TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-20-00075-CV

Brenda Vazquez, Appellant

v.

Health and Human Services Commission, Appellee

FROM THE 98TH DISTRICT COURT OF TRAVIS COUNTY
NO. D-1-GN-19-000925, THE HONORABLE TODD A. BLOMERTH, JUDGE PRESIDING

MEMORANDUM OPINION

Brenda Vazquez appeals the dismissal with prejudice of her suit against the Health and Human Services Commission, by which she sought judicial review under the Administrative Procedure Act (APA), declaratory relief under the Uniform Declaratory Judgments Act (UDJA), and attorneys' fees. The Commission filed a plea to the jurisdiction arguing that the trial court lacked subject-matter jurisdiction over the suit, which the court granted. In five appellate issues, Vazquez contends that the court erred because (1) the APA conferred jurisdiction, (2) she has standing to bring her claims, (3) her UDJA claims are within the trial court's jurisdiction, (4) her constitutional claims are within the trial court's jurisdiction, and (5) the trial court should have filed findings of fact and conclusions of law. We affirm in part and reverse and remand in part.

LEGAL FRAMEWORK

A properly qualified applicant may request from the state registrar a copy of the applicant's Texas birth certificate. Tex. Health & Safety Code § 191.051(a). The state registrar

might refuse the request if there is any "addendum" attached to the birth certificate. *Id.* § 191.057(b). The state registrar attaches an addendum when "any information received by the state registrar . . . may contradict the information in" the birth certificate. *Id.* § 191.033(a). When refusing a request for a certified copy, the state registrar uses certain "criteria for refusal" based on contradictory information, including court orders showing that information in a birth certificate is false or other original records showing that the birth happened outside Texas. 25 Tex. Admin. Code § 181.21(b) (2020) (Dep't of State Health Servs., Refusal To Issue Certified Copies of Records of Birth, Death, or Fetal Death).

If there is "an addendum" to the birth certificate that is "based on evidence of contradictory birth facts," the Department of State Health Services (Department)[1] considers the birth certificate "flagged." *Id.* § 181.24(c)(1) (2020) (Dep't of State Health Servs., Abused, Misused, or Flagged Records). And if the birth certificate has such an addendum, the state registrar must "refuse to issue" any certified copy "until the conditions as stated on the . . . addendum have been satisfied" and the applicant has been notified. *Id.* § 181.24(c)(3). When she so refuses, the state registrar must tell the applicant why, and the Department must give the applicant "an opportunity for a hearing." Tex. Health & Safety Code § 191.057(c); *see also id.* § 191.001(1) (defining "department" for use in title 3 of Health & Safety Code). The hearing is "to determine if there is evidence to support the State Registrar's" refusal. 25 Tex. Admin. Code § 181.21(c)(1).

Upon a timely written request to the state registrar for a hearing, she then asks the Department's Office of General Counsel "to initiate a hearing procedure in accordance with the department's hearing procedures, contained in" title 25, sections 1.51 through 1.55 of the

[1] The Department is a "subsidiary agency" of the Commission. *Texas Dep't of State Health Servs. v. Balquinta*, 429 S.W.3d 726, 733 (Tex. App.—Austin 2014, pet dism'd).

Administrative Code, which the Department calls its "fair hearing" procedures. 25 Tex. Admin. Code §§ 181.21(c)(2), (3), 181.24(d); *accord id.* §§ 1.51(a) (2020) (Dep't of State Health Servs., Purpose and Scope), 1.53(a) (2020) (Dep't of State Health Servs., Preliminary Matters). The state registrar must tell the applicant in writing once the hearing request has been sent to the Office of General Counsel. *Id.* § 181.21(c)(4). That office, upon receiving the state registrar's notice, assigns a "hearing examiner to conduct the hearing." *Id.* § 1.53(a). The applicant may, but need not, have legal counsel for the hearing. *Id.* § 1.52(c) (2020) (Dep't of State Health Servs., Notice).

Once assigned, the hearing examiner lets the applicant know the hearing's date, time, and place (usually somewhere in Austin) and that the applicant may ask that the hearing "be conducted based on the taking of oral testimony or written information contained in the program file and any additional written information the [applicant] may wish to submit, without the necessity of taking oral testimony." *Id.* § 1.53(b), (d). Pre-hearing discovery is limited to "examin[ing] the case file, claim file and any other documents or records the [Department] intends to use" at the hearing. *Id.* § 1.53(c). At the hearing, the applicant may (i) present information to refute the state registrar's reasons for refusing to issue a certified copy, (ii) bring witnesses, (iii) offer oral or written testimony, and (iv) "question any witnesses or appropriate department program representatives about the" state registrar's refusal. *Id.* § 1.54(a) (2020) (Dep't of State Health Servs., Conduct of the Hearing). The Department bears the burden of proof. *Id.* § 1.54(b).[2]

[2] Although the hearing examiner usually must record the hearing "either through a tape recording or a court reporter," 25 Tex. Admin. Code § 1.54(c) (2020) (Dep't of State Health Servs., Conduct of the Hearing), our record on appeal includes no record of Vazquez's administrative hearing. We have her petition, the agency findings of fact and conclusions of law, the Commission's plea and its exhibits, and the reporter's record of the trial-court hearing on the plea.

The hearing examiner may issue the final decision if the examiner has been delegated that authority by the "commissioner of health." *Id.* § 1.55(a), (c)(1) (2020) (Dep't of State Health Servs., The Hearing Decision).[3] If at the hearing there was no oral testimony, the decision must "be based exclusively on the evidence introduced at the hearing from the documents submitted by the [applicant] and the department"; "[o]therwise, [the] decision shall be based on the record of the hearing." *Id.* § 1.55(a). The decision may not "be based on undisclosed information." *Id.* § 1.53(e); *accord id.* § 1.53(f). And while it "need not include separately stated findings of fact and conclusions of law," it still must "summarize the testimony and evidence, decide the facts, and identify evidence and regulations supporting the decision." *Id.* § 1.55(c)(3).

BACKGROUND

Vazquez requested a certified copy of her Texas birth certificate, but the state registrar refused because the birth certificate bore an addendum stemming from information suggesting that Vazquez was born in Mexico. Vazquez, represented by counsel, requested a hearing, and an administrative-law judge (ALJ) was assigned as hearing examiner and conducted the hearing. Vazquez presented testimony and documentary evidence, and the ALJ considered her evidence along with other information. Afterward, the ALJ entered a written order stating "that the State Registrar **SHOULD NOT** issue a certified copy of [Vazquez's] Texas birth certificate" and that its addendum "**SHOULD NOT** be removed." The order also included "appended" findings of fact and conclusions of law, which were "incorporated" in the order. The order and

[3] A "commissioner of state health services" works for the Commission under a separate "executive commissioner," who is the chief executive of the Commission. *See* Tex. Health & Safety Code §§ 11.001(1), (2), (4), 12.002(a); *Balquinta*, 429 S.W.3d at 733 n.13.

findings and conclusions say that they are "**A FINAL DECISION OF THE HEALTH AND HUMAN SERVICES COMMISSION.**" Vazquez moved for rehearing, which was denied.

She then filed this suit against the Commission, seeking APA judicial review of the order and declarations that (1) the addendum should be removed, (2) a certified copy of her birth certificate should be issued, and (3) she was born in Texas. The Commission answered and filed its plea to the jurisdiction. The trial court held a hearing on the plea and signed an order granting it. That order dismissed all of Vazquez's claims, and this appeal followed.

STANDARD OF REVIEW

The standards for review of a grant of a plea to the jurisdiction turn in part on the grounds on which the trial court granted the plea. *See Texas Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226–27 (Tex. 2004); *Norman v. Williamson*, No. 03-19-00297-CV, 2021 WL 500415, at *2 (Tex. App.—Austin Feb. 11, 2021, pet. filed) (mem. op.). If the trial court granted the plea based simply on the insufficiency of the plaintiff's pleadings, we then accept as true all factual allegations in the plaintiff's pleadings. *See Houston Belt & Terminal Ry. Co. v. City of Houston*, 487 S.W.3d 154, 160 (Tex. 2016); *Axtell v. University of Tex. at Austin*, 69 S.W.3d 261, 264 (Tex. App.—Austin 2002, no pet.). We construe the plaintiff's pleadings liberally in the plaintiff's favor and look to the plaintiff's intent. *Houston Belt & Terminal Ry.*, 487 S.W.3d at 160; *Miranda*, 133 S.W.3d at 226. We review *de novo* and as a matter of law whether the factual allegations establish subject-matter jurisdiction. *See Texas S. Univ. v. Villarreal*, 620 S.W.3d 899, 905 (Tex. 2021); *Miranda*, 133 S.W.3d at 226. Review of the plaintiff's pleadings may involve any documents attached to the pleadings. *See State v. Lueck*, 290 S.W.3d 876, 878–79, 885–86 (Tex. 2009). Only if the plaintiff's pleadings affirmatively

negate jurisdiction should the defendant's plea be granted without giving the plaintiff a chance to replead. *Houston Belt & Terminal Ry.*, 487 S.W.3d at 160; *Miranda*, 133 S.W.3d at 227. On the other hand, if the plea is meritorious but the plaintiff's pleadings do not affirmatively demonstrate incurable defects in jurisdiction, the plaintiff should have a chance to replead. *Miranda*, 133 S.W.3d at 226–27.

By contrast, if the trial court granted the plea based on a challenge to the existence of jurisdictional facts, we consider relevant evidence submitted by the parties when necessary to resolve the jurisdictional issues. *Id.* at 227. If the plea involved evidence implicating the merits of the case, we review the evidence to decide whether a fact issue exists. *See id.* If there is a fact question about jurisdiction, we cannot grant the plea, and the fact question will be resolved by the factfinder. *See id.* at 227–28. But if the relevant evidence is undisputed or fails to raise a fact question on jurisdiction, we rule on the plea as a matter of law. *See id.* at 228. To conduct this review, we assume that all evidence supporting the plaintiff's allegations is true, and we resolve all doubts and make all reasonable inferences in the plaintiff's favor. *Texas Tech Univ. Health Scis. Ctr.-El Paso v. Flores*, 612 S.W.3d 299, 305 (Tex. 2020).

In either scenario, if the parties agree on the facts relevant to disposition of the case, we decide the plea as a matter of law. *Villarreal*, 620 S.W.3d at 905.

DISCUSSION

I. The trial court need not have filed findings of fact and conclusions of law.

Vazquez's fifth issue, if meritorious, would change how we review the trial court's judgment, so we consider that issue first. *Compare Ad Villarai, LLC v. Chan Il Pak*, 519 S.W.3d 132, 135–36 (Tex. 2017) (per curiam) (review when trial court should have filed, but did not file, findings of fact and conclusions of law), *with BMC Software Belg., N.V. v. Marchand*,

83 S.W.3d 789, 794–95 (Tex. 2002) (review when trial court did not file, and need not have filed, findings and conclusions), *and University of Tex. v. Poindexter*, 306 S.W.3d 798, 806–07 (Tex. App.—Austin 2009, no pet.) (review of order on plea to the jurisdiction "includes implied fact findings if written findings and conclusions are not issued" (citing *BMC Software Belg.*, 83 S.W.3d at 795)). In her fifth issue, Vazquez contends that the trial court erred by not filing findings of fact and conclusions of law despite her requests under Rules of Civil Procedure 296 and 297. The Commission argues that the trial court need not have filed findings and conclusions because the court's judgment "did not involve disputed facts but was decided as a matter of law" and the hearing on the plea was not an evidentiary hearing.

When a trial court renders judgment "as a matter of law, . . . findings and conclusions can have no purpose and should not be requested, made, or considered on appeal." *IKB Indus. (Nigeria) Ltd. v. Pro–Line Corp.*, 938 S.W.2d 440, 443 (Tex. 1997). Such judgments as a matter of law include summary judgment and dismissal on the pleadings, such as when the trial court "dismisse[s] the case without jurisdiction based on the pleadings and arguments of counsel rather than on sworn testimony." *See Awde v. Dabeit*, 938 S.W.2d 31, 33 (Tex. 1997) (per curiam); *IKB Indus. (Nigeria)*, 938 S.W.2d at 443. Thus, when a trial court dismisses a suit based on a plea to the jurisdiction that successfully challenges the sufficiency of the pleadings, no findings or conclusions are necessary. *Norman*, 2021 WL 500415, at *4 (citing *IKB Indus. (Nigeria)*, 938 S.W.2d at 443); *Smith v. District Att'y Off.*, No. 03-13-00220-CV, 2014 WL 5420536, at *3 (Tex. App.—Austin Oct. 24, 2014, pet. denied) (mem. op.) (same). By contrast, when a grant of a plea to the jurisdiction turns on evidence, findings and conclusions are appropriate. *See Gene Duke Builders, Inc. v. Abilene Hous. Auth.*, 138 S.W.3d 907, 908 (Tex. 2004) (per curiam) (acknowledging *IKB Industries (Nigeria)* but concluding that trial court took evidence on plea

because "[a]lthough [plaintiff] made no formal offer of evidence at the hearing on the plea to the jurisdiction, it submitted a deposition, affidavits, and exhibits attached to its pleadings," which defendant used to argue for dismissal for lack of subject-matter jurisdiction).

This issue therefore turns on whether the order granting the Commission's plea depended solely on the sufficiency of Vazquez's pleadings. In its plea, the Commission sought dismissal of the suit for lack of subject-matter jurisdiction on four grounds: (1) lack of standing because the Commission was not the proper defendant to redress the harms alleged, (2) the UDJA's ineffectiveness to invoke the trial court's jurisdiction or waive the Commission's sovereign immunity, (3) the inapplicability of the APA because the administrative proceeding was not a "contested case," and (4) the requirement that suits to vindicate constitutional rights be pleaded as *ultra vires* claims against individuals and not agencies. Although the Commission attached exhibits to its plea, neither the Commission nor Vazquez offered or relied on those exhibits, or any other evidence, for their arguments during the hearing. By the hearing, Vazquez had not responded to the plea, much less filed any other evidence to contest it. Then to begin the hearing, the court asked Vazquez's counsel if he "ha[d] anything [he] wish[ed] to provide," and counsel responded that he did not because Vazquez's petition gave "the reasons why we thought this—this Court had—had jurisdiction," and Vazquez was "sticking by" those reasons. Similarly, when the court asked the Commission's counsel if she "ha[d] any evidence other than just the pleadings," she said that she did not.

We conclude that the trial court's grant of the plea depended solely on the sufficiency of Vazquez's pleadings, not on any evidence. The trial court thus did not need to file findings or conclusions despite Vazquez's requests for them. *See Norman*, 2021 WL 500415, at *4; *Smith*, 2014 WL 5420536, at *3. We overrule Vazquez's fifth issue.

II. The administrative proceeding afforded to Vazquez here was a contested case.

Vazquez's first issue and a portion of her third are intertwined. In her first issue, she contends that the trial court erred by dismissing her suit because the APA conferred jurisdiction for judicial review of the ALJ's decision, and in a portion of her third, she contends that the APA waives sovereign immunity for her suit. *See Texas Dep't of Protective & Regul. Servs. v. Mega Child Care, Inc.*, 145 S.W.3d 170, 198 (Tex. 2004) ("[S]ection 2001.171 [of the APA] provides a limited waiver of sovereign immunity."). In its plea and again on appeal, the Commission contends that the administrative proceeding was not a "contested case" and therefore that the final decision that followed is not subject to APA judicial review, which applies only to contested cases. *See* Tex. Gov't Code §§ 2001.003(1), 2001.171; *Bacon v. Texas Hist. Comm'n*, 411 S.W.3d 161, 180 (Tex. App.—Austin 2013, no pet.) (reasoning that if administrative decision did not resolve "contested case," APA does not provide for judicial review of that decision). Without APA review, the Commission says, Vazquez is left with the default prohibition against judicial review of agency decisions. *See, e.g.*, *Bacon*, 411 S.W.3d at 173. Vazquez responds by pointing to the APA's definition of "contested case" and our discussions of the definition. *See, e.g.*, *Best & Co. v. Texas State Bd. of Plumbing Exam'rs*, 927 S.W.2d 306, 309 n.1 (Tex. App.—Austin 1996, writ denied).

Generally, a person aggrieved by a final decision of an administrative agency enjoys no right to judicial review of the decision. *Bacon*, 411 S.W.3d at 173. A suit for judicial review gets into court usually only through a statute or constitutional provision. *See Houston Mun. Emps. Pension Sys. v. Ferrell*, 248 S.W.3d 151, 158 (Tex. 2007); *Mega Child Care*, 145 S.W.3d at 172; *Bacon*, 411 S.W.3d at 173. The APA authorizes judicial review of a final decision of an administrative agency only if the aggrieved person "has exhausted all administrative remedies available within a state agency" and the final decision resolved "a contested case." *See* Tex. Gov't

Code § 2001.171; *Mega Child Care*, 145 S.W.3d at 196. "'Contested case' means a proceeding . . . in which the legal rights, duties, or privileges of a party are to be determined by a state agency after an opportunity for adjudicative hearing." Tex. Gov't Code § 2001.003(1). An adjudicative hearing is a hearing at which the decision-making agency hears evidence and, based on that evidence and acting in a judicial or quasi-judicial capacity, determines the rights, duties, or privileges of parties before it. *Bacon*, 411 S.W.3d at 180 n.29; *Foster v. Teacher Ret. Sys.*, 273 S.W.3d 883, 887 (Tex. App.—Austin 2008, no pet.); *Ramirez v. Texas State Bd. of Med. Exam'rs*, 927 S.W.2d 770, 772 (Tex. App.—Austin 1996, no writ); *Best & Co.*, 927 S.W.2d at 309 n.1.

To decide whether an administrative proceeding was a "contested case," we look either to the proceeding that the agency actually provided to the adverse party or to the relevant statutes and rules about the proceeding that the agency should have provided. *Compare Heat Energy Advanced Tech., Inc. v. West Dall. Coal. for Env't Just.*, 962 S.W.2d 288, 291 n.1 (Tex. App.—Austin 1998, pet. denied) ("[I]n determining whether particular agency determination was a 'contested case,' [the] court considered whether the agency had in fact provided an adjudicative hearing on the issue, independent of whether the agency's statute required one." (citing *Best & Co.*, 927 S.W.2d at 309)), *with McAllen Hosps., L.P. v. Suehs*, 426 S.W.3d 304, 315 (Tex. App.—Amarillo 2014, no pet.) (administrative proceeding not a contested case because relevant agency rule described proceeding as "not a hearing").

When applying the "contested case" definition, we have concluded that an administrative proceeding begun by a physician seeking reinstatement of his medical license was a contested case because it involved (a) his offering sworn testimony and exhibits; (b) the agency's review of that evidence; and (c) requirements in the agency's enabling act that an applicant "prove"

the right to reinstatement and that the decision be reviewable for substantial evidence, which implied that the agency needed to create an evidentiary "record," which would be reviewable in a suit for judicial review. *Ramirez*, 927 S.W.2d at 771–73. Similarly, when an environmental coalition challenged a hazardous-waste-storage business's permit, the ensuing administrative proceeding was a contested case because the agency referred it to an administrative-law judge who "determined" whether the coalition could contest the permit's renewal after conducting an evidentiary hearing and issuing findings of fact and conclusions of law. *Heat Energy Advanced Tech.*, 962 S.W.2d at 289–91 & n.1. By contrast, when the state plumbing board rejected a continuing-education provider's application to provide plumbing programs, the proceeding before the rejection was not a contested case because there was no hearing, evidentiary or otherwise. *See Best & Co.*, 927 S.W.2d at 309–10. So too with the state historical commission's decision not to change a historical marker in Austin. The adverse party "wisely" conceded that the commission's actions were not a contested case because the commission conducted no fact-finding, made no "determination of historical merits," and gave the adverse party no chance to participate at any time after filing the application for a historical-marker change. *See Bacon*, 411 S.W.3d at 179–80 & n.29. These examples confirm the Supreme Court's observation that contested cases involve "trial-like proceeding[s]." *See Texas Comm'n on Env't Quality v. City of Waco*, 413 S.W.3d 409, 410 (Tex. 2013); *accord Bacon*, 411 S.W.3d at 170.

We now turn to the administrative proceeding that was afforded to Vazquez. After the state registrar refused to send her the certified copy, Vazquez requested a hearing, and the ALJ assigned as hearing examiner convened the hearing. The ALJ heard and considered testimony from Vazquez and her mother and "documentary evidence" offered by Vazquez. The ALJ also reviewed and considered a Mexican birth certificate for Vazquez's birth and information from a

proceeding in Mexican court that Vazquez initiated. Among that information, the ALJ considered significant Vazquez's "sworn statement" to the Mexican court, in which she "did not ask the court to change the location of her birth" but "swore to the court that she was born in Mexico." Based on all the evidence, the ALJ made "findings . . . by a preponderance of the evidence" and concluded that the Department "met its burden of proving that the Texas Certificate of Birth . . . should not be certified."

This was a contested case. Vazquez's right to a certified copy of her Texas birth certificate was determined after a statutorily required hearing. *See* Tex. Gov't Code § 2001.003(1) (definition of "contested case" requires that party's "legal rights . . . are to be determined"); Tex. Health & Safety Code § 191.057(c)(2), (d) (right to hearing). The ALJ made findings based on evidence offered at the hearing. *See Ramirez*, 927 S.W.2d at 771–73; *Best & Co.*, 927 S.W.2d at 309 n.1. The ALJ, according to the final decision, made those "findings . . . by a preponderance of the evidence" and determined Vazquez's rights. *See Railroad Comm'n v. WBD Oil & Gas Co.*, 104 S.W.3d 69, 78–79 (Tex. 2003); *Heat Energy Advanced Tech.*, 962 S.W.2d at 289–91 & n.1.

The Commission argues that a proceeding can be a contested case only if "a statute or rule . . . affirmatively invoke[s] the right to a contested case hearing at the agency," but we disagree. An administrative proceeding can be a contested case when the agency afforded a procedure that meets the "contested case" definition, despite what the agency's related statutes or rules might otherwise say:

> [I]n determining whether particular agency determination was a "contested case," [the] court considered whether the agency had in fact provided an adjudicative hearing on the issue, independent of whether the agency's statute required one. . . . It matters not that the [agency]'s enabling statute does not expressly incorporate the APA; the enabling statute does not contradict the APA.

Heat Energy Advanced Tech., 962 S.W.2d at 291 n.1 (citing *Best & Co.*, 927 S.W.2d at 309). The statute here entitled Vazquez to a hearing, in harmony with the APA, at which the ALJ "determine[d] if there [wa]s evidence to support the State Registrar's" refusal. *See* 25 Tex. Admin. Code § 181.21(c)(1). And the ALJ based the final decision "on the record" presented and "decide[d] the facts." *See id.* § 1.55(a), (c)(3); *see also Ramirez*, 927 S.W.2d at 773 (proceeding was contested case in part because statute governing it required creation of evidentiary "record").

The Commission also contrasts its statutes with others that deem proceedings to be contested cases. *See, e.g.*, Tex. Alco. Bev. Code § 11.614(e) (proceeding about suspension of permit or license "is a contested case under Chapter 2001, Government Code"). But the lack of any such deeming here is not dispositive. *See Heat Energy Advanced Tech.*, 962 S.W.2d at 291 n.1. In fact, the Legislature, as it has done elsewhere, could have included an express *exemption* from judicial review in the Commission's relevant statute but did not do so. *See* Tex. Health & Safety Code § 361.088(e) (granting agency permission to act "without providing an opportunity for a contested case hearing"); *City of Waco*, 413 S.W.3d at 416 (noting that "public hearings" often are part of contested cases and contrasting statutes that require agency actions to use "public hearings" with another that exempts other actions of same agency from "public hearings"); *Mega Child Care*, 145 S.W.3d at 199 (noting that Legislature "could have expressly prohibited judicial review of contested-case decisions made under" certain statute, but did not, as it had in chapter 2260 of Government Code, in which Legislature "expressly precluded judicial review of the administrative judge's rulings" (internal quotations and citations omitted)).

We conclude that the administrative proceeding afforded to Vazquez was a contested case.[4] *See Texas Health & Hum. Servs. Comm'n v. Marroney*, No. 03-18-00190-CV, 2019 WL 2237885, at *1–5 (Tex. App.—Austin May 24, 2019, pet. denied) (mem. op.) (reviewing Commission order, entered after "fair hearing," for substantial evidence under APA). We thus sustain Vazquez's first issue and the relevant portion of her third.

III. Vazquez has standing to bring her APA claim and two of her three UDJA claims.

In her second issue, Vazquez contends that the trial court erred by dismissing her suit because she had standing to bring each of her claims. The Commission contends that each of Vazquez's claims fail the "redressability" element of standing, arguing that only the state registrar, not the Commission, "has the authority to attach an addendum to" a birth certificate "and refuse to issue a certified" copy. It adds that the Department, not the Commission, "order[s] the issuance (or den[ies] the issuance) of a certified copy of a birth record following a hearing." Vazquez responds that because her APA claim concerns a decision of the Commission by its designee (the ALJ), the Commission is a proper defendant. As for her three UDJA claims, Vazquez argues that because the ALJ's decision ordered "that the State Registrar **SHOULD NOT** issue a certified copy" and that the addendum "**SHOULD NOT** be removed," her three requested declarations—that the addendum should be removed, that a certified copy of her birth certificate should be issued, and that she was born in Texas—are properly pleaded against the Commission.

[4] We need not, and do not, conclude that every administrative proceeding about a challenge to the state registrar's refusal to issue a certified copy of a birth certificate is always a contested case. We need only conclude that the proceeding afforded to Vazquez was a contested case. *See Heat Energy Advanced Tech., Inc. v. West Dall. Coal. for Env't Just.*, 962 S.W.2d 288, 291 n.1 (Tex. App.—Austin 1998, pet. denied) (citing *Best & Co. v. Texas State Bd. of Plumbing Exam'rs*, 927 S.W.2d 306, 309 (Tex. App.—Austin 1996, writ denied)).

A plaintiff must have standing to bring each of the plaintiff's claims: "if a plaintiff lacks standing to assert one of his claims, the court lacks jurisdiction over that claim and must dismiss it." *Heckman v. Williamson County*, 369 S.W.3d 137, 150 (Tex. 2012). For standing to bring a particular claim, the plaintiff must show that: (1) the plaintiff was personally injured, (2) the alleged injury is "fairly traceable" to the defendant's conduct, and (3) the alleged injury is "likely to be redressed by the requested relief." *Id.* at 155.

This third element, "redressability," applies equally to claims and to any "form of relief sought": if a plaintiff "requests injunctive relief as well as damages, but the injunction could not possibly remedy his situation, then he lacks standing to bring that claim." *Id.* "To satisfy redressability, the plaintiff need not prove to a mathematical certainty that the requested relief will remedy his injury—he must simply establish a substantial likelihood that the requested relief will remedy the alleged injury in fact." *Id.* at 155–56 (internal quotation omitted). The alleged injury in fact "must be concrete and particularized, actual or imminent, not hypothetical." *Id.* at 155.

For her APA claim, Vazquez seeks judicial review of a Commission final decision. After the Department's Office of General Counsel received Vazquez's request for a hearing, it assigned the ALJ as hearing examiner. *See* 25 Tex. Admin. Code §§ 1.53(a), 181.21(c)(2), (3), 181.24(d). The ALJ's final decision recites that the hearing was held "**BEFORE THE HEALTH AND HUMAN SERVICES COMMISSION**" and that the "appended" findings of fact and conclusion of law were "incorporated herein." The findings and conclusions end with: "**THIS IS A FINAL DECISION OF THE HEALTH AND HUMAN SERVICES COMMISSION.**" When the ALJ denied Vazquez's motion for rehearing, the order denying rehearing was again styled as "**BEFORE THE HEALTH AND HUMAN SERVICES COMMISSION**."

We conclude that Vazquez's APA claim seeks judicial review of a decision by the Commission and that the Commission is thus a proper defendant in her suit for review of a decision by the Commission that aggrieved her. *See* Tex. Gov't Code § 2001.171; *Heckman*, 369 S.W.3d at 155–56. She therefore has standing to bring her APA claim against the Commission.

As for her three UDJA claims, two, respectively, seek a declaration that "the addendum" should be "removed from her birth certificate" and a declaration that "a certified copy of her birth certificate shall be issued." The ALJ's decision ordered that the addendum "**SHOULD NOT** be removed" and that "the State Registrar **SHOULD NOT** issue a certified copy of the Texas birth certificate." That decision thus creates two obstacles that the two respective declarations would redress. *See Patel v. Texas Dep't of Licensing & Regul.*, 469 S.W.3d 69, 79 (Tex. 2015) (declaratory relief available when party challenging agency order under APA also seeks declaratory relief that "goes beyond reversal of" agency order); *Abbott v. G.G.E.*, 463 S.W.3d 633, 649 (Tex. App.—Austin 2015, pet. denied) ("[A] plaintiff satisfies the redressability requirement when he shows that a favorable decision will relieve a discrete injury to himself. He need not show that a favorable decision will relieve his every injury." (quoting *Larson v. Valente*, 456 U.S. 228, 243 n.15 (1982))); *Amboree v. Bonton*, 575 S.W.3d 38, 50 (Tex. App.—Houston [1st Dist.] 2019, no pet.) (terminated employee's request for declaration would redress her reinstatement claim because defendant school board and officers could effect her reinstatement). Vazquez thus has standing to bring these two UDJA claims.

Her remaining UDJA claim seeks a declaration that she "was born in Texas." This issue made up no part of the ALJ's decision, which denied relief only about the addendum and issuing a certified copy of her Texas birth certificate. Vazquez provides us with no statement by the Commission that she was not born in Texas and no authority for the proposition that the

Commission makes freestanding statements naming the jurisdiction where a person was born. Instead, various statutes and Department rules govern Texas birth certificates, and in Vazquez's case, there is an addendum-burdened Texas birth certificate that says that she was born in Cameron County, Texas. Under these statutes and rules, the ALJ decided that Vazquez is not entitled to a certified copy of that birth certificate or to removal of the addendum, and her APA claim and other two UDJA claims seek relief from those results. We thus conclude that she has not shown a substantial likelihood that a declaration entered against the Commission that she was born in Texas will remedy her alleged injuries. *See Heckman*, 369 S.W.3d at 155–56.

We sustain in part and overrule in part Vazquez's second issue. We affirm the trial court's dismissal of her request for a declaration that she was born in Texas but hold that the trial court erred by dismissing the APA claim.

IV. The remaining UDJA claims are within the trial court's subject-matter jurisdiction.

In the remaining portion of her third issue, Vazquez contends that the Commission's sovereign immunity is waived for her UDJA claims. The Commission contends that because the UDJA does not supply its own immunity waiver, Vazquez "must look elsewhere for the requisite waiver" to support subject-matter jurisdiction. But the Commission implicitly recognizes that the APA's judicial-review mechanism can supply the necessary waiver because the Commission's arguments depend on the success of its position that the APA does not apply: "UDJA claims generally cannot provide relief against agency orders from which the legislature has not granted a right of judicial review and thereby waived sovereign immunity."

State agencies are immune from UDJA claims unless something beyond the UDJA waives their immunity. *Texas Dep't of Transp. v. Sefzik*, 355 S.W.3d 618, 620 (Tex. 2011) (per

curiam). The UDJA does not enlarge jurisdiction but is merely a procedural device for deciding cases already within a court's jurisdiction. *Id.* at 621–22; *Texas Health & Hum. Servs. Comm'n v. Doe*, No. 03-16-00657-CV, 2017 WL 1534209, at *2 (Tex. App.—Austin Apr. 20, 2017, pet. denied) (mem. op.). So when a plaintiff sued to challenge a refusal to issue her a certified copy of her birth certificate without having exhausted her administrative remedies, her claims were properly dismissed in part because "*neither* the UDJA *nor* the APA waive[d]" the defendants' immunity. *Doe*, 2017 WL 1534209, at *6 (emphases added).

But here, Vazquez availed herself of the APA's process, and the APA does waive the Commission's immunity, as we concluded above. Vazquez has thus pleaded a valid waiver of the Commission's immunity through her APA claim, so her UDJA claims about (1) the addendum and (2) the state registrar's refusal to issue her a certified copy are within the trial court's jurisdiction. We thus sustain the remaining portion of Vazquez's third issue and hold that the trial court erred by dismissing her UDJA claims seeking declarations that the addendum to her Texas birth certificate should be removed and "a certified copy of her birth certificate shall be issued."

V. Any constitutional claims were not validly pleaded against the Commission.

Finally, both sides treat Vazquez's petition as having pleaded constitutional claims. The Commission did not specially except to the petition. *See* Tex. R. Civ. P. 90, 91; *Bradt v. West*, 892 S.W.2d 56, 75 (Tex. App.—Houston [1st Dist.] 1994, writ denied) (court of appeals must liberally interpret petition in favor of plaintiff to include cause of action at issue unless it "was plainly omitted"); *Spencer v. City of Seagoville*, 700 S.W.2d 953, 957 (Tex. App.—Dallas 1985, no writ) (noting that "[w]hen pleadings fail to state a cause of action, the proper course for the opposing party is to file special exceptions" and ruling that although defendants specially excepted,

their special exceptions were "inadequate, since special exceptions must be specific enough to inform the opposing party of the particular defect in the pleading"). We therefore treat the petition as having pleaded constitutional claims. *See Bacon*, 411 S.W.3d at 176 (considering plaintiff's "jurisdictional theories inasmuch as they would be relevant to . . . whether his claims would be susceptible to being repleaded in a manner that invoked the district court's jurisdiction" when plaintiff on appeal "purport[ed] to have asserted several claims that he did not actually plead").

In her fourth issue, Vazquez contends that the trial court erred by dismissing her suit because she pleaded a valid "waiver of sovereign immunity for constitutional claims against an entity." The Commission contends that there is no immunity waiver for constitutional claims against a state agency and that such claims instead must be pleaded as *ultra vires* claims against individuals acting in their official capacities.

Constitutional claims pleaded against only the Commission and not as *ultra vires* claims against an individual acting in an official capacity cannot overcome the Commission's sovereign immunity. *See Sefzik*, 355 S.W.3d at 621–22; *Bacon*, 411 S.W.3d at 176. Vazquez could correct this by amending her petition. *See Sefzik*, 355 S.W.3d at 623; *Miranda*, 133 S.W.3d at 226–27. We therefore overrule Vazquez's fourth issue but reverse the dismissal with prejudice of any constitutional claims and remand to the trial court to give Vazquez the chance to replead.

CONCLUSION

We affirm in part and reverse and remand in part the trial court's judgment. We affirm the dismissal of the UDJA claim for a declaration that Vazquez was born in Texas. We reverse and remand the dismissal of the APA claim and the other two UDJA claims. We reverse

the dismissal with prejudice of any constitutional claims to let Vazquez amend her petition to replead the constitutional claims.

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Chari L. Kelly, Justice

Before Chief Justice Byrne, Justices Baker and Kelly

Affirmed in Part, Reversed and Remanded in Part

Filed: July 28, 2021