TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-15-00816-CV

Galan Family Trust, through its Trustee, Galan Family, LLC, Appellant

v.

State of Texas; George P. Bush, Commissioner of The Texas General Land Office and Chairman of The Texas School Land Board; David S. Herrmann, Texas School Land Board Member; and Thomas Orr, Jr., Texas School Land Board Member, Appellees

FROM THE DISTRICT COURT OF TRAVIS COUNTY, 53RD JUDICIAL DISTRICT D-1-GN-15-002810, HONORABLE GISELLA D. TRIANA, JUDGE PRESIDING

M E M O R A N D U M O P I N I O N

The Galan Family Trust appeals from the district court's order dismissing the Trust's inverse-condemnation and trespass-to-try-title claims against the State of Texas; George P. Bush, Commissioner of the Texas General Land Office and Chairman of the Texas School Land Board; David S. Herrmann, Texas School Land Board Member; and Thomas Orr, Jr., Texas School Land Board Member (collectively, the State), regarding approximately 70,000 acres near Laredo, Texas. The State moved for dismissal of the Trust's claims in a plea to the jurisdiction and Rule 91a motion to dismiss. For the reasons set forth below, we affirm the district court's order.

Background

The Galan Family Trust asserts that, in the mid-1800s, unidentified heirs of an individual named Joaquin Galan presented to the State of Texas a claim for title to certain real

property located in Webb County, Texas. The heirs' claim was based on a 1767 Spanish land grant referred to as the Palafox Grant. According to the Trust, the Texas Legislature passed a bill in 1852 that recognized the Palafox Grant, and the Galan heirs, as required by the 1852 legislation, completed a survey of the property. The Trust further asserts that, in 1870, the governor executed a patent[1] in favor of the Galan heirs for the Palafox Grant, but that the State later cancelled the patent in 1874.

In 2015, or 141 years after the alleged patent cancellation, the Galan Family Trust sued the State for possession of the Palafox Grant's mineral estate, asserting takings[2] and trespass-to-try-title claims. The State filed a plea to the jurisdiction and a Rule 91a motion to dismiss, asserting that the State is immune to trespass-to-try-title claims and, further, that the Trust's claims are barred by limitations. After a hearing addressing both of the State's motions, the district court dismissed the Trust's claims without specifying the grounds on which the court was relying.

The Trust raises four issues in its appeal from the district court's order of dismissal. In its first and fourth issues, the Trust asserts that the district court erred in granting the State's

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[1] In this context, "patent" is an instrument by which the State conveys land to a private person. *See Patent*, *Black's Law Dictionary* (10th ed. 2014) ("An instrument by which the government conveys a grant of public land to a private person.").

[2] In its brief to the Court, the Trust urges that there are differences between takings claims and inverse-condemnation claims. Our review of the jurisprudence in this area shows that these terms are generally used interchangeably. *See, e.g.*, *Harris Cty. Flood Control Dist. v. Kerr*, 499 S.W.3d 793, 795 at n.1 (Tex. 2016) ("In addition to their inverse condemnation takings claim, the homeowners asserted a nuisance claim."); *City of Houston v. Carlson*, 451 S.W.3d 828, 833 (Tex. 2014) ("So while the facts alleged here might support a due-process action or perhaps a colorable claim under 42 U.S.C. § 1983, those allegations do not give rise to the takings claim necessary to establish a viable inverse-condemnation case."); *Villarreal v. Harris Cty.*, 226 S.W.3d 537, 542 (Tex. App.—Houston [1st Dist.] 2006, no pet.) ("Inverse condemnation occurs when (1) a property owner seeks (2) compensation for (3) property taken for public use (4) without process or a proper condemnation proceeding.").

Rule 91a motion to dismiss because (1) the State failed to prove each element of its affirmative defense of adverse possession and (4) the Trust pleaded a proper takings claim. In its second and third issues, the Trust maintains that the district court erred in granting the State's plea to the jurisdiction because (2) sovereign immunity does not shield State officials and employees acting on behalf of the State from a takings claim and (3) the Trust pleaded a proper trespass-to-try-title claim.

Because the district court's order does not specify on what basis or under which motion the court dismissed the Trust's claims, we may affirm the district court's decision on any underlying, meritorious ground asserted in those motions.[3] First, however, we must resolve the jurisdictional issues raised by the Trust's second and third claims.

Plea to the jurisdiction

In its plea to the jurisdiction, the State generally challenged the Trust's standing to bring its claims, arguing that while the Trust's pleadings complain that the property belongs to the Galan heirs, its petition does not allege any facts showing that the Trust had an interest in the property. The Trust's petition, however, describes the Trust as "the current owner of the title" to the disputed property. Construing the pleading liberally in favor of the pleader and looking to the pleader's intent,[4] we take the Trust's petition as asserting that the Galan heirs have transferred whatever interest they have in the property to the Trust. Whether the Trust could actually establish an interest and the transfer of that interest are other questions, but because the State does not

[3] *See Parkhurst v. Office of the Atty Gen.*, 481 S.W.3d 400, 402 (Tex. App.—Amarillo 2015, no pet.) (Rule 91a motion); *Hendee v. Dewhurst*, 228 S.W.3d 354, 367 (Tex. App.—Austin, 2007, pet. denied) (plea to the jurisdiction).

[4] *See Texas Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 227 (Tex. 2004) ("We construe the pleadings liberally in favor of the plaintiffs and look to the pleaders' intent.").

challenge the existence of these facts (only whether they were pleaded), the Trust's pleadings are sufficient to affirmatively demonstrate jurisdiction.[5]

The State also asserted in its plea to the jurisdiction that sovereign immunity bars the Trust's trespass-to-try-title claim against the State because the Legislature has not waived immunity.[6] The State's plea further asserts that the named State officials are immune from the Trust's trespass-to-try-title action because the Trust has failed to plead a proper ultra vires claim against those officials,[7] and that sovereign immunity bars the Trust's requests for monetary damages and attorney fees.[8] We agree.[9]

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[5] *Id.* at 226–27. Even if the Trust's petition were not sufficient in this regard, because the petition does not affirmatively negate the existence of jurisdiction, the Trust would be entitled to amend its pleadings. *See Texas A&M Univ. Sys. v. Koseoglu*, 233 S.W.3d 835, 840 (Tex. 2007) ("[A] pleader must be given an opportunity to amend in response to a plea to the jurisdiction only if it is possible to cure the pleading defect.").

[6] Absent legislative waiver, sovereign immunity deprives Texas courts of subject-matter jurisdiction over any suit against the State or its agencies or subdivisions. *See, e.g.*, *Texas Dep't of Transp. v. Sefzik*, 355 S.W.3d 618, 620–21 (Tex. 2011).

[7] Sovereign immunity normally extends to State officials sued in their official capacities, but an ultra vires claim, which seeks to require a State official to comply with statutory or constitutional provisions, is not prohibited by sovereign immunity, even absent legislative consent. *See City of El Paso v. Heinrich*, 284 S.W.3d 366, 372–73 (Tex. 2009).

[8] Because an ultra vires claim is essentially a claim against the State, its remedies are limited and, in fact, may implicate immunity. *See id.* Only some form of prospective injunctive relief is allowed to remedy an ultra vires action; retrospective relief, whether monetary or otherwise, is barred. *See id*. at 373–77 (noting exception for successful takings claim); *see also City of Dallas v. Albert*, 354 S.W.3d 368, 378–79 (Tex. 2011) ("But *Heinrich* clarified that only prospective, not retrospective, relief is available in an ultra vires claim." (citing *id*. at 376)).

[9] Our review of the sovereign-immunity issues in this appeal are under the same standard by which we review subject-matter jurisdiction generally. *Texas Ass'n of Bus. v. Texas Air Control Bd*., 852 S.W.2d 440, 446 (Tex. 1993). That standard requires the pleader to allege facts that affirmatively demonstrate the trial court's jurisdiction to hear the cause. *See Miranda*, 133 S.W.3d at 226 (citing *Texas Ass'n of Bus*., 852 S.W.2d at 446); *Hendee*, 228 S.W.3d at 375. We construe

As counsel for the Trust acknowledged in argument to the district court, sovereign immunity bars the Trust's trespass-to-try-title claims and request for monetary damages and attorney fees from the State because the Legislature has not waived immunity.[10] Accordingly, the district court lacked jurisdiction over these claims and properly granted the State's plea to the jurisdiction as to these claims. Relatedly, the district court lacked jurisdiction over the Trust's requests for monetary relief and attorney fees from the named State officials because, even assuming the Trust has asserted proper ultra vires claims against those officials, monetary relief is barred.[11]

As for the Trust's trespass-to-try-title claims against the named State officials, those are barred by sovereign immunity because the Trust's pleadings affirmatively negate the Trust's title and right of possession in the Palafox Grant. In its 1961 decision *State v. Lain*, the Texas Supreme Court established that sovereign immunity does not shield state officials from a trespass-to-try-title action asserted "by the owner of land *having the right of possession*, when the sovereign *has neither title nor right of possession*."[12] The Trust's pleadings assert that the patent to the Galan heirs was cancelled by the State more than 140 years ago—i.e., that the Galan's heirs lost title to and

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the pleadings liberally and look to the pleader's intent. *See Miranda*, 133 S.W.3d at 226. If the pleadings do not contain sufficient facts to affirmatively demonstrate the trial court's jurisdiction but do not affirmatively demonstrate incurable defects in jurisdiction, the issue is one of pleading sufficiency, and the plaintiffs should be afforded the opportunity to amend. *Id.* If the pleadings affirmatively negate the existence of jurisdiction, we may render judgment dismissing the plaintiffs' case without an opportunity to amend. *Id.* 226–27.

[10] *See, e.g.*, *Sefzik*, 355 S.W.3d at 620–21.

[11] *See Heinrich*, 284 S.W.3d at 373–77.

[12] 349 S.W.2d 579, 582 (Tex. 1961) (citing *United States v. Lee*, 106 U.S. 196 (1882) (emphases added)).

possession of the Palafox Grant when the State cancelled their patent.[13] Once the State cancelled the patent, the State became the titleholder to the Palafox Grant.[14] In sum then, the Trust's petition affirmatively negates the Galan heirs', and thus the Trust's, title and right to possession in the Palafox Grant and establishes the State's (or any successor's) title to the property. Accordingly, the district court lacked jurisdiction over the trespass-to-try-title claims against the named State officials.[15]

Rule 91a motion to dismiss

In its Rule 91a motion, the State asserted that the Trust's takings action should be dismissed as having no basis in law[16] because the Trust's pleadings demonstrate that the ten-year limitations period for asserting such claims has long since passed.[17] We agree.

"To establish a takings claim, the claimant must seek compensation because the defendant intentionally performed actions that resulted in taking, damaging, or destroying property

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[13] *See Day Land & Cattle Co. v. State*, 4 S.W. 865, 868 (Tex. 1887) (noting that after patent is cancelled, State has title).

[14] *See id.*

[15] *See Miranda*, 133 S.W.3d at 227.

[16] *See* Tex. R. Civ. P. 91a.1 ("[A] party may move to dismiss a cause of action on the grounds that it has no basis in law . . . . A cause of action has no basis in law if the allegations, taken as true, . . . do not entitle the claimant to the relief sought.").

[17] *See Trail Enters., Inc. v. City of Houston*, 957 S.W.2d 625, 631 (Tex. App.—Houston [14th Dist.] 1997, pet. denied) (holding that takings claims are barred after expiration of ten-year period of limitations to acquire land by adverse possession) (citing *Brazos River Auth. v. City of Graham*, 354 S.W.2d 99, 110 (Tex. 1961); *Waddy v. City of Houston*, 834 S.W.2d 97, 102 (Tex. App.—Houston [1st Dist.] 1992, writ denied)).

for public use without the owner's consent."[18] As the State points out, the Trust's pleadings demonstrate that its takings claims accrued in 1874 when the patent to the Palafox Grant was allegedly revoked: "On January 13, 1874, the State of Texas cancelled or revoked the 1870 patent, without benefit of a judicial proceeding. The Galan heirs' property was taken without due process of law or compensation for the taking." The Trust did not file a takings claim against the State until 2015—more than 140 years after the alleged taking—when it filed the underlying suit. This delay in filing far exceeds the ten-year limitations period established for takings claims.[19] Although the Trust argues on appeal that the State cannot prevail on limitations because the State has not proved all the elements of adverse possession, the State was only required to establish when the cause of action accrued to establish limitations.[20] As noted, the Trust's pleadings affirmatively demonstrate that its takings claim accrued more than ten years before it filed suit. Specifically, the cancellation of the Galan heirs' patent in 1874 started the limitations clock because, with that action, the State would have allegedly appropriated the Galan heirs' property.[21] Accordingly, it was

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[18] *Texas Parks & Wildlife Dep't v. Sawyer Trust*, 354 S.W.3d 384, 390–91 (Tex. 2011); *see* U.S. Const. amend. V (prohibiting the government from, among other rights, taking private property for public use without just compensation); Tex. Const. art. 1, § 17 ("No person's property shall be taken, damaged, or destroyed for or applied to public use without adequate compensation being made . . . .").

[19] *See Trail Enters.*, 957 S.W.2d at 631.

[20] *See id.* (rejecting same argument and discussing basis for holding (citing *Waddy*, 834 S.W.2d at 103)).

[21] *See id.* (holding that claim accrued on implementation of ordinance that resulted in regulatory taking).

proper for the district court to dismiss the Trust's takings claim on limitations based solely on the Trust's pleadings.[22]

Conclusion

We affirm the district court's order dismissing the Trust's claims.

Jeff Rose, Chief Justice

Before Chief Justice Rose, Justices Goodwin and Bourland

Affirmed

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[22] *See* Tex. R. Civ. P. 91a.6 (requiring trial court to decide the motion "based solely on the pleadings in the cause of action, together with any pleading exhibits permitted").