

**Affirmed and Memorandum Opinion filed February 24, 2011.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-10-00243-CV**

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**GROCERS SUPPLY COMPANY, INC. A/K/A  
SOUTHWEST REDEVELOPMENT, Appellant**

**V.**

**HARRIS COUNTY APPRAISAL DISTRICT, Appellee**

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**On Appeal from the 129th District Court  
Harris County, Texas  
Trial Court Cause No. 2008-57213**

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**MEMORANDUM OPINION**

Grocers Supply Company, Inc. a/k/a Southwest Redevelopment appeals from the trial court's order granting the plea to the jurisdiction filed by Harris County Appraisal District ("HCAD").<sup>1</sup> We affirm.

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<sup>1</sup> Appellant's pleadings and notice of appeal identify both HCAD and the Harris County Appraisal Review Board as defendants. Because the record does not indicate that the Appraisal Review Board was served or appeared in the suit and it was not a necessary party, HCAD is the only appellee properly before this court. *See BACM 2002 PB2 Westpark Dr. LP v. Harris County Appraisal Dist.*, 14-08-00493-CV, 2009 WL 2145922 at \*1, n. 1 (Tex.App.-Houston [14th Dist.] 2009, no pet.) (mem. op.).

## **I. Factual and Procedural Background**

The property at issue is described as 3002 W. Baker Rd 1, Baytown, Texas. By deed dated August 22, 2003, Southwest Redevelopment Corporation (“Southwest Redevelopment”) conveyed the subject property to Grocers Supply Company, Inc. (“Grocers Supply”). Despite this conveyance, Southwest Redevelopment filed a notice of protest with HCAD’s Appraisal Review Board protesting the 2008 tax assessment for the property. On August 15, 2008, HCAD issued an order finding the property was unequally appraised and lowering the value.

On September 26, 2008, Southwest Redevelopment appealed that decision by filing an original petition in the trial court challenging the Review Board’s determination. On December 5, 2008, Southwest Redevelopment filed an amended petition naming as plaintiff “GROCERS SUPPLY CO INC a/k/a SOUTHWEST REVELOPMENT.” On January 15, 2010, HCAD filed a plea to the jurisdiction arguing that the trial court lacked subject matter jurisdiction because Southwest Redevelopment was not the owner of the property as of January 1, 2008, and only the property owner had standing to appeal from the Review Board’s order. On January 22, 2010, Southwest Redevelopment filed a motion pursuant to Texas Rule of Civil Procedure 28. On March 8, 2010, the trial court granted HCAD’s plea to the jurisdiction and dismissed the case. This appeal followed.

## **II. Standard of Review**

We review a trial court’s ruling on a plea to the jurisdiction de novo. *See Tex. Dep’t of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex.2004). In our review, we construe the pleadings liberally in favor of the pleader and look to the pleader’s intent to determine whether the facts alleged affirmatively demonstrate the trial court’s jurisdiction to hear the cause. *See id.*

Standing is a component of subject-matter jurisdiction that cannot be waived. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 445-46 (Tex.1993). If a party does not have standing, a trial court has no subject-matter jurisdiction to hear the case. *Id.* at 444-45. A trial court's jurisdiction to hear the subject matter of a dispute may be challenged by filing a plea to the jurisdiction. *See Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex.2000).

A defendant may prevail on a plea to the jurisdiction by demonstrating that, even if all the plaintiff's pleaded allegations are true, an incurable jurisdictional defect remains on the face of the pleadings that deprives the trial court of subject-matter jurisdiction. *Harris County Appraisal Dist. v. O'Connor & Assocs.*, 267 S.W.3d 413, 416 (Tex.App.-Houston [14th Dist.] 2008, no pet.). In determining a plea to the jurisdiction, a trial court may consider the pleadings and any evidence pertinent to the jurisdictional inquiry. *Bland*, 34 S.W.3d at 554-55.

### **III. Analysis**

Appellant claims that it timely amended its petition to include Grocers Supply as a party pursuant to section 42.21(e)(1) of the Texas Tax Code and Texas Rule of Civil Procedure 28. Therefore, appellant contends, the trial court erred in granting HCAD's plea to the jurisdiction and denying its Rule 28 motion.

#### **A. Standing**

Our court and the First Court of Appeals have recently addressed and rejected these arguments. *See Woodway Drive L.L.C. v. Harris County Appraisal Dist.*, 311 S.W.3d 649 (Tex. App. – Houston [14th Dist.] 2010, no pet.); *BACM 2002 PB2 Westpark Dr. LP v. Harris County Appraisal Dist.*, No. 14-08-00493-CV, 2009 WL 2145922 (Tex. App. - Houston [14th Dist.] 2009, no pet.) (mem. op.); and *GSL Welcome BP 32 L.L.C. v. Harris*

*County Appraisal Dist.*, No. 01-10-00189-CV, 2010 WL 4484361 (Tex. App. – Houston [1st Dist.] 2010, no pet.) (mem. op.). We reach the same outcome here.<sup>2</sup>

As a general rule, only a property owner may protest tax liability before an appraisal-review board and seek judicial review in court. *Tourneau Houston, Inc. v. Harris County Appraisal Dist.*, 24 S.W.3d 907, 909 (Tex.App.-Houston [1st Dist.] 2000, no pet.). Section 42.21(a) of the Property Tax Code requires a party who appeals as provided by Chapter 42 of the Property Tax Code to timely file a petition for review with the district court. Failure to timely file a petition bars any appeal under the chapter. Tex. Tax Code Ann. § 42.21(a) (Vernon Supp. 2009). Section 42.01 of the Tax Code specifies that a property owner is entitled to appeal an order of the appraisal review board determining a protest by the property owner as provided by sections 41.41 *et seq.* of the Property Tax Code. *Id.* § 42.01(1)(A). Alternatively, a property owner may designate a lessee or an agent to act on the property owner's behalf for any purpose under the Property Tax Code, including filing a tax protest. *Id.* §§ 1.111 (Vernon 2008) (authorizing a designated lessee or agent to act for a property owner), 41.413(b) (Vernon 2008) (authorizing a lessee to protest for the property owner in certain circumstances).

Therefore, to qualify as a “party who appeals” by seeking judicial review of an appraisal-review board's tax determination under section 42.21(a), appellant had to be an owner of the property, a designated agent of the owner, or the authorized lessee of the property under the circumstances stated in section 41.413. A party who does not meet one of the above criteria would lack standing under the Property Tax Code. *BACM*, 2009 WL

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<sup>2</sup> See also *Woodway Drive LLC v. Harris County Appraisal Dist.*, No. 14-09-00524-CV, 2010 WL 724174 (Tex.App.-Houston [14th Dist.] Mar. 4, 2010, no pet.) (mem. op.); *Scott Plaza Assoc., Ltd. v. Harris County Appraisal Dist.*, No. 14-09-00707-CV, 2010 WL 724189 (Tex.App.-Houston [14th Dist.] Mar. 4, 2010, no pet.) (mem. op.); *SWP Remic Prop. II LP v. Harris County Appraisal Dist.*, No. 14-08-00425-CV, 2010 WL 26524 (Tex.App.-Houston [14th Dist.] Jan. 7, 2010, no pet.) (mem. op.); *Skylane West Ltd. v. Harris County Appraisal Dist.*, No. 14-08-00507-CV, 2009 WL 4913256 (Tex.App.-Houston [14th Dist.] Dec. 22, 2009, no pet.) (mem. op.); *DL Louetta Village Square LP v. Harris County Appraisal Dist.*, No. 14-08-00549-CV, 2009 WL 4913259 (Tex.App.-Houston [14th Dist.] Dec. 22, 2009, no pet.) (mem. op.).

2145922, at \*3. If the litigant lacks standing, the trial court is deprived of subject-matter jurisdiction to consider a suit for judicial review based on an ad valorem tax protest. *Id.*

Here, Southwest Redevelopment did not own the property as of January 1, 2008. It did not claim rights to protest under the Property Tax Code as either a lessee or an agent. Therefore, Southwest Redevelopment lacked standing to pursue judicial review as a “party who appeals” under section 42.21(a). The record does not reflect that Grocers Supply pursued its right of protest as the actual property owner. According to the record, Grocers Supply was not named as a party until December 5, 2008, when a First Amended Original Petition was filed. Therefore, the Review Board had not determined a protest by the actual property owner, Grocers Supply, upon which it would then premise a right to appeal as the property owner. *See* Tex. Tax Code Ann. §§ 42.01(1)(A), 42.21(a); *BACM*, 2009 WL 2145922, at \*4.

#### **B. Application of Section 42.21(e)(1)**

Appellant also contends the trial court had jurisdiction because section 42.21(e)(1) allows amendment of a timely filed petition “to correct or change the name of a party.” *See* Tex. Tax Code Ann. § 42.21(e)(1) (Vernon Supp. 2009); *BACM*, 2009 WL 2145922, at \*5. We disagree, for the same reasons announced in *BACM*.

Section 42.21(e) specifies that only petitions that are “timely filed under Subsection (a) or amended under Subsection (c)” may later be amended to correct or change a party’s name.<sup>3</sup> *See* Tex. Tax Code Ann. § 42.21(e)(1). To seek judicial review under Subsection (a), the plaintiff must be a “party who appeals as provided by [Chapter 42],” meaning the plaintiff must be the property owner, a properly designated agent, or a lessee. *Id.* § 42.21(a).

Southwest Redevelopment filed a timely appeal; however, it did not own the property on January 1, 2008, and thus lacked standing to seek judicial review. *See BACM*,

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<sup>3</sup> Appellant does not argue that Subsection (c) applies to this case.

2009 WL 2145922, at \*5. Appellant's argument that subsection 42.21(3)(1) operates to allow it to correct or change the party's name presupposes that Grocers Supply was a proper party entitled to seek judicial review. *Id.* However, Grocers Supply did not pursue its right to protest as the property owner. When no proper party timely appealed to the district court, the trial court did not acquire subject matter jurisdiction, and the Review Board's determination became final. *See id.* Appellant's reliance upon *Womack Machine Supply Co. v. Fannin Bank*, 499 S.W.2d 917 (Tex. Civ. App. – Houston [14th Dist.] 1973, *rev'd on other grounds*, 504 S.W.2d 827 (Tex. 1974), and *Ealey v. Insurance Co. of North Am.*, 660 S.W.2d 50 (Tex. 1983), is therefore misplaced. *See GSL Welcome BP 32 L.L.C.*, 2010 WL 4484361, at \*5-6.

### **C. Application of Texas Rule of Civil Procedure 28**

Appellant also argues that the trial court had jurisdiction to hear the case because Texas Rule of Civil Procedure 28, which governs suits by or against entities doing business under an assumed name, permits substitution of Grocers Supply as Southwest Redevelopment's "true name." Rule 28 states:

Any partnership, unincorporated association, private corporation, or individual doing business under an assumed name may sue or be sued in its partnership, assumed or common name for the purpose of enforcing for or against it a substantive right, but on a motion by any party or on the court's own motion the true name may be substituted.

Tex. R. Civ. P. 28.

In this case, Southwest Redevelopment attempted to substitute its purported "true name," Grocers Supply, by filing an amended original petition and arguing Rule 28 permitted the substitution. For a party to take advantage of Rule 28 and sue in its common name, there must be a showing that the named entity is in fact doing business under that common name. *Seidler v. Morgan*, 277 S.W.3d 549, 553 (Tex.App.-Texarkana 2009, *pet. denied*). Whether an entity does business under an assumed or common name is a question

of fact for the trial court. *Sixth RMA Partners, L.P. a/k/a RMA Partners, L.P. v. Sibley*, 111 S.W.3d 46, 52 (Tex.2003).

Appellant did not make a showing that Grocers Supply was in fact doing business under the common name Southwest Redevelopment, nor was there evidence that Grocers Supply used Southwest Redevelopment as a common name to warrant application of Rule 28. *Compare Sixth RMA Partners*, 111 S.W.3d at 52 (concluding evidence supported assumed-name finding when Sixth RMA presented evidence that RMA Partners, L.P. was used as trade name for various RMA partnerships, RMA letterhead was used, and payments on notes were made to RMA) and *Chilkewitz v. Hyson*, 22 S.W.3d 825, 829 (Tex.1999) (stating some evidence supported application of Rule 28 when stationery and phone-number listing used by one-person professional association contained name of individual).<sup>4</sup>

#### IV. Conclusion

For the reasons set forth above, appellant's issues are overruled. We find the trial court did not err in granting appellee's plea to the jurisdiction and affirm the trial court's judgment.

PER CURIAM

Panel consists of Justices Brown, Boyce, and Jamison.

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<sup>4</sup> Although appellant cites HCAD's records that reflect Southwest Redevelopment as the property owner even after the property sale, HCAD's records alone are not sufficient to establish Grocers Supply operated its business under the common name of Southwest Redevelopment. *See KM-Timbercreek, LLC v. Harris County Appraisal Dist.*, 312 S.W.3d 722, 731 (Tex.App.-Houston [1st Dist.] 2009, no pet.) (stating that only Timbercreek could establish whether it operated its business under an assumed or common name). There is no evidence that Grocers Supply held itself out as Southwest Redevelopment or requested HCAD refer to it as Southwest Redevelopment in its records. *See id.*