

Opinion issued August 18, 2022.



In The
Court of Appeals
For The
First District of Texas

NO. 01-21-00099-CV

**TINA M. CATO, INDIVIDUALLY AND ON BEHALF OF THE ESTATE
OF JAMES GREGORY FEATHERSTONE, Appellant**

V.

TEXAS DEPARTMENT OF CRIMINAL JUSTICE, Appellee

**On Appeal from the 149th District Court
Brazoria County, Texas
Trial Court Case No. 101928-CV**

MEMORANDUM OPINION

Tina Cato, individually and on behalf of the estate of James Gregory Featherstone (“Cato”), appeals the trial court’s order granting the Texas Department of Criminal Justice’s (“TDCJ”) plea to the jurisdiction in her suit

asserting a claim against TDCJ under Article I, Section 13 of the Texas Constitution. In one issue, Cato contends the trial court erred in dismissing her suit on jurisdictional grounds. We affirm.

Background

Cato sued TDCJ¹ after her son, James Gregory Featherstone (“Featherstone”), committed suicide while incarcerated at the Darrington Prison Unit in Rosharon, Texas. Cato alleged prison officials subjected Featherstone to cruel and unusual punishment in the conditions of his confinement in violation of Article I, Section 13 of the Texas Constitution.

In her petition, Cato alleged that Featherstone was the victim of an extortion scheme perpetrated by inmates at the Darrington Prison Unit. She alleged that multiple inmates at the prison targeted Featherstone and threatened to injure him or kill him unless he arranged for his family to transfer money into the inmates’ prison bank and trust accounts. Cato claimed that correctional officers assisted in these efforts. In hopes of buying protection for Featherstone, and at the inmates’ behest, Cato and other family members repeatedly transferred money directly into various inmates’ prison trust accounts and to civilians outside the prison. Cato

¹ Cato also named Senior Warden Michael Butcher, Assistant Warden James Danheim, and prison guards Bruce A. Johnson, Michael A. Okunoye, Beverly A. White, Tunde T. Akinson, Anita Y. Jordan, and Billie O. Connor as defendants. These defendants are not parties to this appeal.

alleged that Featherstone reported the threats and extortion to prison guards to no avail.

After months of repeated threats and extortion, Cato alleged Featherstone's mental health deteriorated leading to his eventual suicide inside his prison cell on November 14, 2015. According to Cato, prison guards knew of Featherstone's "altered mental state with suicidal ideations" but refused to take any protective or remedial steps to assist him. She claims that Featherstone should have been moved to protective custody, but he was not.

Cato sought monetary damages for Featherstone's physical pain, mental anguish, disfigurement, loss of love and companionship, physical impairment, medical expenses, funeral expenses, loss of inheritance, loss of earning capacity, and loss of services. She also sought monetary damages for her loss of companionship and support of her son. Separately, Cato sought a "permanent injunction requiring TDCJ to institute a policy to properly supervise and monitor the prisoner trust account system to ensure that prisoners are not facilitating extortion by having another prisoner's family members tender funds into an unrelated prisoner's trust account."

TCJC answered the lawsuit and filed a plea to the jurisdiction. In its plea, TDCJ argued the trial court lacked jurisdiction over Cato's claim because her claim was time-barred, the Texas Constitution does not provide a cause of action

for monetary relief, and Cato lacks standing to request injunctive relief on behalf of other incarcerated individuals. In her response to TDCJ's plea, Cato argued that her constitutional claim was not subject to statutory prerequisites, including limitations. She also argued that a plea to the jurisdiction is not the proper procedural vehicle to challenge the merits of her pleadings. And even if it were, Cato argued the Texas Constitution provides an injured party a cause of action, and she has legal standing to bring her constitutional claim under the public-interest and capable-of-repetition exceptions to the mootness doctrine.

Following a hearing, the trial court granted TDCJ's plea to the jurisdiction. This appeal followed.²

Standard of Review

Subject matter jurisdiction is essential to a court's power to decide a case. *City of Houston v. Rhule*, 417 S.W.3d 440, 442 (Tex. 2013); *City of DeSoto v. White*, 288 S.W.3d 389, 393 (Tex. 2009). To establish subject matter jurisdiction, a plaintiff must allege facts that affirmatively show the court has jurisdiction to hear the claim. *Town of Shady Shores v. Swanson*, 590 S.W.3d 544, 550 (Tex. 2019). A plaintiff also bears the burden of establishing a waiver of sovereign immunity in suits against a governmental entity. *Tex. Dep't of Transp. v. Jones*, 8 S.W.3d 636, 638 (Tex. 1999).

² See TEX. CIV. PRAC. & REM. CODE § 51.014(a)(8) (authorizing interlocutory appeal from trial court's order granting governmental unit's plea to jurisdiction).

When, as here, a plea to the jurisdiction challenges the pleadings, the court must determine whether the pleader has alleged facts that establish affirmatively the court's jurisdiction to hear the asserted claims. *Ryder Integrated Logistics, Inc. v. Fayette Cty.*, 453 S.W.3d 922, 927 (Tex. 2015). Whether a 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).

Discussion

Cato contends the trial court erred in dismissing her suit on jurisdictional grounds. In its plea to the jurisdiction, TDCJ argued, among other things, that the trial court lacked jurisdiction over Cato's claim because Cato filed her claim after expiration of the applicable statute of limitations. TDCJ argued that when the defendant is a governmental entity, the timely filing of a lawsuit is a jurisdictional prerequisite to suit. Cato responded that the trial court has jurisdiction over her lawsuit because she is asserting a constitutional claim that is not burdened by any statutory prerequisites. Because a plea to the jurisdiction challenges the trial court's subject matter jurisdiction, we first address whether compliance with the applicable statute of limitations is a jurisdictional requirement for Cato's suit against TDCJ.

A. Jurisdictional Prerequisite to Suit

The defense of limitations is classified generally as an affirmative defense that is not jurisdictional in nature. *In re United Servs. Auto. Ass'n*, 307 S.W.3d 299, 308 (Tex. 2010). Section 311.034 of the Government Code, however, provides that “[s]tatutory prerequisites to a suit, including the provision of notice, are jurisdictional requirements in all suits against a governmental entity.” TEX. GOV’T CODE § 311.034; *see also Prairie View A&M Univ. v. Chatha*, 381 S.W.3d 500, 510 (Tex. 2012) (citing TEX. GOV’T CODE § 311.034) (“The Legislature has mandated that all statutory prerequisites to suit are jurisdictional in suits against governmental entities”). This is true with respect to both administrative and procedural prerequisites to suit. Specifically, the Texas Supreme Court has clarified that “a statutory prerequisite to suit, whether administrative (such as filing a charge of discrimination) or procedural (such as timely filing a lawsuit) is jurisdictional when the defendant is a governmental entity.” *Chatha*, 381 S.W.3d at 515 (citing TEX. GOV’T CODE § 311.034).

In *Prairie View A&M v. Chatha*, 381 S.W.3d 500 (Tex. 2012), the Texas Supreme Court established a three-step test to determine whether a condition set by statute is a jurisdictional “prerequisite to suit.” *Id.* at 511. First, to fall within the purview of Section 311.034, the “prerequisite must be found in the relevant statutory language.” *Id.* at 512. “Second, the prerequisite must be a requirement.”

Id. “And finally, the term ‘pre’ indicates the requirement must be met before the lawsuit is filed.” *Id.* The term “statutory prerequisite” thus “refers to statutory provisions that are mandatory and must be accomplished before filing suit.” *Id.* Concluding that the timely filing of a lawsuit under the Texas Commission on Human Rights Act is a jurisdictional requirement when the defendant is a governmental entity, the Court held that the plaintiff’s failure to file her discriminatory pay claim within the Act’s 180-day limitations period was a jurisdictional bar to suit. *See id.* at 514.

Since *Chatha*, the Court and several courts of appeals have found various statutes of limitations to be jurisdictional requirements in suits against governmental entities. In *City of Madisonville v. Sims*, 620 S.W.3d 375 (Tex. 2020), for example, the Court held that the 90-day filing deadline under the Texas Whistleblower Act is a jurisdictional statutory prerequisite to suit. *See id.* at 379. And in *AC Interests, L.P. v. Texas Commission on Environmental Quality*, 543 S.W.3d 703 (Tex. 2018), the Court concluded that a statute requiring the filing of a petition within 30 days of an adverse ruling by the Texas Commission on Environmental Quality is jurisdictional in nature. *See id.* at 709; *see also Matthews v. Colorado Cty.*, No. 01-16-00092-CV, 2016 WL 4033391, at *6 (Tex. App.—Houston [1st Dist.] July 26, 2016, pet. denied) (mem. op.) (concluding that timely filing under section 258.004 of Transportation Code is statutory prerequisite to suit

and, thus, jurisdictional); *Stoker v. TWC Comm'rs*, 402 S.W.3d 926, 929 (Tex. App.—Dallas 2013, no pet.) (holding 14-day filing deadline to file suit seeking judicial review of Texas Employment Commission decision is jurisdictional in nature); *San Jacinto River Auth. v. Paxton*, No. 03-18-00547-CV, 2019 WL 3952829, at *3 (Tex. App.—Austin Aug. 22, 2019, no pet.) (mem. op.) (holding requirement under Public Information Act that party file suit seeking declaratory relief within 30 days of receiving attorney general decision is jurisdictional).

Nonetheless, Cato argues Section 311.034 is inapplicable to her claim. She argues that *Chatha* held only that a party's failure to comply with a statutory prerequisite applicable to a *statutory* claim against a governmental entity is a jurisdictional defect. She argues that because she has brought a constitutional rather than statutory claim against TDCJ, Section 311.034 is irrelevant. By arguing her claim is “unburdened” by any statutory requirements, Cato contends in effect that her claim is not subject to any statute of limitations and may be filed at any time.

In *Tucker v. City of Corpus Christi*, 622 S.W.3d 404 (Tex. App.—Corpus Christi—Edinburg 2020, pet. denied), the Corpus Christi Court of Appeals considered as a matter of first impression whether compliance with the applicable limitations period for a state constitutional takings claim is a jurisdictional requirement for suits against a governmental entity. *See id.* at 406. After

concluding that the plaintiffs’ constitutional takings claim was governed by the statutory two-year statute of limitations under Section 16.003(a) of the Civil Practice and Remedies Code,³ the court held that the limitations period “is a statutory requirement that must be met before suit is filed” and thus “complying with § 16.003 is a jurisdictional requirement for claims brought against a governmental entity.” *Id.* at 407. Like the court in *Tucker*, we similarly hold that compliance with the applicable statute of limitations for Cato’s constitutional claim against TDCJ is a jurisdictional prerequisite to suit.

B. Limitations

Cato brought her claim against TDCJ under Article I, Section 13 of the Texas Constitution. That section provides:

§ 13. Excessive bail or fines; cruel and unusual punishment; remedy by due course of law

Excessive bail shall not be required, or excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.

TEX. CONST. Art. I, Sec. 13.

³ Section 16.003(a) provides: “[A] person must bring suit for trespass for injury to the estate or to the property of another, conversion of personal property, taking or detaining the personal property of another, personal injury, forcible entry and detainer, and forcible detainer not later than two years after the day the cause of action accrues.” TEX. CIV. PRAC. & REM. CODE § 16.003(a).

In general, Texas courts have found that state and federal constitutional claims premised on tort-related injuries are governed by the two-year statute of limitations under Section 16.003(a) of the Texas Civil and Practice Remedies Code. *See* TEX. CIV. PRAC. & REM. CODE § 16.003(a); *Sorrow v. Harris Cnty. Sheriff*, 622 S.W.3d 496, 501–02 (Tex. App.—Houston [14th Dist.] 2021, pet. denied) (concluding two-year statute of limitations applied to inmate’s Section 1983 claim); *Nickerson v. Tex. Dep’t of Crim. Justice-Institutional Div.*, No. 09-10-00091-CV, 2011 WL 2732605, at *1 (Tex. App.—Beaumont July 14, 2011, no pet.) (mem. op.) (concluding inmate’s state and federal constitutional claims were subject to two-year tort statute of limitations). Section 16.003(b) of the Texas Civil Practice and Remedies Code provides a two-year statute of limitations for claims stemming from injuries resulting in death. It provides that:

(b) A person must bring suit not later than two years after the day the cause of action accrues in an action for injury resulting in death. The cause of action accrues on the death of the injured person.

TEX. CIV. PRAC. & REM. CODE § 16.003(b).

Cato’s constitutional claim complains of injuries and alleged damages resulting from Featherstone’s death. She alleges that the “unchecked extortion, which went unpunished, and which did not lead to protective custody for Mr. Featherstone, led to his suicide” resulting in “damages to Mr. Featherstone, and by

extension, his heirs and estate, and mother.” Cato’s claim is thus governed by Section 16.003(b).

A statute of limitations begins to run when a claim accrues. “Generally, in the context of a tort,” the accrual date is “when a wrongful act causes an injury.” *Sorrow*, 622 S.W.3d at 502 (quoting *Sw. Energy Prod. Co. v. Berry-Helfand*, 491 S.W.3d 699, 721 (Tex. 2016)). Cato alleges in her petition that Featherstone died on November 21, 2015. Cato’s claim against TDCJ thus accrued on November 21, 2015, the date of Featherstone’s death, and her lawsuit had to be file “not later than two years after the day the cause of action accrue[d].” TEX. CIV. PRAC. & REM. CODE § 16.003(b); *see also Sorrow*, 622 S.W.3d at 502. Cato, however, did not file suit until March 26, 2019—more than one year and four months after the statute of limitations expired. *See* TEX. CIV. PRAC. & REM. CODE § 16.003(b).

Cato’s pleadings thus establish affirmatively that she failed to comply with a statutory prerequisite to suit, thereby negating jurisdiction. The trial court did not err in granting TDCJ’s plea to the jurisdiction. We overrule Cato’s sole issue.⁴

Conclusion

We affirm the trial court’s order granting TDCJ’s plea to the jurisdiction and dismissing Cato’s claim for lack of subject matter jurisdiction.

⁴ Because we conclude the trial court lacked jurisdiction over Cato’s claim based on limitations, we do not reach her argument that she has standing to bring her claims against TDCJ.

Veronica Rivas-Molloy
Justice

Panel consists of Justices Landau, Hightower, and Rivas-Molloy.