

Affirmed and Memorandum Opinion filed March 25, 2010.



In The

Fourteenth Court of Appeals

NO. 14-09-00650-CV

ROBERT W. LAMBERTZ, Appellant

V.

JIM ROBINSON AND OLIVER ESCH, Appellees

**On Appeal from the 333rd District Court
Harris County, Texas
Trial Court Cause No. 2008-67424A**

MEMORANDUM OPINION

Robert Lambertz appeals from an order granting appellees' plea to the jurisdiction. Appellant appealed the decision of the Harris County Appraisal Review Board concerning the appraised value of an apartment complex he owns. In his original petition, appellant complained that he was not permitted to present evidence at the hearing and he suffered mistreatment by the Board. Appellant alleged a claim against appellees under 42 U.S.C. § 1983 asserting the Board's mistreatment and failure to permit him the opportunity to present evidence was a denial of due process. Appellant alleged appellees denied his due

process rights by failing to properly train and supervise members of the Appraisal Review Board.

Appellees filed a plea to the jurisdiction seeking dismissal of appellant's federal and state law damage claims. At the hearing on appellees' plea, appellant filed an amended original petition. At the conclusion of the hearing, the trial court directed appellees to file an amended plea to the jurisdiction in response to appellant's amended petition. In their amended plea, appellees argued, among other things, that even if appellant stated a cause of action for violation of his due process rights arising out of a failure to train and supervise, the provisions of the Tax Code that provide for an appeal of the Board's decision satisfy appellant's due process rights. The trial court granted appellees' plea and severed this cause of action from the appeal of the appraisal award. In twelve issues, appellant argues the trial court erred in granting appellees' plea and dismissing his causes of action under 42 U.S.C. § 1983.

A plea to the jurisdiction contests the trial court's authority to determine the subject matter of the cause of action. *Harris County v. Cypress Forest Public Utility Dist. of Harris County*, 50 S.W.3d 551, 552 (Tex. App.—Houston [14th Dist.] 2001, no pet.). Whether the trial court has subject matter jurisdiction is a question of law that we review de novo. *C.L. Westbrook, Jr. v. Penley*, 231 S.W.3d 389, 394 (Tex. 2007). The plaintiff has the burden to plead facts affirmatively demonstrating the trial court has jurisdiction. See *State v. Holland*, 221 S.W.3d 639, 642–43 (Tex. 2007). A plea to the jurisdiction is a dilatory plea intended to defeat a cause of action without regard to the merits of the asserted claims. *Bland Indep. School Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000).

The district courts are courts of general jurisdiction and have jurisdiction over all actions, proceedings and remedies except in cases where exclusive, appellate, or original jurisdiction may be conferred by the Texas Constitution or other law on some other court, tribunal, or administrative body. Tex. Const. Art. V, § 8. An agency has exclusive

jurisdiction when a pervasive regulatory scheme indicates that the Legislature intended for the regulatory process to be the exclusive means of remedying the problem to which the regulation is addressed. *In re Entergy Corp.*, 142 S.W.3d 316, 322 (Tex. 2004). In the Tax Code, the Legislature bestowed exclusive original jurisdiction in ad valorem tax cases on the appraisal review boards and granted the district courts appellate jurisdiction over appraisal review board orders. *See* Tex. Tax Code Ann. §§ 41.45, 42.21 (Vernon 2001); *see also Cameron Appraisal Dist. v. Rourk*, 194 S.W.3d 501, 502 (Tex. 2006) (holding appraisal review boards have exclusive original jurisdiction over property tax protests).

Here, appellant filed an appeal in the district court of the Board's decision on the appraisal of his property pursuant to chapter 42 of the Tax Code. Although due process includes reasonable notice and the right to be heard, there is no violation of due process if provision is made for a trial de novo in the district court on the issues passed upon by the Board. *See Keggereis v. Dallas Central Appraisal Dist.*, 749 S.W.2d 516, 518 (Tex. App.—Dallas 1988, no writ). When the Legislature enacted the pertinent provisions of Tax Code, it devised a specific regulatory scheme where a property owner may informally present evidence to an appraisal review board to protest the district's valuation of real property. *See* Tex. Tax Code Ann. § 41.45. Further, in Chapter 42, the Legislature provided a specific appellate process for review of board orders. *See* Tex. Tax Code Ann. §§ 42.21, 42.23, 42.28. Due process affords a right to be heard before final assessment; it does not detail the review mechanism. *Keggereis*, 749 S.W.2d at 518. The Tax Code meets the requirement of due process because appellant has a right to a de novo review in the district court. *See Appraisal Review Bd. of Harris County Appraisal Dist. v. Spencer Square Ltd.*, 252 S.W.3d 842, 844 (Tex. App.—Houston [14th Dist.] 2008, no pet.) (holding that district court does not have jurisdiction to order an appraisal review board to conduct a new hearing because statute permits de novo review in district court).

It is undisputed that appellant is entitled to de novo review of the Board's determination in the district court. Appellant filed that action, and is entitled to present

evidence at a trial de novo in the underlying action. Because the Tax Code meets the requirement of due process, we conclude the trial court correctly granted appellees' plea to the jurisdiction. Appellant's twelve issues are overruled.¹

The judgment of the trial court is affirmed.

PER CURIAM

Panel consists of Justices Yates, Seymore, and Brown.

¹ On March 10, 2010, appellant filed a "Motion/Brief asking the 14th Court Justices to Cease and Desist Their Ongoing Denial of Due Process of Law to Appellant." Inasmuch as appellant's motion urges the same arguments urged in his appeal, the motion/brief is taken with the case and denied pursuant to this opinion.