



CITY OF KINGSLAND, GEORGIA

CITY COUNCIL

AGENDA • NOVEMBER 25, 2024

Regular Meeting

City Council Chamber

6:00 PM

107 South Lee Street - City Hall, Kingsland, GA 31548

I. PUBLIC HEARING - STARTS AT 6:00PM

1. Public Hearing: Abandonment of an Unopened Section of East Thrift Street -

The City of Kingsland is seeking to abandon an unopened section of East Thrift Street. This section has never been opened for public use and there is no benefit of ever opening this section of East Thrift Street.

II. CALL TO ORDER AND WELCOME GUESTS

III. ROLL CALL

Charles Grayson Day Jr.
James W Galloway
Farran Fullilove
Kristy Chance
Alex Blount

Mayor
Councilman
Councilman
Councilwoman
Mayor Pro Tem

IV. INVOCATION AND PLEDGE TO THE FLAG

V. CONSENT DOCKET

- A. Approve the Council Minutes of the last regular Council Meeting
- B. Approve the Agenda as Presented
- C. Approve the Payments of Accounts Payable as Due and Funds Available

VI. GRANTING AUDIENCE TO THE PUBLIC

VII. OLD BUSINESS

VIII. NEW BUSINESS

1. Approval of: Resolution 2024-12 - Abandonment of an Unopened Section of East Thrift Street -

The City of Kingsland is seeking to abandon an unopened section of East Thrift Street. This section has never been opened for public use and there is no benefit of ever opening this section of East Thrift Street.

2. Approval Of: Contract for Services Between City of Kingsland and Camden Community Crisis Center, Inc -

The City is in need of a safe shelter to provide food, lodging, clothing and other valuable services for victims and potential victims of family violence when the Police Department finds it necessary to remove these persons from an unsafe environment for their safety. This service contract shall be for an initial period of one (1) year commencing on January 1, 2025 and terminating on December 31, 2025. The City shall pay to the Center for its services to victims of family violence the sum of \$7,500.

3. Approval of: Resolution 2024-16 Authorizing Participation in an Amicus Brief in the Chang V. City of Milton Appeal -

A resolution to authorize city participation in an amicus brief before the Georgia Supreme Court asking that the Chang appellate ruling be taken by the Supreme Court and reversed.

IX. MAYOR AND COUNCIL ANNOUNCEMENT

X. ADJOURNED



City Council
107 South Lee Street
Kingsland, GA 31548

SCHEDULED

AGENDA ITEM (ID # 4580)

Meeting: 11/25/24 06:00 PM
Department: City Clerk
Category: Public Hearing
Prepared By: Jean Seigler
Initiator: Jean Seigler
Sponsors:
DOC ID: 4580

1.1

Public Hearing: Abandonment of an Unopened Section of East Thrift Street

The City of Kingsland is seeking to abandon an unopened section of East Thrift Street. This section has never been opened for public use and there is no benefit of ever opening this section of East Thrift Street.



City Council
107 South Lee Street
Kingsland, GA 31548

SCHEDULED

AGENDA ITEM (ID # 4579)

Meeting: 11/25/24 06:00 PM
Department: City Clerk
Category: Resolution
Prepared By: Jean Seigler
Initiator: Jean Seigler
Sponsors:
DOC ID: 4579

8.1

Approval of: Resolution 2024-12 - Abandonment of an Unopened Section of East Thrift Street

The City of Kingsland is seeking to abandon an unopened section of East Thrift Street. This section has never been opened for public use and there is no benefit of ever opening this section of East Thrift Street.

CITY OF KINGSLAND, GEORGIA

RESOLUTION #2024-12

ABANDONMENT OF AN UNOPENED SECTION OF EAST THRIFT STREET

WHEREAS, East Thrift Street was originally platted in the City of Kingsland, Georgia as a sixty-six-foot-wide street as part of the W. H. King Estate Subdivision in 1935; and

WHEREAS, the section of East Thrift Street adjacent to parcels number K26 08 004, K26 08 005A, K26 14 003, and K26 14 001 has never been opened for public use; and

WHEREAS, the City of Kingsland sees no benefit of ever opening this section of East Thrift Street; and

WHEREAS, the City of Kingsland has notified the property owners adjacent to this section of East Thrift Street by registered mail and found no objections;

NOW, THEREFORE BE IT RESOLVED BY THE MAYOR AND THE COUNCIL OF THE CITY OF KINGSLAND, the section of East Thrift Street will never be opened and is hereby abandoned.

ADOPTED by Mayor and Council the ____ day of _____, 2024.

CITY OF KINGSLAND, GEORGIA

BY:

Dr. C. Grayson Day, Jr.

ATTEST:

Jean O. Horne, City Clerk



City Council
107 South Lee Street
Kingsland, GA 31548

SCHEDULED

AGENDA ITEM (ID # 4584)

Meeting: 11/25/24 06:00 PM
Department: Finance
Category: Contract
Prepared By: Filiz Morrow
Initiator: Filiz Morrow
Sponsors:
DOC ID: 4584

8.2

Approval Of: Contract for Services Between City of Kingsland and Camden Community Crisis Center, Inc

The City is in need of a safe shelter to provide food, lodging, clothing and other valuable services for victims and potential victims of family violence when the Police Department finds it necessary to remove these persons from an unsafe environment for their safety. This service contract shall be for an initial period of one (1) year commencing on January 1, 2025 and terminating on December 31, 2025. The City shall pay to the Center for its services to victims of family violence the sum of \$7,500.

**STATE OF GEORGIA
CAMDEN COUNTY**

**CITY OF KINGSLAND
SERVICES CONTRACT**

This Services Contract (this "Contract") made and entered into as of November 25, 2024 by and between the **CITY OF KINGSLAND, acting by and through its Mayor and City Council (the "City")** and the **CAMDEN COMMUNITY CRISIS CENTER, INC.**, a non-profit corporation created pursuant to the laws of the State of Georgia (**the "Center"**).

RECITALS

WHEREAS, under the laws of the State of Georgia, family violence between past or present spouses, persons who are parents of the same child, parent and children stepparents and stepchildren, for the parents and foster children, or other persons living or formerly living in the same household is a continuing problem; and

WHEREAS, the Police Department of the City of Kingsland is required to intervene in family violence situations to protect certain innocent person or persons from scenes of actual or potential violence; and

WHEREAS, the Center provides a shelter for victims of family violence when the Police Department finds it necessary for the safety of the victim or potential victim to be removed from an unsafe environment; and

WHEREAS, the Center provides food, shelter, and clothing and other services for victims(s) of family violence; and

WHEREAS, the city desires to retain the services of the Center to provide a safe shelter to residents of the City of Kingsland exposed to or a victim of family violence.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the promises and the mutual covenants, promises and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Recitals

The recitals herein set forth are true.

2. Terms of Contract

This Contract shall be for an initial period of one (1) year commencing on January 1, 2025 and terminating on December 31, 2025, unless sooner terminated in accordance with the provisions of this Agreement, or as extended by written agreement of the parties.

3. Payment

The City shall pay to the Center for its services to victims of family violence the sum of SEVEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$ 7,500.00), per year, which shall be payable on the 1st day of January of each year, until this Contract is terminated.

4. Event of Default; Remedies

The following occurrences shall constitute Events of Default hereunder:

- (a) Center fails to provide the services required of Center over a period time, in family violence situations; or
- (b) Fails to assist the City Police in family violence occurrences; or
- (c) Dissolution of the existence of the Center; or
- (d) Any legal or equitable action is commenced against Center which, if adversely determined, could reasonably be expected to substantially impair the ability of the Center to perform each and every obligation under this Contract.
- (e) Upon the occurrence of any Event of Default, the City may declare this Contract null and void without prior notice to the Center. All unearned city Funds shall be returned to the City.

5. Remedies Cumulative

The remedies provided for the City herein shall not be exclusive but shall be concurrent, in addition to and cumulative of any other remedies the City may have by law. The failure to seek or exercise any remedy shall not be deemed a waiver or foreclose any subsequent remedy.

6. General Conditions

- (a) No Waiver. No Waiver or any provision of this Contract shall waive any other provision of this Contract or preclude the City from declaring a default if the Center is unable to satisfy any such provisions or perform hereunder.
- (b) Notices. All notices hereunder shall be in writing and shall be deemed to

have been sufficiently given or served for all purposes when presented personally or sent by registered or certified mail to the other party hereto at the address set forth herein, with instruction to show to whom delivered and return receipt requested. Each party may notify the other by the same process of any change of such address. Loan requests, disbursements and other routine contract administration may be conducted by regular mail.

If to City: CITY OF KINGSLAND
ATTN: City Manager
P.O. Box 250
Kingsland, Georgia 31548

With a Copy to (which shall not constitute notice):

CITY OF KINGSLAND CITY ATTORNEY
Stephen Blackerby
Brown, Reddick, Bumgartner
5 Glynn Avenue
Brunswick, Georgia 31520

If to Center: CAMDEN COMMUNITY CRISIS CENTER
ATTN: Director
P.O. Box 5159
St. Marys, GA 31558

7. Assignment

This Contract may not be assigned by the Center without the advance written consent of the City.

8. Continuity

This Contract shall be binding upon the legal representative, successors and assigns of each party and shall inure to their benefit; provided, however, that nothing herein said shall be deemed to limit any restriction on assignment imposed upon the Center.

9. Counterpart.

This Contract is executed in two counterparts, which are separately numbered, but each of which is deemed one and the same instrument as the

other.

10. Entire Agreement

This Contract contains the entire terms of this agreement and transaction. They may not be changed, waived or discharged in whole or in part, except by written instrument executed by the party sought to be charged therewith.

11. Severability

If any provision of this Contract, or any portion thereof, should be ruled void, invalid, unenforceable or contrary to public policy by any court of competent jurisdiction, any remaining provisions of this Contract shall survive and be applied, and together with the invalid or unenforceable portion shall be construed, reformed to preserve as much of the original words, terms, purpose and intent as shall be permitted by law.

12. Time of Essence

Time is of the essence of this Contract.

13. Georgia Contract

This Contract shall be governed by and construed in accordance with the laws the State of Georgia.

IN WITNESS WHEREOF, the **CAMDEN COMMUNITY CRISIS CENTER,**

INC. AND THE CITY OF KINGSLAND have caused these presents to be signed, sealed and delivered all as of the date hereof.

CAMDEN COMMUNITY CRISIS CENTER, INC.

By: _____
Director

Attest: _____
Treasurer

CITY OF KINGSLAND, GEORGIA

By: _____
Dr. C. Grayson Day, Jr., Mayor

Attest: _____
City Clerk



City Council
107 South Lee Street
Kingsland, GA 31548

SCHEDULED

AGENDA ITEM (ID # 4613)

Meeting: 11/25/24 06:00 PM
Department: City Clerk
Category: Resolution
Prepared By: Jean Seigler
Initiator: Jean Seigler
Sponsors:
DOC ID: 4613

8.3

Approval of: Resolution 2024-16 Authorizing Participation in an Amicus Brief in the Chang V. City of Milton Appeal

A resolution to authorize city participation in an amicus brief before the Georgia Supreme Court asking that the Chang appellate ruling be taken by the Supreme Court and reversed.

**RESOLUTION #2024-16 OF THE CITY OF KINGSLAND, GEORGIA (the “CITY”)
AUTHORIZING PARTICIPATION IN AN AMICUS BRIEF IN THE CHANG V. CITY OF
MILTON APPEAL**

WHEREAS, there is presently pending before the Court of Appeals and/or Supreme Court of Georgia an appeal of a civil lawsuit that, at the trial court level, was referred to as Chang, et. al. v. City of Milton, State Court of Fulton County, Case No. 18EV004442;

WHEREAS, the case involves a claim of liability against the City of Milton for personal injuries due to a 2016 vehicle collision with a fixed obstruction (a masonry planter) located on City-owned right of way where the obstruction was outside the motoring lanes of travel;

WHEREAS, the masonry planter had been at the same location since 1992 and had never been the subject of a complaint or prior accident;

WHEREAS, at the trial court, the City of Milton was found to be partially at fault and a jury awarded money damages against the City of Milton of \$35,000,000;

WHEREAS, the Court of Appeals affirmed the findings of the trial court, City of Milton v. Chang, et. al., 2024 WL 4195584 (Chang appellate ruling);

WHEREAS, the Court of Appeals ruled that the “*planter...was a hazard for vehicles leaving the travel lanes*” and that its presence “*renders the use of these thoroughfares more hazardous;*”

WHEREAS, the CITY is concerned by the Court of Appeals decision finding that a municipality may be liable for fixed obstructions located outside the motoring lanes of travel where the obstruction had never been the subject of a prior collision or complaint;

WHEREAS, the CITY believes the Court of Appeals decision is inconsistent with existing legal precedent and should be overturned; and,

WHEREAS, the CITY believes the financial implications of the Court of Appeals decision could be devastating for Georgia municipalities.

NOW THEREFORE BE IT RESOLVED, that the CITY does hereby authorize participation in an amicus brief before the Georgia Supreme Court asking that the Chang appellate ruling be taken by the Supreme Court and reversed. An amicus brief so tendered may include the City’s name as a participating party.

This _____, day of _____, 2024.

Alex Blount, Mayor Pro Tem

[SEAL]

906 S.E.2d 784
Court of Appeals of Georgia.

CITY OF MILTON
v.
CHANG et al.; and vice versa.

A24A0802, A24A0803
|
September 16, 2024

Synopsis

Background: Parents of motorist who was killed in single-car accident when his car struck concrete planter located on shoulder of public road brought action against city, alleging that it was negligent and in breach of its ministerial duty to ensure its roadways were safe, and that planter created nuisance. Following jury trial, the State Court, Fulton County, [Jane Morrison, J.](#), found city liable for accident, awarded parents over \$30 million in damages, denied city's motions for judgment notwithstanding verdict (JNOV) and for new trial, and implicitly denied parents' motion for pre-judgment interest and for entry of final judgment nunc pro tunc to date of jury's verdict. City appealed and parents cross-appealed.

Holdings: The Court of Appeals, [Markle, J.](#), held that:

sufficient evidence supported jury's conclusion that planter was "defect" such that ministerial duty exception to city's sovereign immunity could apply;

sufficient evidence supported jury's conclusion that city had notice of planter such that ministerial duty exception to city's sovereign immunity could apply;

parents were entitled to pre-judgment interest; and

entry of judgment nunc pro tunc to date of jury's verdict was warranted.

Affirmed with respect to damages award and denial of city's motions; vacated and remanded with direction with respect to parents' motion for pre-judgment interest and entry of judgment nunc pro tunc.

Attorneys and Law Firms

*[787 Joseph Scott Key](#), for Appellant in A24A0802.

Naveen Ramachandrappa, [Christopher Matthew Simon](#), Atlanta, [Jed Davis Manton](#), [Madeline Elizabeth McNeeley](#), Brookhaven, [Tyler Harris Bridgers](#), Decatur, for Appellee in A24A0802.

Naveen Ramachandrappa, [Christopher Matthew Simon](#), Atlanta, [Jed Davis Manton](#), [Madeline Elizabeth McNeeley](#), [Jeffrey R. Harris](#), Brookhaven, for Appellant in A24A0803.

[Matthew H. Bennett](#), Griffin, [Joseph Scott Key](#), for Appellee in A24A0803.

Opinion

[Markle](#), Judge.

*[788](#) In November 2016, Joshua Chang was killed in a single-car accident on Batesville Road in the City of Milton ("the City") when his car struck a concrete planter that was located on the shoulder. His parents sued the City for negligence and nuisance, and a jury found the City liable, awarding over \$30 million in damages.¹ In Case No. A24A0802, the City appeals from the denial of its motions for judgment notwithstanding the verdict ("JNOV") and for new trial on the grounds that (1) it was entitled to sovereign immunity, and (2) the trial court erred by admitting testimony regarding interpretations of the applicable City ordinances. In Case No. A24A0803, the Changs cross-appeal from the trial court's failure to (1) apply pre-judgment interest to the jury's award, and (2) enter judgment nunc pro tunc to the date of the jury's verdict. For the reasons that follow, we affirm in Case No. A24A0802 and we vacate and remand with direction in Case No. A24A0803.

[O]n appeal from the denial of a motion for a directed verdict or a motion for [JNOV], we construe the evidence in the light most favorable to the party opposing the motion, and the standard of review is whether there is any evidence to support the jury's verdict. And because the jurors are the sole and exclusive judges of the weight and credit given the evidence, we must construe the evidence with every inference and presumption in favor of upholding the verdict, and after judgment, the evidence must be construed to uphold the verdict even where the evidence is in conflict. Even so, we review questions of law de novo.

(Citations, punctuation, and emphasis omitted.) *Bristol Consulting Group v. D2 Property Group*, 366 Ga. App. 843, 849 (2), 884 S.E.2d 546 (2023).

So viewed, the record shows that, one evening in November 2016, college student Joshua Chang was driving back to his parents' house when his car left the paved portion of the roadway, slid more than 60 feet, and collided with a large concrete planter on the shoulder of Batesville Road in the City. The impact caused the car to flip and land on top of the planter, killing Joshua. There was no evidence that Joshua was speeding or intoxicated at the time of the accident; nor was there evidence he was using his cell phone while driving. Instead, based on the physical evidence at the scene, an accident reconstructionist opined that it appeared that Joshua had pulled the steering wheel hard right, as if trying to avoid something in the road, causing the car to yaw sideways onto the shoulder before striking the planter.²

The planter sat on a part of the shoulder between two driveways that provided ingress and egress for an adjacent event facility. It is undisputed that the planter was located about six feet off the roadway, but within the right-of-way, as defined by City Ordinance § 48-653.

Chang's parents sued the City, alleging it was negligent and in breach of its ministerial duty to ensure the roadways were safe, and that the planter created a nuisance.³ Prior to trial,⁴ the City filed a motion *789 in limine to exclude testimony from City employees regarding their interpretations of the relevant City ordinances. Although the trial court initially granted the motion to exclude, it later revisited that decision and allowed the testimony.

The testimony at trial established that the planter was on the City's property and in the right-of-way, which the City was responsible for maintaining. Per its ordinances, the City was responsible for inspecting its roadways, identifying defects, and removing hazards, such as the planter. Specifically, several witnesses testified that the City should have noticed and removed the planter when it completed repair work to Batesville Road in 2012. Experts opined that the planter was a problem, and "the appropriate response" and "obvious choice" was to remove it. But the City had not conducted any safety inspections, and according to the City's own code enforcement officer, "oops, ... how could we never notice" the existence of the planter.

The jury found the City liable because it had maintained a defect and a nuisance. It awarded damages in the amount of thirty-five million dollars, which was reduced by seven percent for the amount of Joshua's comparative fault.

Before the trial court entered judgment, the Changs moved for pre-judgment interest under [OCGA § 51-12-14 \(a\)](#), noting that they had made a settlement demand by certified mail, which the City rejected, and they had obtained a judgment in excess of the amount of the demand. The trial court entered judgment reflecting the jury's verdict, but it did not award pre-judgment interest. The Changs later renewed their motion for pre-judgment interest, and requested the trial court enter judgment in the case nunc pro tunc to the date of the jury's verdict. The trial court did not rule on this motion.

The City moved for a new trial and for JNOV, raising the same arguments it now raises on appeal. The trial court denied both motions. Both the City and the Changs now appeal.

Case No. A24A0802

1. The City argues that the trial court erred by denying its motion for JNOV because (a) the negligence claim was barred by sovereign immunity; (b) if it was not barred by immunity, the recovery was limited to the \$2 million insurance policy limit; (c) the nuisance claim was barred by sovereign immunity; and (d) the plaintiffs failed to establish the planter was a nuisance. It further argues that the trial court erred by permitting witnesses to testify to their interpretation of the relevant City ordinances. We conclude the City waived its immunity and that any error in admitting the testimony was harmless.

(A) Sovereign immunity

"Municipalities are protected by sovereign immunity pursuant to [Article IX, Section II, Paragraph IX of the Georgia Constitution](#) unless that immunity is waived by the General Assembly or by the terms of the Constitution itself." (Citations and footnote omitted.) *Mayor & Aldermen of City of Savannah v. Herrera*, 343 Ga. App. 424, 427 (1), 808 S.E.2d 416 (2017); see also [OCGA § 36-33-1 \(a\)](#) ("it is the public policy of the State of Georgia that there is no waiver of the sovereign immunity of municipal corporations of the state and such municipal corporations shall be immune from liability for damages."). "The burden of demonstrating a waiver of sovereign immunity rests upon the party asserting

it.” *Ga. Dept. of Labor v. RTT Assoc.*, 299 Ga. 78, 81 (1), 786 S.E.2d 840 (2016). “Whether sovereign immunity has been waived under the undisputed facts is a question of law, and we conduct a de novo *790 review.” *Smith v. City of Roswell*, 361 Ga. App. 853, 856 (2), 864 S.E.2d 175 (2021).

The General Assembly has carved out two separate waivers of the municipality's sovereign immunity: First, a municipality can waive its immunity through the purchase of insurance under certain circumstances. OCGA § 36-33-1 (a); see also *City of Atlanta v. Mitcham*, 296 Ga. 576, 577 (1), n. 2, 769 S.E.2d 320 (2015); *Smith*, 361 Ga. App. at 855 (2), 864 S.E.2d 175.

Second, municipal corporations can be liable for negligence in the performance of their ministerial duties.⁵ OCGA § 36-33-1 (b); *Herrera*, 343 Ga. App. at 427-428 (1), 808 S.E.2d 416. And we have explained that “[o]ne such ministerial duty ... is the duty of a municipality to maintain city streets in a reasonably safe condition for travel.” *Herrera*, 343 Ga. App. at 428 (1), 808 S.E.2d 416. The General Assembly, however, has limited any such liability by statute:

A municipality is relieved of any and all liability resulting from or occasioned by defects in the public roads of its municipal street system when it has not been negligent in constructing or maintaining the same or when it has no actual notice thereof or when such defect has not existed for a sufficient length of time for notice thereof to be inferred. OCGA § 32-4-93 (a). “Thus, stated positively, municipalities generally have a ministerial duty to keep their streets in repair, and they are liable for injuries resulting from defects after actual notice, or after the defect has existed for a sufficient length of time for notice to be inferred.” (Citation and punctuation omitted.) *Herrera*, 343 Ga. App. at 428 (1), 808 S.E.2d 416; see also *Gatto v. City of Statesboro*, 312 Ga. 164, 167 (1), n. 4, 860 S.E.2d 713 (2021) (“Georgia courts have long held that the duty to maintain streets and sidewalks free from obstructions and other dangers is a ministerial duty.”) (emphasis omitted).

(i) Ministerial duty

We begin with whether the City waived its sovereign immunity under the ministerial duty exception, and our analysis considers (a) whether the planter was a defect in the road; and (b) whether the City had notice of it. See OCGA §§ 32-4-93 (a); 36-33-1 (b); *Herrera*, 343 Ga. App. at 428 (1), 808 S.E.2d 416.

(a) Did the planter constitute a defect in the road

For more than 100 years, the rule in Georgia has been: “[t]he municipality should not allow obstructions ... to adjoin the traveled way which will render its use unsafe and dangerous.... Cities are liable for ... negligently allowing obstructions likely to cause injury to be placed upon or near the line[.]” (Citations and punctuation omitted.) *City Council of Augusta v. Tharpe*, 113 Ga. 152, 155-56, 38 S.E. 389 (1901).

Here, there is no dispute that the planter was located on the shoulder and within the right-of-way on the City's property. Importantly, the term “road” is defined by statute as

a highway, road, street, avenue, toll road, tollway, drive, detour, or other way that either is open to the public or has been acquired as right of way, and is intended to be used for enjoyment by the public and for the passage of vehicles in any county or municipality of Georgia, including but not limited to the following public rights, structures, sidewalks, facilities, and appurtenances incidental to the construction, maintenance, and enjoyment of such rights of way: (A) Surface, shoulders, and sides[.]

OCGA § 32-1-3 (24).⁶

In addition, the City's own municipal code defines right-of-way to include the shoulder. *791 City of Milton Municipal Code § 48-653.⁷ The City acknowledges that the planter was on the shoulder, in the right-of-way on a City-owned road. There was additional evidence that the shoulder was used for drivers in cases of emergency or in evasive maneuvers. Thus, the record demonstrates that the planter was in the road as that term is defined by statute. OCGA § 32-1-3 (24).

Turning to whether the planter was a defect, we have held that a defect in the street “include[s] objects adjacent to, and suspended over, the municipality's streets and sidewalks, the presence of which renders the use of these thoroughfares more hazardous.” (Citations omitted.) *Kicklighter v. Savannah Transit Auth.*, 167 Ga. App. 528, 530 (2), 307 S.E.2d 47 (1983) (whether power pole on curb area was a defect was question of fact for the jury where bus passenger got arm caught between bus window and pole and the bus remained on the road). And in such cases, we have repeatedly found that the City waived its immunity. See *Herrera*, 343 Ga. App. at 429-432 (1), 808 S.E.2d 416 (City waived its immunity where trees adjacent to street may have obstructed view and

it was for the jury to decide if they were a defect); *DeWaters v. City of Atlanta*, 169 Ga. App. 41, 43-44 (1), 311 S.E.2d 232 (1983) (City not immune from suit involving sewer grate in road that injured bicyclist); *Barnum v. Martin*, 135 Ga. App. 712, 716-717 (3), 219 S.E.2d 341 (1975) (road with improper elevation and sharp curve was defective and City had obligation to repair it or provide warning), disapproved of on other grounds by *Dept. of Public Safety v. Ragsdale*, 308 Ga. 210, 214, n.7, 839 S.E.2d 541 (2020); *City of Milledgeville v. Holloway*, 32 Ga. App. 734, 124 S.E. 802 (1924) (City breached ministerial duty to keep streets in safe condition where driver was forced to turn onto sidestreet to avoid obstruction in road, which resulted in driver skidding into ditch not protected by guard rail).

Here, the testimony established that the planter was located on the City's property in the right-of-way and on the shoulder. Additional testimony established that the shoulder was used to give drivers a place to maneuver if they needed to pull off the road or to perform an evasive maneuver, and that the presence of the planter on the shoulder was a hazard for vehicles leaving the travel lanes. There was additional testimony that the City should have discovered the existence of the planter and removed it. Given these facts, it was for the jury to determine if the planter constituted a defect. *Herrera*, 343 Ga. App. at 430 (1), 808 S.E.2d 416.⁸ And, as noted, there was evidence from which the jury could find that the planter was an “object[] adjacent to” the roadway, which “renders the use of these thoroughfares more hazardous.” (Citation omitted.) *Kicklighter*, 167 Ga. App. at 530 (2), 307 S.E.2d 47; see also OCGA § 32-4-93 (a).

We are unpersuaded by the City's reliance on *Smith v. City of Roswell*, 361 Ga. App. 853, 864 S.E.2d 175 (2021), and find that case distinguishable. In *Smith*, while driving under *792 the influence, a father drove his car off the road and struck two mailboxes, killing himself and his daughter. *Id.* at 853, 864 S.E.2d 175. The child's mother sued the City of Roswell, arguing that the failure to remove the mailboxes was a ministerial duty. *Id.* The trial court granted Roswell's motion to dismiss on sovereign immunity grounds. *Id.* On appeal, this Court considered whether the mailboxes constituted defects in the road, noting that it was undisputed that the mailboxes were not in or on the road, as the plaintiff had pled that the car “left the roadway” before striking them. *Id.* at 858-859 (2) (b), 864 S.E.2d 175. Given that fact, we explained,

[w]here a plaintiff alleges that the defective condition which caused injury was located on a part of the city's street

and sidewalk system, *there must be some evidence that the defect was located in an area accepted by the city, either expressly or by implication, for use as a street or sidewalk, before the city can be charged with liability for negligently failing to maintain the area in a reasonably safe condition.* (Citation omitted; emphasis supplied.) *Id.* at 858 (2) (b), 864 S.E.2d 175.

The analysis in *Smith* did not address whether an object in the road constituted a defect such that the City had a ministerial duty to remove it. “[Q]uestions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents.” (Citation and punctuation omitted.) *Wolfe v. Bd. of Regents of the Univ. System of Ga.*, 300 Ga. 223, 231 (2) (d), 794 S.E.2d 85 (2016). Moreover, various City employees testified that the planter was on the shoulder, in the right-of-way, on a City-owned street. Thus, we do not find *Smith* on point.⁹

(b) *Whether the City had notice of the defect in the road*

As we have explained, notice can be actual or constructive. *Herrera*, 343 Ga. App. at 428 (1), 808 S.E.2d 416.

Constructive notice of a defect may be imputed through the knowledge of the city's employees or agents, or may be shown by testimony as to how long the defect existed prior to the injury, objective evidence that the defect existed over time, or evidence that others were injured as a result of the same condition over a period of years. The question of constructive notice ordinarily is for the jury, except in the absence of any evidence of constructive notice that could create a fact question, and in such an instance, the issue of negligence is a matter of law. Further, the length of time a defect must exist in order for an inference of notice to arise is ordinarily a jury question.

(Citation and punctuation omitted.) *Herrera*, 343 Ga. App. at 431 (1), 808 S.E.2d 416; see also *Tucker v. City of Thomasville*, 367 Ga. App. 700, 702, 888 S.E.2d 265 (2023); *City of Suwanee v. Padgett*, 364 Ga. App. 34, 37-38 (3) (b), 873 S.E.2d 712 (2022) (Google street view photos taken years before injury was sufficient to raise jury question of constructive notice); but see *City of Brunswick v. Smith*, 350 Ga. App. 501, 504-505, 829 S.E.2d 781 (2019) (Google street view photograph of defect prior to plaintiff's accident did not create jury question in absence of other evidence to show defect had existed over time).

Here, there was testimony that the planter pre-dated the City's incorporation in 2006, that the City performed repair work on the road in 2012, and the City could have noticed and removed the planter then. The City's representative also acknowledged that, in surveys completed prior to the accident, the planter is visible. As such, there was sufficient evidence from which the jury could conclude the City had notice. See *Herrera*, 343 Ga. App. at 431-432 (1), 808 S.E.2d 416 (evidence of prior accidents and City worker's observation of obstruction created jury question as to notice of nuisance).

(ii) *Insurance policy*

The City also mentions briefly that any waiver of immunity is limited to the *793 extent of the insurance policy. But ministerial duty and insurance are two separate and distinct waivers of immunity. Having concluded that the City waived its immunity based on its ministerial duty, we need not consider whether it waived immunity by purchasing insurance. OCGA § 36-33-1 (a), (b).

(B) *Nuisance*¹⁰

If a municipality is to be held liable under a theory of maintaining a nuisance, there must be the maintenance of a dangerous condition on a continuous or regular basis over a period of time in which no action or inadequate action is taken to correct the condition after knowledge thereof. If the municipality did not perform an act creating the dangerous condition, ... the failure of the municipality to rectify the dangerous condition must be in violation of a duty to act. The municipality must either have knowledge or be chargeable with notice of the dangerous condition[.] (Citations, punctuation, and emphasis omitted.) *Kicklighter*, 167 Ga. App. at 531 (3), 307 S.E.2d 47; see also *City of Alpharetta v. Vlass*, 360 Ga. App. 432, 435-436 (1), 861 S.E.2d 249 (2021); *Heller v. City of Atlanta*, 290 Ga. App. 345, 350 (2), 659 S.E.2d 617 (2008); OCGA § 41-1-1 (“A nuisance is anything that causes hurt, inconvenience, or damage to another and the fact that the act done may otherwise be lawful shall not keep it from being a nuisance.”).¹¹

In light of our conclusion in Division 1 (A) (i) that the City was not entitled to immunity on the negligence claim, we need not address the City's argument that the Changs failed to establish a nuisance. Notably, the jury found the City liable for both negligence and nuisance, and the verdict form did not allocate the damages award to either theory specifically. See *City of Lawrenceville v. Alford*, 366 Ga. App. 226, 229,

881 S.E.2d 474 (2022) (“In the absence of a verdict form requiring more specificity, the method by which a jury reaches a particular verdict is not a matter of which this Court can take judicial cognizance. If the City had wanted the jury to explain the basis for the damages award, it should have objected to the verdict form. It did not do so and thus has waived any objection in this regard.”) (citations and punctuation omitted); *Ga. Clinic v. Stout*, 323 Ga. App. 487, 492 (2), 747 S.E.2d 83 (2013) (where the verdict form did not indicate which of the two grounds of liability the jury found, this Court would not question the verdict).

2. The City next argues that the trial court erred by permitting the witnesses to testify to their interpretations of the City's ordinances because their opinions were irrelevant, and witnesses are not permitted to testify to statutory interpretation. The Changs respond that the City waived this issue by eliciting the testimony during its own examination of the witnesses.¹² We conclude that any error was harmless.

We review a trial court's admission of evidence for abuse of discretion. *MyFamilyDoc v. Johnston*, 366 Ga. App. 459, 464 (2), 883 S.E.2d 404 (2023).

However, to be reversible error, it is not enough that the trial court erred; the plaintiffs also must show that the error had an effect on the outcome of the proceedings. *794 Erroneous evidentiary rulings are subject to the harmless error doctrine, meaning we may not reverse a judgment because of such an error unless refusal to take such action appears to the court inconsistent with substantial justice. When we consider whether an error was harmless, we review the record de novo and weigh the evidence as we would expect reasonable jurors to have done so.

(Citations and punctuation omitted.) *Ross-Stubblefield v. Weakland*, 359 Ga. App. 523, 527, 859 S.E.2d 502 (2021); see also OCGA 24-1-103 (a) (“Error shall not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected[.]”).

Premitting whether the City waived the error, we conclude that any error in the admission of this testimony was harmless.¹³ *Ross-Stubblefield*, 359 Ga. App. at 526-527, 859 S.E.2d 502; see also *Beaubrun v. State*, 363 Ga. App. 798, 799 (2), 872 S.E.2d 776 (2022). Importantly, there was no dispute that the planter was in the roadway as that term is defined by the state statute. The trial court instructed the jury that “a City has a duty to maintain the public roads of its municipal street system in a reasonably safe condition for traffic. A City does

not have a duty to keep an area outside the public roads safe from defects when the defects do not ... impede travel on the public road.”

Reviewing the evidence de novo, and viewing it as a reasonable juror would, we conclude that the fact that the witnesses may have opined whether the planter was a hazard that had to be removed under the ordinances had no impact on the jury's verdict. Given the statutory definition of roadway, the City employees' acknowledgment that they should have noticed and removed the planter, and the other evidence regarding the vehicle use of the shoulder, such testimony did not affect the outcome of the trial. Accordingly, the admission of this testimony was harmless. *Ross-Stubblefield*, 359 Ga. App. at 526-527, 859 S.E.2d 502.

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3. The Changs cross-appeal from the trial court's failure to award pre-judgment interest and to enter its final judgment nunc pro tunc to the date of the jury's verdict. We agree with both arguments.

(a) *Pre-judgment interest.*

Under OCGA § 51-12-14, known as the “Unliquidated Damages Interest Act,”

[w]here a claimant has given written notice by registered or certified mail or statutory overnight delivery to a person against whom claim is made of a demand for an amount of unliquidated damages in a tort action and the person against whom such claim is made fails to pay such amount within 30 days from the mailing or delivering of the notice, the claimant *shall* be entitled to receive interest on the amount demanded if, upon trial of the case in which the claim is made, the judgment is for an amount not less than the amount demanded[.]

(Emphasis supplied.) OCGA § 51-12-14 (a), (e). When a party is entitled to pre-judgment interest under this provision, the amount “shall begin to run from the thirtieth day following the date of the mailing or delivering of the written notice until the date of judgment.”¹⁴ OCGA § 51-12-14 (c). The question of pre-judgment interest is for the court rather than the jury:

*795 Evidence or discussion of interest on liquidated damages, as well as evidence of the offer, shall not be submitted to the jury. Interest *shall be made a part of the judgment* upon presentation of evidence to the satisfaction

of the court that this Code section has been complied with and that the verdict of the jury or the award by the judge trying the case without a jury is equal to or exceeds the amount claimed in the notice.

(Emphasis supplied.) OCGA § 51-12-14 (d).

The Changs argue that they are entitled to pre-judgment interest from March 17, 2023, which was 30 days after the date of the last settlement offer, until the date of the jury's verdict on June 15, 2023. We must look to the statute to determine whether the trial court was required to award pre-judgment interest.

When interpreting provisions of a statute, such as [OCGA § 51-12-14], we must presume that the General Assembly meant what it said and said what it meant. To that end, we must afford the statutory text its plain and ordinary meaning, we must view the statutory text in the context in which it appears, and we must read the statutory text in its most natural and reasonable way, as an ordinary speaker of the English language would. If the statutory text is clear and unambiguous, we attribute to the statute its plain meaning, and our search for statutory meaning is at an end.

(Citation omitted.) *Carr v. Yim*, 369 Ga. App. 389, 392, 893 S.E.2d 801 (2023).

The plain language of the statute uses the mandatory word “shall.” See *In re Blake*, 370 Ga. App. 610, 614 (1), 898 S.E.2d 638 (2024); *Baylis v. Daryani*, 294 Ga. App. 729, 730 (1), 669 S.E.2d 674 (2008) (“The general rule is that ‘shall’ is recognized as a command, and is mandatory.”). Here, the Changs satisfied all of the pre-requisites for seeking pre-judgment interest. Thus, the trial court erred by implicitly denying an award of pre-judgment interest, and we vacate the entry of judgment, and remand the case with direction to award pre-judgment interest.

(b) *Nunc pro tunc*

The Changs then urge this Court to instruct the trial court on remand to enter judgment nunc pro tunc to the date of the jury's verdict under *Taylor v. Devereux Foundation*, 316 Ga. 44, 95-96 (IX), 885 S.E.2d 671 (2023). Here, the record reflects that the trial court did not enter its judgment on the verdict until 12 days after the jury's verdict.

“A trial court may enter a judgment nunc pro tunc to perfect the record and properly reflect when an order or judgment should have been entered.” (Citation and

punctuation omitted.) *Taylor*, 316 Ga. at 95 (IX), 885 S.E.2d 671.

The general rule is that nunc pro tunc entries are proper to correct clerical errors but not judicial errors. A clerical error involves an error or mistake made by a clerk or other judicial or ministerial officer in writing or keeping records; it does not include an error made by the court itself. To be clerical in nature it must be one which is not the result of judicial reasoning or determination.

(Citation omitted.) *K/C Ice, LLC v. Connell*, 352 Ga. App. 376, 379 (2), 835 S.E.2d 11 (2019).

In other words,

[a] court's power to amend nunc pro tunc is the power to correct inadvertent errors or omissions in the record to reflect the truth of what happened; it does not include the power to supply judicial omissions so as to include what a court might or should have decided, but did not actually so decide. Accordingly, the purpose of entering an order nunc pro tunc is to record some previously unrecorded action actually taken or judgment actually rendered. It may not be used to supply an order not yet made by the court.

(Citations and punctuation omitted.) *Citizens for Ethics in Govt. v. Atlanta Dev. Auth.*, 303 Ga. App. 724, 734 (2), 694 S.E.2d 680 (2010).

As our Supreme Court's decision in *Taylor* dictates, the trial court should have entered judgment nunc pro tunc to the date of the jury's verdict. 316 Ga. at 95-96 (IX), 885 S.E.2d 671; see also *796 *Wingate Land & Dev. v. Robert C. Walker, Inc.*, 252 Ga. App. 818, 822 (5), 558 S.E.2d 13 (2001) (trial court had authority to enter judgment nunc pro tunc even though final judgment was entered almost a year after the jury's verdict). Accordingly, on remand, the trial court is directed to enter judgment nunc pro tunc to the date of the jury's verdict.

Judgment affirmed in Case No. A24A0802. Judgment vacated and case remanded with direction in Case No. A24A0803.

Miller, P. J., and Land, J., concur.

All Citations

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Footnotes

- 1 Chang's parents also sued two other entities that owned and operated the property adjacent to the planter, but they settled their claims with those defendants early in the litigation.
- 2 A yaw is a sideways sliding movement, whereas a skid is forward motion in which the tires do not rotate.
- 3 The Changs initially pled a claim for negligence per se for violations of the City's Ordinances, but they later withdrew that claim. To state a claim for negligence, the Changs had to show that the City breached a duty and that breach caused damages. See *Glover v. Ga. Power Co.*, 347 Ga. App. 372, 375 (1), 819 S.E.2d 660 (2018). That duty can be established by statute. *Id.* Relevant here, under OCGA § 32-4-93 (a), the City has a duty to keep its streets free from defects of which it had notice. See also *Mayor and Aldermen of City of Savannah v. Herrera*, 343 Ga. App. 424, 428 (1), 808 S.E.2d 416 (2017).
- 4 The City moved for summary judgment, arguing that it was entitled to sovereign immunity from suit under OCGA § 36-33-1 and the Georgia Constitution of 1983, Art IX, Sec. II, Para. IX. The trial court denied the motion, and this Court denied interlocutory review.
- 5 Ministerial functions ... are recognized as those involving the exercise of some private franchise, or some franchise conferred upon the municipal corporation by law which it may exercise for the private profit or convenience of the corporation or for the convenience of its citizens alone, in which the general public has no interest.

(Citation and punctuation omitted.) *Mitcham*, 296 Ga. at 578 (2), 769 S.E.2d 320; see also *Gatto v. City of Statesboro*, 312 Ga. 164, 167 (1), 860 S.E.2d 713 (2021) (describing governmental and ministerial functions).
- 6 We cannot accept the City's argument during oral argument that the planter was not in the road because it was not in an area intended to be used for vehicle travel. It is well-settled that "when interpreting a statute, all its words must be given due weight; we are forbidden to 'read out' any words in the statute unless a clear reason appears for doing so." (Citation

and punctuation omitted.) *AgSouth Farm Credit v. Gowen Timber Co.*, 336 Ga. App. 581, 589 (2) (b) (i), 784 S.E.2d 913 (2016). And, we must avoid “a statutory construction that will render some of the statutory language mere surplusage[.]” *Kennedy v. Carlton*, 294 Ga. 576, 578 (2), 757 S.E.2d 46 (2014). Reading the statute in this manner, we conclude that the planter was in the road as that term is defined by statute. OCGA § 32-1-3 (24).

- 7 Interestingly, this definition appears in the portion of the municipal code, entitled “Trail Development Standards.” But no one argues that the definition would be different elsewhere in the Code.
- 8 The Changs contend that *Herrera* was limited to consideration of defects outside the road, similar to *Smith*. See *Chatham Area Transit Auth. v. Brantley*, 353 Ga. App. 197, 201 (1), 834 S.E.2d 593 (2019) (“at no point in *Herrera* did we discuss the phrase ‘municipal street system’ or its meaning. Our conclusion in that case, as it clearly states, merely addresses what may be considered a defect based on its location in relation to the public road, not whether the public road is part of the municipal street system.”). This description in *Brantley* is too narrow a reading of *Herrera*, which was concerned with what constituted a “defect” on the road. See *Herrera*, 343 Ga. App. at 428-430 (1), 808 S.E.2d 416 (“The question then turns on what constitutes a defect in the public roads ... and whether objects adjacent to the road that obstruct the view of travellers on the road are considered ‘defects in the public roads.’”) (citation omitted).
- 9 Likewise, *City of Vidalia v. Brown*, 237 Ga. App. 831, 832-834 (1), 516 S.E.2d 851 (1999) (physical precedent only), on which the City relies, is also distinguishable because that case did not involve a hazard or defect in the roadway where vehicles could travel. See also *City of Alpharetta v. Hamby*, 352 Ga. App. 511, 515-516 (1) (b) (ii), 835 S.E.2d 366 (2019).
- 10 The City asks us to overrule two Supreme Court of Georgia cases holding that there is a nuisance “exception” to sovereign immunity. It goes without saying that this Court cannot “overrule” decisions of our Supreme Court. See *Etkind v. Suarez*, 234 Ga. App. 108, 505 S.E.2d 831 (1998) (“[T]his court has no authority to overrule or modify a decision of the Supreme Court of Georgia as the decisions of the Supreme Court of Georgia shall bind all other courts as precedents.”) (citations and punctuation omitted); see also *McCulloch v. State*, 357 Ga. App. 67, 69 (1), n. 4, 849 S.E.2d 795 (2020).
- 11 The Changs contend that the City has waived any argument that the planter constituted a private nuisance (as opposed to a public one) because it did not raise the argument in its motion for directed verdict. See generally, *Avion Systems v. Bellomo*, 338 Ga. App. 141, 144 (2), 789 S.E.2d 374 (2016) (party cannot raise issue in JNOV that it did not raise in motion for directed verdict). However, the City's main argument is that there was no waiver of sovereign immunity for nuisance claims, and the Changs failed to establish the elements of nuisance. And, the arguments on appeal are the same as those raised in the motions for directed verdict and JNOV.
- 12 The City requested a continuing objection to such testimony, and the trial court agreed.
- 13 In arguing that this testimony was permissible, the Changs incorrectly focus on whether the witnesses testified to the ultimate issue; but the City argues that the witnesses improperly gave opinions on statutory interpretation. Although witnesses may give testimony as to the former, any testimony to the latter is clearly improper. See *Fireman's Fund Ins. Co. v. Holder Constr. Group, LLC*, 362 Ga. App. 367, 374 (1) (b), 868 S.E.2d 485 (2022); see also *United States v. F. E. B. Corp.*, 52 F.4th 916, 932 (IV) (B) (11th Cir. 2022) (“statutory interpretation is a legal question for a judge, not a factual question for the trier of fact ... While expert witnesses may offer opinions on an ‘ultimate issue’ in a case, they may not offer ‘legal conclusions.’”) (citations and punctuation omitted).
- 14 The Changs made seven offers to settle the case, all of which the City rejected. The amount of these offers ranged from \$1.75 million early in the case, to \$10 million just before trial. As noted, the jury returned a verdict in the amount of \$35 million.