NUMBER 13-19-00070-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

CITY OF PORT ISABEL, **Appellant,**

v.

EDWARD MEZA, **Appellee.**

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

MEMORANDUM OPINION

Before Justices Benavides, Longoria, and Perkes
Memorandum Opinion by Justice Benavides

By nine issues, which we combine, appellant the City of Port Isabel (the City) challenges the trial court's denial of its plea to the jurisdiction. The City argues that (1) appellee Edward Meza's severance agreement does not fall under the waiver of immunity in chapter 271 of the government code; (2) Meza did not submit any evidence to dispute the City's evidence of the trial court's lack of subject matter jurisdiction; (3) the City's

mayor did not have the authority to sign the alleged severance agreement; (4) the city commission meeting minutes do not show the severance agreement was properly executed; (5) the city charter bars the severance agreement; (6) even if the severance agreement was valid, the city commission's rescinding of the agreement in 2015 divests Meza of standing; (7) the applicable law allowed the city commission to rescind the 2010 agreement in 2015; (8) the City's immunity was not waived based on the type of damages Meza seeks; and (9) the 2010 city commission minutes show the Meza made a counteroffer which was only approved by the mayor in violation of the city charter. We affirm.

I. BACKGROUND

Meza was hired as the city manager by the City on September 23, 2008. At a city commission meeting on July 6, 2010, the commission went into a closed session and the agenda showed the following:

> Discussion and potential action to approve an employment/severance agreement package for the City Manager.
>
> [Commissioners] all voting "aye" to approve an employment/severance agreement package for the City Manager, Edward Meza as follow:
>
> - One-year paid salary
> - One-year paid insurance
> - To pay all of his accumulated sick leave
> - To pay all his accumulated vacation
> - Would pay him $6,000.00 a month to assist the new City Manager

At some point, a document titled "City Manager Severance Agreement" was signed by then-mayor, Joe Vega. Meza's signature accompanied a handwritten statement that said "approved on July 6, 2010" and were located at the bottom of the severance agreement.

Nothing further occurred regarding the severance agreement until Meza was terminated by the City on May 16, 2015. On May 26, 2015, the following was reflected in the city commission's minutes:

> 6. Discussion and possible action to rescind any severance policy for the city manager, effective July 6, 2010 [Gilberto Hinojosa, City Attorney]
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> Commissioner Jeffrey David Martinez motioned, seconded by Commissioner Martin C. Cantu. [T]he City Commission voted three (3) for and two (2) abstain with Mayor Joe E. Vega and Commissioner Maria de Jesus "MJ" Garza abstaining to rescind any severance policy for the city manager, effective July 6, 2010.
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> **Motion carried.**

Meza filed suit for breach of contract on February 22, 2017, requesting actual and consequential damages and attorney's fees. The City filed an answer and raised affirmative defenses as well as counterclaims. Meza filed a combined motion for summary judgment. The City then filed its plea to the jurisdiction arguing that it is immune from suit under chapter 271 of the Texas Local Government Code. Following a hearing, the trial court denied the City's plea to the jurisdiction. This interlocutory appeal followed.[1]

II. PLEA TO THE JURISDICTION

By its first and second issues, the City argues that the trial court erred in denying

[1] The City filed a motion to strike Meza's motion for leave to file an amended brief and it was carried with the case. At this time, we deny the City's motion to strike.

its plea to the jurisdiction.

A. Standard of Review and Applicable Law

"A plea to the jurisdiction is a dilatory plea that seeks dismissal of a case for lack of subject matter jurisdiction." *Harris County v. Sykes*, 136 S.W.3d 635, 638 (Tex. 2004); *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 225–26 (Tex. 2004); *Tex. Nat. Res. Conservation Comm'n v. IT-Davy*, 74 S.W.3d 849, 855 (Tex. 2002). Immunity from suit implicates a court's subject matter jurisdiction and is properly asserted in a plea to the jurisdiction. *See Hous. Belt & Terminal Ry. Co. v. City of Houston*, 487 S.W.3d 154, 160 (Tex. 2016); *State v. Holland*, 221 S.W.3d 639, 642 (Tex. 2007); *City of Pearsall v. Tobias*, 533 S.W.3d 516, 521 (Tex. App.—San Antonio 2017, pet. denied). "As subject matter jurisdiction is a question of law, we review a trial court's ruling on a plea to the jurisdiction de novo." *Hous. Belt & Terminal Ry. Co.*, 487 S.W.3d at 160.

If the plea to the jurisdiction challenges the pleadings, we liberally construe the pleadings to determine if the plaintiff has "alleged facts that affirmatively demonstrate the court's jurisdiction to hear the cause." *Miranda*, 133 S.W.3d at 226 (internal citations omitted). If the plea to the jurisdiction challenges the existence of jurisdictional facts, which also implicate the merits of the case, "we consider the evidence submitted by the parties to determine if a fact issue exists." *Suarez v. City of Texas City*, 465 S.W.3d 623, 632–33 (Tex. 2015). "We take as true all evidence favorable to the nonmovant, indulge every reasonable inference, and resolve any doubts in the nonmovant's favor." *Id*. at 633. "If the evidence creates a fact question regarding jurisdiction, the plea must be denied pending resolution of the fact issue by the fact finder." *Id*. "If the evidence fails to raise a

question of fact, however, the plea to the jurisdiction must be granted as a matter of law." *Id*.; *see also Miranda*, 133 S.W.3d at 226–28; *Tobias*, 533 S.W.3d at 521–22.

If a plea to the jurisdiction challenges the existence of jurisdictional facts, we consider relevant evidence submitted by the parties when necessary to resolve the jurisdictional issues raised, as the trial court is required to do. *Miranda*, 133 S.W.3d at 227. When the consideration of a trial court's subject matter jurisdiction requires the examination of evidence, the trial court exercises its discretion in deciding whether the jurisdictional determination should be made at a preliminary hearing or await fuller development of the case, mindful that this determination must be made as soon as practicable. *Id*. If the evidence creates a fact question regarding the jurisdictional issue, then the trial court cannot grant the plea to the jurisdiction, and the fact issue will be resolved by the fact finder. *Miranda*, 133 S.W.3d at 227-28; *see Diaz v. City of Elsa*, No. 13-16-00577-CV, 2018 WL 1192623, at *3 (Tex. App.—Corpus Christi–Edinburg March 8, 2018, no pet.) (mem. op.). This procedure generally mirrors that of a summary judgment. *See Miranda*, 133 S.W.3d at 227–28. However, when the governmental entity asserts and supports with evidence that the trial court lacks subject matter jurisdiction, a plaintiff, when the facts underlying the merits and subject matter jurisdiction are intertwined, must show that there is a disputed material fact regarding the jurisdictional issue. *Id*.

B. Governmental Entity Must Waive Immunity

Governmental immunity protects political subdivisions of the state from suit and liability. *See Sykes*, 136 S.W.3d at 638. Absent waiver, governmental entities retain

immunity from suit. *City of Houston v. Williams*, 353 S.W.3d 128, 133 (Tex. 2011); *Tobias*, 533 S.W.3d at 522. "If the Legislature has not expressly waived immunity from suit, the State retains such immunity even if its liability is not disputed." *IT-Davy*, 74 S.W.3d at 853.

Section 271.152 of the Texas Local Government Code states:

> A local government entity that is authorized by statute or the constitution to enter into a contract and that enters into a contract subject to this subchapter waives sovereign immunity to suit for the purpose of adjudicating a claim for breach of the contract, subject to the terms and conditions of this subchapter.

TEX. LOC. GOV'T CODE ANN. § 271.152. Only written contracts stating the essential terms of the agreement for providing goods or services that are "properly executed on behalf of the local government entity" are contracts subject to the waiver. *Id*. § 271.151(2). For a waiver of immunity under § 271.152 to apply, three elements must be established: (1) the party against whom the waiver is asserted must be a local government entity as defined by the local government code, (2) the entity must be authorized by statute or the Constitution to enter into contracts, and (3) the entity must in fact have entered into a contract that is defined by local government section 271.151(2). *Id*. §§ 271.151(2); 271.152; *City of Houston*, 353 S.W.3d at 135.

The focus here is to determine if Meza established the third element for wavier to apply under § 271.152. *See id*. § 271.152. The third element "effectively states five elements a contract must meet for it to be a contract subject to § 271.152's waiver of immunity: (1) a contract must be in writing, (2) state the essential terms of the agreement, (3) provide for goods or services, (4) to the local government entity, and (5) be executed on behalf of the local governmental entity." *City of Houston*, 353 S.W.3d at 135. To

determine if the third element applies, we must look to the minutes of the commission meetings and Meza's purported severance agreement.

The City argues that Meza's severance agreement was not "properly executed" because it was never brought before the city commission for final approval, or in the alternative, it was rescinded during the May 26, 2015 meeting and Meza therefore would not have standing to bring this suit. Meza counters by stating that the severance agreement was properly executed because it was approved by the city commission in July 2010 and signed by the mayor.

C. "Properly Executed"

In construing the statute to determine the meaning of "properly executed," the Texas Supreme Court stated its goal is to "ascertain and give effect to the Legislature's intent." *El Paso Educ. Initiative, Inc. v. Amex Props., LLC*, No. 18-1167, __S.W.3d__, __, 2020 WL 2601641, at *8 (Tex. May 22, 2020) (internal citations omitted). "[W]e look to and rely on the plain meaning of a statute's words as expressing legislative intent unless a different meaning is supplied, is apparent from the context, or the plain meaning of the words leads to absurd or nonsensical results." *Id*. (quoting *Cadena Comerical USA Corp. v. Tex. Alcoholic Beverage Comm'n*, 518 S.W.3d 318, 325 (Tex. 2017)). "Section 271.151 does not define 'properly executed;' thus, we employ its plain and common meaning." *Id*. We read the statute to give effect to every word. *Id*. The adjective "properly" necessarily limits the verb "executed," leading to the inexorable conclusion that not *all* executed contracts qualify for Chapter 271's waiver. *Id*. In this context, a contract is *properly* executed when it is executed in accord with the statutes and regulations prescribing that

authority. *Id*. "Proper" means "[a]ppropriate, suitable, right, fit, or correct; *according to the rules.*" *Id*. (quoting *Proper*, BLACK'S LAW DICTIONARY (11th ed. 2019) (emphasis added)); *see also Hous. Auth. of Dallas. v. Killingsworth*, 331 S.W.3d 806, 811 (Tex. App.—Dallas 2011, pet. denied) ("Properly means 'suitably, fitly, rightly, [or] correctly.'"). City governments operate pursuant to statute. Accordingly, they may enter into contract only in the manner the legislature has authorized.

D. Pleadings and Evidence

In his amended pleadings, Meza stated the following:

> 8. Meza excelled in his [role as City Manager], and on July 6, 2010, the City awarded him an employee severance agreement (the "Agreement"). That Agreement, awarded "in the interest of encouraging Meza to continue the good services he has performed for the City," afforded Meza "a lump-sum cash severance payment . . . in the full amount of his then full salary, in other words, in the amount of the then current one year's salary for the city manager."
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> 9. On Saturday, May 16, 2015, City Commissioner Martin Cantu and City Commissioner Jose "JJ" Zamora ordered that City employees unlock the doors to City Hall. The City Commission does not normally meet on weekends, and does not normally meet without advanced notice and without a planned session. Cantu and Zamora then posted a Notice of Special Meeting, which stated that during a closed session, Cantu and Zamora had "deliberate[d] the appoint [sic], employment, evaluation, reassignment, duties, discipline, or dismissal" of the City Attorney, City Manager, and counsel for the City and that "action relative to the executive session" had been taken. Cantu and Zamora announced to those present that Meza would be dismissed as City Manager, and that Cantu and Zamora's longtime associate and friend, Jared Hockema, had been named Interim City Manager.
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> 10. On May 26, 2015, Hinojosa informed the City Commission that the City would not be honoring the Agreement with Meza, and the new City Commission voted to rescind the Agreement.
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> . . . .

> 12. The refusal to honor the Agreement constituted a clear breach of the City of Port Isabel's contract with Meza.
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> 13. On June 11, 2015, Plaintiff Meza sent a letter to Mayor, Jose E. Vega, demanding that Defendant Port Isabel honor the terms of their legally binding severance agreement with him. As instructed by City Attorney Hinojosa, Mayor Vega did not respond to this demand providing any explanation or rationale for Defendant Port Isabel reneging on its obligation per the severance agreement.

The City filed an answer countering that Meza committed multiple actions during his time as City Manager which were contrary to Meza's assertions, as well as affirmative defenses and counterclaims.

During a hearing on the plea to the jurisdiction before the trial court, the City argued that the severance agreement was not a "properly executed" contract. The City agreed that the minutes from July 2010 stated that a severance package was approved by the city commission but there was never any indication in the city commission minutes from all of 2010 that the specific written agreement Meza sought to enforce had been approved either in July 2010 or at a later date. The City's position was because there had been no written contract approved, the trial court also lacked jurisdiction.

The evidence presented by both parties includes: (1) the employee severance agreement at issue, (2) minutes from the July 6, 2010 and May 26, 2015 city commission meetings, (3) the Home Rule Charter of the City of Port Isabel, (4) affidavit from Susie Alcocer, the City Secretary, stating that she found no agenda record where the severance agreement was approved following July 2010, and the (5) affidavits of JJ Zamora and Martin Cantu, both city commissioners at the time the agreement was purportedly approved.

The minutes from July 2010 show that the city commission discussed an "employee severance package" for Meza in closed session and approved certain requirements in an open session following the closed session on the same day. The employee severance agreement submitted by Meza to both the trial court and this Court contain the mayor's signature. Under § 2.05 of the city charter, it states that the mayor "shall sign all ordinances, resolutions, and financial statements, and shall be the chief executive officer of the City. . . ." The minutes show there was another discussion of Meza's severance package in May 2015 and it was rescinded after Meza was terminated.

The evidence before us is more than a scintilla of evidence to show that Meza's employee severance package was properly executed. *See Killingsworth*, 331 S.W.3d at 814. Therefore, indulging every reasonable inference and resolving any doubts in Meza's favor, we conclude that Meza raised a fact question as to whether the severance agreement was properly executed. *See Miranda*, 133 S.W.3d at 228; *Killingsworth*, 331 S.W.3d at 814.

Because Meza met his burden of pleading facts demonstrating a waiver of the City's immunity and created a jurisdictional fact questions as to whether the severance agreement was properly executed, we conclude the trial court correctly denied the City's plea to the jurisdiction. *See Miranda*, 133 S.W.3d at 227–28. We overrule the City's first and second issues.[2]

[2] Because these issues are dispositive of the plea to the jurisdiction, we do not need to address the City's remaining factual issues. *See* TEX. R. APP. P. 47.1

IV. CONCLUSION

We affirm the trial court's ruling.

GINA M. BENAVIDES,
Justice

Delivered and filed the
2nd day of July, 2020.