



**Fourth Court of Appeals**  
**San Antonio, Texas**

**MEMORANDUM OPINION**

No. 04-17-00258-CV

Claudia **PUENTES**,  
Appellant

v.

The **STATE** of Texas,  
Appellee

From the 166th Judicial District Court, Bexar County, Texas  
Trial Court No. 2016-CI-16793  
Honorable Rosie Alvarado, Judge Presiding

Opinion by: Karen Angelini, Justice

Sitting: Karen Angelini, Justice  
Patricia O. Alvarez, Justice  
Irene Rios, Justice

Delivered and Filed: October 4, 2017

**AFFIRMED**

In this interlocutory appeal, Claudia Puentes appeals from the trial court's order granting the State's plea to the jurisdiction. We affirm.

**BACKGROUND**

On or about January 4, 2015, Puentes was allegedly assaulted and/or drugged on or off the premises of a bar called "Brass Monkey" by either Brass Monkey's employees or patrons. Puentes then allegedly published these claims on social media. In September 2016, Brass Monkey, Man of Wire, Inc., and Mark Manuelle (collectively "Brass Monkey") sued Puentes for business

disparagement, defamation, and intentional infliction of emotional distress. In response, Puentes answered with a general denial and asserted some affirmative defenses. Two months later, Puentes amended her answer and added counter-claims against Brass Monkey. She also filed thirty-party claims against the City of San Antonio, the San Antonio Police Department, San Antonio Police Officer Martinez, and the State of Texas,<sup>1</sup> alleging the following causes of action: “Conspiracy of Violate Civil and Human Rights”<sup>2</sup>; “Violation of Right to Access the Courts and Petition for Redress of Grievances”<sup>3</sup>; “Violation of Equal Protection”<sup>4</sup>; and intentional infliction of emotional distress.<sup>5</sup> Puentes then filed a supplemental pleading adding the following claims against the State: “cause of action for falsified ‘sovereignty’ and therefore falsified assertion of ‘government[al] immunity’”<sup>6</sup>; a 42 U.S.C. § 1983 claim for racial discrimination<sup>7</sup>; and a cause of action under the

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<sup>1</sup>Puentes’s live petition states that she is filing “a civil and human rights action.” She alleges that she was sued by Brass Monkey “because she is a casualty of the on-going effort of the Invader imposed governance of the ‘State of Texas’ having been established on the premise that the People autochthonous to this part of this Western Hemisphere upon arrival of the Europeans in 1492 were not human right imbued.”

<sup>2</sup>Puentes alleges that “[b]ecause of the historically racist and fraudulent development of ‘Texas’ by the Invader-Americans coming here from the U.S. starting in the 1820s, it became necessary for the Invaders coming here from the U.S. to obscure from the world and posterity that ‘Indians’ were at all times present in ‘Texas.’” “The ‘Indians’ has been present before the 1820s, when Stephen F. Austin first started to establish colonies of whites from Europe coming here through the United States and into ‘Texas,’ and it was the results of these efforts that affected the here set forth violations of Claudia Puentes’ rights because the ‘System of Justice’ in place today is a direct result of those very same processes set forth to exterminate and remove the ‘Indians.’”

<sup>3</sup>Puentes alleges that the State’s “actions of perpetrating the racist development of this in place governance and its putative Law Enforcement exclusively by persons chosen only because they will perpetuate the historical efforts of the in place governance to exterminate the ‘Indians with rights preexisting Americans’ so as to retroactively legitimize the existing governance constitutes a cause of action for intentional denial of Ms. Puentes’ right to access the courts and to petition government for the redress of grievances for all of which she here now affirmatively sues.”

<sup>4</sup>Puentes again alleges that the State’s “actions of perpetrating the racist development of this in place governance and its putative Law Enforcement exclusively by persons chosen only because they will perpetuate the historical efforts of the in place governance to exterminate the ‘Indians with rights preexisting Americans’ so as to retroactively legitimize the existing governance as done constitutes a cause of action for intentional denial of Ms. Puentes’ right to equal protection under law for all of which she here now affirmatively sues.”

<sup>5</sup>Puentes makes the same allegations as her other claims and concludes by alleging that the State’s conduct “was meant to inflict emotional distress on Ms. Claudia Puentes.”

<sup>6</sup>Puentes alleges that the State is “still trying to build and invent a completely inapplicable and falsified ‘sovereignty’ upon the Autochthonous People and it is the result of said such on-going efforts which entrapped [Claudia Puentes] in the void or ‘hole’ in the on-going said fraudulent articulation.” “That is, the governance of the Invader-Americans is one which has been completely orchestrated and put together by the racist Invader-Americans.”

<sup>7</sup>Puentes alleges that “[w]hat is and has been taking place within this Judiciary in operation under the auspices of the Void Ab Initio governance of the putative ‘State of Texas’ is a matter of committing intentional fraud as is here and now done in conspiracy with the entire Judiciary which has already ruled, albeit in racist fashion, and supposedly but falsely, developing the common law under the auspices of the Constitutions of the United States and that of Texas as

Constitution for failure to train police officers. Puentes sought monetary and exemplary damages. She also sought a permanent injunction.

The State filed a general denial and asserted the affirmative defense of sovereign immunity. The State then filed a plea to the jurisdiction, arguing that governmental immunity bars all of Puentes's claims against the State. After a hearing, the trial court granted the State's plea and ordered that all of Puentes's claims against the State were dismissed with prejudice. This interlocutory appeal followed.

### DISCUSSION

In appellant's brief, Puentes's counsel makes numerous arguments that are not relevant to this appeal, including Puentes's counsel's personal views regarding history and political theory, and whether the State of Texas "is void ab initio." Puentes's counsel presents the following as the two issues presented on appeal:

1. "Did the 'His-panic' Trial Court err in failing to apply the fundamental and well-established procedure of letting the parties plead *their* own case expecting to be able to sabotage the timely perfection of appeal so as to, only in that way, be able to append an entirely inappropriate order stifling what was seen as the 'Anti-American' Advocacy by Puentes's Counsel of Record to the granting of a Plea to the Jurisdiction so as to thereby continue pursuit of the Invader-Americans historically pursued 'Manifest Destiny'?"
2. "Whether, in granting the fraud of a 'State of Texas' plea to the jurisdiction and finding that Puentes's 'Indian' Advocate should be enjoined 'from using this cause as a platform to assert claims that Texas is a Usurper and illegitimate and/or illegal entity' the 'His-panic' presiding over the Trial Court committed error in disregarding the rules established for interpretation of the pleading rules in passing upon a Plea to the Jurisdiction."

We will address these two issues only to the extent that they are relevant to the appeal and the order granting the State's plea to the jurisdiction.

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well as under the rule of law." "What is in reality taking place is that the 'Americans' are actually Invaders of the land here and now denominated 'Texas,' which was, fraudulently and invidiously articulated to be 'vacant' of human right imbued persons such as could be recognized and acknowledged to be such by the Invader-Americans as they came into what is now denominated 'Texas' to invent a government articulation largely affected by the Judiciary as a means, originally intended to deny to the Autochthonous People, and presently, those racist Invader-American-Opponents of such as Claudia Puentes access to these Courts of the Conqueror."

“A unit of state government is immune from suit and liability unless the state consents.” *Ryder Integrated Logistics, Inc. v. Fayette County*, 453 S.W.3d 922, 927 (Tex. 2015) (citations omitted). “Where a government entity challenges jurisdiction on the basis of immunity, the plaintiff must affirmatively demonstrate the court’s jurisdiction by alleging a valid waiver of immunity.” *Id.* (citations omitted). “When a plea to the jurisdiction challenges the pleadings, we determine if the pleader has alleged facts that affirmatively demonstrate the court’s jurisdiction to hear the cause.” *Id.* (citations omitted). “In doing so, we construe the pleadings liberally in favor of the plaintiff and look to the pleader’s intent.” *Id.* (citation omitted). “Where the pleadings generate a fact question regarding the jurisdictional issue, a court cannot sustain the plea to the jurisdiction.” *Id.* (citation omitted). However, “[i]f the pleadings affirmatively negate the existence of jurisdiction, then a plea to the jurisdiction may be granted without allowing the plaintiff[] an opportunity to amend.” *Tex. Dep’t of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 227 (Tex. 2004). We review the trial court’s ruling on a plea to the jurisdiction de novo. *Id.* at 225-27.

We agree with the State that Puentes has not and cannot show any waiver of immunity for any of her claims against the State. Puentes’s claims against the State fall within three broad categories: (1) claims under 42 U.S.C. § 1983 for violations of the Constitution; (2) claims under the Texas Constitution; and (3) intentional torts. With regard to Puentes’s 42 U.S.C. § 1983 claims, the State has immunity pursuant to the Eleventh Amendment to the Constitution “unless the state has waived its sovereign immunity or Congress has clearly abrogated it.” *Moore v. La. Bd. of Elementary & Secondary Educ.*, 743 F.3d 959, 963 (5th Cir. 2014). In enacting 42 U.S.C. § 1983, Congress did not abrogate the States’ immunity under the Eleventh Amendment, and the State of Texas has not consented by statute. *NiGen Biotech, LLC v. Paxton*, 804 F.3d 389, 394 (5th Cir. 2015).

With regard to Puentes’s claims under the Texas Constitution, Puentes has not shown a waiver of immunity by the State. Puentes asserts monetary damages against the State. However, “[g]enerally, there is no private cause of action against a governmental entity or its officials for money damages relating to alleged violations of Texas constitutional rights.” *Donohue v. Dominguez*, 486 S.W.3d 50, 56 (Tex. App.—San Antonio 2016, pet. denied). Similarly, the State of Texas is immune from Puentes’s claim for injunctive relief.<sup>8</sup> *See Tex. Dep’t of Transp. v. Sefzik*, 355 S.W.3d 618, 620 (Tex. 2011) (holding that “state agencies, like TxDOT here, are immune from suits under the UDJA [Uniform Declaratory Judgments Act] unless the Legislature has waived immunity for the particular claims at issue”); *see also City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009) (explaining the distinction between suing the State or a State entity, and suing a governmental official under ultra vires).<sup>9</sup>

Finally, with regard to her claims for intentional torts, the State has explicitly retained immunity from intentional tort claims. The Texas Tort Claims Act, codified in section 101.057 of the Texas Civil Practice and Remedies Code, explicitly states that it does not apply to a claim “arising out of assault, battery, false imprisonment, *or any other intentional tort.*” TEX. CIV. PRAC. & REM. CODE ANN. § 101.057 (West 2011) (emphasis added); *see City of Watauga v. Gordon*, 434 S.W.3d 586, 589 (Tex. 2014) (explaining that the Texas Tort Claims Act’s “limited waiver does not apply to intentional torts”). Therefore, Puentes has not established a waiver of sovereign immunity for her intentional tort claims.

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<sup>8</sup>In her petition, Puentes seeks permanent injunctive relief, requesting that the court enjoin and restrain the State of Texas from acting as an “Invader” government that deprives persons “yet residing in ‘Texas’ with affinity to those autochthonous to what is now named ‘Texas’ from coming to understand the racist way the governance now in place in ‘Texas’ came about and openly disclosing such to the world or posterity.”

<sup>9</sup>We note that Puentes claims she has brought an ultra vires suit against a “state actor” in his official capacity, San Antonio Police Officer Martinez. Officer Martinez is not a state official, and any claims against him are relevant to Puentes’s suit against the City of San Antonio and the San Antonio Police Department, not to claims against the State of Texas.

We further agree with the State that Puentes's pleading has affirmatively negated the existence of jurisdiction, *see Miranda*, 133 S.W.3d at 227, and no amendment to Puentes's pleadings could change the conclusion that her claims are barred by sovereign immunity. We therefore affirm the trial court's order granting the State's plea to the jurisdiction.

Karen Angelini, Justice