

Affirmed and Opinion filed October 11, 2001.



In The
Fourteenth Court of Appeals

NO. 14-00-00025-CV

PRESTON BENTON, PATRICIA BRADLEY, LISA BURCHETT, WILLIAM CASTILLO, ROY CLARK, PAM COKER, NANCY DISHMAN, JERRY FAUGHTENBERRY, STEVEN HILYARD, BRADLEY HUBBARD, LORI JEFFERSON, PATTI JENKINS, JESSE LOPEZ, OLGA LOPEZ, MICHAEL McCULLOUGH, CYNTHIA OLSON, JAMES RAINEY, SAMMIE RINEHART, ANDREW ROMO, JOANNA SASSER, MITCHELL SZYMCZYK, DEBBIE THOMAS, MILES VASTINE, SHAWNA WALKER, DARRELL WILSON, KATRINA WHITAKER, and IDA WIEDERHOLD, Appellants

V.

TOMMY THOMAS and HARRIS COUNTY, Appellees

**On Appeal from the 113th District Court
Harris County, Texas
Trial Court Cause No. 97-31290**

OPINION

This appeal is from the trial court's order granting appellees' motion to dismiss for want of jurisdiction because appellants failed to exhaust administrative remedies. In three points of error, appellants contend the trial court erred in granting appellees' motion for

dismissal and/or summary judgment because: (1) fact issues exist about appellees' promises to promote appellants; (2) fact issues exist on appellants' promissory estoppel claims; and (3) appellants' claims "preclude" (are not proper subjects for) administrative review. We affirm.

Background

Appellants were employed as "white shirt" jailers by the Harris County Sheriff's Department (the Department) and were on the wait list to attend the Department's academy. Appellants contend completion of training at the academy would effectively result in promotion to "blue shirt" deputies. In lieu of attending the academy, appellants allege that former Sheriff Klevenhagen promised them promotions to blue shirt deputies upon graduation from a course at the University of Houston–Downtown, one year's employment, qualification with a duty weapon, and successful completion of a physical fitness test. Michael McCullough was the only appellant who passed the physical fitness test; however, he failed to qualify with his duty weapon.

Appellants sued the sheriff and Harris County, seeking an injunction against promoting persons other than appellants to blue shirt deputies. In their original petition, appellants claim they complied with their part of the "contract" by completing the course at the University of Houston at their own expense and serving as volunteer reserve deputies for many hours.

Appellees filed a motion to dismiss for want of jurisdiction and, in the alternative, a motion for summary judgment on their contract claims. The trial court dismissed all the claims for want of jurisdiction because appellants failed to exhaust their administrative remedies. The trial court concluded in its judgment: "[B]ecause Plaintiffs have failed to exhaust their administrative remedies, this Court is without jurisdiction to hear their claims." We will address appellants' third point of error because it is dispositive.

Standard of Review

When the legislature has provided a method of administrative review, a complainant must exhaust administrative remedies before filing suit. *Firefighters' & Police Officers' Civil Serv. Comm'n v. Herrera*, 981 S.W.2d 728, 732 (Tex. App.—Houston [1st Dist.] 1998, pet. denied). The standard of review in cases involving dismissals for want of jurisdiction requires us to consider the allegations in the petition and take the well-pleaded allegations as true.¹ *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440 (Tex. 1993). Appellants had the burden of alleging facts sufficient to affirmatively show that the trial court had subject matter jurisdiction. *Tex. Ass'n of Bus.*, 852 S.W.2d at 446.

Discussion

The Department has a Civil Service Commission, which publishes regulations for classification of employees and grievance procedures.² These regulations set forth a detailed procedure for review of grievances within the Department, with appeal to the Civil Service Commission. Further, under section 4.05 of the Department's civil service regulations, an employee who has been adversely affected by a job "classification action" may request the Civil Service Commission to review the action.³ The Civil Service Commission's decision is final.

¹ The Texas Supreme Court has recently held that a trial court should also consider evidence in resolving a plea to the jurisdiction. *Bland I.S.D. v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000). Appellants did not offer any evidence in support of the jurisdictional issue.

² In counties with a population of more than 500,000, the sheriff's department may create a civil service system. TEX. LOC. GOV'T CODE ANN. § 158.032 (Vernon 1999). In counties with populations of 2.8 million or more, if the civil service system is approved by employees' vote, a commission is appointed to administer the system. *Id.* § 158.034. The commission's power includes creating rules for grievance procedures and selection, classification, promotion, discipline, and firing of employees. *Id.* §158.035.

³ In providing that a party "may" appeal, such regulations have been explained as meaning that an aggrieved person may appeal, and *if* an appeal is taken, it *must* be taken to the administrative entity. *See Grimes v. Stringer*, 957 S.W.2d 865, 869 (Tex. App.—Tyler 1997, pet. denied).

Only one appellant⁴ pursued review through the Civil Service Commission. Appellants contend that such a review was unnecessary because the Civil Service Commission had no jurisdiction to review their complaints and review would be futile. However, appellants provide very little argument and no authority to support this contention. We hold that appellants have waived this point for review. TEX. R. APP. P. 38.1(h); *Trenholm v. Ratcliff*, 646 S.W.2d 927, 934 (Tex. 1983).

Nonetheless, the standard of review requires an examination of appellants' petition to determine whether the factual allegations are sufficient to establish subject matter jurisdiction. Appellants generally allege the following: they worked as reserve deputies without pay; they attended training classes at "outside academies"; they are entitled to an injunction preventing the Department from hiring others as blue shirt deputies; and they are entitled to the reasonable value of the services they provided as reserve deputies. Appellants contend the trial court has jurisdiction because the Department's principal place of business is Harris County. They do *not* contend that they complied with civil service regulations or that they were not required to exhaust administrative remedies. *See City of Austin v. Ender*, 30 S.W.3d 590, 592 (Tex. App.—Austin 2000, no pet.) (plaintiff alleged in pleadings that he adhered to grievance procedure before filing suit in the district court); *see also Serv. Fin. v. Adriatic Ins. Co.*, 46 S.W.3d 436, 450 (Tex. App.—Waco 2001, no pet.) (no jurisdiction if party fails to allege or present evidence of exhaustion of administrative remedies). In sum, appellants did not allege facts or adduce evidence sufficient to establish subject matter jurisdiction. Therefore, we hold that the trial court did not err in dismissing appellants' action for want of jurisdiction.

Because the trial court had no jurisdiction over this case, we find it unnecessary to address appellants' points of error one and two. *See Bland I.S.D.*, 34 S.W.3d at 554. We

⁴ Appellees reveal that appellant Roy Clark filed an appeal with the Civil Service Commission in 1993 about the failure to promote him to blue shirt deputy. However, appellants' pleadings are silent regarding the final disposition of Roy Clarke's administrative appeal.

affirm the judgment of the trial court dismissing appellants' claims for want of jurisdiction.

/s/ Charles Seymore
Justice

Judgment rendered and Opinion filed October 11, 2001.

Panel consists of Chief Justice Brister and Justices Fowler and Seymore.

Do Not Publish — TEX. R. APP. P. 47.3(b).