# COURT OF APPEALS
**SECOND DISTRICT OF TEXAS**
**FORT WORTH**

**NO. 02-16-00010-CV**

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| NORTHWEST INDEPENDENT SCHOOL DISTRICT, JOSH WRIGHT, MARK SCHLUTER, DEVONNA HOLLAND, JUDY COPP, ANN DAVIS-SIMPSON, MEL FULLER, LILLIAN RAUCH, AND KAREN G. RUE | APPELLANTS |

V.

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| CARROLL INDEPENDENT SCHOOL DISTRICT | APPELLEE |

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FROM THE 141ST DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NO. 141-210251-05

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AND

**NO. 02-16-00014-CV**

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| IN RE NORTHWEST INDEPENDENT SCHOOL DISTRICT | RELATOR |

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ORIGINAL PROCEEDING
TRIAL COURT NO. 141-210251-05

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## OPINION

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We consolidated this appeal and petition for writ of mandamus or prohibition for en banc submission. In the appeal, appellants Northwest Independent School District, Northwest's trustees, and Northwest's superintendent appeal from the trial court's order denying their third plea to the jurisdiction. In the original proceeding, Northwest seeks either a writ of mandamus or a writ of prohibition barring the trial court from acting on its stated intention to try all issues raised by the pleadings. In both, Northwest argues that the trial court may try nothing other than what this court previously allowed in affirming the trial court's order denying Northwest's second plea to the jurisdiction. We affirm the trial court's denial of Northwest's third plea to the jurisdiction and deny Northwest's petition for writ of mandamus or prohibition.

## I. BACKGROUND

### A. BOUNDARY DISPUTE

The factual and procedural history of this case is byzantine, protracted, and laborious. While it would be easy to mechanically detail all the facts leading to the current dispute before us, such a recitation would run the risk of diverting our focus from the very narrow issue we are faced with today in this interlocutory appeal and request for extraordinary writ relief. Suffice it to say that Northwest and appellee Carroll Independent School District dispute the location of the

boundary line dividing them. Carroll contends that the boundary line between the two school districts should be the same boundary line that exists between Denton County and Tarrant County (the county line), which we resolved in a prior appeal between those two counties based on the counties' interlocal agreement approving the county line as their boundary. *See Tarrant Cty. v. Denton Cty.*, 87 S.W.3d 159, 175 (Tex. App.—Fort Worth 2002, pet. denied) (op. on reh'g). Northwest, on the other hand, asserts that the school districts' actual boundary line is located farther south than the county line and comports with the boundary Northwest described by metes and bounds in its filings to the Texas Education Agency.[1] This disputed area—a strip of land lying to the south of Northwest and to the north of Carroll—encompasses 842 acres and, apparently, less than 200 students. Northwest currently levies and collects taxes in the disputed area.

### B. PRIOR PROCEEDINGS

Carroll filed suit against Northwest in 2005 over the location of the districts' boundary line. Northwest filed a plea to the jurisdiction, the trial court granted the plea, and Carroll filed an interlocutory appeal. We reversed the trial court's order and remanded to the trial court "for further proceedings" after concluding that the trial court had jurisdiction over Carroll's claims for trespass to try title and for a declaratory judgment regarding its rights and duties in the disputed area. *Carroll ISD v. Nw. ISD*, 245 S.W.3d 620, 625–26 (Tex. App.—Fort Worth 2008, pet.

[1]*See* Tex. Educ. Code Ann. § 13.010(a) (West 2012).

denied) (*Carroll I*). We specifically stated that Carroll was "not attempting by its suit to change the existing boundary line between the two school districts" or seeking "to detach and annex the Disputed Area from Northwest"; rather, Carroll was simply seeking "a judicial determination regarding in which of these districts the Disputed Area is, and always has been, located." *Id.* at 624–25.

On remand, Carroll amended its petition to allege that although Carroll "contends that the common boundary between the two school districts is located on the county line," Northwest "has disputed this contention in public filings and otherwise." Northwest filed a second plea to the jurisdiction, which the trial court denied. Northwest filed an interlocutory appeal from the trial court's denial. In three opinions on en banc reconsideration, we affirmed the trial court's denial and, in a corrected judgment, remanded the case to the trial court for trial "regarding the meaning of the orders and judgments creating the actual boundary location between the two school districts." *Nw. ISD v. Carroll ISD*, 441 S.W.3d 684, 694–96 (Tex. App.—Fort Worth 2014, pet. denied) (ops. on reconsideration) (*Carroll II*).

The opinions consisted of (1) a lead opinion, authored by Chief Justice Livingston and joined by Justices McCoy[2] and Meier; (2) a concurring and dissenting opinion, authored by Justice Gardner and joined by Justices Walker and Gabriel; and (3) a concurring and dissenting opinion authored by Justice

[2]Justice McCoy is no longer a member of this court.

Dauphinot. *Id.* at 686, 694. A majority of the court agreed only that the trial court's order denying Northwest's plea to the jurisdiction should be affirmed in some respect. *Id.* at 694–96. *See generally* Tex. Const. art. V, § 6 ("The concurrence of a majority of the judges sitting in a section is necessary to decide a case."). The lead opinion remanded Carroll's claims on a limited basis, which was included in a subsequent corrected judgment. The lead opinion stated that it was "simply recognizing that if the schools' common boundary line is now moved, the result is an annexation of the Disputed Area, which we previously held [Carroll] cannot now do." *Carroll II*, 441 S.W.3d at 693. But as stated above, we concluded in *Carroll I* that Carroll was not seeking an annexation. In any event, the Dauphinot opinion concluded that a remand on any of Carroll's claims would be inappropriate and all of Carroll's claims should be dismissed because the trial court did not have jurisdiction over any of Carroll's claims as pleaded. *Id*. at 695. The Gardner opinion, joined by two justices as was the lead opinion, concluded that a limited remand was inappropriate because the trial court had jurisdiction over Carroll's claims as pleaded. *Id.* at 696, 701–02. The Gardner opinion stated that characterizing Carroll's claims as attempting to "move" an existing boundary was "misleading":

> Contrary to the [lead opinion's] terminology (used by it to describe Northwest's and Carroll's common boundary), no language in the documents pertaining to the elections or in the field notes or the commissioners courts' orders creating the school districts identifies the location of the districts' common boundary as the "long-honored" boundary, or ties it to the "then-existing" county line. Those terms in the [lead opinion] appear only in Northwest's brief. It is only

> Northwest's position that this court "moved" the county line from its "historic," "long-accepted" location by our decision in our previous case in which we established the location of the Tarrant–Denton County line . . . . Use of that terminology by the [lead opinion] gives a misleading impression that this court is assuming as true that a different location, namely, the 1852 "White line," [which Northwest described in its filings to the Texas Education Agency,] was somehow previously established and should prevail as the districts' mutual boundary rather than the Tarrant–Denton County line because the White line is where representatives of the school districts believed the county line to be when the school districts were created. But that issue, if it is an issue at all, has yet to be determined, and is not before us on this appeal.

*Id.* at 696.

### C. RULINGS CURRENTLY AT ISSUE

After the *Carroll II* remand, Carroll again amended its petition, adding Northwest's trustees and superintendent as defendants for the purpose of raising an ultra vires claim.[3] In this claim, Carroll alleged that the trustees and superintendent, in their official capacities, committed "illegal, unauthorized and *ultra vires*" actions by exercising authority over the disputed area.[4] Northwest filed a combined third plea to the jurisdiction, special exceptions, and a motion for

[3]Carroll again raised its claim that Northwest disputed that the county line was the districts' boundary "in public filings and otherwise." Carroll asserts that other than the ultra vires claim, the sixth amended petition was "a verbatim copy of [Carroll's] Fifth Amended Petition," which was at issue in *Carroll II*. *See Carroll II*, 441 S.W.3d at 693.

[4]Carroll asserts that this claim was necessary to "forestall[]" Northwest's immunity argument. *See City of El Paso v. Heinrich*, 284 S.W.3d 366, 372–73 (Tex. 2009) (explaining ultra vires claim brought against governmental actor in his official capacity is not barred by sovereign immunity because such a claim asserts actor "acted without legal authority" and, thus, does "not seek to alter government policy but rather to enforce existing policy").

summary judgment. In its special exceptions and motion for summary judgment, Northwest argued that Carroll's ultra vires claim impermissibly exceeded the scope of this court's remand. In its plea to the jurisdiction, Northwest contended that Carroll's ultra vires claim was not ripe because it depended on uncertain, contingent, or hypothetical future events—a judicial determination that the disputed area is located within Carroll's boundaries—which "likely" would never occur based on this court's limited remand in *Carroll II*. Northwest also moved to quash some of Carroll's requested discovery, specifically Carroll's request for demographic data to determine the number of students in the disputed area, because such inquiry, again, was outside the scope of this court's remand.

On December 17, 2015, the trial court held a hearing on Northwest's combined motion. At the hearing, the parties and the court discussed several scheduling deadlines in preparation for trial. The trial court then denied Northwest's motion to quash Carroll's discovery request for demographic information. In arguing its plea to the jurisdiction, Northwest stated that the trial court did not have subject-matter jurisdiction over Carroll's ultra vires claims against the trustees and superintendent and that the only issue that could be tried on remand was "[w]here on the ground is the line that the parties have historically recognized and acquiesced to for the last 60 years." Northwest then argued that because the disputed area "is not going to change hands" based on the limited nature of this court's remand, Carroll's ultra vires claim was not ripe. The trial court denied the plea and the special exception. After Carroll confirmed

that it and Northwest could not agree on what issues were properly before the trial court on remand, the trial court stated on the record that "everything" would be tried so this court could decide any appeal without the necessity for further trial-court proceedings:

> We're going to try this thing [in a bench trial], and we're going to give something to the appellate court that hopefully they can render on, and they can tell us exactly what they want us to do so that this case can go away. I think unless we have a trial on this, it's never going to go anywhere.
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> . . . We can try everything. I mean, we can try what you think we're trying and what they think we're trying and then reach a verdict.
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> . . . .
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> . . . Because . . . I can make a ruling on where this line has been traditionally for 60 years. I can make that ruling. They may not agree that that's even a relevant ruling to even make, but I'll make it. And y'all can take that up to the appellate court and see if that's what they wanted, and they can have me rule on something that y'all don't think matters, and the appellate court can see if they want to hear that or not, too. And we'll give them all that information . . ., and they can figure it out.
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> But I think we have to do this. I know we like to do stuff pretrial to get rid of stuff, but let's just try it and get it over with. It's no different trying the case than it would be for me to rule pretrial. You'll still have a ruling and we'll have a verdict and we'll be done.

Northwest filed an interlocutory appeal from the trial court's denial of its plea to the jurisdiction asserting that Carroll's ultra vires claim was not ripe, divesting the trial court of jurisdiction. Northwest also filed a petition for a writ of mandamus or prohibition, arguing that the trial court's stated intention to try "everything" was an abuse of discretion because the trial court's jurisdiction was

limited to the parameters of this court's remand, which did not include the ultra vires claim. *See generally Harris Cty. Children's Protective Servs. v. Olvera*, 77 S.W.3d 336, 342–43 (Tex. App.—Houston [14th Dist.] 2002, pet. denied) (concluding trial court did not have jurisdiction to determine claim on remand that fell outside the scope of appellate court's specific remand).

## II. DISCUSSION

Both Carroll and Northwest argue at length about the scope of our prior remand, which of this court's three opinions resulted in a plurality holding, and whether the corrected judgment and mandate control over any such holding. These arguments, while thought-provoking, shift our focus from the narrow issue we must ultimately decide: Whether the trial court has subject-matter jurisdiction over Carroll's claims as currently pleaded. We conclude it does.

In *Carroll I*, we did not preclude the trial court from developing and determining any remedy available to the parties regarding the location of the boundary between the districts, which would include Carroll's current alternative claim raising the trustees' and superintendent's alleged ultra vires actions based on the location of the districts' boundary. The lead opinion in *Carroll II* extended the scope of Carroll's claims to encompass an impermissible attempt to detach or annex the disputed area—*Carroll I* stated the opposite. *Carroll I*, 245 S.W.3d at 624–25. Upon study of the additional briefing and the facts and arguments developed in the trial court after *Carroll II*, we conclude that the trial court's subject-matter jurisdiction over Carroll's current claims is not limited despite any

contrary language in *Carroll II*'s lead opinion, its corrected judgment, or its mandate.[5] Corrected judgment and mandate notwithstanding, no majority or plurality of this court in *Carroll II* concluded that a limited remand was appropriate.

The trial court concluded that it had subject-matter jurisdiction over Carroll's claims pleaded against Northwest regarding the disputed area. We agree and conclude that the trial court has jurisdiction over Carroll's claims as pleaded. *See McLeod ISD v. Kildare ISD*, 157 S.W.2d 181, 183 (Tex. Civ. App.—Texarkana 1941, writ ref'd w.o.m.) (in quo warranto proceeding between school districts regarding appropriate tax levy based on boundary dispute, concluding trial court had jurisdiction because "[t]he fact that the question of where upon the ground respondents' true boundary lay was necessary to be determined in order to adjudicate the matter of whether respondent was unlawfully exercising the taxing powers charged against it"); *cf. Bd. of Sch. Trs. of Young Cty. v. Bullock Common Sch. Dist. No. 12*, 55 S.W.2d 538, 540 (Tex. Comm'n App. 1932, judgm't affirmed) (holding courts have initial power to grant relief from orders changing established boundaries of school districts).

[5]It is important to acknowledge that our ordered "remand" to the trial court in *Carroll II* arguably was ill conceived as there was no error found in the trial court's ultimate jurisdictional ruling regarding the location of the districts' boundary, which is the gravamen of Carroll's claims as pleaded. *See* Tex. R. App. P. 44.1(a), 43.2(d); *Chrismon v. Brown*, 246 S.W.3d 102, 116 (Tex. App.—Houston [14th Dist.] 2007, no pet.).

This matter has been bouncing around the trial and appellate courts of Texas for over ten years with nary a ruling on the merits in sight. We are persuaded by the trial court's reasoning that the most prudent course of action is to allow the parties to develop a complete record in the trial court as allowed by the rules of pleading, procedure, and evidence. We concluded in *Carroll I* that the trial court has subject-matter jurisdiction over Carroll's claims regarding the location of the boundary between the districts, specifically in the disputed area, and we so conclude again.[6] No matter what label Carroll attached to its claims in its live pleadings, the location of the boundary between the two districts is the fulcrum around which all claims between Carroll and Northwest revolve. *See San Patricio Cty. v. Nueces Cty.*, 492 S.W.3d 476, 486 (Tex. App.—Corpus Christi May 12, 2016, pet. filed) (in statutory boundary dispute between counties, holding trial court had jurisdiction to declare boundary line because Declaratory Judgments Act, which was claim raised, does not "change the nature of the controversy").

Accordingly, Carroll's current claims are ripe as Northwest currently reaps the benefits from and bears the responsibility for the disputed area, which is contested by Carroll based on its claims implicating the location of the boundary between the districts. *Cf. Camarena v. Tex. Emp't Comm'n*, 754 S.W.2d 149, 151 (Tex. 1988) (holding suit to declare statute unconstitutional not ripe because

[6]Carroll recognizes that the only claims it may pursue or intends to pursue are those implicating the location of the districts' boundary.

state officials had not acted on the statute); *Scarborough v. Metro. Transit Auth.*, 326 S.W.3d 324, 337–38 (Tex. App.—Houston [1st Dist.] 2010, pet. denied) (holding claim that proposed construction would affect homeowner's property rights was not ripe because there was no evidence construction would affect her property). Carroll has alleged that it has been and will continue to be injured by Northwest's affirmative actions in the disputed area; thus, Carroll's claims are ripe, conferring subject-matter jurisdiction on the trial court. *See Scarborough*, 326 S.W.3d at 337; *see also* 1A Tex. Jur. 3d *Actions* § 21 (2012) (discussing necessity of ripeness and stating that ripeness "emphasizes the need for a concrete injury for a justiciable claim to be presented").

Carroll's claims as currently pleaded are nothing more than a request for a judicial determination regarding the location of the actual boundary between the districts. We hold that the trial court has the subject-matter jurisdiction to make this determination based on the current pleadings and under the applicable rules of procedure and evidence. As we have noted, Northwest and Carroll hotly contest whether we previously issued a majority opinion and, if so, whether that majority controls over the corrected judgment and mandate. We certainly recognize this confusion but emphasize that our holding today, which is agreed to by a majority of the sitting justices of this court, is clear: The trial court did not err by denying Northwest's plea to the jurisdiction and has subject-matter jurisdiction to determine the claims raised by the parties in their current pleadings.

## III. CONCLUSION

Because the trial court has subject-matter jurisdiction over Carroll's claims as currently pleaded, we affirm the trial court's order denying Northwest's third plea to the jurisdiction.[7] *See* Tex. R. App. P. 43.2(a). Based on this jurisdiction, the trial court did not abuse its discretion by stating that it intended to adjudicate all claims before it. Therefore, we deny Northwest's petition for a writ of mandamus or prohibition. *See* Tex. R. App. P. 52.8(a).

/s/ Lee Gabriel

LEE GABRIEL
JUSTICE

EN BANC

LIVINGSTON, C.J., filed a dissenting opinion in which DAUPHINOT, J., joins.

DELIVERED: October 20, 2016

[7]Because this is an appeal from an interlocutory order allowed by statute that restricts what issues we may address, we express no opinion on the trial court's handling of Northwest's motion for summary judgment, special exceptions, or motion to quash. *See* Tex. Civ. Prac. & Rem. Code Ann. § 51.014(a)(8) (West Supp. 2016); *Astoria Indus. of Iowa, Inc. v. SNF, Inc.*, 223 S.W.3d 616, 626–28 (Tex. App.—Fort Worth 2007, pet. denied) (op. on reh'g). Accordingly, we do not address Northwest's arguments involving the propriety of the trial court's discovery rulings.