Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-20-00213-CV

CITY OF SAN ANTONIO and Erik Walsh, in his Official Capacity,
Appellants

v.

SAN ANTONIO PARK POLICE OFFICERS ASSOCIATION, Henry Bassuk, and Rogelio Tamez,
Appellees

From the 285th Judicial District Court, Bexar County, Texas
Trial Court No. 2019-CI-18334
Honorable Aaron Haas, Judge Presiding

Opinion by: Rebeca C. Martinez, Chief Justice

Sitting: Rebeca C. Martinez, Chief Justice
Irene Rios, Justice
Beth Watkins, Justice

Delivered and Filed: July 14, 2021

AFFIRMED IN PART; REVERSED AND RENDERED IN PART

Appellees San Antonio Park Police Officers Association, Henry Bassuk, and Rogelio Tamez filed suit against appellants the City of San Antonio and City Manager Erik Walsh in his official capacity, seeking three requests for declaratory relief: (1) that San Antonio's park and airport police officers are "police officers" entitled to collectively bargain with the City and can receive both current and future benefits of the collective bargaining agreements entered into between the City and the San Antonio Police Officers Association ("SAPOA") under chapter 174 of the Texas Local Government Code; (2) that park and airport police officers are "police officers"

entitled to collectively bargain with the City and can receive both current and future benefits of the collective bargaining agreements entered into between the City and SAPOA under chapter 143 of the Texas Local Government Code; and (3) that City Manager Erik Walsh is acting *ultra vires* by denying park and airport police officers the opportunity to collectively bargain.[1] The City and City Manager filed a plea to the jurisdiction, and, after the trial court denied the plea, they filed this interlocutory appeal. We affirm in part, and reverse and render in part.

BACKGROUND

In September 2019, appellees sued the City and City Manager and sought declarations that San Antonio's park and airport police officers are "police officers" under chapters 143 and 174 of the Texas Local Government Code, are entitled to collectively bargain with the City for compensation and benefits, and are entitled to receive the benefits of collective bargaining agreements, both current and future, entered into between the City and SAPOA. *See* TEX. LOC. GOV'T CODE ANN. §§ 143.003(5), 174.003(3).[2] Appellees also sought a declaration that City Manager Walsh acted *ultra vires* by denying park and airport police officers such rights. The City and City Manager filed an original answer and then a plea to the jurisdiction, arguing appellees

[1] Appellees seek these declarations in their live petition under a section entitled "Declaratory Judgment." We review each of the three distinct declarations sought as unique claims. *See City of McKinney v. Hank's Rest. Grp., L.P.*, 412 S.W.3d 102, 113–17, 121 (Tex. App.—Dallas 2013, no pet.) (examining seven requests for declaratory judgment as distinct claims when challenged by a plea to the jurisdiction; dismissing four such claims; and remanding to allow the plaintiff an opportunity to replead the other three declaratory judgment claims); *cf. Thomas v. Long*, 207 S.W.3d 334, 338 (Tex. 2006) (instructing it is proper to examine subject matter jurisdiction on a claim-by-claim basis); *City of Dallas v. Turley*, 316 S.W.3d 762, 774–75 (Tex. App.—Dallas 2010, pet. denied) (separating declaratory judgment requests challenged by a plea to the jurisdiction from those not challenged); *Hegar v. CSG Forte Payments, Inc.*, No. 03-19-00325-CV, 2020 WL 7233605, at *5 (Tex. App.—Austin Dec. 9, 2020, no pet.) (considering declaratory judgment claims separately from *ultra vires* claims in a plea to the jurisdiction analysis).

[2] SAPOA is the exclusive bargaining agent for police officers employed by the San Antonio Police Department ("SAPD").

could not establish a waiver of the City's governmental immunity from suit or an *ultra vires* claim. After a hearing, the trial court denied the City and City Manager's plea.[3]

In two issues, the City and City Manager contend that the trial court should have granted the plea because appellees have not established a waiver of immunity through the Uniform Declaratory Judgments Act or Texas Local Government Code chapters 143 or 174. In a third issue, they argue that the trial court lacks subject matter jurisdiction because appellees have no standing to assert their claims.

STANDARD OF REVIEW

A plea to the jurisdiction challenges the trial court's authority to determine the subject matter of a specific cause of action. *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000); *City of San Antonio v. Rogers Shavano Ranch, Ltd.*, 383 S.W.3d 234, 241 (Tex. App.—San Antonio 2012, pet. denied). In determining whether a trial court has subject matter jurisdiction, our analysis begins with the live pleadings. *Heckman v. Williamson Cty.*, 369 S.W.3d 137, 150 (Tex. 2012). When a plea to the jurisdiction challenges the plaintiff's pleadings, the court must determine, by construing the pleadings liberally in the plaintiff's favor, whether the plaintiff has alleged facts affirmatively demonstrating the trial court's jurisdiction to hear the case. *Tex. Dep't. of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004). Whether a pleader has alleged facts that affirmatively demonstrate a trial court's subject matter jurisdiction is a question of law, reviewed *de novo*. *Id.* We construe the pleadings liberally, taking all factual allegations as true, and look to the pleader's intent. *Heckman*, 369 S.W.3d at 150. If the pleadings do not contain sufficient facts to affirmatively demonstrate the trial court's jurisdiction but do not affirmatively

[3] SAPOA also filed a plea to the jurisdiction, which the trial court denied. As a non-governmental unit, SAPOA could not take an interlocutory appeal of the denial of its plea, but it did file an amicus brief in this appeal. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(8).

demonstrate incurable defects in jurisdiction, the issue is one of pleading sufficiency, and we should afford the plaintiff an opportunity to amend. *Miranda*, 133 S.W.3d at 226–27. If, on the other hand, the pleadings affirmatively negate the existence of jurisdiction, then a plea to the jurisdiction may be granted without affording the plaintiff an opportunity to amend. *Id.* at 227.

In reviewing a plea to the jurisdiction, we also may consider evidence submitted by the parties and must do so when necessary to resolve the jurisdictional issues raised. *Heckman*, 369 S.W.3d at 150; *Bland Indep. Sch. Dist.*, 34 S.W.3d at 555. "We do not adjudicate the substance of the case but instead determine whether a court has the power to reach the merits of the claim." *Satterfield & Pontikes Constr., Inc. v. Tex. S. Univ.*, 472 S.W.3d 426, 430 (Tex. App.—Houston [1st Dist.] 2015, pet. denied). The jurisdictional inquiry may unavoidably implicate the substantive merits of the case when the jurisdictional inquiry and the merits inquiry are intertwined, but a plea does not authorize an inquiry so far into the substance of the claims presented that plaintiffs are required to put on their case simply to establish jurisdiction. *Miranda*, 133 S.W.3d at 228; *Bland Indep. Sch. Dist.*, 34 S.W.3d at 554. "Our ultimate inquiry is whether the particular facts presented, as determined by the . . . review of the pleadings and any evidence, affirmatively demonstrate a claim within the trial court's subject-matter jurisdiction." *Tex. Dep't of State Health Servs. v. Balquinta*, 429 S.W.3d 726, 738 (Tex. App.—Austin 2014, pet. dism'd).

GOVERNMENTAL IMMUNITY

Governmental immunity protects political subdivisions of the State, including counties, cities, and school districts, from lawsuits for damages and for liability. *City of Hous. v. Williams*, 353 S.W.3d 128, 134 & n.5 (Tex. 2011). Political subdivisions of the State, such as the City of San Antonio, have governmental immunity from suit unless the Legislature has expressly waived such immunity by statute. *Id.* at 134; *Ben Bolt–Palito Blanco Consol. Indep. Sch. Dist. v. Tex. Political Subdivisions Prop./Cas. Joint Self–Ins. Fund*, 212 S.W.3d 320, 323–24 (Tex. 2006). A

statute shall not be construed as waiving immunity unless the waiver is effected by "clear and unambiguous" language. TEX. GOV'T CODE ANN. § 311.034; *Williams*, 353 S.W.3d at 134. It has long been recognized that it is the Legislature's sole province to waive immunity from suit. *Tex. Nat'l Res. Conservation Comm'n v. IT–Davy*, 74 S.W.3d 849, 853–54 (Tex. 2002). Only immunity from suit operates as a jurisdictional bar; immunity from liability constitutes an affirmative defense. *Williams*, 353 S.W.3d at 134; *Miranda*, 133 S.W.3d at 224.

A. Waiver of Immunity Under Chapter 174

The City, as a governmental entity, is immune from suit, unless immunity has been waived. *Ben Bolt*, 212 S.W.3d at 323–24. In their second issue, the City and City Manager argue appellees cannot establish their suit falls within a statutory waiver of governmental immunity, as established by chapter 174 of the Texas Local Government Code, the Fire and Police Employee Relations Act, because park and airport police officers are not "police officers" under chapter 174. *See* TEX. LOC. GOV'T CODE ANN. §§ 174.001–.253; *Miranda*, 133 S.W.3d at 225–26 (explaining immunity from suit, unless waived, defeats a trial court's subject matter jurisdiction). We hold that the appellees have pled facts to establish a waiver of the City's immunity under chapter 174 for their first declaratory claim that park and airport police are "police officers" entitled to collectively bargain with the City and can receive both current and future benefits of the collective bargaining agreements entered into between the City and SAPOA. *See* TEX. LOC. GOV'T CODE ANN. §§ 174.001–.253.

Chapter 174 provides "police officers" with the right to organize and bargain collectively with their public employer. *Id.* § 174.023. To this end, chapter 174 provides a limited waiver of immunity:

> WAIVER OF IMMUNITY. This chapter is binding and enforceable against the employing public employer, and sovereign or governmental immunity from suit

> and liability is waived only to the extent necessary to enforce this chapter against that employer.

Id. § 174.008. Thus, under this provision, the trial court has subject matter jurisdiction over the appellees' first declaratory claim that they are entitled to collectively bargain with the City and can receive the benefits of the collective bargaining agreements entered into between the City and SAPOA if appellees can allege a violation of their right to collectively bargain under chapter 174. *See id.* §§ 174.008, 174.023; *Tex. Ass'n of Cty. Emps. v. Wolff*, 583 S.W.3d 828, 833 (Tex. App.—San Antonio 2019, pet. denied); *see also Alamo Heights Ind. Sch. Dist. v. Clark*, 544 S.W.3d 755, 770 (Tex. 2018) (stating governmental immunity is waived for a statutory claim "only when the plaintiff states a claim for conduct that actually violates the statute"). Chapter 174 specifies that it shall be liberally construed. TEX. LOC. GOV'T CODE ANN. § 174.004.

In this case, whether the waiver applies hinges on whether San Antonio park and airport police officers are "police officers," within the meaning of chapter 174. Because there are no facts in dispute, this is a legal question we determine *de novo*.[4] *Cf. Jefferson Cty. v. Jefferson Cty. Constables Ass'n*, 546 S.W.3d 661, 673 (Tex. 2018) (holding deputy constables met definition of "police officers" under chapter 174); *Webb Cty. v. Webb Cty. Deputies Ass'n*, 768 S.W.2d 953, 955 (Tex. App.—San Antonio 1989, no writ) (holding jailers and detention officers employed in the sheriff's office met definition of "policemen" under prior version of chapter 174); *Comm'rs Court of El Paso v. El Paso Cty. Sheriff's Deputies Ass'n*, 620 S.W.2d 900, 902 (Tex. App.—El Paso 1981, writ ref'd n.r.e.) (holding deputy sheriffs met definition of "policemen" under prior version of chapter 174).

[4] Appellees submitted evidence consistent with their jurisdictional allegations, which the City has not contested on a factual basis. *Cf. Hous. Belt & Terminal Ry. Co. v. City of Hous.*, 487 S.W.3d 154, 167 (Tex. 2016) (holding plaintiffs' pleadings affirmatively alleged an *ultra vires* claim because defendant City of Houston failed to bring forth any jurisdictional evidence to rebut the plaintiffs' allegations).

Under chapter 174, "police officer" is defined as (1) "a paid employee who is sworn, certified, and full-time," (2) "who regularly serves in a professional law enforcement capacity" (3) "in the police department of a political subdivision." TEX. LOC. GOV'T CODE ANN. § 174.003(3). A "political subdivision" includes a municipality. *Id.* § 174.003(4). It is undisputed, as the City and City Manager conceded at oral argument, that park and airport police officers meet the first two parts of the definition of "police officer" under chapter 174. These officers are (1) paid, full-time, sworn, certified employees and (2) regularly serve in a professional law enforcement capacity. *Id.* § 174.003(3). The remaining requirement is that park and airport police officers serve in the police department of a political subdivision. *Id.* Chapter 174 does not define the term "police department," but, as the supreme court stated, its ordinary meaning is "a governmental department concerned with the administration of the police force." *Jefferson Cty. Constables Ass'n*, 546 S.W.3d at 668. In turn, a "police force" is a "professional body of trained officers . . . entrusted by a government with maintenance of public peace and order, enforcement of laws, and prevention and detection of crime." *Id.*

We hold the allegations pled support the third requirement that park and airport police officers serve in the police department of a political subdivision. In their live petition, appellees allege facts noting the changes that occurred following SAPD Chief William McManus's appointment in 2009. The allegations, if true, would establish that park and airport police officers serve in the SAPD, which is undisputedly a police department under chapter 174. Appellees allege that their officers currently: are commissioned under Chief McManus, similar to the SAPD; are subject to SAPD rules and regulations; follow a SAPD chain of command; are included in hiring, training, promotions, discipline, demotions and firing under SAPD approval; utilize the same originating agency identifier as SAPD; are included as a part of the SAPD for purposes of determining grant requests; are identified on the SAPD leadership chart as "park command" and

"airport command;" are identified in the SAPD organizational chart with the park police as part of the patrol south division and the airport police as part of the patrol north division; assist SAPD police officers in their duties; and are included in the City's police department budget. Appellees also allege that their officers are welcomed into their positions by an email congratulating them for their new positions "with the City of San Antonio's Police Department." Included as an exhibit to appellees' petition is a photo of a park police officer's badge, which states, "City of San Antonio Police Department." These allegations, liberally construed and accepted as true, qualify park and airport police officers as serving within the SAPD. *See Jefferson Cty. Constables Ass'n v. Jefferson Cty.*, 512 S.W.3d 434, 440 (Tex. App.—Corpus Christi 2016), *aff'd*, 546 S.W.3d at 661 (finding no meaningful distinction between deputy sheriffs and deputy constables with respect to their duties and therefore holding both qualify as "police officers" under the chapter 174, despite each group serving in different county departments); *see also Jefferson Cty. Constables Ass'n*, 546 S.W.3d at 673 (holding deputy constables are "police officers" employed in the "police department" under chapter 174 because the constable's office was a department concerned with the administration of "a body of trained officers entrusted by a government with maintenance of public peace and order, enforcement of laws, and prevention and detection of crime." (citing *Police department*, *Police force*, WEBSTER'S THIRD INT'L DICTIONARY 1754 (2002))).[5]

In opposition, the City and City Manager rely on our decision in *City of San Antonio v. San Antonio Park Rangers Ass'n*, 850 S.W.2d 189 (Tex. App.—San Antonio 1992, writ denied). In *Park Rangers*, we held that law enforcement officers, such as park rangers employed in the San Antonio Park Rangers Department, were not "police officers" under the prior version of chapter

[5] In a post-submission letter, the City appears to concede that park and airport police officers "must be considered part of SAPD for purposes of the [the City's] plea to the jurisdiction." *See Heckman*, 369 S.W.3d at 150 (requiring a court reviewing a plea to the jurisdiction to construe the pleadings liberally and to take all factual allegations as true). To avoid confusion, we have independently reviewed the pleadings and concur.

174 because they were not employed by the SAPD. *See id.* at 192–93. However, *Park Rangers* does not control because the circumstances, as alleged by appellees, have changed and binding, subsequent decisions have altered our analytical framework. In 1992, we decided *Park Rangers*, in part, based on our determination that park rangers were employed by the San Antonio Park Rangers Department and that a city could only have one "police department," which was the SAPD. *See id.*; *see also* TEX. LOC. GOV'T CODE ANN. § 174.003(3). Since *Park Rangers*, the Texas Supreme Court has clarified that "the police department of a political subdivision" can encompass more than one entity. *See Jefferson Cty. Constables Ass'n*, 546 S.W.3d at 670 (determining Jefferson County Deputy Constables were "police officers" entitled to collectively bargain under chapter 174 although not employed by the Jefferson County Sheriff's Department). Moreover, in 1992, the park rangers did not allege, as appellees do now, that they were employed by the SAPD. *See San Antonio Park Rangers Ass'n*, 850 S.W.2d at 191 ("Park Rangers are part of the [San Antonio Park Rangers] Department . . . instead of the San Antonio Police Department."). In the instant case, the City and City Manager do not argue that park and airport police officers are part of any other city department. *Cf. id.* (recognizing the "San Antonio Park Rangers Department" and "San Antonio Police Department" as separate entities and undisputedly placing the Park Rangers in the former department). For all of these differences, *Park Rangers* does not control.

In sum, we hold the City and City Manager have not established that the trial court lacks subject matter jurisdiction over appellees' claim for a declaration that park and airport police are "police officers" entitled to collectively bargain with the City and can receive benefits of the collective bargaining agreements entered between the City and SAPOA. Appellees' petition asserts allegations that could support a determination that park and airport police officers are "police officers" under chapter 174 and have a right, under section 174.023, to organize and

bargain collectively. *See* TEX. LOC. GOV'T CODE ANN. §§ 174.003(3), 174.023. Consequently, appellees have pled facts to establish a waiver of the City's immunity under chapter 174 for this declaratory claim. *See id.* §§ 174.003(3), 174.008, 174.023; 174.251 (authorizing a district court to issue a restraining order, injunction, contempt order, or other writ, order, or process to enforce the chapter); *Stines v. Jefferson Cty.*, 550 S.W.3d 178, 179–80 (Tex. 2018) (per curiam) (holding that chapter 174 waived the County's governmental immunity because deputy constables were considered "police officers" under chapter 174).[6]

B. Waiver of Immunity under Chapter 143

Appellees also seek the same declaration just discussed under chapter 143 of the Texas Local Government Code, the Fire and Police Civil Service Act, as well as specific declaratory language that chapter 143 is a source of their rights and benefits. *See* TEX. LOC. GOV'T CODE ANN. § 143.001. We render judgment dismissing appellees' declaratory claim under chapter 143.

i. The Fire and Police Civil Service Act

Chapter 143 of the Texas Local Government Code governs municipal civil service for firefighters and police officers in Texas. *See id.* §§ 143.001–.363. Its purpose is "to secure efficient fire and police departments composed of capable personnel who are free from political influence and who have permanent employment tenure as public servants." *Id* § 143.001(a). To that end, chapter 143 defines "police officer" as a "member of a police department or other peace officer who was appointed in substantial compliance with this chapter or who is entitled to civil service status." *Id.* § 143.003(5); *see Lee v. City of Hous.*, 807 S.W.2d 290, 294 (Tex. 1991)

[6] The City argues that the park and airport police cannot receive the benefits of collective bargaining agreements entered into between the City and SAPOA because SAPD has already recognized a bargaining agent and the agreements exclude the park and airport police. However, these arguments go to the merits of appellees' claim rather than the trial court's subject matter jurisdiction. *See Cty. of Cameron v. Brown*, 80 S.W.3d 549, 554 (Tex. 2002) ("In deciding a plea to the jurisdiction, a court may not weigh the claims' merits.").

(construing chapter 143 definition of "police officer"). Chapter 143 does not contain a general waiver of immunity, and waiver under section 174.008 applies "only to the extent necessary to enforce" chapter 174. TEX. LOC. GOV'T CODE ANN. § 174.008; *see City of Round Rock v. Whiteaker*, 241 S.W.3d 609, 638–39 (Tex. App.—Austin 2007, pet. denied) (holding governmental immunity was not waived for plaintiff's claims for back pay and retrospective monetary relief because plaintiff did not attempt to bring his claims within chapter 143's limited waivers of immunity); *Cassidy v. City of Balch Springs*, 223 S.W.3d 612, 614 (Tex. App.—Dallas 2007, pet. granted, judgm't vacated w.r.m.) (discussing *City of Houston v. Williams*, 213 S.W.3d 827, 828–29 (Tex. 2007) (per curiam) and noting: "Although the supreme court did not directly address whether a general waiver of immunity existed under [chapter 143], the absence of a general waiver is clearly implied by the outcome."). Here, appellees have not alleged or argued that chapter 143 provides for a waiver of immunity for their declaratory judgment claim. Accordingly, appellees have not established waiver for a declaration pursuant to chapter 143.

ii. The Uniform Declaratory Judgments Act

Alternatively, appellees argue that their claim for a declaration under chapter 143 falls within the narrow waiver of immunity under the Uniform Declaratory Judgments Act ("UDJA") because their declaration challenges the City and City Manager's interpretation of chapter 143. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 37.004(a); *Tex. Parks and Wildlife Dep't v. Sawyer Trust*, 354 S.W.3d 384, 388 (Tex. 2011) (explaining the UDJA provides a narrow waiver of immunity for claims challenging the validity of a statute). The City and City Manager argue that appellees do not challenge the validity of statutes, and, therefore, the UDJA does not provide for a waiver of immunity.

The UDJA provides that "[a] person . . . whose rights, status, or other legal relations are affected by a statute . . . may have determined any question of construction or validity arising under

the . . . statute . . . and obtain a declaration of rights, status, or other legal relations thereunder." TEX. CIV. PRAC. & REM. CODE ANN. § 37.004(a). "[T]he UDJA does not enlarge the trial court's jurisdiction but is 'merely a procedural device for deciding cases already within a court's jurisdiction.'" *Tex. Dep't of Transp. v. Sefzik*, 355 S.W.3d 618, 621–22 (Tex. 2011) (per curiam) (quoting *Sawyer Trust*, 354 S.W.3d at 388). Accordingly, the UDJA is not a general waiver of immunity. *Sawyer Trust*, 354 S.W.3d at 388. Instead, the UDJA only "waives sovereign immunity in particular cases." *Sefzik*, 355 S.W.3d at 622. For example, immunity is waived in a declaratory judgment action that challenges the validity of a statute. *Id.* However, "the UDJA does not waive . . . sovereign immunity when the plaintiff seeks a declaration of his or her rights under a statute or other law." *Id.* at 621.

Appellees' live petition requests a declaration that San Antonio's park and airport police officers are entitled to collectively bargain with the City and receive the benefits of the collective bargaining agreements entered into between the City and SAPOA under chapter 143 of the Texas Local Government Code. This request does not seek a declaration concerning the validity of chapter 143, but instead seeks a declaration as to the park and airport police officers' rights under this chapter. We conclude that the UDJA does not waive the City's immunity with respect to their declaratory claim pursuant to chapter 143. *See id.* at 622 (holding that immunity was not waived when an individual did not challenge the validity of a statute but challenged an agency's actions under the statute); *McLane Co. v. Tex. Alcoholic Beverage Comm'n*, 514 S.W.3d 871, 876 (Tex. App.—Austin 2017, pet. denied) (holding that immunity was not waived under the UDJA when the plaintiff sought a declaration of their rights under a statute); *Tex. Educ. Agency v. Am. YouthWorks, Inc.*, 496 S.W.3d 244, 265 (Tex. App.—Austin 2016), *aff'd sub nom. Honors Acad., Inc. v. Tex. Educ. Agency*, 555 S.W.3d 54 (Tex. 2018) (holding that "the Charter Holders' [UDJA] claims requesting statutory construction and a declaration of rights are barred by sovereign

immunity"). Therefore, appellees have not established waiver under the UDJA for their chapter 143 claim.

STANDING

In their final issue, the City and City Manager contend the trial court lacks subject matter jurisdiction over appellees' claims based on lack of standing. They argue that appellees do not have a particularized injury because (1) they do not possess an interest distinct from the general public and (2) they cannot benefit from the remedy they seek. Appellees respond that their interest is particular to them and the argument as to relief conflates jurisdiction with the availability of a remedy and improperly implicates the merits of the case. We agree with appellees on both points.

"Even if sovereign immunity has been waived or would otherwise not be a bar to a suit to challenge governmental action, additional limitations on the subject-matter jurisdiction of courts are imposed by the Texas Constitution." *Bacon v. Tex. Historical Comm'n*, 411 S.W.3d 161, 174 (Tex. App.—Austin 2013, no pet.). These include the constitutional requirement of standing, which imposes certain threshold standards regarding the stake a plaintiff must possess in a dispute before a court can exercise subject matter jurisdiction to resolve it. *Id.* "A court has no jurisdiction over a claim made by a plaintiff who lacks standing to assert it." *Heckman*, 369 S.W.3d at 150. Texas's standing doctrine parallels the federal test for Article III standing, and we consider precedent from the United States Supreme Court when considering standing to sue in Texas courts. *Id.* at 154. To establish standing, a plaintiff must show: (1) an injury in fact, which is concrete and particularized and actual or imminent, not conjectural or hypothetical; (2) that is fairly traceable to the defendant's conduct; and (3) that is likely to be redressed by the requested relief. *Id.* at 154–55 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992)).

The standing inquiry begins with the plaintiff's alleged injury. *Id.* at 155. An individual must demonstrate a particularized interest distinct from the public at large. *S. Tex. Water Auth. v.*

Lomas, 223 S.W.3d 304, 307 (Tex. 2007). Here, the City and City Manager challenge the first element of standing and argue that appellees cannot show a particularized injury that is not shared by the general public. Because we held that appellees' petition asserts allegations that could support a determination that park and airport police officers are "police officers" under chapter 174, and that they have a right under section 174.023 to organize and bargain collectively, we conclude that appellees have pled jurisdictional facts sufficient to establish that they meet the first element of standing. *See* TEX. LOC. GOV'T CODE ANN. §§ 174.003(3), 174.023. The facts are personal to them as alleged "police officers" who seek to collectively bargain and are not shared by the general public. *See Jefferson Cty. Constables Ass'n*, 546 S.W.3d at 666–67 ("Because [chapter 174] allows only fire fighters and police officers to engage in collective bargaining with their public employers, it follows that only fire fighters and police officers have standing to complain when an employer refuses to do so in violation of [chapter 174]."); *see also Wolff*, 583 S.W.3d at 833 ("[T]he trial court lacks subject matter jurisdiction if [plaintiff, an organization whose members include deputy constables,] is unable to establish a violation of [chapter 174].").

The City and City Manager also challenge the third element of standing. To satisfy this third element of redressability, a plaintiff need not prove to a mathematical certainty that the requested relief will remedy its injury—it must simply establish a "substantial likelihood that the requested relief will remedy the alleged injury in fact." *Heckman*, 369 S.W.3d at 155–56; *see Abbott v. G.G.E.*, 463 S.W.3d 633, 646 (Tex. App.—Austin 2015, pet. denied) ("The redressability prong deprives courts of jurisdiction over cases in which the likelihood of the requested relief redressing the plaintiff's injury is only speculative."). A plaintiff does not lack standing in its proper, jurisdictional sense "simply because he cannot prevail on the merits of his claim; he lacks standing [when] his claim of injury is too slight for a court to afford redress." *Pike v. Tex. EMC Mgmt., LLC*, 610 S.W.3d 763, 774 (Tex. 2020). The City and City Manager argue that appellees

have no remedy because a declaration that park and airport police officers are "police officers" under chapter 174 would forbid them from serving in their roles due to the fact that they were not hired in substantial compliance with chapter 143. *See* TEX. LOC. GOV'T CODE ANN. §§ 143.003(5); 143.025; 143.027(d). We conclude that appellees have pled sufficient facts to establish that their injuries are "likely to be redressed by the requested relief." *See Heckman*, 369 S.W.3d at 155. Appellees seek declaratory relief to remedy their alleged injuries relating to their inability to participate in the collective bargaining process, despite allegedly meeting the definition of "police officers" under chapter 174. *See* TEX. LOC. GOV'T CODE ANN. §§ 174.003(3), 174.023. Because we hold that appellees' petition states allegations that could support a determination that park and airport police officers are "police officers" under chapter 174, it follows that they would be able to collectively bargain under section 174.023. *See id.* § 174.023. Therefore, the relief appellees request will remedy, in some way, their alleged injury. *See Heckman*, 369 S.W.3d at 158–59 (holding that the plaintiff had standing for his injunctive and declaratory relief because the relief will have remedied the plaintiff's alleged injury "in some way" and that "the plaintiff need not prove to a mathematical certainty that the requested relief will remedy his injury.").

We are not persuaded by the City and City Manager's argument that appellees do not meet the redressability element of standing due to their inability to hold roles as "police officers" under chapter 143 because they were not hired in substantial compliance with that chapter. As explained above, chapters 143 and 174 supply different definitions for "police officers" and the chapters address different rights and remedies. While there may be some second-order effects under chapter 143 that may follow if appellees win a declaratory judgment under chapter 174, those potential effects are not immediate, and it is not obvious that a declaration under chapter 174 would deprive park and airport police officers of employment. For their part, appellees argue that park and airport police officers are not subject to the hiring requirement for SAPD officers and that the hiring

requirements of chapter 143 can be modified through a collective bargaining agreement. At this stage, we need not inquire further into the substance of the City and City Manager's argument because further analysis would stray beyond the threshold standing inquiry. *See Balquinta*, 429 S.W.3d at 743 (rejecting argument that plaintiffs failed to meet redressability component of standing because the relief they sought would have the legal effect of terminating the program the plaintiffs were challenging); *see also Bland Indep. Sch. Dist.*, 34 S.W.3d at 555 ("[A] trial court is not authorized to inquire so far into the substance of the claims presented that plaintiffs are required to put on their case simply to establish jurisdiction."). Consequently, we hold the City and City Manager's challenge to redressability goes to the merits of appellees' claims rather than their standing to assert them. *See Bland Indep. Sch. Dist.*, 34 S.W.3d at 555.

Appellees have alleged facts demonstrating a real controversy regarding the existence of a right and concrete injury from its deprivation, and they seek a declaration of this right and a remedy for its deprivation. Based on the allegations in the live petition, we conclude that appellees have alleged sufficient facts that, if taken as true, would confer standing for their claims. *See Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 447–48 (Tex. 1993).

CONCLUSION

We hold that appellees' live petition states allegations that could support a declaration that park and airport police officers are "police officers" under chapter 174 and have a right, under section 174.023, to organize and bargain collectively with the City and receive the benefits of the collective bargaining agreements entered into between the City and SAPOA. We hold governmental immunity has been waived as to this declaratory claim and that appellees have standing to assert that claim. Accordingly, we affirm the trial court's order denying the City and

City Manager's plea to the jurisdiction as to appellees' chapter 174 claim.[7] However, we conclude that the trial court lacks subject matter jurisdiction over appellees' chapter 143 claim. Accordingly, because subject matter jurisdiction is lacking as to this chapter 143 claim, we reverse the trial court's order denying the City and City Manager's plea to the jurisdiction and render judgment dismissing this claim without prejudice to refiling.[8]

Rebeca C. Martinez, Chief Justice

[7] We also affirm the trial court's order denying the plea to the jurisdiction as to appellees' *ultra vires* claim against the City Manager because the City and City Manager only raised an issue challenging appellees' standing to assert this claim. As explained above, appellees have standing to assert their claims.

[8] Where, as here, we conclude that the plaintiffs' pleadings do not contain sufficient facts to affirmatively demonstrate the trial court's jurisdiction over all or part of a suit, our proper remedy depends upon whether that jurisdictional defect can be cured. We render judgment dismissing appellees' claim under chapter 143, rather than remand, because the pleadings affirmatively negate the existence of the trial court's jurisdiction by revealing an incurable defect. *See Harris Cty. v. Annab*, 547 S.W.3d 609, 616 (Tex. 2018). A remand would serve no purpose because jurisdictional evidence demonstrates that appellees' dismissed claim incurably falls outside any waiver of governmental immunity. *See Miranda*, 133 S.W.3d at 227 (instructing that a plaintiff's suit should be dismissed when either the pleadings alone or the jurisdictional evidence demonstrates that the plaintiff's suit incurably falls outside any waiver of immunity). Finally, appellees amended their pleading in response to the jurisdictional challenges, and appellees have not suggested how they would amend their pleading if given another opportunity to do so. *See Rogge v. City of Richmond*, 506 S.W.3d 570, 578–79 (Tex. App.—Houston [1st Dist.] 2016, no pet.) (affirming the grant of a plea to the jurisdiction without providing an opportunity for the plaintiffs to replead because the plaintiffs had amended their pleadings following the jurisdictional challenges and the plaintiffs failed to suggest how they would amend their pleading if given another opportunity to do so). In the absence of an argument suggesting how the pleading might be cured, a remand would serve no purpose. *See Tex. A&M Univ. Sys. v. Koseoglu*, 233 S.W.3d 835, 840 (Tex. 2007).