NUMBER 13-16-00385-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

OPTIMAL UTILITIES, INC., **Appellant,**

v.

BARRY SMITHERMAN, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS CHAIRMAN OF THE RAILROAD COMMISSION OF TEXAS; DAVID PORTER, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE RAILROAD COMMISION OF TEXAS, ET AL., **Appellees.**

On appeal from the 98th District Court of Travis County, Texas.

MEMORANDUM OPINION

Before Chief Justice Valdez and Justices Longoria and Hinojosa
Memorandum Opinion by Justice Longoria

Barry Smitherman, David Porter, Buddy Garcia, and the Railroad Commission of Texas (collectively, "the Commission") filed a plea to the jurisdiction after being sued by appellant Optimal Utilities, Inc. ("Optimal"). After the trial court granted the Commission's plea, Optimal filed this appeal. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(8) (West, Westlaw through Ch. 49, 2017 R.S.) (allowing an interlocutory appeal after the grant or denial of a government's plea to the jurisdiction). Optimal argues in two issues that the trial court erred by: (1) failing to issue a declaratory judgment in favor of Optimal; and (2) granting the Commission's plea to the jurisdiction. We affirm.

I. BACKGROUND[1]

Optimal is the owner of an oil and gas well known as Duncan Well No. 1. The well was drilled and completed in compliance with the permit granted by the Commission on July 24, 1996. When the well was originally drilled, it was located within a forty-one-acre pooled unit. However, after a temporary cessation of production, the pooled unit was terminated and the leases within the pool unit were also terminated. Optimal acquired a new lease from the Duncans, the owners of the property on which the well is located. However, Optimal did not acquire a lease from the neighboring property, owned by the Warthans. As a result of the pooled unit termination, the Duncan Well was only 137 feet from the Warthan's property; according to statewide rules, the well needed to be spaced

[1] This case is before this Court on transfer from the Third Court of Appeals in Austin pursuant to a docket-equalization order issued by the Supreme Court of Texas. *See* TEX. GOV'T CODE ANN. § 73.001 (West, Westlaw through Ch. 49, 2017 R.S.).

at least 467 feet away from adjacent property. The Warthans petitioned the Commission to address the issue. On March, 20, 2012, after a contested case hearing, the Commission found that the Duncan Well was in violation of the Commission's spacing requirement rule and ordered the well to be shut in.

On July 12, 2012, Optimal filed two suits against the Commission: a suit for judicial review of an agency's order, pursuant to the Administrative Procedure Act ("APA"), *see* TEX. GOV'T CODE ANN. § 2001.174 (West, Westlaw through Ch. 49, 2017 R.S.); and the present suit, brought pursuant to the Uniform Declaratory Judgments Act ("UDJA"), *see* TEX. CIV. PRAC. & REM. CODE ANN. § 37.004 (West, Westlaw through Ch. 49, 2017 R.S.). Despite filing the APA suit over four years ago, Optimal has not prosecuted that case.

On August 3, 2012, the Commission filed a plea to the jurisdiction in the UDJA suit claiming, among other things, that the UDJA suit is redundant to Optimal's pending APA suit. Three years later, on December 8, 2015, Optimal filed an amended petition and asked for the following declarations:

> A. A change of boundary line resulting from the termination of previously owned property rights does not cause a Legal Well to become illegal.
>
> B. Defendants do not have statutory authority to revoke an owner's right to produce a Legal Well on the basis that a subsequent change in title to the lands on which the Legal Well is located or a change resulting from the change in title to the lands adjacent to the Legal Well.
>
> C. Any action by the Defendants to revoke the right of an owner of a Legal Well to produce that well because of a subsequent change in title to the lands on which the Legal well is located or a change in title to the lands adjacent to the Legal Well would result in an unconstitutional taking of private property without compensation.

After a hearing, the trial court granted the Commission's plea to the jurisdiction and dismissed the suit without reaching the merits of the case. This appeal followed.

II. STANDARD OF REVIEW AND APPLICABLE LAW

A. Plea to the Jurisdiction

We review a trial court's ruling on a plea to the jurisdiction de novo *Tex. Dept. of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 228 (Tex. 2004). When a plea to the jurisdiction challenges jurisdictional facts, we consider the facts alleged by the plaintiff and, "to the extent it is relevant to the jurisdictional issue, the evidence submitted by the parties" to determine whether the plaintiff has affirmatively demonstrated the court's jurisdiction to hear the case. *Tex. Natural Res. Conservation Comm'n v. White,* 46 S.W.3d 864, 868 (Tex. 2001). The process of deciding whether jurisdictional facts have been affirmatively plead is similar to a summary judgment: if the evidence does not raise a genuine issue of fact regarding the jurisdictional issue, then the plea to the jurisdiction should be granted. *Miranda*, 133 S.W.3d at 228.

B. The UDJA and the Redundant Remedies Doctrine

Section 37.004(a) of the UDJA provides that a person "whose rights, status, or legal relations are affected by a statute . . . may have determined any question of construction or validity arising under the . . . statute . . . and obtain a declaration of rights, status, or other legal relations thereunder." TEX. CIV. PRAC. & REM. CODE ANN. § 37.004. However, "[u]nder the redundant remedies doctrine, courts will not entertain an action brought under the UDJA when the same claim could be pursued through different channels." *Patel v. Tex. Dep't of Licensing & Regulation*, 469 S.W.3d 69, 79 (Tex. 2015); *see SWEPI LP v. R.R. Com'n of Texas*, 314 S.W.3d 253, 268 (Tex. App.—Austin 2010, pet. denied) (holding a UDJA suit is redundant of an APA suit when both seek to reverse an agency's final order); *Tex. Mun. Power Agency v. Pub. Util. Com'n*, 260 S.W.3d 647,

651 (Tex. App.—Austin 2008, no pet.) (holding that a declaratory judgment claim "will not lie" when it is redundant of a parallel administrative appeal and the "remedy under the APA is the same as that provided under the UDJA."). The redundant remedies doctrine is a jurisdictional issue, and a trial court can grant a plea to the jurisdiction based solely on the redundant remedies doctrine. *SWEPI*, 314 S.W.3d at 268.

III. DISCUSSION

In two issues which we will address jointly, Optimal argues that the trial court erred in granting the Commission's plea to the jurisdiction and failing to issue a declaratory judgment. The Commission responds that the APA suit is the proper vehicle for challenging the agency's final order, not the UDJA suit. Thus, under the redundant remedies doctrine, the trial court did not err by dismissing the UDJA suit. We agree with the Commission.

Optimal makes the same arguments on appeal as it did before the Commission in its contested hearing. Ultimately, based on the declarations Optimal seeks and the arguments made in the contested hearing, both the APA suit and the present UDJA suit filed by Optimal seek the same remedy—reversal of the Commission's final order to shut in the Duncan well. Therefore, Optimal's current case is redundant of the currently-pending APA suit. *See SWEPI*, 314 S.W.3d at 268; *see also McLane Co., Inc. v. Tex. Alcoholic Beverage Comm'n*, 514 S.W.3d 871, 877 (Tex. App.—Austin 2017, pet. filed) (finding that "a litigant's couching its requested relief in terms of declaratory relief . . . [does not] alter the underlying nature of the suit"). However, Optimal relies heavily on *Patel* to contend that its UDJA suit is not redundant of its APA suit because the remedies it seeks in both cases are not entirely identical. *See Patel,* 469 S.W.3d at 79.

In *Patel*, the Department of Licensing and Regulation issued a final order against the plaintiffs. The plaintiffs filed both an APA suit and a UDJA suit. In each suit, the plaintiffs sought prospective injunctive relief against future agency rulings against them for the same violations, and, more importantly, challenged the constitutionality of certain statutes as applied to them. *See id.* The Texas Supreme Court held that the plaintiffs could not properly challenge the constitutionality of the statutes in the APA suit because the only available remedies from an APA suit are limited to reversal of the particular orders at issue. *See id.* Thus, the UDJA was not barred by the redundant remedies doctrine because it sought remedies the APA suit could not address. *See id.* We find *Patel* to be distinguishable from the present case.

Optimal argues that the Commission committed an *ultra vires* act that was outside of its authority. By shutting Optimal's well, the Commission was committing an unconstitutional taking of a vested property right, which was beyond its authority. But unlike the plaintiffs in *Patel*, Optimal is not challenging the constitutionality of any statutes or regulations; Optimal wants solely to reverse the agency's order. In other words, Optimal claims that the Commission's actions were unconstitutional, not that any particular statutes or rules are unconstitutional themselves. *See id.* Therefore, the remedy Optimal seeks—reversal of the Commission's allegedly unconstitutional order—can be properly addressed in the APA suit, and the UDJA suit should be dismissed. *See id*.; *see also* TEX. GOV'T CODE ANN. § 2001.174 (authorizing courts to review administrative decisions and to overturn an agency's decision if it is "in violation of a constitutional or statutory provision").

However, Optimal additionally attempts to draw parallels to *Patel* by arguing that because it seeks prospective injunctive relief like the plaintiffs in *Patel*, its UDJA case is not entirely redundant. *See Patel,* 469 S.W.3d at 79. Once again, there is an important difference. The plaintiffs in *Patel* "sought prospective injunctive relief against future agency orders based on the statutes and regulations." In other words, the plaintiffs sought injunctive relief to protect themselves from future agency orders based on the same allegedly unconstitutional statutes at issue, and the Texas Supreme Court found that they had standing to raise these issues. *See id.* In contrast, Optimal's prospective injunctive relief seeks to broadly enjoin the Commission from acting unconstitutionally against anyone who "may" find themselves in similar circumstances. However, Optimal does not have standing to seek relief for hypothetical parties facing hypothetical problems. *See Patel,* 469 S.W.3d at 77 (finding that standing requires a "real controversy" between the parties). Ruling on such issues would constitute an inappropriate advisory opinion. *See SWEPI*, 314 S.W.3d at 269 (observing that the UDJA "may not be used to obtain an impermissible advisory opinion to interpret the Commission's final orders").

We conclude that the trial court lacks jurisdiction over Optimal's UDJA claims under the redundant remedies doctrine because Optimal currently has an APA suit pending in the trial court. *See id.* (holding that the plaintiff's UDJA suit was redundant of its APA suit seeking to reverse a final order of an agency); *see also McLane*, 514 S.W.3d at 877 (finding that the prospective injunctive relief the plaintiff sought in a UDJA suit were redundant of the relief available through an underlying Public Information Act suit); *Harvel v. Tex. Dep't of Ins.–Div. of Workers' Compensation,* 511 S.W.3d 248, 254 (Tex. App.—Corpus Christi 2015, pet. denied) (finding that the pleadings affirmatively negated

jurisdiction because declarations sought in the UDJA suit were duplicative of the remedy sought in the plaintiff's suit for judicial review); *Vanderwerff v. Tex. Dep't of Ins.-Div. of Workers' Comp.*, No. 05-15-00195-CV, 2015 WL 9590769, at *3 (Tex. App.—Dallas Dec. 30, 2015) (mem. op.) (same); *Tex. State Bd. of Plumbing Examiners v. Associated Plumbing-Heating-Cooling Contractors of Texas, Inc.*, 31 S.W.3d 750, 753 (Tex. App.—Austin 2000, pet. dism'd by agr.) ("When a plaintiff files a proceeding that only challenges the validity of an administrative rule, the parties are bound by the APA and may not seek relief under the UDJA because such relief would be redundant."). The trial court did not err in granting the Commission's plea to the jurisdiction or in failing to grant declaratory relief. We overrule Optimal's two issues.

IV. CONCLUSION

We affirm the trial court's order granting the Commission's plea to the jurisdiction.

NORA L. LONGORIA
Justice

Delivered and filed the
10th day of August, 2017.