



**NUMBER 13-18-00495-CV**

**COURT OF APPEALS**

**THIRTEENTH DISTRICT OF TEXAS**

**CORPUS CHRISTI – EDINBURG**

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**JOSEPHINE MARTINEZ,**

**Appellant,**

**v.**

**MATHIS ISD,**

**Appellee.**

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**On appeal from the County Court at Law  
of San Patricio County, Texas.**

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**MEMORANDUM OPINION**

**Before Justices Hinojosa, Perkes, and Tijerina  
Memorandum Opinion by Justice Tijerina**

Pro se appellant Josephine Martinez appeals the trial court's judgment awarding her \$223.86 in lost wages against appellee Mathis Independent School District (MISD). By four issues, Martinez alleges that: (1) her wages were being deducted for summer pay prematurely; (2) she worked a total of ninety-one days instead of fifty-four; (3) the amount

she needs to recover is \$3,738.14; and (4) she is entitled to compensatory and punitive damages. We reverse and render.

## **I. BACKGROUND**

MISD hired Martinez as a substitute bus driver on October 29, 2013. Her rate of pay was \$19.50 per route, and she worked two routes a day. On December 10, 2013, MISD hired Martinez as a full-time bus driver. Her rate of pay was \$13.54 per route, and she was an at-will employee.

During the 2013–2014 school year, MISD offered its contract employees a retention stipend of \$500.00 and \$250.00 for at-will, non-contract employees like Martinez. If an employee did not work the entire school year, the employee was required to repay MISD the stipend.

In December 2013, MISD inadvertently paid Martinez a \$500.00 stipend (for contract employees) instead of a \$250.00 stipend (for at-will employees). Martinez did not work the entire school year because she resigned from MISD on March 12, 2014. Pursuant to its policy, MISD requested that Martinez repay \$250.00 of the \$500.00 retention stipend she received and withheld \$250.00 from Martinez's final paycheck. After receiving her final paycheck in April 2014, Martinez notified MISD Superintendent Benny Hernandez that she was owed backpay because her hourly rate was \$19.50 as opposed to \$13.54.

Three years later, on November 28, 2017, Martinez sued MISD requesting \$1,287.36 in back pay and \$1,000.00 in punitive damages.<sup>1</sup> She attached two letters to her petition addressed to the superintendent and dated 2014 and 2017, asking him to

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<sup>1</sup> Martinez was pro se, and she did not allege any causes of action.

review her paperwork, which she stated “clearly reveals the discrepancy of my pay rate as being \$19.50 when I did some work for another department.” The trial court set the matter for a hearing on March 20, 2018.

At the hearing, Hernandez informed the trial court that initially Martinez was paid \$19.50 an hour when she was a substitute bus driver.<sup>2</sup> When she became full-time, Martinez worked a total of fifty-four days at \$13.54 a route. Hernandez explained that MISD withheld funds from her check so that Martinez would be paid during the summer months. According to Hernandez and MISD’s documentation, Martinez would complete one two-hour route in the morning and another two-hour route in the afternoon for a total of \$54.16 a day. Martinez, on other hand, stated her payrate was \$19.50 an hour and claimed she was owed over \$1,287.36 in backpay based on that claim. She relied on her pay stub, which reflected that indeed she was paid \$19.50 an hour for “extra duties” when she helped other departments. Her pay stubs were admitted into evidence. Based on the evidence provided, the trial court determined that Martinez was not earning \$19.50 an hour as she claimed. Following the hearing, the trial court awarded Martinez a judgment of \$144.68 dollars.<sup>3</sup>

Martinez filed a motion for reconsideration, alleging she was still owed \$1,793.61 because the “daily rate was \$19.50 x 54 = \$78.00 and not \$54.16.” Moreover, she stated that MISD agreed for Martinez to only pay back \$250.00 of the \$500.00 retention stipend she inadvertently received. At the motion for reconsideration hearing, Martinez submitted

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<sup>2</sup> Hernandez appeared on behalf of MISD. We note that “[a] governmental entity can appear in the courts only by and through an attorney.” See *City of Houston v. First City*, 827 S.W.2d 462, 481 (Tex. App.—Houston [1st Dist.] 1992, writ denied).

<sup>3</sup> This calculation was for \$3,190.02 in wages for full-time employment, minus \$2,545.34 of wages paid to her, minus the \$500.00 retention bonus.

her W-3 and W-4 into evidence, claiming it was proof she was receiving \$19.50 an hour as opposed to \$13.54 and therefore MISD still owed her \$473.86. On September 4, 2018, the trial court entered a final judgment in Martinez's favor in the amount of \$223.86.<sup>4</sup> This appeal followed.

## II. SUBJECT-MATTER JURISDICTION

Martinez appeals the trial court's judgment awarding her lost wages. MISD opposes her position on appeal and seeks reversal of the trial court's judgment to the extent of dismissing Martinez's claims as barred by governmental immunity, arguing specifically that Martinez failed to invoke a waiver of MISD's governmental immunity. Such a request to alter the trial court's judgment can only be considered when the party seeking the alteration has filed a notice of appeal or provides "just cause" for granting the party more favorable relief. *See Tex. R. App. P. 25.1.* ("An appellate court may not grant a party who does not file a notice of appeal more favorable relief than did the trial court except for just cause.").

### A. Standard of Review and Applicable Law

Governmental immunity protects a school district from lawsuits and liability for money damages. *Mission Consol. Indep. Sch. Dist. v. Garcia*, 253 S.W.3d 653, 655 (Tex. 2008). Accordingly, a governmental entity, including a school district, cannot be sued without its consent. *Id.* As such, immunity from suit deprives a trial court of subject-matter jurisdiction. *City of Dallas v. Albert*, 354 S.W.3d 368, 373 (Tex. 2011) (explaining that immunity from suit deprives the court of jurisdiction over a suit against the entity unless the legislature has expressly consented to suit).

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<sup>4</sup> This amount was for \$473.86 minus the \$250.00 retention stipend that needed to be paid back to MISD.

Subject-matter jurisdiction is an issue that may be raised for the first time on appeal and cannot be waived by the parties. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 445 (Tex. 1993). Whether a trial court has subject-matter jurisdiction is a legal question that we review de novo. *Tex. Parks & Wildlife Dep't v. Sawyer Tr.*, 354 S.W.3d 384, 388 (Tex. 2011).

## **B. Discussion**

Martinez sued MISD for monetary damages. However, there is no dispute that MISD is entitled to governmental immunity. See *Garcia*, 253 S.W.3d at 655. Accordingly, Martinez was required to show a waiver of governmental immunity via statute or legislative authority. See *id.*; *Tex. Dep't of Transp. v. Jones*, 8 S.W.3d 636, 638 (Tex. 1999) (per curiam). However, at the trial court, Martinez failed to plead a waiver of immunity via statute or legislative authority for her unpaid wages claim. See *Kaufman County v. Combs*, 393 S.W.3d 336, 342–43 (Tex. App.—Dallas 2012, pet. denied) (providing that “governmental immunity is not waived for lawsuits seeking retrospective monetary relief”); see also *Town of Shady Shores v. Swanson*, 590 S.W.3d 544, 550 (Tex. 2019) (“A plaintiff has the burden to affirmatively demonstrate the trial court’s jurisdiction, which encompasses the burden of establishing a waiver of a governmental entity’s immunity from suit.”). Although MISD did not raise subject-matter jurisdiction at the trial court, subject-matter jurisdiction is an issue that may be raised for the first time on appeal. See *Sunset Transp., Inc. v. Tex. Dep't of Transp.*, 557 S.W.3d 50, 64 n. 81 (Tex. App.—Austin 2017, no pet.) (“While appellees did not perfect their own appeal and would generally be required to do so when seeking appellate relief more favorable than the trial court’s judgment,” the rational of *Rusk State Hosp.*, “would permit them to urge

(or re-urge) these jurisdictional challenges in the context of the appeal appellants have perfected."); *Rusk State Hosp. v. Black*, 392 S.W.3d 88, 94–96 (Tex. 2012); *Tex. Ass'n of Bus.*, 852 S.W.2d at 445. Thus, because governmental immunity protects MISD from monetary damages and Martinez failed to establish consent via statute or legislative authority, the trial court was deprived of subject-matter jurisdiction over Martinez's suit. See *Garcia*, 253 S.W.3d at 655. We overrule Martinez's issues on appeal.<sup>5</sup>

### III. CONCLUSION

Having determined that Martinez's suit is barred by governmental immunity, we reverse the trial court's monetary judgment in favor of Martinez. We render judgment dismissing Martinez's suit for lack of subject-matter jurisdiction. See *TEX. R. APP. P.* 43.3(c); *Kaufman*, 393 S.W.3d at 345 (reversing the trial court's summary judgment and rendering judgment dismissing the plaintiff's lawsuit because the appellants had governmental immunity).

JAIME TIJERINA,  
Justice

Delivered and filed the  
30th day of July, 2020.

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<sup>5</sup> Nonetheless, Martinez raises four new issues on appeal that she did not raise at the trial court or in any post-trial motion. Therefore, she is precluded from raising these issues on appeal. See *TEX. R. APP. P.* 33.1(a).