



defended under the Recreational Use Statute, asserting that because Torres did not allege that the City's actions were willful, wanton, or grossly negligent, it was entitled to summary judgment. The trial court agreed. But the court of appeals concluded that softball, the reason Torres was at the complex in the first place, was not a recreational activity.<sup>3</sup> It therefore reversed the summary judgment and remanded the case for trial.<sup>4</sup> Because the court of appeals erred, we reverse and render judgment for the City.

## I

The City filed a motion for summary judgment, admitting that Torres alleged “a condition or use of tangible personal or real property” sufficient to waive sovereign immunity under the Texas Tort Claims Act,<sup>5</sup> but asserting that the claims were controlled by the Texas Recreational Use Statute (the “Statute”).<sup>6</sup>

The Statute provides:

If an owner, lessee, or occupant of real property other than agricultural land gives permission to another to enter the premises for recreation, the owner, lessee, or occupant, by giving the permission, does not:

- (1) assure that the premises are safe for that purpose;
- (2) owe to the person to whom permission is granted a greater degree of care than *is owed to a trespasser on the premises*; or
- (3) assume responsibility or incur liability for any injury to any individual or property caused by any act of the person to whom permission is granted.<sup>7</sup>

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<sup>3</sup> 40 S.W.3d 662.

<sup>4</sup> *Id.* at 666.

<sup>5</sup> TEX. CIV. PRAC. & REM. CODE § 101.021(2).

<sup>6</sup> *Id.* §§ 75.001-.004.

<sup>7</sup> *Id.* § 75.002(c)(1)-(3) (emphasis added).

In addition, the Statute defines premises to include structures.<sup>8</sup> As well, as it existed in 1996, when Torres was injured, the Statute itemized a number of activities as recreation such as: hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, cave exploration, and waterskiing and other water sports.<sup>9</sup> Since 1996, the Legislature has amended the Statute twice to include a larger number of activities as examples of recreation. The first was in 1997, when the Legislature included “any other activity associated with enjoying nature or the outdoors.”<sup>10</sup> The second was in 1999, when the Legislature added subsection (e) to section 75.002 to include indoor hockey or skating at a municipally owned or operated facility.<sup>11</sup> The controlling question is whether the Recreational Use Statute applies. If it does, the duty owed is only that owed to a “trespasser on the premises”<sup>12</sup> – to refrain from causing injury willfully, wantonly, or through gross negligence.<sup>13</sup>

## II

The court of appeals began by focusing on Torres’ purpose for being at the Bellmead Softball

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<sup>8</sup> *Id.* § 75.001(2).

<sup>9</sup> Act of May 15, 1989, 71st Leg., R.S., ch. 736, § 1, 1989 Tex. Gen. Laws 3299 (amended 1995 and 1997) (current version at TEX. CIV. PRAC. & REM. CODE § 75.001(3)(A)-(L)).

<sup>10</sup> Act of April 24, 1997, 75th Leg., R.S., ch. 56, § 1, 1997 Tex. Gen. Laws 124 (current version at TEX. CIV. PRAC. & REM. CODE § 75.001(3)(L)).

<sup>11</sup> Act of June 18, 1999, 76th Leg., R.S. ch. 734, § 1, 1999 Tex. Gen. Laws 3345 (current version at TEX. CIV. PRAC. & REM. CODE § 75.002(e)).

<sup>12</sup> *Id.* § 75.002(c)(2).

<sup>13</sup> *See, e.g., Tex. Utils. Elec. Co. v. Timmons*, 947 S.W.2d 191, 193 (Tex. 1997); *Burton Constr. & Shipbuilding Co. v. Broussard*, 273 S.W.2d 598, 603 (Tex. 1954); *see also* RESTATEMENT (SECOND) OF TORTS § 333 (1965).

Complex.<sup>14</sup> It then considered whether softball was the type of activity that the Legislature intended to include in the Recreational Use Statute. Concluding that softball was a competitive team sport, the court concluded that softball was not the type of recreation envisioned by the Legislature.<sup>15</sup>

The City contends that the court of appeals erred by focusing on the subjective intent of the injured individual. Instead, according to the City, the landowner's intent should control the inquiry into what is recreation. The City finds support for this conclusion in the section that grants protection to landowners who give "permission to another to enter the premises for recreation . . . ."<sup>16</sup> The City describes the relevant inquiry as: What did the landowner give permission for the entrant to do, once the entrant came on to the landowner's property? If the permission was for a recreational activity, then the Recreational Use Statute applies.

But this articulation only goes so far. If the Legislature intended that the intent of the owner, lessee, or occupant control, there would have been no need for it to list recreational activities.<sup>17</sup> There are many activities for which a landowner could easily give permission that one might consider recreation. But the Legislature provided a list of recreational activities, and because neither sitting on a swing nor playing softball are listed in the Statute's examples, we must decide which activity should be the focus and whether the Legislature intended to include that activity as recreation.

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<sup>14</sup> 40 S.W.3d at 664.

<sup>15</sup> *Id.* at 665-66.

<sup>16</sup> TEX. CIV. PRAC. & REM. CODE § 75.002(c).

<sup>17</sup> *See id.* §§ 75.001(3), 75.002(e).

We again note that this is a premises defect case. The court of appeals erred in reasoning that the relevant inquiry was whether softball is recreation as defined by the Statute<sup>18</sup> because Torres did not allege that there was any defect in the softball field, bases, fences, or dugout. She alleged that there was a defect in the swing. All negligence causes of action require a causal relation between the injury and the injury-causing event.<sup>19</sup> In a premises defect case, the dangerous condition must be a cause of the resulting injury.<sup>20</sup> The court of appeals' conclusion that Torres's intent to play softball is controlling detaches this necessary causal link. Under the court of appeals' analysis, the City could be held liable for injuries caused by a defective swing set because it concluded that softball is not recreation. This simply does not follow. Stated another way, even though there is a premises defect, if it in no way contributes to an injury, it cannot be the basis for a cause of action for the premises defect.

The Recreational Use Statute does not change the fact that this is a premises defect claim. The Statute makes Torres's activity relevant in determining whether she was engaged in recreation under the Statute. But the injuries she alleged must be related to the premises defect. Even if softball is not recreation within the meaning of the Statute, a question we need not resolve, Torres's intent upon entering the Softball Complex is not controlling. It is what she was doing when she was injured that controls. And she was sitting on a swing, and the swing broke.

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<sup>18</sup> 40 S.W.3d at 666.

<sup>19</sup> See *El Chico Corp. v. Poole*, 732 S.W.2d 306, 313 (Tex. 1987).

<sup>20</sup> See, e.g., *Wal-Mart Stores, Inc. v. Gonzalez*, 968 S.W.2d 934, 936 (Tex. 1998); *City of Grapevine v. Roberts*, 946 S.W.2d 841, 842 (Tex. 1997); *Keetch v. Kroger Co.*, 845 S.W.2d 262, 264 (Tex. 1992); *Corbin v. Safeway Stores, Inc.*, 648 S.W.2d 292, 295 (Tex. 1983).

### III

Torres’s petition alleges that the swing was defective, and that the swing caused her injuries. Therefore, the question is whether sitting on a swing is recreation as contemplated by the Statute. In our view, sitting on a swing is the type of activity that the Legislature intended to include as recreation when they enacted the Statute.

Before the Statute was amended in 1997, one court of appeals directly held that swinging on a swing was recreation.<sup>21</sup> The court of appeals reasoned that the Statute did not provide an exclusive list.<sup>22</sup> “In light of the general wording of the Texas statute and the purpose of the statute, swinging is a recreational activity contemplated under [the Statute].”<sup>23</sup> And while we overruled that court’s judgment, we did so because we concluded the Statute did not apply to municipalities.<sup>24</sup> Significantly, the Legislature thereafter specifically amended the Statute to not only apply it to municipalities,<sup>25</sup> but also to include broader language than relied on by the court of appeals to conclude that swinging was recreation.<sup>26</sup> The Legislature included within the definition of recreation “any other activity associated with enjoying nature or the outdoors.”<sup>27</sup>

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<sup>21</sup> See *Martinez v. Harris County*, 808 S.W.2d 257, 259 (Tex. App.–Houston [1st Dist.] 1991, writ denied), overruled on other grounds by *City of Dallas v. Mitchell*, 870 S.W.2d 21 (Tex. 1994), superceded by statute, TEX. CIV. PRAC. & REM. CODE § 75.003(g).

<sup>22</sup> *Martinez*, 808 S.W.2d at 259.

<sup>23</sup> *Id.*

<sup>24</sup> *Mitchell*, 870 S.W.2d at 23.

<sup>25</sup> TEX. CIV. PRAC. & REM. CODE § 75.003(g).

<sup>26</sup> *Id.* § 75.001(3)(L); see also *Martinez*, 808 S.W.2d at 259.

<sup>27</sup> TEX. CIV. PRAC. & REM. CODE § 75.001(3)(L).

Since then, other courts of appeals have considered playing on playground equipment recreation.<sup>28</sup>

While the Recreational Use Statute does not specifically list swinging as an example of recreation, it is certainly within the type of activity “associated with enjoying ... the outdoors.”<sup>29</sup> Furthermore, the statute specifically contemplates recreation related to structures on the property.<sup>30</sup> As well, other jurisdictions have held, under similar recreational use statutes, that playing on playground equipment is recreation.<sup>31</sup> As one Texas court of appeals reasoned, “[t]hat journeying to a park to enjoy its facilities and playground equipment is akin to ‘picnicking’ (albeit without the food) and within the category of an ‘activity associated with enjoying nature or the outdoors’ cannot reasonably be disputed.”<sup>32</sup> We conclude that sitting on a swing is recreation under the Recreational Use Statute.

Because sitting on a swing is recreation as contemplated by the Recreational Use Statute, the City owed Torres only the duty not to injure her through willful, wanton, or grossly negligent conduct. And because Torres did not plead any willful, wanton, or grossly negligent conduct, she cannot recover from the City as a matter of law. We reverse the court of appeals judgment and render judgment for the City.

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<sup>28</sup> See *City of Lubbock v. Rule*, 68 S.W.3d 853, 858 (Tex. App.—Amarillo 2002, no pet.); *Flye v. City of Waco*, 50 S.W.3d 645, 647 (Tex. App.—Waco 2001, no pet.).

<sup>29</sup> TEX. CIV. PRAC. & REM. CODE § 75.001(3)(L).

<sup>30</sup> See *id.* § 75.001(2).

<sup>31</sup> See *Watson v. City of Omaha*, 312 N.W.2d 256 (Neb. 1981) (slide); *McGhee v. City of Glens Ferry*, 729 P.2d 396 (Idaho 1986) (swing); *Kruschke v. City of New Richmond*, 458 N.W.2d 832 (Wis. Ct. App. 1990) (swing).

<sup>32</sup> *Rule*, 68 S.W.3d at 858.

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Craig T. Enoch  
Justice