

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

United States Court of Appeals  
Fifth Circuit

**FILED**

June 18, 2012

Lyle W. Cayce  
Clerk

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No. 11-51154  
Summary Calendar

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LOUIS P. MCCASLAND, JR.; JOAN T. MCCASLAND; CASTROVILLE  
AIRPORT, INCORPORATED,

Plaintiffs-Appellants

v.

CITY OF CASTROVILLE,

Defendant-Appellee

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 5:11-CV-506

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Before HIGGINBOTHAM, DAVIS, and ELROD, Circuit Judges.

PER CURIAM:\*

The district court granted the City of Castroville's motion to dismiss the claims in plaintiffs' First Amended Complaint, and plaintiffs now appeal that judgment. The City's motion raised as grounds for dismissal a lack of subject matter jurisdiction, pursuant to FED. R. CIV. P. 12(b)(1), and plaintiffs' failure to state a claim upon which relief can be granted, pursuant to FED. R. CIV. P. 12(b)(6). The court found that "plaintiffs have failed to state a claim upon which

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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relief may be granted” and dismissed their claims with prejudice under Rule 12(b)(6). In light of that conclusion, the court believed that it “need not consider the City’s arguments regarding subject matter jurisdiction.”

When a Rule 12(b)(1) motion is filed in conjunction with a Rule 12(b)(6) motion, however, courts must consider the jurisdictional challenge first.<sup>1</sup> Doing so “prevents a court without jurisdiction from prematurely dismissing a case with prejudice.”<sup>2</sup> That concern is implicated here, and so, without expressing a view on the district court’s Rule 12(b)(6) analysis, we vacate the district court’s judgment granting the City’s Second Motion to Dismiss and dismissing the plaintiffs’ claims with prejudice, and we remand for consideration of the City’s jurisdictional arguments and further proceedings consistent with this opinion.

VACATED AND REMANDED.

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<sup>1</sup> See *Wolcott v. Sebelius*, 635 F.3d 757, 762 (5th Cir. 2011); *Moran v. Kingdom of Saudi Arabia*, 27 F.3d 169, 172 (5th Cir. 1994).

<sup>2</sup> *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001) (per curiam); accord *Hitt v. City of Pasadena*, 561 F.2d 606, 608 (5th Cir. 1977) (per curiam).