TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-15-00820-CV

EMCF Partners, LLC d/b/a Euphoria Music and Camping Festival, Appellant

v.

Travis County, Texas, Appellee

FROM THE DISTRICT COURT OF TRAVIS COUNTY, 98TH JUDICIAL DISTRICT
NO. D-1-GN-15-004139, HONORABLE TIM SULAK, JUDGE PRESIDING

MEMORANDUM OPINION

EMCF Partners, LLC d/b/a Euphoria Music and Camping Festival (EMCF) appeals the trial court's order dismissing its suit against Travis County, Texas (Travis County) for lack of subject-matter jurisdiction. Because we conclude that the trial court lacked subject-matter jurisdiction, although for a reason different from that identified by the trial court in its order of dismissal, we will affirm.

BACKGROUND[1]

EMCF produces a music festival called the Euphoria Music and Camping Festival, which has been held annually since April 2012. In 2014, EMCF chose to hold the festival at Carson

[1] The factual background information derives from documents contained in the trial court's record, including the parties' pleadings and exhibits and voluminous pertinent records from the Travis County Commissioners Court. Unless otherwise indicated, none of the facts recited herein are disputed.

Creek Ranch, a piece of private property located in an unincorporated area of Travis County. The festival was held at Carson Creek Ranch again in 2015. In June 2015, after completion of the 2015 festival, EMCF submitted a Fire Code Permit Application to the Travis County Fire Marshal's Office seeking a "mass gathering permit" for the anticipated 2016 festival, again to be held at Carson Creek Ranch. *See* Tex. Health & Safety Code §§ 751.001-.013 (Texas Mass Gatherings Act).

The Texas Mass Gatherings Act defines a "mass gathering" as a gathering (1) that is held outside the limits of a municipality; (2) that attracts or is expected to attract more than 2,500 persons (or more than 500 persons if 51 percent or more of those persons may reasonably be expected to be under 21 years of age and it is planned or may reasonably be expected that alcoholic beverages will be sold, served, or consumed at or around the gathering); and (3) at which the persons will remain for five or more continuous hours (or for any amount of time between the hours of 10:00 p.m. and 4:00 a.m.). *Id*. § 751.002(1). The Texas Mass Gatherings Act prohibits a person[2] from promoting[3] a mass gathering without a permit. *Id.* § 751.003. The Texas Mass Gatherings Act provides that the permit application must be filed with the county judge of the county in which the mass gathering will be held at least 45 days before the date of the mass gathering. EMCF had used this process—that is, submitting a Fire Code Permit Application to the Travis County Fire Marshal's Office—to obtain permits for the previous years' festivals held at Carson Creek Ranch. The application included supplemental information about the proposed mass gathering, including that

[2] "Person" is defined by the statute to mean an individual, group of individuals, firm, corporation, partnership, or association. Tex. Health & Safety Code § 751.002(2).

[3] The statute provides that the term "promote" includes organize, manage, finance, or hold. *Id.* § 751.002(3).

it would be a camping and music festival held from April 7 through April 11, 2016; that expected attendance was 15,000 people; and that "Camping Quite [sic] Time" would begin at midnight on the Thursday and Sunday festival days and at 2:00 a.m. the morning after the Friday and Saturday festival days.[4] EMCF's permit application was forwarded to Travis County Judge Sarah Eckhardt for consideration. *See id.* § 751.007 (after holding hearing on mass gathering permit application, county judge shall either grant or deny permit).

Since taking office in January 2015, Judge Eckhardt had received a number of applications for mass gathering permits, which were the subject of public hearings and approved without controversy. However, during a public hearing held in March 2015 on EMCF's application for a permit for the April 2015 festival, members of the public raised concerns about amplified sound late at night, traffic safety, and other issues related to the event. Following this hearing, Judge Eckhardt requested a review of the entire mass gathering permitting process. An agenda request for the May 5, 2015 Commissioners Court meeting states:

> **AGENDA LANGUAGE**
>
> CONSIDER AND TAKE APPROPRIATE ACTION REGARDING REVISIONS TO THE MASS GATHERING PERMIT APPLICATION PROCESS INCLUDING RECOMMENDATIONS TO STREAMLINE THE APPLICATION PROCESS AND DESIGNATE THE TRAVIS COUNTY FIRE MARSHAL'S OFFICE AS THE COORDINATING AGENCY FOR RECEIPT OF APPLICATIONS FOR MASS GATHERING PERMITS.
>
> . . . .

[4] We understand this reference to "Quite Time" to mean that the festival's amplified sound would cease and the festival would have a "quiet time" period beginning at midnight on the festival days that were followed by a weekday (Thursday and Sunday) and at 2:00 a.m. on the festival days that were followed by a weekend day (Friday and Saturday).

ISSUES AND OPPORTUNITIES

> Residents living near proposed mass gathering events have expressed concern about what event organizers are required to do in order to hold a mass gathering. Clarifying and streamlining the mass gathering permit application process will make the process easier to understand for landowners, event promoters, members of the public, and the County agencies charged with investigating preparations for mass gatherings. Designating the Travis County Fire Marshal's Office as the coordinating agency for receipt of applications for mass gathering permits will make the permitting process more efficient for applicants and the reviewing agencies.

The county departments involved in the mass gathering permitting process, including the Fire Marshal's Office, Transportation and Natural Resources, the Travis County Sheriff's Office, and the Health and Human Services Department, presented the Commissioners Court with their recommended permitting procedures and guidelines. The proposed procedures and guidelines were discussed at several public hearings between March and August 2015, which were attended by members of the public, event promoters, and staff members of the county departments.

On August 11, 2015, the Commissioners Court unanimously passed a motion to adopt the "Travis County Permitting Procedures for Major Events in Unincorporated Areas" (the Permitting Procedures). The first paragraph of the Permitting Procedures states:

> Travis County uses the following procedures to approve or deny permits for Mass Gatherings under Chapter 751, Health and Safety Code, and Outdoor Music Festivals under Chapter 2104, Occupations Code.[5] These procedures apply uniform standards

[5] Chapter 2104 of the Texas Occupations Code is titled "Regulation of Outdoor Music Festivals." *See* Tex. Occ. Code §§ 2104.001-.151. Although it is not a short title conferred by the Legislature, the parties refer to this chapter of the Occupations Code as the "Outdoor Musical Festival Act" and we will do the same. The statute defines an "outdoor music festival" as "any form of musical entertainment provided by live performances that occurs on two or more consecutive days during a three day period if:

> and requirements for both. Mass gatherings and outdoor music festivals are referred to collectively herein as "events." The County Judge has jurisdiction over mass gatherings. The Commissioners Court has jurisdiction over outdoor music festivals. If an event is subject to both statutes, a permit must be approved by the County Judge and the Commissioners Court.

The Permitting Procedures provide that, in order to obtain a permit, an applicant must file with the Travis County Fire Marshal's Office an application using the "Travis County Application for a Major Event Permit" form (the Permit Application Form). The Permit Application Form states:

> The undersigned promoter agrees to follow the **Travis County Permitting Procedures for Major Events in Unincorporated Areas**. In planning for and carrying out the event, the undersigned promoter agrees to comply with all applicable **Travis County Event Permit Guidelines** (attached hereto) and any special conditions included in the permit.

Among other requirements related to health and safety of the events, the Travis County Event Permit Guidelines (the Guidelines) attached to the Permit Application Form provide that: "Amplified sound is prohibited: (i) After 11:00 p.m. for event days on Sunday through Thursday; and (ii) After 1:00 a.m. the next morning for event days that begin on Friday and Saturday." The Permit Application

---

> (A) more than 5,000 persons attend any performance;
>
> (B) any performer or audience member is not within a permanent structure; and
>
> (C) the performance occurs outside the boundaries of a municipality."

Id. § 2104.001(1). The Outdoor Music Festival Act makes it a criminal offense to "direct, control, or participate in the direction or control of an outdoor music festival unless the festival is authorized by a permit issued under" chapter 2104. *Id.* § 2104.151(b). A request for a permit for an outdoor music festival must be filed with the county clerk of the county in which the festival is to be held for consideration by the commissioners court. *Id.* §§ 2104.101, .104.

Form also contemplates that a promoter may request a waiver of any of the health and safety requirements set forth in the Guidelines, including the amplified sound restrictions.

After adopting the Permitting Procedures in August 2015, the Commissioners Court met on September 8, 2015 for a voting session to, among other things, "consider and take appropriate action regarding the issuance of a Mass Gathering Permit for the Euphoria Music & Camping Festival to be held on April 7-11, 2016, at Carson Creek Ranch."[6] The Commissioners noted that the application sought a permit that would allow amplified sound to continue until midnight on the Thursday and Sunday event days and until 2:00 a.m. the next morning for the Friday and Saturday event days, which exceeded the hours for amplified sound set forth in the recently adopted Guidelines. Commissioner Gerald Daugherty first moved that the permit be denied. That motion was defeated. Judge Eckhardt then moved that the permit be granted on the condition that EMCF ensure that amplified sound cease at hours consistent with the Guidelines. Judge Eckhardt's motion was approved. The County Judge and the Commissioners Court later signed two separate orders, each of which was titled "Order Granting Conditional Major Event Permit for 2016 Euphoria Music & Camping Festival" to be held on April 7-11, 2016 at Carson Creek Ranch. Both orders contain a number of conditions to the permit including the following:

(i) Promoter ensures that amplified sound is prohibited:

(1) After 11:00 p.m. for event days on Sunday through Thursday; and

---

[6] EMCF's application for the 2016 festival had been submitted in June 2015, one month before the Commissioners Court adopted the Permitting Procedures and associated Permit Application Form. EMCF did not resubmit a permit application using the newly adopted form.

> (2) After 1:00 a.m. the next morning for event days that begin on Friday and Saturday;
>
> (j) Promoter undertakes commercially-reasonable efforts to mask stage, parking, and all other lighting to limit light exposure to neighboring properties; and
>
> (k) Promoter undertakes commercially-reasonable efforts to limit dust exposure to neighboring properties.

EMCF did not take an appeal from either the County Judge's or the Commissioners Court's permitting decision as allowed under the Texas Mass Gatherings Act and the Outdoor Music Festival Act. *See* Tex. Health & Safety Code § 751.009 ("A promoter or person affected by the granting, denying, or revoking of a permit may appeal that action to a district court having jurisdiction in the county in which the mass gathering will be held."); Tex. Occ. Code § 2104.107 ("person affected by an action of the commissioners court in granting, denying, or revoking a permit issued under this chapter may appeal the action by filing a petition in a district court in the county in which the commissioners court presides" and "the district court shall review the action of the commissioners court under the substantial evidence rule"). Instead, EMCF sued Travis County under the Texas Uniform Declaratory Judgments Act, seeking declaratory and injunctive relief. *See* Tex. Civ. Prac. & Rem. Code §§ 37.001-.011 (UDJA). In its petition, EMCF stated:

> The issue is whether Travis County has the authority to regulate and restrict the hours of operation of a mass gathering governed by the Texas Mass Gathering[s] Act ("TMGA") in ways not authorized by the TMGA. [EMCF] will show that Travis County does not have the authority to enforce or enact such restrictions.
>
> The Texas Constitution provides that the Commissioners Court "shall exercise such powers and jurisdiction over all county business, as is conferred by this Constitution and the laws of the State, or as may be hereafter prescribed." The Constitution does not confer on commissioners general authority over the county business. The

> legislature for the State of Texas sets the process for applying and obtaining approval for mass gathering permits. To date, the Legislature has not conferred upon counties the authority to regulate the hours of operation.
>
> . . . .
>
> Therefore, [EMCF] seeks a declaration that the Commissioners Court's approved restriction to the Mass Gathering Act is invalid and unenforceable. By imposing this restriction on the hours of operation, the Commissioners Court has exceeded its statutory authority, which it cannot do. The restrictions are outside of the Commissioners Court's authority.

EMCF also sought to enjoin Travis County from enforcing "the newly and unlawfully imposed hours of operation restriction." Travis County filed an answer in which it asserted that, as a political subdivision of the State of Texas, it was immune both from suit and from liability except to the extent the Texas Legislature had "provided a limited waiver of its sovereign immunity by way of the Texas Tort Claims Act."

The trial court held a hearing on EMCF's request for declaratory judgment and a permanent injunction. At the hearing EMCF argued principally that neither Travis County nor the Travis County Commissioners Court has the authority to prohibit the hours during which amplified sound may be used during a mass gathering or outdoor music festival held in an unincorporated area of Travis County. Travis County countered by explaining the history of the development of the Permitting Procedures and the Guidelines and argued that the Permitting Procedures and the Guidelines did not constitute "sound ordinances" that prohibit any person in the county from using amplified sound at any particular time but, rather, were guidelines developed as part of the permitting process for mass gatherings and outdoor music festivals. Travis County pointed out that the Permitting Procedures provided that a promoter could request a waiver of any of the Guidelines, including those

applicable to amplified sound. Travis County also argued that by giving the County Judge and the Commissioners Court permitting authority for mass gatherings and outdoor music festivals, the Legislature conferred on each the authority to impose limits on the hours for amplified sound during those events. EMCF responded that "[i]n the end, it's just the County doesn't have the authority to do this."

After the hearing, the trial court sent the parties a letter stating that it was of the opinion that any declaratory relief it granted would be advisory, explaining "[b]ecause it is unclear whether the conditional grant of the permit was under [the Texas Mass Gatherings Act] or [the Outdoor Music Festival Act], or both, the Court is unable, on this record, to make a determination as to the validity of the actions." The court signed an order dismissing EMCF's petition. The order recited that "the Court finds that it lacks jurisdiction to grant the relief requested under the Declaratory Judgment Act as an advisory opinion, and declines to issue injunctive relief on this record." This appeal followed.

In two issues, EMCF argues that (1) Travis County does not have authority under the Texas Constitution and the laws of Texas, including the Texas Mass Gatherings Act and the Outdoor Music Festival Act, to create restrictions that single out certain kinds of sound, including amplified sound, for limited hours in unincorporated parts of the county; and (2) Travis County's creation of restrictions that do so is an arbitrary and capricious application of the county's health and safety authority. Travis County countered that the trial court properly dismissed the case because it did not have subject-matter jurisdiction over EMCF's claims. Travis County asserts that, as a political subdivision of the State, it enjoys immunity from suit and from liability absent legislative waiver, and the Uniform Declaratory Judgments Act does not provide such a waiver for the claims asserted

in EMCF's petition. Travis County also argued that, because EMCF's petition only challenged Travis County's authority under the Texas Mass Gatherings Act, any declaration would not resolve the controversy between the parties because it would not address authority emanating from the Outdoor Music Festival Act and, consequently, the trial court properly concluded that the requested declaratory relief would constitute an advisory opinion. Finally, in what it labels "reply points," Travis County argued that it did have the authority to set and enforce standards for health and safety, including noise restrictions; that it could establish music festival permitting guidelines and deny permits that did not comply with those guidelines; and that the decision to condition EMCF's permit on its agreement to comply with the Guidelines was neither arbitrary nor capricious and was supported by substantial evidence.

DISCUSSION

The trial court concluded that any decision it made regarding the validity of the Commissioners Court's action would be advisory and dismissed EMCF's suit for lack of subject-matter jurisdiction. Although EMCF's appellate issues and supporting briefing address the merits of its requested relief, the trial court expressly declined to address the merits, stating in its order that it lacked jurisdiction to grant the relief requested under the UDJA. The trial court also stated in its order that it "decline[d] to issue injunctive relief on this record." Thus, this is an appeal from the trial court's dismissal of EMCF's claims for want of jurisdiction, not from a decision on the merits of the request for declaratory and injunctive relief.

EMCF filed its claims solely under the UDJA. We therefore begin our analysis by considering whether, as Travis County maintains on appeal, the trial court did not have subject-

matter jurisdiction to entertain EMCF's claims for relief brought under the UDJA. *See Texas Ass'n of Bus. v. Texas Air Control Bd.*, 852 S.W.2d 440, 443-44 (Tex. 1993) ("Subject matter jurisdiction is never presumed and cannot be waived.").[7] Absent an express waiver, sovereign immunity deprives the courts of subject-matter jurisdiction over suits against the state or its political subdivisions. *State v. Shumake*, 199 S.W.3d 279, 283 (Tex. 2006). Whether a court has subject-matter jurisdiction is a question of law we review de novo. *Texas Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004).

The UDJA gives Texas courts the power to "declare rights, status, and other legal relations whether or not further relief is or could be claimed." Tex. Civ. Prac. & Rem. Code § 37.003(a). The UDJA provides that "[a] person . . . whose rights, status, or other legal relations are affected by a statute . . . may have determined any question of construction or validity arising under the . . . statute . . . and obtain a declaration of rights, status, or other legal relations thereunder." *Id.* § 37.004(a). The UDJA does not create or augment a trial court's subject-matter jurisdiction—it is "merely a procedural device for deciding cases already within a court's jurisdiction." *Texas Ass'n of Bus.*, 852 S.W.2d at 444. Thus, the UDJA "is not a general waiver of sovereign immunity." *Texas Parks & Wildlife Dep't v. Sawyer Trust*, 354 S.W.3d 384, 388 (Tex. 2011). Instead, the UDJA only "waives sovereign immunity in particular cases." *Texas Dep't of Transp. v. Sefzik*, 355 S.W.3d 618,

---

[7] As a political subdivision of the state, Travis County is entitled to governmental immunity. *See Wichita Falls State Hosp. v. Taylor*, 106 S.W.3d 692, 694 n.2 (Tex. 2003) (governmental immunity protects political subdivisions of state, including counties, cities, and school districts). Governmental immunity, composed of both immunity from liability and immunity from suit, implicates a trial court's jurisdiction and, when it applies, precludes suit against a governmental entity. *Texas Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 224 (Tex. 2004); *Texas Nat. Res. Conservation Comm'n v. IT-Davy*, 74 S.W.3d 849, 853 (Tex. 2002).

621 (Tex. 2011) (per curiam). Thus, for EMCF to maintain a suit against Travis County, its claim must be either one that does not implicate sovereign immunity or one for which the Legislature has provided a clear and express waiver of immunity.

Governmental immunity does not bar claims alleging that a government officer acted ultra vires, or without legal authority, in carrying out his duties. *City of El Paso v. Heinrich*, 284 S.W.3d 366, 371-72 (Tex. 2009); *see Houston Belt & Terminal Ry. Co. v. City of Houston*, 487 S.W.3d 154, 158 n.1 (Tex. 2016) ("[W]hen a governmental officer is sued for allegedly *ultra vires* acts, governmental immunity does not apply from the outset."). EMCF's petition purported to allege that the Commissioners Court acted without legal authority; i.e., an ultra vires act. EMCF sought declarations that "the Commissioners Court has exceeded its authority" and "the [amplified-sound] restrictions are outside of the Commissioners Court's authority." EMCF's suit, however, was brought against Travis County rather than the government officers—the members of the Commissioners Court. Suits alleging ultra vires acts cannot be brought against the state or its political subdivisions, which retain immunity, but must be brought against the state actors in their official capacity. *Heinrich*, 284 S.W.3d at 373 ("[B]ecause the rule that *ultra vires* suits are not 'suits against the State within the rule of immunity of the State from suit' derives from the premise that 'acts of officials which are not lawfully authorized are not acts of the State,' it follows that these suits cannot be brought against the state, which retains immunity, but must be brought against the state actors in their official capacity." (internal citations omitted)) . Travis County retains immunity from EMCF's claim that the Commissioners Court acted without legal authority by including amplified-sound restrictions in the Permitting Procedures and the Guidelines.

EMCF nevertheless asserts that this appeal is really a challenge to the "validity" of a "statute" and that the UDJA waives immunity as to such claims. *See Patel v. Texas Dep't of Licensing & Regulation*, 469 S.W.3d 69, 75-76 (Tex. 2015) (sovereign immunity is inapplicable when suit challenges constitutionality of statute and seeks only equitable relief); *Texas Lottery Comm'n v. First State Bank of DeQueen*, 325 S.W.3d 628, 633-35 (Tex. 2010) (UDJA waives immunity for suits challenging statutes that involve constitutional invalidation and invalidation arising from statutory interpretation). EMCF insists that, although it is not challenging the constitutionality of either the Texas Mass Gatherings Act or the Outdoor Music Festival Act, it is challenging the validity of the amplified-sound restrictions included in the Permitting Procedures and the Guidelines, which it denominates as "newly-passed regulations," an "ordinance," and a "statute."[8] EMCF does not explain why the Permitting Procedures and the Guidelines constitute "statutes" as opposed to merely establishing the conditions for receiving a permit to engage in an activity that is otherwise prohibited. *See* Tex. Health & Safety Code § 751.003 (person may not promote mass gathering without permit issued under this chapter).[9] Even assuming, however, that the Guidelines and Permitting Procedures could be considered "statutes," an "ordinance," or "newly-

[8] In its appellate briefing, EMCF asserts that it is challenging the validity of an "ordinance." EMCF does not explain how the Guidelines or Permitting Procedures the Commissioners Court adopted to streamline the permitting process constitute an "ordinance." In any event, with respect to ordinances, the UDJA waives *a municipality*'s immunity in a suit "involving the validity of a municipal ordinance or franchise." *See* Tex. Civ. Prac. & Rem. Code § 37.006(b). The present suit was brought against Travis County, which is not a municipality.

[9] The Permitting Procedures and the Guidelines contemplate that an applicant may request that the amplified-sound condition be waived. The decision to waive or not waive the amplified-sound condition may be appealed to the district court. *See* Tex. Health & Safety Code § 751.009; Tex. Occ. Code § 2104.107.

passed regulations" for purposes of this analysis, an issue we express no opinion about, the fact remains that the nature of EMCF's suit is an ultra vires claim. EMCF alleges that the Commissioners and County Judge acted without statutory or other authority by purporting to place limits on the hours for amplified sound in unincorporated areas of Travis County. This is a quintessential ultra vires claim. The fact that the alleged result of the ultra vires act was an invalid amplified-sound restriction does not convert EMCF's claim into the type of challenge to the validity or constitutionality of a statute for which the supreme court has determined that the UDJA waives immunity. *See DeQueen*, 325 S.W.3d at 633-35 (UDJA waives immunity for suits challenging statutes that involve constitutional invalidation and invalidation arising from statutory interpretation). To be sure, the Court might be required to engage in statutory construction or interpretation of the Texas Mass Gatherings Act, the Outdoor Music Festival, or some other statutes to determine whether the acts complained of were in fact unauthorized and did not involve the exercise of discretion such that the suit falls within the "ultra vires exception." But the mere fact that statutory interpretation may be part of the Court's analysis does not transform the claim from an ultra vires claim into a type of challenge to a statute's validity for which the supreme court has found a waiver of immunity. *See McLane Co., Inc. v. Texas Alcoholic Beverage Comm'n*, No 03-16-00415-CV, 2017 WL 474067 (Tex. App.—Austin Feb. 1, 2017, no pet. h.) (UDJA does not waive immunity for "bare statutory construction" claims); *see also Heinrich*, 284 S.W.3d at 373 (ultra vires claim may be brought against state actors in their official capacities rather than against political subdivision of state, which retains its immunity).

Moreover, to the extent that EMCF's UDJA claim challenges the substance (specifically the amplified-sound restrictions) of the Order Granting Conditional Major Event

Permit for the 2016 Euphoria Music and Camping Festival signed by either the Commissioners Court or the County Judge on the ground that the restrictions were imposed in violation of a constitutional or statutory provision or were arbitrary and capricious, that relief would also be barred by the "redundant remedies" doctrine. Under this doctrine, courts will not entertain an action brought under the UDJA when the same claim could be pursued through different channels. *Patel*, 469 S.W.3d at 79 (citing *Texas Mun. Power Agency v. Public Util. Comm'n*, 253 S.W.3d 184, 200 (Tex. 2007)). The doctrine focuses on "whether the Legislature created a statutory waiver of sovereign immunity that permits the parties to raise their claims through some avenue other than the UDJA." *Id.* (citing *Aaron Rents, Inc. v. Travis Cent. Appraisal Dist.*, 212 S.W.3d 665, 669 (Tex. App.—Austin 2006, no pet.) (en banc) ("When a statute provides an avenue for attacking an agency order, a declaratory judgment action will not lie to provide redundant remedies.")). The Legislature has provided EMCF alternatives to the UDJA for challenging the Commissioners Court's action of granting a permit under the Outdoor Music Festival Act. The Outdoor Music Festival Act provides that "[a] person affected by an action of the commissioners court in granting, denying, or revoking a permit issued under this subchapter may appeal that action by filing a petition in a district court in the county in which the commissioners court resides." *See* Tex. Occ. Code § 2104.107(a).[10] Similarly, the Texas Mass Gatherings Act provides that "[a] promoter or a person affected by the granting, denying, or revoking of a permit may appeal that action to a district court having

[10] The statute provides that the district court "shall review the action of the commissioners court under the substantial evidence rule." *See* Tex. Occ. Code § 2104.107(b); Tex. Gov't Code § 2001.174 (review under substantial evidence rule or undefined scope of review). This standard of review also applies if the law does not define the scope of judicial review. *See* Tex. Gov't Code § 2001.174.

jurisdiction in the county in which the mass gathering will be held." *See* Tex. Health & Safety Code § 751.009. These statutes constitute express waivers of governmental immunity and authorize judicial review of permitting actions under either the Texas Mass Gatherings Act or the Outdoor Music Festival Act. In those appeals, which are reviewed under the substantial evidence rule, the district court may resolve the question of whether the Commissioners Court's or the County Judge's permitting decision exceeded their respective statutory authority or violated the constitution. *See* Tex. Gov't Code § 2001.174(2)(A), (B) (permitting resolution of appeal from administrative action on ground that administrative decisions are in violation of constitutional or statutory provision or in excess of statutory authority). The district court may also determine whether the action was "arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." *Id.* § 2001.174(2)(F). EMCF did not avail itself of either of these procedural vehicles and their concomitant statutory waivers of immunity to challenge the Commissioners Court's or the County Judge's permitting decisions, relying instead solely on the UDJA. Thus, the redundant remedies doctrine stands as an additional bar to EMCF's UDJA claim.

In sum, the allegations in EMCF's petition complain of allegedly ultra vires acts of state officials and thus it is a suit for which Travis County retains its sovereign immunity. While EMCF's petition might allege a viable ultra vires claim over which the trial court could have subject-matter jurisdiction, an issue we express no opinion about, EMCF simply did not pursue such a claim against the appropriate parties in this case. To the extent EMCF's petition seeks relief that it could obtain through an avenue other than the UDJA, and for which the Legislature has created a statutory waiver of sovereign immunity, the redundant remedies doctrine also prevents it

from seeking that relief pursuant to the UDJA. Consequently, the trial court did not have subject-matter jurisdiction over EMCF's UDJA claims and did not err in dismissing the suit.

CONCLUSION

For the reasons stated in this opinion, we affirm the trial court's judgment dismissing this case for lack of subject-matter jurisdiction.

Scott K. Field, Justice

Before Chief Justice Rose, Justices Field and Bourland

Affirmed

Filed: February 15, 2017