and its employees' alleged failure to follow proper procedures. As a result, the court granted the City's motion to dismiss with respect to these claims. However, the trial court also held that governmental immunity did not preclude the Sanchezes from suing the city based upon the allegedly malfunctioning phone system. The court denied the City's motion to dismiss this claim.

## **The Appeal**

Both the City and the Sanchezes appeal the trial court's decisions regarding the City's motion to dismiss. The City filed an interlocutory appeal (an appeal that is made before the trial is completed). The City argues that the trial court erred in denying its motion to dismiss with respect to the Sanchezes' claim based upon the allegedly malfunctioning phone system.

The Sanchezes appeal, arguing that the trial court mistakenly dismissed three of their claims. Specifically, the Sanchezes argue that the trial court has jurisdiction to hear their claims

that the city misused its equipment, failed to properly train its 911 dispatchers, and failed to follow proper procedures.

The Fifth District Court of Appeals of Texas will hear the appeal. Because the City filed this interlocutory appeal, the City is the “Appellant.” The Sanchezes are the “Appellees.” Because the Sanchezes also have filed an appeal of their own, they are also considered “Cross-Appellants.” Because the City will respond to the Sanchezes’ appeal, the City is a “Cross-Appellee.”

### **The Attorneys**

Experienced attorneys represent each party. The lawyers have prepared briefs and will present the parties’ arguments to the appellate court. The City of Dallas, the Appellant, is represented on appeal by the Office of the City Attorney through Patricia M. De La Garza and Barbara Rosenberg. The Sanchezes, the Appellees, are represented on appeal by Charles “Chad” Baruch and Brett Anthony.

### **The Oral Argument**

The Fifth District Court of Appeals will hear this appeal on September 15, 2014, at the Belo Mansion in Dallas. The Appellant and the Appellees will each have twenty minutes to address the court. During this time, the attorneys will present their arguments, and the judges will ask questions regarding the case and the applicable law. The Appellant’s lawyers will argue first, followed by the Appellees’ attorneys. Once the Appellees have concluded their argument, the Appellant’s lawyers will have five more minutes for a final rebuttal argument.

### **Fifth District Court of Appeals**

The Fifth District Court of Appeals is an intermediary court, which hears both civil and criminal cases and has jurisdiction over appeals from both district and county courts located in Dallas, Collin, Grayson, Hunt, Rockwall, and Kaufman Counties. The court consists of a Chief Justice and twelve other judges, all of whom are elected and hold their offices for terms of four years. Ordinarily, three judges will preside over oral arguments. After an oral argument, the judges will review the briefs and the trial court record. After they have fully considered the case, the three judges will vote and decide the outcome of the case. For a panel of three to reach a final decision, two of the three judges must agree. Decisions issued by the Fifth District Court of Appeals can be appealed to either the Texas Supreme Court, which hears only civil cases, or the Texas Court of Criminal Appeals, which hears only criminal cases. To learn more about the Fifth District Court of Appeals, visit <http://www.5thcoa.courts.state.tx.us/>.

### **The Legal Standard**

The Fifth District Court of Appeals reviews decisions of trial courts, but it does not preside over trials. No new witnesses or evidence are introduced during an appeal because the

appellate court's role is to review the trial court's decisions. When an appellate court reviews the trial court's subject-matter jurisdiction, the appellate court examines the issues *de novo* (or anew). Therefore, the appellate court will not defer to the trial court's decision and will make its own determination.

### **The Disputed Issues**

#### **1. Does governmental immunity preclude the trial court from exercising subject-matter jurisdiction over the Sanchezes' claim that is based upon the allegedly malfunctioning phone system?**

Generally, governmental immunity precludes negligence suits against a city. If a city cannot be sued for negligence, then the courts lack subject-matter jurisdiction—the power to hear a certain type of case. Nonetheless, the Texas Tort Claims Act (the TTCA) waives a city's immunity under certain conditions. If a waiver applies, then a city can be sued for negligence, and a trial court can exercise subject-matter jurisdiction.

Under the TTCA, one instance in which a city can be sued is when it (through its employees) causes personal injury or death as the result of a condition or use of tangible personal property. The trial court held that this waiver applied to the Sanchezes' claim that is based upon the allegedly malfunctioning phone system. Accordingly, the court ruled that it had subject-matter jurisdiction, and the Sanchezes' case could proceed with respect to this claim.

On appeal, the City argues that the telephone system's alleged malfunction was not a condition of tangible property that caused Matthew's death thereby triggering a waiver of governmental immunity. The City argues that as used in the TTCA, the term condition implies that the equipment was defective or inadequate. The City argues that its 911 phone system was not inadequate or defective because the call reporting Matthew's overdose was received and the dispatcher sent emergency responders to the apartment complex.

The Sanchezes respond by arguing that the trial court properly waived governmental immunity. They argue that the 911 phone system is personal property and that it malfunctioned by disconnecting the call and preventing dispatchers from staying on the line until emergency responders arrived. They also argue that the phone system's failure caused Matthew's death.

#### **2. Did the trial court wrongly dismiss the Sanchezes' claim that is based upon the City's alleged negligent use of property?**

The trial court dismissed the Sanchezes' claim that the City's negligent use of personal property (i.e., its computer and phone systems) triggered a waiver of governmental immunity under the TTCA. The Sanchezes allege that the City's dispatcher either hung up on the emergency caller prematurely or failed to call back after being disconnected, and, as a result, the dispatcher failed to stay on the line long enough to learn that the emergency responders did not appear at Matthew's location. The Sanchezes argue that these actions caused Matthew's death.

Additionally, the Sanchezes argue that the City's failure to use an ambulance to respond to Matthew's overdose was a negligent use of property that also waives governmental immunity.

The City disagrees. First, the City argues that the crux of the Sanchezes complaint is that the 911 dispatcher failed to ensure that emergency dispatchers arrived at the apartment at which Matthew overdosed. Thus, the City argues that the Sanchezes claim amounts to a claim that the 911 dispatcher negligently used information rather than a claim that the City misused its computer and phone systems. The City argues that the TTCA does not waive governmental immunity based upon misuse of information. Second, the City argues that the failure to use the ambulance to assist Matthew was a nonuse of property, which is different from the negligent use of property. Since the TTCA does not waive governmental immunity for the nonuse of property, the City argues that the trial court correctly dismissed this claim.

**3. Did the trial court err in dismissing the claims for the City's alleged failure to follow proper procedures?**

Under the TTCA, governmental immunity related to 911 service may be waived when the government's actions violate an applicable statute or ordinance. The Sanchezes argue that the City's 911 employees violated City personnel rules and other (unspecified) regulations, statutes, and ordinances. The City argues that the personnel rules that the dispatchers allegedly violated were not statutes or ordinances and, therefore, the trial court correctly found that governmental immunity required dismissal of this claim.

**4. Did the trial court err in dismissing the Sanchezes' claims against the City for its alleged failure to properly train its employees?**

The Sanchezes also claim that the trial court erred in dismissing their claims for negligence that is based upon the City's alleged failure to properly train its dispatchers in how to handle 911 calls. The City argues that governmental immunity required the trial court to dismiss this claim because the Sanchezes did not point to any legal authority that would give them the right to sue for the City's failure to provide adequate training.

**The Decision and the Opinions**

After the attorneys present their oral arguments, the Fifth District Court of Appeals may take several weeks or months to decide the appeal. The Fifth District Court of Appeals decision and any opinion written by the judges will be made available for review at <http://www.dallasbar.org/appealing/>. In addition, the opinions can be viewed at <http://www.search.txcourts.gov/Case.aspx?cn=05-13-01651-CV>.