



NUMBER 13-17-00135-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

JOSE ROEL GARCIA,

Appellant,

v.

JESSE ROBERT PEREZ AND
SOUTH TEXAS EMERGENCY
CARE FOUNDATION, INC.,

Appellees.

On appeal from the 445th District Court
of Cameron County, Texas.

MEMORANDUM OPINION

**Before Chief Justice Valdez and Justices Contreras and Hinojosa
Memorandum Opinion by Justice Contreras**

In this interlocutory appeal, appellant Jose Roel Garcia contends that the trial court erred by denying his motion for partial summary judgment in a suit he brought against appellees Jesse Robert Perez and South Texas Emergency Care Foundation, Inc. (STEC). We will dismiss the appeal for want of jurisdiction.

Garcia sued for injuries he allegedly sustained when he was struck by an ambulance operated by Perez and owned by STEC. In their answer to Garcia’s suit, Perez and STEC asserted in part that they were “entitled to immunity under the Texas Tort Claims Act [TTCA] as a matter of law.” Garcia filed a motion for partial summary judgment on January 31, 2017, arguing that “[t]he summary judgment evidence . . . conclusively establishes that because [STEC] is not a volunteer emergency service organization it is not entitled to immunity.”

Subsequently, appellees filed a supplemental answer and plea to the jurisdiction contending in part that they are “immune from liability, or any alleged liability is limited . . . on the grounds [appellees] are a volunteer organization and/or a charitable organization and emergency services organization.” See TEX. CIV. PRAC. & REM. CODE ANN. ch. 84 (West, Westlaw through 2017 1st C.S.) (Charitable Immunity and Liability Act). Appellees further alleged in their supplemental answer and plea to the jurisdiction that the “emergency exception” to the TTCA applies “because [appellees’] acts at issue herein were in response to an emergency call and in compliance with law or—in the absence of applicable laws—not done with conscious indifference or reckless disregard for the safety of others.” See *id.* § 101.055(2) (West, Westlaw through 2017 1st C.S.).

By order dated February 28, 2017, the trial court denied Garcia’s motion for partial summary judgment, and Garcia perfected the instant interlocutory appeal. Garcia asserts that we have jurisdiction over the appeal because the February 28, 2017 order “effectively grant[ed]” appellees’ plea to the jurisdiction. See *id.* § 51.014(a)(8) (West, Westlaw through 2017 1st C.S.). We disagree.

Appellate courts only have jurisdiction to review final judgments and certain

interlocutory orders identified by statute. See *Lehmann v. HarCon Corp.*, 39 S.W.3d 191, 195 (Tex. 2001). The order on appeal is not a final judgment. Section 51.014 of the civil practice and remedies code permits an immediate appeal of an interlocutory order that, among other things, “grants or denies a plea to the jurisdiction by a governmental unit.” TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(8). The reference to “plea to the jurisdiction” in section 51.014(a)(8) “is not to a particular procedural vehicle but to the substance of the issue raised.” *Tex. Dep’t of Criminal Justice v. Simons*, 140 S.W.3d 338, 349 (Tex. 2004). “Thus, an interlocutory appeal may be taken from a refusal to dismiss for want of jurisdiction whether the jurisdictional argument is presented by plea to the jurisdiction or some other vehicle, such as a motion for summary judgment.” *Id.* But an interlocutory appeal “cannot be taken from the denial of a plea to the jurisdiction that does not raise an issue that can be jurisdictional.” *Id.*

The order at issue in this appeal denied Garcia’s January 31, 2017 motion for partial summary judgment. That motion argued only that appellees were “not entitled to immunity” because they are “not a volunteer emergency service organization” under the TTCA. The TTCA, however, does not provide that only “emergency service organizations” are entitled to immunity. The TTCA limits the liability of such organizations in suits brought under the TTCA, see TEX. CIV. PRAC. & REM. CODE ANN. § 101.023(d) (West, Westlaw through 2017 1st C.S.), but a damages cap is not a jurisdictional issue. Thus, regardless of whether appellees are considered an “emergency service organization,” the trial court would have jurisdiction over Garcia’s suit. It follows that the February 28, 2017 order did not “effectively grant[]” any jurisdictional argument.¹ An

¹ Under the Charitable Immunity and Liability Act (CILA), a “volunteer” of a “charitable organization” may be immune to civil liability for acts or omissions undertaken in the course and scope of the volunteer’s

interlocutory appeal is not authorized in this situation. See *Simons*, 140 S.W.3d at 349.

We dismiss the appeal for want of jurisdiction. See TEX. R. APP. P. 43.2(f). Any pending motions are denied as moot.

DORI CONTRERAS
Justice

Delivered and filed the
19th day of October, 2017.

duties or functions. See TEX. CIV. PRAC. & REM. CODE ANN. § 84.004(a) (West, Westlaw through 2017 1st C.S.). Appellees raised the issue of charitable immunity under the CILA in their supplemental answer and plea to the jurisdiction, but that pleading was filed after Garcia's motion for partial summary judgment, and the issue of charitable immunity under the CILA was not addressed in Garcia's motion. In any event, the CILA concerns only immunity from liability, which is not a jurisdictional issue. See *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 224 (Tex. 2004) ("Immunity from liability is an affirmative defense, while immunity from suit deprives a court of subject matter jurisdiction.").

Similarly, the "emergency exception" to the TTCA, though arguably a jurisdictional issue, was first raised in appellees' supplemental pleading and was not addressed in Garcia's motion. See TEX. CIV. PRAC. & REM. CODE ANN. § 101.055(2) (West, Westlaw through 2017 1st C.S.) (providing that the TTCA does not apply to a claim arising "from the action of an employee while responding to an emergency call or reacting to an emergency situation if the action is in compliance with the laws and ordinances applicable to emergency action, or in the absence of such a law or ordinance, if the action is not taken with conscious indifference or reckless disregard for the safety of others").