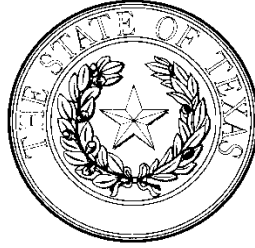


Opinion issued February 3, 2011



In The
Court of Appeals
For The
First District of Texas

NO. 01-09-01085-CV

BARBARA HERNANDEZ, Appellant

V.

**TEXAS WORKFORCE COMMISSION, EES SUPPORT SERVICES
AMERICAS/CROTHELL, EUREST SERVICES, INC., AND COMPASS
GROUP ISA, INC., Appellee**

**On Appeal from the 270th District Court
Harris County, Texas
Trial Court Cause No. 2009-19154**

MEMORANDUM OPINION

Barbara Hernandez appeals from the trial court's dismissal of her suit challenging a decision by the Texas Workforce Commission ("TWC") for lack of

jurisdiction. *See* TEX. LAB. CODE ANN. § 212.201 (West 2006). Hernandez contends the trial court misapplied section 212.201, which she asserts imposes a jurisdictional deadline for joining the TWC, but not for joining other parties to the suit. We affirm.

Background

The TWC issued a final decision denying Hernandez's claim for unemployment benefits and giving her notice that she had exhausted her administrative remedies. The TWC's final decision included a letter informing her that she had 14 days to challenge the decision by filing suit. The letter instructed her to join the TWC and all other parties from the administrative proceeding as defendants to the suit.

Hernandez filed suit against the TWC within the 14 day deadline, but failed to join her employers who were parties to the administrative proceeding. The TWC filed an answer and plea to the jurisdiction asserting the trial court lost jurisdiction because all the parties to the administrative proceeding were not joined to the suit. Her employers joined in the TWC's plea to the jurisdiction. Hernandez filed an amended petition joining her employers over a month after the 14 day time limit. The trial court granted the plea to the jurisdiction and dismissed the case with prejudice.

Plea to the Jurisdiction

Hernandez argues the trial court erred in granting the plea to the jurisdiction.

I. Standard of Review

A plea to the jurisdiction is a dilatory plea that seeks dismissal of a case for lack of subject-matter jurisdiction. *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 the plea challenges the sufficiency of the claimant’s pleadings, the trial court must construe the pleadings liberally in the claimant’s favor and deny the plea if the claimant has alleged facts affirmatively demonstrating jurisdiction to hear the case. *Id.* at 226–27. If the pleadings are insufficient but do not affirmatively demonstrate incurable jurisdictional defects, the court should afford an opportunity to replead. *Id.* But, if the pleadings affirmatively negate the existence of jurisdiction, the plea may be granted. *Id.* at 227.

II. Labor Code Section 212.201

Hernandez argues that she complied with section 212.201 even though she joined her employers outside of the 14 day time limit for filing suit. She asserts that the 14 day time-limit applies to filing suit against the TWC, but not to joining the other parties to the administrative proceedings as defendants. Section 212.201 provides:

(a) A party aggrieved by a final decision of the commission may obtain judicial review of the decision by bringing an action in a court of competent jurisdiction for review of the decision against the commission on or after the date on which the decision is final, and not later than the 14th day after that date.

(b) Each other party to the proceeding before the commission must be made a defendant in an action under this subchapter.

TEX. LAB. CODE ANN. § 212.201. Failure to comply with section 212.201 deprives the trial court of jurisdiction over the suit. *See Kelley v. Tex. Workforce Comm'n*, No. 01-05-01109-CV, 2006 WL 3804444, at *2 (Tex. App.—Houston [1st Dist.] Dec. 28, 2006, pet. denied) (mem. op.).

The facts in *Kelley* are similar to the facts in this case. In *Kelley*, the plaintiff filed suit against the TWC within the 14 day window under section 212.201, but did not join her employers until a month after the deadline. *Id.* at *3. We held the statutory deadline applied to all parties to the proceeding, not just the TWC, and therefore the trial court properly granted the TWC's plea to the jurisdiction. *Id.* Like *Kelley*, Hernandez sued the TWC within 14 days, but failed to join her employers within the statutory deadline. We hold the trial court did not err in granting the TWC's plea to the jurisdiction. *See id.* We overrule Hernandez's sole issue on appeal.

Conclusion

We affirm the judgment of the trial court.

Harvey Brown
Justice

Panel consists of Justices Jennings, Higley, and Brown.