Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-20-00478-CV

CITY OF SAN ANTONIO,
Appellant

v.

Albert **DAVILA**, Individually; Madeline Davila, Individually; and Albert Davila as Trustee of the Albert Peña Davila and Madeline Davila Living Trust,
Appellees

From the 225th Judicial District Court, Bexar County, Texas
Trial Court No. 2019CI03387
Honorable Aaron S. Haas, Judge Presiding

Opinion by: Luz Elena D. Chapa, Justice

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

Delivered and Filed: August 4, 2021

REVERSED AND REMANDED

The City of San Antonio appeals an order denying its plea to the jurisdiction. The City argues the trial court erred by concluding the City's governmental immunity was waived as to appellees' trespass to try title action regarding property they claim to have adversely possessed from the City. Appellees did not allege or show a waiver of governmental immunity, but the defect is not incurable. We therefore reverse the trial court's order and remand with instructions.

BACKGROUND

Albert and Madeline Davila, individually, and Albert Davila as Trustee of the Albert Peña Davila and Madeline Davila Living Trust sued the City in a trespass to try title action. The Davilas alleged that, as part of closing and abandoning 12th Street and conveying parcels to adjoining landowners in 1987, the City deeded the subject property to the Davilas' parents (and predecessors in title), but the deed misidentified the property and misspelled the name of a grantee. The Davilas further alleged they have adversely possessed property from the City.

After filing an answer and special exceptions, the City filed a plea to the jurisdiction. In support of its plea, the City attached a 1987 quitclaim deed and a printout of property records from the Bexar County Appraisal District. The quitclaim deed recites the City passed an ordinance authorizing the sale of the property to the Davilas' parents. The quitclaim deed also contains a metes-and-bounds description of the subject property and reserves a utility easement. In its plea, the City argued the Davilas failed to plead a waiver of its governmental immunity.

The Davilas amended their pleadings, alleging their trespass to try title action was authorized by Chapter 16 of the Texas Civil Practice & Remedies Code. The Davilas also filed a response to the City's plea, arguing the alleged waivers of immunity under Chapter 16 established the trial court's subject matter jurisdiction. After a hearing, the trial court signed an order denying the City's plea. The City timely appealed.

APPLICABLE LAW & STANDARD OF REVIEW

Governmental immunity protects political subdivisions from suits and defeats a trial court's subject matter jurisdiction. *City of Conroe v. San Jacinto River Auth.*, 602 S.W.3d 444, 457 (Tex. 2020). Because the existence of governmental immunity defeats a trial court's subject matter jurisdiction, governmental immunity is properly asserted in a plea to the jurisdiction. *See State v. Holland*, 221 S.W.3d 639, 642 (Tex. 2007). "A plea questioning the trial court's jurisdiction raises

a question of law that we review *de novo.*" *Id.* "We focus first on the plaintiff's petition to determine whether the facts pled affirmatively demonstrate that jurisdiction exists." *Id.* "We construe the pleadings liberally, looking to the pleader's intent." *Id.* at 643. We take all factual assertions as true. *Tex. Dep't of Criminal Justice v. Rangel*, 595 S.W.3d 198, 205 (Tex. 2020). "If the pleadings are insufficient to establish jurisdiction but do not affirmatively demonstrate an incurable defect, the plaintiff should be afforded the opportunity to replead." *Holland*, 221 S.W.3d at 643.

"[W]aivers of sovereign immunity must be clear and unambiguous." *PHI, Inc. v. Tex. Juvenile Justice Dep't*, 593 S.W.3d 296, 303 (Tex. 2019). When construing a statute, "we must look to the plain meaning of statutory text unless a different meaning is apparent from the context or the plain meaning leads to absurd or nonsensical results." *Id.* (internal quotation marks omitted). "If a statute is clear and unambiguous, we apply its words according to their common meaning without resort to rules of construction or extrinsic aids." *Id.* (internal quotation marks omitted). "[A]ny purported statutory waiver of sovereign immunity should be strictly construed in favor of retention of immunity." *Id.* (internal quotation marks omitted).

DISCUSSION

The City argues governmental immunity is not waived for trespass to try title actions. In *Texas Parks & Wildlife Department v. Sawyer Trust*, the Supreme Court of Texas stated: "If the Trust's suit against the Department is in substance a trespass to try title action, it is barred by sovereign immunity absent the Legislature's having waived its immunity." 354 S.W.3d 384, 389 (Tex. 2011). In *Sawyer Trust*, the supreme court quoted its 1961 decision in *State v. Lain*: "When in this state the sovereign is made a party defendant to a suit for land, without legislative consent, its plea to the jurisdiction of the court based on sovereign immunity should be sustained in limine."

Id. (quoting 349 S.W.2d 579, 582 (Tex. 1961)).[1] "As an extension of sovereign immunity, governmental immunity protects political subdivisions performing governmental functions as the state's agent." *Rosenberg Dev. Corp. v. Imperial Performing Arts, Inc.*, 571 S.W.3d 738, 741 (Tex. 2019). When a city is sued in a trespass to try title action based on adverse possession, governmental immunity is not waived, and the trial court lacks subject matter jurisdiction. *City of Dallas v. Turley*, 316 S.W.3d 762, 773 (Tex. App.—Dallas 2010, pet. denied). Here, the Davilas have asserted only a trespass to try title action based on adverse possession. Thus, without a clear and unambiguous waiver of immunity, the City retains governmental immunity and the trial court lacks subject matter jurisdiction. *See id.*

The Davilas argue different rules should apply to municipalities. In support of their position, the Davilas cite *City of Fort Worth v. Taylor*, 346 S.W.2d 792 (Tex. 1961). In *Taylor*, the Supreme Court of Texas affirmed "a judgment in favor of a private citizen against a municipal corporation for title to and possession of a tract of land." *Id.* at 793. However, the supreme court in *Taylor* did not directly address governmental immunity or the trial court's subject matter jurisdiction. And, the jurisprudence relating to governmental immunity and subject matter jurisdiction has developed since the 1960s. As one of our sister courts noted in 1999:

> There are two conflicting views on governmental immunity as a bar to subject matter jurisdiction. One view is that sovereign immunity may not be asserted as a jurisdictional obstacle to a trial court's power to hear cases against governmental defendants. Instead, erroneous judgments against governmental units may be corrected, as in other cases, on appeal.

City of Houston v. Fagan, No. 14-99-00103-CV, 1999 WL 1080691, at *1 (Tex. App.—Houston [14th Dist.] Dec. 2, 1999, no pet.) (not designated for publication) (citations omitted). That same day, the supreme court clarified that sovereign immunity is a bar to subject matter jurisdiction. *See*

[1] The Davilas argue *Sawyer Trust* shows state officials may be sued in a trespass to try title action, but the Davilas sued only the City of San Antonio, not any other officials.

Tex. Dep't of Transp. v. Jones, 8 S.W.3d 636, 638-39 (Tex. 1999) (per curiam). The supreme court has applied these principles to local governmental entities with governmental immunity. *See Harris Cty. v. Sykes*, 136 S.W.3d 635, 638 (Tex. 2004). Additionally, in *Taylor*, the supreme court discussed a city's ability to defend itself against a counterclaim when the city sues to remove obstructions from public roads. *Taylor*, 346 S.W.2d at 793-94. When a governmental entity voluntarily initiates a suit for title, the entity's immunity may be waived as to certain counterclaims relating to title. *See Hughes v. Tom Green Cty.*, 573 S.W.3d 212, 219 (Tex. 2019). We conclude *Taylor* is not controlling.

The Davilas argue section 16.005 of the Texas Civil Practice & Remedies Code waives the City's governmental immunity. Section 16.005 provides, in relevant part:

> (a) A person must bring suit for any relief from the following acts not later than two years after the day the cause of action accrues:
>
> > (1) the passage by a governing body of an incorporated city or town of an ordinance closing and abandoning, or attempting to close and abandon, all or any part of a public street or alley in the city or town, other than a state highway;
> >
> > . . . .
>
> (b) The cause of action accrues when the order or ordinance is passed or adopted.
>
> (c) If suit is not brought within the period provided by this section, the person in possession of the real property receives complete title to the property by limitations and the right of the city or county to revoke or rescind the order or ordinance is barred.

Id. § 16.005. "Under the unambiguous language of section 16.005, that statute does not apply to . . . claims [that do] not seek relief from the passage of an ordinance closing and abandoning, or attempting to close and abandon, all or any part of a public street or alley in a city or a town." *Kennedy Con., Inc. v. Forman*, 502 S.W.3d 486, 501 (Tex. App.—Houston [14th Dist.] 2016, pet. denied). And under section 16.005, "[a] member of the public who wished to keep the road and bridge open for public use, despite the statutory abandonment, could have brought suit against the

[government]." *Long Island Owner's Ass'n, Inc. v. Davidson*, 965 S.W.2d 674, 687 (Tex. App.—Corpus Christi 1998, pet. denied).

The Davilas did not request relief from the City's ordinance, which authorized the sale or abandonment of property, but from the quitclaim deed itself. The Davilas suggest that because they waited until two years after the City closed 12th Street to file suit, they would be entitled to "complete title" under section 16.005. Under the Davilas' interpretation, section 16.005 would incentivize waiting until after the limitations period has expired to file suit, which is contrary to the purpose of a statute of limitations. *See Erikson v. Renda*, 590 S.W.3d 557, 569 (Tex. 2019) (stating purposes of statute of limitations are to ensure suits are filed within specific timeframe to avoid litigating stale or fraudulent claims and to avoid prejudicing defendant). The Davilas' interpretation is untenable. Considering the plain meaning of section 16.005, we hold the provision does not clearly and unambiguously waive governmental immunity for the Davilas' trespass to try title claim against the City.

The Davilas also argue section 16.030 of the Texas Civil Practice & Remedies Code provides a waiver of governmental immunity. Section 16.030 provides as follows:

> (a) If an action for the recovery of real property is barred under this chapter, the person who holds the property in peaceable and adverse possession has full title, precluding all claims.
>
> (b) A person may not acquire through adverse possession any right or title to real property dedicated to public use.

Id. § 16.030. The Davilas cite no authority that section 16.030 waives governmental immunity. Based on the plain meaning of section 16.030, we cannot say the provision clearly and unambiguously authorizes an action for recovery of real property against the state or its political subdivisions. *See id.* Thus, section 16.030 does not waive the City's governmental immunity.

DISPOSITION

The City's plea challenged the trial court's subject matter jurisdiction based on the Davilas' pleadings, and the Davilas' pleadings establish the trial court lacks subject matter jurisdiction as to their claim against the City. However, under *Sawyer Trust*, when a claim asserted against the government is barred by immunity, the claimant may be "entitled to replead and attempt to assert an ultra vires claim against state officials if it chooses to do so." 354 S.W.3d at 386. The City argues the Davilas had an opportunity to amend their pleadings and failed to do so. But when faced with a plea to the jurisdiction, a plaintiff may stand on the pleadings "unless and until a court determines that the plea is meritorious." *Tex. A & M Univ. Sys. v. Koseoglu*, 233 S.W.3d 835, 839 (Tex. 2007). If the trial court determines the plea is meritorious and the pleadings are deficient, the plaintiff must then be given a reasonable opportunity to amend the pleadings to cure the jurisdictional defects. *Id.* Whether pleading defects are incurable generally turns on whether the pleadings affirmatively demonstrate the absence of subject matter jurisdiction. *Holland*, 221 S.W.3d at 643.

The City's brief does not argue or explain why the pleading defect—suing the City instead of government officials for ultra vires acts—is incurable. Instead, the City acknowledges the Davilas have not attempted "the correct method to sue a government entity for title to property." The Davilas' pleadings do not affirmatively demonstrate they could not allege their claim in a manner over which the trial court would have subject matter jurisdiction. We therefore reverse the trial court's order denying the City's plea and remand with instructions for the trial court to provide the Davilas with an opportunity to amend their pleadings to cure the deficiencies.

Luz Elena D. Chapa, Justice