



Escalera Ranch Owners' Ass'n v. Schroeder

Court of Appeals of Texas, Seventh District, Amarillo

August 17, 2020, Decided

No. 07-19-00210-CV

Reporter

610 S.W.3d 521 *; 2020 Tex. App. LEXIS 6566 **

ESCALERA RANCH OWNERS' ASSOCIATION, INC.,
APPELLANT v. JOSH SCHROEDER, IN HIS OFFICIAL
CAPACITY AS CHAIR OF THE CITY OF
GEORGETOWN PLANNING AND ZONING
COMMISSION, ALONG WITH THE FOLLOWING
MEMBERS OF THE PLANNING AND ZONING
COMMISSION ALSO IN THEIR OFFICIAL
CAPACITIES: TIM BARGAINER, JOHN MARLER,
ERCEL BRASHEAR, KAYLA MCCORD, GARY
NEWMAN, AND BEN STEWART, APPELLEES

Subsequent History: Rehearing denied by,
Reconsideration denied by, En banc [Escalera Ranch
Owners' Ass'n v. Schroeder, 2020 Tex. App. LEXIS
7584 \(Tex. App. Amarillo, Sept. 16, 2020\)](#)

Petition for review granted by [Schroeder v. Escalera
Ranch Owners' Ass'n, 2022 Tex. LEXIS 113 \(Tex., Jan.
28, 2022\)](#)

Reversed by, Dismissed by [Schroeder v. Escalera
Ranch Owners' Ass'n, 646 S.W.3d 329, 2022 Tex.
LEXIS 488 \(Tex., June 3, 2022\)](#)

Prior History: On Appeal from the 26th District Court¹,
Williamson County, Texas² [**1]. Trial Court No. 18-
0945-C26, Honorable Ryan D. Larson, Presiding.

Core Terms

plat, ranch, ministerial, mandamus relief, trial court,

¹ The order appealed from shows the trial court as the 26th District Court. The record reflects that the case was transferred from the docket of the 26th District Court to the docket of the 395th District Court on December 11, 2018.

² Originally appealed to the Third Court of Appeals, this case was transferred to this Court by the Supreme Court of Texas pursuant to its docket equalization efforts. [TEX. GOV'T CODE ANN. § 73.001](#) (West 2013).

ministerial duty, subject matter jurisdiction,
neighborhood, conform, clear abuse of discretion,
exercise of discretion, applicable regulation, parkway,
street

Case Summary

Overview

HOLDINGS: [1]-The homeowners' association had standing to pursue its claims against the city's zoning commission because its members had credible concerns that the development of the new subdivision would create a material increase in traffic on the road at issue, the one neighborhood roadway that would serve as the sole inlet for both subdivisions, and added congestion of the road created a potential risk to the safety and welfare of residents. Therefore, the association's members had an interest peculiar and distinguishable from the public generally; [2]-Because the commission's evidence failed to show that it performed a purely ministerial act in approving the plat, it did not provide conclusive evidence of a lack of jurisdiction, and the trial court erred by granting the commission's plea to the jurisdiction.

Outcome

Order reversed and case remanded.

LexisNexis® Headnotes

Civil Procedure > Preliminary
Considerations > Jurisdiction > Subject Matter
Jurisdiction

HN1 Jurisdiction, Subject Matter Jurisdiction

A plea to the jurisdiction is a dilatory plea that

challenges a trial court's authority to decide the subject matter of a specific cause of action. Subject matter jurisdiction is necessary for a trial court to decide a case, and standing is a component of subject matter jurisdiction.

Civil Procedure > Appeals > Standards of Review > De Novo Review

HN2 Standards of Review, De Novo Review

An appellate court reviews a trial court's ruling on a plea to the jurisdiction under a de novo standard. In doing so, the appellate court exercises its own discretion and redetermine each legal issue, without giving deference to the lower court's decision. The appellate court takes the facts pleaded in the petition as true and determines whether the trial court has subject matter jurisdiction over the claims.

Constitutional Law > ... > Case or Controversy > Standing > Third Party Standing

HN3 Standing, Third Party Standing

In general, standing requires a real controversy between the parties that will be determined by the judicial relief sought. Unless standing is conferred by statute, the common-law rule in Texas is that a person seeking to enjoin the actions of a governmental body must plead and prove that he has suffered special injury, i.e. he must allege and show how he has been damaged or injured other than as a member of the general public. When an association sues on behalf of its members, the association must show that (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

Civil Procedure > Preliminary Considerations > Equity > Adequate Remedy at Law

Civil Procedure > ... > Writs > Common Law Writs > Mandamus

HN4 Equity, Adequate Remedy at Law

Texas law generally authorizes mandamus relief to compel a public official or body to either perform a ministerial duty or to correct a clear abuse of discretion. To demonstrate entitlement to mandamus relief, a party must establish that (1) a public official or body failed to perform a ministerial duty or committed a clear abuse of discretion; and (2) there is no adequate remedy at law. The district court generally has exclusive original jurisdiction over mandamus proceedings except when the Constitution or a statute confers original jurisdiction on another tribunal.

Business & Corporate Compliance > Real Property > Zoning > Administrative Procedure
Real Property Law > Zoning > Administrative Procedure

Real Property Law > Subdivisions > Local Regulations

Real Property Law > Subdivisions > State Regulations

Business & Corporate Compliance > Real Property > Zoning > Ordinances
Real Property Law > Zoning > Ordinances

HN5 Zoning, Administrative Procedures

The the City of Georgetown's Planning and Zoning Commission's ministerial, non-discretionary duty extends only to the approval of a conforming plat. If a plat does not so conform, the law creates no ministerial duty for the Commission to approve it.

Torts > Public Entity
Liability > Immunities > Qualified Immunity

HN6 Immunities, Qualified Immunity

The distinction between ministerial and judicial and other official acts seems to be that where the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment, the act is ministerial; but where the act to be done involves the exercise of discretion or judgment in determining whether the duty exists, it is not to be deemed merely ministerial.

Business & Corporate Compliance > Real Property > Zoning > Administrative Procedure
Real Property Law > Zoning > Administrative Procedure

Civil Procedure > ... > Writs > Common Law Writs > Mandamus

Governments > Local
Governments > Administrative Boards

Business & Corporate Compliance > Real Property > Zoning > Ordinances
Real Property Law > Zoning > Ordinances

HN7 Zoning, Administrative Procedures

If the City of Georgetown's Planning and Zoning Commission approved a plat that failed to comply with applicable regulations, it could constitute an abuse of discretion, subject to mandamus relief.

Judges: Before PIRTLE and PARKER and DOSS, JJ.

Opinion by: Judy C. Parker

Opinion

[*524] Appellant, Escalera Ranch Owners' Association, Inc., appeals from the trial court's order granting the plea to the jurisdiction filed by appellees. We reverse the order of the court.

Background

In April of 2018, the City of Georgetown's Planning and Zoning Commission approved a plat for Patience Ranch, a new, 89-home subdivision. Patience Ranch is to be located within the City's extraterritorial jurisdiction, adjacent to and north of an existing residential subdivision known as Escalera Ranch. The sole means of access to Patience Ranch is via Escalera Parkway, a residential local street³ that provides access to and through the Escalera Ranch neighborhood.

The Escalera Ranch Owners' Association, an association of homeowners in the Escalera Ranch subdivision, opposed approval of the plat. Seeking a

reversal of the Commission's decision, the association filed suit against the members of the Commission in their official capacities.⁴ The Owners' Association sought mandamus relief to correct what it alleged was a [**2] clear abuse of discretion by the Commission. It also requested a temporary injunction to halt the development.

The Commission filed a plea to the jurisdiction based on two grounds: (1) the Owners' Association lacks standing and (2) the Commission's action was ministerial, leaving the trial court powerless to compel it to withdraw approval of the plat. After the trial court granted the Commission's plea to the jurisdiction, the Owners' Association filed this appeal.

Plea to the Jurisdiction

HN1 A plea to the jurisdiction is a dilatory plea that challenges a trial court's authority to decide the subject matter of a specific cause of action. [*Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 554 \(Tex. 2000\)](#). Subject matter jurisdiction is necessary for a trial court to decide a case, and standing is a component of subject matter jurisdiction. [*Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 443-45 \(Tex. 1993\)](#).

HN2 We review a trial court's ruling on a plea to the jurisdiction under a de novo standard. [*Tex. DOT & Edinburg v. A.P.I. Pipe & Supply, LLC*, 397 S.W.3d 162, 166 \(Tex. 2012\)](#); [*Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 \(Tex. 2004\)](#). In doing so, we exercise our own discretion and redetermine each legal issue, without giving deference to the lower court's decision. See [*Quick v. City of Austin*, 7 S.W.3d 109, 116 \(Tex. 1999\)](#). We take the facts pleaded in the petition as true and determine whether the trial court has subject matter jurisdiction over the claims. [*Bexar Metro. Water Dist. v. City of Bulverde*, 156 S.W.3d 79, 85-86 \(Tex. App.—Austin 2004, pet. denied\)](#).

The trial court did not specify on what basis it [**3] granted the plea, so we will review each asserted ground in turn. See, e.g., [*In re Estate of King*, No. 04-15-00271-CV, 2016 Tex. App. LEXIS 7043, at *3 \[**525\] \(Tex. App.—San Antonio July 6, 2016, no pet.\)](#) (mem. op.) (when a trial court does not state the basis for granting a plea to the jurisdiction, the appealing party

³According to the City's Unified Development Code, a residential local street is expected to serve up to 80 dwelling units and carry less than 800 vehicles per day.

⁴The association's factual allegations concern action taken by the Commission; therefore, we do not differentiate between the appellees in our discussion but rather refer to them collectively as the Commission.

must negate on appeal all possible grounds that could form the basis of that ruling).

Analysis

Issue One: Standing

The Commission's first argument in its plea to the jurisdiction was that the Owners' Association lacks standing to pursue its claims. See [Miranda, 133 S.W.3d at 227](#) (a party may challenge another party's standing by filing a plea to the jurisdiction). On appeal, the Owners' Association contends that it meets the associational standing test and its individual members have standing to challenge approval of the plat.

HN3 In general, standing requires a real controversy between the parties that will be determined by the judicial relief sought. [Concerned Cmty. Involved Dev., Inc. v. City of Houston, 209 S.W.3d 666, 670 \(Tex. App.—Houston \[14th Dist.\] 2006, pet. denied\)](#). "Unless standing is conferred by statute, the common-law rule in Texas is that a person seeking to enjoin the actions of a governmental body must plead and prove that he has suffered 'special injury,' i.e. he must allege and show how he has been damaged or injured other than as a member of the general public." [Persons v. City of Fort Worth, 790 S.W.2d 865, 868 \(Tex. App.—Fort Worth 1990, no writ\)](#). When, as in this ****4** case, an association sues on behalf of its members, the association must show that "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." [Tex. Ass'n of Bus., 852 S.W.2d at 447](#) (quoting [Hunt v. Wash. State Apple Advert. Comm'n, 432 U.S. 333, 343, 97 S. Ct. 2434, 53 L. Ed. 2d 383 \(1977\)](#)).

The relief the Owners' Association requests, reversal of the Commission's decision, does not require the participation of its individual members. The interest the Owners' Association seeks to protect, the preservation and enjoyment of property within the neighborhood, is germane to its organizational purpose. The element in dispute is whether members of the Owners' Association would be entitled to sue in their own right. The Commission argues that the Owners' Association cannot meet this test, because no member has suffered an injury in fact, i.e., the "invasion of a legally protected interest that is concrete and particularized, and that is

actual or imminent rather than conjectural or hypothetical" [Save Our Springs Alliance, Inc. v. City of Dripping Springs, 304 S.W.3d 871, 878 \(Tex. App.—Austin 2010, pet. denied\)](#).

It is undisputed that only one road, Escalera Parkway, provides access to and egress from the Escalera Ranch ****5** neighborhood. It is further undisputed that Patience Ranch is only accessible by driving through the Escalera Ranch subdivision to where Patience Ranch connects to two existing street stubs. The Owners' Association asserts that its neighborhood roads do not have the capacity to absorb the traffic that will be generated by the Patience Ranch development. It claims that the "89 new residential homes [will] crowd the already crowded streets leading to Escalera Ranch causing hinderance to the HOA residents' ability to access their own home. Moreover, . . . the use of the only, already crowded, street will invite further travel hazards for emergency vehicles to get to ****526** the HOA residents and create difficulties for emergency vehicles to access the residents' homes." Further, the Owners' Association claims that the City's Code of Ordinances requires developments to have two separate and approved fire apparatus access roads, and that only one such road, Escalera Parkway, is available. The association reasons that this lack of access presents a fire danger to residents in both Escalera Ranch and Patience Ranch.

Taking the allegations in the Owners' Association's pleadings as true, we conclude ****6** that it has alleged a particularized injury and demonstrated that its members would have standing to sue on their own. Members' concern about increased traffic is not, as the Commission alleges, "a consequence no different than that any other property owner will face when additional housing is added to a city." Members have credible concerns that the development of Patience Ranch will create a material increase in traffic on Escalera Parkway, the one neighborhood roadway that will serve as the sole inlet for both subdivisions. This particular street was designed to support a limited number of dwellings, and the increase in traffic would exceed the amount contemplated by the original development plan of Escalera Ranch. Moreover, added congestion to Escalera Parkway creates a potential risk to the safety and welfare of neighborhood residents because the roadway serves as the only emergency vehicle access to the neighborhood. Thus, the development presents a risk of harm that is distinct to residents of Escalera Ranch. See, e.g., [City of Laredo v. Rio Grande H2O Guardian, No. 04-10-00872-CV, 2011 Tex. App. LEXIS](#)

[5729, at *12-13 \(Tex. App.—San Antonio July 27, 2011, no pet.\)](#) (mem. op.) (associational standing met when members owned property near rezoned [****7**] areas and would be adversely affected by disturbances likely to result from rezoning); [Lake Medina Conserv. Soc'y v. Tex. Nat. Res. Conserv. Comm'n, 980 S.W.2d 511, 516 \(Tex. App.—Austin 1998, pet. denied\)](#) (first prong of *Hunt* test satisfied where lakeside property owners and businesses would suffer injury due to administrative action that would cause lake levels to drop); [Tex. Rivers Prot. Ass'n v. Tex. Nat. Res. Conserv. Comm'n, 910 S.W.2d 147, 151-52 \(Tex. App.—Austin 1995, writ denied\)](#) (standing found where plaintiffs owned property fronting the river affected by proposed water diversion plan). Therefore, the Owners' Association's members have an interest peculiar and distinguishable from the public generally, giving them standing to complain about approval of the plat.

Because the Owners' Association meets the standard for standing, we conclude that lack of standing was not a proper basis for granting the Commission's plea to the jurisdiction.

Issue Two: Availability of Mandamus Relief

In the second argument in its plea to the jurisdiction, the Commission argued that its approval of the plat was a ministerial act, and mandamus will not lie to compel the reversal of a ministerial act. Consequently, the Commission indicated, the Owners' Association sought relief that was not within the power of the trial court to grant. We therefore must consider whether the court had subject matter jurisdiction over the association's [****8**] request for mandamus relief.

HN4 "Texas law generally authorizes mandamus relief to compel a public official or body to either perform a ministerial duty or to correct a clear abuse of discretion." [Bd. of Trs. of the Houston Firefighters' Relief & Ret. Fund v. City of Houston, 466 S.W.3d 182, 187 \(Tex. App.—Houston \[1st Dist.\] 2015, pet. denied\)](#) (citing [****527**] [Walker v. Packer, 827 S.W.2d 833, 840 \(Tex. 1992\)](#) (orig. proceeding)). To demonstrate entitlement to mandamus relief, a party must establish that (1) a public official or body failed to perform a ministerial duty or committed a clear abuse of discretion; and (2) there is no adequate remedy at law. *Id.* (citing [Republican Party v. Dietz, 940 S.W.2d 86, 88 \(Tex. 1997\)](#) (orig. proceeding)). The district court generally has exclusive original jurisdiction over mandamus proceedings except when the Constitution or a statute confers original

jurisdiction on another tribunal. [In re Nolo Press/Folk Law, Inc., 991 S.W.2d 768, 775 \(Tex. 1999\)](#) (orig. proceeding).

In its mandamus petition, the association argues that the Commission abused its discretion by approving a plat that does not meet the requirements of the City's fire code. The Owners' Association thus sufficiently pleaded a claim within the trial court's subject matter jurisdiction. The Commission then had the burden to adduce evidence establishing that the trial court lacked jurisdiction as a matter of law. [Miranda, 133 S.W.3d at 225-26, 228.](#)

To show that the trial court lacked jurisdiction, the Commission asserted that it had carried out [****9**] a ministerial duty, not a discretionary one. Relying on [section 212.005 of the Texas Local Government Code](#), the Commission maintained that it had merely performed its ministerial duty to approve the plat as submitted. See [TEX. LOC. GOV'T CODE ANN. § 212.005](#) (West 2016) (providing that a "municipal authority responsible for approving plats must approve a plat or replat . . . that satisfies all applicable regulations."). As evidence in support of its plea, the Commission attached a Georgetown Planning Department staff report regarding the Patience Ranch subdivision. The Commission relies on the one-sentence "Staff Analysis" section of the report, which states, "The proposed Preliminary Plat meets all of the requirements of the Unified Development Code for a 95-lot (89 single-family lots and six (6) landscape lots) residential subdivision." The Commission concluded that, because its act was ministerial, it could not have committed an abuse of discretion subject to mandamus relief.

We observe that the duty the Commission identifies is a conditional one: it is a duty to approve a subdivision plat *if* it conforms to applicable regulations. See *id.* **HN5** The Commission's ministerial, non-discretionary duty extends only to the approval of a conforming plat. If a plat does not so conform, [****10**] the law creates no ministerial duty for the Commission to approve it. In this case, the Owners' Association has not alleged that the Commission failed to perform a ministerial duty by failing to approve a conforming plat under [section 212.005](#). It has alleged that the Commission abused its discretion by approving a plat that it had no duty to approve because it violated applicable regulations.

HN6 The distinction between ministerial and judicial and other official acts seems to be that where the

law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment, the act is ministerial; but where the act to be done involves the exercise of discretion or judgment in determining whether the duty exists, it is not to be deemed merely ministerial.

Judy C. Parker

Justice

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[*State Bar of Tex. v. Heard*, 603 S.W.2d 829, 832 \(Tex. 1980\)](#) (quoting [*Comm'r of the Gen. Land Office v. Smith*, 5 Tex. 471, 479 \(1849\)](#)). In this case, the act to be done, i.e., approval of the plat, involved the exercise of discretion or judgment in determining whether the duty exists, i.e., whether the plat conformed to requirements. See also [*Town of Flower Mound v. Stafford Estates Ltd. P'ship*, 71 S.W.3d 18, 35 \[*528\] \(Tex. App.—Fort Worth 2002\)](#), aff'd [*135 S.W.3d 620 \(Tex. 2004\)*](#) (determination of whether a plat complies with city plan, applicable ordinances, and state statutes requires interpretation and construction of these regulations). **[**11]** [HN7](#) We agree with the Owners' Association in that, if the Commission approved a plat that failed to comply with applicable regulations, it could constitute an abuse of discretion, subject to mandamus relief. See [*Walker*, 827 S.W.2d at 840](#) (erroneously analyzing and applying the law can constitute a clear abuse of discretion).

To prevail on its plea to the jurisdiction, the Commission had to conclusively establish that it performed a purely ministerial act. The evidence presented by the Commission consists of a single, conclusory statement, unsupported by any specific facts. The evidence does not establish that the Commission's decision to approve the plat did not involve the exercise of discretion. Because the evidence presented by the Commission fails to show that the Commission performed a purely ministerial act, it does not provide conclusive evidence of a lack of jurisdiction. See [*Miranda*, 133 S.W.3d at 228](#).

Accordingly, reviewing the trial court's ruling de novo and construing the pleadings liberally in favor of the Owners' Association, we conclude that the unavailability of mandamus relief was not a proper basis for granting the Commission's plea to the jurisdiction.

Conclusion

For the reasons set forth above, we reverse the district **[**12]** court's order granting the Commission's plea to the jurisdiction and remand the case for further proceedings consistent with this opinion.