Affirmed and Opinion filed March 16, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-99-00408-CV

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In the Matter of L.P.

On Appeal from the 268th District Court
Fort Bend County, Texas
Trial Court Cause No. 102,948

O P I N I O N

The City of Stafford appeals the trial court's denial of its plea to the jurisdiction. Appellant filed an interlocutory appeal pursuant to section 51.014(8) of the Texas Civil Practices and Remedies Code claiming two points of error. In point of error one, appellant asserts that the trial court erred in denying Stafford's plea to the court's jurisdiction because respondent's claim for declaratory relief is moot. In point of error two, appellant asserts that the trial court erred in denying Stafford's plea to the court's jurisdiction to entertain respondent's claim for unspecified injunctive relief. For the reasons stated below, we affirm the judgment of the trial court.

FACTUAL BACKGROUND

L.P. was a student at Stafford Middle School during the 1996-97 school year. On February 21, 1997, officers of the Stafford Police Department accused L.P. of vandalizing motor vehicles on school grounds. L.P. alleges he was apprehended by school police officers who proceeded to threaten him with physical force and failed to notify him of his rights. L.P. argues that this interrogation denied him his rights against self incrimination, his right to representation, and his rights under § 1983 of the United States Code. During the interrogation, L.P. confessed to the officers.

After obtaining his confession, the officers escorted L.P. to the office of Principal David R. Pirtle. Pirtle also questioned L.P. and obtained another confession. Neither the officers nor the principal notified L.P.'s family. The officers then searched and handcuffed L.P. and arrested him for felony criminal mischief. As the officers drove away with L.P., the school's assistant principal telephoned L.P.'s sister and told her about the incident. L.P.'s mother, Yolanda, learned of the arrest when she returned home later that evening.

As a result of being charged with the felony, the school district temporarily placed L.P. in an alternative education program on a different school campus. All criminal charges against L.P. were eventually dropped. L.P. now claims that he was deprived of his liberty to be free from restraint, denied his entitlement to a public education, and stigmatized in the eyes of his fellow pupils, teachers, and community.

PROCEDURAL BACKGROUND

In his petition, L.P. sought monetary damages, a declaratory judgment, equitable relief, and attorney's fees. On March 3, 1998 L.P. removed this case to federal court. In federal court, Stafford moved for judgment on the pleadings. The federal district court granted Stafford's motion in part by dismissing all of L.P.'s § 1983 claims against Stafford with prejudice. The federal court then remanded the state law claims back to state court without comment on the merits. On February 23, 1999 Stafford filed a motion for summary judgment and a plea to the jurisdiction in the state district court. The district court granted Stafford's motion for summary judgment on all of L.P.'s claims against Stafford for monetary

damages. However, the court denied Stafford's motion of summary judgment on L.P.'s claims for declaratory and injunctive relief. The court also denied Stafford's plea to the jurisdiction.

STANDARD OF REVIEW

A plea to the jurisdiction is the vehicle by which a party contests the trial court's authority to determine the subject matter of the cause of action. *State v. Benavides*, 772 S.W.2d 271, 273 (Tex. App.–Corpus Christi 1989, writ denied). It is a dilatory plea whose purpose is to defeat the cause of action without defeating the merits of the case. *See Cox v. Klug*, 855 S.W.2d 276, 279 (Tex. App.–Amarillo 1993, no writ). The plaintiff bears the burden of alleging facts that affirmatively show the trial court has subject matter jurisdiction. *Texas Ass'n of Business v. Texas Air Control Bd.*, 852 S.W.2d 440, 446 (Tex. 1993). The trial court looks solely to the allegations in the pleadings in reaching its decision, and we accept the allegations in the pleadings as true and construe them in favor of the pleader in conducting our review. *Texas Ass'n of Business*, 852 S.W.2d at 446; *Texas Parks & Wildlife Dept. v. Garrett Place, Inc.*, 972 S.W.2d 140, 143 (Tex. App.–Dallas 1998, no pet). Because the question of subject matter jurisdiction is a legal question, we review the trial court's ruling on a plea to the jurisdiction under a de novo standard of review. *See Mayhew v. Town of Sunnyvale*, 964 S.W.2d 922, 928 (Tex. 1998).

POINT OF ERROR ONE

By point one, the State contends that the trial court erred in denying Stafford's plea to the court's jurisdiction. The State argues that the court lacks jurisdiction to provide declaratory relief because respondent's action is moot.

Under classic mootness doctrine, a justiciable controversy is definite and concrete and must impact the legal relations of parties having adverse legal interests. *See Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240-41(1937); *Reyna v. City of Weslaco*, 944 S.W.2d 657, 662 (Tex. App.–Corpus Christi 1997, no writ). Therefore, a controversy between the parties must exist at every stage of the legal proceedings, including the appeal. *See United States v. Munsingwear, Inc.*, 340 U.S. 36, 39 (1950).

Cases may become moot when allegedly wrongful behavior has passed and could not be expected to recur. *See Securities & Exch. Comm'n v. Medical Comm. for Human Rights*, 404 U.S. 403, 406 (1972); *Reyna*, 944 S.W.2d at 662.

Appellant brings a claim for declaratory and injunctive relief. In Texas, declaratory relief is controlled by the Uniform Declaratory Judgments Act. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 37.001 et seq. (Vernon 1997), and injunctive relief is governed by general principles of equity. *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 65.001, 65.011 (Vernon 1997). The Uniform Declaratory Judgments Act provides that "a court of record within its jurisdiction has power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." TEX. CIV. PRAC. & REM. CODE ANN. § 37.003(a) (Vernon 1997). The Act does not confer jurisdiction on the trial court, but rather, makes available the remedy of a declaratory judgment for a cause of action already within the court's jurisdiction. *See State v. Morales*, 869 S.W.2d 941, 947 (Tex. 1994); *Kennesaw Life & Acc. Ins. Co. v. Goss*, 694 S.W.2d 115, 118 (Tex. App.–Houston [14th Dist.] 1985, writ ref'd n.r.e.). Therefore, a declaratory judgment is appropriate only if a justiciable controversy exists as to the rights and status of the parties and the controversy will be resolved by the declaration sought. *See Bonham State Bank v. Beadle*, 907 S.W.2d 465, 467 (Tex. 1995). The trial court may not grant declaratory relief unless the judgment will determine the controversy between the parties; otherwise, the court's judgment will constitute no more than an impermissible advisory opinion. *See Southwest Airlines Co. v. Texas High-Speed Rail Auth.*, 863 S.W.2d 123, 125 (Tex. App.–Austin 1993, writ denied).

L.P. claims that Stafford denied him certain constitutional rights and inflicted several intentional torts against him. As a result of the arrest, various agencies of the City of Stafford maintain documents concerning L.P. which cast a shadow on his academic and juvenile records. Stafford argues that this case is moot because the allegedly wrongful behavior has passed and could not be expected to recur. However, the courts in Texas recognize two exceptions to the mootness doctrine: (1) the "capable of repetition exception" and (2) the "collateral consequences exception." *General Land Office v. OXY U.S.A., Inc.*, 789 S.W.2d 569, 571 (Tex. 1990). The 'collateral consequences' exception has been applied when Texas courts have recognized that prejudicial events have occurred whose effects continued to stigmatize

individuals long after the unconstitutional judgment had ceased to operate. *See Spring Branch Indep. Sch. Dist. v. Reynolds*, 764 S.W.2d 16, 19 (Tex. App.–Houston [1st Dist.] 1988, no writ). Such effects are not absolved by mere dismissal of the cause as moot. *See id*.

L.P. requests that the trial court declare that he was wrongfully arrested and that the City of Stafford be enjoined from maintaining any formal or informal record reflecting that disciplinary action was ever taken against him. Despite the fact that legal charges against L.P. have been dropped, the question of whether the city's actions caused future injury to L.P. has not been resolved. L.P. may well suffer 'collateral consequences' unless the trial court resolves by final judgment whether his constitutional rights were violated. *See Fiswick v. United States*, 329 U.S. 211, 222 (1946); *Sullivan v. Houston Indep. Sch. Dist.*, 307 F. Supp. 1328, 1338 (S.D. Tex. 1969). Such consequences may manifest themselves in an increased difficulty in obtaining admission to a college or university based on the school's or the City's records. The disciplinary records kept by the school amounts to a blot on L.P.'s scholastic record that will affect him for years to come. L.P.'s arrest record may also hinder his scholastic advancement as well as his ability to gain employment. A declaratory judgment deciding the propriety of appellant's actions would determine whether L.P. deserves an injunctive remedy. *See Harkins v. Crews*, 907 S.W.2d 51, 56 (Tex. App.–San Antonio 1995, writ denied) (Texas courts have powers to render declaratory judgment when judgment would end a controversy or serve a useful purpose).

Having found that L.P.'s claim is not moot, we overrule appellant's point of error one.

POINT OF ERROR TWO

By point two, the State claims that the district court erred in denying Stafford's plea to the court's jurisdiction to entertain L.P.'s claim for unspecified injunctive relief. Appellant asserts that respondent filed nebulous pleadings which do not provide a basis for injunctive relief. We disagree.

Respondent's pleadings request "equitable relief for injuries Plaintiffs have suffered and Constitutional violations." The prayer further requests "any and all relief, either in law or in equity to which Plaintiff may be justly entitled to." Because respondent does not specify in his petition what sort of

equitable relief is sought, appellant contends that the pleadings do not confer jurisdiction on the district court to direct an injunction against Stafford. Stafford cites several cases holding that as a prerequisite to the granting of an injunction, the pleadings and prayer must state the particular form of injunction sought, and a court is without jurisdiction to grant relief beyond that particularly specified. *See American Precision Vibrator Co. v. National Air Vibrator Co.*, 764 S.W.2d 274, 279 (Tex. App.–Houston [1st Dist.] 1988, no writ); *Fairfield v. Stonehenge Association Company*, 678 S.W.2d 608, 611 (Tex. App.–Houston [14th Dist.] 1984, no writ); *Fletcher v. King*, 75 S.W.2d 980, 982 (Tex. Civ. App. –Amarillo 1934, writ ref'd). However, these cases only concern the question of whether an injunction granted by a court exceeded the relief sought by the parties. This analysis is not useful in the present case because the trial court has not yet issued an injunction, and, therefore, there can be no determination of whether the trial court exceeded its jurisdiction.

Appellate courts presume jurisdiction is proper unless the lack of jurisdiction appears affirmatively on the face of the petition. *See Taliancich v. Betancourt*, 807 S.W.2d 891, 892 (Tex. App.–Corpus Christi 1991, no writ). Nothing on the face of the pleadings before us indicates that the district court lacks jurisdiction to hear the matter. Imprecisely pleaded elements of recovery are no impediment to jurisdiction, so long as they do not affirmatively demonstrate a lack of jurisdiction. *See Harris v. Victoria Indep. Sch. Dist.*, 972 S.W.2d 815, 818 (Tex. App.–Corpus Christi 1991, pet. denied).

If Stafford believes that L.P. does not have a claim for injunctive relief, it should file special exceptions with the trial court. While an incurable defect should be challenged by a plea to the jurisdiction, a pleading defect that can be cured by amendment should be challenged by a special exception so that the plaintiff has an opportunity to amend. *See Washington v. Fort Bend Indep. Sch. Dist.*, 892 S.W.2d 156, 159 (Tex. App.–Houston [14th Dist.] 1994, writ denied). If and when those special exceptions are heard and granted, and if and when the plaintiff does not adequately amend, then the suit can be properly dismissed. *See Bagg v. University of Texas Med. Branch*, 726 S.W.2d 582, 587 (Tex. App.–Houston [14th Dist.] 1987, writ ref'd n.r.e.). As it now stands, respondent's pleadings ask the district court to grant equitable and declaratory relief. Such general relief is within the jurisdiction of that court. *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 37.003, 65.001, 65.011 (Vernon 1997). In his

appellate brief, respondent enumerates examples of potential claims for injunctive relief. Stafford, in turn, counters that the proposed relief would still not confer jurisdiction upon the trial court. However, such hypothetical additions to respondent's petition are not before this court's review until such time as respondent amends his pleadings. Until then, any ruling from this court concerning the validity of the potential claims would only be an impermissible advisory opinion. *See Texas Ass'n of Business*, 852 S.W.2d at 444.

Appellant urges this court to rule that special exceptions are not necessary in instances where the defendant files a plea to the jurisdiction. Since a plea to the jurisdiction is a dilatory plea, appellant points out that any dismissal would be without prejudice and would not bar respondent from filing a new lawsuit that cures the defect by alleging necessary jurisdictional facts. We do not adopt appellant's reasoning. Such a procedure would subvert the purpose of special exceptions and impede judicial economy by requiring a party to re-file a case when the matter could more efficiently be resolved by amending the pleadings. *See Liberty Mutual Ins. Co. v. Sharp*, 874 S.W.2d 736, 739 (Tex. App.–Austin 1994, writ denied); *Cameron v. University of Houston*, 598 S.W.2d 344, 345 (Tex. App.–Houston [14th Dist.] 1980, writ ref'd n.r.e.) (The purpose of special exceptions is to inform the opposing party of defects in its pleadings so that the party may cure the defect by amendment).

We find that nothing on the face of respondent's petition deprives the trial court of the jurisdiction to grant injunctive relief. Accordingly, we overrule appellant's second point of error and *affirm* the judgment of the trial court.

/s Maurice Amidei
Justice

Judgment rendered and Opinion filed March 16, 2000.

Panel consists of Justices Amidei, Edelman, and Wittig.

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