Reversed and Rendered and Opinion Filed April 16, 2026

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-25-01511-CV

JOHN A. HARRELL AND LUCAS LUCERO, Appellants
V.
VALENCIA SMITH, INDIVIDUALLY, AND AS NEXT FRIEND OF G.A., A MINOR, Appellee

On Appeal from the 101st Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-25-08202

MEMORANDUM OPINION

Before Justices Smith, Breedlove, and Rossini
Opinion by Justice Rossini

I. INTRODUCTION

Appellants John A. Harrell and Lucas Lucero (Coaches), coaches at Rockwall Independent School District (Rockwall ISD), appeal the denial of their motion to dismiss claims brought by Appellee Valencia Smith, individually, and as next friend of G.A., a minor. The claims arose from disciplinary actions the Coaches imposed during football practice. The Coaches sought dismissal under the Texas Tort Claims Act's 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 Coaches argue that the trial court erred by denying their motion because: (1) they are immune from suit under Section 101.106(f)'s Election of Remedies provision because their alleged negligent conduct in administering physical punishment against student athletes fell within the general scope of their employment with Rockwall ISD; (2) the Coaches' Section 101.106(f) immunity from suit is not waived or abridged by application of Section 22.0511(a) of the Texas Education Code; and (3) the trial court's order denying the Coaches' Motion to Dismiss pursuant to Section 101.106(f) conflicts with the intent of the Texas Tort Claims Act.

We reverse the trial court's September 11, 2025 order denying the Coaches' Motion to Dismiss and render judgment dismissing Smith's claims against the Coaches under Section 101.106(f)'s election-of-remedies provision.

II. BACKGROUND

On May 27, 2025, Smith filed suit against the Coaches alleging that G.A., a student at Rockwall ISD, suffered injuries as a result of the Coaches' negligent conduct during a football workout. More particularly, Smith alleged that during "an 8th period workout class led by head coach Harrell and administered by his assistant coaches" student athletes, including G.A., were forced to do "punishment push-ups"

for committing infractions including wearing "wrong attire," making "mistakes in the warmup lines," having "attitude and negative interactions with coaches and peers," as well as failing to demonstrate "effort" in class. Smith also alleged that G.A. "sustained serious injuries" including Rhabdomyolysis[1] as a result of the complained-of punishment.

The allegations continued that "at least 26 [Rockwall] student athletes were either diagnosed with Rhabdomyolysis or having symptoms consistent with it." According to the pleadings, "[a]ll of the cases occurred after the student athletes participated in the workouts." Smith further alleged that it was "very likely that there were substantially more [Rockwall] student athletes who could have been diagnosed with Rhabdomyolysis" but they had not sought out athletic trainers for treatment or they had sought out their own physicians related to any symptoms.

Smith also alleged that, at all times relevant to this lawsuit, the Coaches were football coaches at Rockwall-Heath High School in Rockwall ISD.

After the suit was filed, the Coaches filed a motion to dismiss under Section 101.106(f) of the Texas Civil Practices and Remedies Code. In their dismissal motion, the Coaches alleged that they were "employees of the District who were

[1]According to Cleveland Clinic's Website, rhabdomyolysis is a dangerous, potentially life-threatening condition where high-intensity exercise or other causes may lead to muscle breakdown, releasing harmful proteins into the bloodstream. Symptoms can range from mild to severe and may include muscle soreness, dehydration, and loss of consciousness. Complications may include kidney damage or failure. *See* https://my.clevelandclinic.org/health/diseases/21184-rhabdomyolysis, last visited April 8, 2026.

acting within the scope of their employment at the time of G.A.'s injuries" and that their "Discipline Plan" fell within the scope of their employment with the school. The Coaches claimed that they were immune from suit under the Texas Torts Claims Act; that the students had knowingly and expressly assumed the risk of participating in sports activity; and that the students own acts or omissions caused or contributed to G.A.'s injuries.

In her response to the Coaches' dismissal motion, Smith argued that Harrell and Lucas did not act within the scope of their employment when administering punishment; that the Coaches had applied prohibited punishment techniques; and that the Coaches could be held personally liable for their conduct because their actions satisfied Section 22.0511(a) of the Texas Education Code's negligent-discipline exception to school employee immunity.

After conducting a hearing, the trial court issued an order denying the Coaches' motion. This interlocutory appeal followed. For the reasons discussed below, we reverse the trial court's order and render judgment in the Coaches' favor.

III. DISCUSSION

1. 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 and no resolution of fact is required, we determine if the plaintiff has alleged facts affirmatively demonstrating subject-matter jurisdiction.[2]

[2] Smith contends in her brief that the Coaches needed to provide factual proof that their conduct fell within the "general scope" of their employment because the Coaches allege their conduct was related to their employment and served legitimate educational purposes of classroom instruction and discipline. While presenting 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 Coaches chose to challenge the trial court's subject-matter jurisdiction on the pleadings only. Under these circumstances, we determine merely whether Smith has alleged sufficient facts to demonstrate the trial court's jurisdiction. *See 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).

See id. at 226. We look to the plaintiff's pleadings, construing them liberally in the plaintiff's favor and looking to the pleader's intent, but we are not bound by any legal conclusions asserted in the pleadings. *Id*.

2. Texas Tort Claims Act and Election of Remedies

In their first issue, the Coaches assert that 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, requiring dismissal on the Coaches' motion under Section 101.106(f)'s election-of-remedies provision.

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, 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* TEX. CIV. PRAC. & REM. CODE § 101.021. After the Texas Tort Claims Act's enactment, "plaintiffs often sought to avoid the Act's 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* TEX. CIV. PRAC. & REM. CODE § 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:

> 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.

TEX. CIV. PRAC. & REM. CODE § 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. TEX. CIV. PRAC. & REM. CODE § 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." TEX. CIV. PRAC. & REM. CODE § 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 the employee's 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 purpose" 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 Smith's claims against the Coaches are considered to be against them in their official capacities only and should be dismissed. *See* TEX. CIV. PRAC. & REM. CODE § 101.106(f).

B. Analysis

The parties do not dispute that the Coaches were Rockwall ISD employees at the time of the alleged conduct and that suit could have been brought under the Texas Tort Claims Act against Rockwall ISD and the record supports these conclusions, thus we need not substantively address those matters. The only dispute with respect to the Coaches' first issue is whether, within the meaning of Section 101.106(f), the Coaches acted within the general scope of their employment with the school district at the time of the alleged wrongful acts.

Smith contends that the 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 the students." Smith also claims that "the fact that the Rockwall ISD investigation found the [Coaches] discipline was improperly implemented and an impermissible use of exercises indicates their actions contradicted their duty as educators."

But unlawful conduct or conduct that violates the employer's policies, in and of itself, does not establish that the complained-of conduct falls outside the general scope of employment. *Jones v. Hanvey*, No. 05-25-01127-CV, 2026 WL 448819, at *5 (Tex. App.—Dallas Feb. 17, 2026, no pet. h.) (mem. op.) (citing *Smith v. Heap*, 31 F.4th 905, 914 (5th Cir. 2022)). 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); *Hanvey*, 2026 WL 448819, at *5; *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 Texas Torts Claims 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.); *see also Hanvey*, 2026 WL 448819, at *5.

In this case, Smith affirmatively pleaded that the claimed wrongful conduct occurred at the school, during the school day "in 8th period class," and involved punishment imposed for disciplinary purposes. These alleged facts establish that there was a connection between the Coaches' duties and the alleged tortious conduct. *See Laverie*, 517 S.W.3d at 753; *Garza*, 574 S.W.3d at 401 (reasoning that a governmental employee is discharging generally assigned job duties if the employee

was doing her job at time of the alleged tort). We conclude that Smith's allegations that the Coaches violated provisions of the Education Code and school district policies do not establish that their alleged negligent conduct in administering physical punishment against G.A. did not fall within the general scope of their employment with the school district. *See Garza*, 574 S.W.3d at 401. We further conclude that Smith did not allege that the 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 v. Walker*, 435 S.W.3d 789, 792 (Tex. 2014). Thus, under the specific circumstances alleged in this case, and pursuant to controlling precedent, we are compelled to conclude that Smith's pleadings establish that the complained-of conduct was within the general scope of the Coaches' employment; thus, we conclude that the Coaches properly invoked the Texas Tort Claims Act's election-of-remedies provision.

We recently came to a similar conclusion in *Hanvey*. 2026 WL 448819, at *5. In *Hanvey*, the plaintiffs affirmatively alleged that the "claimed wrongful conduct [by cheer coaches] occurred at the school, during the school day, in the cheerleading class and involved punishment imposed for disciplinary purposes." *Id.* This Court concluded that the plaintiffs' allegations that cheer coaches violated provisions of the Education Code and school district policies did not establish that the cheer coaches were *not* acting in the general scope of their employment with the school district. *Id*. We held that the plaintiffs' pleadings established that the complained-of

conduct was within the general scope of the cheer coaches' employment; thus, we held that the cheer coaches (the defendants) had properly invoked the Texas Tort Claims' Act's Section 101.106(f) election-of-remedies provision, the same provision at issue here, and we reversed the trial court's order denying the cheer coaches' motion to dismiss, and we rendered judgment dismissing the plaintiffs' claims. *Id*. at *6.

As in *Hanvey*, we conclude that the Coaches' pleadings establish that the complained-of conduct in this case was within the general scope of the Coaches' employment and that the trial court erred in denying the Coaches' Section 101.106(f) election-of-remedies motion to dismiss. We sustain the Coaches' first issue.

3. Section 22.0511(a) of the Texas Education Code

In their second issue, the Coaches argue that Section 22.0511(a) of the Texas Education Code is not a basis to overcome their claim of immunity under Section 101.106(f). As an initial matter, we note that Smith concedes and represents on appeal that she "does not assert [section 22.0511(a)] as a basis for conferring jurisdiction on the trial court in this proceeding" although Smith did cite section 22.0511(a) in her response to the Coaches' motion to dismiss in support of her argument that the Coaches "can be personally liable in circumstances where the employee uses excessive force in the discipline of students or negligence resulting in bodily injury to students." For their part, the Coaches state that they "have not asserted their entitlement to professional immunity from liability under the Texas

Education Code; rather they asserted their right to dismissal given their immunity from suit pursuant to § 101.106(f)."

We address this issue because it is possible the trial court relied on Section 22.0511(a) in denying the Coaches' motion to dismiss. *See Hanvey*, 2026 WL 448819, at *5 (addressing possible issue of trial court relying on Section 22.0511(a) in denying similar 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.

TEX. EDUC. CODE. § 22.0511(a).

Section 22.0511(a) 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 Coaches' motion to dismiss for lack of subject-matter jurisdiction, it erred in doing so. Accordingly, we sustain the Coaches' second issue.

3. Aims of the Texas Tort Claims Act

In their third issue, the Coaches argue that the trial court's order denying the Coaches' Motion to Dismiss pursuant to Section 101.106(f) conflicts with the intent of the Texas Tort Claims Act. Because we have sustained the Coaches' first two issues, we need not address this third issue. S*ee Hanvey*, 2026 WL 448819, at *6; Tex. R. App. P. 47.1 ("The court of appeals must hand down a written opinion that is as brief as practicable but that addresses every issue raised and necessary to final disposition of the appeal.").

4. Rendition is the appropriate remedy in this appeal

Smith argues that the trial court properly denied the Coaches' motion to dismiss. In the alternative, Smith argues that "if this Court concludes that Smith's

Petition does not sufficiently plead that the Appellant coaches engaged in conduct beyond the general scope of their lawful job duties, [Smith prays that the Court] remand to allow Smith the opportunity to amend her Petition."

Having sustained the Coaches' first and second issues on appeal based on Smiths' pleading allegations affirmatively falling within Section 101.106(f)'s election-of-remedies provision, we conclude that remand is unnecessary here because Smith's pleadings, taken as true, affirmatively negate subject matter jurisdiction over her claims against the Coaches. *See Miranda*, 133 S.W.3d at 227; *see also Hanvey*, 2026 WL 448819, at *5 (reversing trial court's order denying coaches' motion to dismiss and rendering judgment dismissing plaintiff's claims against cheer coaches based on the cheer coaches' motion to dismiss under Section 101.106(f)'s election-of-remedies provision); *Williams*, 2025 WL 2712513, at *4 ("We reverse the trial court's order and render judgment dismissing Williams's claims against Gutierrez under the election-of-remedies provision in section 101.106(f).").

IV. CONCLUSION

We reverse the trial court's November 5, 2025 order denying the motion to dismiss filed by Coaches John A. Harrell and Lucas Lucero, and we render judgment dismissing the claims of Appellee Valencia Smith, individually, and as next friend of G.A., a minor, under the election-of-remedies provision of the Texas Tort Claims Act.

/Gino J. Rossini/
GINO J. ROSSINI
JUSTICE