



**NUMBER 13-13-00088-CV**

**COURT OF APPEALS**

**THIRTEENTH DISTRICT OF TEXAS**

**CORPUS CHRISTI - EDINBURG**

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**CITY OF CORPUS CHRISTI, TEXAS,**

**Appellant,**

**v.**

**CITY OF INGLESIDE, TEXAS,**

**Appellee.**

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**On appeal from the 156th District Court  
Of San Patricio County, Texas.**

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**MEMORANDUM OPINION ON REMAND**

**Before Chief Justice Valdez and Justices Rodriguez and Longoria  
Memorandum Opinion on Remand by Chief Justice Valdez**

By two issue, which we have renumbered and reorganized, appellant, the City of Corpus Christi, Texas, appeals the trial court's denial of its plea to the jurisdiction in a suit brought by appellee, the City of Ingleside, Texas for declaratory judgment. We affirm.

## I. BACKGROUND

This case is on remand from the Texas Supreme Court. In the previous memorandum opinion reversed by that court, we set out the facts as follows:

Corpus Christi, Texas enacted ordinance 6636 on September 19, 1962. . . .” [On December 14, 2011,] Ingleside filed a petition for a declaratory judgment [in San Patricio County, Texas] seeking the trial court’s construction of ordinance 6636’s use of the term “shoreline.” Ingleside further sought construction of Ingleside’s ordinance which also described the boundary with Corpus Christi as the “shoreline.” Ingleside claimed that the ordinances’ use of the term “shoreline” when describing the boundary between the two cities had allowed for double taxation. Ingleside requested that the trial court “construe the jurisdictional boundaries such that structures, both natural and man-made, that are attached to and part of the fast land, and are functionally part of the land, are entirely within the jurisdiction of the land side of the shoreline.” Ingleside stated that the trial court’s determination of what the “shoreline” encompassed would “settle the question of which city bears both the benefit and corresponding burden of having such an area within its city limits. [And, at] this time, Corpus Christi has claimed the benefit, but Ingleside has borne the burden.”

[On October 31, 2012,] Corpus Christi filed a plea to the jurisdiction claiming that the trial court lacked subject matter jurisdiction over Ingleside’s cause of action for several reasons. . . . Corpus Christi . . . argued that the trial court lacked subject matter jurisdiction because the issue presented involved “political questions which have been decided by legislation and are not subject to judicial revision,” and no justiciable controversy exists.

*City of Corpus Christi v. City of Ingleside*, No. 13-13-00088-CV, 2014 WL 7403974, at \*1 (Tex. App.—Corpus Christi May 29, 2014) (mem. op.), *rev’d*, 469 S.W.3d 589 (Tex. 2015).

In its plea to the jurisdiction, Corpus Christi also argued as follows:

This Court [in San Patricio County] does not have subject matter jurisdiction over this cause of action because the 94th District Court of Nueces County, Texas [the (“94th District Court”)] has acquired and maintains continuing jurisdiction of the matters and issues involved in this case. Cause No. 09-5990-C, styled *San Patricio County, Texas vs. Nueces County, Texas et. al.* presently pending in said Court. The relief requested in said case is identical to the relief requested by Plaintiff herein. The 94th District Court acquired jurisdiction of this issue and should be allowed to retain such jurisdiction until all matters in controversy are resolved.

After holding a hearing on Corpus Christi's plea, the trial court denied it. On February 5, 2013, Corpus Christi appealed the trial court's denial of its plea to the jurisdiction. On May 29, 2014, in a memorandum opinion, we held that the trial court lacked jurisdiction over the matter and that it should have granted Corpus Christi's plea to the jurisdiction because "Ingleside [sought] an answer to a purely political question solely within the power, prerogative, and discretion of the legislature and not subject to judicial review." See *id.* at \*2. The Texas Supreme Court disagreed and reversed our opinion stating that Ingleside had not sought a declaration "altering the boundary between the cities, which is indisputably the 'shoreline'" and that instead Ingleside merely requested clarification regarding whether "the 'shoreline,' an unfixed and inherently variable boundary, may be reshaped by protrusions of natural and artificial fixtures on the fast land." 469 S.W.3d at 492. The court concluded, "[t]his question does not constitute a political question beyond the Court's competence or authority." *Id.* at 493. The court remanded the case for us to consider Corpus Christi's remaining issues. *Id.* at 493. We now address Corpus Christi's two remaining issues as we understand them.

## II. STANDARD OF REVIEW

The purpose of a plea to the jurisdiction is to "defeat a cause of action without regard to whether the claims asserted have merit." *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000). A challenge to the trial court's subject matter jurisdiction is a question of law that we review de novo. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004).

### III. PRE-EXISTING AND DOMINANT JURISDICTION

By its first issue, Corpus Christi contends that the 94th District Court had acquired and maintained either pre-existing or “continuing jurisdiction of the identical or similar issues that are being contested in this lawsuit.” In its plea to the jurisdiction, Corpus Christi requested consolidation of this case with a suit filed in the 94th District Court by San Patricio County against Nueces County.<sup>1</sup> Corpus Christi argued in its brief that because Ingleside and San Patricio County were “in legal privity with regards to the taxation of property, and [because] the issues in [*San Patricio County v. Nueces County*, (trial court cause number 09-5990-C)] are identical or similar enough to the issues contested in this case . . . all contested matters could be resolved by the 94th District Court.” Ingleside responded that “Corpus Christi’s assertion that [it] and San Patricio County ‘are in legal privity with regards to the taxation of property . . .’” had “no legal or factual content.” Ingleside argued that Corpus Christi offered no evidence that either San Patricio County represents the interests of Ingleside or that Nueces County represents Corpus Christi’s interest in the dispute filed in the 94th District Court.

While this case was pending on appeal, our Court in appellate cause number 13–14–00293–CV and trial court cause number 09-5990-C, styled *San Patricio County, Texas v. Nueces County, Texas and Nueces County Appraisal District*, concluded that venue was not proper in the 94th District Court of Nueces County and that proper venue was in Refugio County, Texas. 492 S.W.3d 476, 486 (Tex. App.—Corpus Christi 2016, pet. filed).

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<sup>1</sup> In the 94th District Court case, the counties disputed a judgment establishing a common boundary between the two counties, as explained in our opinion *San Patricio County, Texas v. Nueces County, Texas and Nueces County Appraisal District*, 492 S.W.3d 476, 486 (Tex. App.—Corpus Christi 2016, pet. filed).

We abated this case requesting supplemental briefing concerning the effect, if any, of our decision in appellate cause number 13–14–00293–CV in this case.<sup>2</sup>

In a joint response filed in this Court by Ingleside and Corpus Christi, Corpus Christi now concedes that Ingleside is not in privity with San Patricio County and that “the principle of dominant jurisdiction does not apply where, as here, no party in the suit between the counties is a party to the suit between the cities.” Corpus Christi and Ingleside agree that “[w]hether or not the trial court has jurisdiction to resolve the dispute between the municipalities is unrelated to the merits of the underlying dispute and unrelated to the resolution of the dispute between the counties.” Thus, Corpus Christi appears to agree with Ingleside that the 94th District Court does not have pre-existing or continuing jurisdiction over this cause. Moreover, we agree with Ingleside that in its appellate brief, Corpus Christi cited no authority that supports its bald assertion that the trial court should have transferred this case to or consolidated it with the counties’ case in the 94th District Court because Ingleside is in privity with San Patricio County or because the issues are similar or the same. See TEX. R. APP. P. 38.1(i). Accordingly, we cannot conclude that the 94th District Court had maintained either pre-existing or continuing jurisdiction over this cause based on Corpus Christi’s arguments. We overrule Corpus Christi’s first issue.<sup>3</sup>

#### **IV. DECLARATORY JUDGMENT ACT (“DJA”)**

By its second issue, Corpus Christi contends that the DJA does not waive governmental immunity or confer jurisdiction on the trial court. Ingleside responds that the

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<sup>2</sup> The parties requested reinstatement of the appeal, which we granted.

<sup>3</sup> In its brief, relying on its argument that Ingleside is in privity with San Patricio County, Corpus Christi states, “The City of Ingleside should be collaterally estopped from bringing this action.” However, Corpus Christi provides no further analysis of this issue. Accordingly, we conclude that it is inadequately briefed, and we will not address it. See TEX. R. APP. P. 38.1(i).

DJA, specifically, section 37.004(a), provides authority for jurisdiction in the trial court and waives governmental immunity for a suit to construe an ordinance. See TEX. CIV. PRAC. & REM. CODE ANN. § 37.004(a) (West, Westlaw through 2015 R.S.).

“Parties may have any question regarding construction of a city ordinance determined by a declaratory-judgment action.” *City of Austin v. Pendergrass*, 18 S.W.3d 261, 264 (Tex. App.—Austin 2000, no pet.) (citing TEX. CIV. PRAC. & REM. CODE ANN. § 37.004). Specifically, section 37.004(a) states that a person whose rights, status, or other legal relations are affected by a municipal ordinance may request a declaratory judgment determining any question of construction of or validity arising under the ordinance. See TEX. CIV. PRAC. & REM. CODE ANN. § 37.004(a). Municipal corporations are defined as “persons” in section 37.001. *Id.* § 37.001.

Ingleside stated in its petition that “Corpus Christi has asserted jurisdiction over structures which are built upon and affixed to land with Ingleside, a portion of which extends from dry land into or over the water of Corpus Christi Bay, thereby subjecting property owners to double taxation for all or part of integral structures which are appurtenant to and part of land in Ingleside.” Ingleside also averred that it was requesting for the trial court to “construe the jurisdictional boundaries [under the ordinance] such that structures, both natural and man-made, that are attached to and part of the fast land, and are functionally part of the land, are entirely within the jurisdiction of the land-side of the shoreline.” We conclude that Ingleside has alleged that its rights, status, or other legal relations have been affected by the municipal ordinance at issue here, and it has requested that the trial court construe the city ordinance in order “to clarify whether the ‘shoreline,’ an unfixd and inherently variable boundary, may be reshaped by protrusions

of natural and artificial fixtures on the fast land.” See *id.* § 37.004(a); *City of Ingleside v. City of Corpus Christi*, 469 S.W.3d 589, 591–92 (Tex. 2015) (per curiam). Moreover, we conclude that Ingleside’s request for construction of the meaning of the term “shoreline” as used in the city’s ordinance constitutes a justiciable controversy because it involves the tangible interests of the parties in this case. See *SpawGlass Constr. Corp. v. City of Houston*, 974 S.W.2d 876, 879 (Tex. App.—Houston [14th Dist.] 1998, pet. denied) (“To constitute a justiciable controversy, there must exist a real and substantial controversy involving a genuine conflict of tangible interests and not merely a theoretical dispute.”). Therefore, pursuant to section 37.004(a), Ingleside may obtain a declaration of its rights, status, or other legal relations under the ordinance. See *City of Austin v. Pendergrass*, 18 S.W.3d 261, 264 (Tex. App.—Austin 2000, no pet.) (citing TEX. CIV. PRAC. & REM. CODE ANN. § 37.004(a)). We overrule Corpus Christi’s second issue.

## V. CONCLUSION

We affirm the trial court’s judgment.

/s/ Rogelio Valdez  
ROGELIO VALDEZ  
Chief Justice

Delivered and filed the  
21st day of December, 2016.