Opinion issued July 1, 2014.

In The

Court of Appeals

For The

First District of Texas

NO. 01-13-00869-CV

TOWN & COUNTRY SUITES, L.C., Appellant

V.

HARRIS COUNTY APPRAISAL DISTRICT, Appellee

On Appeal from the 215th District Court
Harris County, Texas
Trial Court Case No. 2012-55900

O P I N I O N

This is an appeal from a property valuation dispute between the Harris County Appraisal District and Town & Country Suites, L.C., the owner of the property being appraised for tax purposes. After the HCAD Appraisal Review Board issued a decision setting the market value of the property, the decision was

appealed to district court. HCAD responded by filing a plea to the jurisdiction, contending that the trial court lacked subject-matter jurisdiction because the actual property owner (Town & Country) was the only party permitted to appeal a Board decision and failed to do so within the 60-day statutory limitations period. The trial court granted the plea and dismissed the suit; Town & Country appeals.

In two issues, Town & Country contends that the trial court erred by granting the plea to the jurisdiction because (1) a newly enacted Tax Code provision effectively halts the existing HCAD practice of dismissing valuation appeals due to plaintiff misidentification, and alternatively, (2) the naming error in this case should be considered misnomer instead of misidentification.

Because the recent amendment to the Tax Code compels the conclusion that the trial court did not lack subject matter jurisdiction, we reverse and remand.

Background

John Sheehan, Robert Gowan, and Barden Patterson executed a special warranty deed on November 12, 1997, conveying property to Town & Country. When HCAD issued its annual notice of the property's appraisal value in 2012, a notice of protest was filed, not by Town & Country (the current owner of the property), but by "Gowan Sheenan & Patterson" (a grouping of the individual, prior owners' last names). The Harris County Appraisal Review Board responded

with an Order Determining Protest, addressed to "Gowan Sheenan & Patterson," notifying "[t]he above property owner" of the property's assigned valuation.

An appeal of that decision was filed in district court by "Sheenan Gowan and Patterson Gowan"—another variation of the prior owners' last names. The parties agree that "Sheenan Gowan and Patterson Gowan" was a misnomer for "Gowan Sheenan & Patterson" and has no legal effect. Thus, for the purposes of this appeal, the party that filed the protest also appealed the Board decision. But that party was not Town & Country. There is no dispute that the property was correctly identified.

HCAD answered the suit. Seven months later—and well after the 60-day statutory deadline imposed on property owners to appeal a Board decision—HCAD filed a plea to the jurisdiction and attached a copy of the 1997 warranty deed listing Town & Country as the property owner. *See* TEX. TAX CODE ANN. § 42.21(a) (West Supp. 2013) (establishing 60-day statutory limitations period for appealing Board decision). HCAD argued that the true property owner—Town & Country—had not filed an appeal within the 60-day limitations period and, therefore, the trial court lacked subject matter jurisdiction and was required to dismiss the suit. Town & Country responded that "Gowan Sheehan and Patterson" had been listed on the HCAD appraisal rolls as the property owner "for at least 15

years" and that it mistakenly filed suit under the Gowan name due to HCAD's record error.

Town & Country attempted to correct the error by filing an amended petition naming Town & Country as the property owner. HCAD filed a second plea to the jurisdiction, arguing that the true property owner, Town & Country, had not appealed within the time period allowed by statute and an amendment to identify a different entity as the property owner is not permitted. HCAD contended that, as a result of Town & Country's misidentification, the trial court never "acquire[d] subject-matter jurisdiction and the [Board]'s determination became final." HCAD again requested dismissal of the suit.

Town & Country responded by alerting the trial court to a recent amendment to Section 42.21 of the Tax Code, which Town & Country argued changed prior law and allowed the trial court to retain jurisdiction despite the naming error. TEX. TAX CODE ANN. § 42.21(h) (West Supp. 2013) (effective June 14, 2013). Alternatively, Town & Country argued that the error should be viewed as a misnomer, which can be corrected by amendment and does not require dismissal. TEX. TAX CODE ANN. § 42.21(e) (West Supp. 2013).

The trial court granted HCAD's plea to the jurisdiction. Town & Country timely appealed.

Standard of Review

A. Pleas to the jurisdiction and standing

A plea to the jurisdiction challenges the trial court's subject matter jurisdiction to hear a case. *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000); *Pineda v. City of Houston*, 175 S.W.3d 276, 279 (Tex. App.—Houston [1st Dist.] 2004, no pet.). Standing is a component of subject matter jurisdiction and is a constitutional prerequisite to maintaining a lawsuit under Texas law. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 443–45 (Tex. 1993). Subject matter jurisdiction is essential to the authority of a court to decide a case and is never presumed. *Id.* at 443–44.

The plaintiff has the burden to allege facts affirmatively demonstrating that the trial court has subject matter jurisdiction. *Id.* at 446; *Richardson v. First Nat'l Life Ins. Co.*, 419 S.W.2d 836, 839 (Tex. 1967). The existence of subject matter jurisdiction is a question of law. *State Dep't of Highways & Pub. Transp. v. Gonzalez*, 82 S.W.3d 322, 327 (Tex. 2002); *Mayhew v. Town of Sunnyvale*, 964 S.W.2d 922, 928 (Tex. 1998). Therefore, we review de novo the trial court's ruling on a plea to the jurisdiction. *Mayhew*, 964 S.W.2d at 928.

Section 42.01 provides that a "property owner is entitled to appeal . . . an order of the appraisal review board determining . . . a protest by the property owner . . . ." TEX. TAX CODE ANN. § 42.01(a)(1)(A) (West Supp. 2013). Therefore, to

have standing to seek judicial review of a decision of the Board, the appealing party must be the property owner. *KM–Timbercreek, L.L.C. v. Harris Cnty. Appraisal Dist.*, 312 S.W.3d 722, 726–27 (Tex. App.—Houston [1st Dist.] 2009, no pet.). Alternatively, a property owner may designate a lessee or an agent to act on the property owner's behalf. TEX. TAX CODE ANN. § 1.111(a) (West Supp. 2013) (authorizing designated lessee or agent to act for property owner). Finally, a lessee with a contractual obligation to reimburse an owner its assessed property taxes has statutory authority to challenge a valuation directly. *Id.* § 41.413(b), (d) (West 2008) (authorizing lessee to protest valuation to Board and appeal Board's decision). Section 42.21 was amended in 2013 and includes a provision that the trial court has jurisdiction over appeals "brought on behalf of a property owner . . . ." TEX. TAX CODE ANN. § 42.21(h).

Considering these provisions together, a party qualifies as a "party who appeals" a Board decision under Section 42.21(a) if the party is the owner of the property, a designated agent or lessee, a lessee authorized to appeal independently under Section 41.413, or one who qualifies as appealing "on behalf of a property owner" within the meaning of Section 42.21(h). *See* TEX. TAX CODE ANN. § 42.21(h); *Timbercreek*, 312 S.W.3d at 726–27. A party who does not meet any of the above criteria lacks standing under the Tax Code. *Timbercreek*, 312 S.W.3d at 726–27. If the litigant lacks standing, the trial court is deprived of subject-matter

jurisdiction to consider a suit for judicial review based on an ad valorem tax protest. *Id.* at 727, 729.

Town & Country argues that an amendment to the Tax Code after *Timbercreek* has changed the law on subject matter jurisdiction over misnamed property owners. We, therefore, consider the standard of review for statutory construction as well.

B. Statutory construction

We review issues of statutory construction de novo. *See Loaisiga v. Cerda*, 379 S.W.3d 248, 254–55 (Tex. 2012). The Texas Supreme Court has repeatedly held that when courts construe statutes, they should start with the text because it is the best indication of the Legislature's intent. *See Fresh Coat, Inc. v. K–2, Inc.*, 318 S.W.3d 893, 901 (Tex. 2010); *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 437 (Tex. 2009). "When the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'" *Connecticut Nat'l Bank v. Germain,* 503 U.S. 249, 254, 112 S. Ct. 1146, 1149 (1992) (quoting *Rubin v. United States,* 449 U.S. 424, 430, 101 S. Ct. 698, 701 (1981)). A court should interpret a statute by reference to its language alone when the court can do so. *Fresh Coat,* 318 S.W.3d at 901. Courts, however, are not confined to isolated statutory words or phrases; instead they review the entire act to determine legislative intent. *Meritor Auto., Inc. v. Ruan Leasing Co.*, 44 S.W.3d 86, 90 (Tex.

2001); *City of Houston v. Hildebrandt*, 265 S.W.3d 22, 25 (Tex. App.—Houston [1st Dist.] 2008, pet. denied).

Subject Matter Jurisdiction

Neither party disputes the identity of the property that is the subject of the HCAD valuation. Instead, the dispute is whether the correct entity pursued the appeal of the HCAD valuation and, if not, whether a procedural mechanism exists under the Tax Code to correct the misidentification and avoid dismissal for lack of subject matter jurisdiction. We begin our analysis with a review of the statutory scheme and accompanying case law in place before the Tax Code was amended in 2013.

A. Pre-2013 law on subject matter jurisdiction involving erroneously named property owner

Chapter 41 of the Tax Code permits property owners to protest the appraised value of their property to their local Board. *See* TEX. TAX CODE ANN. §§ 41.41–.47 (West 2008). Chapter 42 grants the right to seek judicial review of an adverse decision by the Board on a protest. *See* TEX. TAX CODE ANN. §§ 42.01–.031 (West 2008, West Supp. 2013). Rights under the Code are premised upon ownership of the property at issue. *See Timbercreek*, 312 S.W.3d at 726. With a few specifically enumerated exceptions, the property owner is the only entity with standing to appeal a Board decision to the district court. *Id.*; *Tourneau Houston, Inc. v. Harris*

Cnty. Appraisal Dist., 24 S.W.3d 907, 909 (Tex. App.—Houston [1st Dist.] 2000, no pet.).

Before the 2013 amendment to Section 42.21, both this Court and the Fourteenth Court of Appeals consistently held that misidentification of a property owner in an appeal of a Board decision required dismissal of the appeal for lack of subject matter jurisdiction if the statutory limitations period had expired and the true property owner was not yet a party to the appeal. *See, e.g.*, *Timbercreek*, 312 S.W.3d at 729; *GSL Welcome BP 32 L.L.C. v. Harris Cnty. Appraisal Dist.*, No. 01-10-00189-CV, 2010 WL 4484361, at *3 (Tex. App.—Houston [1st Dist.] Nov. 10, 2010, no pet.) (mem. op.) ("The Tax Code procedures for adjudicating a property-tax valuation protest are the exclusive remedies available to property owners. . . . If no proper party seeks judicial review of the board's decision . . . within the statutory time period, the trial court does not acquire subject-matter jurisdiction over the protest, and the [Board's] valuation becomes final when the statutory time period expires."); *Woodway Drive L.L.C. v. Harris Cnty. Appraisal Dist.*, 311 S.W.3d 649, 653 (Tex. App.—Houston [14th Dist.] 2010, no pet.) (same).

Wrongly named property owners could avoid dismissal only if they proved that the error was misnomer (instead of misidentification) or that Rule 28 of the Texas Rules of Civil Procedure applied and they were suing under an assumed

name. *See Reddy P'ship/5900 N. Fwy. L.P. v. Harris Cnty. Appraisal Dist.*, 370 S.W.3d 373, 376–77 (Tex. 2012). Misnomer occurs when the proper party is included in the suit but listed with an incorrect name; misidentification, on the other hand, occurs when it is the wrong individual or entity to be included in the litigation. *See id.* (holding that property owner was named incorrectly in appeal of Board decision due to misnomer and applying Section 42.21(e)(1) of the Tax Code to hold that property owner could amend petition without violating statutory limitation period); *Storguard Invs., L.L.C. v. Harris Cnty. Appraisal Dist.*, 369 S.W.3d 605, 618 (Tex. App.—Houston [1st Dist.] 2012, no pet.) (holding that property owner failed to present evidence that it did business under assumed name and, therefore, trial court properly granted HCAD plea to jurisdiction based on failure of true property owner to appeal within statutory time period).

B. Amendment to Section 42.21

Section 42.21 was amended in 2013 to add a new subsection (h):

> (h) *The court has jurisdiction over an appeal* under this chapter *brought on behalf of a property owner* or lessee . . . *regardless of whether the petition correctly identifies the plaintiff as the owner* or lessee of the property or correctly describes the property as long as [1] the property was the subject of an appraisal review board order, [2] the petition was filed within the period required by Subsection (a), and [3] the petition provides sufficient information to identify the property that is the subject of the petition. *Whether the plaintiff is the proper party to bring the petition . . . must be addressed by means of a special exception* and correction of the petition by amendment as authorized by Subsection (e) *and may not be the subject of a plea to the jurisdiction* . . . . If the petition is amended to add a plaintiff, the

> court on motion shall enter a docket control order to provide proper deadlines in response to the addition of the plaintiff.

TEX. TAX CODE ANN. § 42.21(h) (West 2014) (effective June 14, 2013).

HCAD contends that this section is meant to address misnomer, not misidentification, meaning that it only applies when the actual property owner has appealed but is listed under the wrong name. HCAD argues that any other reading would create constitutional standing issues and that there is no indication the Legislature "meant to overturn the many judicial opinions requiring a property owner to bring suit," such as *Timbercreek*, 312 S.W.3d 722.

Town & Country, on the other hand, argues that the legislative history supports their assertion that Section 42.21(h) was added to "end the procedural gamesmanship whereby appraisal districts obtained dismissals of tax lawsuits that had proceeded through the administrative process and were otherwise proper in all respects but contained the lone blemish of not properly identifying the name of the plaintiff." According to Town & Country, HCAD's interpretation would "strip 42.21(h) of all utility, essentially eviscerating any remedial promise held by the rule" because, under the prior version of the statute, misnomer already could be corrected while misidentification led to the "harsh" result of dismissal without the ability to obtain review of the Board's real property valuation decision. *See Reddy*, 370 S.W.3d at 376 (concluding that naming error was due to misnomer instead of misidentification; reversing dismissal of tax valuation appeal after noting that

Section 42.21(e) of Tax Code permits amendment to correct misnomer; and explaining, "A misidentification's consequences are generally harsh, but the same is not true for misnomers."); *Timbercreek*, 312 S.W.3d at 728–29.

The 2013 amendment to Section 42.21 has not been subject to judicial review. Whether the amendment has changed the law to grant subject matter jurisdiction over tax suits involving misidentification is a question of first impression. We construe the statute in accordance with established rules of statutory construction.

C. Statutory construction of amendment

The dispute in this case centers on the interpretation of the newly added Section 42.21(h) and the extent to which it altered the statutory framework that, in the past, has limited subject matter jurisdiction to cases in which the true property owner appealed within the limitations period. *See Timbercreek*, 312 S.W.3d 722.

We first consider the text of the statute and, if it is unambiguous, we honor its plain language unless that interpretation would lead to absurd results. *Combs v. Health Care Servs. Corp.*, 401 S.W.3d 623, 630 (Tex. 2013). In doing so, "[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage." TEX. GOV'T CODE ANN. § 311.011(a). And we avoid any construction that would "renders any part of the statute meaningless or

superfluous." *Columbia Med. Ctr. of Las Colinas, Inc. v. Hogue,* 271 S.W.3d 238, 256 (Tex. 2008).

The amended Section 42.21(h) discusses appeals "brought on behalf of a property owner . . . ." TEX. TAX CODE ANN. § 42.21(h). Two other subsections of Section 42.21, by comparison, refer to petitions "filed by an owner" TEX. TAX CODE ANN. §§ 42.21(f), (g). We presume that every word of a statute has been included or excluded for a reason. *City of San Antonio v. City of Boerne,* 111 S.W.3d 22, 29 (Tex. 2003) ("It is an elementary rule of construction that, when possible to do so, effect must be given to every sentence, clause, and word of a statute so that no part thereof be rendered superfluous or inoperative." (quoting *Spence v. Fenchler*, 180 S.W. 597, 601 (Tex. 1915))); *see also* TEX. GOV'T CODE ANN. § 311.021(2). Thus, the use of the phrase "brought on behalf of a property owner" signifies that the Legislature was contemplating jurisdiction over suits that were not brought by the property owner directly. This is contrary to HCAD's interpretation of the amendment, seeking to limit subject matter jurisdiction to cases in which the correct entity sued as the property owner.

Similarly, the newly enacted Subsection (h) states that the trial court has jurisdiction "regardless of whether the petition correctly identifies the plaintiff as the owner or lessee of the property." TEX. TAX CODE ANN. § 42.21(h). Again, the plain reading of the words does not comport with HCAD's interpretation. The

Legislature chose to include the term "identifies" instead of "names." We assume the Legislature purposefully selected one word over the other. *See Old Am. Cnty. Mut. Fire Ins. Co. v. Sanchez*, 149 S.W.3d 111, 115 (Tex. 2004) ("[W]e presume that every word of a statute has been included or excluded for a reason . . . ."). The term "names" is generally associated with misnomer, while "identifies" is linked with the concept of misidentification. *In re Greater Houston Orthopaedic Specialists, Inc.*, 295 S.W.3d 323, 325 (Tex. 2009) ("A misnomer occurs when a party misnames itself or another party, but the correct parties are involved."); *Hernandez v. ISE, Inc.*, No. 04-06-00888-CV, 2008 WL 80005, at *4 (Tex. App.—San Antonio Jan. 9, 2008, no pet.) (mem. op.) (discussing claim of misidentification in which trial court mistakenly "identifies" the defendant). We agree with Town & Country that the choice of the term "identifies" indicates that this provision is meant to deal with misidentification, not misnomer.

Next, we consider the second sentence of the new Section 42.21(h): "Whether the plaintiff is the proper party to bring the petition . . . must be addressed by means of a special exception and correction of the petition by amendment as authorized by Subsection (e) and may not be the subject of a plea to the jurisdiction . . . ." TEX. TAX CODE ANN. § 42.21(h). HCAD argues that this provision is meant to address misnomer because Subsection (e)—specifically referenced in Subsection (h)—has been held in the past to apply to misnomer but

not misidentification. *See Reddy*, 370 S.W.3d at 376–77; *Timbercreek*, 312 S.W.3d at 728–29.

While it is correct that Subsection (e) permits amendment to correct misnomer, HCAD's interpretation of Section 42.21(h) raises the question why the Legislature would have amended the statute to include Subsection (h) if it did nothing more than allow what was already permissible under Subsection (e)—amendment to correct misnomer.

We must construe a statute to give effect to all of the statute's provisions, leaving none of its parts without meaning or import. *See City of San Antonio*, 111 S.W.3d at 29; *Harris Cnty. Water Control & Improvement Dist. No. 99 v. Duke*, 59 S.W.3d 333, 336 (Tex. App.—Houston [1st Dist.] 2001, no pet.); *Hogue*, 271 S.W.3d at 256. Because Subsection (e) already permitted an amendment to correct misnomer, there would be no need to add a provision to Subsection (h) to permit the same course of action. To give meaning to this second sentence of Subsection (h), it must be read to contemplate a different type of amendment.

The better interpretation—which would give meaning to the entire sentence and take into account the existing HCAD practice of obtaining dismissal of appeals involving misidentification through pleas to the jurisdiction—is to read the statute to address misidentification and to establish a new statutory scheme in which

misidentification of a property owner should be addressed through a special exception instead of a plea to the jurisdiction.

Based on the text of the statute and the implications of the various interpretations of the statute given the existing statutory scheme for establishing and maintaining subject matter jurisdiction of tax appeals, we conclude that the trial court had subject matter jurisdiction despite the misidentification of Gowan Sheehan and Patterson as the property owner.

D. HCAD's argument that interpretation would lead to advisory opinions

HCAD's final argument is that the interpretation we have adopted could not be reasonable because it would result in an unconstitutional violation of established constitutional standing requirements. *See Combs*, 401 S.W.3d at 630 (stating that statute should not be interpreted using plain meaning of words if doing so would lead to absurd results). We, therefore, consider this constitutional challenge to our interpretation of the statute.

The Legislature dictates the scope of subject matter jurisdiction for trial courts to hear appeals of administrative tax decisions. TEX. TAX CODE ANN. § 42.01 (providing that property owner is entitled to appeal Board's order). In addition to granting subject matter jurisdiction, the Legislature has authority to revise its statutes to alter jurisdictional requirements. *See Univ. of Tex. Sw. Med. Ctr. at Dallas v. Estate of Arancibia ex rel. Vasquez-Arancibia*, 244 S.W.3d 455,

459 (Tex. App.—Dallas 2007), *aff'd*, 324 S.W.3d 544 (noting that Legislature amended Government Code to make statutory prerequisites to suit jurisdictional requirements, thereby altering the subject matter jurisdiction).

HCAD argues that interpreting the amendment to Section 42.21 to expand subject matter jurisdiction to include cases in which property owners have been misidentified would be "unreasonable" in that it would raise constitutional standing concerns. Specifically, HCAD argues that it would lead to advisory opinions being issued because misidentified property owners do not have standing to challenge tax valuations in the trial courts. Instead, only the actual property owner may appeal the tax valuation. *See* TEX. TAX CODE ANN. § 42.01. As the party challenging the constitutionality of the amended statute, as we have interpreted it, HCAD "bears the burden of demonstrating that the enactment fails to meet constitutional requirements." *Enron Corp. v. Spring Indep. Sch. Dist.*, 922 S.W.2d 931, 934 (Tex. 1996). HCAD's argument fails for two reasons.

First, HCAD ignores the statutory provision that provides a defendant aware of a misidentification with a procedure to rectify the error and allow the correct party to be brought into the suit. *See* TEX. TAX CODE ANN. § 42.21(h) (permitting HCAD to raise issue of misidentification through special exception and plaintiff to amend petition to name correct property owner). Use of this procedure would

allow the parties to correct the misidentification error, bring the proper parties before the trial court, and avoid the issuance of an advisory opinion.

Second, it is only if HCAD fails to raise the issue of misidentification that a final judgment could be entered in a suit brought by a person who, potentially, is not the actual property owner. But that same possibility existed before the 2013 amendment to the statute. There always is a possibility that a party will be misidentified and, if uncorrected, that a judgment will result that does not affect the true parties in interest. *Cf. Sanchez v. Braden*, No. 05-97-00811-CV, 1999 WL 378426, at *2 (Tex. App.—Dallas June 11, 1999, no pet.) (mem. op., not designated for publication) (refusing to modify trial court's order to grant appellant judgment on the merits when legal reality was that appellee's statute of limitations had expired while appellee was prosecuting suit against misidentified appellant; stating that judgment on merits in appellant's favor in that context would be "a purely advisory opinion").

Thus, the possibility that an uncorrected misidentification might result in an "advisory opinion" is not a valid basis for rejecting the clear wording of the amendment or refusing to give it effect. *See Combs*, 401 S.W.3d at 630 (requiring reviewing courts to honor plain language of statute unless that interpretation would lead to absurd results); *see also Enron Corp.*, 922 S.W.2d at 934 ("In determining

the constitutionality of a statute, we begin with a presumption that it is constitutional.").

Accordingly, we conclude that the newly enacted Subsection 42.21(h) grants a trial court subject matter jurisdiction over a suit appealing a Board decision as long as the suit meets the property identification and filing requirements contained in Section 42.21(h), even if the petition misidentifies the property owner and must be corrected through amendment. We, therefore, conclude that the trial court erred by finding that it lacked subject matter jurisdiction and by granting HCAD's plea to the jurisdiction. We sustain Town & Country's first issue. We, therefore, do not reach the second issue.

Conclusion

We reverse the trial court's order granting HCAD's second plea to the jurisdiction and remand for further proceedings between Town & Country and HCAD.

Harvey Brown
Justice

Panel consists of Chief Justice Radack and Justices Higley and Brown.