

Reversed and Rendered and Memorandum Opinion filed September 21, 2021.



In The

Fourteenth Court of Appeals

NO. 14-18-00174-CV

THE SAN JACINTO RIVER AUTHORITY, Appellant

V.

RODRICK DENNIS, CHARLES MADDEN, VINCENT MCCONNELL, ZENOBIA WASHINGTON, MARY JANE CASANOVA, RANDY BRAUD, RALPH IMPERATO, CHRISTIAN BUDDE, PATRICIA NICHOLS, MARK CLEMENCE, RANDY ZIEBARTH, BRIAN JOHNSON, BRIAN COLONA, MARK MABILE, BOB HARRELL, JEFF BAILEY, LORRAINE BOREAS, JACQUELINE CHANDLER, LAWRENCE CSENGERY, BENJAMIN FLORES, ROBERT GARWOOD, HUMARA GULL, LEAANN HOFFMAN, JENNIFER MEJIA, RAFIA QADRI, JACK SCHOLLARD, JASON TAYLOR, STEVE CONLEY, COREY COX, WILLIAM MORGAN, IMELDA NAVES, LORI ROBERTSON, THOMAS STEGNER, CAROLYN SUELL, BEN WILLIS, TSONG-DAR LIN, MICHAEL AHEARNE, JILL ANDERSON, WILLIAM BACHMAN, JAMES BELTIS, DAVID BURNLEY, RHUBEN COFFEY, MICHAEL FONTENOT, DON GARRETT, ANDREW GOLDSMITH, KATHLEEN HASSEL, MICHAEL HIGGINS, SCOTT HOMANN, VICKI LOTT, WILLIAM MCMAHON, JR., KEVIN MILLS, SANTIAGO PACHECO, KENNETH PARR, DIANA RUTHERFORD, PAUL SCHIKAL, KELVIN SHAW, PATRICK SMITH, MICHAEL STARK, BEN TRAMMELL, JR., PAUL YALE, MICHAEL ZELLER, RHANI BABENDURE, RAINER BAUER, ELAINE BEASON, JULIE BERNELL,

**CHARLES CASEY, STUART CASTLEBERRY, SCOTT DUBOIS,
ANTHONY EDEN, BOBBY EVERSOLE, DANIEL FOISIE, MARY
GILBERT, GARY GORSKI, ERNEST HAUSER, DALE JOLY, DICKEY
LANEY, SCOTT LEBBIN, JOHN LINDBERG, NEAL LUX, MARY
MARBACH, DAVID MERKLEY, SARAH MOWERY, JANETTA PENN,
STEPHEN RIPP, THOMAS SNYDER, BRETT THOMAS, TRUMAN
WOODWARD, JEREMY ADORNA, JULIE ANTRICH, CARL BARTZ,
GREG BATTERTON, CHRISTINE BEYER, ROBERT BLEWETT, JAMES
BOLTINGHOUSE, TERI BUTLER, DAN BYERS, AND JAMES BYRD,
Appellees**

**On Appeal from the 125th District Court
Harris County, Texas
Trial Court Cause No. 2017-74341**

MEMORANDUM OPINION

This case is one of a series of lawsuits brought in Harris County district courts against the San Jacinto River Authority (SJRA) by various homeowners whose properties allegedly flooded when water was released from the Lake Conroe Dam in the aftermath of Hurricane Harvey. In the present lawsuit, the homeowners asserted only inverse condemnation claims under the Texas Constitution. Because, as we have previously held, Harris County civil courts at law have exclusive jurisdiction over such claims filed in Harris County, we reverse the trial court's order denying SJRA's motion to dismiss and render judgment dismissing the homeowners' claims for lack of subject matter jurisdiction.

Discussion

As indicated, the homeowners' petition raised claims only under Article I, section 17 of the Texas Constitution. Tex. Const. art. I, § 17. SJRA filed a motion to dismiss under Texas Rule of Civil Procedure 91a contending the homeowners' claims have no basis in law or fact and SJRA's immunity from suit as a

governmental entity is not waived under the circumstances. The trial court denied SJRA's motion, and SJRA brought this interlocutory appeal.

In a supplemental brief on appeal, SJRA argued for the first time that Texas Government Code section 25.1032(c) imbues the Harris County civil courts at law with exclusive jurisdiction over all inverse condemnation claims filed in Harris County; thus, the district court lacked subject matter jurisdiction over the homeowners' claims. Tex. Gov't Code § 25.1032(c). Subject matter jurisdiction is essential to the authority of a court to decide a case; it therefore cannot be waived and can be raised for the first time on appeal, even sua sponte. *See Clint I.S.D. v. Marquez*, 487 S.W.3d 538, 558 (Tex. 2016); *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 446 (Tex. 1993). The existence of subject matter jurisdiction is a question of law that we review de novo. *See Wheelabrator Air Pollution Control, Inc. v. City of San Antonio*, 489 S.W.3d 448, 451 (Tex. 2016).

Section 25.1032(c) states in full:

A county civil court at law has exclusive jurisdiction in Harris County of eminent domain proceedings, both statutory and inverse, if the amount in controversy in a statutory proceeding does not exceed the amount provided by Section 25.0003(c) in civil cases. Notwithstanding Section 21.013, Property Code, a party initiating a condemnation proceeding in Harris County may file a petition with the district clerk when the amount in controversy exceeds the amount provided by Section 25.0003(c). The amount in controversy is the amount of the bona fide offer made by the entity with eminent domain authority to acquire the property from the property owner voluntarily.

Tex. Gov't Code §25.1032(c).

In a case involving the very same release of water from the Lake Conroe Dam as is at the heart of the present case, we interpreted section 25.1032(c) as providing the Harris County civil courts at law with exclusive jurisdiction over all inverse condemnation claims filed in Harris County. *San Jacinto River Auth. v.*

Ogletree, 594 S.W.3d 833, 838–40 (Tex. App.—Houston [14th Dist.] 2020, no pet.) (citing *San Jacinto River Auth. v. Burney*, 570 S.W.3d 820, 825-29 (Tex. App.—Houston [1st Dist.] 2018, pet. filed), and *Doan v. TransCanada Keystone Pipeline, LP*, 542 S.W.3d 794, 797, 799-801, 806 (Tex. App.—Houston [14th Dist.] 2018, no pet.)); *see also San Jacinto River Auth. v. Ray*, No. 14-19-00095-CV, 2021 WL 2154081, at *2–3 (Tex. App.—Houston [14th Dist.] May 27, 2021, no pet.) (following *Ogletree*). As we explained in *Ogletree*,

[a]lthough the homeowners suggest that section 25.1032(c) provides exclusive jurisdiction in eminent domain proceedings only when a bona fide offer by the contemnor does not exceed \$200,000, the provision cannot plausibly be read to support that contention. The \$200,000 cap expressly applies only to statutory condemnation proceedings and not inverse condemnation proceedings. *See Burney*, 570 S.W.3d at 828 (rejecting identical argument). As the homeowners' eminent domain claims in the present lawsuit are undisputedly inverse condemnation claims, the Harris County civil courts at law have exclusive jurisdiction, and consequently, the district court lacked subject matter jurisdiction over these claims.

594 S.W.3d at 839-40. That analysis applies equally here. Accordingly, the district court lacked subject matter jurisdiction over the homeowners' constitutional inverse condemnation claims.

When pleadings are insufficient to establish jurisdiction but do not affirmatively establish an incurable defect, the plaintiff generally should be afforded an opportunity to replead. *State v. Holland*, 221 S.W.3d 639, 643 (Tex. 2007); *Tex. Parks & Wildlife Dep't v. Miranda*, 133 S.W.3d 217, 226-27 (Tex. 2004). However, if the pleadings affirmatively negate the trial court's jurisdiction, the case may be dismissed without allowing the plaintiff an opportunity to amend. *Miranda*, 133 S.W.3d at 227.

Here, the homeowners' live pleading affirmatively negates the district

court's jurisdiction because the district court lacks subject matter jurisdiction over all pleaded claims; accordingly, the homeowners are not entitled to a remand to plead new claims over which the district court may possess subject matter jurisdiction. *See Clint I.S.D.*, 487 S.W.3d at 559; *Ogletree*, 594 S.W.3d at 842-43. The proper remedy therefore is to reverse the order denying SJRA's motion to dismiss and render judgment dismissing the homeowners' claims for lack of subject matter jurisdiction. *See Ogletree*, 594 S.W.3d at 842-43. Our disposition, however, is without prejudice to the homeowners' rights, if any, to file or refile claims in the proper court, and we express no opinion as to the availability or viability of any future claims. *See id.* at 843.

We reverse the trial court's order denying SJRA's motion to dismiss and render judgment dismissing the homeowners' claims for lack of subject matter jurisdiction.

/s/ Frances Bourliot
Justice

Panel consists of Justices Jewell and Bourliot and Senior Justice Jamison.¹

¹ Senior Justice Martha Hill Jamison sitting by assignment.