IN THE
TENTH COURT OF APPEALS

No. 10-16-00044-CV

KAREN HALL,

Appellant

v.

CITY OF BRYAN, TEXAS,

Appellee

From the 272nd District Court
Brazos County, Texas
Trial Court No. 12-000391-CV-272

MEMORANDUM OPINION

Karen Hall sued the City of Bryan for disannexation of property annexed by the City. This was the third time she sued for disannexation. Because the trial court did not err in granting the City's motion for summary judgment and denying Hall's summary judgment, the trial court's judgment is affirmed.

PROCEDURAL BACKGROUND

On July 17, 1999, the City of Bryan adopted an ordinance annexing part of Karen Hall's property. In 2004, she filed suit seeking disannexation. The trial court granted the

City's motion for summary judgment, and Hall appealed. We affirmed the trial court's judgment in 2006, stating that "the city conclusively proved that it had complied with the service plan as written." *Hall v. City of Bryan*, No. 10-05-00417-CV, 2006 Tex. App. LEXIS 10280, *6 (Tex. App.—Waco Nov. 29, 2006, pet. denied) (mem. op.) (*Hall I*). We also determined that section 43.141(b) of the Texas Local Government Code permitted disannexation only for a city's failure "to perform its obligations in accordance with the service plan; not for failure to comply with, for example, the statutory requirements of a service plan. *Id*. at *7.

In 2010, Hall again sued the City for disannexation. The trial court granted the City's plea to the jurisdiction, and if it had any jurisdiction, the trial court granted the City's motion for summary judgment. We affirmed the trial court's judgment as to the City's plea to the jurisdiction stating that Hall's complaints in her petition about misrepresentations made by the City at public hearings regarding the services to be provided were attacks on the validity of the annexation process, and Hall had no standing to proceed. *Hall v. City of Bryan*, No. 10-10-00403-CV, 2011 Tex. App. LEXIS 8038, *8-9 (Tex. App.—Waco Oct. 5, 2011, pet. denied) (mem. op.) (*Hall II*). We did not review Hall's issues regarding the City's motion for summary judgment.

In 2012, Hall sued the City a third time for disannexation. The City again filed a plea to the jurisdiction and a motion for summary judgment. The trial court granted the plea to the jurisdiction but did not rule on the motion for summary judgment. We

affirmed the trial court’s judgment granting the City's plea to the jurisdiction and dismissing Hall's suit as to Hall's standing to seek disannexation based on her claim that the City failed to provide full municipal services "in good faith," independent of the service plan and that the annexed area did not have sewer paid by tax dollars, fire hydrants, water on both sides of Highway 21, and waterlines capable of supporting fire hydrants. *Hall v. City of Bryan*, 2014 Tex. App. LEXIS 8071 *18-19 (Tex. App.—Waco July 24, 2014, no pet.) (mem. op.) (*Hall III*). We determined that there was no separate duty by a city to provide full municipal services "in good faith" beyond those specified in the service plan. *Id*. at *9. We also determined that the service plan at issue did not include provisions for sewer paid by tax dollars, fire hydrants, water on both sides of the highway, or waterlines capable of supporting fire hydrants. *Id*. *12. However, we reversed the trial court's judgment granting the City's plea to the jurisdiction and dismissing Hall's suit as to Hall's standing to seek disannexation based on her claim that the City lacked adequate police patrols, and remanded the case to the trial court for further proceedings. *Id*. at *19.

LAW OF THE CASE

Initially, we must determine what issues are here for our review.

Two days after our mandate issued in *Hall III*, Hall amended her 2012 petition for disannexation. Hall asserts in her amended petition that it is “limited to the City’s failure to provide, in good faith or under its service plan, specific municipal services” to the

annexed area. Specifically, she contends in the petition that the annexed area has not been provided "sanitary sewer,[1] fire suppression with hydrants, a water line capable of supporting fire hydrants, and regular and routine preventative police patrols."

These allegations are no different than what was alleged in her first amended petition which we reviewed in *Hall III*. As explained, all of her claims except for her claim regarding routine police patrols were dismissed by the trial court for lack of standing and that decision was affirmed by this Court. Those claims were finally decided against Hall and have become the "law of the case."

Under the law of the case doctrine, a decision rendered in a former appeal of a case is generally binding in a later appeal of the same case. *Paradigm Oil, Inc. v. Retamco Operating, Inc*., 372 S.W.3d 177, 182 (Tex. 2012). By narrowing the issues in successive stages of the litigation, the law of the case doctrine is intended to achieve uniformity of decision as well as judicial economy and efficiency. *Hudson v. Wakefield*, 711 S.W.2d 628, 630 (Tex. 1986). The doctrine is based on public policy and is aimed at putting an end to litigation. *Id*.

In *Hall III*, we said the service plan at issue did not include provisions for sewer paid by tax dollars, fire hydrants, water on both sides of the highway, or waterlines

[1] Hall asserts within the petition that the service plan may not require landowner funding for the capital improvements necessary to provide municipal services. Thus, she essentially argues the services should be paid by tax dollars—an argument she made in *Hall III*.

capable of supporting fire hydrants; and we affirmed the trial court's dismissal of those claims. *Hall v. City of Bryan*, 2014 Tex. App. LEXIS 8071 *12, 18 (Tex. App.—Waco July 24, 2014, no pet.) (mem. op.). Hall contends we stated in *Hall III* that she could raise additional claims on remand. She is correct. *Id*. at n. 5 ("…our holding does not necessarily mean there are no *other claims* that Hall can pursue in this proceeding by amending her petition." (emphasis added)). However, Hall did not raise "other claims." Rather, she merely altered the language in her second amended petition somewhat and raised the *same claims* that were in her 2012 petition which we had already reviewed.[2]

---

[2] We reiterate what we stated in *Hall* II:

> Our affirmance of the trial court's judgment should not be construed as a validation of the process through which the City has annexed the property and subjected the existing property owners to full city taxation without also providing full city services. If the annexation procedure does not provide for providing services to existing property owners without them having to pay for the services, it appears to be non-compliant with the annexation statute. *See* TEX. LOC. GOV'T CODE ANN. § 43.056(f)(2) (West 2008). Thus, when the city service plan called for the extension of services to the annexed area only if the property owner/developer, including existing residents, paid for the extension of services, the plan appears to depart from the statute. Failure of the service agreement to provide for services to existing residents in the area annexed without those residents having to pay for the extension services to the area appears to be a deficient service agreement under the statute. Such a deficiency, if any, is a part of the annexation process about which Hall cannot complain in this proceeding. Her complaint is not that the service plan that was adopted and implemented was not complied with, but that the service plan that should have been adopted and implemented has not been complied with.

Hall v. City of Bryan, No. 10-10-00403-CV, 2011 Tex. App. LEXIS 8038 *10 n. 3 (Tex. App.—Waco Oct. 5, 2011, pet. denied) (mem. op.). In their current briefing, the City coyly hides behind the phrase that it "has continued to provide services consistent with the plan *as-written*." (Emphasis added). In the final analysis, that appears to be what Hall really wants to complain about. But she does not have standing to do so and was apparently unable to get the Attorney General, who did have standing, to require the City to present, adopt, and implement a service plan that complied with the annexation statute. While it appears the Service Plan used by the City in its annexation of Hall's property was deficient, Hall has no vehicle, *i.e*. no standing, to force the City to correct it. Although the municipalities' abuse of the annexation process caught the attention of the 85th Legislature and some abuses in larger cities were addressed, the statute's

Accordingly, due to the law of the case doctrine, we will not revisit or review any claim made by Hall in this appeal regarding sanitary sewers, fire suppression with hydrants, or a water line capable of supporting fire hydrants.[3] Therefore, the only reviewable claim made by Hall is the claim that the City did not provide regular or routine preventative police patrols.

SUMMARY JUDGMENT REVIEW

In response to Hall's 2014 amended petition, the City filed a motion for summary judgment and supplemental motion for summary judgment, asserting that Hall's claims were precluded by res judicata, collateral estoppel, statute of limitations, and in the alternative, asserting that the City complied with the Annexation Service Plan, as written. Hall also filed a motion for summary judgment, asserting generally that the City had not complied with the service plan because the annexed area had not been provided sanitary sewer service, fire hydrants, and regular and routine police patrols. After hearing arguments from both parties and considering the motions and the evidence, the trial court granted summary judgment in favor of the City and denied summary judgment in favor of Hall. The trial court did not specify the grounds upon which it relied in granting

---

amendments would not have assisted Hall in the position in which the statute left her. *See* Acts 2017, 85th Leg., 1st C.S., ch. 6 (S.B. 6), eff. Dec. 1, 2017 (the Municipal Annexation Right to Vote Act, which, per the Bill Analysis, requires "consent by the residents being annexed through either an election or petition process when the city is located in a county with a population of 500,000 or more.").

[3] To the extent that Hall raises any issue in this appeal regarding the lack of full municipal services, we have also previously determined this issue against her and will not revisit it. *Hall v. City of Bryan*, 2014 Tex. App. LEXIS 8071 (Tex. App.—Waco July 24, 2014, no pet.) (mem. op.) (*Hall* III).

summary judgment in favor of the City.

We review a trial court's order granting summary judgment de novo, taking as true all evidence favorable to the nonmovant, and indulging every reasonable inference and resolving any doubts in the nonmovant's favor. *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005). A party moving for traditional summary judgment has the burden to prove that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *Seabright Ins. Co. v. Lopez*, 465 S.W.3d 637, 641 (Tex. 2015). Once the movant establishes its right to summary judgment as a matter of law, the burden then shifts to the nonmovant to present evidence raising a genuine issue of material fact which precludes the summary judgment. *See City of Houston v. Clear Creek Basin Auth.*, 589 S.W.2d 671, 678 (Tex. 1979); *Talford v. Columbia Med. Ctr. at Lancaster Subsidiary, L.P.*, 198 S.W.3d 462, 464 (Tex. App.—Dallas 2006, no pet.). We will affirm a defendant's traditional summary judgment if the record establishes that the defendant has conclusively proved its defense as a matter of law or has negated at least one essential element of the plaintiff's cause of action. *See Am. Tobacco Co. v. Grinnell*, 951 S.W.2d 420, 425 (Tex. 1997). If the order granting a motion for summary judgment, such as the one in this case, does not specify the grounds upon which judgment was rendered, we must affirm the judgment if any of the grounds in the motion for summary judgment is meritorious. *FM Props. Operating Co. v. City of Austin*, 22 S.W.3d 868, 872

(Tex. 2000); *Lotito v. Knife River Corporation-South*, 391 S.W.3d 226, 227 (Tex. App.—Waco 2012, no pet.).

RES JUDICATA

In her first issue, Hall contends the trial court erred in granting summary judgment on the City's defense of res judicata.

Res judicata bars the relitigation of claims that have been actually litigated, as well as claims that could have been litigated, in a prior action. *See Barr v. Resolution Trust Corp.*, 837 S.W.2d 627, 628 (Tex. 1992). For res judicata to apply, the following elements must be present: (1) a prior final judgment on the merits by a court of competent jurisdiction; (2) the same parties or those in privity with them; and (3) a second action based on the same claims as were raised or could have been raised in the first action. *Igal v. Brightstar Info. Tech. Group, Inc.*, 250 S.W.3d 78, 86 (Tex. 2008); *Citizens Ins. Co. v. Daccach*, 217 S.W.3d 430, 449 (Tex. 2007). Thus, a party may not pursue a claim determined by the final judgment of a court of competent jurisdiction in a prior suit as a ground of recovery in a later suit against the same parties. *Igal*, 250 S.W.3d at 86; *Tex. Water Rights Comm'n v. Crow Iron Works*, 582 S.W.2d 768, 771-72 (Tex. 1979).

There is no question that the first two prongs of res judicata are met. There was a prior final judgment on the merits by the trial court regarding Hall's 2004 petition for disannexation, and the same parties are now involved in the 2014 petition. The question is whether the 2014 petition for disannexation is "based on the same claims as were raised

or could have been raised" in the 2004 petition for disannexation.

The City contends in its motion for summary judgment and on appeal that when Hall filed her 2004 petition, she asserted as one of the grounds for disannexation that the City failed to properly provide police protection. The City attached Hall's petition to the motion for summary judgment. In that petition, Hall complained that although the service plan stated that "over time…the Department will add more police personnel and equipment if needed…," the City had not added more police personnel. This does not appear to be the same claim Hall makes now which is that the City does not provide routine and regular preventative police patrols. However, in a deposition taken in response to Hall's 2012 petition for disannexation which was attached to the City's supplemental motion for summary judgment, Hall expressly agreed that in her 2004 petition, she was complaining that the City was not conducting routine and preventative police patrols. Further, she agreed that, in anticipation of supporting her petition for disannexation in 2004, she had recorded 130 hours of video purportedly showing no routine patrols on a street in the annexed area. This is some of the same video evidence she contends supports her claims in her 2014 petition.[4]

Regardless of whether the specific claim of no regular or routine preventative police patrols was actually pursued in the 2004 petition for disannexation, Hall knew in

[4] The DVDs purportedly evidencing the lack of police patrols were introduced into evidence during the 2015 summary judgment hearing. The reporter indicated that these exhibits were not requested to be "attached to volume." The subject matter of the recordings is not in dispute and was summarized in affidavits that are a part of the appellate record. Thus, we will not order the DVD exhibits to be filed with this Court.

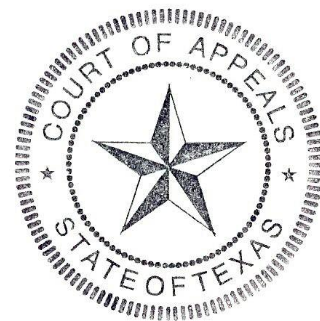
2004 that the City was not providing routine police patrols and prepared for asserting that deficiency as a ground for disannexation by videoing a street in the annexed area. Thus, Hall's police patrol claim could have been brought in Hall's 2004 petition for disannexation, and the third prong for res judicata is met.

CONCLUSION

Hall's claim in her 2014 petition regarding police patrols, the only claim to be reviewed in this appeal, is barred by res judicata. The City proved its defense as a matter of law, and Hall did not present evidence raising a genuine issue of fact which would preclude summary judgment on this defense. Accordingly, the trial court did not err in granting summary judgment on this basis. Hall's first issue is overruled, and we need not address Hall's remaining issues.

The trial court's judgment is affirmed.

TOM GRAY
Chief Justice



Before Chief Justice Gray,
Justice Davis, and
Justice Scoggins
Affirmed
Opinion delivered and filed January 3, 2018
[CV06]