



COURT OF APPEALS  
EIGHTH DISTRICT OF TEXAS  
EL PASO, TEXAS

|                               |   |                        |
|-------------------------------|---|------------------------|
|                               | § | No. 08-21-00169-CV     |
| IN RE:                        | § |                        |
|                               | § | AN ORIGINAL PROCEEDING |
| HUDSPETH COUNTY, TEXAS, AND   | § |                        |
| THE HUDSPETH COUNTY SHERIFF'S | § | IN MANDAMUS            |
| OFFICE,                       | § |                        |
|                               | § |                        |
| Relators.                     | § |                        |
|                               | § |                        |

**MEMORANDUM OPINION**

Relators Hudspeth County and the Hudspeth County Sheriff's Office (hereinafter County and Sheriff's Office, respectively) have filed a petition for a writ of mandamus against the Honorable Francisco X. Dominguez, Judge of the 205th District Court of Hudspeth County. The County and Sheriff's Office request the Court to direct Judge Dominguez to rule on their Plea to the Jurisdiction, which was first heard on August 25, 2020, then rescheduled for a second hearing set for January 7, 2021, after the trial court requested additional briefing and argument. Before holding the second hearing, the trial court cancelled the hearing and since then has neither re-set the hearing, nor provided a ruling on the Plea to the Jurisdiction.

We conditionally grant mandamus relief and direct the trial court to rule on the Plea to the

Jurisdiction within thirty days.

## **BACKGROUND**

This mandamus action arises from a workers' compensation lawsuit pending in the 205th District Court styled *Raquel Ramirez, Individually and as Representative of the Estate of Lorenzo Ramirez v. Public WC Program, Hudspeth County, Texas, and Hudspeth County Sheriff's Department*,<sup>1</sup> Trial Court Cause No. CV-04833-205. By her suit, Real Party in Interest Raquel Ramirez alleged that her husband, Lorenzo Ramirez, sustained an injury that caused paraplegia and death due to a fall that occurred while he was working in the ordinary course of his employment for the County Sheriff. Ramirez brought suit under the Texas Workers' Compensation Act, as the surviving wife of a worker, as well as the authorized person under the Wrongful Death Act, Section 71.004 and 71.021 of the Texas Civil Practice and Remedies Code. In asserting that the Sheriff's Office had been grossly negligent at the time of the alleged occurrence, Ramirez sought recovery of exemplary damages, among other claims.

On July 9, 2020, the County and the Sheriff's Office filed their Plea to the Jurisdiction seeking dismissal of the suit. The County and Sheriff's Office assert: (1) that Ramirez's claim for gross negligence and seeking exemplary damages was barred by governmental immunity under the Texas Tort Claims Act, TEX. CIV. PRAC. & REM. CODE ANN. § 101.024; (2) that Ramirez is not permitted to sue for exemplary damages under TEX. LAB. CODE ANN. § 504.002, because her husband was employed by a political subdivision; and (3) that Ramirez could not sue the County or Sheriff's Office for wrongful death because neither entity was a "person" for purposes of recovery under the Wrongful Death Act, TEX. CIV. PRAC. & REM. CODE ANN. § 71.002.

Ramirez responded on August 14, 2020, contending she had not filed an independent cause

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<sup>1</sup> Although the petition refers to the "Sheriff's Department," subsequent pleadings from the defendants clarify that the proper name is the "Hudspeth County Sheriff's Office."

of action for exemplary damages under the Texas Tort Claims Act, as asserted by the County and Sheriff's Office in their Plea. Rather, she argued her claim for benefits and damages was brought under Section 408.001 of the Texas Labor Code. On August 18, 2020, the County and Sheriff's Office replied, arguing that TEX. LAB. CODE ANN. § 408.001(b), which permits recovery of exemplary damages by the surviving spouse of a deceased employee whose death was caused by the employer's gross negligence, was not extended to apply to political subdivisions under TEX. LAB. CODE ANN. § 504.002.

On August 25, 2020, the trial court held a hearing on the Plea to the Jurisdiction, via Zoom, but did not make a ruling at that time. The transcript of this hearing is not included in our mandamus record.

On September 17, 2020, counsel for the County and Sheriff's Office sent correspondence to the trial court inquiring whether additional briefing was needed as a ruling had been promised by the trial court within a week of the hearing. In a second letter sent on December 8, 2020, counsel for the County and Sheriff's Office again offered to submit further briefing, if helpful; and otherwise requested a ruling on the Plea to the Jurisdiction.

On December 17, 2020, the trial court issued an order setting a second hearing, via Zoom, on the Plea to the Jurisdiction. The order setting the second hearing stated as follows:

On this date, the Court considered Defendants Hudspeth County and Hudspeth County Sheriff's Office's Plea to the Jurisdiction. After careful consideration of the pleadings, argument of counsel, and the authority provided, the Court is of the opinion that additional briefing and argument is required.

First, the Court needs clarification on whether Plaintiff has abandoned its wrongful death claim.

Second, given the dearth of case law regarding the viability of a claim for exemplary damages/gross negligence under Section 408.001(b) of the Texas Labor Code, as opposed to a claim for exemplary damages/gross negligence against a political subdivision under the Texas Tort Claims Act, the Court requires that the

parties provide additional briefing on this issue and the interplay between TEX.LAB.CODE § 408.001(b) and TEX.CIV.PRAC. & REM.CODE § 101.024.

Finally, given that Defendant concedes that governmental immunity is *not* waived for exemplary damages claims against Hudspeth County and the Sheriff's Office, the Court seeks clarification on Defendant's position that this Court lacks jurisdiction over the gross negligence/exemplary damages cause of action. [Emphasis added by the trial court.]

Therefore, this matter is set for hearing to supplement and further develop the record on Defendants Hudspeth County and Hudspeth County Sheriff's Office's Plea to the Jurisdiction on **Thursday, January 7, 2021 at 10:30am.**

On December 21, 2020, counsel for the County and Sheriff's Department sent a letter seeking clarification of the statement in the order in which the trial court asserted the County and Sheriff's Department had conceded "that governmental immunity is not waived for exemplary damages . . . ." Counsel's letter clarified that defendants had not so conceded; and instead, continued to assert their position that there was no waiver of governmental immunity provided by the Tort Claims Act for claims of gross negligence or exemplary damages. In closing, counsel's letter requested clarification of the trial court's request for further information.

On January 4, 2021, the County and Sheriff's Office followed their letter by filing a formal response to the trial court's request for additional briefing regarding defendants' Plea to the Jurisdiction. Two days later, on January 6, 2021, the trial court cancelled the hearing set for January 7, 2021, by telephone notice.

On June 21, 2021, counsel for the County and Sheriff's Office again sent a letter to the trial court requesting a ruling on the Plea to the Jurisdiction or, in the alternative, a rescheduling of the hearing on the Plea. Counsel stated that the parties were attempting to schedule expert depositions and the County sought a ruling "so that the County may avoid the expense of further litigation if such is unnecessary." On August 20, 2021, or two months following the prior letter, the County and Sheriff's Office sent another letter requesting a ruling on the Plea to the Jurisdiction.

On October 4, 2021, the County and Sheriff's Office filed this petition for a writ of mandamus seeking to compel a ruling from Respondent on the Plea to the Jurisdiction. Relators assert the trial court had not yet ruled on the Plea filed on July 9, 2020. On October 13, 2021, the Real Party in Interest filed a response opposing the petition for a writ of mandamus. Without asserting that more time was needed for briefing or discovery on the issues raised by the Plea, the Real Party in Interest asserts "[i]t would seem a reasonable and appropriate remedy to let the Trial Judge set this issue for a hearing."

### **DISCUSSION**

It is well settled that mandamus is proper to correct a clear abuse of discretion or the violation of a duty imposed by law when there is no adequate remedy at law. *Walker v. Packer*, 827 S.W.2d 833, 839 (Tex. 1992). To that end, we have recognized that a trial court commits a clear abuse of discretion when it refuses to rule on a pending motion within a reasonable amount of time. *See In re Shredder Co., L.L.C.*, 225 S.W.3d 676, 679 (Tex. App.—El Paso 2006, orig. proceeding); *In re Greenwell*, 160 S.W.3d 286, 288 (Tex. App.—Texarkana 2005, orig. proceeding). What is considered a reasonable amount of time is dependent upon the circumstances of each case. *In re Shredder*, 225 S.W.3d at 679.

To establish that the trial court abused its discretion by failing to rule, the relator must show that the trial court: (1) had a legal duty to perform a nondiscretionary act; (2) was asked to perform the act; and (3) failed or refused to do so. *Id.* As found by the Supreme Court of Texas, the act of giving consideration to and ruling upon a properly filed and pending motion is a ministerial act. *See Eli Lilly and Co. v. Marshall*, 829 S.W.2d 157, 158 (Tex. 1992) (mandamus conditionally issued to compel trial court to conduct a hearing).

Here, the record clearly establishes that Relators filed a Plea to the Jurisdiction, which

triggered a legal duty on the trial court to rule on the Plea within a reasonable period of time. Likewise, the record shows that Relators have requested rulings from the trial court at least four times since the Plea was filed, including twice after the trial court received supplemental briefing which had been provided prior to a second hearing set by the trial court, but later cancelled. With nearly fourteen months now passed beyond the initial hearing, and at least nine months after supplemented briefing and cancellation of a second hearing, the trial court has thus far failed to issue a ruling on the Plea. We conclude the trial court has failed to rule on a motion of which it possesses awareness. The remaining question is whether the delay of nine to fourteen months is reasonable under the circumstances. On the record provided, we conclude it is not.

No bright line demarcates the boundaries of a reasonable time period for a trial court to rule on a pending motion or jurisdictional plea; what is considered a reasonable amount of time is dependent upon the circumstances of each case. *In re Mesa Petroleum Partners, L.P.*, 538 S.W.3d 153, 157-58 (Tex. App.—El Paso 2017, orig. proceeding). Factors we consider in weighing reasonableness of time in issuing a ruling include the seriousness and complexity of the pending motion or plea, the court's actual knowledge of the motion or plea, the length of time the motion or plea has been pending, the imminence of any trial setting, the court's overt refusal to act, the state of the trial court's docket, the existence of judicial and administrative matters which the trial court must first address, and the court's inherent power to control its own docket. *Id.*

We observe that the Plea to the Jurisdiction on file here does appear to involve a somewhat complex or novel legal question. We note, the trial court did solicit and receive additional briefing on questions it had, and initially set the matter for a second hearing. However, at this point, there is no indication from the record that any outstanding questions from the trial court remain, or that requests for information were left unaddressed. The Plea to the Jurisdiction appears to be

principally related to questions of law, not questions of fact, and neither Relators nor the Real Party in Interest have averred that a determination of the existence of jurisdictional facts is necessary, or that discovery is needed, to resolve the merits of the Plea. The record also does not show that any future hearings on this matter have been scheduled; or that any trial court response to the requests for a ruling has taken place, at least since the telephonic cancellation of the second hearing on January 6, 2021. Lastly, although we note the Real Party in Interest referenced, in her response to the petition for writ of mandamus, the challenges inherent in conducting judicial proceedings during the ongoing COVID-19 pandemic, she does not argue or make a specific claim that those considerations have prevented the trial court from issuing a ruling on the Plea at issue. Moreover, the record fails to indicate that any such problems have negatively impacted the trial court's ability to rule in this case. Instead, the record shows the trial court held at least one hearing via Zoom, and thereafter scheduled a second hearing, also via Zoom, to receive further argument.

We recently granted mandamus relief under similar circumstances, holding that a district court's delay of more than thirteen months in ruling on cross-motions for summary judgment that turned on the resolution of two questions of law was unreasonable even in light of challenges posed by the ongoing COVID-19 pandemic. *In re UpCurve Energy Partners, L.L.C.*, No. 08-21-00053-CV, 2021 WL 2659832, at \*3 (Tex. App.—El Paso June 29, 2021, orig. proceeding); *see also In re GTG Sols., Inc.*, No. 08-20-00198-CV, 2021 WL 3761102, at \*2-3 (Tex. App.—El Paso Aug. 25, 2021, orig. proceeding) (no record evidence indicating the pandemic had negatively impacted the trial court's ability to rule on a motion to compel pending some sixteen months from when it was heard). Similarly, we hold that under these circumstances, the trial court's delay of more than nine months after cancelling a second hearing, and fourteen months from the date of the first hearing, is unreasonable.

Therefore, without addressing the merits of Relators' Plea to the Jurisdiction, we conditionally grant the petition for a writ of mandamus and direct the trial court to issue a ruling on Relators' Plea within thirty days of the date of this opinion.

The writ will issue only if Respondent fails to comply.

GINA M. PALAFOX, Justice

November 2, 2021

Before Rodriguez, C.J., Palafox, and Alley, JJ.