

Opinion filed May 29, 2020



In The

# Eleventh Court of Appeals

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No. 11-18-00130-CV

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**KORR, LLC, Appellant**

**V.**

**COUNTY OF GAINES, TEXAS, Appellee**

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**On Appeal from the 106th District Court  
Gaines County, Texas  
Trial Court Cause No. 18-01-17763**

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## **MEMORANDUM OPINION**

This is an appeal from the trial court's order granting a plea to the jurisdiction in a declaratory judgment suit that was filed by KORR, LLC against the County of Gaines, Texas. In two issues on appeal, KORR contends that the trial court erred by granting the County's jurisdictional plea and by failing to grant the declaratory relief requested by KORR. Because we agree with the trial court's

determination that it lacked subject-matter jurisdiction in this cause, we affirm the trial court’s order.

### *Background Facts*

KORR filed a petition against the County under the Uniform Declaratory Judgments Act (UDJA).<sup>1</sup> KORR sought to have the trial court declare a portion of a Gaines County regulation to be “[w]ithout constitutional or statutory authority, and therefore . . . void.” The regulation at issue, which was adopted in 2016, relates to subdivision plat approvals. As relevant here, the regulation provides that, prior to approval of a subdivision, the Gaines County Commissioners’ Court may require a subdivider or developer to execute a bond “to ensure proper provision of electrical infrastructure to the individual tracts” of the subdivision. KORR alleged in its petition that the regulation usurped the powers of the Public Utility Commission and that the Commissioners’ Court had no authority to enact the regulation. KORR also alleged in its petition that it was an interested party because it held an interest in real property located in Gaines County, specifically “a subdivision known as ‘Southern Skies.’”

The County filed a plea to the jurisdiction challenging the trial court’s subject-matter jurisdiction. The County asserted three bases for its plea: (1) KORR’s suit did not involve a justiciable claim because KORR lacked standing, because KORR’s claims were not ripe, and because KORR’s claims were moot; (2) KORR failed to serve the Texas Attorney General as required by Section 37.006 of the UDJA; and (3) the County was immune from suit pursuant to its governmental immunity. The County attached evidence to its plea, including affidavits of Gaines County officials and the Southern Skies subdivision plat, which was approved by the Commissioners’ Court in 2014—well before the

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<sup>1</sup>See TEX. CIV. PRAC. & REM. CODE ANN. ch. 37 (West 2020).

regulation was enacted. The evidence presented by the County showed that KORR was not named as an owner or holder of an interest in the Southern Skies subdivision or in any other real property located in Gaines County and that the Gaines County Commissioners' Court had not addressed any matter related to the Southern Skies subdivision or to any contiguous land since the subdivision's plat had been approved and filed.

KORR filed a response to the County's plea. In its response, KORR relied upon the subdivision plat attached to the County's plea, which KORR had also attached to its petition, and upon evidence related to a company by the name of KORR Building Co., LLC. KORR asserted that it had assumed ownership of KORR Building's assets when KORR Building forfeited its entity status in 2017. KORR further asserted that it was relying upon the subdivision plat "as proof of KORR Building Co., LLC's connection to County of Gaines." However, neither KORR nor KORR Building appeared on the Southern Skies subdivision plat that was attached to KORR's petition and to the County's plea to the jurisdiction.

The trial court held a hearing on the plea to the jurisdiction. At the hearing, KORR's counsel spoke about hypothetical situations and indicated that KORR had additional acreage and that KORR, in the future, wished "to apply for additional lots in the same property." The trial court found that there was no justiciable controversy between the parties, granted the County's plea to the jurisdiction, and dismissed KORR's suit without prejudice.

#### *Analysis*

In its first issue, KORR contends that the trial court erred when it granted the County's plea to the jurisdiction. Although the County asserted three separate bases for its contention that the trial court lacked subject-matter jurisdiction, we need address only one of those bases in this opinion: the lack of a justiciable

controversy between the parties, under which the County challenged both standing and ripeness.

“A plea to the jurisdiction is a dilatory plea, the purpose of which is to defeat a cause of action without regard to whether the claims asserted have merit.” *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000). A plea to the jurisdiction may be used to raise the issue of subject-matter jurisdiction. *Id.*; see also *Tex. Dep’t of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 225–26 (Tex. 2004). Because subject-matter jurisdiction is a question of law, we review it de novo. *Miranda*, 133 S.W.3d at 226.

A party may challenge “the pleadings, the existence of jurisdictional facts, or both” in a plea to the jurisdiction. *Alamo Heights Indep. Sch. Dist. v. Clark*, 544 S.W.3d 755, 770 (Tex. 2018). Here, the County challenged the existence of jurisdictional facts. When a party challenges the existence of jurisdictional facts, courts consider the relevant evidence submitted by the parties. *Id.*; *Miranda*, 133 S.W.3d at 227. If a defendant presents evidence showing that the trial court lacks jurisdiction, the plaintiff must come forward with evidence showing that there is a disputed issue of material fact regarding the jurisdictional issue. *Clark*, 544 S.W.3d at 771; *Miranda*, 133 S.W.3d at 228. In determining whether a material fact issue exists, courts must take as true all evidence favorable to the plaintiff, indulging every reasonable inference and resolving any doubts in the plaintiff’s favor. *Clark*, 544 S.W.3d at 771. If a fact issue exists, the trial court should deny the plea. *Mission Consol. Indep. Sch. Dist. v. Garcia*, 372 S.W.3d 629, 635 (Tex. 2012). But, if the jurisdictional evidence negates the existence of a jurisdictional fact as a matter of law, the trial court may grant the plea to the jurisdiction without allowing the plaintiff to amend its pleadings. *City of Waco v. Lopez*, 259 S.W.3d 147, 150 (Tex. 2008).

Subject-matter jurisdiction is essential to the authority of a court to decide a case. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 443 (Tex. 1993). In order for a court to have subject-matter jurisdiction, the plaintiff must have standing to sue and the plaintiff's claim must be ripe. *Sw. Elec. Power Co. v. Lynch*, 595 S.W.3d 678, 683 (Tex. 2020). The doctrines of both standing and ripeness stem from the prohibition of advisory opinions, which in turn is rooted in the separation-of-powers doctrine. *Patterson v. Planned Parenthood of Houston & Se. Tex., Inc.*, 971 S.W.2d 439, 442 (Tex. 1998).

A party's standing to sue is implicit in the concept of subject-matter jurisdiction and will not be presumed—it must be proved. *Linegar v. DLA Piper LLP (US)*, 495 S.W.3d 276, 279 (Tex. 2016). In Texas, standing requires that the plaintiff have suffered a concrete and distinct injury and that there be a real controversy between the parties that will actually be resolved by the judicial relief sought. *Linegar*, 495 S.W.3d at 279 (citing *Heckman v. Williamson Cty.*, 369 S.W.3d 137, 154–55 (Tex. 2012)). The plaintiff must show that the plaintiff—rather than a third party or the public generally—was *personally* injured. *Heckman*, 369 S.W.3d at 155.

Like standing, ripeness “emphasizes the need for a concrete injury for a justiciable claim to be presented.” *Lynch*, 595 S.W.3d at 683 (quoting *Patterson*, 971 S.W.2d at 442). If the plaintiff's claimed injury is based on “hypothetical facts, or upon events that have not yet come to pass,” then the case is not ripe, and the court lacks subject-matter jurisdiction. *Id.* (quoting *Waco Indep. Sch. Dist. v. Gibson*, 22 S.W.3d 849, 852 (Tex. 2000)). Standing focuses on the issue of who may bring an action, and ripeness focuses on when that action may be brought. *Gibson*, 22 S.W.3d at 851.

We note that KORR asserts that the UDJA “is remedial” and permits courts to render opinions in cases without a ripe injury. We disagree. A plaintiff bringing

suit under the UDJA must still properly invoke the trial court's subject-matter jurisdiction. *Lynch*, 595 S.W.3d at 683 (citing *Tex. Ass'n of Bus.*, 852 S.W.2d at 444). The UDJA does not permit courts to render advisory opinions, *Tex. Ass'n of Bus.*, 852 S.W.2d at 444, and it does not authorize a court to decide a case in which the issues are hypothetical or contingent—the dispute must still involve an actual controversy. *Lynch*, 595 S.W.3d at 684.

We conclude that the evidence presented below established that KORR lacked standing and that KORR's claims were not ripe. The County's jurisdictional evidence showed that KORR was not an owner or holder of an interest in any real property located in Gaines County, that the Southern Skies subdivision plat did not mention KORR or KORR Building, that the Southern Skies subdivision plat had been approved prior to the adoption of the complained-of regulation, and that the Gaines County Commissioners' Court had not addressed any matter related to the Southern Skies subdivision or any land contiguous to the subdivision since the subdivision's plat had been approved and filed.

KORR did not present any evidence that controverted the relevant evidence presented by the County. KORR provided no evidence that it owned property in Gaines County or that it had an interest in the Southern Skies subdivision. KORR also failed to present any evidence that it had been affected by the complained-of regulation or that it had filed or attempted to file a subdivision plat after Gaines County adopted the complained-of regulation. KORR's lack of standing and lack of a ripe claim were highlighted at the hearing on the plea to the jurisdiction by several exchanges between KORR's counsel and the trial court. At the hearing, the trial court asked KORR's counsel directly whether KORR owned property in Gaines County. KORR's counsel replied with one word: "Hypothetically." Additionally, KORR's counsel resorted to hypothetical scenarios to explain how KORR was injured by the challenged regulation, and he indicated that the

challenged regulation might affect KORR in the future because KORR wanted to “apply for additional lots in the same property.”

Any decision by the trial court on the merits of this case would have been a prohibited advisory opinion. KORR failed to meet its burden to affirmatively demonstrate that it had standing to bring this declaratory judgment action. *See Miranda*, 133 S.W.3d at 226. Furthermore, even if (as asserted by KORR) KORR, via KORR Building, owned property in Gaines County, KORR’s claims were nonetheless not ripe for review as they were based on hypothetical facts and events that have not yet come to pass. *See Lynch*, 595 S.W.3d at 683–84. We hold that the trial court lacked subject-matter jurisdiction and, thus, did not err when it granted the County’s plea to the jurisdiction. Accordingly, we overrule KORR’s first issue.

Because KORR’s first issue is dispositive of this appeal, we do not reach the merits of KORR’s second issue. *See TEX. R. APP. P. 47.1.*

*This Court’s Ruling*

We affirm the order of the trial court.

JOHN M. BAILEY  
CHIEF JUSTICE

May 29, 2020

Panel consists of: Bailey, C.J.,  
Stretcher, J., and Wright, S.C.J.<sup>2</sup>

Willson, J., not participating.

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<sup>2</sup>Jim R. Wright, Senior Chief Justice (Retired), Court of Appeals, 11th District of Texas at Eastland, sitting by assignment.