Affirm and Opinion Filed October 1, 2020

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-19-00244-CV

CITY OF DALLAS, Appellant
V.
BRIGHT SIAW-AFRIYIE, Appellee

On Appeal from the 192nd Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-15-02654

MEMORANDUM OPINION

Before Justices Molberg and Partida-Kipness[1]
Opinion by Justice Molberg

The City of Dallas (the City) appeals the trial court's order denying its plea to the jurisdiction in an employment action filed by Bright Siaw-Afriyie under the Texas Commission on Human Rights Act (TCHRA)[2] alleging race and national origin discrimination and retaliation. On appeal, the City argues the trial court erred by denying its jurisdictional plea because the City had a legitimate, non-discriminatory reason for not selecting Siaw-Afriyie for a senior information

[1] The Honorable David Bridges, Justice, participated in the submission of this case. However, he did not participate in the issuance of this opinion due to his death on July 25, 2020.

[2] TEX. LAB. CODE §§ 21.001–.556.

technology manager position and Siaw-Afriyie presented no evidence of pretext; and the City had a legitimate, non-discriminatory, and non-retaliatory reason for eliminating Siaw-Afriyie's position and Siaw-Afriyie presented no evidence of pretext.

For the reasons set forth below, we affirm the trial court's denial of the City's plea to the jurisdiction and remand the case for proceedings consistent with this opinion.

FACTUAL BACKGROUND

From 2007 to February 2015, when he was laid off in a reduction-in-force (RIF), Siaw-Afriyie—a Canadian citizen originally from Ghana—was employed by the City as a senior information technology (IT) analyst in the Communication and Information Services Department (CIS).[3] Within CIS, Siaw-Afriyie worked in the business technology group. Siaw-Afriyie holds a bachelor of science degree in computer science as well as a master of business administration degree (MBA) with a concentration in not-for-profit management. In addition to his IT work with the City, Siaw-Afriyie's professional experience includes teaching computer science at the University of Quebec, Brookhaven College, and Mountain View College; serving as the chief executive officer of a city in Ghana; and working in IT at the United Nations World Health Organization. The City does not dispute that Siaw-

[3] Siaw-Afriyie was hired by the City and assigned to the Dallas Fire-Rescue Department in February 2000. He was transferred to CIS in 2007.

Afriyie performed his job well, he did programming and wrote code for the City in various capacities, and he was paid less than the other two employees in the business technology group—neither of whom had his academic credentials and at least one of whom did not have a college degree.

The City's Civil Service Department (Civil Service) provides employment services for approximately eighty-three percent of the positions in the City's workforce and is responsible for evaluating and processing applications for positions and promotions in City departments, including CIS. Accordingly, CIS hiring managers work with Civil Service to define the minimum qualifications for all advertised CIS positions (except executive positions such as director and assistant director), and applicants submit their applications to Civil Service, where analysts review the applications and evaluate which candidates meet the minimum qualifications for the advertised position. Civil Service compiles a list of the eligible candidates and forwards that list to the CIS hiring manager for the job.

In 2013, a senior IT manager position became available in CIS's business technology group when Justine Tran was promoted to assistant director, leaving her senior IT manager position vacant. The senior IT manager's responsibilities included interacting with high-ranking City officials, such as directors and executives of various City departments, and supervising approximately twenty employees. Siaw-Afriyie applied for the position through Civil Service's application system, and he was included on the list of candidates meeting the

eligibility requirements. Civil Service provided the list to the hiring manager, in this case, Tran. The person hired for the position would report to Tran, and she was responsible for selecting the candidates who would be interviewed. Siaw-Afriyie was not offered an interview. Among the candidates Tran selected for an interview were Modupe Sonola, who is African-American and of African national origin, Mohammad Kacem, who is African-American and of Tunisian national origin, Pavel Islam, who is of Bangladeshi national origin, and Chaitanya Mandava, who is of Indian national origin. Mandava was hired for the position in March 2014.

At a hearing on a grievance filed by Siaw-Afriye alleging discrimination for his non-selection for the senior IT manager position, Tran explained she offered Mandava an interview because his application showed he "has managed multiple teams and he has served as a project manager [and] he has client interfacing experience." While being a certified project management professional was not required for the job, it was a plus, and Mandava was a certified project management professional. Tran likewise accounted for her selections of Islam, Kacem, and Sonola for interviews. Islam "held program director positions dealing with clients and customers of fairly big industries. He's got global IT leadership experience [and] cross-function supervisory" experience. Kacem had "more technical" experience, "[i]n the GIS [Geographical Information Systems] field, he had previous management experience," he "had held the position of director," and he "managed four to eight professional staff throughout his career." Sonola held "management

positions [at] DeKalb County" and "dealt with customers as a business analyst and she's very familiar with project management and certified [as] well."

The City contends Siaw-Afriyie was not offered an interview because he lacked management experience. According to Tran, "In the last fourteen years" as a senior IT analyst for the City, he did not supervise other employees; he did not manage projects as a project manager; and he had limited "client interfacing activities." Siaw-Afriyie also was not a certified project management professional. While Siaw-Afriyie's resume stated that as a senior IT analyst for the City, he had "management" and "business analyst" duties, Tran testified that "the senior IT analyst position does not perform project management responsibilities and does not perform the responsibilities of a business analyst either." As to other program analyst positions held by Siaw-Afriyie prior to his employment for the City, Tran explained, "A program analyst in the IT industry generally is not a supervisory management position," and "I did not see the kind of supervisory IT management positions that I needed to see." The City argues Siaw-Afriyie's university teaching positions did not qualify as supervisory experience because he was teaching students and not supervising them. And, his "supervisory experience of over 15,000 to 23,000 people through his [chief executive officer] position of a town in Ghana" did not constitute sufficient management experience for a senior IT manager position with the City, because in that role, he "only supervises about 6 to 10 people in this

part-time position that he devotes time to, in absentia, after work and on the weekends."

During the course of his employment at CIS, Siaw-Afriyie unsuccessfully applied for promotions to several positions, including assistant director, project manager III, IT project manager, and multiple senior IT manager positions. As a result of his failed applications and his allegation that he was underpaid relative to other employees who were performing similar or less difficult job duties, Siaw-Afriyie complained and filed internal grievances alleging race and national origin discrimination. Siaw-Afriyie filed his first Equal Employment Opportunity Commission (EEOC) charge in March 2014, after Mandava was selected for the senior IT manager position. He filed a second EEOC charge after he was passed over for two more promotions in approximately September and October 2014. Siaw-Afriyie also complained that his job position was misclassified, and he was performing duties and tasks in the course of his employment that qualified him for a higher job classification than CIS's designation of his position. Even after a human resources (HR) analyst performed a desk audit and confirmed his position was improperly classified, CIS did not properly re-classify Siaw-Afriyie's job.

2015 Elimination of Siaw-Afriyie's Position

Between 2012 and 2015, the City purchased and implemented a new case management system for the City's municipal courts from Tyler Technologies. In 2014, Bill Finch, the director of CIS, decided maintenance and IT support for the

system—a function previously tasked to the business technology group which included Siaw-Afriyie—should be outsourced. The City eventually entered into a vendor agreement outsourcing that role to Tyler Technologies. The decision to outsource IT support for the new municipal court case management system resulted in a RIF in February 2015 that eliminated four positions in the CIS business technology group: Siaw-Afryie's senior IT analyst position, two programmer analyst II positions held by Paul Sullivan and Mike Brooke, and a then-vacant programmer analyst III position. Sullivan is an American-born African American, and Brooke, who passed away after the RIF, was Causasian.[4] Siaw-Afryie, Sullivan, and Brooke received identical written notification of the RIF and elimination of their positions, and the reasons therefor, on the same day. Siaw-Afriyie claims his position was eliminated as a result of race and national origin discrimination and retaliation for his discrimination complaints, grievances, and EEOC charges.

Typically, a City employee who loses his job in a RIF is entitled to preference for vacant positions with the same or lower job classification. In his July 2016 deposition, Sullivan testified the City offered him five interviews while he was laid off after the RIF. In June or July 2015, Sullivan was re-hired by the City as a GIS analyst II for the Department of Water. Siaw-Afriyie maintains he applied for dozens of positions with the City, including at least one position with the same job

[4] The record on appeal suggests Brooke was ill and planned to retire, and he, in fact, retired after the 2015 reduction-in-force.

title he previously held, and he was not offered a single interview. Siaw-Afriyie was not rehired by the City.

PROCEDURAL BACKGROUND

On March 6, 2015, Siaw-Afriyie filed suit against the City in the 192nd Judicial District Court of Dallas County, Texas, asserting claims for race and national origin employment discrimination and retaliation under the TCHRA. *See* TEX. LAB. CODE §§ 21.051, 21.055. In addition to claiming his job position was misclassified, Siaw-Afriyie alleged that for discriminatory and retaliatory reasons, he was underpaid, denied promotions, terminated, and not rehired—or even offered an interview—after the RIF that resulted in the elimination of his position. The City filed a plea to the jurisdiction on the grounds Siaw-Afriyie failed to exhaust administrative remedies on all of his claims except with regard to two promotions he unsuccessfully applied for.[5] The trial court granted the City's plea to the jurisdiction and dismissed with prejudice the following claims:

- Race and national origin discrimination and retaliation claims regarding his non-selection and Justine Tran's selection for an assistant director position.

- Race and national origin discrimination and retaliation claims regarding his pay grade and pay.

- Race and national origin discrimination and retaliation claims for his non-selection for other promotions, with the exceptions of his non-selection for promotions that were given to Mandava

[5] While the City's first plea to the jurisdiction is not included in the record on appeal, other documents indicate the City's first plea to the jurisdiction argued Siaw-Afriyie failed to exhaust all administrative remedies and therefore failed to meet the prerequisites for filing an action based on those claims.

(senior IT manager) and Donna Bell and Sonia Joseph (project manager III).

- Race and national origin discrimination and retaliation claims for not re-hiring him following the reduction-in-force.

The trial court denied the City's plea to the jurisdiction on Siaw-Afriyie's claim of race and national origin discrimination and retaliation regarding the elimination of his position in the RIF.

After this ruling, Siaw-Afriyie amended his petition to assert claims for the same events under 42 U.S.C. section 1981 through 42 U.S.C. section 1983. The City removed the case to federal court and filed a motion for summary judgment. The federal court granted the City's motion for summary judgment and dismissed with prejudice the following claims:

- Pay discrimination and retaliation claims brought pursuant to 42 U.S.C. section 1981 through 42 U.S.C. section 1983.

- All claims and causes of action regarding his pay grade and pay.

- Race and national origin discrimination claims brought pursuant to 42 U.S.C. section 1981 through 42 U.S.C. section 1983 regarding his non-selection and Mandava's selection for a senior IT manager position.

- Race and national origin discrimination claims brought pursuant to 42 U.S.C. section 1981 through 42 U.S.C. section 1983 and Chapter 21 of the Texas Labor Code regarding his non-selection and Donna Bell's and Sonia Joseph's selections for project manager III positions.

- Race and national origin discrimination and retaliation claims brought pursuant to 42 U.S.C. section 1981 through 42 U.S.C. section 1983 regarding his non-selection and Danny Roberts's

selection for a senior IT manager position, his non-selection and Islam's selection for a senior IT manager position, his non-selection and Massimo Scicali's selection for an IT project manager position, and the City's failure to rehire Siaw-Afriyie following the reduction-in-force.[6]

- Race and national origin discrimination and retaliation claims brought pursuant to 42 U.S.C. section 1981 through 42 U.S.C. section 1983 regarding the elimination of his position.

The federal court denied the City's motion for summary judgment as to the following remaining claims, which were remanded to state court:

- Race and national origin discrimination claims brought pursuant to Chapter 21 of the Texas Labor Code for his non-selection and Mandava's selection for a senior IT manager position.

- Race and national origin discrimination claims brought pursuant to Chapter 21 of the Texas Labor Code regarding the elimination of his position.

- A retaliation claim brought pursuant to Chapter 21 of the Texas Labor Code regarding the elimination of his position.

On remand, the City filed a second plea to the jurisdiction on Siaw-Afriyie's amended petition, asserting he was unable to create a fact issue for trial and his remaining claims should be dismissed for want of jurisdiction. After a hearing, the trial court denied the City's second plea to the jurisdiction as to all three of Siaw-Afriyie's remaining claims. The City appealed.

[6] The federal district court stated, "[Siaw-Afriyie's] claims regarding these promotions and the alleged failure to rehire [Siaw-Afriyie] following the RIF brought pursuant to Texas Labor Code Chapter 21 were dismissed by the state district court prior to removal, and pursuant to 28 U.S.C. § 1450, the state district court dismissal remains in full force and effect."

APPLICABLE LAW

Plea to the Jurisdiction

Generally, the State is immune from suit in the absence of an express waiver of its sovereign immunity. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 224 (Tex. 2004). As political subdivisions of the State, cities are entitled to sovereign immunity when performing governmental functions. *City of Galveston v. State*, 217 S.W.3d 466, 469 (Tex. 2007). Immunity from suit deprives a trial court of subject matter jurisdiction. *Id.* A court does not have authority to decide a case and cannot render a valid judgment without subject matter jurisdiction. *Miranda*, 133 S.W.3d at 226. Whether a court has subject matter jurisdiction is a question of law. *Miranda*, 133 S.W.3d at 226. Appellate courts always have jurisdiction to resolve questions of subject matter jurisdiction. *State v. Naylor*, 466 S.W.3d 783, 787 (Tex. 2015); *Moses v. Dallas Indep. Sch. Dist.*, 12 S.W.3d 168, 170 (Tex. App.—Dallas 2000, no pet.).

Immunity from suit is properly asserted through a plea to the jurisdiction, a dilatory plea that challenges the trial court's subject matter jurisdiction over a pleaded cause of action. *Miranda*, 133 S.W.3d at 226; *see also Alamo Heights Indep. Sch. Dist. v. Clark*, 544 S.W.3d 755, 770 (Tex. 2018); *Mission Consol. Indep. Sch. Dist. v. Garcia*, 372 S.W.3d 629, 636 (Tex. 2012). Typically, the plea challenges whether the plaintiff sufficiently alleged facts demonstrating the trial court's jurisdiction to hear the case, and its purpose is "to defeat a cause of action without

regard to whether the claims asserted have merit."[7] *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000). However, where, as here, a plea to the jurisdiction challenges the existence of jurisdictional facts, a trial court's review "mirrors that of a traditional summary judgment motion" and the court may consider not only the fact allegations in the live pleadings but also evidence, as necessary, to resolve disputes over those facts. *Garcia*, 372 S.W.3d at 635–36. The reviewing court must take as true all evidence favorable to the non-movant, indulging every reasonable inference and resolving any doubts in the non-movant's favor. *City of El Paso v. Heinrich*, 284 S.W.3d 366, 378 (Tex. 2009). If the pleadings and the jurisdictional evidence create an issue of fact, then the trial court cannot grant the plea to the jurisdiction and the issue must be resolved by the factfinder. *Heinrich*, 284 S.W.3d at 378. However, if the evidence is undisputed or if the plaintiff failed to raise an issue of fact on the jurisdictional issue, the trial court rules on the plea to the jurisdiction as a matter of law. *Miranda*, 133 S.W.3d at 228.

"If the pleadings do not contain sufficient facts to affirmatively demonstrate the trial court[']s jurisdiction but also do not affirmatively demonstrate incurable defects in jurisdiction, the issue is one of pleading sufficiency and the plaintiff[] should be afforded the opportunity to amend." *Id.* at 226–27. A trial court may grant a plea to the jurisdiction without allowing the plaintiff an opportunity to amend

[7] It is the plaintiff's burden to allege facts that affirmatively establish the trial court's subject matter jurisdiction. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 446 (Tex. 1993).

only if the pleadings affirmatively negate the existence of jurisdiction. *Id.* Construing the pleadings liberally in favor of the plaintiff and looking to the pleader's intent, we review a trial court's ruling on a plea to the jurisdiction de novo. *Id.* at 226; *see also City of Elsa v. Gonzales*, 325 S.W.3d 622, 625 (Tex. 2010).

The TCHRA

The TCHRA is a "comprehensive fair employment practices act and remedial scheme, modeled after Title VII of the federal Civil Rights Act of 1964 (Title VII) that provides the framework for employment discrimination claims in Texas." *Prairie View A&M Univ. v. Chatha*, 381 S.W.3d 500, 502–03 (Tex. 2012). The TCHRA was enacted "to address the specific evil of discrimination and retaliation in the workplace," as well as to coordinate and conform with federal anti-discrimination and retaliation laws under Title VII. *City of Waco v. Lopez*, 259 S.W.3d 147, 153–55 (Tex. 2008).

Among its other general purposes, the TCHRA is meant to secure for persons in this state freedom from discrimination in certain employment transactions, to make available to the State the full productive capacities of persons in the State, and to provide for the execution of the policies of various federal employment discrimination laws. TEX. LAB. CODE § 21.001(1), (3)–(5). The TCHRA also prohibits retaliation against an employee for engaging in certain protected activities, such as by filing an internal complaint of discrimination, opposing a discriminatory practice, or making a charge of discrimination with the EEOC or Texas Workforce

Commission–Civil Rights Division. See *Alamo Heights*, 544 S.W.3d at 781, 786; TEX. LAB. CODE § 21.055.

Discrimination. In employment discrimination cases, we often employ the burden-shifting analysis described by the U.S. Supreme Court in *McDonnell Douglas v. Green*, 411 U.S. 792 (1973). The plaintiff bears the initial burden to present a prima facie case of discrimination, *Garcia*, 372 S.W.3d at 634, by showing (1) he was a member of a protected class, (2) he suffered an adverse employment action, and (3) he was treated less favorably than similarly situated members outside of the protected class. *AutoZone, Inc. v. Reyes*, 272 S.W.3d 588, 592 (Tex. 2008) (per curiam). Once a prima facie case is established, the plaintiff is entitled to a presumption of discrimination. *Garcia*, 372 S.W.3d at 634. The burden then shifts to the defendant-employer to articulate a legitimate, non-discriminatory reason for the adverse employment action. *Id.*; *see also Quantum Chem. Corp. v. Toennies*, 47 S.W.3d 473, 477 (Tex. 2001). If the employer does so, the presumption of discrimination disappears and the burden shifts back to the plaintiff to demonstrate the employer's reason is a pretext for discrimination. *Id.*; *Kaplan v. City of Sugar Land*, 525 S.W.3d 297, 303 (Tex. App.—Houston [14th Dist.] 2017, no pet.).

To demonstrate the employer's articulated reason for the adverse employment action was pretextual and discrimination was the real cause, *see St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 515 (1993), a plaintiff only need "show that discrimination was a motivating factor" in the adverse employment action. *See*

Quantum Chem., 47 S.W.3d at 482 ("The [TCHRA] makes no distinction between pretext and mixed-motive cases."). A plaintiff's "prima facie case, combined with sufficient evidence to find that the employer's asserted justification is false, may permit the trier of fact to conclude that the employer unlawfully discriminated." *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 148 (2000); *see also Garcia*, 372 S.W.3d at 634 (prima facie case raises presumption of discrimination and "if the defendant fails to 'articulate some legitimate, nondiscriminatory reason' for the employment decision, that presumption will be sufficient to support a finding of liability") (quoting *McDonnell Douglas*, 411 U.S. at 802–03). However, an "employer would be entitled to judgment as a matter of law if the record conclusively revealed some other, nondiscriminatory reason for the employer's decision, or if the plaintiff created only a weak issue of fact as to whether the employer's reason was untrue and there was abundant and uncontroverted independent evidence that no discrimination had occurred." *Reeves*, 530 U.S. at 148.

Retaliation. The TCHRA also prohibits retaliation against an employee for engaging in certain protected activities, including reporting race or national origin based workplace discrimination. TEX. LAB. CODE ANN. § 21.055. Retaliation claims can be actionable under the TCHRA even if the underlying discrimination claim is not. *Alamo Heights*, 544 S.W.3d at 781. The *McDonnell Douglas* burden-shifting framework also frequently applies to employee workplace retaliation claims relying on circumstantial evidence. *Id.* at 782.

To establish a prima facie retaliation case under the TCHRA, a plaintiff must show (1) he engaged in a protected activity, (2) the employer took an adverse employment action against him, and (3) a causal connection between the protected activity and the adverse employment action. *San Antonio Water Sys. v. Nicholas*, 461 S.W.3d 131, 137 (Tex. 2015); *see also Donaldson v. Tex. Dep't of Aging & Disability Servs.*, 495 S.W.3d 421, 441 (Tex. App.—Houston [1st Dist.] 2016, pet. denied); *Anderson v. Houston Cmty. Coll. Sys.*, 458 S.W.3d 633, 647 (Tex. App.—Houston [1st Dist.] 2015, no pet.). The employee need not establish the protected activity was the sole cause of the employment action. *Herbert v. City of Forest Hill*, 189 S.W.3d 369, 377 (Tex. App.—Fort Worth 2006, no pet.). All that is required is evidence from which a factfinder may infer that retaliation motivated the adverse employment action in whole or in part. *Roberson v. Alltel Info. Servs.*, 373 F.3d 647, 655 (5th Cir. 2004).

In *Alamo Heights*, the Texas Supreme Court declined to specify the causation standard under which TCHRA retaliation claims are evaluated. 544 S.W.3d at 782–83. Acknowledging it "[had] yet to determine the appropriate causation standard for a TCHRA retaliation claim," the supreme court applied the but-for standard rather than the mixed-motives standard "because the parties have advocated the but-for

standard and have not asserted any other should apply."[8] *Id.* In any case, the *Alamo Heights* court cautioned, "The causation standard for the *McDonnell Douglas* prima-facie-case element is not onerous and can be satisfied merely by proving close timing between the protected activity and the adverse action." *Id.* at 782. Prior to *Alamo Heights*, this Court required the plaintiff to establish a "but for" causal nexus between the protected activity and the adverse employment action to satisfy the causation element of a retaliation claim. *Crutcher v. Dallas Indep. Sch. Dist.*, 410 S.W.3d 487, 494 (Tex. App.—Dallas 2013, no pet.) (plaintiff must demonstrate that absent the protected activity, the adverse employment action would not have occurred when it did). Until the supreme court requires otherwise, we follow our own precedent and evaluate TCHRA retaliation claims under a but-for causation standard.

ANALYSIS

The City's Challenge to Jurisdictional Facts

On appeal, the City maintains Siaw-Afriyie's claims do not fall within the limited waiver of immunity from suit provided by the TCHRA, and the trial court erred by denying its plea to the jurisdiction because "Siaw-Afriyie cannot create a fact issue with respect to the elements of his claims." Specifically, the City challenges the trial court's subject matter jurisdiction on the grounds it demonstrated

[8] The supreme court recognized that under the federal standard, if the employer provides evidence of a legitimate reason for the adverse employment action, the employee must prove the adverse action would not have occurred "but for" the protected activity. *Id.* at 782.

a non-discriminatory reason for not promoting Siaw-Afriyie to senior IT manager—that Siaw-Afriyie was not qualified for the position—and a non-discriminatory and non-retaliatory reason for eliminating Siaw-Afriyie's position—that Siaw-Afriyie's position was eliminated in a RIF. According to the City, Siaw-Afriyie did not satisfy his burden under *McDonnell Douglas* to then provide evidence the City's non-discriminatory and non-retaliatory reasons were not credible and, instead, were a pretext for unlawful discrimination or retaliation.

In response, Siaw-Afriyie contends his pleadings and the evidence presented to the trial court created a fact issue on whether the City engaged in race and national origin discrimination by selecting Mandava, and not him, for a senior IT manager position and race and national origin discrimination and retaliation by eliminating his position as part of a RIF. Specifically, Siaw-Afriyie claims the evidence demonstrates:

- he was more than qualified for the senior IT position;
- he routinely was treated unfairly with respect to his job position, pay, and opportunities for promotion relative to other employees who were not black or from Africa;
- the City did not follow its "normal" reduction-in-force policies and practices with respect to the elimination of his position;
- of the two employees actually affected by the RIF (Siaw-Afriyie and Sullivan), only Sullivan was offered interviews and quickly re-hired by the City;
- CIS utilized the reduction-in-force to eliminate his position because the grievance process is not available for a RIF;

- CIS did not obtain authorization from City Counsel to outsource maintenance of the municipal court case management system prior to eliminating his position;

- his position was eliminated mere days after a grievance hearing was conducted on his complaints he was improperly passed over for two manager positions and one month after he formally challenged the classification of his job; and

- the CIS director and the CIS manager he reported to created a generally hostile environment for him relative to other employees who were not black or from Africa or who had not filed grievances and complaints alleging discrimination.

Non-Selection for Senior IT Manager Position:
Siaw-Afriyie Raised a Fact Issue With Respect to His Discrimination Claims

The first adverse employment action about which Siaw-Afriyie complains is the failure to hire him for the senior IT manager position. Siaw-Afriyie contends he was not selected or even offered an interview for the position due to race and national origin discrimination. To establish a prima facie case, Siaw-Afriyie was required to show he was (1) a member of a protected class, (2) qualified for the employment position at issue, (3) subject to an adverse employment action, and (4) treated less favorably than similarly situated members outside of the protected class. *AutoZone, Inc.*, 272 S.W.3d at 592. Jumping directly to the second step in the *McDonnell Douglas* burden-shifting analysis, the City contends it provided a legitimate, non-discriminatory reason for not selecting Siaw-Afriyie for the position—that he lacked the necessary qualifications—and Siaw-Afriyie did not present evidence of pretext. If the evidence demonstrates a fact question regarding Siaw-Afriyie's qualifications for the job or the credibility of the City's articulated reason, then we must affirm the

trial court's denial of the City's plea to the jurisdiction. *Miranda*, 133 S.W.3d at 227–28.

We focus on CIS' failure to offer Siaw-Afriyie an interview because that is the stage at which he effectively was denied the position. Tran was the hiring authority for the position. It is undisputed Civil Service deemed Siaw-Afriyie sufficiently qualified to include his name on the list of eligible candidates provided to Tran. Tran, however, did not select Siaw-Afriyie for an interview. The City contends Siaw-Afriyie was not offered an interview "because he did not have management experience." Tran's deposition testimony reflects the senior IT manager position entailed working closely with multiple City departments, the project management office, and internal IT partners to prioritize projects. To that end, Tran sought a candidate who could manage multiple technical projects, had strong communication skills, and had customer relations experience in leading customer-driven projects. According to Tran, Siaw-Afriyie did not have supervisory or management experience and he had limited customer relations experience. Tran testified:

> In the last fourteen years, [Siaw-Afriyie] has been at the City of Dallas as a senior IT analyst. And most of his job duties is assigned. He does not have supervisory [experience] and he does not manage projects as a project manager and he has limited client interfacing activities.

Tran claimed she hired Mandava for the position because he was a certified project management professional—while Siaw-Afriyie was not—and Mandava's

application indicated he had "managed multiple teams," "served as a project manager," and had "client-interfacing experience."

Tran's assertion Siaw-Afriyie was not qualified for the position constitutes a legitimate, non-discriminatory reason for not interviewing, and thus not hiring, Siaw-Afriyie. Thus, the burden then shifted to Siaw-Afriyie to produce evidence this reason lacked credibility, and thereby raise an inference that discrimination was a reason he was not offered an interview. According to Tran, the position required "some exposure to management type of experience," and Siaw-Afriyie was not eligible for an interview because "he didn't have management experience." However, record evidence suggests Tran was not in a position to know whether Siaw-Afriyie's actual job duties included a management role. Tran testified that because she did not "direct him on a day-to-day basis" and he reported to Lynn Chaffin—another senior IT manager—and not to her, she did not know whether Siaw-Afriyie performed "any management level duties" in the course of his employment at CIS. Tran also conceded Siaw-Afriyie exercised "responsibilities in training other people on his team" and he may have "help[ed] other individuals in his department write programs and software." Moreover, record evidence shows the senior IT manager position did not require the candidate to be a certified project management professional, and the City does not contend or point to evidence showing that every candidate Tran selected for an interview was a certified project management professional.

Siaw-Afriyie produced evidence he was qualified for the senior IT manager position and the City's contrary claim was not credible. To demonstrate his qualifications, Siaw-Afriyie pointed to his bachelor of science degree in computer science, his MBA with a concentration in not-for-profit management, many years of experience working in IT in various capacities, his university experience teaching computer science, multiple coding programs he wrote for the City, and his management as the chief executive officer of a city in Ghana.

Other evidence challenging the credibility of the City's claim Siaw-Afriyie was not qualified shows he was paid less than employees outside of his protected class who had the same or lesser job responsibilities; he was paid less than employees whose educational and professional credentials were not as strong as his; and CIS misclassified his position. Sullivan testified that Siaw-Afriyie was "doing more coding than everyone else in the department" and "essentially writing software" and "original code," while Sullivan "didn't write much software" and "did more editing" for:

> [Mainframe] systems [that] were already written and coded and all we had to do was tweak them to whatever requirement the police and courts had. And it essentially amounted to changing—mostly it was changing amounts of fines, types of fines, classifications of fines, dates of fines, age groups, and things like that. So these [were] mostly codes that were already put in place years ago and we would change them and run those routines and see if they worked. But outright raw coding, no I seldom did it.

Despite the more complicated nature of his job responsibilities, Siaw-Afriyie's per annum salary was $61,800, while Sullivan's salary was approximately $70,200 and Brooke's salary was approximately $75,700.[9] In addition to programming and writing code for the municipal court system, Siaw-Afriyie developed a program application "used extensively by the 911 and 311 call centers." In a 2014 letter to the City recommending Siaw-Afriyie for a promotion, Sullivan stated:

> [Siaw-Afriyie's] 311 and 911 applications, though constructed almost a decade ago, have remained operational until recently and most staff complain that the new systems are not as responsive as [Siaw-Afriyie's] applications.
>
> *****
>
> [Siaw-Afriyie] has often demonstrated a high standard in his knowledge of Information Technology (IT) systems well beyond a normal programmer and possesses a command of national development standards as well as Architectural protocols. He has consistently designed applications from scratch that operate on parity with anything Microsoft or Oracle has developed only with less bugs.

In his July 2016 deposition, Sullivan testified the statements in his 2014 letter of recommendation were true, and Siaw-Afriyie was a "good programmer" who wrote "complicated code" and did "complicated work as a programmer analyst" for the City. Siaw-Afriyie also provided evidence CIS under-classified his position, which negatively affected his pay and ability to get a promotion. A desk audit by an HR analyst confirmed Siaw-Afriyie was performing tasks and assignments outside of

[9] Additional evidence indicates the salaries of all three employees may have been higher or lower, but with similar discrepancies between Siaw-Afriyie, Sullivan, and Brooke.

and above his job classification. Despite the results of the desk audit, CIS failed to properly re-classify his position.

Deposition testimony of Jacqueline Jones, an African American female and senior contract compliance administrator for the City, provided additional evidence the City's claim Siaw-Afriyie was not qualified was pretextual and, thus, discrimination was a reason Siaw-Afriyie was not offered an interview for the senior IT manager position. In Jones' experience, females and African Americans were paid less and were less likely to be promoted than their less-qualified counterparts,[10] and complaints and grievances she filed with the City alleging sex- and race-based disparate treatment in pay and promotional opportunities resulted in retaliation:

> The city has . . . paid me less than other people doing the same job who are not female or African American, consistently passed me over for promotions. When I've gone through the internal process, then it was not addressed. And because I brought it up and attempted to address it, then I'm given nothing but a hard time for doing so.

We conclude Siaw-Afriyie satisfied his burden under *McDonnell Douglas* to raise evidence of pretext. Among other things, Siaw-Afriyie presented evidence he was programming and writing complicated code for the City in various capacities; his job may have entailed a management role; he performed his job well; he has an exemplary educational background relevant to IT and not-for-profit management as

[10] Consistent with Siaw-Afriyie's complaint that despite his MBA and professional experience, he was paid less than Sullivan, who did not have a college degree, Jones testified she had "three degrees and [was] a former captain in the military" but she was paid less than "a Latino male [with only] a high school diploma."

well as extensive professional experience in IT, programming, and coding; he performed complicated tasks and assignments outside of and above his job classification; and CIS did not properly re-classify his job even after an HR analyst confirmed his position was misclassified. Also suggesting pretext are allegations and evidence Chaffin and Finch created a generally hostile atmosphere for Siaw-Afriyie at CIS[11]; evidence he was denied promotions and he was paid less than employees performing the same or less complicated assignments and employees who did not have his academic credentials; Sullivan's statement that he believed Siaw-Afriyie was not promoted because he was from Africa; Tran's shifting deposition testimony on whether or not Siaw-Afriyie's education, training, and professional background provided any relevant experience whatsoever for a senior IT manager position; and Tran's shifting deposition testimony on whether or not she was in a position to know Siaw-Afriyie's job responsibilities at CIS.

Taken as a whole, the evidence creates a fact issue as to whether the City's stated reason for not offering Siaw-Afriyie an interview for the senior IT manager position—that he was not qualified—was not credible; and the evidence supports a reasonable inference that race and national origin discrimination was a real reason

[11] In a sworn declaration, Siaw-Afriyie described, among other things, Chaffin yelling at him in the presence of his co-workers, and Finch laughing and "making a kicking gesture, as though he was trying to kick me out of the City" while he was waiting with Tran for a hearing on one of Siaw-Afriyie's grievances.

he was not offered an interview. Accordingly, we conclude the trial court properly denied the City's plea to the jurisdiction as to that claim.

Reduction-in-Force:
Siaw-Afriyie Raised a Fact Issue as to His Retaliation Claim

The TCHRA prohibits an employer from retaliating against an employee who makes or files a complaint alleging a discriminatory employment action. TEX. LAB. CODE § 21.055. To establish a prima facie case of retaliation, an employee is required to show (1) he engaged in a protected activity, (2) an adverse employment action occurred, and (3) a causal connection between the protected activity and the adverse action. *Nicholas*, 461 S.W.3d at 137; *see also Donaldson*, 495 S.W.3d at 441. Siaw-Afriyie claims CIS eliminated his position because he filed complaints, grievances, and EEOC charges alleging race and national origin based discrimination.[12] The City does not challenge Siaw-Afriyie's prima facie case, but rather, contends it provided a legitimate, non-retaliatory reason for the elimination of Siaw-Afriyie's position—a RIF—and Siaw-Afriyie did not meet his burden to produce evidence of pretext or mixed motive.

According to the City, the RIF was a product of the outsourcing of maintenance and IT support of the municipal court case management system to Tyler Technologies, which resulted not only in the elimination of Siaw-Afriyie's job but

[12] Here, we address Siaw-Afriyie's retaliation claim with respect to the RIF. We separately address Siaw-Afriyie's race and national origin discrimination claims with respect to the RIF. The *McDonnell Douglas* burden-shifting standard applies to all of these claims in the circumstances before us.

also three other positions in the business technology group. A reduction-in-force is a legitimate, non-discriminatory and non-retaliatory reason for an employee's termination. *See Nichols v. Loral Vought Sys. Corp.*, 81 F.3d 38, 41 (5th Cir. 1996); *see also Russo v. Smith Int'l, Inc.*, 93 S.W.3d 428, 438 (Tex. App.—Houston [14th Dist.] 2002, pet. denied). The City's evidence eliminated the presumption of discrimination and retaliation created by Siaw-Afriyie's prima facie case. *See Tex. Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 258, 254 (1981); *Quantum Chem.*, 47 S.W.3d at 477. Therefore, under *McDonnell Douglas*, the burden shifted to Siaw-Afriyie to raise a fact issue by presenting some evidence the City's articulated reason for the elimination of his position was false or not credible, thereby permitting a factfinder to conclude the real reason for the City's elimination of his position was unlawful discrimination or retaliation. *See Reeves*, 530 U.S. at 148; *see also Hicks*, 509 U.S. 515; *Chandler v. CSC Applied Techs., LLC*, 376 S.W.3d 802, 814 (Tex. App.—Houston [1st Dist.] 2012, pet. denied).

Circumstantial evidence sufficient to show a causal link between an adverse employment decision and the protected activity may include the employer's failure to follow its usual policies and procedures in carrying out the challenged employment actions; discriminatory treatment in comparison to similarly situated employees; knowledge of the discrimination charge by those making the adverse employment decision; evidence the stated reason for the adverse employment decision was false or not credible; and the temporal proximity between the

employee's protected activity and the adverse employment decision. *Crutcher*, 410 S.W.3d at 494; *see also Alamo Heights*, 544 S.W.3d at 790 ("In evaluating but-for causation evidence in retaliation cases, we examine all of the circumstances, including temporal proximity between the protected activity and the adverse action, knowledge of the protected activity, expression of a negative attitude toward the employee's protected activity, failure to adhere to relevant established company policies, discriminatory treatment in comparison to similarly situated employees, and evidence the employer's stated reason is false."). Siaw-Afriyie was not required to establish his discrimination complaints were the sole reason for the elimination of his position. *Herbert*, 189 S.W.3d at 377. Rather, he only was required to provide evidence of such substance that, on its consideration, reasonable and fair-minded people could disagree on whether Siaw-Afriyie would not have lost employment with the City but for his complaints, grievances, and EEOC charges of race and national origin discrimination. Therefore, the issue before us is whether Siaw-Afriyie offered evidence from which a factfinder could infer Finch was motivated, in whole or in part, by retaliation when Siaw-Afriyie's position was eliminated. *See Roberson*, 373 F.3d at 655.

Siaw-Afriyie argues that ultimately, he was the only employee who became unemployed by the City after the RIF. In other words, his was a RIF of one. Siaw-Afriyie presented evidence he was "programming" and "writing code" that supported the municipal court case management software purchased from Tyler

Technologies, and his department was maintaining that system at a lower cost than Tyler Technologies. There is no dispute Finch knew about Siaw-Afriyie's multiple complaints, grievances, and EEOC charges alleging race- and national origin-based discrimination. As the director of CIS, Finch was responsible for the decision to outsource maintenance of the municipal court case management system to the vendor and implement the RIF that eliminated Siaw-Afriyie's position. Tran testified that Finch "suggest[ed] to [her] the possibility that the existing contract with Tyler Technologies could be expanded to subsume [Siaw-Afriyie's] department" in July 2014, a few months after Siaw-Afriyie filed his first EEOC charges. While the City claims four positions were eliminated in the RIF, only three of those positions were filled at the time of the RIF, and record evidence indicates one of the employees—Brooke—planned to retire, leaving only Sullivan and Siaw-Afriyie involuntarily unemployed.

According to Siaw-Afriyie, the City then singled him out in breaking from its policy of giving employment priority to employees laid off in a RIF. Record evidence, including Sullivan's deposition testimony, shows that Siaw-Afriyie's educational background far exceeded Sullivan's: Siaw-Afriyie had an MBA and a bachelor of science in computer science, while Sullivan did not have a college degree. During the course of his employment at CIS, Siaw-Afriyie performed tasks and completed assignments more complex than Sullivan. Siaw-Afriyie wrote code for the City, while Sullivan did not. Despite Siaw-Afriyie's experience and

educational background, the City failed to offer Siaw-Afriyie a single interview for any of the dozens of positions he applied for, at least one of which had the same title he held at CIS prior to the RIF. Conversely, Sullivan was offered at least five interviews and was re-hired by the City within ninety days of the RIF.[13]

Tran was responsible for offering interviews for some of the positions Siaw-Afriyie applied for. Tran testified she knew in September 2014 that Siaw-Afriyie had filed EEOC charges and she was aware Siaw-Afriyie was "still involved" in Civil Service hearings related to an EEOC charge in January 2015, just one month prior to the RIF. Moreover, Tran heard and denied, by letter dated May 20, 2014, a grievance filed by Siaw-Afriyie against Chaffin alleging harassment, intimidation, and retaliation. Despite that he had been programming and writing code for the City as a senior IT analyst in various capacities and she knew he "was looking for a job because he had been RIF'd," Tran testified she did not consider, nor was she aware of anyone who considered, Siaw-Afriyie for at least the following open positions (some of which had multiple vacancies) after the RIF: senior IT manager, IT

[13] The City argues that by citing evidence of its failure to rehire Siaw-Afriyie following the RIF, paying him lesser wages, and denying him certain promotions—employment actions that do not form the basis of his liability claims that are currently the focus of our review—Siaw-Afriyie is attempting to re-litigate claims previously dismissed by the district court in the earlier jurisdictional plea proceedings. We do not understand Siaw-Afriyie's argument in that way. Clearly, as *McDonnell Douglas* noted, other evidence that does not form the basis of liability may be relevant to a showing of pretext. 411 U.S. at 804; *see also United Air Lines, Inc. v. Evans*, 431 U.S. 553, 558 (1977) (acts not made basis of discrimination claim may constitute relevant background evidence). Thus, we decline the City's invitation to balkanize the evidence and divorce it from the context of Siaw-Afriyie's terms and conditions of employment. We also note that at least with respect to Siaw-Afriyie's failure to rehire claims, and perhaps others, the trial court's previous dismissal is interlocutory, appears not to have been affected by the federal court proceedings, and could presumably be revisited by the trial court.

manager, programmer analyst, senior systems programmer, business analyst, IT project manager, program analyst, and network analyst. In her deposition, Tran testified Siaw-Afriyie was not considered for a vacant senior systems programmer position because "[t]hat was mostly for network, and that's not a skill set that [Siaw-Afriyie] has." However, Tran later admitted that Siaw-Afriyie, in fact, has network experience:

> Q: [T]urning to page 2 of my client's resume, you see that he was a teaching assistant and a research fellow in telecommunications at the University of Quebec, Canada.
>
> A: I see that.
>
> Q: You see that he managed and supervised 40 college students per semester.
>
> A: I see that.
>
> Q: Do you see that one of the areas that he was giving instruction in was instruction on principles of data transmission, LAN, WAN, radio and wireless network standard protocols?
>
> A: Uh-huh. I see that.
>
> Q: Wouldn't that be some network experience?
>
> A: Teaching experience, yes.
>
> Q: Teaching about networks assumes you know something about networks, doesn't it?
>
> A: It does.
>
> Q: Especially when done at the college level.
>
> A: Uh-huh.
>
> Q: Is that a yes?

A: Yes.

Q: It says, "Participated in research work involving Wireless PCS, X.25, SS7 and TDMA protocols," correct?

A: That's what it says.

Q: Are those network protocols?

A: It looks like it.

Q: And it also says, "Taught students how to develop telecommunications software, using C/C++ and Visual Basic 5.0/6.0 on both Unix and Windows platforms, correct?

A: That's what it says.

Q: So he was conversant with programming languages for desktops in addition to whatever knowledge he may have had about mainframe systems, correct?

A: I would assume so, yeah.

Tran confirmed that Siaw-Afriyie's MBA transcript reflected a concentration in not-for-profit management and the City is a not-for-profit organization. When asked if a not-for-profit management concentration might be particularly useful for managing people in the City, Tran replied, "I suppose." Nevertheless, Tran testified that Siaw-Afriyie's MBA with a special concentration in not-for-profit management was "not enough to even get him an interview."

Siaw-Afriyie also challenges the legitimacy of RIF because he was fired before City Council approved outsourcing the maintenance of the municipal court case management system. Siaw-Afriyie was fired on February 10, 2014, but record evidence reflects City Council did not approve the outsourcing contract with Tyler

Technologies until February 25, 2015. In her deposition, Tran could not explain why Siaw-Afriyie "was fired before the City Council actually approved" outsourcing the work.[14]

Having reviewed the entirety of the voluminous record, we conclude Siaw-Afriyie produced circumstantial evidence sufficient to show a causal link between his race and national origin discrimination complaints, grievances, and EEOC charges and the elimination of his position, including:

- the City failed to follow its usual post-RIF employment policies by denying Siaw-Afriyie employment opportunities in comparison to Sullivan;
- Finch and Tran knew about Siaw-Afriyie's discrimination complaints, grievances, and EEOC charges;
- Finch and Tran were the deciding authorities in eliminating Siaw-Afriyie's position and providing at least some post-RIF employment opportunities; and
- the temporal proximity between the elimination of Siaw-Afriyie's position and proceedings on his grievance and EEOC charges and his formal complaint that his job was misclassified.

See Crutcher, 410 S.W.3d at 494. We conclude Siaw-Afriyie carried his burden to produce some controverting evidence of a retaliatory motive for the elimination of

[14] Arguing that reductions-in-force generally are announced "in September, at the end of the fiscal year," Siaw-Afriyie also points to the alleged suspicious timing of the RIF, which occurred in February, as evidence of pretext. However, Pamela McDonald, the Interim Civil Service Director for the City, swore in her affidavit that reductions-in-force in the middle of the fiscal year are not uncommon: "When a position is eliminated in a reduction in force, the person whose job is affected has reinstatement rights. Pursuant to Civil Service rules, a person affected has the right to reinstatement for two years in a job in the same job classification, same organization, and same department he occupied before he was laid off, at the same level or at a lower level than the position he occupied. Reinstatement rights do not exist for positions at a higher classification than what the person occupied prior to being laid off."

his position, and the trial court properly denied the City's plea to the jurisdiction with respect to his claim the City unlawfully retaliated against him under section 21.055 of the Texas Labor Code.

Reduction-in-Force:
Siaw-Afriyie Raised a Fact Issue as to His Discrimination Claims

Siaw-Afriyie also claims CIS eliminated his position as a result of race and national origin discrimination. To establish a prima facie case of discrimination in the context of a reduction-in-force, a plaintiff must establish the following elements: (1) he is a member of the protected group; (2) he has been adversely affected by the employer's decisions; (3) he was qualified to assume another position at the time of discharge; and (4) there is direct or circumstantial evidence from which a factfinder might reasonably conclude that the employer intended to discriminate in reaching the decision at issue. *See Nichols*, 81 F.3d at 41; *Amburgey v. Corhart Refractories Corp., Inc.*, 936 F.2d 805, 812 (5th Cir. 1991). The City contends the RIF is a legitimate, non-discriminatory reason for the elimination of Siaw-Afriyie's position and Siaw-Afriyie presented no evidence of pretext.

Under *McDonnell Douglas*, Siaw-Afriyie must present evidence sufficient to create an issue of material fact that either the City's stated reason is not genuine and is merely pretext for discrimination, or the decision was based on "mixed motives" and the City's reason, while true, is only one of the reasons for its conduct and another "motivating factor" was Siaw-Afriyie's race or national origin. *See Rachid*

v. Jack in the Box, Inc., 376 F.3d 305, 312 (5th Cir. 2004). Because it is "relatively easy both for a plaintiff to establish a prima facie case and for a defendant to articulate legitimate, nondiscriminatory reasons for [its] decision, most disparate treatment cases are resolved at the third stage of inquiry, on the issue of whether the defendant's reasons are pretextual." *Amburgey*, 936 F.2d at 811. Because the City does not challenge Siaw-Afriyie's prima facie case and it presented a legitimate, non-discriminatory reason for eliminating his position, we turn our focus to the issue of pretext.

The evidence shows Finch ultimately made the decision to outsource maintenance of the municipal court management system to Tyler Technologies and eliminate three occupied positions in the business technology group, including Siaw-Afriyie's position. Siaw-Afriyie's evidence of Finch's intent to discriminate against him on the basis of race and national origin is the same as the evidence for his other claims: Finch's, Chaffin's, and Tran's disparate treatment of him compared to similarly situated employees who were not black or from Africa with respect to pay, promotions, and job classification, as well as mistreatment in the office. The issue before us is whether Siaw-Afriyie presented sufficient evidence to create a fact issue on whether a discriminatory motive influenced Finch's decision to eliminate Siaw-Afriyie's position and outsource maintenance of the municipal court case management system and whether the City's explanation is unworthy of credence. *Harrington v. Harris*, 118 F.3d 359, 367–68 (5th Cir. 1997).

Every employment discrimination case is unique. We must analyze the "nature, extent, and quality of the evidence" in determining whether a factfinder reasonably could infer discrimination. *Crawford v. Formosa Plastics Corp.*, 234 F.3d 899, 903 (5th Cir. 2000). Siaw-Afriyie was performing duties and responsibilities far above his pay and job classification, and the evidence indicates his superiors at CIS made no attempt to correct the situation or offer him any opportunity for advancement. Siaw-Afriyie was the only employee actually affected by the RIF who was not rehired by the City or even offered an interview. Siaw-Afriyie presented evidence describing the history of his employment at CIS, the entirety of which suggests that despite his academic credentials, professional experience, and the programming and complex coding he was performing, he was unable to obtain: a promotion, a salary commensurate to his job duties relative to the salaries of other employees who either were not black or were not from Africa, or even a proper job classification.

On this record, we conclude a reasonable factfinder could determine Siaw-Afriyie's superiors at CIS engaged in an intentional effort to treat him less favorably than equally or less qualified employees who were not black or not from Africa, and Finch intended to discriminate against Siaw-Afriyie on the basis of race or national origin when he decided to eliminate Siaw-Afriyie's position. Accordingly, we conclude the trial court properly denied the City's plea to the jurisdiction with

respect to Siaw-Afriyie's race and national origin discrimination claim for the elimination of his position.

CONCLUSION

We affirm the trial court's denial of the City's plea to the jurisdiction, and we remand the case for further proceedings consistent with this opinion.

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/Ken Molberg//
KEN MOLBERG
JUSTICE

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

CITY OF DALLAS, Appellant	On Appeal from the 192nd Judicial District Court, Dallas County, Texas
No. 05-19-00244-CV V.	Trial Court Cause No. DC-15-02654. Opinion delivered by Justice Molberg.
BRIGHT SIAW-AFRIYIE, Appellee	Justice Partida-Kipness participating.

In accordance with this Court's opinion of this date, the order of the trial court denying Appellant's plea to the jurisdiction is **AFFIRMED**. We **REMAND** the case to the trial court for proceedings consistent with the opinion.

It is **ORDERED** that appellee BRIGHT SIAW-AFRIYIE recover his costs of this appeal from appellant CITY OF DALLAS.

Judgment entered this 1st day of October, 2020.