Opinion issued January 25, 2018

In The

Court of Appeals

For The

First District of Texas

NO. 01-17-00724-CV

METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY, TEXAS, Appellant

V.

RONALD WILLIAMS, Appellee

On Appeal from the 215th District Court
Harris County, Texas
Trial Court Case No. 2015-00325

MEMORANDUM OPINION

Ronald Williams filed suit against the Metropolitan Transit Authority of Harris County, Texas ("Metro"). Williams asserted a claim under the Texas Whistleblower Act. *See* TEX. GOV'T CODE ANN. §§ 554.002(a), .003(a) (West

2012). Metro filed a plea to the jurisdiction. After remand from this Court,[1] the trial court denied the plea. In four issues, Metro argues that the trial court erred by denying the plea.

We reverse and render.

Background

Williams started working for Metro in 2005. He worked as a track maintainer. At some point, William's supervisor left Metro, and Reginald Ratcliff was hired in his place. On July 18, 2014, Williams sent a letter to Metro's equal employment opportunity compliance officer complaining of a hostile work environment, which he claimed he had had to endure since Ratcliff became his supervisor. Near the end of the letter, Williams reported, "When Mr. Ratcliff first took his position he asked me to be a 'snitch' and his 'eyes and ears' on the track. I told him I was uncomfortable with that but that I would report any action to him that I was required to report." Williams asserted that the harassment began at this point.

On August 4, 2014, an incident occurred between Williams and another Metro employee, Fred Burton. Burton reported the incident to the Metro police the next day. According to Burton, he had been complaining that people who evacuated from New Orleans to Houston after Hurricane Katrina were a problem for Houston.

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[1] *See Williams v. Metro. Transit Auth.*, No. 01-15-00299-CV, 2016 WL 1128120, at *5 (Tex. App.—Houston [1st Dist.] Mar. 22, 2016, pet. denied) (mem. op.).

Williams, a Katrina evacuee, became upset by Burton's statement. Burton asserted that Williams began to curse at him, calling him a derogatory name for a black person, and threatening to fight him off Metro property.

Three other people were witnesses to the incident, including Ratcliff. All three corroborated that Williams became angry with Burton and threatened to fight him. Williams acknowledged becoming upset with Burton but asserted that he only suggested that the two of them discuss the matter further after work. Williams denied threatening Burton.

Ten days after the incident, Williams wrote a letter to Metro's senior manager for employee relations, addressing the allegations from August 4. In it, Williams asserted, "I sincerely feel that the complaint against me is in retaliation for me filing the complaint with [Metro's equal employment opportunity compliance officer]." Williams also acknowledged, "I know that Metro has zero tolerance for anything that threatens the safety of employees."

Charges were ultimately filed against Williams for the August 4 incident. Williams was charged with a class C misdemeanor of assault by threat. Three days later, Metro fired Williams, citing the August 4 incident as the basis for the termination.

After Williams was fired, another Metro employee reported to Metro that Ratcliff and Burton were stealing and selling Metro equipment. Metro police were

notified, and an investigation began. Williams was interviewed as part of the investigation on November 11, 2014. Charges were ultimately filed against Ratcliff and Burton.

Williams filed suit against Metro on January 6, 2015. In his live pleading, Williams asserted a claim of violation of the Texas Whistleblower Act. Williams claimed that he reported illegal activity at Metro and suffered an adverse personnel action as a result.

Metro filed a plea to the jurisdiction.[2] In it, Metro asserted that Williams had failed to provide it with the required notice and that Williams had failed to establish the prima facie elements for a whistleblower claim. Williams responded, attaching evidence he asserted would show that he provided the necessary notice and would establish the prima facie elements of his claim. The trial court denied the plea.

Proof of Reporting a Violation of Law

In its second issue, Metro argues the evidence establishes that Williams did not report any violation of law while he was a Metro employee.

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[2] An earlier plea to the jurisdiction was decided on Williams's pleadings alone. *See id.* at *2. We reversed to allow Williams to replead. *Id.* at *5. Metro filed a new plea to the jurisdiction upon remand, and Williams responded to that plea. All references to a plea to the jurisdiction in this opinion refer to the plea filed after remand.

A. Standard of Review

We review de novo a trial court's ruling on a jurisdictional plea. *See Ben Bolt-Palito Blanco Consol. Indep. Sch. Dist. v. Tex. Political Subdivisions Prop./Cas. Joint Self-Ins. Fund*, 212 S.W.3d 320, 323 (Tex. 2006); *City of Houston v. Vallejo*, 371 S.W.3d 499, 501 (Tex. App.—Houston [1st Dist.] 2012, pet. denied). "A plea to the jurisdiction is a dilatory plea that seeks dismissal of a case for lack of subject matter jurisdiction." *Harris County v. Sykes*, 136 S.W.3d 635, 638 (Tex. 2004). A plea to the jurisdiction may be utilized to challenge whether the plaintiff has met its burden of alleging jurisdictional facts or to challenge the existence of jurisdictional facts. *See Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226–27 (Tex. 2004).

Review of a plea challenging the existence of jurisdictional facts mirrors that of a traditional summary-judgment motion. *Mission Consol. Indep. Sch. Dist. v. Garcia*, 372 S.W.3d 629, 635 (Tex. 2012); *see also Miranda*, 133 S.W.3d at 228 ("[T]his standard generally mirrors that of a summary judgment under Texas Rule of Civil Procedure 166a(c). . . . By requiring the [political subdivision] to meet the summary judgment standard of proof . . . we protect the plaintiffs from having to put on their case simply to establish jurisdiction."); TEX. R. CIV. P. 166a(c). "[A] court deciding a plea to the jurisdiction . . . may consider evidence and must do so when necessary to resolve the jurisdictional issues raised." *Bland Indep. Sch. Dist. v. Blue*,

34 S.W.3d 547, 555 (Tex. 2000). A court may consider evidence as necessary to resolve a dispute over the jurisdictional facts even if the evidence "implicates both the subject-matter jurisdiction of the court and the merits of the case." *Miranda*, 133 S.W.3d at 226.

We take as true all evidence favorable to the nonmovant, and we indulge every reasonable inference and resolve any doubts in the nonmovant's favor. *Id*. at 228. If the defendant meets its burden to establish that the trial court lacks jurisdiction, the plaintiff is then required to show that there is a material fact question regarding the jurisdictional issue. *Id*. at 228. If the evidence raises a fact issue regarding jurisdiction, the plea cannot be granted and a fact finder must resolve the issue. *Id*. at 227–28. On the other hand, if the evidence is undisputed or fails to raise a fact issue, the plea must be determined as a matter of law. *Id*. at 228; *Garcia*, 372 S.W.3d at 635.

B. Analysis

The parties do not dispute that Metro is a governmental entity entitled to governmental immunity. *See Kosoco, Inc. v. Metro. Transit Auth. of Harris Cty*., No. 01-14-00515-CV, 2015 WL 4966880, at *6 (Tex. App.—Houston [1st Dist.] Aug. 20, 2015, no pet.) (mem. op.) (recognizing Metro as a governmental entity). Governmental entities are immune from suit unless immunity is waived by the legislature. *State v. Lueck*, 290 S.W.3d 876, 880 (Tex. 2009). The Whistleblower

Act imposes a limited waiver of immunity that allows consideration of the elements of a whistleblower claim to determine whether subject-matter jurisdiction exists. *Id.* at 882.

Under the Whistleblower Act, "A state or local governmental entity may not suspend or terminate the employment of, or take other adverse personnel action against, a public employee who in good faith reports a violation of law by the employing governmental entity or another public employee to an appropriate law enforcement authority." GOV'T § 554.002(a). Williams alleges in his petition that the final adverse personnel action he suffered for his claim was being fired. It follows, then, that Williams must have reported a violation of law before he was fired. Metro argues that the evidence establishes that Williams did not report a violation of the law while he was employed.

On appeal, Williams suggests a number of pieces of evidence establish that he reported a violation of the law before being fired. First, Williams argues his July 18 letter reported a violation of the law. Williams focuses on the part of the letter in which he reported that Ratcliff asked Williams to be a snitch and to be Ratcliff's eyes and ears on the tracks. Williams argues that this passage was meant to convey that Ratcliff asked Williams to be a look out while Ratcliff carried out criminal activities. The letter does not support this interpretation.

The passage to which Williams refers states, "When Mr. Ratcliff first took his position he asked me to be a 'snitch' and his 'eyes and ears' on the track. I told him I was uncomfortable with that but that I would report any action to him that I was required to report." "Snitch" means to report on someone else. *Snitch*, THE NEW OXFORD AM. DICTIONARY (2d ed. 2005) ("inform on someone"). Williams's attempt to change the meaning to protecting Ratcliff from being reported on is unsupported. In the context of the entire passage, Ratcliff asking Williams to be his eyes and ears on the track also conveys the idea that Williams would watch what other people were doing and report to Ratcliff. Nothing in this passage indicates that Ratcliff was engaged in any criminal activity and seeking Williams's help in the process.

Second, Williams relies on his August 14 letter. Nothing in this letter reported a violation of law. Williams asserted, "I sincerely feel that the complaint against me is in retaliation for me filing the complaint with [Metro's equal employment opportunity compliance officer]." This refers to the July 18 letter, which we have held does not report a violation of the law.

Third, Williams relies on what he refers to as his affidavit, which is attached to his response to the plea to the jurisdiction. This one-page document is not signed by Williams and is not notarized. As such, it has no legal effect, and constitutes no evidence. *See Carter v. Harris Cty. Appraisal Dist.*, 409 S.W.3d 26, 35 (Tex. App.—Houston [1st Dist.] 2013, no pet.) (holding unsigned affidavit fails to

establish oath was taken); *Hardy v. AAA Cooper Transp., Inc.*, No. 01-02-00872-CV, 2003 WL 22451367, at *3 n.1 (Tex. App.—Houston [1st Dist.] Sept. 11, 2003, no pet.) (holding defective affidavit does not constitute competent evidence).

Finally, Williams attached four pages of his deposition to his response to the plea to the jurisdiction. Williams asserts these pages establish that he reported criminal violations before he was fired. We disagree. In these four pages, Williams was asked about his statement to police regarding the August 4 incident. Nothing in these four pages of his deposition suggests that Williams reported any criminal activity to the police at this time.

In contrast to this evidence, Metro produced evidence that another employee reported the criminal acts of Ratcliff and Burton after Williams was fired. Metro's evidence established that an officer was assigned to investigate the allegations and that the first time the officer spoke to Williams was after he had been fired.

We hold that the evidence establishes Williams did not report any criminal activities before he was fired and that Williams failed to raise a fact issue on this point. We sustain Metro's second issue.[3]

[3] Because they are not necessary to the disposition of this appeal, we do not reach Metro's remaining issues.

Conclusion

We reverse the trial court's order denying Metro's plea to the jurisdiction and render a judgment dismissing with prejudice William's claim.

Laura Carter Higley
Justice

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