

**Affirm in part, reverse in part, and remand; Opinion Filed December 21, 2017.**



**In The  
Court of Appeals  
Fifth District of Texas at Dallas**

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**No. 05-16-00789-CV**

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**RODNEY D. BAILEY, Appellant**

**V.**

**DALLAS COUNTY, TEXAS; DALLAS COUNTY SHERIFF'S DEPARTMENT CIVIL SERVICE COMMISSION; AND JUANITA H. NANEZ, STEVE HANNA AND DWAYNE BISHOP IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE SHERIFF'S DEPARTMENT CIVIL SERVICE COMMISSION, Appellees**

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**On Appeal from the 160th Judicial District Court  
Dallas County, Texas  
Trial Court Cause No. DC-15-11206**

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**MEMORANDUM OPINION**

Before Justices Bridges, Myers, and Schenck  
Opinion by Justice Myers

This case concerns a district court's subject-matter jurisdiction to hear the case of a deputy sheriff, Rodney D. Bailey, who was terminated by Dallas County and whose civil service proceeding was dismissed. Bailey appeals the trial court's dismissal of his suit against Dallas County, the Dallas County Sheriff's Department's Civil Service Commission, and the members of the Commission. Bailey brings five issues on appeal contending the trial court erred by determining Bailey's claims were barred by appellees' governmental immunity. We conclude the trial court erred by granting the plea to the jurisdiction as to Bailey's suit under section 158.037 of the Local Government Code and his claim for mandamus but that the trial court did

not err by granting the plea the jurisdiction on Bailey's claim for declaratory judgment. Accordingly, we reverse the trial court's judgment in part and affirm in part.

### **BACKGROUND**

In 2014, Bailey was a Dallas County Deputy Sheriff. In August of that year, he was indicted for sexual assault and suspended from active duty. In September, he received a disciplinary hearing and was terminated by the sheriff's department for dereliction of duty related to the indictment. Bailey timely filed a grievance challenging his termination. In November and December 2014, the Sheriff's Department's Civil Service Commission contacted Bailey's attorney concerning scheduling the hearing before the Commission, and the attorney said he was not prepared to proceed to the hearing at that time. On May 1, 2015, the district attorney dismissed the indictment against Bailey because the State could not procure the testimony of the complaining witness. On July 9, Bailey's attorney sent a letter to the Commission requesting that Bailey's grievance be set for a hearing before the Commission.

At the hearing before the Commissioners, the County requested that the Commissioners dismiss Bailey's grievance because he did not request a hearing on his grievance within thirty days of the dismissal of the indictment, which the County asserted was required by section 5.02(2) of the Dallas County Sheriff's Department Civil Service Rules.<sup>1</sup> The Commissioners granted the County's request and dismissed Bailey's grievance without reaching the merits.<sup>2</sup>

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<sup>1</sup> Section 5.02(2) of the Dallas County Sheriff's Department Civil Service Rules provides:

If an employee is indicted for a felony or officially charged with a class A or B misdemeanor, and he has also been charged by the department for violating rules and regulations related to the same incident, he may delay the civil service hearing for not more than 30 days after the final disposition of the charge. This does not delay the implementation of any disciplinary action taken by the Sheriff.

This provision is similar to section 158.0351(d) of the Texas Local Government Code:

An employee indicted for a felony or officially charged with the commission of a Class A or B misdemeanor who has also been charged by the sheriff with a civil service rule violation directly related to the indictment or complaint may delay the civil service hearing for not more than 30 days after the date of the final disposition of the indictment or complaint.

TEX. LOC. GOV'T CODE ANN. § 158.0351(d) (West 2008).

<sup>2</sup> The Commission's order stated:

Bailey then filed suit in district court under section 158.037 of the Texas Local Government Code appealing the Commission's ruling. *See* TEX. LOC. GOV'T CODE ANN. § 158.037 (West 2008). Besides bringing a cause of action under section 158.037 contending that section 5.02(2) did not apply, Bailey's suit also sought declarations under the Uniform Declaratory Judgment Act that the County failed to comply with chapter 158 of the Local Government Code, that section 5.02(2) and a similar provision, section 158.0351(d) of the Local Government Code, were void for vagueness, and that the Commissioners' act of dismissing his grievance under section 5.02(2) without considering the merits was an *ultra vires* act. Bailey also sought a mandamus requiring the Commission to hold a hearing on the merits of his grievance as required by chapter 158. Appellees filed a plea to the jurisdiction asserting Bailey's claims were barred by governmental immunity. The trial court granted the plea to the jurisdiction and dismissed Bailey's suit.

### **GOVERNMENTAL IMMUNITY**

Governmental immunity from suit protects cities and counties and other subdivisions of the state from suit unless immunity has been expressly waived by the legislature. *See Harris County v. Sykes*, 136 S.W.3d 635, 638 (Tex. 2004). Without a legislative waiver of governmental immunity, courts have no jurisdiction to adjudicate any claim against the County. *See id.* Likewise, "there is no right to judicial review of an administrative order unless a statute provides a right or unless the order adversely affects a vested property right or otherwise violates a constitutional right." *Continental Cas. Ins. Co. v. Functional Restoration Assocs.*, 19 S.W.3d 393, 397 (Tex. 2007).

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The Sheriff's Department Civil Service Commission ruled to dismiss Mr. Bailey's grievance appeal due to grievant's failure to timely request a grievance hearing within thirty (30) days after the final disposition of his criminal charge, in accordance with § 5.02(2) of the Dallas County Sheriff's Civil Service Rules and Texas Local Government Code § 158.035(d) [sic].

A plea to the jurisdiction challenges the trial court’s authority to determine the subject matter of a specific cause of action. *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000). A plea to the jurisdiction is a dilatory plea, the purpose of which is to defeat a cause of action without regard to whether the claims asserted have merit. *Id.* The plea should be decided without delving into the merits of the case. *Id.* To prevail on a plea to the jurisdiction, a defendant must demonstrate an incurable jurisdictional defect apparent on the face of the pleading rendering it impossible for the plaintiff’s petition to confer jurisdiction on the district court. *MAG-T, L.P. v. Travis Cent. Appraisal Dist.*, 161 S.W.3d 617, 624 (Tex. App.—Austin 2005, pet. denied).

Whether a trial court has subject matter jurisdiction is a question of law. *Tex. Dep’t of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004). Therefore, we review a challenge to the trial court’s subject matter jurisdiction de novo. *Id.* In performing this review, an appellate court does not look to the merits of the case but considers only the pleadings and evidence relevant to the jurisdictional inquiry. *Blue*, 34 S.W.3d at 554–55. We construe the plaintiff’s pleadings liberally in the plaintiff’s favor and look to the pleader’s intent. *Miranda*, 133 S.W.3d at 226. When a plea to the jurisdiction challenges the existence of jurisdictional facts, the trial court may consider the evidence necessary to resolve any dispute over those facts. *Mission Consol. Indep. Sch. Dist. v. Garcia*, 372 S.W.3d 629, 635 (Tex. 2012). In that situation, the defendant has the burden of proving as a matter of law that the trial court lacks jurisdiction. *Id.* (trial court’s review of plea to jurisdiction “mirrors that of a traditional summary judgment motion”).

## STATUTORY APPEAL OF COMMISSION'S RULING

In his first issue, Bailey contends the trial court erred by determining it lacked jurisdiction over his appeal of the Commission's decision under section 158.037 of the Local Government Code.

Section 158.037 waives the County's immunity from suit for review in district court of certain decisions of civil service commissions concerning employees of sheriff's departments.

That section provides,

An employee who, on a final decision by the commission, is demoted, suspended, or removed from a position may appeal the decision by filing a petition in a district court in the county within 30 days after the date of the decision.

LOC. GOV'T § 158.037(a). Appellees contend that Bailey is not entitled to district court review of his case because the Commission's decision did not demote, suspend, or remove him from his position; instead, appellees argue, the Commission's decision dismissed the case because Bailey did not timely request a hearing before the Commission after his criminal proceeding was dismissed. In support of this argument, appellees rely on an opinion from the El Paso Court of Appeals, *County of El Paso v. Zapata*, 338 S.W.3d 78 (Tex. App.—El Paso 2011, no pet.).

In *Zapata*, a group of deputy sheriffs were suspended or terminated. *Id.* at 80. Under an agreement between the sheriff and the El Paso County Sheriff's Officer's Association, the deputies could have their suspensions and terminations reviewed by either an arbitrator or the civil service commission by requesting review within ten days of the termination or suspension. The deputies timely chose arbitration. However, the sheriff's term ended before the arbitration hearing. The new sheriff was not a signatory to the arbitration agreement. When the new sheriff took office, the deputies decided to forego arbitration and submitted a request to have their grievances heard by the commission. *Id.* The commission determined it was without jurisdiction because the deputies had not timely requested review by the commission. *Id.* at 81. The

deputies then filed suit, seeking review of the commission's decision under section 158.037. The trial court denied the plea to the jurisdiction, and the county and sheriff appealed that ruling. *Id.* at 82. The El Paso Court of Appeals concluded the trial court erred. The appellate court decided that the trial court did not have jurisdiction of the deputies' cases under section 158.037(a) "[b]ecause the Commission's decision did not demote, suspend, or remove any appellee from his employment but, rather, dismissed the grievances for lack of jurisdiction." *Id.* at 84.

We disagree with the El Paso court's decision in *Zapata*. The effect of the commission's decision in *Zapata* was to suspend or terminate the deputies. The fact that the commission did not reach the merits but instead dismissed the grievance for want of jurisdiction does not change the fact that the decision dismissing the grievance was the final decision suspending or terminating the deputies. Likewise, the Commission's decision in this case was the final decision by the Sheriff's Department on Bailey's termination. Bailey filed suit within thirty days after the Commission's ruling as required by section 158.037(a). Accordingly, we conclude the trial court erred by granting the County's plea to the jurisdiction as to Bailey's appeal to the district court under section 158.037(a). We sustain Bailey's first issue.

### **DECLARATORY JUDGMENT**

Bailey also sought declaratory judgment. His requested declarations fall into three categories. First, as an alternative to his suit under section 158.037, Bailey sought declarations that sections 5.02(2) and 158.0351(d) do not apply to him. Second, Bailey sought declarations that the sections are invalid because they are unconstitutionally vague. And third, he sought declarations that the Commissioners' act of dismissing his grievance under the sections was *ultra vires*. On appeal, Bailey does not assert any error from the dismissal of his request for declarations that sections 5.02(2) and 158.0351(d) do not apply to him. However, he does appeal

the dismissal for want of jurisdiction of his request for declarations that those sections are invalid and that the Commissioners actions were *ultra vires*.

Generally, the County has governmental immunity from suits for declaratory judgment. However, the legislature waived immunity for suits seeking a declaration concerning “the validity of a municipal ordinance or franchise” or the unconstitutionality of “a statute, ordinance, or franchise.” See TEX. CIV. PRAC. & REM. CODE ANN. § 37.006(b); *Tex. Dep’t of Transp. v. Sefzik*, 355 S.W.3d 618, 622 & n.3 (Tex. 2011); *City of El Paso v. Heinrich*, 284 S.W.3d 366, 373 n.6 (Tex. 2009). A request for a declaration seeking the construction or application of an ordinance or statute does not waive the government’s immunity. See *Sefzik*, 355 S.W.3d at 622; *City of Dallas v. Tex. EZPAWN*, 2013 WL 1320513, \*2 (Tex. App.—Dallas Apr. 1, 2013, no pet.) (mem. op.).

### **Ultra Vires Acts**

In his second issue, Bailey contends the trial court erred by dismissing his claim seeking a declaration that the Commissioners’ act, in their official capacities, of dismissing his grievance was beyond their statutory and jurisdictional authority and constituted an *ultra vires* action. Governmental immunity does not bar a suit asserting a government officer acted *ultra vires*, that is, without legal authority, in carrying out his duties. *Houston Belt & Terminal Rwy. Co. v. City of Houston*, 487 S.W.3d 154, 157–58 (Tex. 2016). Governmental immunity bars suits complaining of an official’s acts over which the official has absolute discretion, but it does not generally bar suits complaining of either (1) an officer’s failure to perform a ministerial act or (2) “an officer’s exercise of judgment or *limited* discretion without reference to or in conflict with the constraints of the law authorizing the official to act.” *Id.* at 163. “Only when such absolute discretion—free decision-making without any constraints—is granted are *ultra vires* suits absolutely barred. And, as a general rule, ‘a public officer has no discretion or authority to

misinterpret the law.” *Id.* (quoting *In re Smith*, 333 S.W.3d 582, 585 (Tex. 2011) (orig. proceeding)). “[W]hether a suit attacking an exercise of limited discretion will be barred is dependent upon the grant of authority at issue . . . . [M]any legislative grants of authority, although not absolute, will be broad enough to bar most, if not all, allegedly *ultra vires* claims.” *Id.* at 164.

Construing Bailey’s petition liberally, we determine that he makes two arguments as to why the Commissioners’ act of dismissing his grievance was *ultra vires*. First, he asserts the Commissioners had authority only to “sustain, overturn, or reduce the disciplinary action” and not to dismiss the grievance. *See* LOC. GOV’T § 158.035(d) (West Supp. 2016). Second, he asserts that the Commissioners’ dismissal of his grievance was not authorized by section 5.02(2) of the County Rules and section 158.0351(d) of the Local Government Code.

The County argues Bailey’s *ultra vires* cause of action is barred by governmental immunity because it seeks retroactive relief. We agree. Governmental immunity is waived as to *ultra vires* claims only for claims seeking prospective relief, not claims seeking retrospective relief. *City of El Paso v. Heinrich*, 284 S.W.3d 366, 376 (Tex. 2009). Bailey argues he “is requesting only prospective relief by asking the Court to order the Commission members to comply with Tex. Loc. Gov’t Code § 158.0351(d) and Commission Rule 5.02(2) by affording Bailey a hearing on the merits of his timely filed grievance.” However, in order for Bailey to receive a hearing before the Commission on his grievance, the trial court would have to order the Commission to set aside its order dismissing Bailey’s grievance and order it to reinstate the grievance. Such relief would be retrospective, not prospective. We conclude immunity is not waived for Bailey’s *ultra vires* claim. We overrule Bailey’s second issue.



## Validity of a Statute

In his fourth issue, Bailey contends the trial court erred by dismissing his requests for declarations that sections 5.02(2) and 158.0351(d) are invalid because they are unconstitutionally vague. The Uniform Declaratory Judgment Act waives the government's immunity for suits seeking declarations that a statute or ordinance is invalid. *Heinrich*, 284 S.W.3d at 373 n.6. Bailey sought declarations that the sections were "unconstitutionally vague as applied to Plaintiff" and "to Plaintiff's circumstances" "in the Commission's decision to dismiss his grievance."

A statute violates the Due Process Clauses of the United States and Texas Constitutions for vagueness only if it (1) does not give fair notice of what conduct may be punished, and (2) invites arbitrary and discriminatory enforcement by its lack of guidance for those charged with its enforcement. *See Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498 (1982); *Commission for Lawyer Discipline v. Benton*, 980 S.W.2d 425, 437 (Tex. 1998). "Due process is satisfied if the prohibition is 'set out in terms that the ordinary person exercising ordinary common sense can sufficiently understand and comply with.'" *Benton*, 980 S.W.2d at 437 (quoting *United States Civil Serv. Comm'n v. Nat'l Ass'n of Letter Carriers*, 413 U.S. 548, 579 (1973)). When persons of common intelligence are compelled to guess at a law's meaning and applicability, due process is violated and the law is invalid. *See King Street Patriots v. Tex. Democratic Party*, 521 S.W.3d 729, 743 (Tex. 2017). However, the fact that the parties disagree about a law's meaning does not necessarily render the law unconstitutionally vague. *Howeth Invs., Inc. v. City of Hedwig Vill.*, 259 S.W.3d 877, 904 (Tex. App.—Houston [1st Dist.] 2008, pet. denied).

Bailey alleged in his petition that the sections are unconstitutionally vague because the sections

[are] not clear and precise enough for Plaintiff to determine that the submission of any request for delay, even if not related to the disposition of his criminal charge, could be considered as a request for delay under [sections 158.0351(d) and 5.02(2)] or that he would need to make a second written request to set his grievance hearing after his criminal charge was dismissed, whether a delay request was made or not. The language in [sections 158.0351(d) and 5.02(2)] is not precise as it is applied to Plaintiff, and allows for arbitrary application and enforcement. The action by the Commission of subjecting Plaintiff to any requirement of [sections 158.0351(d) and 5.02(2)] even though Plaintiff did not request a delay until the disposition of his criminal charge, requiring him to make a second request in writing and dismissing Plaintiff's grievance was outside its jurisdiction in accordance with the limited powers assigned to the Commission under § 158.035(d) . . . . The Commission's decision cannot be legal and enforceable because they [sic] never had jurisdiction to hold Plaintiff to any requirement of [sections 158.0351(d) and 5.02(2)] without a written request by Plaintiff for a delay until the disposition of his criminal charge. Plaintiff is seeking a declaration as to his rights, status or legal relations under [sections 158.0351(d) and 5.02(2)]. Plaintiff would ask the Court to declare [sections 158.0351(d) and 5.02(2)] unconstitutionally vague as applied to Plaintiff. [Sections 158.0351(d) and 5.02(2)] provide for certain rights and procedures for an employee who may wish to delay a grievance hearing after being charged with a criminal matter or indicted for a felony and a civil service rule violation directly related to the criminal charge. These rights and procedures under [sections 158.0351(d) and 5.02(2)] although generally constitutional, are unconstitutionally vague as applied to Plaintiff's circumstance. The Commission ruled to dismiss Plaintiff's grievance because Plaintiff did not timely, and in writing, request a hearing pursuant to [section 5.02(2)] which was duly adopted and published in accordance from [TEX. LOC. GOV'T CODE ANN. § 158.0351(d)]. Plaintiff did not exercise his right to request a delay of his grievance hearing pursuant to [sections 5.02(2) and 158.0351(d)], however, the Commission subjected Plaintiff to such provisions, without notice based solely on the fact that Plaintiff had been indicted for a felony and charged with a violation of civil service rules related to the criminal charge. . . . The Commission does not have the jurisdiction or authority to automatically subject Plaintiff to the provisions of [sections 5.02(2) nor 158.0351(d)], especially with no notice to Plaintiff. This is a discretionary right given only to Plaintiff as the grievant employee. The Commission does not have the statutory or jurisdictional right to dismiss a grievance based on Plaintiff's failure to comply with a statutory or agency rule that did not pertain to Plaintiff. The Commission does not have the statutory or jurisdictional right to require that Plaintiff make a second written request for a hearing pursuant to [sections 5.02(2) and 158.0351(d)] when such agency rule and statute do not require that any request be in writing. This would be especially true when the Commission is ignoring its own rule that any postponement or delay of a civil service hearing must be in writing and filed with the Commission. Plaintiff's rights, status, and legal relations under [sections 158.0351(d) and 5.02(2)] are uncertain and Plaintiff would request the Court to construe his rights, status and legal relations as they relate to [sections 158.0351(d) and 5.02(2)].

Although Bailey generally alleged that the sections were unconstitutionally vague, his allegations show his complaint is that the Commission applied the sections to him when, by their wording, they do not apply, and that the Commission purported to apply provisions not contained in those sections. These are complaints about the applicability and construction of the sections, not that they are invalid as unconstitutionally vague. Because Bailey's complaint concerns the applicability and construction of the sections and not their invalidity, the County did not waive its governmental immunity as to this claim.

We conclude that the trial court did not err by granting appellees' plea to the jurisdiction as to Bailey's claim seeking a declaration that sections 158.0351(d) and 5.02(2) are invalid. We overrule Bailey's fourth issue.

### **MANDAMUS**

In his third issue, Bailey contends the trial court erred by determining that Bailey's claim for mandamus relief was barred by governmental immunity. Bailey sought a writ of mandamus ordering the County to comply at all times with chapter 158 of the Local Government Code and ordering that the County "provide Plaintiff with the grievance hearing on the merits regarding his wrongful termination to which he is entitled under" chapter 158 of the Local Government Code and the Sheriff's Department's rules and regulations. Bailey asserts that the decision whether to have a hearing on the merits of his grievance was a nondiscretionary, ministerial decision of the Commission and was not a matter within the discretion of the Commission.

District Courts are vested with original mandamus jurisdiction over county officials. *Sheppard v. Thomas*, 101 S.W.3d 577, 580 (Tex. App.—Houston [1st Dist.] 2003, pet. denied). A party is entitled to mandamus relief when there is a legal duty to perform a nondiscretionary act, a demand for performance of that act, and a refusal. *Doctors Hosp. Facilities v. Fifth Court of Appeals*, 750 S.W.2d 177, 178 (Tex. 1988); *Sheppard*, 101 S.W.3d at 581. A discretionary act

is one that requires the exercise of “personal deliberation, decision and judgment.” *City of Lancaster v. Chambers*, 883 S.W.2d 650, 654 (Tex. 1994). If the act requires “obedience to orders or the performance of a duty to which the actor has no choice,” then it is ministerial. *Id.* Appellees argue that Bailey’s suit for mandamus relief is barred by governmental immunity because the Commission’s act of dismissing Bailey’s grievance was a discretionary act, not a ministerial one.

We disagree with appellees that the Commission’s decision whether to dismiss the grievance without reaching the merits was a matter within the Commissioners’ discretion. The Commissioners relied on sections 5.02(2) and 158.0351(d) in deciding Bailey was not entitled to a hearing on the merits of his lawsuit. Bailey alleged the Commission misinterpreted those provisions in deciding to dismiss his grievance without reaching the merits of the grievance. The County introduced no evidence and presents no authority showing that the decision whether to hold a hearing on the merits of Bailey’s grievance was discretionary. Public officials have no discretion or authority to misinterpret the law. *In re Smith*, 333 S.W.3d 582, 585 (Tex. 2011) (orig. proceeding). Whether the Commission complied with or violated its ministerial duty to interpret and apply sections 5.02(2) and 158.0351(d) correctly was the basis of Bailey’s mandamus action.

Appellees’ assert that the Commissioners heard evidence about whether Bailey’s grievance complied with section 5.02(2), and they argue that Bailey’s suit is based on his disagreement with the Commissioners’ discretionary weighing of that evidence and their subsequent decision to dismiss his grievance based on their weighing of that evidence. We disagree. The facts concerning the application of section 5.02(2) were largely undisputed. Those facts were the dates and substance of Bailey’s attorney’s communications with the Commission requesting a delay in the hearing, the date of the dismissal of the indictment, and the

date of Bailey’s request for a hearing after the dismissal of the indictment.<sup>3</sup> What was disputed in the testimony before the Commissioners was what section 5.02(2) meant and how it applied to the facts, including (1) whether under that provision Bailey’s attorney’s statement in December 2014 that he was unprepared to proceed to a hearing constituted a request to delay the proceeding until the disposition of the criminal charges; (2) whether Bailey had the burden under section 5.02(2) to request in writing that the grievance be heard within thirty days of the disposition of the criminal charges; and (3) whether Bailey’s failure to make a written request to have the grievance heard within thirty days of the dismissal of the indictment authorized the Commission to dismiss his grievance without reaching the merits. These are questions of law requiring the interpretation of section 5.02(2) and its application to undisputed facts.

The County also quotes from the Austin Court of Appeals: “A suit that seeks to control a state official’s exercise of discretion within her legal authority is a suit to control state action and cannot be maintained without legislative permission.” *McLane Co. v. Strayhorn*, 148 S.W.3d 644, 649 (Tex. App.—Austin 2004, pet. denied). However, Bailey’s mandamus action sought to require the Commission to perform its ministerial duty to hold a hearing on the merits of his grievance; it did not seek “to control a state official’s exercise of discretion within her legal authority.”

We conclude the trial court erred by granting appellees’ plea to the jurisdiction as to Bailey’s mandamus action. We sustain Bailey’s fourth issue.

#### **WHETHER THE CIVIL SERVICE COMMISSION IS SUBJECT TO SUIT**

In his fifth issue, Bailey contends the trial court erred by granting the County’s plea to the jurisdiction on its argument that the Commission is not a jural entity subject to suit. The County

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<sup>3</sup> The only disputed fact was whether Bailey’s attorney made requests by telephone to have the grievance heard within 30 days of the dismissal of the indictment. However, if under a proper interpretation of section 5.02(2), Bailey did not have the duty to request that the hearing take place within 30 days after the dismissal of the indictment, then this disputed fact is irrelevant.

argues that a plaintiff may not sue a governmental entity that does not have a separate and distinct legal existence, citing *Coombs v. City of Dallas*, 289 Fed. Appx. 684 (5th Cir. 2008) (per curiam), and *Darby v. Pasadena Police Department*, 939 F.2d 311 (5th Cir. 1991).

Whether the Commission has a separate and distinct legal existence is a jurisdictional fact question. As the movant on a plea to the jurisdiction, the County had the burden to prove jurisdictional facts as a matter of law. See *Mission Consol. Indep. Sch. Dist. v. Garcia*, 372 S.W.3d 629, 635 (Tex. 2012) (“Initially, the defendant carries the burden to meet the summary judgment proof standard for its assertion that the trial court lacks jurisdiction.”). Appellees presented no evidence that the Commission does not have a separate and distinct legal existence.<sup>4</sup> Accordingly, appellees have failed to show they are entitled to dismissal of the case on this ground.

We conclude the trial court erred by granting appellees’ plea to the jurisdiction on the ground that the Commission is not a jural entity subject to suit. We sustain Bailey’s fifth issue.

### CONCLUSION

We reverse the trial court’s judgment granting appellees’ plea to the jurisdiction as to Bailey’s cause of action for an appeal under section 158.037 of the Local Government Code and his cause of action for mandamus.<sup>5</sup> In all other respects, we affirm the trial court’s judgment.

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<sup>4</sup> This Court tacitly recognized the trial court’s jurisdiction over the Commission in *Adams v. Dallas County Sheriff’s Department Civil Service Commission*, No. 05-03-00939-CV, 2004 WL 1178608 (Tex. App.—Dallas May 28, 2004, no pet.) (mem. op.). However, it does not appear that the Commission expressly challenged the trial court’s jurisdiction in that case.

<sup>5</sup> Our conclusion is only that appellees failed to establish that the trial court lacked jurisdiction to consider these claims. We express no opinion on their merits.

We remand the case to the trial court for further proceedings.

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/Lana Myers/  
LANA MYERS  
JUSTICE



**Court of Appeals  
Fifth District of Texas at Dallas**

**JUDGMENT**

RODNEY D. BAILEY, Appellant

No. 05-16-00789-CV      V.

DALLAS COUNTY, TEXAS; DALLAS COUNTY SHERIFF'S DEPARTMENT CIVIL SERVICE COMMISSION; AND JUANITA H. NANEZ, STEVE HANNA AND DWAYNE BISHOP IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE SHERIFF'S DEPARTMENT CIVIL SERVICE COMMISSION,  
Appellees

On Appeal from the 160th Judicial District Court, Dallas County, Texas  
Trial Court Cause No. DC-15-11206.  
Opinion delivered by Justice Myers. Justices Bridges and Schenck participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED** in part and **REVERSED** in part. We **REVERSE** that portion of the trial court's judgment dismissing appellant RODNEY D. BAILEY'S causes of action for mandamus and for appeal of his termination under section 158.037 of the Texas Local Government Code. In all other respects, the trial court's judgment is **AFFIRMED**. We **REMAND** this cause to the trial court for further proceedings consistent with this opinion.

It is **ORDERED** that appellant RODNEY D. BAILEY recover his costs of this appeal from appellees DALLAS COUNTY, TEXAS; DALLAS COUNTY SHERIFF'S DEPARTMENT CIVIL SERVICE COMMISSION; AND JUANITA H. NANEZ, STEVE HANNA AND DWAYNE BISHOP IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE SHERIFF'S DEPARTMENT CIVIL SERVICE COMMISSION.

Judgment entered this 21st day of December, 2017.