Affirmed in Part; Reversed and Dismissed in Part; Opinion Filed February 23, 2017.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-16-00573-CV

CITY OF PLANO, TEXAS, LISA HENDERSON, IN HER OFFICIAL CAPACITY AS CITY SECRETARY; HARRY LAROSILIERE, IN HIS OFFICIAL CAPACITY AS MAYOR; ANGELA MINER, IN HER OFFICIAL CAPACITY AS MEMBER OF THE CITY COUNCIL; BEN HARRIS, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE CITY COUNCIL; RICK GRADY, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE CITY COUNCIL; LISSA SMITH, IN HER OFFICIAL CAPACITY AS MEMBER OF THE CITY COUNCIL; RON KELLEY, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE CITY COUNCIL; TOM HARRISON, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE CITY COUNCIL; AND DAVID DOWNS, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE CITY COUNCIL, Appellants

V.

ELIZABETH CARRUTH, MATTHEW TIETZ, JANIS NASSERI, JUDITH KENDLER, AND STEPHEN PALMA, Appellees

On Appeal from the 380th Judicial District Court
Collin County, Texas
Trial Court Cause No. 380-00469-2016

MEMORANDUM OPINION

Before Justices Lang-Miers, Stoddart, and O'Neill[1]
Opinion by Justice Stoddart

This is an interlocutory appeal from the denial of a plea to the jurisdiction. Appellees Elizabeth Carruth, Matthew Tietz, Janis Nasseri, Judith Kendler, and Stephen Palma sued the

[1] The Hon. Michael J. O'Neill, Justice, Assigned.

City of Plano, the City Secretary, the Mayor, and the members of the City Council in their official capacities[2] seeking writs of mandamus and a declaratory judgment regarding the City Secretary's failure to submit their petition for a referendum on a city ordinance to the City Council and the Council's failure to reconsider the ordinance and call an election. Appellants filed a plea to the jurisdiction asserting that an ordinance adopting a municipal comprehensive plan[3] is not subject to the referendum process and, other than the mandamus claim against the City Secretary, the claims are not ripe. The trial court denied the plea.

The City[4] argues the trial court erred by denying the plea to the jurisdiction because the City is immune from suit and the claims, other than the mandamus claim against the City Secretary, are not ripe.[5] As discussed below, we affirm the denial of the plea as to the mandamus claim against the City Secretary, reverse the denial as to the mandamus claim against the City Council and the declaratory judgment claim and dismiss those claims for lack of subject matter jurisdiction.

BACKGROUND

The governing body of a municipality may adopt a comprehensive plan for the long-range development of the city, including provisions on land use, transportation, and public facilities. TEX. LOC. GOV'T CODE ANN. § 213.002. Such a plan or coordinated set of plans may be used to coordinate and guide the establishment of development regulations. *Id.* A

[2] Lisa Henderson, in her official capacity as City Secretary; Harry LaRosiliere, in his official capacity as Mayor; Angela Miner, in her official capacity as member of the City Council; Ben Harris, in his official capacity as member of the City Council; Rick Grady, in his official capacity as member of the City Council; Lissa Smith, in her official capacity as member of the City Council; Ron Kelley, in his official capacity as member of the City Council; Tom Harrison, in his official capacity as member of the City Council; and David Downs, in his official capacity as member of the City Council.

[3] *See* TEX. LOC. GOV'T CODE ANN. §§ 213.001–.005.

[4] For simplicity, we refer to appellants as the City except where necessary to identify specific parties.

[5] The Texas Municipal League, Texas City Attorneys Association, Texas Chapter of the American Planning Association, and International Municipal Lawyers Association submitted an amicus brief in support of the City of Plano.

comprehensive plan may be adopted or amended by ordinance after a public hearing allowing testimony and written evidence and review by the city's planning commission or department, if one exists. *Id.* § 213.003. A city may establish in its charter or by ordinance the procedures for adopting and amending a comprehensive plan. *Id.* Zoning regulations must be adopted in accordance with a comprehensive plan. *Id.* § 211.004. Maps of a comprehensive plan must contain the statement that a "comprehensive plan shall not constitute zoning regulations or establish zoning district boundaries." *Id.* § 213.005.

The Plano City Charter permits qualified voters to submit a referendum petition seeking reconsideration of and a public vote on any ordinance, other than taxation ordinances. PLANO, TEX., HOME RULE CHARTER § 7.03 [hereinafter Charter]. The referendum petition must be filed with the City Secretary within thirty days of passage or publication of the ordinance and be signed and verified as required by section 7.02. *Id.* Section 7.02 provides that a petition must be signed by at least twenty percent of the qualified voters at the last regular municipal election, or one hundred fifty, whichever is greater. *Id.* § 7.02. "Immediately upon the filing of such petition, the person performing the duties of city secretary shall present said petition to the city council." *Id.* § 7.03.

After presentation of a referendum petition by the City Secretary, the City Council "shall immediately reconsider such ordinance or resolution and if it does not entirely repeal the same, shall submit it to popular vote as provided in section 7.02 of this charter." *Id.* If the City Council submits the ordinance to popular vote, "Pending the holding of such election such ordinance or resolution shall be suspended from taking effect and shall not later take effect unless a majority of the qualified voters voting thereon at such election shall vote in favor thereof." *Id.*

On October 12, 2015, following public hearings and review by the city planning

department, the City Council adopted ordinance 2015-10-9 establishing a new comprehensive plan (the Plan) and repealing the previous comprehensive plan.[6] After adoption of the Plan, several citizens began collecting signatures on a petition requesting a referendum under the provisions of the city charter. On November 10, 2015, the petition was presented to the City Secretary.

The City Secretary did not act on the referendum petition. On November 23, 2015, the City Council met to discuss the petition and was advised by outside counsel that zoning regulations are not subject to a referendum vote. On January 20, 2016, counsel for appellees sent a letter to the city attorney requesting that the City Secretary present the referendum petition to the City Council as required by the charter and that the City Council perform its duties under the charter when presented with the petition. No one with the City responded to the letter or complied with appellees' requests.

Appellees then filed this suit seeking a writ of mandamus directing the City Secretary to present the petition to the City Council and directing the City Council to reconsider the Plan and submit it to popular vote if the council did not entirely repeal the Plan. In addition, appellees sought a declaratory judgment that pending approval by the voters in a referendum the Plan is suspended and invalid, is not the current comprehensive plan, and the repealed comprehensive plan is the current comprehensive plan.

The City filed a plea to the jurisdiction asserting governmental immunity and ripeness by challenging the jurisdictional allegations in appellees' petition. After hearing the arguments of counsel, the trial court denied the plea to the jurisdiction. The City then filed this interlocutory appeal. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 51.0014(a)(8).

[6] We take the background facts from appellees' live pleading.

STANDARD OF REVIEW

A plea to the jurisdiction is a dilatory plea that challenges the trial court's subject matter jurisdiction without regard to the merits of the claims asserted. *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000). We review the trial court's ruling on a plea to the jurisdiction de novo. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004). When a plea to the jurisdiction challenges the pleadings, we determine if the pleader has alleged facts affirmatively showing the court's jurisdiction. *Id.* We construe the pleadings liberally in favor of the plaintiffs and look to the pleader's intent. *Id.* In this case, the City did not challenge the existence of jurisdictional facts and the parties did not submit evidence; therefore, we consider only the jurisdictional allegations in the pleadings.

A plea to the jurisdiction presents only the question of the court's jurisdiction to hear the case; it does not present the merits of the case for determination. *Heckman v. Williamson Cty.*, 369 S.W.3d 137, 150 (Tex. 2012); *Consumer Serv. All. of Texas, Inc. v. City of Dallas*, 433 S.W.3d 796, 802 (Tex. App.—Dallas 2014, no pet.). Therefore, we consider only the jurisdictional issue, not the merits of the underlying case. *City of Dallas v. Brown*, 373 S.W.3d 204, 209 (Tex. App.—Dallas 2012, pet. denied).

JURISDICTION

Governmental immunity from suit defeats a trial court's subject matter jurisdiction unless immunity has been expressly waived. *Rusk State Hosp. v. Black*, 392 S.W.3d 88, 91 (Tex. 2012); *Miranda*, 133 S.W.3d at 224. Additionally, the law has long recognized that a writ of mandamus will issue to compel a public official to perform a ministerial act. *See Anderson v. City of Seven Points*, 806 S.W.2d 791, 793 (Tex. 1991). Thus, governmental immunity does not bar a suit seeking to compel public officials to comply with statutory or constitutional provisions or to perform a ministerial act. *See City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex.

2009) ("[I]t is clear that suits to require state officials to comply with statutory or constitutional provisions are not prohibited by sovereign immunity . . . ."). The plaintiff "must allege, and ultimately prove, that the officer acted without legal authority or failed to perform a purely ministerial act . . . ." *Id.* This is known as the ultra vires exception to governmental immunity. *Brown*, 373 S.W.3d at 208–09.

Ripeness "is a threshold issue that implicates subject matter jurisdiction . . . [and] emphasizes the need for a concrete injury for a justiciable claim to be presented." *Robinson v. Parker*, 353 S.W.3d 753, 755 (Tex. 2011) (quoting *Patterson v. Planned Parenthood of Houston & Se. Tex.*, 971 S.W.2d 439, 442 (Tex. 1998)). In evaluating ripeness, we consider "whether, *at the time a lawsuit is filed*, the facts are sufficiently developed 'so that an injury has occurred or is likely to occur, rather than being contingent or remote.'" *Waco Indep. Sch. Dist. v. Gibson*, 22 S.W.3d 849, 851–52 (Tex. 2000) (emphasis original) (quoting *Patterson*, 971 S.W.2d at 442). "Although a claim is not required to be ripe at the time of filing, if a party cannot demonstrate a reasonable likelihood that the claim will soon ripen, the case must be dismissed." *Robinson*, 353 S.W.3d at 755.

Without subject matter jurisdiction, a court lacks authority to adjudicate a case on the merits and must dismiss the case for lack of jurisdiction. *See Reiss v. Reiss*, 118 S.W.3d 439, 443 (Tex. 2003) (jurisdiction is a court's authority to adjudicate a case); *Li v. Univ. of Tex. Health Sci. Ctr. at Houston*, 984 S.W.2d 647, 654 (Tex. App.—Houston [14th Dist.] 1998, pet. denied). Any decision on the merits in such cases would be an advisory opinion. *See Robinson*, 353 S.W.3d at 756; *Patterson*, 971 S.W.2d at 443; *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 444 (Tex. 1993) (courts have no jurisdiction to render advisory opinions).

ANALYSIS

A. Mandamus

We agree with the City that the petition for mandamus against the City Secretary is ripe for determination. The City argues in its first issue that the trial court lacks subject matter jurisdiction over this claim because the City Secretary does not have a ministerial duty to act on the referendum petition. By analogizing comprehensive plans to zoning regulations,[7] the City contends comprehensive plans have been withdrawn from the referendum power by general law. *See Glass v. Smith*, 244 S.W.2d 645, 648–49 (1951) (citizens of a city generally have power of initiative and referendum over legislative matters unless the subject matter has been excluded from that power by the charter or by general law). Thus, the City asserts, the City Secretary does not have a ministerial duty to act.

Appellees respond that the City Secretary has a ministerial duty under the express terms of section 7.03 to forward the referendum petition to the City Council, but refused to do so. They also argue the City's analogy to zoning regulations goes to the merits of the case, not subject matter jurisdiction.

Appellees' live pleading expressly alleged the referendum petition contained more than the required number of signatures, was verified and delivered as required by the charter, and was filed with the City Secretary within thirty days of the adoption of the Plan. The charter provides: "Immediately upon the filing of such petition, the person performing the duties of city secretary shall present said petition to the city council." Charter § 7.03. "The filing of a 'signed and verified' petition in the prescribed form and manner triggers the City Secretary's duties." *In re*

[7] The City has cited no case expressly holding that comprehensive plans have been withdrawn from the referendum power.

Woodfill, 470 S.W.3d 473, 476 (Tex. 2015) (per curiam).[8] The City Secretary's duty under section 7.03 is clear: the secretary must present the petition to the City Council immediately upon the filing of such petition. Charter § 7.03. This is a ministerial duty and the allegations support the conclusion that the City Secretary failed to perform that duty. *See Anderson*, 806 S.W.2d at 793 (act is ministerial when law clearly spells out duty to be performed with sufficient certainty that nothing is left to the exercise of discretion).

The City argues the duty does not arise if the subject matter of the petition has been removed from the power of referendum. However, this Court has held that city secretaries and city councils have ministerial duties to act on recall petitions without considering the sufficiency of the allegations in the petition or the number of signatures certified by the city secretary. *See In re Porter*, 126 S.W.3d 708, 711–12 (Tex. App.—Dallas 2004, orig. proceeding) (charter creates ministerial duty for city council to call recall election once city secretary certifies sufficiency of petition); *Duffy v. Branch*, 828 S.W.2d 211, 214 (Tex. App.—Dallas 1992, orig. proceeding) (charter did not give city officials power to review sufficiency of recall petition); *Howard v. Clack*, 589 S.W.2d 748, 752 (Tex. Civ. App.—Dallas 1979, orig. proceeding) (implying authority of council to make ultimate determination of sufficiency of recall petition "would commit the decision to a body that could not be considered impartial").

Other courts have reached the same conclusion regarding recall, initiative, and referendum petitions. *See Woodfill*, 470 S.W.3d at 479–80 & nn.8–9 (city council had no authority under charter to question number of signatures on referendum petition after certification by city secretary); *In re Lee*, 412 S.W.3d 23, 26–27 (Tex. App.—Austin 2013, orig.

[8] Unlike the city charter in *Woodfill*, the Plano City Charter does not require the City Secretary to certify the number or validity of the signatures on the petition. *Compare id.* at 476–77, 479 (Houston city charter required city secretary to certify referendum petition and present it to city council; charter gave secretary, not city council, discretion to evaluate petition).

proceeding) ("in the absence of an express [charter] provision clearly authorizing the City Secretary or City Council to make this determination [about the sufficiency of allegations in recall petition] in certifying the petition, we will not infer that such authority exists"); *In re Roof*, 130 S.W.3d 414, 419 (Tex. App.—Houston [14th Dist.] 2004, orig. proceeding) (conditionally granting mandamus relief and ordering city secretary to present initiative petition to city council); *In re Suson*, 120 S.W.3d 477, 480 (Tex. App.—Corpus Christi 2003, orig. proceeding) (city secretary and commission have no authority to determine sufficiency of allegations in recall petition).

Similarly, the Plano City Charter does not give the City Secretary any discretion to determine whether the subject matter of a referendum petition has been withdrawn from the referendum power by general law or the charter. We will not imply such discretion absent express language in the charter supporting its existence. *See Howard*, 589 S.W.2d at 751–52. Therefore, appellees alleged facts supporting a claim for mandamus relief against the City Secretary under the ultra vires exception to governmental immunity.[9] *See Woodfill*, 470 S.W.3d at 479–80 (noting charter did not give city council discretion to reevaluate referendum petition for forgery or perjury, therefore city secretary's certification of petition invoked council's ministerial duty to reconsider and repeal ordinance or submit it to popular vote); *Brown*, 373 S.W.3d at 209 (concluding allegations in pleading sufficiently invoked ultra vires exception to sovereign immunity).

Further, the City's argument that comprehensive plans have been removed from the referendum power confuses the merits of whether mandamus should be issued with whether the

[9] We are not presented with the situation where a referendum petition concerns a matter, such as zoning, that has clearly been held to be outside the referendum power. We express no opinion about such a case. *See Robinson*, 353 S.W.3d at 756 (expressing no opinion on standing where case was not ripe); *Tex. Ass'n of Bus.*, 852 S.W.2d at 444 (courts have no jurisdiction to render advisory opinions).

trial court has subject matter jurisdiction to consider a petition for mandamus. "'Jurisdiction' refers to a court's authority to adjudicate a case." *Reiss*, 118 S.W.3d at 443 (citing *Dubai Petroleum Co. v. Kazi*, 12 S.W.3d 71, 75 (Tex. 2000)). A party's right to relief says nothing about the jurisdiction of a court to grant or deny that relief. *See id.* (judgment was not void "because a court has jurisdiction to characterize community property—even if it does so incorrectly"); *Dubai Petroleum*, 12 S.W.3d at 76–77. In this case, appellees' entitlement to a writ of mandamus goes "in reality to the right of the plaintiff to relief *rather than to the jurisdiction of the court to afford it*." *Dubai Petroleum*, 12 S.W.3d at 76–77. (emphasis added, citation omitted). Whether the trial court should ultimately grant or deny the petition for mandamus is not the issue before us; the issue is whether the trial court has jurisdiction to consider the petition.[10] *See Brown*, 373 S.W.3d at 209.

The City relies on *Texas Music Library & Research Center v. Texas Department of Transportation*, No. 13-13-00600-CV, 2014 WL 3802992, at *1–2 (Tex. App.—Corpus Christi July 31, 2014, pet. denied) (mem. op.). In that case, the Library sought to compel the executive director of the department of transportation to provide federal funds under a transportation enhancement program. *Id.* The Texas Legislature appropriated those funds for a museum of music history, and directed that the funds would go to the entity approved by the governor's

[10] Cases cited by the City where decided *on the merits* of whether the writ of mandamus should issue, indicating the courts had subject matter jurisdiction to rule on the merits. *See In re Arnold*, 443 S.W.3d 269, 277 (Tex. App.—Corpus Christi 2014, orig. proceeding) (denying writ of mandamus to compel action on referendum petition regarding zoning amendments); *In re Ryan*, No. 13-08-00179-CV, 2008 WL 1822442, at *1 (Tex. App.—Corpus Christi April 18, 2008, orig. proceeding) (mem. op.) (denying writ of mandamus to compel referendum on annexation ordinances); *San Pedro N., Ltd. v. City of San Antonio*, 562 S.W.2d 260, 262–63 (Tex. Civ. App.—San Antonio 1978, writ ref'd n.r.e.) (reversing and rendering judgment that referendum election regarding zoning was invalid); *Hancock v. Rouse*, 437 S.W.2d 1, 4 (Tex. Civ. App.—Houston [1st Dist.] 1969, writ ref'd n.r.e.) (affirming denial of writ of mandamus to compel initiative election on zoning ordinance); *Denman v. Quin*, 116 S.W.2d 783, 786–87 (Tex. Civ. App.—San Antonio 1938, writ ref'd) (affirming the granting of a general demurrer to a petition for writ of mandamus to compel referendum on ad valorem tax ordinance, concluding the ordinance was administrative or executive, not legislative). In all these cases, the court had jurisdiction and decided the case on the merits rather than dismissing for lack of jurisdiction. *See Li*, 984 S.W.2d at 654 (if court lacks jurisdiction, it should dismiss and refrain from deciding the merits).

office for the museum. *Id*. at *15–16. The court of appeals affirmed the trial court's dismissal of the suit because the Library's allegations did not show it had been approved by the governor's office. *Id.* Thus, the allegations did not show the executive director had a ministerial duty to make the funds available:

> The Library has not alleged that it was designated as the official Texas museum of music history by the Trusteed Programs within the Office of the Governor. Therefore, the Library has not pled a viable claim for writ of mandamus based on TxDOT's executive director having a ministerial duty to fund the Library's project under Section 14.31 [of the appropriations act].

Id. at *16.

Unlike the Library in *Texas Music Library*, appellees alleged facts supporting the existence of a ministerial duty and that the City Secretary failed to perform that duty. *See* Charter 7.03. Thus, appellees alleged a viable claim for a writ of mandamus against the City Secretary.

We conclude appellees sufficiently alleged facts necessary to come within the ultra vires exception to immunity from suit and invoked the trial court's subject matter jurisdiction over their mandamus petition against the City Secretary. "[W]e do not decide in this appeal whether [appellees] can 'ultimately prove' [their] ultra vires allegations." *Brown*, 373 S.W.3d at 209. Accordingly, without regard to the merits, we overrule the City's first issue as to the City Secretary and affirm the trial court's order denying the plea to the jurisdiction on the mandamus action against the City Secretary.

B. Ripeness

In its third issue, the City argues the claims for mandamus against the City Council and for declaratory judgment are not yet ripe. We agree.

Appellees argue the claims are ripe because the City Council held a meeting after the referendum petition was submitted to the City Secretary and indicated the council would not act

on the petition. But appellees' allegations do not support this contention. They alleged the City Council "met to discuss whether to comply with its obligations under the Charter" and was advised by an attorney that "zoning regulations are not subject to a referendum vote." These allegations do not indicate the City Council will not act as required by the charter when presented with a referendum petition by the City Secretary. Nor do the allegations show the City Council had any obligation under the charter at the time of the meeting.

The City Council has no duty to act on a referendum petition until the petition is actually presented by the City Secretary. *See* Charter § 7.03 (requiring city secretary to present referendum petition to city council and "[t]hereupon the city council shall immediately reconsider such ordinance . . ."); *see also Woodfill*, 470 S.W.3d at 478–79 (city secretary's certification of sufficiency of referendum petition invoked city council's ministerial duty to immediately reconsider ordinance and submit it to voters if not repealed). What the City Council will do when presented with a referendum petition is unknown and appellees merely speculate the council will refuse to act.

Appellees also argue the declaratory judgment claims are ripe because the Plan has been suspended as a result of filing the referendum petition. However, the charter does not provide that an ordinance is suspended immediately upon the filing of a referendum petition. It provides that when presented with a petition by the City Secretary, the City Council shall reconsider the ordinance and

> *if it does not entirely repeal the same*, shall submit it to popular vote as provided in section 7.02 of this charter. Pending the holding of such election such ordinance or resolution shall be suspended from taking effect and shall not later take effect unless a majority of the qualified voters voting thereon at such election shall vote in favor thereof.

Charter § 7.03 (emphasis added). Suspension of an ordinance does not occur until the secretary presents the petition and the council reconsiders the ordinance, decides not to "entirely repeal" it,

and submits the ordinance to a vote. These events have not occurred and may never occur. A case is not ripe if "the determination of whether a plaintiff has a concrete injury can be made only 'on contingent or hypothetical facts, or upon events that have not yet come to pass.'" *Robinson*, 353 S.W.3d at 756 (quoting *Gibson*, 22 S.W.3d at 852).

Finally, appellees argue their remaining claims will soon ripen and the trial court has jurisdiction to consider them. But this argument is based on contingent events that may never occur. Until the City Council acts in response to a referendum petition properly submitted by the City Secretary, the remaining mandamus and declaratory judgment claims are not ripe and we cannot know that they are likely to ripen in the near future. *See id.* (court could not determine with necessary certainty from allegations and record whether city failed to comply with spending limits "or that it is likely to exceed the spending caps in the near future"); *Perry v. Del Rio*, 66 S.W.3d 239, 249 (Tex. 2001) (case based on "uncertain or contingent future events" is not ripe for judicial adjudication); *Patterson*, 971 S.W.2d at 444 (potential injury cannot be ripe unless it is established with certain and definite documentation).

Until the City Council is presented with a referendum petition by the City Secretary as provided by the charter, it has no duty to act. And until the City through the City Council acts on the referendum petition, any declaration about the effect of that action would be advisory. *See Public Util. Comm'n v. Houston Lighting & Power Co.*, 748 S.W.2d 439, 442 (Tex. 1987) ("A court has no jurisdiction to render an advisory opinion on a controversy that is not yet ripe."). Therefore, the appellees' requests for a writ of mandamus against the City Council and for a declaratory judgment are not ripe and the trial court should have granted the plea to the jurisdiction and dismissed those requests. We sustain the City's third issue. We need not address the second issue. *See* TEX. R. APP. P. 47.1.

CONCLUSION

The trial court has subject matter jurisdiction over the petition for a writ of mandamus against the City Secretary, but the remaining claims presented are not yet ripe for adjudication. Accordingly, without regard to the merits, we affirm the trial court's order denying the plea to the jurisdiction on the request for a writ of mandamus against the City Secretary, reverse the order as to appellees' request for mandamus against the City Council and for a declaratory judgment, and dismiss those claims for want of jurisdiction.

/Craig Stoddart/
CRAIG STODDART
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

CITY OF PLANO, TEXAS, LISA HENDERSON, IN HER OFFICIAL CAPACITY AS CITY SECRETARY; HARRY LAROSILIERE, IN HIS OFFICIAL CAPACITY AS MAYOR; ANGELA MINER, IN HER OFFICIAL CAPACITY AS MEMBER OF THE CITY COUNCIL; BEN HARRIS, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE CITY COUNCIL; RICK GRADY, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE CITY COUNCIL; LISSA SMITH, IN HER OFFICIAL CAPACITY AS MEMBER OF THE CITY COUNCIL; RON KELLEY, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE CITY COUNCIL; TOM HARRISON, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE CITY COUNCIL; AND DAVID DOWNS, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE CITY COUNCIL, Appellants

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Opinion delivered by Justice Stoddart.
Justices Lang-Miers and O'Neill participating.

In accordance with this Court's opinion of this date and without regard to the merits, the trial court's May 16, 2016 order denying defendants' plea to the jurisdiction is **AFFIRMED** in part and **REVERSED** in part. We **REVERSE** that portion of the trial court's order denying defendants' plea to the jurisdiction as to the claims for a writ of mandamus against the members of the city council and for declaratory judgment, and **DISMISS** those claims without prejudice for lack of jurisdiction. In all other respects, the trial court's order is **AFFIRMED**.

It is **ORDERED** that each party bear its own costs of this appeal.

Judgment entered this 23rd day of February, 2017.