REVERSE and RENDER and Opinion Filed February 17, 2026

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-25-01127-CV

AMANDA JONES, RYLEIGH VALLADAREZ, AND KALEY STEWART, Appellants
V.
ROBERT AND MISTY HANVEY, INDIVIDUALLY, AND AS NEXT FRIENDS OF E.H., A MINOR, Appellees

On Appeal from the 382nd Judicial District Court
Rockwall County, Texas
Trial Court Cause No. 1-25-0902

MEMORANDUM OPINION

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

Amanda Jones, Ryleigh Valladarez, and Kaley Stewart, former teachers and cheer coaches at Rockwall-Heath High School (collectively referred to herein as the Cheer Coaches), appeal the denial of their motion to dismiss claims brought by Robert and Misty Hanvey, individually, and as next friends of E.H. (the Hanveys), which arose from disciplinary actions the Cheer Coaches imposed during a cheerleading class. The Cheer Coaches sought dismissal under Section 101.106(f) of the Texas Civil Practice and Remedies Code, which essentially prevents an employee from being sued for work related torts and instead provides for a suit

against the government employer. *See* TEX. CIV. PRAC. & REM. CODE § 101.106(f) (titled "Election of Remedies").

In three issues, the Cheer Coaches urge the trial court erred by denying their motion because: their alleged negligent conduct in requiring the cheerleaders to do fifty modified burpees fell within the general scope of their employment with the Rockwall Independent School District (Rockwall ISD), and thus, the claims asserted against them should be dismissed under the Texas Tort Claims Act's election-of-remedies provision; Section 22.0511(a) of the Texas Education Code, addressing a professional employee of a school district's immunity from *liability*, and excepting from that immunity uses of excessive force in the discipline of students or negligence resulting in bodily injury to students, does not waive or abridge the Cheer Coaches' immunity from *suit* pursuant to Section 101.106(f); and the trial court's denial of their motion conflicts with the intent of the Texas Tort Claims Act.

We reverse the trial court's August 20, 2025 order denying the Cheer Coaches' Motion to Dismiss, render judgment dismissing the Hanveys' claims against the Cheer Coaches under the election-of-remedies provision in Section 101.106(f) of the Texas Civil Practice and Remedies Code. Because all issues are settled in law, we issue this memorandum opinion. TEX. R. APP. P. 47.4.

BACKGROUND

On May 27, 2025, the Hanveys filed suit against the Cheer Coaches alleging E.H., a student and cheerleader at Rockwall-Heath High School (RHHS), suffered

injuries as a result of the Cheer Coaches' negligent conduct. More particularly, the Hanveys alleged that on October 15, 2024, the RHHS Cheer Coaches forced their students to do fifty modified burpees, which included push-ups, during cheerleading class because they were unhappy with their students' performance. The Hanveys also alleged that E.H. suffered Exertional Rhabdomyolysis as a result of the complained-of punishment. The Hanveys' petition further alleged:

> On the day of the punishments, E.H. had not been feeling well and had a note from her doctor excusing her from physical exercise. Despite this, the teachers running the class demanded she perform the punishments. The teachers threatened that if the punishments were not done correctly, then more punishments would be added.
> . . .
>
> Other students recognized the danger of the punishments. A student incident report noted: "At practice, E.H. had a doctor's note to excuse her from practice due to having strep. But when we had to do our conditioning after not doing well on one of our full-out routines, E.H. was made to do the condition. E.H. was visibly in distress yet Coach Jones yelled at her to finish. The coaches were aware of her excused note from the doctor due to still being sick with strep yet Jones pushed her and forced her to continue after seeing her physically struggling due to the workout."
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> Video footage of the work out confirmed the punishments took place during the class.
> . . .
>
> Each teacher tried to imply they were not responsible for ordering the punishments. [A]ll three claimed it was the students themselves who came up with the idea to perform an excessive number of burpees.
>
> The district investigation determined the three teachers' actions violated at least five different district policies. They include violations of policies concerning Student Discipline, violation of the Educator Code of Ethics, and violations of Employee Standards of Conduct. The

district investigation also specifically states that the three teachers violated Student Discipline TEC Section 37.0023 and Employee Standards of Conduct Standards 3.2, and 3.5 among other detailed violations. The Employee Standards of Conduct 3.2 states: "The educator shall not intentionally, knowingly, or recklessly treat a student or minor in a manner that adversely affects or endangers the learning, physical health, mental health, or safety of a student minor." Additionally, the Employee Standards of Conduct 3.5 states: "The educator shall not intentionally, knowingly, or recklessly engage in physical mistreatment, neglect, or abuse of a student or minor." The three teachers resigned their positions with the cheerleading team during and after the investigation.

. . .

The District's report made specific findings including:

> The evidence supports that RHHS Cheerleader E.H. was diagnosed with Exertional Rhabdomyolysis and treated overnight in the emergency room with IV fluids on or about October 23, 2024.
>
> The evidence supports that this exercise was used as punishment for not doing their routine correctly.
>
> The evidence supports a finding that the burpee exercises may have contributed to E.H.'s diagnosis of Exertional Rhabdomyolysis.
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> The evidence supports that E.H. had a doctor's note to refrain from cheer practice until October 17, 2024, and the RHHS Cheer coaches did not follow the doctor's order.
>
> The evidence supports that there is a lack of knowledge and training by the coaches regarding Rhabdomyolysis.

The Cheer Coaches answered the lawsuit and moved to dismiss the claims against them under the election-of-remedies provision of the Texas Tort Claims Act, which insulates governmental employees from being sued for work related torts.

CIV. PRAC. & REM. § 101.106(f). The Cheer Coaches urged that the Hanveys pled facts that indicate the Cheer Coaches were teachers and cheer coaches at RHHS, and thus, they were employees of the Rockwall ISD. The Cheer Coaches asserted the Hanveys' factual allegations established the event at issue occurred during a cheerleading class and related to the discipline and instruction of student athletes, and team management, and indicated that courts have found that maintaining discipline falls within the general scope of a teacher's employment in Texas and that discipline in the school context ordinarily describes some form of punishment.

In response to the Cheer Coaches motion to dismiss, the Hanveys claimed the Cheer Coaches were not acting in the scope of their employment when they demanded that E.H. and the other cheerleaders do the modified burpees because they applied prohibited aversive techniques as punishment and engaged in conduct that harmed the health and safety of their students. In addition, the Hanveys asserted the Cheer Coaches can be personally liable for their tortious actions under the Education Code's negligent discipline exception to school employee immunity.[1] The Hanveys specifically acknowledged in their response that "[I]n Texas, discipline of students is a legitimate state goal to create an atmosphere where students can learn" but claimed because school districts and their employees are prohibited from using

[1] On appeal, the Hanveys concede that Section 22.0511(a) of the Education Code, addressing a professional employee of a school district's immunity from *liability*, does not inform the analysis as to whether immunity from *suit* has been waived.

aversive techniques to discipline a student, such actions are not within the scope of the Cheer Coaches' employment with Rockwall ISD. *See* TEX. EDUC. CODE § 37.0023(b) (prohibiting application of an aversive technique).[2] The Hanveys also asserted that even if the Cheer Coaches' conduct did not constitute an aversive technique, their actions were at odds with their duty as school employees to promote the health and safety of students and in violation of school policies regarding same and the Education Code's requirement that a school district provide an exemption to physical education for any student who cannot participate because of illness or disability, and, thus, they were not within the general scope of their employment. *See* EDUC. § 28.002(l)(1) (addressing physical education and exemption due to illness or disability). The Hanveys further urged that the fact that Rockwall ISD found the Cheer Coaches violated at least five different school policies indicates they acted outside the scope of their employment.

The trial court held a hearing on the Cheer Coaches' motion to dismiss on August 15, 2025, and, on August 20, 2025, signed an order denying the motion. This interlocutory appeal followed.

[2] An aversive technique is a technique or intervention intended to reduce the likelihood of a behavior reoccurring by intentionally inflicting on a student significant physical or emotional discomfort or pain. EDUC. § 37.0023(a).

DISCUSSION

I. Standard of Review

A motion to dismiss filed by an employee of a governmental unit pursuant to section 101.106(f) of the Texas Civil Practice and Remedies Code is a challenge to the trial court's subject-matter jurisdiction, which we review de novo. *See Marino v. Lenoir*, 526 S.W.3d 403, 405 & n.5 (Tex. 2017); *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 224–26 (Tex. 2004). If resolution of an issue requires the court to construe statutory language, statutory construction is also reviewed de novo. *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 437 (Tex. 2009).

A motion to dismiss for lack of jurisdiction is the "functional equivalent" of a plea to the jurisdiction. *Richardson Hosp. Auth. v. Duru*, 387 S.W.3d 109, 114 (Tex. App.—Dallas 2012, no pet.). A plea to the jurisdiction is a dilatory plea that seeks dismissal of a case for lack of subject-matter jurisdiction. *Harris Cnty. v. Sykes*, 136 S.W.3d 635, 638 (Tex. 2004).

A plea to the jurisdiction may be utilized to challenge whether the plaintiff has met its burden of alleging jurisdictional facts or to challenge the existence of jurisdictional facts. *See Miranda*, 133 S.W.3d at 226–27. When, as here, the plea challenges the pleadings, we determine if the plaintiffs have alleged facts affirmatively demonstrating subject-matter jurisdiction.[3] *See id.* at 226. We look to

[3] The Hanveys contend that the Cheer Coaches needed to provide factual proof to show that their conduct, as alleged in the Petition, fell within the "general scope" of their employment. While presenting

the plaintiffs' pleadings, construing them liberally in the plaintiffs' favor and looking to the pleaders' intent, but we are not bound by any legal conclusions asserted in the pleadings. *Id.*

II. Texas Tort Claims Act and Election of Remedies

In their first issue, the Cheer Coaches assert the trial court erred by denying their motion to dismiss because they were a governmental unit's employees at the time of the alleged negligent conduct and the conduct complained of was within the general scope of their employment.

A. Governing Law

Sovereign immunity and governmental immunity protect the State and its political subdivisions, respectively, from lawsuits and liability. *See Mission Consol. Indep. Sch. Dist. v. Garcia*, 253 S.W.3d 653, 655, 655 n.2 (Tex. 2008). The Texas Tort Claims Act provides a limited waiver of that immunity for certain suits against governmental entities. *Id.* at 655; *see also* CIV. PRAC. & REM. § 101.021. After the Texas Tort Claims Act's enactment, "plaintiffs often sought to avoid the Act's

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evidence pertinent to the jurisdictional inquiry is one way to support a plea to the jurisdiction, it is not the only way. *See Miranda*, 133 S.W.3d at 226–27. Here, the Cheer Coaches chose to challenge the trial court's subject-matter jurisdiction on the pleadings only. Under these circumstances, we determine merely whether the Hanveys have alleged sufficient facts to demonstrate the trial court's jurisdiction. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 446 (Tex. 1993); *see also Univ. of Tex. Health & Sci. Ctr. at Hous. v. Rios*, 542 S.W.3d 530, 537 (Tex. 2017) ("The connection between their job duties and the alleged tortious conduct, as claimed by [plaintiff] himself, places [the conduct] squarely within the scope of their employment at the Center."); *Gutierrez v. Williams*, No. 05-25-00289-CV, 2025 WL 2712513, at *4 (Tex. App.—Dallas Sept. 23, 2025, no pet.) (mem. op.) ("based on the allegations in Williams' pleading, we consider Williams's suit to be against Gutierrez in his official capacity . . . .") (demonstrating a Section 101.106(f) motion to dismiss may be made on the basis of the pleadings).

damages cap or other strictures by suing governmental employees, since claims against them were not always subject to the Act." *Garcia*, 253 S.W.3d at 656.

To prevent such circumvention and to protect governmental employees, the Texas Tort Claims Act was amended in 2003 to include an election-of-remedies provision. *Id.*; *see also generally* CIV. PRAC. & REM. § 101.106. The election-of-remedies provision "force[s] a plaintiff to decide at the outset whether an employee acted independently and is thus solely liable or acted within the general scope of his or her employment such that the governmental unit is vicariously liable, thereby reducing the resources that the governmental unit and its employees must use in defending redundant litigation and alternative theories of recovery." *Garcia*, 253 S.W.3d at 657.

Relevant to this case, the statute provides as follows:

> If a suit is filed against an employee of a governmental unit based on conduct within the general scope of that employee's employment and if it could have been brought under [the Texas Tort Claims Act] against the governmental unit, the suit is considered to be against the employee in the employee's official capacity only. On the employee's motion, the suit against the employee shall be dismissed unless the plaintiff files amended pleadings dismissing the employee and naming the governmental unit as defendant on or before the 30th day after the date the motion is filed.

CIV. PRAC. & REM. § 101.106(f). The election-of-remedies provision effectively mandates that only a governmental unit, and not a governmental employee, may be sued for governmental employee's work-related tortious conduct. *Garza v. Harrison*, 574 S.W.3d 389, 393–94 (Tex. 2019).

Section 101.106(f) encompasses two elements. The suit must (1) be filed against an employee of a governmental unit and be based on conduct within the general scope of that employment; and (2) be one that could have been brought "under this chapter" against the governmental unit. CIV. PRAC. & REM. § 101.106(f).

With respect to the first element's requirement that the suit be filed against an employee of a governmental unit, the Texas Tort Claims Act defines "employee" as "a person . . . in the paid service of a governmental unit . . . [but not] an independent contractor . . . or a person who performs tasks the details of which the governmental unit does not have the legal right to control." *Franka v. Velasquez*, 332 S.W.3d 367, 372 (Tex. 2011) (quoting TEX. CIV. PRAC. & REM. CODE § 101.001(2)). Status as an employee of a governmental unit presents a threshold issue. *Id.*

With respect to the first element's requirement that the complained-of conduct be within the general scope of employment, the Texas Tort Claims Act broadly defines "scope of employment" as "the performance for a governmental unit of the duties of an employee's office or employment and includes being in or about the performance of a task lawfully assigned to an employee by competent authority." CIV. PRAC. & REM. § 101.001(5). The scope of employment inquiry under Section 101.106(f) is fundamentally objective. *Laverie v. Wetherbe*, 517 S.W.3d 748, 753 (Tex. 2017). The operative question is whether there is a connection between the employee's job duties and the alleged tortious conduct. *Id.* The answer may be yes even if the employee performs negligently or is motivated by ulterior motives or

personal animus so long as the conduct itself was pursuant to her job responsibilities. *Id.* The focus is therefore on whether the general conduct was within the scope of employment, rather than whether the specific act was wrongful, negligent, or incompetently performed. *Garza*, 574 S.W.3d at 401. Conduct falls outside the scope of employment when it occurs within an independent course of conduct not intended by the employee to serve *any* purposes of the employer. *Alexander v. Walker*, 435 S.W.3d 789, 792 (Tex. 2014).

As to the second element's requirement, the law is well established that any tort claim against the government is brought under the Texas Tort Claims Act for purposes of dismissal, even if the Texas Tort Claims Act does not waive immunity. *Franka*, 332 S.W.3d at 375. Thus, even a tort for which the government retains immunity is one that could have been brought under the Texas Tort Claims Act. *Id.* at 385.

If the Section 101.106(f) requirements are satisfied, then the Hanveys' claims against the Cheer Coaches are considered to be against them in their official capacities only and should be dismissed. *See* CIV. PRAC. & REM. § 101.106(f).

B. Analysis

The parties do not dispute that the Cheer Coaches were Rockwall ISD employees at the time of the alleged tort and that suit could have been brought under the Texas Tort Claims Act against Rockwall ISD and the record supports these conclusions, so we need not substantively address those matters. The only dispute

with respect to the Cheer Coaches' first issue is whether, within the meaning of Section 101.106(f), the Cheer Coaches acted within the general scope of their employment with the school district at the time of the alleged wrongful act.

The Hanveys contend the Cheer Coaches were acting outside the scope of their employment with Rockwall ISD because school districts and employees are prohibited from using aversive techniques to discipline students and because "their actions were at odds with their duty as school employees to promote the health and safety of student." They also claim that "the fact that Rockwall ISD found the [Cheer Coaches] violated at least five different school district policies, . . . indicates their actions contradicted their dut[ies]."

But unlawful conduct or conduct that violates the employer's policies, in and of itself, does not establish the complained-of conduct falls outside the general scope of employment. *See Smith v. Heap*, 31 F.4th 905, 914 (5th Cir. 2022) (citing *Garza v. Harrison*, 574 S.W.3d 389, 405 (Tex. 2019)). What matters is whether the employee was performing the duties of his governmental employer's office, not on how adequately he performed such duties. *Pardo v. Iglesias*, 672 S.W.3d 428, 437 (Tex. App.—Houston [14th Dist.] 2023, pet. denied); *see also Alexander*, 435 S.W.3d at 790 (expressing no opinion as to whether officers acted in good faith in holding that alleged improper conduct of officers during course of arrest fell within general scope of their employment and was subject to election-of-remedies provision of Act); *City of Lancaster v. Chambers*, 883 S.W.2d 650, 658 (Tex. 1994) (on-duty

police officers acted within the scope of their duties during a high-speed chase even though the officers disregarded safety of others and severely injured motorcyclist); *Kraidieh v. Nudelman*, No. 01-15-01001-CV, 2016 WL 6277409, at *6 (Tex. App.—Houston [1st Dist.] Oct. 27, 2016, no pet.) (mem. op.) (when determining whether public employee was acting within the general scope of employment, for purposes of whether the employee is entitled to governmental immunity under the Texas Tort Claims Act, the issue is not whether the government employee had authority to commit the allegedly tortious act, but whether she was discharging the duties generally assigned to her); *Wilkerson v. Univ. of N. Tex. ex rel. Bd. of Regents*, 878 F.3d 147, 161 (5th Cir. 2017) (concluding even if employee acted wrongly by skipping appropriate procedures, her actions were in connection with her official duty as department chair). And while a deviation from job duties is not within the scope of employment, the escalation of a duty beyond what is assigned, or even what is permitted, is still within the scope of employment. *See Fink v. Anderson*, 477 S.W.3d 460, 466–67 (Tex. App.—Houston [1st Dist.] 2015, no pet.).

The Hanveys affirmatively alleged that the claimed wrongful conduct occurred at the school, during the school day, in the cheerleading class and involved punishment imposed for disciplinary purposes. These alleged facts establish that there was a connection between the Cheer Coaches' duties and the alleged tortious conduct. *See Laverie*, 517 S.W.3d at 753; *Garza*, 574 S.W.3d at 401 (governmental employee is discharging generally assigned job duties if employee was doing her job

at time of the alleged tort). We conclude the Hanveys' allegations the Cheer Coaches violated provisions of the Education Code and school district policies do not establish the Cheer Coaches were not acting in the general scope of their employment with the school district. *See Garza*, 574 S.W.3d at 404–405. We further conclude the Hanveys did not allege that the Cheer Coaches engaged in an independent course of conduct that was intended to further only their own purposes and no purpose of their employer. *See Alexander*, 435 S.W.3d at 792. Thus, under the specific circumstances presented here, and pursuant to controlling precedent, we are compelled to conclude the Hanveys' pleadings establish the complained-of conduct was within the general scope of the Cheer Coaches' employment. Therefore, we conclude the Cheer Coaches properly invoked the Texas Tort Claims Act's election-of-remedies provision. Accordingly, we sustain the Cheer Coaches' first issue.

III. Section 22.0511(a) of the Texas Education Code ("Immunity from Liability)

In their second issue, the Cheer Coaches assert Section 22.0511(a) of the Texas Education Code is not a basis to overcome their claim of immunity under Section 101.106(f) of the Texas Civil Practices and Remedies Code. As an initial matter we note that the Hanveys concede and represent on appeal that they were not relying upon Section 22.0511(a) as a basis to contest the Cheer Coaches' motion to dismiss, although they did assert in their response to the motion that the Cheer

Coaches "can be personally liable for their tortious conduct because their actions satisfy the Education Code's negligent discipline exception to school employee immunity." We address the Cheer Coaches' second issue because it is possible the trial court relied on Section 22.0511(a) in denying the Cheer Coaches' motion to dismiss.

Section 22.0511(a) of the Texas Education Code, titled "Immunity from Liability", provides as follows:

> A professional employee of a school district is not personally liable for any act that is incident to or within the scope of the duties of the employee's position of employment and that involves the exercise of judgment or discretion on the part of the employee, except in circumstances in which a professional employee uses excessive force in the discipline of students or negligence resulting in bodily injury to students.

EDUC. § 22.0511(a).

Section 22.0511 is an affirmative defense that provides professional school employees immunity from liability in relation to actions taken within the scope of their employment, with exceptions for use of excessive force and negligence resulting in bodily injury. *Gonzalez v. Ison–Newsome*, 68 S.W.3d 2, 4 (Tex. App.—Dallas 1999), *pet. dism'd w.o.j.*, 73 S.W.3d 178 (Tex. 2001). Immunity from liability and immunity from suit are two distinct principles. *Tex. Dep't of Transp. v. Jones*, 8 S.W.3d 636, 638 (Tex. 1999). Immunity from suit defeats the trial court's subject-matter jurisdiction and may be asserted in a plea to the jurisdiction. *Id.* In contrast, immunity from liability, like other affirmative defenses to liability, must be

pleaded or else it is waived. *Id.* Furthermore, unlike immunity from suit, immunity from liability does not affect a court's jurisdiction to hear a case and should not be raised in a plea to the jurisdiction. *See State v. Lueck*, 290 S.W.3d 876, 880 (Tex. 2009). While Section 22.0511(a) excepts excessive force and negligence resulting in bodily injury from a school employee's immunity from liability, it does not waive immunity from suit. Therefore, to the extent the trial court may have relied on Section 22.0511(a) of the Texas Education Code to deny the Cheer Coaches' motion to dismiss for lack of subject-matter jurisdiction, it erred in doing so. Accordingly, we sustain the Cheer Coaches' second issue.

Because we have sustained the Cheer Coaches' first two issues, we need not address their third issue asserting the trial court's denial of their motion to dismiss conflicts with the intent of the Texas Tort Claims Act. TEX. R. APP. P. 47.1.

CONCLUSION

We reverse the trial court's August 20, 2025 order denying Amanda Jones, Ryleigh Valladarez, and Kaley Stewart's motion to dismiss, render judgment dismissing Robert and Misty Hanvey, individually, and as next friends of E.H.'s claims against Amanda Jones, Ryleigh Valladarez, and Kaley Stewart under the election-of-remedies provision of the Texas Tort Claims Act.

/Nancy Kennedy/
NANCY KENNEDY
JUSTICE