

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-19-00535-CV

Robert Lee Fitzsimmons, Jr., Appellant

v.

Killeen Independent School District, Appellee

**FROM THE 169TH DISTRICT COURT OF BELL COUNTY
NO. 304,583-C, THE HONORABLE JACK WELDON JONES, JUDGE PRESIDING**

MEMORANDUM OPINION

This is a dispute between Killeen Independent School District (KISD) and a former employee, Robert Fitzsimmons. Fitzsimmons sued KISD in a Bell County district court alleging breach of a non-disclosure clause in a settlement agreement. The district court sustained KISD’s plea to the jurisdiction on governmental-immunity grounds. We affirm.

KISD employed Fitzsimmons as a teacher during the 2015-16 school year.¹ In January of 2016, Fitzsimmons was placed on administrative leave following an accusation of “viewing inappropriate materials.” The parties executed a “Settlement and Resignation Agreement” (Agreement) whereby Fitzsimmons agreed to submit his resignation at the end of the school year, waive all legal claims he may have against KISD, and refrain from disparaging KISD in the future. In return, KISD agreed to pay him the remainder of his salary for the year,

¹ We take this summary from the allegations in Fitzsimmons’ pleadings, which KISD does not contest here.

to refrain from providing an employment reference, and to “not discuss with anyone, unless required by law, the allegations against Fitzsimmons that led to him being placed on administrative leave.”

Fitzsimmons subsequently accepted a teaching position with Temple Independent School District, but the offer was withdrawn after his new employer learned of the allegations. Fitzsimmons sued KISD for breach of the nondisclosure clause alleging that a KISD employee disclosed the allegations. He asserted the Local Government Contract Claims Act as a waiver of KISD’s governmental immunity. *See* Tex. Loc. Gov’t Code §§ 271.151–.160 (waiving government immunity for certain contract claims against local government entities). KISD filed a plea to the jurisdiction asserting governmental immunity. The district court sustained the plea and dismissed Fitzsimmons’ claim with prejudice. This appeal ensued.

“Sovereign and governmental immunity are common-law concepts that generally protect the State and its political subdivisions from the burdens of litigation.” *Hughes v. Tom Green County*, 573 S.W.3d 212, 218 (Tex. 2019). Governmental immunity refers to the protections afforded political subdivisions, such as school districts, “when performing governmental functions as the state’s agent.” *Rosenberg Dev. Corp. v. Imperial Performing Arts, Inc.*, 571 S.W.3d 738, 741 (Tex. 2019). Immunity has two components: “immunity from liability, which bars enforcement of a judgment against a governmental entity, and immunity from suit, which bars suit against the entity altogether.” *Tooke v. City of Mexia*, 197 S.W.3d 325, 332 (Tex. 2006). Immunity from suit implicates a court’s subject matter jurisdiction to decide a claim against the State. *Rosenberg Dev. Corp.*, 571 S.W.3d at 746. When a government defendant challenges jurisdiction on immunity grounds, the plaintiff has the burden to “affirmatively demonstrate the court’s jurisdiction by alleging a valid waiver of immunity.”

Ryder Integrated Logistics, Inc. v. Fayette County, 453 S.W.3d 922, 927 (Tex. 2015) (per curiam) (quoting *Dallas Area Rapid Transit v. Whitley*, 104 S.W.3d 540, 542 (Tex. 2003)).

We review a court’s disposition of a plea to the jurisdiction de novo. *Id.* When a court grants a plea to the jurisdiction without specifying its reasons, as the district court did here, the appellant must challenge every ground on which the trial court may have granted the motion. *S.W. ex rel. A.W. v. Arlington Indep. Sch. Dist.*, 435 S.W.3d 414, 419 (Tex. App.—Fort Worth 2014, no pet.). If an appellant does not challenge every ground that could have independently supported the trial court’s ruling, “we must accept the validity of the unchallenged ground and affirm the adverse ruling.” *Equistar Chems., LP v. ClydeUnion DB, Ltd.*, 579 S.W.3d 505, 512 (Tex. App.—Houston [14th Dist.] 2019, pet. denied).

Fitzsimmons alleged in his live petition that the Act waives KISD’s immunity from suit. The Act provides that a local government entity that “enters into a contract subject to this subchapter” waives immunity “for the purpose of adjudicating a claim for breach of the contract, subject to the terms and conditions of this subchapter.” Tex. Loc. Gov’t Code § 271.152. The “subject to” phrase “incorporates the other provisions of the Act to define the scope of its waiver of immunity.” *Hays St. Bridge Restoration Grp. v. City of San Antonio*, 570 S.W.3d 697, 706 (Tex. 2019) (quoting *Zachry Constr. Corp. v. Port of Hous. Auth. of Harris Cty.*, 449 S.W.3d 98, 106 (Tex. 2014)). “Stated more succinctly, ‘the [other] provisions of the Act [are] limitations on the waiver of immunity.’” *Id.* (quoting *Zachry Constr. Corp.*, 449 S.W.3d at 108). KISD argued in its plea to the jurisdiction that the Agreement does not meet the statutory definition of a “contract subject to this subchapter.” See Tex. Loc. Gov’t Code § 271.151(2)(A) (defining term, in part, as “a written contract stating the essential terms of the agreement for providing goods or services to the local governmental entity that is properly

executed on behalf of the local governmental entity”). As an alternative, KISD argued that Fitzsimmons had no recoverable damages under section 271.153 of the Act. *See id.* § 271.153 (“Limitations on Adjudication Awards”).

Fitzsimmons argues on appeal that the Agreement constitutes a “contract subject to this subchapter” but does not address whether his damages are recoverable. Section 271.153 limits “the total amount of money awarded in an adjudication brought against a local governmental entity for breach of a contract subject to this subchapter” to certain enumerated categories. *See id.* § 271.153. These limitations are jurisdictional, and the Act “does not waive immunity from suit on a claim for damages not recoverable under Section 271.153.” *San Antonio River Auth. v. Austin Bridge & Rd., L.P.*, 601 S.W.3d 616, 630 (Tex. 2020) (quoting *Zachry Const. Corp.*, 449 S.W.3d at 110). Thus, even if the Agreement constitutes a “contract subject to this subchapter,” the Act preserves KISD’s immunity if Fitzsimmons has no recoverable damages under Section 271.153. *See id.* By failing to address damages on appeal, Fitzsimmons has not challenged every ground that may support the district court’s ruling, and we must affirm its order on the unchallenged ground. *See Equistar Chems.*, 579 S.W.3d at 512; *Deadmon v. Dallas Area Rapid Transit*, 347 S.W.3d 442, 445 (Tex. App.—Dallas 2011, no pet.) (“Because appellant has not challenged all of the grounds alleged in the plea to the jurisdiction which could, if meritorious, support the order granting the plea, we overrule appellant’s sole issue.”).

We overrule Fitzsimmons’ appellate issues and affirm the district court’s order.

Edward Smith, Justice

Before Justices Goodwin, Kelly, and Smith

Affirmed

Filed: August 14, 2020