



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

HUDSPETH COUNTY, TEXAS AND	§	
THE HUDSPETH COUNTY SHERIFF'S	§	No. 08-21-00218-CV
OFFICE,	§	
	§	Appeal from the
Appellants,	§	
	§	205th District Court
v.	§	
	§	of Hudspeth County, Texas
RAQUEL RAMIREZ, INDIVIDUALLY	§	
AND AS REPRESENTATIVE OF THE	§	(TC# CV-04833-205)
ESTATE OF LORENZO RAMIREZ,	§	
	§	
Appellee.	§	

OPINION

Appellants Hudspeth County, Texas, and the Hudspeth County Sheriff's Office appeal the trial court's denial of their plea to the jurisdiction, arguing their sovereign immunity as governmental units deprives the trial court of jurisdiction over claims brought against them by Appellee, Raquel Ramirez, Individually and as Representative of the Estate of Lorenzo Ramirez. Lorenzo Ramirez was an employee of the Hudspeth County Sheriff's Office who died following what Appellee alleges was an on-the-job injury. Appellants allege that governmental immunity deprives the trial court of subject matter jurisdiction for any cause of action alleged by Appellee under either the Civil Practices and Remedies Code or the Labor Code. Appellee disagrees, claiming Appellants' interpretation of the law is incorrect and the trial court acted soundly in

denying Appellants' plea.

We agree with Appellants and find the trial court erred in denying their plea to the jurisdiction. The trial court's order denying Appellants' plea is reversed and Appellee's causes of action for damages under the Texas Wrongful Death Act and for exemplary damages under the Worker's Compensation Act are dismissed for want of jurisdiction based on governmental immunity and judgment is rendered in Appellants' favor on these claims.

FACTUAL BACKGROUND

Mr. Ramirez was an employee of the Hudspeth County Sheriff's Office. According to Appellee's petition, Mr. Ramirez suffered a fall while on the job at the Hudspeth County Jail when he tripped over a rolled-up floor mat in the jail. The fall caused Mr. Ramirez to hit his head and, according to Appellee's pleadings, caused his death several days later.

Appellee originally filed suit against Appellants¹ for wrongful death under the Wrongful Death Act and seeking exemplary damages for gross negligence. Appellee's Second Amended Petition, filed some months later, included an additional claim under the Worker's Compensation Act, arguing Mr. Ramirez suffered his injuries during the course and scope of his employment with the Hudspeth County Sheriff's Office, which was a worker's compensation insurance subscriber. The Second Amended Petition maintained Appellee's claims for wrongful death and exemplary damages under the Texas Wrongful Death Act.

Appellants filed a plea to the jurisdiction addressing the claims raised in Appellee's Second Amended Petition, to which Appellee filed a response. Approximately a month thereafter, Appellee filed her Third Amended Petition with additional facts, but identical causes of action as

¹ A third defendant, Public WC Program, is also named in Appellee's lawsuit, but is not a party to this appeal.

her previous petition. Several months after the Third Amended Petition was filed, Appellants filed a supplemental brief in support of their plea to the jurisdiction at the trial court's request. Appellee responded shortly thereafter. Then, ten months later, but before the trial court ruled on the plea, Appellee filed her Fourth Amended Petition which alleged, for the first time, an alternative claim under the Tort Claims Act for "personal injury and death caused by the negligent use of tangible property by the [Appellants] . . . under Section 101.021 of the Texas Civil Practices & Remedies Code." The trial court denied Appellants' plea in an order filed December 9, 2021. This timely interlocutory appeal followed.

DISCUSSION

Appellants raise one issue for our consideration: whether the trial court erred in denying their plea to the jurisdiction since Appellants are governmental units which enjoy sovereign immunity unless expressly waived by the legislature.

Appellants' plea to the jurisdiction first addresses Appellee's claim for exemplary damages. Appellants assert that their immunity was not waived for any type of exemplary damages claim under statutory or common law. They argue they could not be liable for exemplary damages under Subsection 408.001(b) of the Labor Code because that provision was not extended by the legislature to employees of political subdivisions. On Appellee's cause of action under the Wrongful Death Act, Appellants argued the act did not apply because neither Appellant meets the definition of "person" under the Act.

Appellee's response to the plea to the jurisdiction states she is not bringing a cause of action

under the Tort Claims Act,² but rather under Section 408.001 of the Labor Code. She does not address Appellants' argument that Subsection 408.001(b) does not apply to claims brought against employers that are political subdivisions. Appellee asserts instead simply that municipalities **can** be liable for exemplary damages for wrongful death.³ Appellee also argued the cases cited by Appellants involved exemplary damages for retaliation, rather than worker's compensation death cases, and were thus inapposite.

Subject Matter Jurisdiction and Sovereign Immunity

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).

Counties and their subparts, like Appellants, 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); *see also* TEX.CIV.PRAC.&REM.CODE ANN. § 101.001(3)(B)(defining county as governmental unit); *Rosales v. Brazoria County*, 764 S.W.2d 342, 344 (Tex.App.—Texarkana 1989, no writ)(under the Tort Claims Act, the sheriff's department is not a distinct entity from the county itself). Sovereign immunity includes immunity from suit and immunity from liability. *Ben Bolt-Palito Blanco Consol. Indep. Sch. Dist.*, 212 S.W.3d at 324 (*citing Tex. Natural Res. Conservation Comm'n v. IT-Davy*, 74 S.W.3d 849, 855 (Tex. 2002)). Immunity from suit implicates a trial court's subject matter jurisdiction over the case.

² Appellee made this argument before filing her Fourth Amended Petition where she brought, for the first time, an alternative cause of action under the Tort Claims Act.

³ We should note that neither the County nor the Sheriff's Office is a municipality.

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).

Defendants typically challenge subject matter jurisdiction through a plea to the jurisdiction. *Miranda*, 133 S.W.3d at 225-26.⁴ 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. *Id.* 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." *H.S. 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). "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

⁴ Jurisdictional challenges may also occur through "other procedural vehicles, such as a motion for summary judgment." *Bland Indep. School Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000).

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).

***Claims Against Political Subdivisions Under
the Workers’ Compensation Act and the Wrongful Death Act***

Applicable Law

Subsection 408.001(a) of the Labor Code states, “Recovery of workers’ compensation benefits is the exclusive remedy of an employee covered by workers’ compensation insurance coverage or a legal beneficiary against the employer . . . for the death of or a work-related injury sustained by the employee.” TEX.LAB.CODE ANN. § 408.001(a). Subsection 408.001(b), however, clarifies that the exclusive remedy provided in 408.001(a) “does not prohibit the recovery of exemplary damages by the surviving spouse . . . of a deceased employee whose death was caused by an intentional act or omission of the employer or by the employer’s gross negligence.” *Id.* § 408.001(b). Moreover, Section 408.002 provides, “A right of action survives in a case based on a compensable injury that results in the employee’s death.” *Id.* § 408.002. In other words, an employee who receives worker’s compensation benefits is prohibited from bringing a lawsuit against the employer for actual damages arising out of the incident which caused him injury. *See id.* § 408.001(a); *City of Dallas v. Gatlin*, 329 S.W.3d 222, 226 (Tex.App.—Dallas 2010, no pet.). However, when a compensable injury results in the death of the employee, the employee’s surviving spouse and heirs may “bring suit for the death of the employee and to recover exemplary

damages from the employer for its gross negligence notwithstanding the fact that workers' compensation benefits were paid for the employee's death." *Id.* (citing *Wright v. Gifford-Hill & Co.*, 725 S.W.2d 712, 714 (Tex. 1987)).

The legislature has applied portions of the Workers' Compensation Act to political subdivisions, including counties, through the Political Subdivisions Law, codified in chapter 504 of the Labor Code. *See* TEX.LAB.CODE ANN. § 504.001(3); *Gatlin*, 329 S.W.3d at 226. However, the Political Subdivisions Law does not waive governmental immunity or create a new cause of action. *Id.* § 504.053(e); *see Manbeck v. Austin Indep. Sch. Dist.*, 381 S.W.3d 528, 530 (Tex. 2012)(noting that the Political Subdivisions Law is "too internally inconsistent" to satisfy the requirement that a waiver of governmental immunity must be clear and unambiguous to be upheld). Furthermore, the Political Subdivisions Law excludes Subsection 408.001(b) regarding exemplary damages for gross negligence resulting in an employee's death from applying to political subdivisions. *See* TEX.LAB.CODE ANN. § 504.002(a)(6). And finally, Subsection 504.002(c) states that neither the Political Subdivisions Law nor the Workers' Compensation Act "authorizes a cause of action or damages against a political subdivision . . . beyond the actions and damages authorized by" the Tort Claims Act. TEX.LAB.CODE ANN. § 504.002(c); *see Manbeck*, 381 S.W.3d at 530. The Tort Claims Act does not authorize exemplary damages for any cause of action brought pursuant to it. TEX.CIV.PRAC.&REM.CODE ANN. § 101.024.

Analysis

With these statutory provisions in mind, we turn to the allegations asserted against

Appellants in Appellee’s Fourth Amended Petition.⁵⁶ Appellee’s first cause of action is simply for worker’s compensation benefits and appears to be brought solely against the third defendant, Public WC Program. It is axiomatic that a claim for workers’ compensation benefits against Appellants is not supported under the law. *See* TEX.LAB.CODE ANN. § 504.002(c)(adopting the exclusive remedy provision under the Political Subdivisions Act); *see Manbeck*, 381 S.W.3d at 530. Thus, to the extent Appellee asserts a claim for workers’ compensation benefits against Appellants, it must be dismissed. *Miranda*, 133 S.W.3d at 227 (where facts alleged affirmatively negate jurisdiction, dismissal without opportunity to replead is appropriate).

Appellee’s next cause of action is for wrongful death under Section 71.004 of the Wrongful Death Act and/or Section 408.001 of the Labor Code. *See* TEX.CIV.PRAC.&REM.CODE ANN. § 71.004; TEX.LAB.CODE ANN. § 408.001(b). Appellee alleges that Appellants’ negligence or gross negligence proximately caused Mr. Ramirez’s injuries. However, no damages are pleaded under this cause of action, other than generally stating, “The suit is for recovery on Plaintiff’s behalf of damages claimed by Plaintiff under the Texas Wrongful Death Act[.]” In other words, it

⁵ Appellants’ brief claims that Appellee’s Fourth Amended Petition “was not before the trial court when it ruled on Hudspeth County’s plea to the jurisdiction and is not before this Court.” We disagree. “When a party files an amended pleading after a hearing has been held on the plea but before the trial court’s ruling, and the court’s order reflects that it reviewed the parties’ pleadings, the amended pleadings are considered the live pleadings before the trial court when it ruled on the plea.” *Matzen v. McLane*, 604 S.W.3d 91, 100 (Tex.App.—Austin 2020), *aff’d in part, rev’d in part*, No. 20-0523, 2021 WL 5977218 (Tex. Dec. 17, 2021)(citing *City of McKinney v. Hank’s Rest. Grp.*, 412 S.W.3d 102, 110 (Tex.App.—Dallas 2013, no pet.)).

⁶ There is no doubt that Appellee filed the Fourth Amended Petition before the trial court entered the order denying Appellants’ plea to the jurisdiction, and nothing in the Rules of Civil Procedure proscribe Appellee from doing so. *See Hank’s Rest. Grp.*, 412 S.W.3d at 110. Further, the trial court’s order indicates it denied the plea “[a]fter due consideration of the pleadings and argument of counsel[.]” Accordingly, we must treat it as the live petition before the trial court at the time the plea was denied. *See id.*; *see also* TEX.R.CIV.P. 65 (amended pleading supersedes the previous pleading).

is unclear whether Appellee seeks actual or exemplary damages under the Wrongful Death Act.⁷ In either event, the Wrongful Death Act does not impose liability upon a county for damages arising out of an injury that causes death; liability for wrongful death against a county can only be imposed by the Tort Claims Act. *See County of El Paso v. Dorado*, 33 S.W.3d 44, 46-47 (Tex.App.—El Paso 2000, no pet.) (“[A] county may indeed be held accountable for wrongful death, but such accountability is *imposed by the Texas Tort Claims Act*, and not the Wrongful Death Act.”)[Emphasis added].

Additionally, Appellee’s claim against Appellants for exemplary damages under Subsection 408.001(b) has no jurisdictional basis. First, Subsection 408.001(b) is neither an independent cause of action nor a waiver of governmental immunity. *See* TEX.LAB.CODE ANN. § 504.053(e); *see Manbeck*, 381 S.W.3d at 530 (discussing the interplay between TEX.LAB.CODE ANN. §§ 504.002(c), 504.053(e); and the Tort Claims Act). Second, the Political Subdivisions Law excludes Subsection 408.001(b) regarding exemplary damages for gross negligence resulting in an employee’s death from applying to political subdivisions. *See* TEX.LAB.CODE ANN. § 504.002(a)(6).⁸ And finally, Subsection 504.002(c) states that neither the Political Subdivisions

⁷ Appellee’s brief states it sued Appellants for “wrongful death in violation of the 14th Amendment to the U.S. Constitution, the Texas Constitution, Article 16 § 26, and under the Texas Labor Code § 408.001.” However, the Fourth Amended Petition makes no mention of either constitution in relation to its causes of action. Even if the constitutional issues were properly before the trial court, Texas law is clear that article 16 of the Texas Constitution does not prohibit the legislature from “remov[ing] a purely statutory right to compensation[.]” *Travelers Indem. Co. of Illinois v. Fuller*, 892 S.W.2d 848, 853 (Tex. 1995). Nor does the constitution create a cause of action for exemplary damages under the Labor Code. *See id.* at 850, 852-53 (“[T]he reason for adoption of [article 16, section 26 of the Texas Constitution] was to allow for exemplary damages *under the Wrongful Death Act*[.]”).

⁸ Appellee’s brief states that Subsection 504.002(a)(6) serves as an affirmative defense rather than a bar to immunity. Appellee is incorrect, and does not cite any case law in support of her position. She states that “[a] close reading of *Gatlin*, however[,] admits there is a cause of action against [Hudspeth County] for the gross negligence causing . . . death. It simply restricts exemplary damages. In short[,] it serves as a cap.” However, nothing in *Gatlin* states that a cause of action can be maintained against a county for gross negligence.

Law nor the Workers' Compensation Act "authorizes a cause of action or damages against a political subdivision . . . beyond the actions and damages authorized by" the Tort Claims Act. TEX.LAB.CODE ANN. § 504.002(c); *see Manbeck*, 381 S.W.3d at 530. The Tort Claims Act does not authorize exemplary damages. TEX.CIV.PRAC.&REM.CODE ANN. § 101.024 ("This chapter does not authorize exemplary damages."); *see also City of LaPorte v. Barfield*, 898 S.W.2d 288, 299 (Tex. 1995)(noting that Tort Claims Act does not authorize punitive damages). Accordingly, Appellee's cause of action under the Wrongful Death Act and for exemplary damages under the Labor Code must be dismissed for lack of jurisdiction.

Appellants' sole issue is sustained.

Claims Against Political Subdivisions Under the Tort Claims Act

Finally, the Fourth Amended Petition pleads an alternative cause of action under the Texas Tort Claims Act in the event "the deceased Lorenzo Ramirez's death was not caused by an [on-the-job] injury or was unrelated to his employment[.]"⁹ Appellee seeks actual medical and funeral expenses, loss of consortium damages, mental anguish, lost wage earning capacity, and punitive damages. Appellants' plea to the jurisdiction does not address Appellee's claim under the Tort Claims Act, nor does it request that any cause of action brought under the Tort Claims Act be dismissed for want of jurisdiction.¹⁰ Therefore, we decline to address it at this stage of the proceedings to avoid the risk of issuing an opinion which is merely advisory. *See Tex. Ass'n of*

⁹ We recognize Subsection 408.001(a) of the Labor Code, which describes the exclusive remedy available to an employee or legal beneficiary who receives workers' compensation benefits following the employee's death. *See* TEX.LAB.CODE ANN. § 408.001(a). However, no evidence was presented by either party regarding whether Mr. Ramirez or his beneficiaries ever actually received workers' compensation benefits. Accordingly, we do not have adequate evidence to find Appellee is barred from pursuing other remedies against Appellants.

¹⁰ At the time Appellants filed their plea, Appellee's live petition did not allege a claim under the Tort Claims Act.

Business v. Tex. Air Control Bd., 852 S.W.2d 440, 444 (Tex. 1993)(discussing prohibition of advisory opinions issued by the judicial branch of government).

CONCLUSION

We agree with Appellants and find the trial court erred in denying Appellants' plea to the jurisdiction. We therefore sustain Appellants' sole issue. The order of the trial court denying Appellants' plea is reversed and judgment is rendered in favor of Appellants on Appellee's causes of action for damages under the Wrongful Death Act and for exemplary damages under the Worker's Compensation Act are dismissed for want of jurisdiction based on governmental immunity.

Having sustained Appellants' sole issue, the order of the trial court denying Appellants' plea is reversed and rendered in Appellants' favor. The pending issues, if any, regarding the Texas Tort Claims Act, are remanded to the trial court.

August 5, 2022

YVONNE T. RODRIGUEZ, Chief Justice

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