

NO. 12-16-00259-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

*CHRISTINA CATOE,
APPELLANT*

§ *APPEAL FROM THE*

V.

§ *COUNTY COURT AT LAW NO. 2*

*HENDERSON COUNTY, TEXAS AND
ADAM SLAYTER,
APPELLEES*

§ *HENDERSON COUNTY, TEXAS*

MEMORANDUM OPINION

Christina Catoe appeals the trial court's order dismissing her claims against Adam Slayter. She presents one issue on appeal. We affirm.

BACKGROUND

Catoe sued Henderson County and Slayter, a detention officer employed by Henderson County, alleging that Slayter assaulted her while she was in custody. In her petition, Catoe alleged that Slayter was liable for assault, intentional infliction of emotional distress, and sexual harassment. She further asserted that the County negligently hired, supervised, or trained Slayter.

The County moved to dismiss Catoe's claims against Slayter pursuant to section 101.106(e) of the Texas Civil Practice and Remedies Code. The trial court granted the motion. The County then filed a plea to the jurisdiction arguing that the trial court lacked subject matter jurisdiction over it because its immunity had not been waived under the Texas Tort Claims Act (TTCA). The trial court granted the motion. This appeal followed.

DISMISSAL UNDER THE TORT CLAIMS ACT

In her only issue, Catoe contends the trial court erred by dismissing her claims against Slayter pursuant to section 101.106(e). She urges that the TTCA did not mandate dismissal because her claims do not fit within the TTCA's limited waiver of immunity and, therefore, were not brought "under" the TTCA.¹

Standard of Review

Generally, we review a trial court's order on a motion to dismiss under an abuse of discretion standard. *Am. Transitional Care Ctrs. of Tex., Inc. v. Palacios*, 46 S.W.3d 873, 878 (Tex. 2001). However, the proper standard of review is not necessarily determined by the type of motion to which the order relates, rather it is determined by the substance of the issue to be reviewed. *Singleton v. Casteel*, 267 S.W.3d 547, 550 (Tex. App.—Houston [14th Dist.] 2008, pet. denied) (citing *In re Doe*, 19 S.W.3d 249, 253 (Tex. 2000)).

Here, the County's motion raised an issue of immunity as conferred by section 101.106 of the Texas Civil Practice and Remedies Code. See *Franka v. Velasquez*, 332 S.W.3d 367, 371 n.9 (Tex. 2011) (section 101.106 confers immunity to employees of governmental units in certain circumstances). If immunity applies, the trial court lacks subject matter jurisdiction over the case. See *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 224 (Tex. 2004); see also *Univ. of Tex. Health Sci. Ctr. at San Antonio v. Webber-Eells*, 327 S.W.3d 233, 240 (Tex. App.—San Antonio 2010, no pet.) (section 101.106 is a jurisdictional statute involving waiver of immunity). Subject matter jurisdiction is a question of law, which we review de novo. *Miranda*, 133 S.W.3d at 226. Likewise, we review matters of statutory construction under a de novo standard. *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 25 (Tex. 2003).

Applicable Law

Governmental immunity protects political subdivisions of the state, including counties, from suit and liability. See TEX. CIV. PRAC. & REM. CODE ANN. § 101.001(3)(B) (West Supp. 2016). The TTCA provides a limited waiver of governmental immunity and caps recoverable damages. See *id.* § 101.021 (West 2011). In general, the TTCA waives governmental immunity for liability arising from the "use of a motor-driven vehicle or motor-driven equipment" or "a condition or use of tangible personal or real property." *Id.* The TTCA does not apply to a claim

¹ Catoe does not challenge the trial court's grant of the County's plea to the jurisdiction.

“arising out of assault, battery, false imprisonment, or any other intentional tort[.]” *Id.* § 101.057(2) (West 2011).

The filing of a suit under the TTCA against a governmental unit constitutes an irrevocable election by the claimant and forever bars any suit or recovery by the claimant against any individual employee of the governmental unit regarding the same subject matter. *Id.* § 101.106(a) (West 2011). Section 101.106(e) of the TTCA provides that when a claimant files suit “under this chapter,” against both a governmental unit and its employee, the employee shall immediately be dismissed from the suit upon the filing of a motion to dismiss by the governmental unit. *Id.* § 101.106(e). The Texas Supreme Court has explained that the apparent purpose of section 101.106 is to

... force a plaintiff to decide at the outset whether an employee acted independently and is thus solely liable, or acted within the general scope of his or her employment such that the governmental unit is vicariously liable, thereby reducing the resources that the government and its employees must use in defending redundant litigation and alternative theories of recovery. By requiring a plaintiff to make an irrevocable election at the time suit is filed between suing the governmental unit under the Tort Claims Act or proceeding against the employee alone, section 101.106 narrows the issues for trial and reduces delay and duplicative litigation costs.

Mission Consol. Ind. Sch. Dist. v. Garcia, 253 S.W.3d 653, 657 (Tex. 2008).

Analysis

On appeal, Catoe urges that her claims against Slayter consisted of intentional torts, which do not fit within the TTCA’s limited waiver. As a result, she argues, her lawsuit is not brought “under this chapter” and section 101.106(e) did not apply to her claims against Slayter.

Contrary to Catoe’s argument, the Texas Supreme Court has never interpreted “under this chapter” to only include tort claims for which the TTCA waives immunity. *Id.* at 658. Because the TTCA is the only avenue for common-law recovery against the government, all tort theories alleged against a governmental unit, whether it is sued alone or with its employees, are assumed to be “under” the TTCA for purposes of section 101.106. *Id.* at 659.

In this case, Catoe sued Slayter for assault, intentional infliction of emotional distress, and sexual harassment. These are intentional torts that are not within the TTCA’s limited waiver of immunity. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 101.057(2). In the same suit, Catoe included Slayter’s employer, Henderson County, which is a governmental unit. *See id.* § 101.001(3)(B). Her negligent hiring, supervision, and training claims against the County arise

out of Slayter’s intentional conduct and likewise fall within the exclusion for intentional tort claims. See *Tex. Dept. of Crim. Justice v. Campos*, 384 S.W.3d 810, 814-15 (Tex. 2012); see also TEX. CIV. PRAC. & REM. CODE ANN. § 101.106(a). Under *Garcia*, because all tort theories of recovery alleged against a governmental entity, whether sued alone or with its employee, are assumed to be “under” the TTCA, Catoe’s tort claims are not excluded from section 101.106(e)’s application.² See *Garcia*, 253 S.W.3d at 659.

For this reason, when the County filed its motion to dismiss, Slayter was entitled to immediate dismissal of Catoe’s suit against him. See TEX. CIV. PRAC. & REM. CODE ANN. § 101.106(e); see also *Garcia*, 253 S.W.3d at 659; *Tex. Bay Cherry Hill, L.P. v. City of Fort Worth*, 257 S.W.3d 379, 401 (Tex. App.—Fort Worth 2008, no pet.) (holding dismissal of city employee proper because employee was entitled to dismissal of claims against her upon City’s filing motion to dismiss). Therefore, in accordance with *Garcia* and section 101.106(e), dismissal was appropriate, and the trial court did not err when it granted the County’s motion to dismiss Slayter from Catoe’s lawsuit. Accordingly, we overrule Catoe’s sole issue.

DISPOSITION

Having overruled Catoe’s sole issue, we *affirm* the trial court’s judgment.

JAMES T. WORTHEN
Chief Justice

Opinion delivered May 10, 2017.

Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

(PUBLISH)

² In her reply brief, Catoe maintains that her “pleadings against the individual defendant clearly support a Federal Civil Rights Violation Claim under 42 U.S. Code § 1983 – ‘Civil action for deprivation of rights.’” Thus, she argues that, because *Garcia* applies to common law claims and not claims based on other statutory remedies, a civil rights claim was not subject to dismissal. See *Garcia*, 253 S.W.3d at 659-60. However, Catoe’s petition does not plead a cause of action under section 1983. See *Dallas Cty. v. Gonzales*, 183 S.W.3d 94, 110 (Tex. App.—Dallas 2006, pet. denied) (stating “[t]o be entitled to the government’s lack of immunity under section 1983, the plaintiff must plead a cause of action in which the deprivation of a federal right is implicated[]”).



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

MAY10, 2017

NO. 12-16-00259-CV

CHRISTINA CATOE,

Appellant

V.

HENDERSON COUNTY, TEXAS AND ADAM SLAYTER,

Appellee

Appeal from the County Court at Law No. 2
of Henderson County, Texas (Tr.Ct.No. 00155-CCL2-16)

THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the judgment.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the court below **be in all things affirmed**, and that all costs of this appeal are hereby adjudged against the Appellant, **CHRISTINA CATOE**, for which execution may issue, and that this decision be certified to the court below for observance.

James T. Worthen, Chief Justice.

Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.