**REVERSE AND REMAND and Opinion Filed January 21, 2026**

**In The**
**Court of Appeals**
**Fifth District of Texas at Dallas**

**No. 05-24-00717-CV**

**THE SHORES AT LAKE RAY HUBBARD OWNERS ASSOCIATION, INC., JANICE CARSON, STEVE HALL, HOLLY STEVENS, JAMES PULATIE, SARAH LAWSON, AND JOSH KING, Appellants**
**V.**
**BRANDY LUTZ, DWAYN LUTZ, JOHN BARFIELD, AND CITY OF ROCKWALL, Appellees**

**On Appeal from the County Court at Law No. 1**
**Rockwall County, Texas**
**Trial Court Cause No. 1-22-0425**

# MEMORANDUM OPINION

Before Justices Goldstein, Breedlove, and Kennedy
Opinion by Justice Kennedy

Appellees Brandy Lutz, Dwayn Lutz, and John Barfield (resident appellees) are individuals residing in The Shores, a neighborhood subject to the governance of appellant The Shores at Lake Ray Hubbard Owners Association, Inc. (the HOA). The remaining appellants are directors and officers of The Shores.[1] The resident

[1] The remaining appellants are listed in the parties pleadings as Janice Carson, President and Director of the HOA; Steve Hall, Vice-President and Director of the HOA; Holly Stevens, Secretary and Director of the HOA; E. James Pulatie, Treasurer and Director of the HOA; Sarah Lawson, Director of the HOA; and Josh King, Director of the HOA.

appellees filed suit against appellants asserting claims for breach of fiduciary duty and tortious interference and seeking a declaratory judgment and injunctive relief. Appellee City of Rockwall (City) filed a petition in intervention seeking a declaratory judgment. The resident appellees and appellants filed competing motions for partial summary judgment. The trial court signed an order denying the resident appellees' motion, granting appellants' motion in part, entering a declaration, and severing remaining claims of the resident appellees for breach of fiduciary duty against appellants.

In two issues, appellants urge the trial court erred by declining to grant their motion in full and that the trial court erred by entering its declaration as it is vague, it fails to resolve the dispute between the parties, and it is contrary to Texas law. The resident appellees raise the following cross-issues: (1) whether the trial court erred by dismissing Brandy Lutz and Dwayne Lutz's claims for declaratory judgment and breach of fiduciary duty for lack of standing;[2] (2) whether the trial court erred in its characterization of its ruling "granting" appellants' motion for partial summary judgment when the order granted relief in favor of the resident appellees; (3) whether the trial court erred in failing to grant the declaratory relief

[2] That order explicitly did not address the Lutzes' claim for tortious interference, "which remains pending."

sought by the resident appellees; and (4) whether the trial court erred in failing to determine an award of attorney's fees.[3]

We reverse the trial court's order dismissing the Lutzes' claims for declaratory judgment and breach of fiduciary duty for lack of standing, reverse the trial court's order on the parties' motions for partial judgment on their declaratory judgment claims, and remand this case to the trial court for further proceedings consistent with this opinion. Because all dispositive issues are settled in law, we issue this memorandum opinion. *See* TEX. R. APP. P. 47.2(a), 47.4.

## FACTUAL AND PROCEDURAL BACKGROUND

The HOA is governed by the Declaration of Covenants, Conditions, and Restrictions (the Declaration), which includes the following parking restrictions under Section 2(a) of Article XIII:

> Vehicles shall be parked only in the garages or in the driveways, if any, serving the Units or other hard-surfaced areas which are not visible from the street. Vehicles shall be subject to such reasonable rules and regulations as the Board of Directors, or any Neighborhood Association, if any, having concurrent jurisdiction over parking areas within the Neighborhood, may adopt. The Declarant and/or the Association may designate certain on-street parking areas for visitors or guests subject to reasonable rules.

Section 2(b) of the Declaration provides in relevant part, "Any vehicle parked in violation of this Section or parking rules promulgated by the Board may be towed in

[3] City filed a brief responding to appellants' issues and requesting the appealed judgment be affirmed.

accordance with Article III, Section 22 of the By-Laws." Additionally, Section 2(c) provides for parking enforcement as follows:

> (i) A courtesy patrol will be hired to log offenders.
>
> (ii) Once 3 violations are logged in a 5 day period, a letter will be sent to the homeowner notifying him and/or her of the violations. The homeowner will be given 10 days to cure or notify Management Company of an error (i.e., vehicle does not belong to them).
>
> (iii) If a subsequent violation occurs after the 10 day period, the car will be stickered and the homeowner will be sent a certified letter by the Management Company informing them that a $250 fine will be assessed for the first violation and $500 for subsequent violations, and that the matter may be turned over to an attorney for action, and that any attorney fees will be charged to their homeowner account. The homeowner will have 30 days from date of receipt of second letter to pay fine, cure violation or provide a written request for a hearing.
>
> (iv) If the violation is not cured after 30 days, a $250 fine will be assessed.
>
> (v) Subsequent violations occurring beyond this 30 day period will draw a fine of $500.00. No opportunity to cure is required to be given if the subsequent violation occurs within six (6) months after written notice and opportunity to cure has been given as above provided.
>
> (vi) Demand letters will be sent for fines remaining unpaid after 60 days from the original date of assessment to homeowners notifying them that a lien will be filed for all fines remaining unpaid 90 days after the date of assessment.

In April 2022, resident appellees filed their original petition against appellants, seeking a declaratory judgment and injunction and asserting claims for breach of fiduciary duty. According to that petition, appellants have interpreted Section 2 of the Declaration "to mean [the HOA] can issue fines for any vehicle parked on the street" and have fined residents for parking on public streets within

The Shores. The petition further alleged that residents complained to the HOA, and when those complaints yielded no relief, to the City, which issued a letter dated November 9, 2016, to "The Shores Community from the City of Rockwall," stating the City's position that "the streets in The Shores are public property, and parking cannot be restricted by a private entity, regardless of the language in the deed restrictions." According to the petition, the Lutzes are residents in The Shores and are purchasing their home on a "lease to own" basis. In January 2021, the Lutzes received a "Friendly Reminder" letter in the mail stating they had violated the Declaration and would be fined if they did not move their vehicle from the street, a "2nd Request for Compliance" on March 31, 2021, and a "Third and Final Notice for Compliance" on May 26, 2021. Subsequently, the HOA contacted HPA US1, LLC,[4] the company with whom the Lutzes contracted to lease and purchase their house, to notify them "[HPA US1, LLC] is ultimately responsible for all fines and they must force the Lutz family to stop parking on the street." According to the petition, HPA US1, LLC sent the Lutzes a letter stating it would void the lease for future parking violations.

The original petition sought the following declarations:

- that the HOA has no legal authority to issue any "warnings," tickets," "fines," "fees," or rules relating to parking on a public street;

[4] In their original petition, this company was named as "Pathlight," but later pleadings and evidence refer to this company as HPA US1, LLC.

- that the following language from the Declaration is void as a matter of law: "The Declarant and/or the Association may designate on-street parking areas for visitors or guests subject to reasonable rules"; and
- that the HOA must strike all the following language from the Declaration: "The Declarant and/or the Association may designate on-street parking areas for visitors or guests subject to reasonable rules."

The original petition also sought temporary restraining orders, temporary injunctions, and permanent injunctions related to appellants' conduct related to parking on public streets within The Shores. Additionally, the original petition asserts claims for breach of fiduciary duty against the individual appellants as members of the HOA's board of directions for "wrongfully collecting money [by issuing fines to residents who park on public streets] and placing residents in a situation whereby they would be wrongfully threatened with foreclosure." Appellants answered with a general denial and a verified denial that the Lutzes lacked capacity to assert any claims against appellants because they are not members of the HOA and thus had no standing to challenge the enforceability of the Declaration. On April 18, 2022, the parties entered into an agreed temporary restraining order pursuant to which appellants agreed to refrain from threatening to issue or issuing any fines for any vehicle parked on a public road to resident appellees. That order was later extended by a later order made with the agreement of the parties "until trial or until further Order of this Court."

On May 9, 2022, the City filed a petition in intervention, asserting that the streets within The Shores are publicly owned and maintained by the City and that,

pursuant to its interpretation of the Declaration, the HOA has been issuing fines to its residents for parking their vehicles on the streets at issue and has continued to do so "[d]espite multiple requests from the City to cease the HOA's attempts at regulation over City streets." According to the City's petition, it has a justiciable interest in this matter because "by enforcing the [Declaration] in this manner, the HOA is, effectively, acting in place of the City to control public streets . . . [which] runs counter to the exclusive control provided by the Section 311.001 of the Texas Transportation Code." The City's petition sought the following declarations, as well as costs and attorney's fees pursuant to Section 37.009 of the Texas Civil Practice and Remedies Code:

> a. The HOA has no legal authority to issue "warnings," "tickets," "fines," "fees," or any other adverse action toward any individual, resident of the HOA or otherwise, for parking on a public street of the City.
>
> b. The HOA has no legal authority to enter into agreements with residents or other individuals regarding conduct on a public street, such that the agreement would effectively amount to one or both parties to the agreement exercising "control" over a public street of the City.
>
> c. Any language in the [Declaration] that purports to grant the HOA legal authority to issue "warnings," "tickets," "fines," "fees" or any other adverse action toward any individual, resident of the HOA or otherwise, for parking on a public street is void as a matter of law.
>
> d. Any language in the [Declaration] that purports to act as an agreement to which the City is not a party regarding conduct on a public street owned by the City, or a delegation of the City's control of public streets, such that the agreement would effectively amount to one or both parties to the agreement

> exercising "control" over a public street of the City is void and unenforceable as a matter of law.

Appellants filed an answer to the City's petition in intervention generally denying the City's allegations and more specifically challenging the City's standing to intervene because the City was not a party to the contract in dispute, the Declaration. Appellants also specifically denied the HOA "is controlling or dominating public streets, [or] acting in the place of the City . . . [but] merely requiring Owners to comply with the Declaration and park on their driveways or in their garages."

On August 10, 2022, appellants filed an amended plea to the jurisdiction, seeking to dismiss the Lutzes for lack of standing.[5] The Lutzes responded to the plea, urging they had standing as "persons [whose] right to avoid eviction is directly related to the relief they seek from this Court in this suit." The trial court conducted a hearing on the plea to the jurisdiction but did not rule on the plea. The resident appellees filed an amended petition that included the same claims as previously urged with the addition of a claim for tortious interference with existing contract, asserting the HOA's conduct in enforcing the Declaration and contacting HPA US1, LLC in its enforcement of the Declaration has resulted in the "threatened loss of their home, the forced payment of illegal fines, and the forced payment of 'legal fees' to HPA US1, LLC." On August 31, 2022, the trial court signed an order granting the first amended plea to the jurisdiction and dismissing the Lutzes' claims against

[5] On May 2, 2022, appellants filed a plea to the jurisdiction, seeking to dismiss the Lutzes for lack of standing, but the record does not indicate the trial court ruled on that plea.

appellants for declaratory judgment and breach of fiduciary duty, but also stating, "[This Order does not address Plaintiffs' newly asserted claim for tortious interference, which remains pending."

On May 26, 2023, the resident appellants filed a motion for partial summary judgment on their claim for declaratory judgment. On July 12, 2023, appellants filed their Responsive Cross-Motion for Partial Summary Judgment on Plaintiffs' Declaratory Judgment Claims. In that motion, appellants pointed out that the trial court had dismissed the Lutzes' claims for declaratory judgment, such that the only pending claim for declaratory judgment was that of Barfield. Additionally, appellants' motion sought a declaration that the HOA has the authority to enforce the Declaration.

On March 20, 2024, the trial court signed an Order on Motion and Cross-Motion for Partial Summary Judgment on Declaratory Judgment Claims. In that order, the trial court stated that resident appellees' motion was denied and that appellants cross-motion was granted in part. Additionally, the order included the following declaratory judgment:

> The deed restriction at issue is enforceable against vehicles parked on private property and the restriction of parking on public roadways within the physical boundaries of the Defendants' association are regulated solely by the City of Rockwall or their designated agency.

The order also severed the following claims "[i]n order to allow an immediate appeal of these issues": resident appellees' claims for breach of fiduciary duty and tortious

interference against appellants. Appellants filed their notice of appeal, and the resident appellees filed their notice of cross-appeal.

## STANDING

In their first cross-issue, the resident appellees argue the trial court erred by dismissing the Lutzes' claims for lack of standing.

We review a trial court's ruling on a plea to the jurisdiction de novo. *Sw. Airlines Pilots Ass'n v. Boeing Co.*, 704 S.W.3d 832, 840 (Tex. App.—Dallas 2022), aff'd, 716 S.W.3d 140 (Tex. 2025) (citing *Houston Belt & Terminal Ry. Co. v. City of Houston*, 487 S.W.3d 154, 160 (Tex. 2016)).

The burden is on the plaintiff to affirmatively demonstrate the trial court's jurisdiction. *Id.* (citing *Heckman v. Williamson Cnty.*, 369 S.W.3d 137, 150 (Tex. 2012)). In reviewing a plea to the jurisdiction, we begin with the plaintiff's live pleadings and determine if the plaintiff has alleged facts that affirmatively demonstrate the trial court's jurisdiction to hear the cause. *Id.* (citing *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004)). In making this assessment, we construe the plaintiff's pleadings liberally, taking all assertions as true, and look to the plaintiff's intent. *Id.* (citing *Miranda*, 133 S.W.3d at 226). If a plea to the jurisdiction challenges the existence of jurisdictional facts, we may consider evidence and must do so when necessary to resolve the jurisdictional issues raised. *Id.* (citing *Miranda*, 133 S.W.3d at 227). That is, we review the evidence in the light most favorable to the nonmovant to determine whether a genuine issue of

material fact exists. *Id.* (citing *Town of Shady Shores v. Swanson*, 590 S.W.3d 544, 550 (Tex. 2019), and *Miranda*, 133 S.W.3d at 221, 227–28). "Our ultimate inquiry is whether the plaintiff's pleaded and un-negated facts, taken as true and liberally construed with an eye to the pleader's intent, would affirmatively demonstrate a claim or claims within the trial court's jurisdiction." *Id.* (quoting *Brantley v. Texas Youth Comm'n*, 365 S.W.3d 89, 94 (Tex. App.—Austin 2011, no pet.)).

When a plaintiff fails to plead facts that establish jurisdiction, but the petition does not affirmatively demonstrate incurable defects, the issue is one of pleading sufficiency and the plaintiff should be afforded the opportunity to amend. *Id.* (citing *Cty. of Cameron v. Brown*, 80 S.W.3d 549, 555 (Tex. 2002), and *Miranda*, 133 S.W.3d at 226–27). If, however, the pleadings affirmatively negate the existence of jurisdiction, then the plea to the jurisdiction may be granted without allowing the plaintiff an opportunity to replead. *Id.* (citing *Cty. of Cameron*, 80 S.W.3d at 555).

The plea in this case was premised on the alleged absence of standing, which is a constitutional prerequisite to suit. *See id.* (citing *Heckman*, 369 S.W.3d at 150, and *Sw. Bell Tel. Co. v. Mktg. on Hold Inc.*, 308 S.W.3d 909, 915 (Tex. 2010)). Standing "requires a concrete injury to the plaintiff and a real controversy between the parties that will be resolved by the court." *Id.* (quoting *Heckman*, 369 S.W.3d at at 154) (citing *DaimlerChrysler Corp. v. Inman*, 252 S.W.3d 299, 304, 307 (Tex. 2008))). "If a plaintiff lacks standing to assert a claim, then a court has no

jurisdiction to hear it." *Id.* (quoting *Heckman*, 369 S.W.3d at 150) (citing *Inman*, 252 S.W.3d at 304).

Appellants' plea argued that the Lutzes lack standing to bring their claims for declaratory judgment and breach of fiduciary duty because the Lutzes do not own property in The Shores and are not members of the HOA but instead have entered into a contract to lease to own property in The Shores. According to appellants' plea, because the Lutzes were not parties to the Declaration, they lack standing to request declaratory relief to challenge the validity or enforceability of the Declaration.[6] However, a challenge to a party's privity of contract is a challenge to capacity, not standing. *See John C. Flood of DC, Inc. v. SuperMedia, L.L.C.*, 408 S.W.3d 645, 651 (Tex. App.—Dallas 2013, pet. denied). As capacity is an affirmative defense and does not implicate a trial court's jurisdiction, the trial court could not have granted appellants' plea to the jurisdiction even assuming that it found the Lutzes' lacked capacity to seek declaratory relief against appellants. *See Adams v. Prine*, No. 04-16-00327-CV, 2017 WL 96119, at *3 (Tex. App.—San Antonio Jan. 11, 2017, no pet.) (mem. op.) (reversing portion of judgment dismissing claim against defendant in individual capacity because defendant raised issue of capacity in plea to jurisdiction instead of summary judgment) (citing *Martinez v. Val*

[6] The plea also challenged the Lutzes' standing to assert the existence of any fiduciary duty between themselves and appellants. However, since the appealed of order on the competing motions for summary judgment severed the claims for breach of fiduciary duty and tortious interference into a separate cause of action, we will not address the ruling on the Lutzes' standing to assert claims for breach of fiduciary duty.

*Verde Cnty. Hosp. Dist.*, 110 S.W.3d 480, 485 (Tex. App.—San Antonio 2003), aff'd, 140 S.W.3d 370 (Tex. 2004) (noting affirmative defense must be raised in a motion for summary judgment not in a plea to the jurisdiction)). Accordingly, we address whether the Lutzes established standing to seek declaratory relief against appellants by showing "a concrete injury . . . and a real controversy between the parties that will be resolved by the court." *See Sw. Airlines Pilots Ass'n*, 704 S.W.3d at 840.[7]

A declaratory judgment "requires a justiciable controversy as to the rights and status of parties actually before the court for adjudication, and the declaration sought must actually resolve the controversy." *Webb v. Voga*, 316 S.W.3d 809, 812–13 (Tex. App.—Dallas 2010, no pet.) (quoting *Brooks v. Northglen Ass'n*, 141 S.W.3d 158, 163–64 (Tex. 2004)). The Uniform Declaratory Judgment Act provides that "[a] person interested under a deed, will, written contract, or other writings constituting a contract or ***whose rights, status, or other legal relations are affected*** by a statute, municipal ordinance, ***contract***, or franchise ***may have determined any question of construction or validity arising under the*** instrument, statute,

[7] Similarly, although not argued in their plea to the jurisdiction, appellants argue on appeal that the Lutzes lack standing to assert any claims against the HOA because the Lutzes' residential lease agreement provides that the Lutzes waive the right to sue the HOA directly and assign to the company that owns their house any rights the Lutzes may have against the HOA. But, "disputes over whether a claim belongs to the plaintiff are disputes over capacity, not constitutional standing." *See Moser, Tr. of Estate of Mason v. Dillon Invs., LLC*, 649 S.W.3d 259, 270 (Tex. App.—Dallas 2022, no pet.) (citing *Pike v. Tex. EMC Mgmt., LLC*, 610 S.W.3d 763, 772 (Tex. 2020)) ("A plaintiff has *standing* when it is personally aggrieved, regardless of whether it is acting with legal authority; a party has *capacity* when it has the legal authority to act, regardless of whether it has a justiciable interest in the controversy.") (emphasis in original).

ordinance, ***contract***, or franchise ***and obtain a declaration of rights, status, or other legal relations thereunder.***" TEX. CIV. PRAC. & REM. CODE § 37.004(a) (emphasis added).

Article XIII of the Declaration, which contains Section 2 regarding parking and prohibited vehicles, includes Section 3, which provides for occupants bound as follows:

> All provisions of the Declaration, any applicable Supplemental Declaration, By-Laws, and rules and regulations which govern the conduct of Owners and which provide for sanctions against Owners ***shall also apply to all occupants, guests, and invitees of any Unit***. Every Owner shall cause all occupants of his or her Unit to comply with the Declaration, any applicable Supplemental Declaration, By-Laws, and rules and regulations. Every Owner shall be responsible for all violations and losses to the Common Area caused by such occupants, ***notwithstanding the fact that such occupants of a Unit are fully liable and may be sanctioned for any violation of the Declaration, By-Laws, and rules and regulations***.

(emphasis added). Thus, we conclude the Declaration contemplates affecting the rights, status, or other legal relations of occupants other than property owners. Moreover, the resident appellees' petitions, original and amended, assert that the Lutzes were charged legal fees by the company that owns the house they lease and that the same company warned the Lutzes that the lease would be voided for future parking violations. Therefore, we conclude the Lutzes asserted and provided evidence that their rights, status, and other legal relations are affected by the Declaration such that they may seek a declaration of their rights, status, and other legal relations under the Declaration, or in other words a concrete injury and a real

controversy that may be resolved by the court. *See, e.g.*, *McCalla v. Ski River Dev., Inc.*, 239 S.W.3d 374, 380 (Tex. App.—Waco 2007, no pet.) (holding developers had standing to seek delcaratory relief regarding validity of sublessees' purchase option contract with landlord despite not being parties to that contract because developers' rights under their contract with landlord were affected by any enforcement of sublessees' purchase option contract).

We conclude the trial court erred by finding the Lutzes lacked standing to assert their claims for declaratory relief. We sustain the resident appellees' first cross-issue.

**SUMMARY JUDGMENT ON DECLARATORY JUDGMENT CLAIMS**

In their two issues, appellants urge the trial court erred by declining to grant their motion for partial summary judgment in full and that the trial court erred by entering its declaration because it is vague, it fails to resolve the dispute between the parties, and it is contrary to Texas law. The resident appellees respond that the trial court correctly declared that the Declaration prohibits parking only on private property and that the appellants have no authority to restrict parking on public roads. The resident appellees also urge in a cross-issue that the trial court erred in failing to award the declaratory relief they sought.

A declaratory judgment decided by summary judgment is reviewed under the same standard of review that governs summary judgments generally. *Schmidt v. Ward*, No. 05-13-01095-CV, 2014 WL 4977422, at *3 (Tex. App.—Dallas Oct. 6,

2014, no pet.) (mem. op.) (citing TEX. CIV. PRAC. & REM. CODE § 37.010). We review a trial court's summary judgment rulings de novo. *See KMS Retail Rowlett, LP v. City of Rowlett*, 559 S.W.3d 192, 197 (Tex. App.—Dallas 2017), aff'd, 593 S.W.3d 175 (Tex. 2019) (citing *Travelers Ins. Co. v. Joachim*, 315 S.W.3d 860, 862 (Tex. 2010)). When both parties move for summary judgment and the trial court grants one party's motion for summary judgment and denies the other party's motion, we can consider both motions, review the summary judgment evidence presented by both sides, determine all questions presented, and render the judgment the trial court should have rendered. *See id.* (citing *FM Props. Operating Co. v. City of Austin,* 22 S.W.3d 868, 872 (Tex. 2000), and *Malcomson Road Util. Dist. v. Newsom*, 171 S.W.3d 257, 263 (Tex. App.—Houston [1st Dist.] 2005, pet. denied) (op. on reh'g).

The purpose of the Uniform Declaratory Judgments Act is "to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and it is to be liberally construed and administered." TEX. CIV. PRAC. & REM. CODE § 37.002(b). And, as noted above, the act further provides in relevant part:

> A person interested under a deed . . ., written contract, or other writings constituting a contract or whose rights, status, or other legal relations are affected by a . . . contract . . . may have determined any question of construction or validity arising under the instrument . . . [or] contract . . . and obtain a declaration of rights, status, or other legal relations thereunder.

*Id.* § 37.004(a).

The resident appellees' motion for partial summary judgment sought award of the following declarations:

- that the HOA has no legal authority to issue any "warnings," tickets," "fines," "fees," or rules relating to parking on a public street; and
- that the following language from the Declaration is void as a matter of law and must be struck: "The Declarant and/or the Association may designate on-street parking areas for visitors or guests subject to reasonable rules."

In contrast, appellants' cross-motion for partial summary judgment sought a declaration that the HOA has the authority to enforce the Declaration. However, in ruling on the competing motions, the trial court entered the following declaration:

> The deed restriction at issue is enforceable against vehicles parked on private property and the restriction of parking on public roadways within the physical boundaries of the Defendants' association are regulated solely by the City of Rockwall or their designated agency.

On appeal, appellants argue that the foregoing declaration is vague because it does not say whether Section 2 is stricken or modified in any way and leaves the parties questioning whether the HOA may continue to enforce Section 2. Appellants also argue the declaration fails to clarify how appellants could enforce Section 2 if it is enforceable. The resident appellees respond that the trial court correctly declared that Section 2 prohibits parking on private property and that the City has the sole authority to prohibit parking on public roads.

The dispute between appellants and the resident appellees centers on whether the HOA may enforce the requirement to park "only in the garages or in the driveways" by using evidence of vehicles parked on the public streets to establish

residents' noncompliance with Section 2. The resident appellees' motion for summary judgment explicitly states that they "filed this case seeking to stop the Defendants from their repeated ticketing of their cars on the public streets within the HOA" and that they sought two declaratory judgments: (1) one that strikes certain language from [the Declaration] and (2) one that states such ticketing on a public street is not allowed going forward. Appellants' cross-motion urges that the resident appellees have contractually agreed by purchasing or leasing a house within the HOA to avoid "habitual and consistent parking on the streets" and that by enforcing the Declaration, the HOA "is not attempting to regulate or control the public roads, but rather is enforcing a contractual neighborhood rule among homeowners who bought their homes with an expectation that [the Declaration] would be enforced."

Reviewing the Declaration at issue, we note that Section 2, broadly speaking, requires residents to park their vehicles "only in the garages or in the driveways" and that nowhere within Section 2 is there any prohibition on parking on public streets, other than the statement that "[the HOA] may designate certain on-street parking areas for visitors or guests subject to reasonable rules." The summary judgment record contains evidence that the HOA uses photographs of vehicles parked on public streets as well as reported observations by an individual hired "to patrol the neighborhood" to support their enforcement of Section 2. Appellants offered evidence in support of their cross-motion that they do not ticket, boot, or tow

vehicles and that nothing is placed on a vehicle to indicate a violation has been observed.

We agree with appellants that the trial court's declaration leaves the following issue in dispute: whether appellants' use of evidence of parking on public streets in enforcing the deed restrictions on private property constitutes regulation of the public streets. If the current enforcement is indeed regulation, then the trial court's declaration does in fact prohibit the HOA's current process to enforce Section 2. But without a declaration or finding on that issue, the parties' dispute remains unresolved. *See Transcon. Realty Invs., Inc. v. Orix Cap. Markets, LLC*, 353 S.W.3d 241, 244 (Tex. App.—Dallas 2011, pet. denied) ("Declaratory judgment is appropriate only when a real controversy exists between the parties and the entire controversy may be determined by the judicial declaration.") (citing *Brooks v. Northglen Ass'n*, 141 S.W.3d 158, 163–64 (Tex. 2004), and *OAIC Com. Assets, L.L.C. v. Stonegate Vill., L.P.*, 234 S.W.3d 726, 745 (Tex. App.—Dallas 2007, pet. denied)).

Accordingly, we sustain appellants' issues and reverse the trial court's order on motion and cross-motion for partial summary judgment on the declaratory judgment claims.

Both appellants and the resident appellees seek reversal and rendition of judgment and our rules of appellate procedure permit modification of the trial court's judgment. *See* TEX. R. APP. P. 43.2(b); *see also City of Anahuac v. Morris*, 484

S.W.3d 176, 182 (Tex. App.—Houston [14th Dist.] 2015, pet. denied). Our rules of appellate procedure also dictate that when reversing a trial court's judgment, we must render the judgment the trial court should have rendered, except when the interests of justice require a remand for another trial. *See* TEX. R. APP. P. 43.3. Based on the record in this case, we conclude the interests of justice require we remand this case to the trial court for further proceedings consistent with this opinion.

Because of our resolution of appellants' issues, we need not address the resident appellees' cross-issues arguing that the trial court erred in its characterization of its ruling "granting" appellants' motion for partial summary judgment when the order granted relief in favor of the resident appellees, that the trial court failed to award the declaratory relief sought by the resident appellees, and that the trial court erred in failing to determine an award of attorney's fees. *See* TEX. R. APP. P. 47.1.

## CONCLUSION

We reverse the trial court's order dismissing the Lutzes' claims for declaratory judgment and breach of fiduciary duty for lack of standing, reverse the trial court's order on the parties' motions for partial judgment on their declaratory judgment

claims, and remand this case to the trial court for further proceedings consistent with this opinion.

/Nancy Kennedy/
NANCY KENNEDY
JUSTICE