

SUPREME COURT OF TEXAS

Texas A & M University System v. Koseoglu

233 S.W.3d 835 (Tex. 2007) · No. No. 05-0321 · Decided September 7, 2007

SUMMARY

The Supreme Court of Texas held that a plaintiff whose jurisdictional pleading defect cannot be cured is not entitled to amend before dismissal. The court also held that Texas Civil Practice and Remedies Code section 51.014(a)(8) permits an interlocutory appeal from the denial of a plea to the jurisdiction based on sovereign immunity filed by a state official sued in an official capacity. The court dismissed the claims against Texas A&M University System and Dr. McLellan.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                              |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Texas                                                                                                                                                                                                                                                                                                                                       |
| WRITING FOR THE COURT | Justice Green                                                                                                                                                                                                                                                                                                                                                |
| JURISDICTION          | Texas                                                                                                                                                                                                                                                                                                                                                        |
| DECIDED               | September 7, 2007                                                                                                                                                                                                                                                                                                                                            |
| DOCKET                | No. 05-0321                                                                                                                                                                                                                                                                                                                                                  |
| DISPOSITION           | reversed                                                                                                                                                                                                                                                                                                                                                     |
| PROCEDURAL POSTURE    | The defendants appealed the trial court's denial of their pleas to the jurisdiction based on sovereign immunity. The court of appeals held that Texas A&M's immunity barred the breach-of-contract claim but remanded to allow amendment, and dismissed McLellan's interlocutory appeal for lack of jurisdiction. The Supreme Court of Texas granted review. |
| STANDARD OF REVIEW    | Questions of statutory construction and appellate jurisdiction are reviewed de novo.                                                                                                                                                                                                                                                                         |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                                                                                                                                                                                               |
| PARTIES               | Texas A & M University System, Texas Engineering Experiment Station, Dr. Mark McLellan v. Dr. Sefa Koseoglu                                                                                                                                                                                                                                                  |

TOPICS

- subject matter jurisdiction
- interlocutory appeal
- appellate jurisdiction
- statutory interpretation
- breach of contract

## PRACTICE AREAS

civil procedure

government liability

sovereign immunity

contracts

civil rights

## QUESTIONS PRESENTED

1. Whether a plaintiff whose pleadings are jurisdictionally defective is entitled to amend after a plea to the jurisdiction when the defect cannot be cured.
2. Whether Texas A&M's sovereign immunity barred Koseoglu's breach-of-contract claim.
3. Whether Texas Civil Practice and Remedies Code section 51.014(a)(8) authorizes an interlocutory appeal by a state official sued in his official capacity from the denial of a plea to the jurisdiction based on sovereign immunity.

## HOLDINGS

1. A plaintiff is entitled to a reasonable opportunity to amend pleadings in response to a plea to the jurisdiction only if the jurisdictional defect can be cured. When the defect is incurable, remand for amendment is improper.
2. Texas A&M's sovereign immunity barred Koseoglu's breach-of-contract claim because he had not obtained legislative consent to sue, and accepting benefits under an alleged contract did not waive immunity.
3. Texas Civil Practice and Remedies Code section 51.014(a)(8) authorizes a state official sued in his official capacity to appeal interlocutorily from the denial of a plea to the jurisdiction asserting sovereign immunity.

## KEY QUOTATIONS

*“But Koseoglu's pleading defects cannot be cured, and he has made no suggestion as to how to cure the jurisdictional defect.”* (at 840)

*“Thus, we conclude McLellan's appeal fits squarely into those appeals permitted by Section 51.014(a)(8).”* (at 845)

## FACTUAL BACKGROUND

Koseoglu was a contract employee at the Texas Engineering Experiment Station, a division of the Texas A&M University System. After his supervisor denied permission to continue outside employment, Koseoglu negotiated proposed terms for remaining employed and receiving other benefits, and an attorney in the university system's general counsel's office signed an acknowledgment marked “AGREED.” A final agreement was never signed, and Koseoglu sued Texas A&M and his supervisor for breach of the alleged December 19 agreement.

## PROCEDURAL HISTORY

Koseoglu sued Texas A&M and McLellan for breach of an alleged employment-related agreement. The trial court denied both defendants' pleas to the jurisdiction. The court of appeals reversed as to Texas A&M but remanded for an opportunity to amend, and held it lacked jurisdiction over McLellan's interlocutory appeal. The

Supreme Court affirmed the determination that Texas A&M was immune, reversed the remand order, dismissed the claim against Texas A&M with prejudice, and held that the court of appeals had jurisdiction over McLellan's appeal before rendering the judgment that court should have rendered.

## DISPOSITION

reversed

## REMAND INSTRUCTIONS

No remand was ordered. The court reversed the court of appeals' remand order, dismissed Koseoglu's claim against Texas A&M with prejudice, and rendered the judgment the court of appeals should have rendered by dismissing the official-capacity claim against McLellan with prejudice.

## CASES CITED

- Texas A&M University-Kingsville v. Lawson, 87 S.W.3d 518 (Tex. 2002)
- Will v. Michigan Department of State Police, 491 U.S. 58 (1989)
- Texas Natural Resources Conservation Commission v. IT-Davy, 74 S.W.3d 849 (Tex. 2002)
- Harris County v. Sykes, 136 S.W.3d 635 (Tex. 2004)
- Texas Department of Parks and Wildlife v. Miranda, 133 S.W.3d 217 (Tex. 2004)
- County of Cameron v. Brown, 80 S.W.3d 549 (Tex. 2002)
- Texas Department of Transportation v. Ramirez, 74 S.W.3d 864 (Tex. 2002)
- Baylor University v. Sonnichsen, 221 S.W.3d 632 (Tex. 2007)
- General Services Commission v. Little-Tex Insulation Co., 39 S.W.3d 591 (Tex. 2001)
- Catalina Development Co. v. County of El Paso, 121 S.W.3d 704 (Tex. 2003)
- Travis County v. Pelzel & Associates, Inc., 77 S.W.3d 246 (Tex. 2002)
- Federal Sign v. Texas Southern University, 951 S.W.2d 401 (Tex. 1997)
- Texas Department of Transportation v. Jones, 8 S.W.3d 636 (Tex. 1999)
- Stary v. DeBord, 967 S.W.2d 352 (Tex. 1998)
- Bally Total Fitness Corp. v. Jackson, 53 S.W.3d 352 (Tex. 2001)
- Department of Criminal Justice v. Simons, 140 S.W.3d 338 (Tex. 2004)
- Kentucky v. Graham, 473 U.S. 159 (1985)
- Monell v. Department of Social Services of City of New York, 436 U.S. 658 (1978)
- Texas Department of Public Safety v. Petta, 44 S.W.3d 575 (Tex. 2001)
- City of Lancaster v. Chambers, 883 S.W.2d 650 (Tex. 1994)
- Monsanto Co. v. Cornerstones Municipal Utility District, 865 S.W.2d 937 (Tex. 1993)
- Liberty Mutual Insurance Co. v. Garrison Contractors, Inc., 966 S.W.2d 482 (Tex. 1998)

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