AFFIRMED and Opinion Filed July 27, 2020

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-19-01233-CV

DAVID E. SHAW, Appellant
V.
CITY OF DALLAS, Appellee

On Appeal from the 14th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-19-08164

MEMORANDUM OPINION

Before Justices Myers, Partida-Kipness, and Reichek
Opinion by Justice Reichek

David E. Shaw appeals the trial court's dismissal of his claims against the City of Dallas arising out of his transportation by ambulance to Baylor Hospital. Appellant, representing himself pro se, brings two issues contending the evidence is factually insufficient to support the judgment and the trial court erred in "not addressing critical evidence." We affirm.

Background

Appellant filed this suit against the City alleging that, on March 15, 2019, City employees transported him to Baylor Hospital by ambulance. The only facts

appellant alleged were the names of the employees and "transport potholes." As his cause of action, appellant asserted "Transport, Ambulance, Injury Stomach/Surgery." The petition recited several provisions of the Texas Tort Claims Act ("TTCA") and stated appellant was seeking $300,000 for stomach surgery and pain and suffering. The City filed special exceptions contending appellant's petition failed to set forth sufficient facts to establish a waiver of immunity under the TTCA.

On July 1, appellant filed a first amended petition setting forth the alleged facts supporting his claims. Appellant stated he had been experiencing severe pain in the area of his stomach and called an ambulance. He asserted the paramedics did not show proper regard for his pain and discomfort. He further alleged that, on the drive to the hospital, they "did not use siren, and stop at every light, and hit every pothole." Once at the hospital, appellant received surgery including a small bowel resection and hernia repair.

Attached to appellant's amended petition was a copy of medical examination notes from a VA hospital dated May 15, 2019. In a section of the notes entitled "Assessment/Plan," it stated appellant had "small bowel segmental resection and omentum and hernia resection." It further stated appellant had a history of abdominal pain of "8/10 prior to the surgery with a bowel obstruction thus the bumpy ride at that time would possibly add more pain to his abdomen area." Appellant was instructed to follow up with his surgeon for an "appropriate eval[uation]" if he continued to have pain.

The City again filed special exceptions to appellant's amended petition asserting he had failed to plead facts showing the City had waived its immunity under the TTCA. The City argued the petition failed to allege how the governmental employees caused appellant's alleged damages because it was apparent appellant's condition was pre-existing and the resulting damages he suffered were not caused by the conduct of the paramedics. The next day, appellant filed a second amended petition in which he simply recited the provisions of the TTCA concerning waiver of immunity and limitations on damages. None of the facts alleged in the previous petition were included in the second amended petition.

On July 24, the trial court conducted a hearing on the City's special exceptions at which appellant appeared. At the hearing, the court explained to appellant that amended petitions replace the previous petition and he needed to put the facts he was relying on in the live pleading. The court further explained the facts pleaded needed to demonstrate a waiver of immunity under the TTCA. Appellant was given until August 14 to file a new pleading.

Two days later, appellant filed a third amended petition. In this petition, appellant listed his injury as "small bowel resection and two hernia repair, procedure laparotomy." Appellant further stated "the incident that led to the injury" was "being transported to the hospital." The petition again recited the provisions of the TTCA. The pleading went on to state that appellant had a "preexisting injury or condition" that was "made worse by the incident." No other facts were alleged.

The City filed a motion to strike appellant's pleadings and dismiss the suit contending appellant had not, and could not, "plead sufficient facts to establish that the City's drivers negligently operated the ambulance, and that said negligence caused or aggravated his injury." At the hearing on the motion, the trial court instructed appellant again that he was required to set forth sufficient facts to show a waiver of immunity including specifically identifying the alleged acts by the governmental employees that caused his injury. The court then ordered appellant's pleadings struck and granted appellant one final chance to replead.

On September 27, 2019, appellant filed a "Replead Third Amended Original Petition" that was largely identical to the previous petition. One week later, appellant filed a supplement to his petition attaching the medical examination notes from the VA hospital he had previously attached to his first amended petition and a copy of a "Notice of Claim Against the City of Dallas" signed by him on April 9. The Notice of Claim set forth the same facts appellant alleged in his first amended petition.

The City filed a second motion to dismiss arguing, again, that appellant had not pleaded facts showing a waiver of immunity under the TTCA. The trial court granted the City's motion and dismissed appellant's suit. Appellant brought this appeal.

Analysis

In two issues, appellant contends the evidence is factually insufficient to support the judgment and the trial court erred in "not addressing critical evidence." We liberally construe pro se pleadings and briefs. *Washington v. Bank of N.Y.*, 362 S.W.3d 853, 854 (Tex. App.—Dallas 2012, no pet.). We hold pro se litigants to the same standards as licensed attorneys, however, and require them to comply with applicable laws and rules of procedure. *Mansfield State Bank v. Cohn*, 573 S.W.2d 181, 184–85 (Tex. 1978); *Washington*, 362 S.W.3d at 854. To do otherwise would give a pro se litigant an unfair advantage over a litigant who is represented by counsel. *Shull v. United Parcel Serv.*, 4 S.W.3d 46, 53 (Tex. App.—San Antonio 1999, pet. denied).

We construe appellant's issues as challenging the trial court's dismissal of his claims based on the insufficiency of his pleadings. "In a suit against a governmental unit, the plaintiff must affirmatively demonstrate the court's jurisdiction by alleging a valid waiver of immunity." *Dallas Area Rapid Transit v. Whitley*, 104 S.W.3d 540, 542 (Tex. 2003). To determine if the plaintiff has met that burden, we consider the facts alleged by the plaintiff and, to the extent it is relevant to the jurisdictional issue, the evidence submitted by the parties. *Id.* To allege a valid waiver of immunity, appellant was required to plead sufficient factual allegations to show, among other things, the City employees' alleged negligence proximately caused his injuries. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 101.102; *Texas Tech Univ.*

Health Sciences Ctr.-El Paso v. Bustillos, 556 S.W.3d 394, 402 (Tex. App.—El Paso 2018, no pet.); *City of Dallas v. Hughes*, 344 S.W.3d 549, 553 (Tex. App.—Dallas 2011, no pet.). Mere reference to the TTCA is insufficient to waive immunity or confer jurisdiction. *Bustillos*, 556 S.W.3d at 402.

Appellant's sole argument that the trial court erred in dismissing his claims is "the doctor statement . . . should show the Texas Tort Claims Act should apply to my claim and was overlooked." The statement, which was submitted as a supplement to appellant's petition, appears to have been written by a nurse practitioner at the VA hospital and was based on an examination of appellant two months after the incident in question. The nurse recited appellant's history of surgery for hernias and a bowel obstruction and stated that appellant was suffering abdominal pain of "8/10" before the surgery. This statement is consistent with appellant's Notice of Claim in which he said he called for an ambulance because he was experiencing severe pain in his stomach area. The nurse noted that, because appellant was suffering severe pain with the bowel obstruction, "the bumpy ride at that time would possibly add more pain to his abdomen area." Nothing in the nurse's assessment, however, indicated that the "bumpy ride" could have caused or exacerbated appellant's medical condition. Accordingly, appellant failed to plead facts showing that the actions of the City's employees proximately caused his alleged injuries.

Appellant was given multiple opportunities to replead his claims to allege facts falling within the TTCA's waiver of immunity. He failed to do so. Accordingly, the trial court properly dismissed appellant's claims with prejudice. *See Harris Cty. v. Sykes*, 136 S.W.3d 635, 639 (Tex. 2004). We resolve appellant's two issues against him.

We affirm the trial court's judgment.

/Amanda L. Reichek/
AMANDA L. REICHEK
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

DAVID E. SHAW, Appellant	On Appeal from the 14th Judicial District Court, Dallas County, Texas
No. 05-19-01233-CV V.	Trial Court Cause No. DC-19-08164.
CITY OF DALLAS, Appellee	Opinion delivered by Justice Reichek. Justices Myers and Partida-Kipness participating.

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

It is **ORDERED** that each party bear its own costs of this appeal.

Judgment entered July 27, 2020