

IN THE SUPREME COURT OF TEXAS

No. 98-0479

CONTINENTAL CASUALTY INSURANCE COMPANY, PETITIONER

v.

FUNCTIONAL RESTORATION ASSOCIATES, PRODUCTIVE REHABILITATION
INSTITUTE OF DALLAS FOR ERGONOMICS, AND THE TEXAS WORKERS'
COMPENSATION COMMISSION, RESPONDENTS

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE THIRD DISTRICT OF TEXAS

Argued January 13, 1999

CHIEF JUSTICE PHILLIPS, dissenting.

I agree with the Court's holding that Continental Casualty does not have a statutory right to judicial review of the Workers' Compensation Commission's decision. But I disagree with the Court that Continental waived its constitutional basis for judicial review merely because it neglected to add this claim to its pleadings once this issue was raised in the trial court. This holding not only elevates form over substance, but is contrary to the spirit of established precedent. Therefore, I respectfully dissent.

I

Continental brought this suit to reverse the Commission's order requiring it to pay for medical services provided by Functional Restoration Associates ("FRA") and Productive

Rehabilitation Institute of Dallas for Ergonomics (“PRIDE”) to James Hood. Continental’s petition stated that Continental sought judicial review “pursuant to Tex. Lab. Code § 410.255 (Vernon Pamph. 1995) and Tex. Gov’t Code Ann. § 2001.171, et seq. (Vernon Pamph. 1995),” but did not mention any constitutional basis. In its original answer, the Commission did not contest jurisdiction on any grounds. After the trial court questioned jurisdiction on its own motion, the Commission filed a plea to the jurisdiction and a trial brief asserting that the statute did not permit judicial review of medical benefits disputes. In response, Continental filed a trial brief contending that it had both a statutory right to judicial review under Texas Labor Code section 410.255 and an inherent right to judicial review because the Commission’s order adversely affected Continental’s protected property interest. Continental never amended its petition, but the Commission never objected in the trial court to this omission. At the hearing on the plea to the jurisdiction, both the Commission and Continental argued both grounds. The trial court granted the plea and dismissed the suit.

II

A plea to the jurisdiction is a dilatory plea that challenges a court’s subject matter jurisdiction. When a plea to the jurisdiction is granted, the trial court dismisses the suit without prejudice. *See Bell v. State Dep’t of Highways & Pub. Transp.*, 945 S.W.2d 292, 295 (Tex. App.—Houston [1st Dist.] 1997, writ denied). A plea to the jurisdiction should only be granted, however, “where the court can see from the allegations of a pleading that, even by amendment, no cause of action can be stated” to invoke the court’s jurisdiction. *Bybee v. Fireman’s Fund Ins. Co.*, 331 S.W.2d 910, 917 (Tex. 1960) (quoting *Lone Star Fin. Corp. v. Davis*, 77 S.W.2d 711, 715 (Tex. Civ. App.—Eastland 1934, no writ)). If the jurisdictional defect can be cured by amendment, a court

errs in granting the plea without allowing the plaintiff an opportunity to replead. *See Texas Ass'n of Business v. Texas Air Control Bd.*, 852 S.W.2d 440, 446 (Tex. 1993) (a litigant has a right to amend to attempt to cure jurisdictional defects); *Peek v. Equipment Serv. Co.*, 779 S.W.2d 802, 805 (Tex. 1989) (“Unless the petition affirmatively demonstrates that no cause of action exists or that plaintiff’s recovery is barred, we require the trial court to give the plaintiff an opportunity to amend before granting a motion to dismiss”); *Bybee*, 331 S.W.2d at 917 (where jurisdictional defects can be cured “there is involved only a question of sufficiency of the pleading, and not of the jurisdiction of the court”) (quoting *Lone Star Fin. Corp.*, 77 S.W.2d at 715); *see also* O’CONNOR & DAVIS, O’CONNOR’S TEXAS RULES—CIVIL TRIALS 158 (1998); 2 McDONALD, TEXAS CIVIL PRACTICE § 8.15, at 200 (Allen et al. eds., 1992). The rule we announce today is contrary to the spirit of these authorities. The sole basis for the Court’s holding is that the constitutional claim was not in the petition when the trial court ruled on the plea to the jurisdiction. But a trial court’s decision about whether to accept or decline jurisdiction should not turn on strict compliance with technical pleading requirements. *See Peek*, 779 S.W.2d at 805; *Bybee*, 331 S.W.2d at 917. To the contrary, if the trial court has jurisdiction, it must exercise that jurisdiction. *See Stewart v. Moore*, 291 S.W. 886, 891 (Tex. Comm’n App. 1927, holding approved); *see also Coastal Corp. v. Garza*, 979 S.W.2d 318, 322 (Tex. 1998) (Hecht, J., dissenting). And if a court erroneously declines to exercise jurisdiction, the losing party should be able to complain on appeal about any jurisdictional basis that it presented to the trial court. Technical pleading failings should no more bar this appeal than did the failure to plead an amount in controversy in a wrongful death case deprive the trial court of jurisdiction in *Peek*. *See Peek*, 779 S.W.2d at 805; *cf. In re B.I.V.*, 870 S.W.2d 12, 13-14 (Tex.

1994) (summary judgment should not be based on a pleading deficiency that could be cured by amendment); *Womack v. Allstate Ins. Co.*, 296 S.W.2d 233, 237 (Tex. 1956) (“[W]hen the affidavits or other summary judgment ‘evidence’ disclose facts which render the position of the moving party untenable, summary judgment should be denied regardless of defects which may exist in the pleadings of the [nonmovant].”). Because both Continental’s brief and its oral argument set forth its constitutional jurisdictional argument, error has been preserved.¹

III

It is well-established that there is no right to judicial review of an administrative order unless a statute provides one or the order violates some provision of the state or federal constitution. *See Stone v. Texas Liquor Control Bd.*, 417 S.W.2d 385, 385-86 (Tex. 1967); *City of Amarillo v. Hancock*, 239 S.W.2d 788, 790 (Tex. 1951); *see also* LOUIS L. JAFFE, JUDICIAL CONTROL OF ADMINISTRATIVE ACTION 376-389 (1965) (setting forth state and federal constitutional bases for judicial review of administrative decisions). Generally, the constitutional provisions implicated are federal due process or state due course of law. *See Brazosport Sav. & Loan Ass’n v. American Sav. & Loan Ass’n*, 342 S.W.2d 747, 751 (Tex. 1961) (citing *English Freight Co. v. Knox*, 180 S.W.2d 633, 640 (Tex. Civ. App.—Austin 1944, writ ref’d w.o.m.)); *see also Texas Workers’ Compensation Comm’n v. Garcia*, 893 S.W.2d 504, 525 (Tex. 1995) (the Texas due course provision requires at least the same protections as the federal due process clause). Therefore, due process supplies a right

¹ The Court’s reliance on *Carrizales v. Texas Dept. of Protective and Regulatory Servs.*, 5 S.W.3d 922 (Tex. App.—Austin 1999, pet. filed), is misplaced. *Carrizales* is distinguishable from this case because the plaintiff in *Carrizales* never informed the trial court of his inherent right to judicial review, but instead asserted that jurisdictional basis for the first time on appeal. *Id.* at 925.

to judicial review if the agency decision adversely affects a protected property interest. *See Chemical Bank & Trust Co. v. Falkner*, 369 S.W.2d 427, 433 (Tex. 1963); *Brazosport Sav. & Loan Ass'n v. American Sav. & Loan Ass'n*, 342 S.W.2d 747, 750, 751 (Tex. 1961); *Hancock*, 239 S.W.2d at 790-91; *see also Board of Ins. Comm'rs v. Title Ins. Ass'n of Tex.*, 272 S.W.2d 95, 97 (Tex. 1954) (“[P]roperty rights . . . cannot be determined by the orders of an administrative agency without affording a right of judicial review”); *Schwantz v. Texas Dep't of Pub. Safety*, 415 S.W.2d 12, 15 (Tex. Civ. App.—Waco 1967, writ ref'd) (same).

The key inquiry for determining if Continental has an inherent right to judicial review is whether Continental has a protected property interest that was adversely affected by the Commission's decision. *See Alford v. City of Dallas*, 738 S.W.2d 312, 314 (Tex. App.—Dallas 1987, no writ). Because this is a plea to the jurisdiction, we must take the pleaded facts as true and construe them in the plaintiff's favor. We must then determine whether these facts demonstrate that Continental's protected property interest has been adversely affected by the Commission's decision, thereby giving Continental a due process right to judicial review. *See Texas Ass'n of Bus.*, 852 S.W.2d at 446; *Hernandez v. Texas Workers' Compensation Ins. Fund*, 946 S.W.2d 904, 906 (Tex. App.—Eastland 1997, no writ) (citing *Huston v. Federal Deposit Ins. Corp.*, 663 S.W.2d 126 (Tex. App.—Eastland 1983, writ ref'd n.r.e.)).

In my opinion, Continental meets this burden. The interest at stake is the money Continental was ordered to pay. Continental owns and possesses this money; it therefore has a protected property interest in it. While the property interests protected by due process extend well beyond actual ownership of property, ownership of money is among the core property interests protected by due

process. See *Board of Regents v. Roth*, 408 U.S. 564, 571-72 (1971); see also *Campbell v. Miller*, 787 F.2d 217, 222 (7th Cir.), cert. denied, 474 U.S. 1019 (1986) (inmate has property interest in funds in his prison account); *Chauffeur's Training School, Inc. v. Riley*, 967 F. Supp. 719, 729 (N.D.N.Y. 1997) (school has protected property interest in retaining the funds in its accounts); *Black v. Dallas County Bail Bond Bd.*, 882 S.W.2d 434, 439 (Tex. App.—Dallas 1994, no writ) (bondsmen have property right in the money they use to pay rearrest costs); *Brewer v. Collins*, 857 S.W.2d 819, 823 (Tex. App.—Houston [1st Dist.] 1993, no writ) (prison inmate has protected property interest in money seized by state from inmate's trust fund). Because the Commission's decision would have deprived Continental of this property, due process provides Continental with an inherent right to judicial review of that decision.² See *Board of Ins. Comm'rs*, 272 S.W.2d at 97. In that review, the trial court should determine whether the agency decision is supported by substantial evidence, is not arbitrary and capricious, and satisfies procedural due process. See, e.g., *Chemical Bank & Trust Co.*, 369 S.W.2d at 433; *Brazosport*, 342 S.W.2d at 747; *Board of Ins. Comm'rs*, 272 S.W.2d at 99; *Fire Dep't of City of Fort Worth v. City of Fort Worth*, 217 S.W.2d 664, 666 (Tex. 1949).

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² Parties to a medical benefits dispute under Texas Labor Code section 413.031 other than an insurance carrier may also have a right to judicial review if they have a legitimate claim of entitlement to money or benefits that is created by "by existing rules or understandings that stem from an independent source such as state law." *Phillips v. Washington Legal Found.*, 524 U.S. 156, 163 (1998) (quoting *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972)); see also *Mallette v. Arlington County Employee's Supplemental Retirement Sys. II*, 91 F.3d 630, 635 (4th Cir. 1996); *Daniels v. Woodbury County*, 742 F.2d 1128, 1132 (8th Cir. 1984); *Griffeth v. Dietrich*, 603 F.2d 118, 121 (9th Cir. 1979); *Soeken v. Herman*, 35 F. Supp.2d 99, 105 (D.D.C. 1999); *Last v. MCI Const. Co.*, 409 S.E.2d 334, 336 (S.C. 1991); *Barron v. Board of Trustees of the Policemen's Pension & Relief Fund*, 345 S.E.2d 779, 782 (W. Va. 1985).

Chief Justice

Opinion delivered: April 6, 2000