

**Mandamus Dismissed; Reversed and Rendered and Opinion filed June 30, 2022.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-21-00157-CV**

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**STATE OF TEXAS BY AND THROUGH THE TEXAS  
TRANSPORTATION COMMISSION, Appellant**

**V.**

**AHMAD SULEIMAN, INDIVIDUALLY, AND COLUMBIA STOP, LLC,  
Appellees**

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**On Appeal from the 239th District Court  
Brazoria County, Texas  
Trial Court Cause No. 107226-CV**

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**NO. 14-21-00238-CV**

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**IN RE STATE OF TEXAS BY AND THROUGH THE TEXAS  
TRANSPORTATION COMMISSION, Relator**

**ORIGINAL PROCEEDING**

**WRIT OF MANDAMUS  
239th District Court  
Brazoria County, Texas  
Trial Court Cause No. 107226-CV**

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**O P I N I O N**

In this consolidated interlocutory appeal and mandamus proceeding arising out of an eminent domain dispute, the dispositive question is whether the district court has jurisdiction to enjoin the State from pursuing condemnation proceedings in an earlier-filed county-court-at-law action. The present circumstances demonstrate that the county court at law acquired exclusive jurisdiction over all questions pertaining to the condemnation, including the State’s authority to condemn the property at issue. Therefore, we conclude that the district court lacks jurisdiction over appellees’ subsequent suit to enjoin the condemnation action. Accordingly, we render judgment dismissing appellees’ suit and dismiss the consolidated mandamus proceeding as moot.

**Background**

**A. The condemnation of Ahmad Suleiman’s property**

In 2005, the Texas Department of Transportation (“TxDOT”) sought to expand State Highway 35, which required widening the intersection of Highways 35 and 36 in Brazoria County. Appellee Ahmad Suleiman owned residential property near that intersection. A dispute arose as to whether a fence on Suleiman’s property lay within TxDOT’s right-of-way. After TxDOT removed the fence, Suleiman sued TxDOT for inverse condemnation, and TxDOT sued Suleiman for condemnation of Suleiman’s property known as Parcel 908. The suits were consolidated.

During that condemnation proceeding, Suleiman and TxDOT executed a Memorandum of Settlement (the “Settlement”), pursuant to which: (1) TxDOT would pay Suleiman \$80,000, to be credited against any subsequent judgment for damages; (2) construction could continue during the litigation; and (3) the entrances and exits to Suleiman’s property would not be affected by the construction or roadway improvements.

A jury awarded Suleiman \$125,810.75 as compensation for the taking of Parcel 908. The trial court rendered judgment on the jury’s verdict and awarded TxDOT title to Parcel 908. Suleiman appealed, and the First Court of Appeals affirmed the judgment. *See generally Suleiman v. TxDOT*, No. 01-09-00099-CV, 2010 WL 2431076, at \*10 (Tex. App.—Houston [1st Dist.] June 17, 2010, no pet.) (mem. op.).

**B. The condemnation of Columbia Stop’s property**

Several years later, the State determined it was necessary to condemn an additional parcel, Parcel 400, near the intersection of Highways 35 and 36. Appellee and real-party-in-interest Columbia Stop, LLC<sup>1</sup> owned Parcel 400 and operated a gas station and convenience store on the property. The State filed a petition for condemnation in County Court at Law No. 4 and Probate Court of Brazoria County (the “Condemnation Proceeding”). Suleiman is Columbia Stop’s registered agent for service.

Columbia Stop filed a counterclaim asking the county court at law to enjoin the State from taking Parcel 400. According to Columbia Stop, the taking would violate the Settlement because it would affect entrances and exits to Columbia Stop’s property. Columbia Stop later dismissed its counterclaim.

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<sup>1</sup> The record suggests that Suleiman created Columbia Stop, LLC.

The special commissioners appointed by the county court at law awarded Columbia Stop \$80,257.<sup>2</sup> The State deposited that amount with the court, thus entitling the State to take possession.<sup>3</sup> Columbia Stop filed objections to the commissioners' award in the county court.<sup>4</sup> Among other things, Columbia Stop argued that the Settlement prohibited the State's attempt to condemn the property. We are unaware of the Condemnation Proceeding's current status, but we are told that it remains pending in the county court at law.

### **C. Suleiman's and Columbia Stop's district court injunction suit**

After Columbia Stop filed its objections to the commissioners' award in the Condemnation Proceeding, appellees Suleiman and Columbia Stop sued the State in Brazoria County district court, seeking (1) a declaration that the Settlement precludes the State from condemning Columbia Stop's property and (2) an injunction prohibiting the State from taking Columbia Stop's property (the "District Court Proceeding").

The State filed a motion to dismiss for want of jurisdiction or, in the alternative, to abate the District Court Proceeding. The State argued that the

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<sup>2</sup> The procedure for condemning public property is prescribed in sections 21.012 through 21.016 of the Property Code. *See* Tex. Prop. Code § 21.011. If the entity with eminent domain authority cannot agree with the property owner regarding the amount of damages, it must file a petition in the proper court with a description that contains the following: (1) the property to be condemned; (2) the public purpose for which the entity intends to use the property; (3) the name of the property owner; (4) a statement that the entity and the property owner are unable to agree on the damages; (5) if applicable, a statement that the owner was provided the landowner's bill of rights; and (6) a statement that the entity made a bona fide offer. *Id.* § 21.012(a)-(b). The judge of the court must then appoint three disinterested real property owners who reside in the county as special commissioners to assess the damages of the property owner. *Id.* § 21.014(a). The special commissioners must conduct a hearing to assess damages. *Id.* § 21.015(a).

<sup>3</sup> *See* Tex. Prop. Code § 21.021 ("Possession Pending Litigation").

<sup>4</sup> "A party to a condemnation proceeding may object to the findings of the special commissioners by filing a written statement of the objections and their grounds with the court that has jurisdiction of the proceeding." Tex. Prop. Code § 21.018(a).

district court lacked jurisdiction to enjoin the Condemnation Proceeding. The State further argued that sovereign immunity barred appellees' claims or, alternatively, that the court should abate the District Court Proceeding pending resolution of the Condemnation Proceeding.

The district court denied the State's motion to dismiss. The State appealed the denial, which we assigned cause number 14-21-00157-CV. *See* Tex. Civ. Prac. & Rem. Code § 51.014(a)(8). The district court also denied the State's motion to abate, which the State challenged by petition for writ of mandamus. We assigned cause number 14-21-00238-CV to the original proceeding. On August 2, 2021, we consolidated the two appellate proceedings.

### **Issues Presented**

In the first two issues of its interlocutory appeal, the State argues that the trial court erred in denying its motion to dismiss because Suleiman lacks standing and, assuming otherwise, the trial court lacks jurisdiction to enjoin the Condemnation Proceeding. If its jurisdictional arguments prove unmeritorious, the State argues alternatively in its third issue that sovereign immunity bars appellees' claims. In the mandamus proceeding, the State contends the trial court abused its discretion in refusing to abate the District Court Proceeding.

We agree with the State's second issue in its interlocutory appeal. Because resolution of that issue is dispositive of the consolidated appeal, we so confine our opinion to that question and dismiss the petition for writ of mandamus as moot. *See* Tex. R. App. P. 47.1.

### **Jurisdiction of the County Court at Law**

Generally, Texas district courts and county courts at law have concurrent jurisdiction in eminent domain cases. *See* Tex. Prop. Code § 21.001 ("District

courts and county courts at law have concurrent jurisdiction in eminent domain cases.”).<sup>5</sup> Government Code section 25.0222 provides that a statutory county court in Brazoria County, which includes County Court at Law No. 4 and Probate Court, “shall be primarily responsible for and give preference to . . . eminent domain proceedings and cases.” Tex. Gov’t Code § 25.0222(c)(2).<sup>6</sup> A county court at law’s jurisdiction includes the right to try and decide all questions which may fairly arise out of, or in connection with, a condemnation suit, other than questions of title. *See In re Breviloba, LLC*, No. 21-0541, ---S.W.3d---, 2022 WL 2282598, at \*1, 3 (Tex. June 24, 2022) (orig. proceeding, per curiam) (citing, *inter alia*, *In re Burlington N. & Santa Fe Ry. Co.*, 12 S.W.3d 891, 898 (Tex. App.—Houston [14th Dist.] 2000, orig. proceeding); *see also City of Garland v. Mayhew*, 528 S.W.2d 305, 307 (Tex. App.—Tyler 1975, writ ref’d n.r.e.) (holding that “[t]he county court at law is a court of general jurisdiction in eminent domain matters, and this jurisdiction by necessary implication includes the right to try and decide *all questions* which may arise in such controversies, including the right to determine whether the existing facts authorize the exercise of the power thus conferred”) (emphasis added)).

An eminent domain proceeding initiated by a condemning authority under Property Code section 21.012(a) generally is considered administrative. *See Amason v. Nat. Gas Pipeline Co.*, 682 S.W.2d 240, 241-42 (Tex. 1984). After special commissioners issue an award in a condemnation proceeding, either the

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<sup>5</sup> Exceptions exist, such as when the legislature grants a county civil court at law exclusive jurisdiction over certain proceedings. *See, e.g.*, Tex. Gov’t Code § 25.1032(c) (a Harris County civil court at law has “exclusive jurisdiction” of eminent domain proceedings, both statutory and inverse, if the amount in controversy in a statutory proceeding does not exceed \$250,000).

<sup>6</sup> Without determining this matter, we note that the phrase “primarily responsible” appears to mean something different than exclusive jurisdiction. *See Schumann v. City of Schertz*, 100 S.W.3d 361, 366 (Tex. App.—San Antonio 2002, no pet.).

condemning authority or the property owner may object to the award. *See* Tex. Prop. Code § 21.018. The timely filing by either party of objections to a condemnation award serves to vacate the award, and the special condemnation proceedings become a cause pending in the county court, with the condemnor as plaintiff and condemnee as defendant. *See Stuart v. Harris Cnty. Flood Control Dist.*, 537 S.W.2d 352, 354 (Tex. App.—Houston [14th Dist.] 1976, writ ref’d n.r.e.) (citing *Denton County v. Brammer*, 361 S.W.2d 198, 200 (Tex. 1962)). If either party timely files an objection to the commissioners’ award, the county court is invested with subject matter jurisdiction over the case. *See State v. Fiesta Mart, Inc.*, 233 S.W.3d 50, 54 (Tex. App.—Houston [14th Dist.] 2007, pet. denied). Moreover, as many courts have stated, once a county court at law’s jurisdiction is invoked in an eminent domain proceeding, that court “has jurisdiction to the exclusion of all other courts of the subject matter of the litigation and can enforce such jurisdiction, if necessary, by ancillary injunctive process.” *City of Beaumont v. West*, 484 S.W.2d 789, 792-93 (Tex. App.—Beaumont 1972, writ ref’d n.r.e.); *see also Tarrant County v. Shannon*, 104 S.W.2d 4, 10 (Tex. 1937); *Burlington*, 12 S.W.3d at 898; *Jefferson Cnty. Drainage Dist. No. 6 v. Gulf Oil Corp.*, 437 S.W.2d 415, 419-20 (Tex. App.—Beaumont 1969, no writ); *Hous. Auth. of City of Dallas v. Higginbotham*, 143 S.W.2d 95, 96 (Tex. App.—Dallas 1940, no writ).

It is undisputed that Columbia Stop properly invoked the county court at law’s jurisdiction when it filed its objections to the special commissioners’ award. *See Burlington*, 12 S.W.3d at 898. Included in the objections was Columbia Stop’s contention that the State “lack[ed] authority” to condemn Parcel 400 because of the Settlement. That is an issue to be decided by the county court in its exclusive jurisdiction. *See Breviloba*, 2022 WL 2282598, at \*3 (“Jurisdiction over ‘eminent domain cases’ would be a hollow grant without the ability to adjudicate

condemnation authority.”); *Burlington*, 12 S.W.3d at 898 (Fort Bend county court at law had exclusive jurisdiction over ancillary injunctive request, once objections to commissioners’ award were filed in that court); *City of Garland*, 528 S.W.2d at 307 (county court’s jurisdiction, once invoked, includes the right to decide all questions relating to condemnation); *see also City of Beaumont*, 484 S.W.2d at 793; *Jefferson Cnty. Drainage Dist.*, 437 S.W.2d at 419-20; *Higginbotham*, 143 S.W.2d at 96.

Appellees contend that they are not seeking to enjoin the Condemnation Proceeding but are merely asking the district court to enforce the judgment in the prior condemnation of Parcel 908, which incorporated the Settlement:

The Amended Petition on [sic] this case does not seek to enjoin The County Court at Law from trying the condemnation case filed by the State. It asks the District Court to enter a declaratory judgment that The Memorandum of Settlement entered into by the State and Suleiman in the first condemnation suit is a valid and enforceable contract. The Petition asks the District Court to enjoin the State from violating The Memorandum by seeking condemnation of land that takes entrances from Columbia Stop property which The State promised not to alter or affect.

But this argument is just a variation of the core issue: whether the district court has jurisdiction to act when the county court’s jurisdiction has already attached. A request for the district court to enjoin the State from violating the Settlement (by condemning Parcel 400) is not materially different from asking the district court to enjoin the Condemnation Proceeding, in which the State seeks to condemn Parcel 400. *See Breviloba*, 2022 WL 2282598, at \*4 (“We are guided by the ‘nature’ and ‘gravamen’ of a claim, not how the claim is artfully pleaded or recast.”).

For this reason, the district court lacked subject matter jurisdiction to declare that the Settlement bars the Condemnation Proceeding or precludes the State from



pursuing the Condemnation Proceeding, or to enjoin the Condemnation Proceeding. *See City of Garland*, 528 S.W.2d at 307 (district court lacked authority to enjoin ongoing condemnation proceeding in county court, despite property owner's claim that City lacked authority to condemn property); *see also Jefferson Cnty. Drainage Dist.*, 437 S.W.2d at 418-20 (district court lacked authority to enjoin drainage district's use of property, which was the subject of an ongoing condemnation proceeding).

### **Conclusion**

We hold that the district court lacks subject matter jurisdiction over the District Court Proceeding. We sustain the State's second issue, reverse the trial court's order denying the State's motion to dismiss, and render judgment dismissing without prejudice appellees' claims in the District Court Proceeding for want of jurisdiction. We dismiss the State's related mandamus proceeding as moot.

/s/ Kevin Jewell  
Justice

Panel consists of Justices Wise, Jewell, and Spain.