



NUMBER 13-16-00602-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

THE STATE OF TEXAS,

Appellant,

v.

**ANTONIO MENCHACA JR. AND
PERLA NEVAREZ,**

Appellees.

**On appeal from the 444th District Court
of Cameron County, Texas.**

MEMORANDUM OPINION

**Before Justices Contreras, Benavides, and Longoria
Memorandum Opinion by Justice Benavides**

This interlocutory appeal concerns the denial of appellee the State of Texas's plea to the jurisdiction in favor of appellant Antonio Menchaca Jr. and Perla Nevarez (collectively Menchaca, unless otherwise noted). By five issues which we construe as one central issue, the State asserts that the trial court erred by denying its plea to the jurisdiction. We reverse and render.

I. BACKGROUND

In early January 2016, Richard Garza, a licensed Texas Peace Officer and investigator with the Cameron County District Attorney's Office (CCDA), sent identical notices to two different banks in Brownsville stating the following:

NOTICE PURSUANT TO SEC. 32.02(B), MONEY LAUNDERING TEXAS
PENAL CODE

[. . . .]

RE: Safe Deposit Box(es) and/or Bank Account(s) in the name of and/or control of Verdejo Enterprises, Loma Alta Investments, SCIG, Southern County Investment Groups, Cameron County Auto Registration, BAGO Investments, Cameron CARS, Tony Menchaca, Maria Menchaca, and/or Antonio Menchaca, including but not limited to Account Numbers [. . . .]

You are hereby notified by Richard Garza, a Peace Officer, pursuant to Texas Penal Code Section 32.02(b) (Money Laundering) [Footnote citing Texas Penal Code 32.02 omitted] that the property and/or funds in the above referenced safety deposit box(es) and/or accounts are the proceedings of criminal activity as the term is defined in Section 32.01 of the Texas Penal Code (Money Laundering Definitions) and said funds/property are proceeds of criminal activities which occurred in the County of Cameron and said secreting/concealment of funds/property constitutes a felony under the laws of the State of Texas.

NOTICE IS HEREBY GIVEN THAT ANY TRANSFER, INVESTMENT, CONCEALMENT, RELEASE OR FACILITATION OF A TRANSACTION ALLOWING RELEASE OF SAID PROPERTY AND/OR FUNDS IN THE SAFETY DEPOSIT BOX(ES) AND/OR ACCOUNTS SET FORTH ABOVE COULD CONSTITUTE A CRIMINAL OFFENSE OF MONEY LAUNDERING BY THE PERSON, FIRM OR ENTITY ENGAGING IN SAID CONDUCT.

[. . . .]

_____/s/_____
RICHARD GARZA
A Peace Officer

(emphasis in original). Pursuant to these notices, both banks notified Menchaca that his accounts would be frozen.

On May 26, 2016, the State filed a civil forfeiture action against Menchaca seeking to seize one of Menchaca's bank accounts. See *generally* TEX. CODE CRIM. PROC. ANN. arts. 59.01–.14 (West, Westlaw through 2017 1st C.S.) (Forfeiture of Contraband). In its First Amended Petition, the State alleged that the property at issue was subject to summary forfeiture under article 18.18 of the Texas Code of Criminal Procedure, see *id.* art. 18.18 (West, Westlaw through 2017 1st C.S.), and, in the alternative, the property is subject to forfeiture under article 59.01 of the Texas Code of Criminal Procedure as it is contraband “insofar as it has been used or intended to be used, or the proceeds of the commission of felonies [sic].”¹ See *id.* art. 59.01(2) (defining “contraband”).

Menchaca subsequently answered the State's petition and asserted a counterclaim for “declaratory judgment and other affirmative relief.” Specifically, Menchaca alleged that due to the actions taken by the CCDA, “together with the false allegations made by [the State], Menchaca [has] not only been deprived of their property, but also suffered irreparable damage to their business.” Menchaca requested the trial court to declare that: (1) an ex-parte “constructive seizure” took place in January of 2016, when Garza served the notice on the banks threatening criminal prosecution if funds were released; (2) “the constructive seizure” was made in violation of Menchaca's due process rights under the federal and state constitutions; (3) the CCDA lacked probable cause to serve the notices to the banks in January of 2016; (4) the CCDA lacked probable cause to re-seize his property in April of 2016; (5) the State has no evidence that Menchaca was engaged in or

¹ The State alleged fifteen different violations by Menchaca under the penal code, finance code, and civil statutes as grounds to support the forfeiture.

committed any of the offenses as alleged by the State; (6) Menchaca was not engaged in any of the offenses alleged by the State; (7) the property at issue does not constitute proceeds of any of the offenses alleged by the State; and (8) Menchaca was entitled to recover attorney's fees, expert witness fees, and court costs.

Prior to answering Menchaca's counterclaim, the State nonsuited its civil forfeiture action. The State then answered Menchaca's counterclaim and filed a plea to the jurisdiction alleging that the trial court lacked subject-matter jurisdiction over Menchaca's declaratory action because: (1) Menchaca did not plead that the statutes at issue were unconstitutional; (2) Menchaca lacked standing because there was no justiciable issue; (3) the CCDA and its employees acting in their official capacity are protected by government immunity and are immune from suit; and (4) the CCDA is entitled to absolute prosecutorial immunity.

The trial court denied the State's plea to the jurisdiction, and this interlocutory appeal followed. See TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(8) (West, Westlaw through 2017 1st C.S.).

II. PLEA TO THE JURISDICTION

By five issues, which we treat as one issue, the State asserts that the trial court erred in denying its plea to the jurisdiction.

A. Standard of Review

Whether a court has subject matter jurisdiction is a question of law subject to de novo review. *Tex. Nat. Res. Conserv. Comm'n v. IT-Davy*, 74 S.W.3d 849, 855 (Tex. 2002). Whether a plaintiff has alleged facts that affirmatively demonstrate a 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). Whether undisputed evidence of jurisdictional facts establishes a trial court's jurisdiction is also a question of law. *Id.* However, disputed evidence of jurisdictional facts that also implicate the merits of the case may require resolution by the finder of fact. *Id.*

We construe the pleadings liberally in favor of the plaintiffs and look to the pleaders' intent. *Id.* If the pleadings do not contain sufficient facts to affirmatively demonstrate the trial court's jurisdiction but also do not affirmatively demonstrate incurable defects in jurisdiction, the issue is one of pleading sufficiency and the plaintiffs should be afforded the opportunity to amend. *Id.* at 226–27. If the pleadings affirmatively negate the existence of jurisdiction, then a plea to the jurisdiction may be granted without allowing the plaintiffs an opportunity to amend. *Id.* at 227.

B. Discussion

A plaintiff who sues the State must establish the State's consent to suit. *IT-Davy*, 74 S.W.3d 849, 855 (Tex. 2002). Otherwise, sovereign immunity from suit defeats a trial court's subject-matter jurisdiction. *Id.* Generally, governmental immunity also protects government officers sued in their official capacities to the same extent that it protects their employers. *City of El Paso v. Heinrich*, 284 S.W.3d 366, 380 (Tex. 2009). However, suits that require state officials, acting in their official capacities, to comply with statutory or constitutional provisions are not prohibited by sovereign immunity, even if a declaration to that effect compels the payment of money. *Id.* at 372. This exception to sovereign immunity is known as the *ultra vires* exception, which involves a suit that complains not of a government officer's exercise of discretion, but rather alleges and ultimately proves that the officer acted without legal authority or failed to perform a purely ministerial act. See

id. at 372. The rationale behind this exception is that these suits do not seek to alter government policy but rather to enforce existing policy. *Id.* Thus, as a technical matter, the governmental entities themselves—as opposed to their officers in their official capacity—remain immune from suit. *Id.* at 372–73.

The pleadings before this Court undisputedly show that the parties to the underlying declaratory action are Menchaca and Nevarez as the petitioners seeking declaratory relief and the State of Texas as the respondent. Construing Menchaca’s pleadings liberally in his favor, and looking to Menchaca’s intent, we find that Menchaca’s petition for declaratory judgment generally alleges actions taken without legal authority by the State and the “Cameron County District Attorney’s Office” as the basis for its declaratory action. Stated another way, Menchaca seeks *ultra vires* declaratory relief against the State of Texas and the CCDA as entities for failing to comply with the law related to civil forfeitures. However, these types of suits cannot be brought against the State because the State retains its immunity. *Id.* at 373. Instead, a suit such as Menchaca’s must be brought against the state actors in their official capacity in order to defeat immunity from suit. *Id.* Although Menchaca’s declaratory action alleges facts implicating the conduct of specific state actors, the suit itself is not brought against them in their official capacity, but instead, against the State as an entity.²

² State officials may, of course, be sued in their official and individual capacities. *City of El Paso v. Heinrich*, 284 S.W.3d 366, 373 n. 7 (Tex. 2009). However, judgments against state officials in their individual capacities will not bind the state. *Id.*

Because the complained-about parties are governmental entities—rather than officers acting in their official capacity—we conclude that Menchaca’s action is defeated by sovereign immunity. See *IT-Davy*, 74 S.W.3d at 855.³

III. CONCLUSION

We reverse the trial court’s denial of the State’s plea to the jurisdiction and render an order granting the plea to the jurisdiction.

GINA M. BENAVIDES,
Justice

Delivered and filed the
15th day of February, 2018.

³ We note that today’s decision is limited in its reach and deals solely with the issue of whether the trial court had subject matter jurisdiction over the present action. We express no opinion on the merits of Menchaca’s allegations in the current underlying lawsuit, nor do we express an opinion on the viability of a future *ultra vires* action, if any, that Menchaca may bring against any state actors in their official capacities. See TEX. R. APP. P. 47.1.