In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-15-00451-CV

CITY OF BEAUMONT, BOYD MEIER, AND QUENTIN PRICE, Appellants

V.

TAMMY ERMIS, Appellee

On Appeal from the 58th District Court
Jefferson County, Texas
Trial Cause No. A-186,662

MEMORANDUM OPINION

In this appeal, we address whether the trial court possessed subject-matter jurisdiction over a petition Tammy Ermis filed seeking judicial review of an order issued by the City in October 2007, which authorized a structure located at 2002 Park Street to be demolished. *See* Tex. Loc. Gov't Code Ann. § 214.001(a)(1) (West 2016) (providing that municipalities may, by ordinance, require that a structure be vacated, the occupants relocated, or that the structure be secured, repaired, removed, or demolished because it presents a hazard to public health, safety and welfare); *Id*.

§ 214.0012(a) (West 2016) (providing for the classes of individuals who may seek judicial review in a district court complaining of such orders). In two issues, the appellants argue the trial court erred by denying the City's plea, and the appellants claim the trial court erred when it overruled the City's objection to some of the evidence that Tammy submitted in her response to the City's plea.

Because the evidence conclusively shows that Tammy was on notice of the City's order to demolish the structure at 2002 Park Street when she acquired her community-property interest in the structure, we conclude that the trial court does not have jurisdiction over Tammy's complaints about the ordinance the City passed declaring the structure dangerous and ordering the structure demolished. As to the City, we reverse and render judgment dismissing Tammy's suit with prejudice. We further conclude that we do not have jurisdiction over the appeals filed by Boyd Meier and Quentin Price, the two city employees Tammy added as defendants in the case after the trial court ruled on the City's plea. As to Meier and Price, the record does not contain an appealable order on the pleas to the jurisdiction that they filed contesting whether the trial court possessed subject-matter jurisdiction over the claims Tammy filed against them.

Background

When the trial court ruled on the City of Beaumont's plea, the pleadings and evidence that were before it revealed that Tammy acquired her interest in the

structure at 2002 Park Street in March 2008. Before Tammy acquired the property, the City, in October 2007, had found the structure at 2002 Park Street to be dangerous and ordered the structure to be demolished.

The following evidence was undisputed regarding the actions the City had taken against the structure to have it demolished. In January 2007, a field supervisor for the City of Beaumont signed a notice declaring the structure dangerous as defined by the ordinances of the City of Beaumont. The notice also states that the structure may not be lawfully occupied, and that the structure could be demolished without further notice.[1] In October 2007, based on the action of City Council, Beaumont's acting mayor approved ordinance number 07-105 declaring the structure a public nuisance that violated the City's building ordinances. The ordinance indicates that the owners were required to demolish the structure at 2002 Park Street within ten

[1] The record shows that in April 2007, Timothy Seymour entered into a work program to repair the structure at 2002 Park Street and bring it up to code. The record also shows that the City was involved in another case, cause number A-181,515, with Brian Muldrow, Tammy's husband. The case Muldrow filed against the City concerned whether the City should be required to allow Muldrow to repair the structure. The record shows that Muldrow agreed to dismiss his case against the City in late March 2009 in return for the City's agreement allowing him a limited period of time, not to exceed a total of 360 days, to repair the structure in two phases, with the first phase to be completed within 180 days. Muldrow was not a party to Tammy's case, and Tammy has not claimed that the City breached the agreement that it made with Muldrow. Given the issues the City raises in its appeal, and our disposition of Tammy's appeal, the background facts in the opinion are limited to those facts central to the Court's resolution of the issues that were raised by the City in its appeal.

days, and the ordinance states that if the owners failed to do so, the property could be demolished by the City without further notice and without further action by City Council.

Two days after the City passed ordinance number 07-105, the City sent Timothy B. Seymour and Steven J. Seymour a notice, by certified mail, informing them that they were required to demolish or remove the structure within ten days. The notice also states that the City could demolish the structure without further notice or action by City Council. The record includes a return receipt for the notice indicating that the Seymours received the notice less than a week after it was mailed.

In March 2008, Timothy B. Seymour, joined by his spouse, Vickie Ann Seymour, conveyed their interest in the lot at 2002 Park Street to Brian Muldrow using a special warranty deed with a vendor's lien. Brian's name is listed as the grantee on the deed to the property at 2002 Park Street. Tammy's name is not on the deed. However, the record before the trial court on the City's plea shows that Tammy and Brian were married before Brian acquired the property. One of the exhibits in the record includes a marriage license showing that Brian and Tammy married in January 2008.

In April 2010, Tammy filed a petition in the 58th District Court of Jefferson County challenging the validity of ordinance number 07-105. In her petition, Tammy alleged that when she and Brian purchased the property, they understood that it was

subject to a demolition order that had been issued by the City of Beaumont to Timothy Seymour, who she alleged was the prior owner of the structure at 2002 Park Street.

In October 2015, the trial court denied the City of Beaumont's plea. When the trial court ruled on the plea, Meier and Price were not parties to the case. However, on the day after the trial court denied the plea, Tammy filed a supplemental petition, alleging that Meier and Price had prevented her from obtaining the building permits that she needed to repair the structure at 2002 Park Street. Meier's response to Tammy's supplemental petition indicates that he is an employee of the City responsible for issuing building permits and conducting inspections to insure that buildings comply with the City's building codes. Price's response to Tammy's supplemental petition indicates that he is an assistant city attorney for the City, and that his actions regarding the structure at 2002 Park Street occurred in his role as an assistant city attorney. In responding to Tammy's supplemental petition, Meier and Price adopted the City's plea to the jurisdiction, a plea that the trial court had already denied. In the initial response that Meier and Price filed, they did not assert any claims based on their official immunity as employees of a governmental unit. On the date that they first appeared, the City, Meier, and Price also filed a joint motion requesting that the trial court rehear the City's plea.

Approximately one week after Meier and Price appeared in the suit, the City, Meier, and Price, filed an amended answer. In it, the City, Meier, and Price alleged that at all times, Meier and Price were performing their discretionary duties, in good faith, and that they were acting within the scope of their authority as City employees. Meier and Price also alleged they enjoyed a right to official immunity, which immunized them from being sued for the actions they took in response to Tammy's requests to repair the structure. On the day the defendants filed their first amended answer, the trial court denied the request the City, Meier, and Price filed asking the trial court to rehear the City's plea.

Within twenty days of the date the trial court denied the City's plea to the jurisdiction, the City, Meier, and Price filed a timely joint notice of appeal. Tex. R. App. P. 26.1(b) (requiring notices in accelerated appeals to be filed within twenty days after the judgment is signed); Tex. R. App. P. 28.1(b) (providing motions for new trial, among other types of motions or requests, do not extend the time to perfect an accelerated appeal). We note our jurisdiction over the City's appeal from the order the trial court rendered on its plea to the jurisdiction. Tex. Civ. Prac. & Rem. Code Ann. § 51.014(a)(8) (West Supp. 2016) (providing a right to an accelerated appeal on rulings granting or denying pleas to the jurisdiction).

Standard of Review

Tammy filed a variety of claims[2] against the City based on the City's notice declaring the structure at 2002 Park Street dangerous, the requirement in the notice announcing the structure would be demolished, and the actions the City and its officials took toward her requests to repair the structure at 2002 Park Street. In its plea to the jurisdiction and the brief the City filed in this appeal, the City asserts that Tammy does not have standing to sue the City because she knew the City had declared the structure at 2002 Park Street to be a dangerous structure and that the City had ordered the structure to be demolished when she acquired her ownership interest in the structure.

Standing, as a component of subject-matter jurisdiction, is an issue that a party may properly raise in a case by filing a plea to the jurisdiction. *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 553-54 (Tex. 2000); *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 443 (Tex. 1993). Whether a party has standing is a

[2] Tammy filed claims against the City seeking to challenge the validity of the City's order under Chapter 214 of the Local Government Code, alleging that the City's conduct toward the structure amounted to a prior restraint and violated her rights to free speech, violated her right to equal protection of the law, constituted a taking, and that the City had tortuously interfered with her rights to her property. In her brief, Tammy characterizes all but one of her claims as state constitutional claims in which she sought solely equitable relief. Tammy's brief also indicates that she sought damages based on a takings claim under article I, section 17 of the Texas Constitution. Tex. Const. art. I, § 17.

question of law that is reviewed on appeal using a de novo standard of review. *Mayhew v. Town of Sunnyvale*, 964 S.W.2d 922, 928 (Tex. 1998).

Plaintiffs are required to plead facts that affirmatively demonstrate they have standing to assert their claims. *See Andrade v. Venable*, 372 S.W.3d 134, 138-39 (Tex. 2012); *Mazon Assocs., Inc. v. Comerica Bank*, 195 S.W.3d 800, 803 (Tex. App.—Dallas 2006, no pet.). In reviewing a ruling on a plea to the jurisdiction, the appeals court considers the pleadings and the evidence before the court at the hearing on the plea that is relevant to the jurisdictional issue. *Blue*, 34 S.W.3d at 555.

"'[A] plaintiff must demonstrate standing for each claim [she] seeks to press and for each form of relief that is sought.'" *Andrade v. NAACP of Austin*, 345 S.W.3d 1, 14 (Tex. 2011) (quoting *Davis v. FEC*, 554 U.S. 724, 734 (2008)). "The standing inquiry 'focuses on the question of who may bring an action.'" *Vernco Constr., Inc. v. Nelson*, 460 S.W.3d 145, 149 (Tex. 2015) (quoting *Patterson v. Planned Parenthood*, 971 S.W.2d 439, 442 (Tex. 1998)). Courts lack subject-matter jurisdiction to adjudicate disputes initiated by parties who lack standing. *The M.D. Anderson Cancer Ctr. v. Novak*, 52 S.W.3d 704, 708 (Tex. 2001); *Tex. Air Control Bd.*, 852 S.W.2d at 443-44. Whether a court has subject-matter jurisdiction over a party's claims presents a court with a question that is resolved as a matter of law. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004).

In deciding a plea to the jurisdiction, a court must not weigh the merits of the claim, but should consider only the plaintiff's pleadings and the evidence pertinent to the jurisdictional inquiry. *Cty. of Cameron v. Brown*, 80 S.W.3d 549, 555 (Tex. 2002). When the jurisdictional issue is not intertwined with the merits of the plaintiff's claims, which is the situation in Tammy's case, the disputed fact issues are resolved by the court, not the jury. *See Blue*, 34 S.W.3d at 554-55; *Miranda*, 133 S.W.3d at 226 (citing *Cameron v. Children's Hosp. Med. Ctr*., 131 F.3d 1167, 1170 (6th Cir. 1997)).

Unlike the State, cities are not freestanding sovereigns with their own inherent immunity. *Wasson Interests, Ltd. v. City of Jacksonville*, 489 S.W.3d 427, 433 (Tex. 2016). However, when a city is exercising its powers for a public purpose, cities are deemed to be agents of the State for the purposes of applying the doctrine of sovereign immunity to their actions. *See Fort Worth Indep. Sch. Dist. v. City of Fort Worth*, 22 S.W.3d 831, 840 n.12 (Tex. 2000) (citing *City of Galveston v. Posnainsky*, 62 Tex. 118, 127 (1884)). Consistent with the understanding that a municipality's immunity extends only as far as the State's but no further, the Texas Supreme Court has explained that "'[a] municipality is not immune from suit for torts committed in the performance of its proprietary functions, as it is for torts committed in the performance of its governmental functions.'" *Wasson,* 489 S.W.3d at 430 (quoting *Tooke v. City of Mexia*, 197 S.W.3d 325, 343 (Tex. 2006)).

In this case, the City's pleadings alleged that Tammy's claims against the City arose from the City's governmental functions. Tammy has not alleged or argued in her brief that the actions the City took toward the structure at 2002 Park Street, or that the actions the City took in dealing with her about repairing the structure related to or arose out of any of the City's proprietary functions. Based on the pleadings and evidence before the trial court on the City's plea, we conclude that the City's actions that are at issue in the case do not implicate any of the City's proprietary functions.

While municipalities may not generally assert governmental immunity to avoid claims for violating an individual's constitutional rights, plaintiffs asserting a constitutional claim must plead a facially valid claim to overcome a plea to the jurisdiction. *See Klumb v. Houston Mun. Emps. Pension Sys.*, 458 S.W.3d 1, 13 (Tex. 2015) (citing *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009)); *Andrade*, 345 S.W.3d at 11. The City's plea to the jurisdiction challenged Tammy's pleadings on the basis that her pleadings showed that she did not have standing to complain about the actions the City took against the structure at 2002 Park Street. According to the pleadings relevant to the hearing conducted on the City's plea, Tammy did not own the structure at 2002 Park Street when the City declared it dangerous and ordered that it be repaired or demolished.

Under Texas law, plaintiffs must allege facts demonstrating the trial court's subject-matter jurisdiction when bringing claims against a municipality. *See Tex. Air*

Control Bd., 852 S.W.2d at 446. In this case, Tammy was required to allege sufficient facts in her pleadings to demonstrate that she had standing to pursue her claims against the City for issuing ordinance number 07-105 and for the decisions that she alleged the City made after issuing that ordinance. When a plaintiff's pleadings are determined to be insufficient to allege facially valid claims but the defects can be cured by amendment, courts must allow the plaintiff an opportunity to re-plead before dismissing the plaintiff's case. *See Miranda*, 133 S.W.3d at 226-27. However, if the plaintiff has been given an opportunity to re-plead after having been placed on notice that its pleadings are insufficient to demonstrate standing, or if the pleadings and record demonstrate that the deficiencies in the plaintiff's pleadings cannot be cured, the case should be dismissed. *See RSL Funding, LLC v. Pippins*, 499 S.W.3d 423, 429 (Tex. 2016); *Harris Cty. v. Sykes*, 136 S.W.3d 635, 639 (Tex. 2004).

Application of Law to the City's Plea

In this case, Tammy's pleadings reflect that she knew the City had declared the property a dangerous structure and ordered it demolished before she and her husband acquired their interests in the property at 2002 Park Street. The deed to the property does not reflect that Tammy (or her husband) acquired any claims the Seymours may have had against the City regarding the structure at 2002 Park Street. Under Texas law, the injury to the property at 2002 Park Street, if any, occurred

when the City declared the structure on the property dangerous and ordered it demolished. *See Exxon Corp. v. Emerald Oil & Gas Co., L.C.*, 331 S.W.3d 419, 424 (Tex. 2010); *Houston Water-Works Co. v. Kennedy*, 8 S.W. 36, 37 (Tex. 1888). Although Tammy asserted various takings and constitutional claims seeking equitable relief for the City allegedly violating her rights, Tammy was required to plead a case based on a violation of her own legal rights and interests. *Warth v. Seldin*, 422 U.S. 490, 499 (1975). Tammy's claims, which concern the City's decision to declare the structure dangerous and order that it be demolished, cannot rest on rights owned by the Seymours in the absence of an express assignment by the Seymours of their right to litigate the validity of the City's ordinance. *See id.* In other words, Tammy's constitutional claims cannot be based on a claim that the City violated someone else's constitutional rights. *Id*.

The record conclusively shows that Tammy did not own the property when City Council found the structure at 2002 Park Street to be dangerous and ordered that it be demolished. The record also shows that ordinance number 07-105 became final before Tammy acquired her interest in the structure. Under Texas law, "[t]he right to sue is a personal right that belongs to the person who owns the property at the time of the injury, and the right to sue does not pass to a subsequent purchaser of the property unless there is an express assignment of the cause of action." *Emerald*

Oil, 331 S.W.3d at 424. Subsequent purchasers of a property cannot recover for injuries to the property that were committed prior to their purchase. *Id*.

With respect to all of the claims Tammy raised in her pleadings, we conclude Tammy does not enjoy standing to assert those claims because she acquired her interest in the property after she was on notice that the structure at 2002 Park Street was to be demolished. Additionally, Tammy has no valid constitutional claim against the City, should the City demolish the structure, since the validity of ordinance number 07-105 became final. "A maxim of takings jurisprudence holds that 'all property is held subject to the valid exercise of the police power.'" *City of Dallas v. Stewart*, 361 S.W.3d 562, 569 (Tex. 2012) (quoting *City of College Station v. Turtle Rock Corp.*, 680 S.W.2d 802, 804 (Tex. 1984)). Based on their police powers, "[m]unicipalities have . . . authority to abate nuisances, including the power to do so permanently through demolition." *Id.* at 564 n.1 (citing *Schneider Nat'l Carriers, Inc. v. Bates*, 147 S.W.3d 264, 286-87 (Tex. 2004)). A municipality's abatement of a nuisance is within the scope of its police powers. *See id.* at 564 n.1. Accordingly, "the government commits no taking when it abates what is, in fact, a public nuisance." *Id.* at 569. We conclude that the finding by City Council that the structure at 2002 Park Street is dangerous, which became final, is dispositive of Tammy's takings claim. *See Stewart*, 361 S.W.3d at 569.

Tammy's remaining claims, which she pleaded as constitutional claims seeking equitable relief, are invalid on their face. *See Warth*, 422 U.S. at 499; *Emerald Oil*, 331 S.W.3d at 424. Tammy's pleadings fail to set forth any facts to show that she was denied any process she was due, she alleged no facts to show that the City violated her right to freedom of speech, and she failed to plead any facts showing that she was treated unequally. Because Tammy's pleadings reflect that she was not injured by the City's threat to tear down a dangerous structure at 2002 Park Street, Tammy's pleadings fail to demonstrate that she has any facially valid constitutional claims. *See id*. We reverse the trial court's order denying the City's plea. *See Miranda*, 133 S.W.3d at 228 (explaining that when the pleadings and evidence fail to raise a fact question on the jurisdictional issue, the plea is ruled on as a matter of law).

We further conclude that Tammy's pleadings are not capable of being cured by amendment. Tammy has not argued in her brief that she acquired any interest in the property at 2002 Park Street before City Council passed ordinance 07-105. Additionally, Tammy does not argue that she acquired the Seymours' claims by assignment. Tammy also had ample opportunity to re-plead after she was on notice that the City was challenging her standing to sue. Because nothing shows that the defects in Tammy's pleadings can be cured, we are required to dismiss Tammy's claims against the City, with prejudice. *See* Tex. R. App. P. 43.2(c); *Pippins*, 499

S.W.3d at 429 (indicating that the rule allowing an opportunity to re-plead to establish standing exists unless the pleadings and record demonstrate an incurable jurisdictional defect); *Sykes*, 136 S.W.3d at 639 (indicating that if the record shows the plaintiff re-pleads after the governmental entity files its plea but the plaintiff's pleadings still do not allege sufficient facts to establish that the court has subject-matter jurisdiction over the dispute, "then the trial court should dismiss the plaintiff's action . . . with prejudice").

Jurisdiction over the Appeals

In her brief, Tammy argues that we do not have jurisdiction over the appeals filed by the City, Meier, and Price. Tammy argues that we do not have jurisdiction over the City's appeal because the City failed to appeal from an order the trial court rendered in April 2011, overturning an earlier order granting the City's plea. With respect to the appeals filed by Meier and Price, Tammy argues that the trial court has never rendered an appealable interlocutory order regarding her claims against them.

First, we address whether we have jurisdiction over Meier's and Price's appeals. Section 51.014(a) of the Texas Civil Practice and Remedies Code provides that appellate courts have jurisdiction over several types of interlocutory rulings, one of which is a ruling denying a plea to the jurisdiction. Tex. Civ. Prac. & Rem. Code Ann. § 51.014(a)(1)-(a)(13) (West Supp. 2016). The statute that provides for

appellate jurisdiction over various types of interlocutory orders does not provide an appellate court with jurisdiction over all of a trial court's interlocutory rulings. *See id.*; *see also In re K.A.F.*, 160 S.W.3d 923, 927 (Tex. 2005) (explaining that a motion for new trial is not an instrument that may be considered to have been a bona fide attempt to invoke the appellate court's jurisdiction); *Bhakta v. Tex. DOT*, No. 04-14-00063-CV, 2014 Tex. App. LEXIS 4115, *1 (Tex. App.—San Antonio Apr. 16, 2014, no pet.) (mem. op.) (applying *In re K.A.F.* to a motion to reconsider a trial court's ruling on a plea to the jurisdiction). Section 51.014(a) does not give us jurisdiction over a trial court's denial of a motion for rehearing. *See* Tex. Civ. Prac. & Rem. Code Ann. § 51.014(a). Therefore, we conclude that we cannot exercise jurisdiction over the order Meier and Price filed asking the trial court to rehear the City's plea. *Bhakta*, 2014 Tex. App. LEXIS 4115, at *1.

After the trial court ruled on the City's plea, Meier and Price filed pleas to the jurisdiction and challenged the trial court's right to exercise subject-matter jurisdiction over Tammy's claims. While Meier and Price filed a pleading asking that the trial court dismiss Tammy's suit against them, the record does not show that the trial court has ever ruled on their request. As to Meier and Price, our review of the record shows that the trial court has not yet entered any interlocutory orders over which we can exercise appellate jurisdiction. *See* Tex. Civ. Prac. & Rem. Code Ann.

§ 51.014(a). We dismiss the appeals filed by Meier and Price for lack of appellate jurisdiction.

Tammy also argues that the City failed to meet the deadline established by the rules of appellate procedure to appeal from the trial court's order granting Tammy's motion for new trial. Tammy points out that the City failed to appeal from the trial court's March 2014 ruling granting Tammy's motion for new trial within twenty days of the date the trial court rendered that order. According to Tammy, the City's deadline to appeal was not revived by filing amended pleadings raising the same jurisdictional issues on which the trial court had already ruled.

The record shows that in February 2011, the trial court initially granted the City's plea the jurisdiction. Before the trial court's plenary power over that order expired, the trial court granted Tammy's motion for new trial. By granting a new trial, the trial court essentially "wipe[d] the slate clean and start[ed] over." *Wilkins v. Methodist Health Care Sys.*, 160 S.W.3d 559, 563 (Tex. 2005).

Tammy also argues that the trial court ruled on the City's plea in an order that it rendered on March 17, 2014. Although the trial court's March 17 order is styled as if it is an order denying the City's plea, the language in the order recites only that "Plaintiff is ordered to provide to the City professional engineer-approved plans for the back twenty foot (20') section of the front structure located at 2002 Park Street within 180 days of the date of this Order." The order then indicates that Tammy was

to produce written plans on the repairs of the structure to assist the parties in settling the matter. However, the March 17 order contains no decretal language indicating the trial court ruled on the City's plea. Given the language in the body of the order, we cannot conclude the trial court intended the March 17 order to function as an order denying the City's plea. *See Unifund CCR Partners v. Villa*, 299 S.W.3d 92, 96 (Tex. 2009) (concluding what the trial court intended by an order of dismissal by looking to the language of the order and the other orders the trial court rendered in the case); *S & A Rest. Corp. v. Leal*, 892 S.W.2d 855, 858 (Tex. 1995) ("The words used by the trial court must clearly indicate the intent to render judgment at the time the words are expressed."). Tammy's argument that the March 17 order denied the City's plea is without merit and is overruled.

The City filed its notice of appeal from the interlocutory ruling denying the City's plea to the jurisdiction on November 6, 2015, less than twenty days after October 20, 2015, the date the trial court denied the City's plea. Tex. R. App. P. 26.1(b) (providing an interlocutory appeal must be filed within 20 days of the appealable order to be timely). We overrule Tammy's argument that we have no jurisdiction to consider the City's appeal from the trial court's order dated October 20, 2015. *See* Tex. Civ. Prac. & Rem. Code Ann. § 51.014(a)(8).

Conclusion

We sustain the City's first issue, which argues the trial court erred in denying the City's plea to the jurisdiction. We order all of Tammy's claims against the City dismissed, with prejudice. Tex. R. App. P. 43.2(c). Because the City's second and remaining issue concerns the City's complaints about the trial court's evidentiary rulings, we need not address the issue because resolving the issue would afford the City no greater relief. Tex. R. App. P. 47.1.

We dismiss the appeals filed by Meier and Price. The record shows that Meier and Price have not yet secured an interlocutory ruling on their pleas. Finally, we overrule Tammy's motion to dismiss the City's appeal for lack of jurisdiction, as the record shows the City filed a timely notice of appeal from the trial court's ruling on the City's plea. We remand the cause to the trial court so that it may conduct further proceedings on the case that accord with the Court's opinion.

REVERSED AND RENDERED IN PART; DISMISSED IN PART, AND REMANDED.

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HOLLIS HORTON
Justice

Submitted on March 23, 2016
Opinion Delivered March 30, 2017

Before McKeithen, C.J., Horton and Johnson, JJ.

CONCURRING OPINION

While I join in the result reached by the majority, I concur and write separately because I also conclude that Ermis does not have standing under the express wording of Chapter 214 of the Texas Local Government Code. Ermis was not an "owner lienholder, or mortgagee of record" at the time the demolition ordinance was passed and placed of record by the City.

Section 214.0012(a) states that "[a]ny owner, lienholder, or mortgagee of record of property jointly or severally aggrieved by an order of the municipality issued under Section 214.001 may file in district court a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality." Tex. Local Gov't Code Ann. § 214.0012(a) (West 2016). The petition must be filed within thirty calendar days after the date a copy of the final decision of the municipality is delivered to the owner, lienholder, or mortgagee. *Id.* Failure to timely file suit to seek judicial review of the municipal order is a jurisdictional defect. *City of El Paso v. Fox*, 458 S.W.3d 66, 71-72 (Tex. App.—El Paso 2014, no pet.); *Fox v. Wardy*, 318 S.W.3d 449, 453-54 (Tex. App.—El Paso 2010, pet. denied).

Section 214.0012(a), much like section 54.039 of the Local Government Code, enumerates who may seek judicial review and the legislature limits such to three classes of individuals: "[a]ny owner, lienholder, or mortgagee of record . . . ."

Tex. Loc. Gov't Code Ann. §§ 214.0012(a), 54.039(a) (West 2008) (providing for judicial review of certain municipal ordinances); *Monroe v. City of San Antonio*, No. 04-09-00795-CV, 2010 Tex. App. LEXIS 7090, at *5 (Tex. App.—San Antonio 2010, no pet.) (mem. op.) (explaining that sections 214.0012 and 54.039 of the Local Government Code "specifically enumerate who may seek judicial review and limit it to three classes of individuals—'[a]ny owner, lienholder, or mortgagee of record . . .'"). Section 214.001(e) of the Local Government Code also expressly provides that a notice regarding a demolition order is binding on subsequent grantees and lienholders if the municipality files the notice in the Official Public Records of Real Property. *See* Tex. Loc. Gov't Code Ann. § 214.001(e) (West 2016).

When a statute is clear and unambiguous, we "should give the statute its common meaning." *St. Luke's Episcopal Hosp. v. Agbor*, 952 S.W.2d 503, 505 (Tex. 1997). Section 214.0012 expressly provides that there are three categories of people or entities who have standing to make a judicial challenge to a demolition order—an "owner, lienholder, or mortgagee"—and each is separated by a comma rather than a semicolon and then the legislature included the phrase "of record." *See* Tex. Loc. Gov't Code Ann. § 214.0012(a). The Houston Fourteenth Court of Appeals and the San Antonio Court of Appeals have interpreted the phrase "of record" as modifying all three terms "owner, lienholder, or mortgagee" in the statute, according to the plain language and common meaning of the statute. *See Henderson v. City of*

Houston, No. 14-13-01025-CV, 2015 Tex. App. LEXIS 1961, at **7-9 (Tex. App.—Houston [14th Dist.] Mar. 3, 2015, pet. denied) (mem. op.) (applying section 214.0012(a) and concluding City's plea to the jurisdiction was properly granted because Henderson was merely an occupant of the home and not an "owner, lienholder, or mortgagee of record"); *Monroe*, 2010 Tex. App. LEXIS 7090, at **7-8 ("Reading sections 54.039 and 214.0012 within the context of their respective statutory schemes, we must assume the legislature used the phrase 'any owner, lienholder, or mortgagee of record' because it intended to limit standing to persons with a property interest of record."); *see also Porto Rico Ry., Light & Power Co. v. Mor*, 253 U.S. 345, 348 (1920) ("When several words are followed by a clause which is applicable as much to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all."). *Compare* Tex. Loc. Gov't Code Ann. § 214.0012(a) (permitting "[a]ny owner, lienholder, or mortgagee of record" to appeal a municipality's order concerning a substandard structure) *with* Tex. Loc. Gov't Code Ann. § 211.011(a) (West 2016) (permitting any of the following to appeal a municipality's zoning decision under a review process: "a person aggrieved by a decision of the board; [] a taxpayer; or [] an officer, department, board, or bureau of the municipality[]"); *see also* Tex. Loc. Gov't Code Ann. § 214.001(c), (q) (requiring that notice of a hearing under section 214.001 must be sent to "an owner, lienholder, or mortgagee" and that a municipality

satisfies due diligence in determining the identity and address of "an owner, a lienholder, or a mortgagee" if it searches the designated records).[3]

When standing has been statutorily conferred, the party seeking relief must allege and establish standing within the parameters of the language used in the statute. *In the Interest of A.T.*, No. 14-14-00071-CV, 2014 Tex. App. LEXIS 7592, at *22 (Tex. App.—Houston [14th Dist.] July 15, 2014, no pet.) (mem. op.); *Monroe*, 2010 Tex. App. LEXIS 7090, at *4 ("When the legislature confers standing by statute, the party seeking relief must allege and establish that he meets the statutory requirements."). The City contends Ermis lacked standing under the statute because

[3] Strictly applying the "last-antecedent canon" of construction, there is an argument that the phrase "of record" only modifies "mortgagee." *See generally Sullivan v. Abraham*, 488 S.W.3d 294, 297 (Tex. 2016) (applying the last-antecedent canon to a phrase in the Texas Citizens Participation Act). I do not believe the "last antecedent canon" applies in this context because such would ignore the purpose of the statute and subject the municipality to claims from *unknown* owners and lienholders. A city would have to ascertain and give notice to every "owner" even when such ownership is not discoverable because it is not "of record." This would lead to an inconsistent and potentially absurd result. We should interpret statutes to avoid an absurd result. *Jose Carreras, M.D., P.A. v. Marroquin*, 339 S.W.3d 68, 73 (Tex. 2011); *City of Rockwall v. Hughes*, 246 S.W.3d 621, 625-26 (Tex. 2008) ("[W]e construe the statute's words according to their plain and common meaning . . . unless such a construction leads to absurd results."); *In re Office of the Att'y Gen. of Tex.*, 456 S.W.3d 153, 155 (Tex. 2015) (per curiam) ("When construing statutes, or anything else, one cannot divorce text from context[,]" as "[t]he meaning of words read in isolation is frequently contrary to the meaning of words read contextually in light of what surrounds them.").

she is not an "owner, lienholder, or mortgagee of record[.]" *See* Tex. Loc. Gov't Code Ann. § 214.0012(a).

In support of its plea to the jurisdiction, the City attached a copy of the Warranty Deed with Vendor's Lien executed in March of 2008 transferring the Property from Seymour to Brian Muldrow. The City also presented exhibits pertaining to the underlying ordinance declaring the Property to be a nuisance. Ermis alleged that she had a "community property interest" in the Property by marriage, but she failed to allege she was an owner at the time the City designated the Property for demolition. Based upon the uncontroverted facts, the record provides no evidence that Ermis was an "owner, lienholder, or mortgagee of record." Ermis lacks standing to challenge the demolition under the express language contained in section 214.0012. *See* Tex. Loc. Gov't Code Ann. § 214.0012(a); *Henderson*, 2015 Tex. App. LEXIS 1961, at **7-8; *Monroe*, 2010 Tex. App. LEXIS 7090, at *8.

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LEANNE JOHNSON
Justice

Concurrence Delivered March 30, 2017