Affirm and Opinion Filed June 3, 2020

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-18-00213-CV

MICHAEL DWAIN WILLIAMS, Appellant
V.
LUPE VALDEZ, SHERIFF, Appellee

On Appeal from the 160th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-17-09709

MEMORANDUM OPINION

Before Justices Molberg, Reichek, and Evans
Opinion by Justice Molberg

Michael Dwain Williams, an inmate in the Texas Department of Criminal Justice (TDCJ) system, sued former Dallas County Sheriff Lupe Valdez for false imprisonment due to her alleged actions in his transfer from the Dallas County jail to TDCJ, which occurred after he pleaded guilty and was sentenced to 8 years' confinement in TDCJ's Institutional Division. In response, Valdez moved to dismiss the lawsuit under section 101.106(f) of the Texas Tort Claims Act, and the trial court granted the motion. *See* TEX. CIV. PRAC. & REM. CODE § 101.106(f). In three issues, Williams appeals the trial court's order of dismissal. Finding no error, we affirm.

BACKGROUND

Williams was an inmate in the Dallas County jail from October 1, 2014 to August 20, 2015, when he was transferred to TDCJ. He sued Valdez in August 2017, alleging that while he was in the Dallas County jail, Valdez submitted certain paperwork to TDCJ later than she should have and that this delay prevented TDCJ from discharging his sentence in July 2015. Thus, Williams asserts that because of Valdez's delay, his TDCJ sentence was not discharged when it should have been, and he claims he has been unlawfully confined at TDCJ since August 20, 2015. Williams has sued Valdez in her official capacity and seeks declaratory relief and damages between $200,000 and $1,000,000.

Valdez answered, generally denying Williams's claims. She raised various affirmative defenses and moved to dismiss his claims under section 101.106(f) of the Tort Claims Act. *See* TEX. CIV. PRAC. & REM. CODE § 101.106(f). In her motion, Valdez argued that because Williams's suit concerned acts taken in her official capacity, the suit should be dismissed unless he amended his petition within thirty days to dismiss her and to name Dallas County as the defendant. *See id.*

After Valdez's motion, Williams filed both an amended and a supplemental petition, but he did not dismiss Valdez or name Dallas County as a defendant.

The trial court heard Valdez's motion on January 29, 2018. Williams attended by phone and appeared pro se. Valdez appeared through counsel, who attended in person. In his argument in opposition to Valdez's motion, Williams acknowledged

that he was suing Valdez in her official capacity but argued section 101.106(f) did not apply, both because he had brought an *ultra vires* claim against her and because he could not bring his claim against Dallas County under the Tort Claims Act because the county's immunity had not been waived.

The trial court took the issue under advisement, then granted Valdez's motion, dismissed Williams's claims, and taxed costs against Williams.

Following entry of the court's order of dismissal, Williams requested findings of fact and conclusions of law, later notified the court they were past due, and filed a motion for new trial. The trial court did not issue any findings or conclusions and did not rule on his motion for new trial, which was denied by operation of law.

Williams appealed and makes three main arguments in this appeal. First, he argues the clerk failed to timely file his supplemental pleading before the hearing and that this denied him due process and court access. Second, he argues section 101.106(f) does not apply because his lawsuit involves an *ultra vires* claim against Valdez and because he could not have sued Dallas County when its immunity has not been waived. Third, he complains that the court failed to issue findings of fact and conclusions of law after he requested them and notified the court they were past due.

ANALYSIS

As an issue of statutory construction, we consider de novo the central dispute before us—whether the trial court properly dismissed Williams's lawsuit under

section 101.106(f) of the Tort Claims Act. *See Garza v. Harrison*, 574 S.W.3d 389, 400 & n.43 (Tex. 2019) (citing *Marino v. Lenoir*, 526 S.W.3d 403, 405 & n.5 (Tex. 2017); *Molinet v. Kimbrell*, 356 S.W.3d 407, 411 (Tex. 2011)); TEX. CIV. PRAC. & REM. CODE § 101.106(f).

1. Clerk's Delay in Filing Williams's Supplemental Pleading

In his first issue, Williams asserts that the clerk's failure to file his supplemental pleading until after the court ruled on Valdez's motion denied him due process and court access, on the theory that the court only considered the pleadings that were on file at the time of the hearing and that the court therefore failed to consider the *ultra vires* claim he alleges he raised in his supplemental petition.

This argument lacks merit. Even though his supplemental pleading was not yet filed, Williams and Valdez both argued *ultra vires* issues at the hearing. As Williams noted, the amended petition already on file had the same core allegation as the one made in his supplemental pleading—specifically, that Valdez's acts regarding his paperwork were illegal and outside the scope of her authority. Williams presented his *ultra vires* argument at the hearing, and even if we assume he preserved his complaint for appeal, Williams has failed to show any reversible error regarding the delay in filing. *See* TEX. R. APP. P. 33.1(a), 44.1(a).

2. Order Dismissing Claims Under Section 101.106(f)

In his second issue, Williams argues the trial court erred in dismissing his claims under section 101.106(f) of the Tort Claims Act, which states:

> If a suit is filed against an employee of a governmental unit based on conduct within the general scope of that employee's employment and if it could have been brought under this chapter against the governmental unit, the suit is considered to be against the employee in the employee's official capacity only. On the employee's motion, the suit against the employee shall be dismissed unless the plaintiff files amended pleadings dismissing the employee and naming the governmental unit as defendant on or before the 30th day after the date the motion is filed.

TEX. CIV. PRAC. & REM. CODE § 101.106(f).

In *Garza v. Harrison*, the Texas Supreme Court stated:

> The election-of-remedies provision in section 101.106(f) of the Texas Tort Claims Act requires courts to grant a motion to dismiss a lawsuit against a governmental employee sued in an "official capacity" but allows the governmental unit to be substituted for the employee. By adopting section 101.106(f), the Legislature has effectively mandated that only a governmental unit can be sued for a governmental employee's work-related tortious conduct.

Garza, 547 S.W.3d at 393–94 (internal footnotes and citations omitted).

Here, it is undisputed that Williams has sued Valdez in her official capacity and that his complaint involves her alleged tortious conduct involving her work-related responsibilities. Still, Williams argues that section 101.106(f) does not apply because he brought an *ultra vires* claim against her and because he could not have brought his claim against Dallas County when its government immunity for intentional torts has not been waived. We consider both arguments below.

a. *Ultra Vires* Claim

Williams argues section 101.106(f) does not apply because he has asserted an *ultra vires* claim against Valdez. He cites *Franka v. Velasquez*, 332 S.W.3d 367

(Tex. 2011) and *City of El Paso v. Heinrich*, 284 S.W.3d 366 (Tex. 2009) as support.[1] While we agree *ultra vires* claims are not subject to section 101.106(f) dismissal,[2] we reject Williams's premise, because despite his description of his claim, he has not asserted an *ultra vires* claim and instead has asserted an intentional tort claim for which he seeks monetary damages from Valdez.

An *ultra vires* claim requires proof that the government officer acted without legal authority or failed to perform a purely ministerial act, and such claims entitle a successful claimant to prospective injunctive relief only, not retrospective monetary relief for alleged harm that results. *See Chambers-Liberty Ctys. Navigation Dist. v. State*, 575 S.W.3d 339, 345 (Tex. 2019) (*ultra vires* claims generally bar retrospective monetary relief and allow only prospective injunctive relief) (citing *Heinrich*, 284 S.W.3d at 374–77).

Here, Williams seeks damages from Valdez between $200,000 and $1,000,000 and a declaration from the court stating he has been falsely imprisoned, that his state constitutional rights have been violated, and that his TDCJ transfer was illegal. This relief is not available under an *ultra vires* claim. *See Chambers-Liberty*,

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[1] *Heinrich* did not involve section 101.106(f) of the Tort Claims Act but involved the *ultra vires* exception to sovereign immunity. *See Heinrich*, 284 S.W.3d at 372 (stating, in a discussion regarding sovereign immunity, "To fall within this *ultra vires* exception, a suit must not complain of a government officer's exercise of discretion, but rather must allege, and ultimately prove, that the officer acted without legal authority or failed to perform a purely ministerial act."). Because *Heinrich* did not analyze section 101.106(f) of the Tort Claims Act, we do not discuss it further here.

[2] "A suit against a governmental employee in an official capacity is effectively a suit against the employing governmental unit, except in those cases alleging the employee has acted *ultra vires*." *Garza*, 547 S.W.3d at 399 (citing *Franka*, 332 S.W.3d at 382).

575 S.W.3d at 345. Further, because Valdez is now only a former government official (i.e. she no longer has an "official capacity" in which she serves Dallas County), even if we were to conclude that Williams had asserted an *ultra vires* claim, the prospective injunctive relief that would potentially be available in such a claim would not be possible against Valdez. *See, e.g. Brantley v. Texas Youth Comm'n*, 365 S.W.3d 89, 97 n.9 (Tex. App.—Austin 2011, no pet.) (noting that certain defendants were no longer serving in any official capacity and stating that prospective injunctive relief would be available only from the government agency's current executive director) (citing *Heinrich*, 284 S.W.3d at 372–73).

Because Williams has not brought an *ultra vires* claim against Valdez, the *ultra vires* exception to dismissal under section 101.106(f) did not apply.

b. Williams's Ability to Sue Dallas County Under the Act

Section 101.106(f) of the Tort Claims Act applies, in part, if the claim asserted against the government employee "could have been brought *under this chapter* against the governmental unit." TEX. CIV. PRAC. & REM. CODE § 101.106(f) (emphasis added). Williams argues dismissal under section 101.106(f) was improper because he could not have brought his false imprisonment claim against Dallas County under the Tort Claims Act when the county's immunity has not been waived. However, in *Franka*, the Texas Supreme Court considered and rejected a similar argument, holding that "for section 101.106(f), suit 'could have been

brought' under the Act against the government *regardless of whether the Act waives immunity from suit*." 332 S.W.3d at 385 (emphasis added).

We overrule Williams's second issue.

3. Failure to Issue Findings of Fact and Conclusions of Law

Finally, while Williams only presents two points of error, Williams also complains that the trial court failed to issue findings of fact and conclusions of law despite his request for them and his notice to the court that they were past due.

Rule 296 of the Texas Rules of Civil Procedure allows parties to obtain findings of fact and conclusions of law only in cases tried without a jury. *See* TEX. R. CIV. P. 296 ("In any case tried in the district or county court without a jury, any party may request the court to state in writing its findings of fact and conclusions of law."). For purposes of Rule 296, a case is "tried" when a court holds an evidentiary hearing or conducts a bench trial on the merits. *See General Elec. Capital Corp. v. ICO, Inc.*, 230 S.W.3d 702, 711 (Tex. App.—Houston 14th Dist. 2007, pet. denied) ("case is 'tried' when a court holds an evidentiary hearing"); *Lusk v. Service Lloyds Ins. Co.*, 922 S.W.2d 647, 648 (Tex. App.—Austin 1996, pet. denied) (per curiam) ("trial envisioned by Rule 296 is an evidentiary hearing to the court or a bench trial on the merits"); *Besing v. Moffitt*, 882 S.W.2d 79, 81 (Tex. App.—Amarillo 1994, no writ) (case is tried when there is an evidentiary hearing on conflicting evidence); *see also Belohlavy v. Belohlavy*, No. 05-98-02096-CV, 2001 WL 804507, at *2 (Tex. App.—Dallas July 18, 2001, no writ) (mem. op.) (stating "case is 'tried' when a

court holds an evidentiary hearing" and noting trial court's findings and conclusions were not properly before the court on appeal when there was no indication they were based on any evidence the trial court might have considered).

Here, because the trial court did not conduct an evidentiary hearing, the court was not required to issue findings of fact or conclusions of law after the hearing. *See Awde v. Dabeit*, 938 S.W.2d 31, 33 (Tex. 1997) ("findings and conclusions as to the court's jurisdiction would not serve any purpose in the court of appeals" when dismissal was based on pleadings and arguments of counsel and not on sworn testimony); *Belohlavy*, 2001 WL 804507, at *2 ("A trial court cannot make findings of fact without hearing evidence and findings so made are without effect.") (citing *Timmons v. Luce*, 840 S.W.2d 582, 586 (Tex. App.—Tyler 1992, no writ); *Healy v. Wick Bldg. Sys., Inc.*, 560 S.W.2d 713, 721 (Tex. App.—Dallas 1977, writ ref'd n.r.e.)).

CONCLUSION

We overrule Williams's issues, conclude the trial court properly dismissed Williams's claims under section 101.106(f) of the Tort Claims Act, and affirm the trial court's order.

/Ken Molberg/
KEN MOLBERG
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

MICHAEL DWAIN WILLIAMS,
Appellant

No. 05-18-00213-CV V.

LUPE VALDEZ, SHERIFF,
Appellee

On Appeal from the 160th Judicial District Court, Dallas County, Texas
Trial Court Cause No. DC-17-09709.
Opinion delivered by Justice Molberg. Justices Reichek and Evans participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellee LUPE VALDEZ, SHERIFF recover her costs of this appeal from appellant MICHAEL DWAIN WILLIAMS.

Judgment entered this 3rd day of June, 2020.