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CASE LAW UPDATE 2024

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2024 Case Update

Supreme Court of Texas and Third Court of Appeals

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I. Injunctive Relief

In re State, 682 S.W.3d 890 (Tex. 2023).

A pregnant woman, Cox, received a diagnosis that her child would be born with Trisomy 18, and she filed suit to block the enforcement of Texas' abortion laws. 682 S.W.3d at 892. Cox asserted that her had a good faith belief that Cox qualified for the exception to Texas' abortion prohibition. But the doctor failed to assert that Cox had a "life threatening physical condition" that would have put her "at risk of death or [...] serious risk of substantial impairment of a major bodily function." *Id.* The Coxes and their doctor sued to prevent enforcement of the law generally prohibiting abortion. *Id.* at 892. Based only on the pleadings, the district court issued an order enjoining the Attorney General from enforcing the abortion laws against the Coxes and their doctor. *Id.* at 893. The Attorney General promptly appealed. *Id.*

The Court noted, first, that the Attorney General had filed a plea to the

jurisdiction in the district court, but the district court had not considered it. *Id.* Because the Supreme Court concluded, however, that the Coxes had failed to show a probable right to relief, it also did not consider the State's plea. *Id.* at n.3.

The Court held that, to avail themselves of the exception in the statute, pregnant women need more than their doctors' subjective belief that the pregnant women meet the exceptions requirements. Texas' abortion laws require the exercise of reasonable medical judgment in determining whether a pregnant woman has a life-threatening physical "aggravated by, caused by, or arising from a pregnancy that places the female at risk of death or poses a serious risk of substantial impairment of a major bodily function unless the abortion is performed or induced." *Id.* at 892-894.

The Court specifically stated that, although "[s]ome difficulties in pregnancies, however, even serious ones, do not pose the heightened risks to the mother the exception encompasses," *id.* at 893, "[n]othing in [its] opinion prevents a physician from acting if, in that physician's

¹ Although the author is an assistant attorney general in the Administrative Law Division of the Office of the Attorney General, the statements and opinions expressed in this paper are solely her own. They are not intended to be and should not be taken as statements or opinions of the Attorney General.

² The author extends her gratitude to Mr. Naranjo for his work to assist her in preparing this paper. Mr. Naranjo was an intern with the Administrative Law Division over the summer and is currently a third-year law student at Texas Tech University School of Law.

reasonable medical judgment, she determines that [the woman] has a 'life-threatening physical condition' that places her 'at risk of death' or 'poses a serious risk of substantial impairment of a major bodily function unless the abortion is performed or induced.'" *Id.* at 894.

The Court further observed that the standard for the exception cannot be judicially expanded to include a lower standard or more narrowly construed to prevent abortions that fall within the exception. *Id.* at 894. The Court also called on the Texas Medical Board to provide more guidance in this area of the law, noting that "the legal process works more smoothly" when "executive branch entities do their part" *Id.* at 895.

Relevance to practice: Although the case contains the standard language requiring district courts to consider their jurisdiction before granting even temporary relief, both courts resolved the case on the likelihood of entitlement to relief.

II. Discovery Before PTJ

***Tex. So. Univ. v. Young*, 682 S.W.3d 886 (Tex. 2013) (opinion concurring in denial of petition for review and petition for writ of mandamus).**

Justice Young authored this opinion to explain why he voted with the Court to deny of a petition for review and alternative petition for writ of mandamus, both concerning a district court's ability to order discovery before ruling on a plea to the jurisdiction.

When the district court authorized some pre-plea discovery, the University sought review of the "implicit denial" of its plea to the jurisdiction. Justice Young summarized the law concerning the

availability of discovery to aid the court in resolving any factual disputes on which its jurisdiction depends, writing :

"Subject matter jurisdiction is 'essential to a court's power to decide a case.'" It does not mean that anything short of a final decision is fair game despite the absence of jurisdiction, of course, because the principle "stems from the doctrine of separation of powers, and aims to keep the judiciary from encroaching on subjects properly belonging to another branch of government." A court that exercises unauthorized judicial power is necessarily exercising power that belongs to someone else, either to others within the government or to the citizens of our State.

The State's premise is therefore correct: subject-matter jurisdiction is a condition precedent to reaching the merits of a dispute. Because "[s]overeign immunity from suit deprives a trial court of subject-matter jurisdiction," the trial court here has no authority to proceed to the merits until it determines whether TSU's plea to the jurisdiction should be sustained. Discovery that implicates only the merits is wholly improper until it is clear that the court has authority to reach the merits.

But because discovery is not invariably tethered only to the merits, discovery is not categorically unavailable upon a challenge to a trial court's subject-matter jurisdiction. "Courts

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