

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

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**NO. 03-17-00131-CV**

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**The State of Texas, Appellant**

**v.**

**City of Austin, Texas; Elaine Hart, in her official capacity as City Manager of the  
City of Austin; and Austin Firefighters Association, Local 975, Appellees**

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**FROM THE DISTRICT COURT OF TRAVIS COUNTY, 419TH JUDICIAL DISTRICT  
NO. D-1-GN-16-004307, HONORABLE ORLINDA NARANJO, JUDGE PRESIDING**

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**MEMORANDUM OPINION**

Appellant the State of Texas seeks to appeal an interlocutory order signed by the trial court on February 7, 2017, granting a motion to dismiss filed by appellee Austin Firefighters Association, Local 975 (AFA) pursuant to the Texas Citizens Participation Act (TCPA). *See* Tex. Civ. Prac. & Rem. Code §§ 27.003, .005. The State has appealed the February 7 order to the extent it operates as a denial of the State’s plea to the jurisdiction. *See id.* § 51.014(a)(8) (providing for interlocutory appeal of order granting or denying plea to jurisdiction by governmental unit).

Upon review, we concluded that it was unclear from the face of the February 7 order whether “the trial court intended to dismiss the State’s claims against AFA and, in doing so, to deny the State’s plea to the jurisdiction.” *State of Texas v. City of Austin*, No. 03-17-00131-CV, 2017 Tex. App. LEXIS 8605, at \*5 (Tex. App.—Austin Sept. 12, 2017) (mem. op.); *see Thomas v. Long*, 207 S.W.3d 334, 339 (Tex. 2006) (explaining that trial court’s ruling on merits constituted an

implicit rejection of appellant’s jurisdictional challenges). We therefore abated the appeal and remanded the case to the trial court for clarification. *City of Austin*, 2017 Tex. App. LEXIS 8605, at \*6. Specifically, we asked the trial court to certify whether it intended to dismiss the State’s claims and to deny the State’s plea to the jurisdiction. *Id.*

Pursuant to our instructions, the district clerk has filed a supplemental clerk’s record containing an “Order and Certification” clarifying the February 7 order. In its certification order, signed on September 27, 2017, the trial court states that it “did not rule on the State’s Plea to the Jurisdiction and did not intend its February 7, 2017 Order to function either as an *explicit or implicit* denial of that motion.” (Emphasis added.) Based on the language of the certification order, we conclude that the trial court did not rule on AFA’s motion to dismiss with respect to the State’s claims, and the February 7 order does not operate as an implicit denial of the State’s plea to the jurisdiction. Consequently, we do not have jurisdiction to consider the interlocutory order under section 51.014(a)(8) of the Texas Civil Practice and Remedies Code. Accordingly, we dismiss the appeal.

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Scott K. Field, Justice

Before Justices Puryear, Field, and Bourland

Dismissed for Want of Jurisdiction

Filed: October 11, 2017