

Affirmed and Memorandum Opinion filed July 27, 2010.



In The

**Fourteenth Court of Appeals**

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NO. 14-09-00461-CV

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**GLADYS JESSICA DIAZ, Appellant**

**V.**

**UNITED INSURANCE COMPANY OF AMERICA AND THE RELIABLE LIFE  
INSURANCE COMPANY, Appellees**

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**On Appeal from the 157th District Court  
Harris County, Texas  
Trial Court Cause No. 2008-69579**

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**MEMORANDUM OPINION**

Appellant Gladys Jessica Diaz appeals from the trial court's judgment dismissing with prejudice her suit against appellees United Insurance Company of American and The Reliable Life Insurance Company. In two issues, Diaz complains that the trial court's dismissal should have been without prejudice and asserts that the trial court improperly undeemed admissions. We affirm.

Diaz filed a declaratory judgment action against appellees, requesting declarations that the contractual relationships between appellees and other entities does not allow for certain actions. Diaz is not a party to any of these contracts. Appellees filed a plea to the

jurisdiction, arguing there is no justiciable controversy between Diaz and themselves. The trial court granted the plea and dismissed the case with prejudice.

A few days after the trial court dismissed the case, Diaz filed an amended petition.<sup>1</sup> The amended petition contained two new parties and added two paragraphs regarding requests for admissions previously served on appellees but otherwise was the same as the first petition, including requesting the same declaratory relief. Diaz filed a motion for new trial, asserting that the trial court should have dismissed her case without prejudice instead of with prejudice. The trial court overruled the motion, and this appeal followed.

In her first issue, Diaz argues that the trial court erred in dismissing her case with prejudice. She argues that because a dismissal for lack of jurisdiction is not a determination on the merits, the trial court's dismissal order must be without prejudice as a matter of law. Diaz is mistaken. Though some older cases do hold as Diaz suggests,<sup>2</sup> the Texas Supreme Court clarified the law regarding whether dismissals for lack of jurisdiction should be with or without prejudice. *See Harris County v. Sykes*, 136 S.W.3d 635 (Tex. 2004). The court held that a dismissal with prejudice is proper when the plaintiff has been given an opportunity to amend its pleadings to cure the jurisdictional defect or when the defect is incapable of being cured. *See id.* at 639; *see also OBHA Corp. v. City of Carrollton*, 203 S.W.3d 1, 6–7 (Tex. App.—Dallas 2006, pet denied.). Diaz does not explain in her brief how any amendment could cure the jurisdictional defect the trial court found, and the amended petition she attempted to file does nothing to cure the defect. Therefore, the trial court did not err in dismissing Diaz's case with prejudice. *See OBHA Corp.*, 203 S.W.3d at 6–7 (affirming dismissal with prejudice when jurisdictional defects, based on failure to plead a justiciable controversy, could not

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<sup>1</sup> Diaz later stated that she had not yet received notice that the case had been dismissed when she filed the amended petition.

<sup>2</sup> *See, e.g., Jansen v. Fitzpatrick*, 14 S.W.3d 426, 431 (Tex. App.—Houston [14th Dist.] 2000, no pet.).

be remedied by amendment); *see also Sykes*, 136 S.W.3d at 639. We overrule Diaz’s first issue.

In her second issue, Diaz argues that the trial court erred in undeeming admissions against appellees. Diaz had served requests for admissions on appellees after appellees filed their plea to the jurisdiction, and rather than answer them, appellees sought a protective order and requested that the court rule on the plea before they were required to answer discovery. In the motion for new trial hearing, Diaz stated that appellees’ failure to answer her requests for admissions meant those admissions were automatically deemed against them. Appellees then requested that the trial court undeem whatever admissions might have been deemed against them, and the trial court granted the motion. Diaz contends that the trial court had no jurisdiction to take such action because it had already ruled it had no jurisdiction over the case. Diaz does not explain why the issue of whether the trial court had authority to rule on the request to undeem admissions is relevant to the ultimate disposition of this appeal, which hinges on whether the trial court’s dismissal with prejudice was proper. Indeed, the only relief Diaz requests in her brief is that the judgment be amended to be without prejudice. We need not address issues that do not impact our ultimate resolution of the case. *See* TEX. R. APP. P. 47.1.

We affirm the trial court’s judgment.

/s/ Leslie B. Yates  
Justice

Panel consists of Justices Yates, Seymore, and Brown.