

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

Texas Alcoholic Beverage Commission v. Earl Pearson

No. 03-25-00902-CV · No. 03-25-00902-CV · Decided March 4, 2026

SUMMARY

The Texas Court of Appeals, Third District, affirmed the denial of the Texas Alcoholic Beverage Commission’s plea to the jurisdiction and motion for summary judgment in Earl Pearson’s race-discrimination lawsuit. The court held that statements attributed to TABC employees in Pearson’s affidavit were largely admissible as opposing-party statements and that one statement constituted direct evidence creating a genuine issue of material fact regarding discriminatory intent. The court affirmed the trial court’s order.

CASE DETAILS

COURT	Texas Court of Appeals, Third District, at Austin
WRITING FOR THE COURT	Karin Crump; Chief Justice Byrne; Justice Crump; Justice Ellis
JURISDICTION	Texas Court of Appeals, Third District, Austin
DECIDED	March 4, 2026
DOCKET	03-25-00902-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Interlocutory appeal from the trial court's denial of the Texas Alcoholic Beverage Commission's plea to the jurisdiction and motion for summary judgment in an employment-discrimination action.
STANDARD OF REVIEW	The denial of a plea to the jurisdiction and motion for summary judgment is reviewed de novo. Evidentiary rulings are reviewed for abuse of discretion. When a plea to the jurisdiction challenges jurisdictional facts with supporting evidence, the review mirrors traditional summary judgment review, requiring the plaintiff to raise at least a genuine issue of material fact to avoid dismissal.
PRECEDENTIAL VALUE	Published intermediate appellate opinion
PARTIES	Texas Alcoholic Beverage Commission v. Earl Pearson

TOPICS

- racial discrimination
- summary judgment
- hearsay
- administrative law
- appellate procedure

PRACTICE AREAS

employment law

civil rights

administrative law

civil procedure

evidence

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by admitting statements in Pearson's affidavit over TABC's hearsay objection.
2. Whether the statements attributed to TABC employees were supported by personal knowledge.
3. Whether TABC preserved its argument that Pearson's affidavit was a sham affidavit.
4. Whether Pearson's evidence raised a genuine issue of material fact that race was a motivating factor in TABC's decision to terminate him, thereby supporting TCHRA jurisdiction and defeating summary judgment.

HOLDINGS

1. The statements attributed to TABC Executive Chief Robert Saenz and Human Resources Director Don Rupp were not hearsay because they qualified as opposing-party statements made by TABC employees concerning matters within the scope of their employment while the employment relationship existed.
2. The trial court did not abuse its discretion by overruling TABC's personal-knowledge objection because an employee's position may establish personal knowledge of matters learned in the usual course of employment, and Saenz and Rupp were presumed to have personal knowledge of the employment matters about which they spoke.
3. TABC failed to preserve its sham-affidavit objection because it raised that alleged defect for the first time on appeal and did not obtain a ruling from the trial court.
4. Pearson's evidence, particularly Saenz's statement that TABC had "fired the wrong black guy," constituted direct evidence of discriminatory animus and raised a genuine issue of material fact as to whether race was a motivating factor in TABC's termination decision.

KEY QUOTATIONS

"We conclude that the trial court did not abuse its discretion in determining that each of these requirements was met." (8)

"constitutes direct evidence of discrimination." (11)

"we conclude that Pearson established a genuine issue of material fact as to the ultimate jurisdictional issue in this case: whether race was a motivating factor in TABC's decision to terminate him." (13)

"Accordingly, the trial court did not err in denying TABC's plea to the jurisdiction and motion for summary judgment." (13)

FACTUAL BACKGROUND

Pearson, an African-American employee who had worked for TABC since 2009 and had become Chief of Enforcement, was notified on July 5, 2017, that his employment was being terminated. TABC told him the

agency was moving in a new direction and that he was not part of it; a white male later replaced him. Pearson's affidavit recounted statements by TABC Executive Chief Robert Saenz that TABC had made a mistake and had "fired the wrong black guy," as well as statements by Human Resources Director Don Rupp that Pearson's performance had nothing to do with the termination.

PROCEDURAL HISTORY

Earl Pearson sued TABC under Chapter 21 of the Texas Labor Code, alleging that TABC terminated him because of his race. TABC filed a plea to the jurisdiction and motion for summary judgment, arguing that governmental immunity had not been waived because Pearson failed to establish a prima facie discrimination claim or raise a fact issue regarding pretext. The trial court overruled TABC's evidentiary objections to Pearson's affidavit and denied the plea and motion. TABC brought an interlocutory appeal.

DISPOSITION

affirmed

CASES CITED

- *Prairie View A & M Univ. v. Chatha*, 381 S.W.3d 500, 503 (Tex. 2012)
- *Beebe v. City of San Antonio ex rel. CPS Energy*, 673 S.W.3d 691, 697 (Tex. App.—San Antonio 2023, pet. denied)
- *Okoye v. University of Tex. Houston Health Sci. Ctr.*, 245 F.3d 507, 512-13 (5th Cir. 2001)
- *Harris County v. Sykes*, 136 S.W.3d 635, 638 (Tex. 2004)
- *Texas Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 225-28 (Tex. 2004)
- *Mission Consol. Indep. Sch. Dist. v. Garcia*, 372 S.W.3d 629, 634-37 (Tex. 2012)
- *City of Houston v. Gomez*, 716 S.W.3d 161, 164 (Tex. 2025)
- *University of Tex. M.D. Anderson Cancer Ctr. v. McKenzie*, 578 S.W.3d 506, 512 (Tex. 2019)
- *Alamo Heights Independent School District v. Catherine Clark, Alamo Heights Indep. Sch. Dist. v. Clark*, 544 S.W.3d 755, 771, 782 (Tex. 2018)
- *Quantum Chem. Corp. v. Toennies*, 47 S.W.3d 473, 480 (Tex. 2001)
- *Sandstad v. CB Richard Ellis, Inc.*, 309 F.3d 893, 897 (5th Cir. 2002)
- *City of Brownsville v. Alvarado*, 897 S.W.2d 750, 753 (Tex. 1995)
- *In re Commitment of Lott*, No. 03-23-00783-CV, 2024 WL 3187663, at *1 (Tex. App.—Austin June 27, 2024, pet. denied) (mem. op.)
- *Volkswagen of Am., Inc. v. Ramirez*, 159 S.W.3d 897, 908 n.5 (Tex. 2004)
- *Texas Health & Hum. Servs. Comm'n v. Kadia*, 704 S.W.3d 84, 104-05 (Tex. App.—Austin 2024, no pet.)
- *Brownlee v. Brownlee*, 665 S.W.2d 111, 112 (Tex. 1984)
- *Marty's Food & Wine, Inc. v. Starbucks Corp.*, No. 05-01-00008-CV, 2002 WL 31410923, at *3 (Tex. App.—Dallas Oct. 28, 2002, no pet.) (op. on reh'g) (not designated for publication)
- *Rizkallah v. Conner*, 952 S.W.2d 580, 587 (Tex. App.—Houston [1st Dist.] 1997, no writ)

- Autozone, Inc. v. Reyes, 272 S.W.3d 588, 593-94 (Tex. 2008)
- Haffan Props., LLC v. Vista Agency, LLC, No. 14-21-00708-CV, 2023 WL 3640997, at *3 (Tex. App.—Houston [14th Dist.] May 25, 2023, no pet.) (mem. op.)
- Broadnax v. Kroger Tex., L.P., No. 05-04-01306-CV, 2005 WL 2031783, at *5 (Tex. App.—Dallas Aug. 24, 2005, no pet.) (mem. op.)

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