Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-19-00694-CV

Felicidad **MARTINEZ**,
Appellant

v.

CITY OF LAREDO,
Appellee

From the 49th Judicial District Court, Webb County, Texas
Trial Court No. 2019CVK000800D1
Honorable Jose A. Lopez, Judge Presiding

Opinion by: Lori I. Valenzuela, Justice

Sitting: Rebeca C. Martinez, Chief Justice
Luz Elena D. Chapa, Justice
Lori I. Valenzuela, Justice

Delivered and Filed: May 12, 2021

AFFIRMED

Appellant, Felicidad Martinez, appeals from an order granting a motion to dismiss for lack of jurisdiction filed by appellee, the City of Laredo. We affirm.

BACKGROUND

Martinez filed an original petition for declaratory judgment in which she alleged the City improperly revoked permits she owned to operate two taxis in the City of Laredo. In her petition, she asked the trial court to order the City to reinstate her permits and that she be awarded damages, attorney's fees, and costs. Martinez also filed an amended petition in which she alleged: (1) the

City issued the two taxi permits on August 23, 2013; (2) she was arrested, but not yet convicted, on thirteen counts of identity fraud and theft; and (3) the City revoked her permits on January 18, 2019 for a period of two years. She alleged an unconstitutional taking of her property and sought unliquidated damages of not less than $100,000 and not more than $200,000; mental anguish damages in the amount of $50,000; and attorney's fees. The basis of her allegations was that the permits were revoked based on the criminal charges against her that had not yet been adjudicated.

The City filed a motion to dismiss for lack of jurisdiction arguing Martinez did not have a vested property right in the two permits; therefore, her cause of action alleging an unconstitutional taking of a "property right" was not a viable cause of action for which the City waived governmental immunity. After the trial court granted the City's motion and denied Martinez's motion for new trial, this appeal ensued.

DISCUSSION

Martinez challenges the trial court's order in six issues on appeal: (1) the ordinance under which the City revoked the permits is unconstitutional, (2) the City violated her rights under article 1, sections 13 and 19 of the Texas Constitution and Texas Code of Criminal Procedure 38.03, (3) the trial court erred by revoking the permits, (4) the court erred by concluding sovereign immunity barred her claims, (5) the court erred by denying her motion for new trial, and (6) the court's findings of fact and conclusions of law did not satisfy the requirements of Texas Rule of Civil Procedure 297. Martinez also asserts she is entitled to recover her attorney's fees for legal services rendered in connection with this appeal.

MARTINEZ'S CONSTITUTIONAL CHALLENGES

In her first and second issues, Martinez contends the ordinance[1] under which the City revoked her permits is unconstitutional because it violates article 1, sections 13 and 19 of the Texas Constitution and Texas Code of Criminal Procedure 38.03. Article 1, section 13 provides that "[e]xcessive bail shall not be required, nor 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, § 13. Section 19 provides that "[n]o citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land." *Id.* § 19.

We begin our analysis with the presumption that a statute is constitutional. *Nootsie, Ltd. v. Williamson Cty. Appraisal Dist.*, 925 S.W.2d 659, 662 (Tex. 1996). The party challenging a statute's constitutionality bears the burden of overcoming that presumption. *See Edgewood Indep. Sch. Dist. v. Meno*, 917 S.W.2d 717, 725 (Tex. 1995). A party may argue a statute is unconstitutional on its face or as applied to that party. *See Tex. Workers' Comp. Comm'n v. Garcia*, 893 S.W.2d 504, 518 & n.16 (Tex. 1995). "Under a facial challenge, . . . the challenging party contends that the statute, by its terms, always operates unconstitutionally." *Id.* at 518. Under an "as applied" challenge, the plaintiff contends "that a statute, even though generally constitutional, operates unconstitutionally as to him or her because of the plaintiff's particular circumstances." *Id.* at 518 n.16.

Other than her conclusory statement that the revocation of the permits violated her rights under the Texas Constitution, Martinez makes no authoritative argument in support of this

[1] In her appellant's brief, Martinez does not provide a citation to the ordinance.

contention. Therefore, her constitutional challenge is waived for insufficient briefing. *See* TEX. R. APP. P. 38.1(i) ("The brief must contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record.").

Martinez also asserts the revocation violated her rights under Code of Criminal Procedure 38.03, which provides that "[a]ll persons are presumed to be innocent and no person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. The fact that he has been arrested, confined, or indicted for, or otherwise charged with, the offense gives rise to no inference of guilt at his trial." TEX. CODE CRIM. PROC. art. 38.03. Martinez contends her permits were revoked without due process because she has not yet been convicted for the felony offenses; therefore, she is entitled to a presumption of innocence. Again, Martinez makes no authoritative argument in support of this contention. Therefore, her argument is waived for insufficient briefing. *See* TEX. R. APP. P. 38.1(i).

PLEA TO THE JURISDICTION

In her third and fourth issues, Martinez asserts the trial court erred by granting the City's plea to the jurisdiction based on sovereign immunity.[2]

A. Standard of Review

To establish subject matter jurisdiction, a plaintiff must allege facts that affirmatively demonstrate the court's jurisdiction to hear the claim. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 446 (Tex. 1993); *County of Bexar v. Steward*, 139 S.W.3d 354, 357 (Tex. App.—San Antonio 2004, no pet.). A party may contest a trial court's subject matter jurisdiction by filing a plea to the jurisdiction. *Houston Belt & Terminal Ry. Co. v. City of Houston*, 487 S.W.3d 154,

[2] The City filed a motion to dismiss for lack of jurisdiction, but for convenience we refer to the motion as a plea to the jurisdiction. *See Texas Nat. Res. Conservation Comm'n v. White*, 46 S.W.3d 864, 866-67 (Tex. 2001) (treating "Motion to Dismiss for Lack of Jurisdiction Based on Sovereign Immunity" as plea to jurisdiction).

160 (Tex. 2016); *Hendee v. Dewhurst*, 228 S.W.3d 354, 366 (Tex. App.—Austin 2007, pet. denied). We review a trial court's ruling on a plea to the jurisdiction under a de novo standard of review. *Steward*, 139 S.W.3d at 357; *Houston Belt & Terminal Ry.*, 487 S.W.3d at 160.

There are two general categories of pleas to the jurisdiction: (1) those that challenge only the pleadings, and (2) those that present evidence to challenge the existence of jurisdictional facts. *Texas Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004). When, as here, a plea to the jurisdiction challenges only the pleadings, we determine whether the pleader has alleged facts that affirmatively demonstrate the court's jurisdiction to hear the case. *Id.* Our de novo review of such challenges looks to the pleader's intent and construes the pleadings in its favor. *Id.* If the pleadings lack sufficient facts to affirmatively demonstrate the trial court's jurisdiction but do not affirmatively demonstrate incurable defects in jurisdiction, the issue is one of pleading sufficiency, and the plaintiff should generally be given an opportunity to amend.[3] *Id.* at 226-27. "If 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." *Id.* at 227.

B. The City's Immunity

Martinez contends the City is not entitled to claim sovereign immunity because the City wrongfully took her property and she is entitled to monetary damages for the alleged violation of her constitutional rights. However, Texas does not allow a damage remedy for unconstitutional conduct. *See City of Beaumont v. Bouillion*, 896 S.W.2d 143, 149 (Tex. 1995) (no implied cause of action for damages was intended as a remedy for unconstitutional conduct under the free speech and free assembly clauses of the Texas Constitution); *Univ. of Tex. Sys. v. Courtney*, 946 S.W.2d

[3] The City contends Martinez was given the opportunity to amend her pleadings but did not do so.

464, 469 (Tex. App.—Fort Worth 1997, writ denied) (no claim for monetary, non-equitable damages under the Texas Constitution's due process provision).

Martinez also asserts this court is "obligated to abide by the decisions of the Texas Supreme Court," which hold an action may be brought against a municipality for violations of the Texas Constitution. She relies on *Steele v. City of Houston*, 603 S.W.2d 786 (Tex. 1980). However, that case involved the plaintiffs' claim for destruction of their property under the Takings Clause of Article 1, section 17 of the Texas Constitution. *Id.* at 791. To establish a takings claim, the plaintiff must prove (1) the State intentionally performed certain acts, (2) that resulted in a "taking" of property, (3) for public use. *Id.* at 788-92. Here, there is no allegation the City took the permits for public use; therefore, Martinez's reliance on *Steele* is misplaced.

Finally, Martinez's argument is premised on her contention that the permits to operate her taxis were her "property." "A property or liberty interest must find its origin in some aspect of state law." *Spring Branch I.S.D. v. Stamos*, 695 S.W.2d 556, 561 (Tex. 1985). A person's property interests include actual ownership of real estate, chattels, and money. *Stratton v. Austin Indep. Sch. Dist.*, 8 S.W.3d 26, 29 (Tex. App.—Austin 1999, no pet.).

"No person can 'acquire a vested right to use public streets and highways for carrying on a commercial business.'" *City of Dallas v. Aye*, 05-95-00361-CV, 1995 WL 634159, at *2 (Tex. App.—Dallas Oct. 24, 1995, writ dism'd w.o.j.) (quoting *Airport Coach Serv., Inc. v. City of Fort Worth*, 518 S.W.2d 566, 572 (Tex. Civ. App.—Tyler 1974, writ ref'd n.r.e.)); *see also Mooney v. City of San Antonio*, 386 S.W.2d 638, 639 (Tex. Civ. App.—San Antonio 1965, writ ref'd). "The long-standing law in Texas is 'that the use of public highways by common carriers . . . is an extraordinary use enjoyed as a mere privilege or license, revocable at the will of the Legislature.'" *Aye*, 1995 WL 634159, at *2 (quoting *Ex parte Sterling*, 122 Tex. 108, 115, 53 S.W.2d 294, 297 (1932)). The "right to solicit passengers and convey them for hire from one point to another in a

city . . . is a privilege . . . granted by the city." *Dallas Taxicab Co. v. City of Dallas*, 68 S.W.2d 359, 362 (Tex. Civ. App.—Dallas 1934, no writ). Therefore, Martinez does not have a property right in the permits allowing her to solicit and convey passengers on the City's streets.

Because Martinez's permits to operate her taxis on the City's streets is a privilege and not an inherent right, we conclude Martinez's pleadings do not demonstrate a viable cause of action not barred by governmental immunity. Therefore, the trial court did not err in granting the City's plea to the jurisdiction.

MOTION FOR NEW TRIAL & FINDINGS OF FACT AND CONCLUSIONS OF LAW

Martinez asserts the trial court erred by denying her motion for new trial because the record contains no evidence she was convicted of the criminal charges against her. We review a trial court's ruling on a motion for new trial for an abuse of discretion. *BZ Tire Shop v. Brite*, 387 S.W.3d 837, 838 (Tex. App.—San Antonio 2012, no pet.). "A trial court abuses its discretion when it acts unreasonably or without regard for any guiding legal principles." *Id.*

In her motion for new trial, Martinez alleged (1) she "was subjected to a two-day suspension. The suspension was and is void because the arresting officer did not appear at the hearing. Such failure denied [her] right under Article I, Section 10 of the Texas Constitution to confront the witness against her" and (2) because the City "failed to present evidence at the September 17, 2019, evidentiary hearing as to the records of this proceeding that had resulted in the two-day suspension and the two-year revocation of the proceeding [she] has been denied due process of law."

Nothing in the appellate record indicates Martinez presented evidence in support of her allegations. The record does not contain a copy of any record taken from the new trial hearing, of her alleged two-day suspension, or any record of the September 17, 2019 hearing. Furthermore, her motion before the trial court and her briefing in this court is devoid of any legal analysis in

support of her arguments. Therefore, on this record, we cannot conclude the trial court abused its discretion by denying her motion for new trial.

Martinez also complains the trial court's findings of fact and conclusions of law, which the court filed upon Martinez's request, do not satisfy the requirements of Rule 297[4] and, therefore, did not provide her with sufficient information to prepare her appeal. We conclude Martinez's complaint lacks merit for two reasons.

First, a trial court has no duty to file findings of fact or conclusions of law when there has been no trial. *See IKB Indus. (Nigeria) Ltd. v. Pro-Line Corp.*, 938 S.W.2d 440, 441-42 (Tex. 1997) (noting, "if summary judgment is proper, there are no facts to find, and the legal conclusions have already been stated in the motion and response[; therefore,] [t]he trial court should not make, and an appellate court cannot consider, findings of fact in connection with a summary judgment."). When, as here, a plea to the jurisdiction challenges only the pleadings and there are no disputed facts to be determined by the fact-finder, findings of fact and conclusions of law are not required. *See Miranda*, 133 S.W.3d at 228 (holding, this standard [of review for pleas to the jurisdiction] generally mirrors that of a summary judgment"). Second, Martinez does not explain why the trial court's findings of fact and conclusions of law failed to apprise her of adequate information to prepare for her appeal.

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[4] Rule 297 provides as follows:

"The court shall file its findings of fact and conclusions of law within twenty days after a timely request is filed. The court shall cause a copy of its findings and conclusions to be mailed to each party in the suit.

If the court fails to file timely findings of fact and conclusions of law, the party making the request shall, within thirty days after filing the original request, file with the clerk and serve on all other parties in accordance with Rule 21a a "Notice of Past Due Findings of Fact and Conclusions of Law" which shall be immediately called to the attention of the court by the clerk. Such notice shall state the date the original request was filed and the date the findings and conclusions were due. Upon filing this notice, the time for the court to file findings of fact and conclusions of law is extended to forty days from the date the original request was filed."

TEX. R. CIV. P. 297.

CONCLUSION

For the reasons stated above, we overrule Martinez's issues on appeal and affirm the trial court's order granting the City's motion to dismiss for lack of jurisdiction.[5]

Lori I. Valenzuela, Justice

[5] We also overrule Martinez's final issue on appeal that she is entitled to recover her attorney's fees for this appeal because she is not the prevailing party. *See* TEX. R. APP. P. 43.4 ("The court of appeals' judgment should award to the prevailing party costs incurred by that party related to the appeal, including filing fees in the court of appeals and costs for preparation of the record.").