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

**NO. 02-17-00159-CV**

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| JAMES A. MCGUIRE, ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED IN THE STATE OF TEXAS | APPELLANT |
| V. | |
| GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF TEXAS AND OFFICIAL CAPACITY AS CEO OF THE STATE OF TEXAS | APPELLEE |

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FROM THE 17TH DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NO. 017-290364-17

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## MEMORANDUM OPINION[1]

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Pro se Appellant James A. McGuire, on behalf of himself and all others similarly situated in the State of Texas, appeals from an order granting a

[1]*See* Tex. R. App. P. 47.4.

jurisdictional plea in favor of Appellee Greg Abbott, in his official capacity as Governor of the State of Texas, and dismissing the underlying lawsuit. We will affirm.

McGuire sued Governor Abbott for a declaration that property code section 51.0001(4)(C) is facially "ambiguous, vague, overbroad, or possibly illegal, and violates the Texas Constitution." Chapter 51 of the property code addresses foreclosure sales of real property under contract liens. *See* Tex. Prop. Code Ann. §§ 51.0001–.016 (West 2014 & Supp. 2016). Section 51.0001 defines terms applicable to the chapter, and under section 51.0001(4)(C), "Mortgagee" means "if the security interest has been assigned of record, the last person to whom the security interest has been assigned of record." *Id.* § 51.0001(4)(C).

Among other assertions, McGuire alleged that section 51.0001(4)(C),

- "allows personal property transactions to be misrepresented as real property transactions";
- "makes no clarification as to whether a *security interest* was 'lawfully' assigned of record, or whether a *security interest* was allowed even if the security interest was a Chapter 9 *security interest assigned*";
- "allow[s] . . . an instrument filed of record under another Texas law," such as local government code section 192.007(a), to "be rendered a nullity";
- "deprives the statutory[] and constitutional rights of other existing Texas laws";
- "is vague enough to allow for transactions governed by section [] 322.016 of [the] Texas Uniform Electronic Transactions Act to be given the effect of full force of law";

- "is vague enough to deprive the county clerks of revenue regarding filing fees";
- "is vague enough to deprive the Secretary of State of revenue regarding filing fees"; and
- will lead to "paper rights case law [to] become a thing of the past[] and abstract rights [to] become the new property rights law regarding real property." (footnotes omitted) (emphasis in original).

Governor Abbott answered and filed a plea to the jurisdiction, arguing that McGuire lacked standing because he failed to allege that he had suffered any specific injury in fact that was fairly traceable to Governor Abbott. The trial court granted the plea and dismissed McGuire's suit with prejudice.

McGuire's only issue challenges the trial court's ruling granting Governor Abbott's plea to the jurisdiction.

A plea to the jurisdiction is a dilatory plea, the purpose of which is to defeat a cause of action without regard to whether the claims asserted have merit. *Bland ISD v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000). The plaintiff has the burden to plead facts affirmatively showing that the trial court has jurisdiction. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 446 (Tex. 1993).

Standing is a component of subject-matter jurisdiction. *Id.* at 445. If a party lacks standing to bring an action, then the trial court lacks subject-matter jurisdiction to hear the case. *Id.* at 444–45. If a court lacks subject-matter jurisdiction to hear a case, then it lacks authority to decide that case. *M.D. Anderson Cancer Ctr. v. Novak*, 52 S.W.3d 704, 708 (Tex. 2001).

The requirement of standing is implicit in the open courts provision of the Texas Constitution and contemplates access to the courts only for those litigants who suffer an injury. *Id.* at 708. In Texas, the standing doctrine requires a concrete injury to the plaintiff and a real controversy between the parties that will be resolved by the court. *DaimlerChrysler Corp. v. Inman*, 252 S.W.3d 299, 307 (Tex. 2008); *see Neeley v. W. Orange-Cove Consol. ISD*, 176 S.W.3d 746, 774 (Tex. 2005). This test parallels the federal test for Article III standing—"'A plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief.'" *Heckman v. Williamson Cty.*, 369 S.W.3d 137, 154 (Tex. 2012) (quoting *Allen v. Wright*, 468 U.S. 737, 751, 104 S. Ct. 3315, 3324 (1984)). We review a claimant's standing de novo. *Tex. Dep't of Transp. v. City of Sunset Valley*, 146 S.W.3d 637, 646 (Tex. 2004).

McGuire did not allege that he suffered any personal injury that was fairly traceable to Governor Abbott's conduct and likely to be redressed by a judicial declaration. Instead, as Governor Abbott's counsel argued at the hearing on the plea to the jurisdiction, McGuire "sees . . . a vast conspiracy to deprive homeowners of their rights" and was "suing to undo a statute"—property code section 51.0001(4)(C). But McGuire's perceived flaws with section 51.0001(4)(C) and the potential consequences that he thinks could flow therefrom are insufficient bases for standing. *See Inman*, 252 S.W.3d at 307 (explaining that hypothetical injury is not concrete personal injury); *see also Brown v. Todd*, 53

S.W.3d 297, 302 (Tex. 2001) ("Our decisions have always required a plaintiff to allege some injury distinct from that sustained by the public at large.").

Further, insofar as McGuire attempted to sue on behalf of any others, he made no effort to show that he had standing to do so, nor would he have been successful even if he had. *See Powers v. Ohio*, 499 U.S. 400, 410–11, 111 S. Ct. 1364, 1370–71 (1991) (explaining that to have third-party standing, plaintiff must have suffered an injury in fact). Insofar as McGuire contends that he has standing as a taxpayer, he does not, in part because he did not sue to enjoin any public funds from being illegally expended. *See Williams v. Lara*, 52 S.W.3d 171, 180 (Tex. 2001). And insofar as McGuire contends that his status as a citizen confers standing on him, it does not because he alleged no particularized, concrete injury distinct from that potentially sustained by the public. *See Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 220–21, 94 S. Ct. 2925, 2932 (1974) ("[S]tanding to sue may not be predicated upon an interest of the kind alleged here which is held in common by all members of the public, because of the necessarily abstract nature of the injury all citizens share.").

Finally, McGuire seems to suggest that he suffered an actual injury sufficient for constitutional standing when the trial court granted Governor Abbott's jurisdictional plea. This is incorrect for numerous reasons, not the least of which is that there is no connection between the trial court's ruling and the

declaratory relief that McGuire sought. *See Brown*, 53 S.W.3d at 305 (explaining that alleged personal injury must likely be redressed by requested relief).

The trial court properly granted Governor Abbott's plea to the jurisdiction. Accordingly, we overrule McGuire's issue and affirm the trial court's judgment.

/s/ Bill Meier
BILL MEIER
JUSTICE

PANEL: SUDDERTH, C.J.; WALKER and MEIER, JJ.

DELIVERED: November 30, 2017