

COURT OF APPEALS OF TEXAS, EIGHTH DISTRICT, EL PASO

John Fox v. City of El Paso, Thomas Maguire, William Stern, Mario D'Agostino, Sam Jarvis and John Doe(s)

Fox · No. 08-08-00092-CV · Decided July 22, 2009

SUMMARY

The Eighth District Court of Appeals of Texas affirmed the dismissal of John Fox’s suit against the City of El Paso and related defendants. The court held that Fox waived his appellate issues by failing to provide adequate legal argument and authority challenging the trial court’s subject-matter jurisdiction ruling, and by raising new issues in his reply brief.

CASE DETAILS

COURT	Court of Appeals of Texas, Eighth District, El Paso
WRITING FOR THE COURT	Per curiam; McClure, J.; Guadalupe Rivera, J.; Macias, Judge
JURISDICTION	Texas
DECIDED	July 22, 2009
DOCKET	08-08-00092-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Pro se appeal from an order granting appellees' plea to the jurisdiction and dismissing Fox's suit.
STANDARD OF REVIEW	The appellate court reviewed the granting of the plea to the jurisdiction and required Fox to affirmatively establish subject-matter jurisdiction and attack all independent grounds supporting dismissal.
PRECEDENTIAL VALUE	Published opinion
PARTIES	John Fox v. City of El Paso, Thomas Maguire, William Stern, Mario D'Agostino, Sam Jarvis, John Doe(s)

TOPICS

- appellate procedure
- preservation of error
- subject matter jurisdiction
- civil procedure
- municipal law

PRACTICE AREAS

- appellate procedure
- civil procedure
- municipal law
- torts

QUESTIONS PRESENTED

1. Whether Fox waived his appellate complaints by failing to provide adequate argument, legal authority, and record citations.
2. Whether Fox could raise new issues for the first time in his reply brief.
3. Whether a pro se litigant is entitled to more favorable treatment or exemption from applicable procedural rules.

HOLDINGS

1. An appellant challenging dismissal on a plea to the jurisdiction must affirmatively establish subject-matter jurisdiction and attack every independent ground that fully supports the trial court's ruling; failure to do so requires affirmance.
2. An appellant may not raise an issue in a reply brief that was not included in the original brief; such an issue is not preserved for appellate review.
3. Pro se litigants in Texas are held to the same standards as licensed attorneys and must comply with applicable laws and procedural rules.

KEY QUOTATIONS

“In this instance, as Fox is appealing from the granting of Appellees' plea to the jurisdiction, Fox must allege facts that affirmatively establish subject-matter jurisdiction, and if the case is dismissed on that basis, he must, on appeal, attack all independent grounds that fully support the adverse trial ruling.”

“However, in order to prevent unfair advantage over litigants represented by counsel, pro se litigants in Texas are held to the same standards as licensed attorneys and are required to comply with applicable laws and procedural rules.”

FACTUAL BACKGROUND

Fox alleged that the City of El Paso and its employees committed trespass, illegal search, negligence, and other torts or intentional torts in connection with their use of municipal codes. The appellees asserted sovereign immunity and contended that Fox failed to comply with Texas Local Government Code requirements concerning judicial review of condemnation actions. The trial court granted the appellees' plea to the jurisdiction.

PROCEDURAL HISTORY

Fox filed a suit alleging torts and intentional torts arising from the appellees' use of municipal codes. The appellees filed an amended answer and plea to the jurisdiction asserting sovereign immunity and lack of subject-matter jurisdiction. The County Court at Law No. 6 of El Paso County granted the plea, and the court of appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Wil-Roye Inv. Co. II v. Washington Mut. Bank, F.A., 142 S.W.3d 393, 411 (Tex.App.-El Paso 2004, no pet.)
- Fox v. Maguire, 224 S.W.3d 304, 307 (Tex.App.-El Paso 2005, pet. denied)
- Few v. Few, 271 S.W.3d 341, 347 (Tex.App.--El Paso 2008, pet. denied)
- Gray v. Woodville Health Care Center, 225 S.W.3d 613, 620 (Tex.App.--El Paso 2006, pet. denied)
- Wheeler v. Green, 157 S.W.3d 439, 444 (Tex. 2005)
- Fox v. Wardy, 234 S.W.3d 30, 33 (Tex.App.-El Paso 2007, rev. dismiss'd w.o.j.)

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