COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

CITY OF EL PASO,	§	No. 08-20-00159-CV
Appellant,	§	Appeal from the
v.	§	210th District Court
MARIA PINA,	§	of El Paso County, Texas
Appellee.	§	(TC# 2019DCV1458)

O P I N I O N

Appellant, City of El Paso, appeals the trial court's denial of its combined plea to the jurisdiction, no-evidence motion for summary judgment, and traditional summary judgment in a premises liability case brought against it by Appellee, Maria Pina, after she was involved in a motor vehicle accident with an automatic gate on city property. The plea to the jurisdiction and no-evidence summary judgment are based on Appellant's sovereign immunity as a municipality. Appellant claims Appellee has not, and cannot, produce any evidence to prove Appellant had actual knowledge the gate posed an unreasonable risk of harm, and the duty of care owed by Appellant to Appellee is that of a licensee, which does require that the premises owner have actual knowledge of the alleged dangerous condition.

We find Appellee failed to carry its burden of proof to produce more than a scintilla of

evidence in support of two essential elements of its cause of action against Appellant. Thus, it was improper for the trial court to deny its plea to the jurisdiction and no-evidence motion for summary judgment.

The trial court's order denying Appellant's plea to the jurisdiction is reversed and judgment is rendered for Appellant.

FACTUAL BACKGROUND

On April 18, 2017, the entrance gate at the El Paso Police Academy closed on Appellant's car as she was driving onto the premises to attend a class. Appellee claims that as she approached the gate, cars were freely entering and exiting, and the gate was not closing between vehicles. Thus, she was not aware the gate could close automatically while a car was going through it. As her vehicle was traveling through the gate, it began closing and struck her car. The collision damaged her vehicle and caused her to sustain bodily injury, according to the allegations in her petition.

Appellee filed suit against Appellant under the Texas Tort Claims Act, alleging Appellant was liable to her under a premises liability theory of negligence. After some time elapsed in the case, Appellant filed a combined plea to the jurisdiction, no-evidence motion for summary judgment, and traditional motion for summary judgment. The bases for the plea to the jurisdiction and the no-evidence motion for summary judgment were identical, in which Appellant argued the Appellee had no evidence of an essential element of her cause of action—namely, Appellant's actual knowledge that the gate posed an unreasonable risk of harm. Appellant's traditional motion for summary judgment was a statute of limitations argument where Appellant claimed Appellee failed to diligently attempt service upon Appellant after the expiration of the statute of limitations. Appellant did not attach any evidence to its combined motion. Appellee responded to the combined

motion, attaching various exhibits as evidence to its motion, including a video of the incident, photographs of the entrance gate, a portion of the incident report prepared by the El Paso Police Department, and an affidavit from a witness to the incident. After a hearing on the combined motion, the trial court denied the combined motion in its entirety by issuance of three separate orders. This appeal followed.

DISCUSSION

Appellant presents this Court with two "groups" of issues. First, Appellant claims the trial court erred in denying its plea to the jurisdiction and no-evidence summary judgment on the basis that Appellee failed to prove Appellant waived its sovereign immunity to suit because she provided no evidence that (1) a dangerous condition existed, (2) Appellant had actual knowledge of an unreasonably dangerous condition, or (3) Appellee's lack of awareness regarding the alleged dangerous condition posed by the gate. Second, Appellant argues the trial court erred in denying its traditional motion for summary judgment based on a statute of limitations affirmative defense for lack of diligent service.

We begin our review by addressing Appellant's first issue group. *See* TEX.CIV.PRAC.&REM.CODE ANN. § 51.014(a)(8)(interlocutory appeal from denial of a plea to the jurisdiction filed by a governmental unit is permissible); *Harris County v. Sykes*, 136 S.W.3d 635, 638 (Tex. 2004)(Section 51.014(a)(8) permits appeal of a trial court's denial of a governmental entity's claim of no jurisdiction, regardless of procedural method used to contest it). However, Appellant's plea to the jurisdiction addressed only the disputed existence of an unreasonably dangerous condition and Appellant's lack of actual notice regarding it. It did not address Appellee's lack of knowledge regarding the dangerous condition. Accordingly, any argument regarding Appellee's failure to adequately demonstrate she lacked actual knowledge of the

dangerous condition has not been preserved for review. *See Tex. Dep't of Motor Vehicles v. Bustillos*, 630 S.W.3d 316, 327 (Tex.App.—El Paso 2021, no pet.)(citing TEX.R.APP.P. 33.1(a)(1)(A)).

Standard of Review and Applicable Law

Whether a trial court has subject matter jurisdiction over a case is an issue we review *de novo*. *Texas Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226-27 (Tex. 2004).

Municipalities, like Appellant, enjoy sovereign immunity from lawsuits, except where the legislature consents to the suit, thereby waiving the immunity. *See Ben Bolt-Palito Blanco Consol. Indep. Sch. Dist. v. Tex. Political Subdivisions Prop./Cas. Joint Self-Ins. Fund*, 212 S.W.3d 320, 324 (Tex. 2006). Sovereign immunity includes immunity from liability and immunity from being sued. *Id.* (citing *Tex. Nat. Res. Conservation Comm'n v. IT-Davy*, 74 S.W.3d 849, 855 (Tex. 2002)). Immunity from suit deprives a trial court of subject matter jurisdiction. *Miranda*, 133 S.W.3d at 224. It is the plaintiff's burden to demonstrate the trial court has jurisdiction to hear the case, which, in cases against a governmental unit, includes showing the entity waived its sovereign immunity. *Town of Shady Shores v. Swanson*, 590 S.W.3d 544, 550 (Tex. 2019).

One of the causes of action for which the Legislature has waived sovereign immunity is a claim for premises liability, when the claim "arises from a premise defect[.]" TEX.CIV.PRAC.&REM.CODE ANN. § 101.022(a). In those cases, the government owes the claimant the same duty as a private person owes a licensee on private property. *Id.* at 101.022(a). "The duty owed to a licensee on private property requires that 'a landowner not injure a licensee by willful, wanton or grossly negligent conduct, and that the owner use ordinary care either to warn a licensee of, or to make reasonably safe, a dangerous condition of which the owner is aware and the licensee is not.'" *Sampson v. Univ. of Tex. at Austin*, 500 S.W.3d 380, 385 (Tex. 2016)(quoting *State Dep't*

of Highways & Pub. Transp. v. Payne, 838 S.W.2d 235, 237 (Tex. 1992)). However, unless a claimant can prove the governmental unit acted with either (a) "willful, wanton or grossly negligent conduct," or (b) had actual knowledge of a dangerous condition and failed to warn the claimant about the condition or otherwise make it reasonably safe, the governmental unit's sovereign immunity is not waived. *See id.*

Challenging Jurisdiction

Defendants typically challenge subject matter jurisdiction through a plea to the jurisdiction. *Miranda*, 133 S.W.3d at 225-26. However, jurisdictional challenges may also occur through "other procedural vehicles, such as a motion for summary judgment." *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000). An attack on a trial court's jurisdiction can challenge both the facts as pleaded as well as the existence of jurisdictional facts by attaching evidence to the plea. *Miranda*, 133 S.W.3d at 226-27. If the plea "challenges the adequacy of the facts pleaded in a petition, courts must construe the pleadings liberally in favor of the plaintiff." *HS Tejas, Ltd. v. City of Houston*, 462 S.W.3d 552, 556 (Tex.App.—Houston [1st Dist.] 2015, no pet.)(citing *Miranda*, 133 S.W.3d at 226). If a plaintiff fails to allege sufficient facts in their pleadings to adequately demonstrate the trial court has jurisdiction, the trial court must afford the plaintiff an opportunity to amend. *Id.* (citing *Miranda*, 133 S.W.3d at 226-27). However, if the facts pleaded "affirmatively negate the existence of jurisdiction, the trial court may grant the plea without allowing the plaintiff an opportunity to amend." *Id.* (citing *Miranda*, 133 S.W.3d at 227).

On the other hand, "[w]hen a plea to the jurisdiction challenges the **existence** of jurisdictional facts, we consider relevant evidence submitted by the parties." *Tex. Dep't of Crim. Justice v. Flores*, 555 S.W.3d 656, 661 (Tex.App.—El Paso 2018, no pet.)(*citing Miranda*, 133 S.W.3d at 226)[Emphasis added]. "If there is no question of fact as to the jurisdictional issue, the

trial court must rule on the plea to the jurisdiction as a matter of law." *City of El Paso v. Heinrich*, 284 S.W.3d 366, 378 (Tex. 2009). "If, however, the jurisdictional evidence creates a fact question, then the trial court cannot grant the plea to the jurisdiction, and the issue must be resolved by the fact finder." *Id.* "'This standard mirrors our review of summary judgments' where the reviewing court takes as true all evidence favorable to the non-movant, indulging every reasonable inference and resolving any doubts in the non-movant's favor." *Flores*, 555 S.W.3d at 661 (quoting *Heinrich*, 284 S.W.3d at 378).

In *Town of Shady Shores v. Swanson*, the Texas Supreme Court considered the propriety of using a no-evidence motion by a governmental unit to defeat jurisdiction. 590 S.W.3d at 551. Before that time, several intermediate courts of appeals held a no-evidence summary judgment, or other no-evidence motion, was an improper vehicle in which to assert sovereign immunity and challenge a trial court's jurisdiction. *See, e.g.*, *Thornton v. Ne. Harris Cty. MUD 1*, 447 S.W.3d 23, 39-40 (Tex.App.—Houston [14th Dist.] 2014, pet. denied); *Arthur v. Uvalde Cty. Appraisal Dist.*, No. 04-14-00533-CV, 2015 WL 2405343, at *9-10 (Tex.App.—San Antonio May 20, 2015, pet. denied)(mem. op.); *HS Tejas, Ltd.*, 462 S.W.3d at 555-56; *City of El Paso v. Collins*, 483 S.W.3d 742, 755-56 (Tex.App.—El Paso 2016, no pet.). The Texas Supreme Court held otherwise, however, in *Town of Shady Shores*, 590 S.W.3d at 551-52. It determined there was no logical reason "to allow jurisdictional challenges via traditional motions for summary judgment but to foreclose such challenges via no-evidence motions." *Id.* at 551. Although the different types of summary judgment motion involve "different initial burdens on the movant[,]" a no-evidence motion does not unfairly require the nonmovant marshal evidence to defeat the motion. *Id.* at 551-52. The nonmovant need only produce more than a scintilla of evidence "to create a genuine issue of material fact as to the challenged element." *Id.* at 552 (citing *Ford Motor Co. v. Ridgway*, 135

S.W.3d 598, 600 (Tex. 2004)). Additionally, the nonmovant facing a jurisdictional challenge by way of a no-evidence motion has the further safeguards in place under Rule 166a(i), which only allows such motions "after adequate time for discovery." *Id.* (quoting TEX.R.CIV.P. 166a(i)). Thus, presumably, in responding to the no-evidence motion, a nonmovant has had adequate time to procure at least some evidence to support each element of its cause of action, to the extent it exists. *See id.* In other words, if the other requirements of Rule 166a(i) are satisfied, jurisdiction may be challenged by a no-evidence summary judgment or similar no-evidence motion. *See Town of Shady Shores,* 590 S.W.3d at 552.

Analysis

Appellant has not argued the allegations pleaded by Appellee in its petition, if assumed to be true, fail to establish jurisdiction.[1] In this case, Appellant's premise for dismissal was Appellee's inability to produce evidence to support two essential elements of its claim, which are also required to prove jurisdiction: whether the gate constituted an unreasonably dangerous condition, and Appellant's actual knowledge that the gate posed an unreasonable risk of harm. In making this assertion, Appellant did not attach any evidence to its combined motion. Rather, it rested on its argument that the Appellee had not produced, and was unable to produce, any evidence of these two essential elements. This argument satisfied Appellant's burden under the no-evidence standard to "move for summary judgment on the ground that there is no evidence of one or more essential elements of a claim . . . on which [Appellee] would have the burden of proof

[1] Even if Appellant had put forth this theory in its plea to the jurisdiction, it would have failed. Appellee's petition alleges, in part, that Appellant permitted an unreasonably dangerous condition to exist on its premises which it "knew, or in the exercise of ordinary care should have known about[.]" While this statement encompasses both an actual knowledge and constructive knowledge allegation, we are obliged to liberally construe the pleadings in favor of finding jurisdiction. *See HS Tejas, Ltd.*, 462 S.W.3d at 556 (citing *Miranda*, 133 S.W.3d at 226). Thus, if we take as true the allegations that Appellant knew the gate posed an unreasonably dangerous condition, Appellee has sufficiently pleaded facts regarding Appellant's actual knowledge.

at trial[,]" and "state the elements as to which there is no evidence." *See* TEX.R.CIV.P. 166a(i).

At that point, it was Appellee's burden to "produce enough evidence—that is, more than a scintilla—to create a genuine issue of material fact as to the challenged element[s]." *Town of Shady Shores*, 590 S.W.3d at 552. In her response, Appellee attached the following evidence pertaining to the plea to the jurisdiction and no-evidence motion for summary judgment: (a) photographs of the entrance gate; (b) an affidavit by Appellee with a screen-shot of a text message exchange attached; (c) the video of the incident;[2] (d) the incident report prepared by the El Paso Police Department; and (e) an affidavit by an eyewitness to the incident, Priscilla Guerra, with a screen-shot of her text message exchange with Appellee regarding the incident.[3] However, upon motion by Appellant, the trial court struck the text message exchange attached to both Appellee's and Ms. Guerra's affidavits, and Appellee's affidavit contained no substance other than an attempt to authenticate the text message conversation that was struck. Thus, the only substantive evidence upon which Appellee premised her response was photographs of the gate, the video of the incident, the incident report prepared by the police department, and Ms. Guerra's affidavit.

In her response, Appellee argued the video "camera angle is not ideal and causes an inaccurate depiction of events[,]" and that the incident report "is misleading and misrepresents the statement of witness Priscilla Guerra." Specifically, Appellee takes issue with the incident report's omission of Ms. Guerra's statement that her own car would have been hit by the gate if Appellee had not been going through in front of her. Appellee also implied that the mere fact that the gate was automatic and "closes without warning" rendered it an unreasonably dangerous condition

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[2] A copy of the video was not provided to this Court as part of the clerk's record. After requesting a copy of same from counsel, no copy was provided. Accordingly, we do not have it as part of the record to consider on appeal.

[3] An additional affidavit by Appellee's counsel's paralegal was also attached as evidence. It was made in response to Appellant's traditional motion for summary judgment on limitations and diligence of service of process. Accordingly, it does not pertain to the arguments regarding subject matter jurisdiction and sovereign immunity.

about which Appellant was obligated to warn the public.

We now consider whether any of the evidence provided in Appellee's response constitutes more than a scintilla of evidence that the automatic gate constituted an unreasonably dangerous condition, and that Appellant had actual knowledge that the gate was an unreasonably dangerous condition. With respect to whether the gate, by virtue of it being automatic, constituted an unreasonably dangerous condition, neither party cited any case instructive on the issue. Our own search revealed only one case in Texas involving a similar automatic gate, which was an entry gate to a freight elevator. *See Dallas Market Center Development Co. v. Liedeker*, 958 S.W.2d 382, 383 (Tex. 1997), *rev'd on other grounds*, 959 S.W.2d 217 (Tex. 1997). There, the plaintiff, a florist, was injured when the gate began lowering and struck her in the head as she was loading flowers into the elevator. *Id.* That case mostly involved an analysis of the degree of care owed by an elevator owner to its occupants. *See id.* at 383-84. However, the Dallas court of appeals also held the trial court erred when it denied the elevator owner's request for a jury question on whether the condition on the premises—the automatic gate—presented an unreasonable risk of harm. *Id.* at 385. It appears, based on this noted error, that the Dallas court believed that whether the automatic gate was an unreasonably dangerous condition was a contested issue of fact for a jury to resolve. *See id.* In other words, the fact that the gate operated automatically and lowered without warning did not, *ipso facto*, render it unreasonably dangerous.

In other jurisdictions, only one additional case offers insight on whether an automatic gate constituted an unreasonably dangerous condition. *See Seo v. Kaplan*, No. B149836, 2002 WL 725654, at *1 (Cal.Ct.App. April 24, 2002).[4] *Seo* was a premises liability case where a person was injured after reaching through the vertical slats on an automatic gate while it was open, which then

[4] This case is not officially published pursuant to Cal. Rules of Court, Rules 8.1105, 8.1110, 8.1115.

abruptly closed and crushed his arm. *Id.* There, the court noted that even when a condition alleged to be dangerous is a permanent condition of the property, the mere fact that the defendant owns the property and created the condition does not relieve the plaintiff's obligation to prove the defendant knew of the alleged danger posed by the condition. *Id.* at *5 (citing *Laird v. T.W. Mather, Inc.*, 331 P.2d 617, 623 (Cal. 1958)). In that case, the court of appeals stated that the plaintiff assumed that because the automatic gate closed on him without delay, there was a malfunction. *Id.* However, his only evidence of an alleged malfunction was the incident in which he was injured. *See id.* Other evidence indicated the gate was inspected regularly, and the person operating the gate would routinely notify the owner if the gate was in need of repair. *See id.* Even if it was assumed the gate malfunctioned at the time of the plaintiff's incident, there was no evidence indicating the owner had actual or even constructive knowledge a malfunction was likely to occur. *Id.* Accordingly, the court found that issue was not a "triable issue of fact" regarding knowledge. *Id.*

We now consider whether there is more than a scintilla of evidence the automatic gate in this case constituted an unreasonably dangerous condition. Appellee argues that "the City [knew] that its gate was electronic and could close without warning[,]" and cites Ms. Guerra's affidavit as evidence. Ms. Guerra's affidavit states:

> As I approached the Police Academy, I was driving behind [Appellee]. As both I and [Appellee] approached the entrance gate, the entrance gate was open and did not appear to be closing as cars entered and exited. There were no signs that the gate might close. Suddenly and without warning[,] the Gate began closing as [Appellee's] vehicle and she was driving through the entrance.

This affidavit is sufficient evidence to prove that the gate closed automatically and without warning. However, we are reluctant to find that the mere fact the gate had the ability to close automatically and "without warning" therefore renders it unreasonably dangerous. There exist in

the world a plethora of automated technologies which are not, in and of themselves, dangerous simply because they operate automatically. We are not convinced the gate in this case constitutes an exception to this fact, and we cannot ascertain any evidence produced by Appellee in response to Appellant's jurisdictional challenge raises an issue of material fact regarding whether the gate was unreasonably dangerous. We recognize that an automatic gate can be dangerous. The key is whether it poses an **unreasonable** danger by virtue of its mere existence. *See Brookshire Grocery Co. v. Taylor*, 222 S.W.3d 406, 408 (Tex. 2006)("A condition is not unreasonably dangerous simply because it is not foolproof."); *see also Brinson Ford, Inc. v. Alger*, 228 S.W.3d 161, 162 (Tex. 2007)(A premises owner is not an insurer of invitees to its premises). We do not believe Appellee produced sufficient evidence of an unreasonable danger posed by the automatic gate.

Furthermore, even if there was evidence the gate was an unreasonably dangerous condition because it closed automatically on Appellee's car without warning, Appellee was still required to provide evidence that Appellant had actual knowledge that the gate was unreasonably dangerous. *See City of Dallas v. Thompson*, 210 S.W.3d 601, 603 (Tex. 2006); *see also State v. Tennison*, 509 S.W.2d 560, 562 (Tex. 1974)("Actual knowledge rather than constructive knowledge of the dangerous condition is required"). Evidence of actual knowledge in premises liability claims is typically proven through evidence of prior incidents involving the alleged condition, or reports that the condition posed a danger. *Sampson*, 500 S.W.3d at 392.

Consider two Texas Supreme Court cases analyzing actual knowledge of a governmental unit in a premises liability case brought under the Tort Claims Act. *See Thompson*, 210 S.W.3d at 603; *Sampson*, 500 S.W.3d at 392. In *Thompson*, the plaintiff fell in the airport lobby when she tripped over the lip of an expansion-joint coverplate which had been improperly secured and was sticking up from the floor. 210 S.W.3d at 602. The trial court granted the City of Dallas's plea to

the jurisdiction, and the court of appeals reversed. *Id.* The Texas Supreme Court, however, agreed with the trial court. *Id.* The evidence presented by the parties showed the lobby was well-traveled, city employees had been in the area of the coverplate and probably walked over it prior to the accident, but no one had reported it protruding from the floor. *Id.* at 603. Accident reports indicated prior tripping incidents in the same area, but none for three years. The City knew the coverplate was prone to becoming loose and raising suddenly with ordinary wear and tear, and city employees regularly had to tighten it. *Id.* In spite of this evidence, the Texas Supreme Court held that was insufficient evidence to prove actual knowledge. *Id.* at 604. Rather, the evidence showed only that the coverplate **could** become dangerous over time, that it was **possible** for the employees to have discovered the condition, and that the coverplate had posed a dangerous condition in the past. *Id.* at 603-04. None of those evidentiary showings, according to the Texas Supreme Court, was evidence of actual knowledge that the coverplate posed an unreasonably dangerous condition at the time the plaintiff tripped over it. *Id.* at 604. Accordingly, the plaintiff failed to meet her burden and the Supreme Court dismissed her claim for lack of jurisdiction. *Id.*

Similarly, in *Sampson*, a professor tripped over an extension cord that was strung across a walkway at shin-height for a tailgate party on the University of Texas campus, injuring his shoulder. 500 S.W.3d at 383. The trial court denied the university's plea to the jurisdiction, which the Austin court of appeals reversed, and the Supreme Court affirmed. *Id.* Although there was some dispute about whether UT employees or another defendant's employees laid the extension cord, there was enough evidence to infer UT laid the extension cord. *See id.* at 393-94. There was also evidence that at one point, the extension cord became unplugged and a UT employee plugged it back in, which "leads at most to suspicion that [the employee] was aware the cord was a tripping hazard[.]" *Id.* at 394. However, that suspicion was not enough to mean the employee "actually

became aware of how the cord was positioned over the retaining wall [where the plaintiff tripped over it] and that it created a tripping hazard." *Id.* at 394. There was also evidence that UT employees double checked the tailgate setup, including the extension cords, before the event started. *Id.* at 395. However, the Supreme Court again found that this fact, without more, is not evidence of actual knowledge of the cord's position. *Id.* The court determined, "[a]t most, there is evidence that UT employees initially laid the extension cord, that the extension cord became unplugged at some point during the event and was simply plugged back in without further investigation, and that the power was verified to be up and running for the tailgate party[,]" but none of that evidence showed UT had actual knowledge of the cord's position when the plaintiff fell over it. *Id.* at 396. It went on, "the most we can conclude is either that UT had constructive knowledge of a dangerous condition or that UT had actual knowledge of a potential danger. Neither satisfies the standard here." *Id.* at 397. The Supreme Court affirmed the judgment of the court of appeals and dismissed the claim for lack of jurisdiction. *Id.*

Here, there is significantly less evidence in the record than *Thompson* or *Sampson* regarding Appellant's actual knowledge that the gate posed an unreasonable danger. Appellee produced no evidence regarding Appellant's actual knowledge of the alleged danger posed by the automatic gate, either through evidence of prior injuries involving the gate, or any other type of evidence. We decline to find, as Appellee suggests, that simply because Appellant knew the gate was automatic is sufficient to prove actual knowledge that it was unreasonably dangerous. *See Reyes v. City of Laredo*, 335 S.W.3d 605, 609 (Tex. 2010)(per curiam)("[A]wareness of a potential problem is not actual knowledge of an existing danger."). Likewise, we are unpersuaded that Appellant's ability to have put a warning sign on the gate notifying the public that the gate closed automatically is evidence of actual knowledge that the gate posed a dangerous condition. *See*

Sampson, 500 S.W.3d at 392. ("[T]hat the owner could have done more to warn the licensee is not direct evidence to show that the owner had actual knowledge of the dangerous condition."). Appellant must have actually known that the gate would likely close on an incoming car while it was going through the gate. Appellee produced no evidence that Appellant had such actual knowledge. *Id.* at 397.

Appellee failed to carry its summary judgment and plea to the jurisdiction burdens to produce some evidence the gate posed an unreasonably dangerous condition; or, even if the gate could be considered unreasonably dangerous, that Appellant had actual knowledge of such danger. Therefore, the trial court should have granted Appelant's plea to the jurisdiction and no-evidence summary judgment regarding sovereign immunity.

Appellant's first issue is sustained. We need not address Appellant's second issue, and lack jurisdiction to consider it. *See Schlipf v. Exxon Corp.*, 644 S.W.2d 453, 454 (Tex. 1982)(orders denying motions for summary judgment are generally not appealable because they are not final judgments).

CONCLUSION

Having sustained Appellant's first issue, we reverse the trial court's orders denying the Appellant's second amended plea to the jurisdiction and no-evidence summary judgment. *See Thompson*, 210 S.W.3d at 604. We further render judgment in favor of Appellant and dismiss Appellee's claims against Appellant for lack of subject matter jurisdiction based on Appellant's sovereign immunity.

Reversed and rendered.

August 08, 2022

YVONNE T RODRIGUEZ, Chief Justice

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