# NUMBER 13-18-00288-CV

# COURT OF APPEALS

# THIRTEENTH DISTRICT OF TEXAS

# CORPUS CHRISTI – EDINBURG

---

**CITY OF PHARR, TEXAS** **Appellant,**

**v.**

**ROGELIO SOTO GARCIA,** **Appellee.**

---

**On appeal from the 139th District Court of Hidalgo County, Texas.**

---

## OPINION

**Before Justices Benavides, Hinojosa, and Perkes**
**Opinion by Justice Perkes**

Appellee Rogelio Soto Garcia filed suit against appellant City of Pharr, Texas (City), alleging that the City breached a settlement agreement and that the City's governmental immunity was waived under *Texas A & M University-Kingsville v. Lawson* and Chapter 271 of the Texas Local Government Code. The trial court denied the City's

plea to the jurisdiction. On interlocutory appeal, the City argues that neither *Lawson* nor Chapter 271 applies. We affirm.

## I. Background

Garcia was employed by the City as Community Events Director. The City asked Garcia to take a hair follicle drug test, and he refused, alleging the City's conduct violated his Fourth Amendment right against unreasonable searches. Instead, Garcia resigned in what he characterizes as a constructive discharge.

Within a month of his separation and before Garcia filed suit, the parties executed a "Mutual Separation Agreement and Release" (the Settlement Agreement). Under the Settlement Agreement, the City agreed to pay Garcia $8,205.84 in exchange for Garcia's agreement to release numerous state and federal claims against the City, including those arising under 42 U.S.C. § 1983. The Settlement Agreement described Garcia's release as "a material inducement" for the City's payment.

The Settlement Agreement also contained a non-disparagement provision prohibiting the City and Garcia from "making false, misleading or disparaging statements or representations" about the other party. The City allegedly breached this provision when a City official made statements that Garcia "flunked a drug test" and "was dirty," affecting his ability to obtain new employment. Garcia filed suit for breach of the Settlement Agreement. The City filed a plea to the jurisdiction based on Garcia's pleading, and the trial court denied the plea. This interlocutory appeal ensued. *See* Tex. Civ. Prac. & Rem. Code Ann. § 51.014(a)(8).

## II. Applicable Law & Standard of Review

Generally, governmental immunity protects the state's political subdivisions from suits for money damages. *City of Houston v. Williams*, 353 S.W.3d 128, 134 (Tex. 2011). It has two components: immunity from suit, and immunity from liability. *Id.* (citing *Gen. Servs. Comm'n v. Little–Tex Insulation Co.*, 39 S.W.3d 591, 594 (Tex. 2001)). A governmental unit waives immunity from liability when it contracts with a private party, but immunity from suit must be waived by legislative enactment or constitutional provision. *Id.* (citing *Little–Tex*, 39 S.W.3d at 594). "[A] statute shall not be construed as a waiver of sovereign immunity unless the waiver is effected by clear and unambiguous language." Tex. Gov't Code Ann. § 311.034.

Immunity from suit deprives a trial court of subject matter jurisdiction and may be raised in a plea to the jurisdiction. *Williams*, 353 S.W.3d at 133. It is the plaintiff's burden to plead facts that affirmatively demonstrate the trial court's subject matter jurisdiction. *See Tex. Dept. of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004) (citing *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 446 (Tex. 1993)). Because the City's plea to the jurisdiction was based on Garcia's pleadings, we accept the pleaded facts as true, and construe the pleadings liberally to determine whether Garcia established a waiver of governmental immunity. *See id.* (citing *Tex. Air Control Bd.*, 852 S.W.2d at 446). The trial court's subject matter jurisdiction is a question of law we review

de novo. *See Williams*, 353 S.W.3d at 133 (citing *Tex. Nat. Res. Conservation Comm'n v. IT–Davy*, 74 S.W.3d 849, 855 (Tex.2002)).

## III. Analysis

Garcia alleged in his petition that the City's immunity was waived under *Texas A & M University-Kingsville v. Lawson*, 87 S.W.3d 518 (Tex. 2002) (plurality op.).[1] The City contends on appeal that *Lawson* does not apply because: (1) unlike *Lawson*, the Settlement Agreement did not settle a pending lawsuit; and (2) regardless, the Settlement Agreement did not settle any underlying claim for which immunity had been waived. We conclude *Lawson* does apply.

In *Lawson*, the plaintiff sued the university after he was terminated, alleging various causes of action, including a violation of the Whistleblower Act. *Id.* at 518–19. The Whistleblower Act contains a clear and unambiguous waiver of immunity. *See* TEX. GOV'T CODE ANN. § 554.0035. The parties settled the case and the plaintiff brought a subsequent suit alleging the university breached the settlement agreement. *Lawson*, 87 S.W.3d at 519. The university argued that any breach of the settlement agreement was a separate claim barred by immunity. *Id.* The supreme court disagreed: "[W]e hold that, having waived immunity from suit in the Whistleblower Act, the State may not now claim immunity from a suit brought to enforce a settlement agreement reached to dispose of a claim brought under that Act." *Id.* at 522–23.

[1] Although *Lawson* was a plurality opinion, the supreme court cited it with approval in *Texas A & M Univ. Sys v. Koseoglu*, 233 S.W.3d 835, 838–39 (Tex. 2007) and then adopted the holding in *Hughes v. Tom Green County*, 573 S.W.3d 212, 214 (Tex. 2019).

The City urges us to interpret *Lawson* narrowly, applying it only to an agreement that settles "a pending suit." Because there was no suit pending at the time the parties entered the Settlement Agreement, the City argues Garcia is precluded from invoking *Lawson* in the first instance. The City contends that our precedent in *Donna ISD v. Gracia* supports its proposition because, according to the City, we held in *Gracia* that *Lawson* does not apply to *any* pre-suit settlement agreement. *See* 286 S.W.3d 392 (Tex. App.—Corpus Christi–Edinburg 2008, no pet.).

The City reads too much into *Gracia*. As we said in *Gracia*, a *Lawson* analysis "hinges on [the] underlying claim." *Id.* at 394. Although *Gracia* involved a pre-suit settlement agreement, we held that the plaintiff's claim "had no adjudicative value in our court system" because, at the time the parties entered the settlement agreement, the plaintiff had failed to exhaust his administrative remedies under Chapter 21 of the Texas Education Code. *Id.* at 393–95; *see generally O'Neal v. Ector Cty. Indep. Sch. Dist*., 251 S.W.3d 50, 52 (Tex. 2008) (per curiam) (holding the trial court lacked subject matter jurisdiction over the plaintiff's Chapter 21 claim because the plaintiff failed to exhaust her administrative remedies). In other words, whether the plaintiff had filed suit in *Gracia* was irrelevant; his claim "had no adjudicative value in our court system" because no trial court had jurisdiction over his claim. *Id.*

As the *Lawson* Court explained, "when a governmental entity is *exposed to suit* because of a waiver of immunity, it cannot nullify that waiver by settling the claim with an agreement on which it cannot be sued." *Lawson*, 87 S.W.3d at 521 (emphasis added). The focus under *Lawson*, then, is on whether immunity from the underlying claim existed

at the time of the settlement agreement (i.e., whether the governmental unit was "exposed to suit"), not whether a suit had actually been filed. *Harris Cty. Hous. Auth. v. Rankin*, 414 S.W.3d 198, 204 (Tex. App.—Houston [1st Dist.] 2013, pet. denied); *City of Carrolton v. Singer*, 232 S.W.3d 790, 799–800 (Tex. App.—Fort Worth 2007, pet. denied); *see also Tex. Dep't of Health v. Neal*, No. 03-09-00574-CV, 2011 WL 1744966, at *4 (Tex. App.—Austin May 6, 2011, pet. denied) (mem. op.).

In *Texas A & M University System v. Koseoglu* the Supreme Court of Texas considered whether *Lawson* applied to a pre-suit settlement agreement. 233 S.W.3d 835, 837–39 (Tex. 2007). In deciding *Lawson* did not apply, the supreme court's analysis turned on the absence of a legislative waiver for the underlying claim, not the timing of the settlement agreement. *Id.* at 839. Had the court wanted to limit *Lawson's* application to pending suits, it had the opportunity to do so in *Koseoglu*.

The City's position is also inconsistent with the policy underlying immunity—to protect the public not only from paying money damages, but also to avoid the costs associated with defending lawsuits. *Reata Const. Corp. v. City of Dallas*, 197 S.W.3d 371, 375 (Tex. 2006) (citing *Tex. Nat. Res. Conservation Comm'n v. IT–Davy*, 74 S.W.3d 849, 854 (Tex. 2002)). Although "Texas law favors and encourages voluntary settlements and orderly dispute resolution," *Schlumberger Tech. Corp. v. Swanson*, 959 S.W.2d 171, 178 (Tex. 1997), and promotes judicial economy, *Engelman Irrigation Dist. v. Shields Bros.*, 514 S.W.3d 746, 750 (Tex. 2017), the City's position would discourage pre-suit settlement with governmental units. At the very least, such a rule would compel plaintiffs

to file suit before executing any settlement agreement, if only to ensure *Lawson's* protections, causing unnecessary delay and waste.

The City's position is also inconsistent with the intent of the pre-suit notice requirements that are often coupled with waivers of immunity. *See, e.g.,* TEX. CIV. PRAC. & REM. CODE ANN. § 101.101(a) (requiring notice "not later than six months after the day that the incident giving rise to the claim occurred"). These jurisdictional prerequisites to filing suit not only ensure that cities are well positioned to guard against unfounded claims, they also promote the settlement of valid claims. *City of Houston v. Torres*, 621 S.W.2d 588, 591 (Tex. 1981).

Finally, we are guided by *Lawson's* underlying assumption—"that a governmental entity would not, in settling a suit for which immunity has been waived, undertake an obligation that exposes it to liability much greater or different than that which it faced from the original claim." *Lawson*, 87 S.W.3d at 521. We see no reason why that assumption is any less realistic when a governmental unit settles a claim pre-suit. To the contrary, given immunity's broad scope, a pre-suit settlement often signals a compelling claim. *See id.* at 522 ("In reaching a settlement, the government is guided by legal counsel to help gauge the degree of exposure to liability and the fairness of the settlement."). Therefore, we decline the City's invitation to draw a bright line under *Lawson* between claims settled before and after suit is filed. *See Rankin*, 414 S.W.3d at 204; *Singer*, 232 S.W.3d at 799–800; *see also Neal*, 2011 WL 1744966, at *4.

We next turn to the underlying claims. The City correctly points out that, although the Legislature has waived immunity from several of Garcia's released claims, those

claims are subject to jurisdictional prerequisites that Garcia failed to perform. *See, e.g., Univ. of Tex. Sw. Med. Ctr. at Dall. v. Gentilello,* 398 S.W.3d 680 (Tex. 2013) (reporting requirement under Texas Whistleblower Act); *Lueck v. State*, 325 S.W.3d 752 (Tex. 2010) (exhaustion of administrative remedies under Chapter 21 of the Texas Labor Code); *but see Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385 (1982) (filing a timely administrative complaint is not a jurisdictional prerequisite to a Title VII claim).

Although the Settlement Agreement releases a laundry list of state and federal claims, Garcia alleges in his petition that the true nature of his claim was a violation of his Fourth Amendment rights. Because the City's plea was based solely on Garcia's pleading, we take this allegation as true. *See Mission Consol. Indep. Sch. Dist. v. Flores*, 39 S.W.3d 674, 676 (Tex. App.—Corpus Christi–Edinburg 2001, no pet.) ("The factual allegations relating to jurisdictional prerequisites must be taken as true unless the defendant pleads and proves that they were fraudulently made to confer jurisdiction." (citing *Curbo v. State*, 998 S.W.2d 337, 341 (Tex. App.—Austin 1999, no pet.))).

Under the Settlement Agreement, Garcia expressly released any claim brought under 42 U.S.C. § 1983, the procedural vehicle for bringing a constitutional claim against a municipality. *Monell v. N.Y.C. Dep't of Social Servs.*, 436 U.S. 658, 690 (1978) ("Local governing bodies, therefore, can be sued directly under § 1983 for monetary, declaratory, or injunctive relief where, as here, the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers.") (footnote omitted). The United States Congress has waived the City's immunity from constitutional claims brought under

§ 1983. *See Owen v. City of Independence*, 445 U.S. 622, 647–48 (1980) ("By including municipalities within the class of 'persons' subject to liability for violations of the Federal Constitution and laws, Congress—the supreme sovereign on matters of federal law—abolished whatever vestige of the State's sovereign immunity the municipality possessed.") (footnote omitted).

The City has failed to point to any jurisdictional prerequisite to filing Garcia's § 1983 claim, and we are not aware of any. Therefore, at the time the City and Garcia executed the Settlement Agreement, Garcia's § 1983 claim had "adjudicative value in our court system." *See Gracia*, 286 S.W.3d at 395. Applying *Lawson*, we hold that the City is not immune from Garcia's suit for breach of the Settlement Agreement.

## IV. CONCLUSION

We affirm the trial court's order denying the City's plea to the jurisdiction.[2]

GREGORY T. PERKES
Justice

Delivered and filed the
8th day of August, 2019.

[2] Because the City's immunity from Garcia's contract claim is waived under *Lawson*, we do not reach the question of whether a waiver exists under Chapter 271 of the Texas Local Government Code. *See* TEX. R. APP. P. 47.1.