

**TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN**

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**NO. 03-16-00828-CV**

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**Trent Alvon Smith, Appellant**

**v.**

**District Attorney's Office for Smith County, Texas;  
and District Clerk's Office for Smith County, Texas, Appellees**

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**FROM THE DISTRICT COURT OF TRAVIS COUNTY, 126TH JUDICIAL DISTRICT  
NO. D-1-GN-13-000652, HONORABLE CHARLES R. RAMSAY, JUDGE PRESIDING**

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**MEMORANDUM OPINION**

In this appeal, appellant Trent Alvon Smith challenges the trial court's judgment, which granted a plea to the jurisdiction filed by the District Attorney's Office of Smith County, Texas, and the District Clerk's Office of Smith County, Texas (or, collectively, the "District Offices") and dismissed Smith's claims. For the reasons that follow, we will affirm the judgment of the trial court.

**BACKGROUND**

Smith, an inmate in the Texas Department of Criminal Justice, Ellis Unit, filed a pro se lawsuit against the District Offices, along with the 241st Judicial District Court and the 114th Judicial District Court of Smith County (jointly, the "District Courts"). According to Smith, the defendants had committed certain actions in the course of his 2000 criminal trial for robbery and

in the handling of his subsequent application for writ of habeas corpus. Smith sought declaratory and injunctive relief in order to “redress the deprivation under color of state law of rights secured by the due course of law of the land in conjunction with the constitution of the United States.”

In response, the District Courts filed a plea to the jurisdiction, asserting that Smith’s claims against them are barred by sovereign immunity and judicial immunity. After the trial court granted the District Courts’ plea to the jurisdiction, Smith filed an interlocutory appeal in this Court, and we affirmed the trial court’s order. *See Smith v. 241st Dist. Court of Smith Cty.*, No. 03-13-00719-CV, 2015 WL 1611703, at \*1 (Tex. App.—Austin Apr. 9, 2015, pet. denied) (mem. op.), *cert. denied*, 136 S. Ct. 1187 (2016); *see also* Tex. Civ. Prac. & Rem. Code § 51.014(a)(8). The District Offices then filed their own plea to the jurisdiction, similarly arguing that Smith’s claims against them were barred by governmental immunity, official immunity, and prosecutorial immunity. Following a hearing, the trial court granted the District Offices’ plea to the jurisdiction and dismissed the case.

## ANALYSIS

In his first issue on appeal, Smith asserts that the trial court “abused its discretion” in granting the District Offices’ plea to the jurisdiction because the District Offices failed to establish their claim of immunity.<sup>1</sup>

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<sup>1</sup> Because subject-matter jurisdiction is a question of law, we review a trial court’s ruling on a plea to the jurisdiction *de novo*. *Texas Dep’t of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004). In our review, we construe the pleadings liberally and look to the pleader’s intent to determine whether the facts alleged affirmatively demonstrate the trial court’s jurisdiction to hear the cause. *Id.*

“In Texas, sovereign immunity deprives a trial court of subject matter jurisdiction for lawsuits in which the state or certain governmental units have been sued unless the state consents to suit.” *Texas Dep’t of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004). In this case, Smith named the District Offices (along with the District Courts) as defendants; however, his claims concern actions taken by certain unnamed persons employed by these offices in the performance of their official duties. *See Telthorster v. Tennell*, 92 S.W.3d 457, 460-61 (Tex. 2002) (explaining that official immunity is “an affirmative defense that shields governmental employees from personal liability so that they are encouraged to vigorously perform their official duties”). Although his pleadings are not entirely clear, to the extent Smith is attempting to sue the District Offices as governmental entities, his suit implicates sovereign immunity.

Nevertheless, Smith contends that the trial court erred in concluding his claims were barred by immunity because, according to Smith, “a private party may seek declaratory relief against a state entity or official who allegedly acted without legal or statutory authority.” This Court rejected this same argument when considering Smith’s interlocutory appeal of the trial court’s dismissal of his claims against the District Courts in this case, *see 241st Dist. Court of Smith Cty.*, 2015 WL 1611703, at \*2, and, before that, in a suit brought by Smith against the District Attorney and the 402nd District Court of Wood County, Texas, *see Smith v. District Attorney Office for Wood Cty.*, No. 03-13-00220-CV, 2014 WL 5420536, at \*2-3 (Tex. App.—Austin Oct. 24, 2014, pet. denied) (mem. op.), *cert. denied*, 136 S. Ct. 300 (2015). Again, in this appeal, we cannot conclude that the trial court erred in granting the District Offices’ plea on this basis.

A suit seeking to compel a government official “to comply with statutory or constitutional provisions” is an ultra vires suit and is not prohibited by sovereign immunity. *City*

of *El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009). Suits alleging ultra vires or unconstitutional conduct by a government official are not considered suits against the State and therefore must be brought against state actors in their official capacities. *Id.* In addition, relief is limited in an ultra vires suit to prospective declaratory relief or injunctive relief restraining ultra vires conduct, as opposed to retroactive relief. *Id.*

As we previously explained in Smith’s interlocutory appeal in this case, Smith has pleaded for injunctive and declaratory relief related to what he contends are violations of “due course of law and the constitution of the United States.” Specifically, Smith seeks declarations that his constitutional rights were violated in the underlying criminal proceedings against him and also requests (1) an injunction requiring the District Courts to order the remand of his criminal case and to set aside the judgment “as being void for state and federal constitutional violations in criminal proceeding” and (2) an injunction requiring all the defendants, including the District Attorney’s Office and the District Clerks’s Office, to admit that Smith’s constitutional rights were violated in the criminal proceedings. Smith’s claims for injunctive and declaratory relief, based on past actions, are retrospective claims and will not support a claim of ultra vires conduct.<sup>2</sup> See *241st Dist. Court of Smith Cty.*, 2015 WL 1611703, at \*2 (citing *Smith*, 2014 WL 5420536, at \*3; *Roy v. Shannon*, No. 02-13-00238-CV, 2014 WL 4105271, at \*3 (Tex. App.—Fort Worth Aug. 21, 2014, no pet.) (mem. op.) (upholding dismissal of inmate’s suit against judge and district attorney and explaining

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<sup>2</sup> Although Smith has not sued any government officials or characterized his suit as an ultra vires action, we liberally construe Smith’s pleadings as an attempt to bring ultra vires claims against government officials in their official capacities. *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009) (explaining that ultra vires suit must be brought against state actor in his official capacity).

that ultra vires exception to immunity does not permit relief for acts and omissions already committed); *Delk v. Lehmborg*, No. 03-12-00678-CV, 2014 WL 1910314, at \*3 (Tex. App.—Austin May 9, 2014, no pet.) (mem. op.) (same); *Hailey v. Glaser*, No. 06-12-00065-CV, 2012 WL 5872869, at \*3-4 (Tex. App.—Texarkana Nov. 21, 2012, no pet.) (mem. op.) (same)). The trial court did not err in granting the District Offices’ plea to the jurisdiction on the basis of immunity. Smith’s first issue on appeal is overruled.

In his second issue on appeal, Smith complains that the trial court abused its discretion by failing to rule on his pending “motions to dismiss” and “motion for special exceptions” to the District Offices’ plea to the jurisdiction. As in his prior cases before this Court, Smith’s motions are comprised of legal arguments made by Smith in opposition to the District Offices’ plea to the jurisdiction.<sup>3</sup> The trial court considered and rejected these arguments when it granted the District Offices’ plea to the jurisdiction and was not required to separately rule on these motions. *See 241st Dist. Court of Smith Cty.*, 2015 WL 1611703, at \*2. We overrule Smith’s second issue on appeal.

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<sup>3</sup> After Smith requested that the trial court clerk submit a supplemental record to this Court containing these motions, the trial court clerk informed this Court that these motions do not appear in the trial court clerk’s record. *See* Tex. R. App. P. 34.5(c) (supplementation of clerks’ record). In response, Smith has filed an “application for writ of error,” requesting that we supplement the appellate record with copies of his motions, which he contends were filed by mail. Alternatively, Smith asks that we remand the matter to the trial court to determine “what constitutes an accurate copy of the missing items and order it to be included in the clerk’s record or a supplement.” *See* Tex. R. App. P. 34.5(e) (clerk’s record lost or destroyed). Based on the copies of the motions attached to Smith’s “application for writ of error,” we conclude that Smith’s motions contain only legal arguments in opposition to the State’s plea to the jurisdiction. To the extent relevant, we have considered these legal arguments in determining whether the trial court erred in concluding that Smith’s claims were barred by immunity. Thus, even if the documents were formally made part of the appellate record, they would not affect the disposition of this case. The “application for writ of error” is denied.

## **CONCLUSION**

Having overruled all of Smith's issues on appeal, we affirm the judgment of the trial court.

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Scott K. Field, Justice

Before Justices Puryear, Field, and Bourland

Affirmed

Filed: August 23, 2017