LEGAL UPDATES

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Governmental Immunity Bars Suit Against Dallas County Sheriff for COVID-19 Response

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In any case where a government official raises a defense of governmental immunity, a key legal question is whether the plaintiff's pleadings successfully allege *ultra vires* conduct—that the government official acted without legal authority, or failed to perform a purely ministerial act. A just-issued opinion, involving claims against Dallas County Sheriff Marian Brown relating to her response to COVID-19, provides a useful precedent on immunity for governmental officials whose responsibilities involve exercising discretionary powers.

Background

On May 5, 2021, the Fifth Court of Appeals filed its opinion in *Lewis v. Brown*, No. 05-20-00855-CV. In the underlying case, Officer Lewis (a detention security officer in the Dallas County Jail) alleged certain deficiencies in the way Sheriff Brown had responded to the COVID-19 pandemic, and sought injunctive relief to require the sheriff to implement Officer Lewis's preferred measures. Anticipating a governmental immunity defense, Officer Lewis pled that Sheriff Brown acted *ultra vires* by creating a public health nuisance and failing to abate it, failing to maintain the jail in a clean and sanitary condition, and ignoring requirements relating to staffing and preventative maintenance in the jail. The Trial Court granted Sheriff Brown's plea to the jurisdiction. The Appellate Court affirmed.

First, the Court examined Officer Lewis's allegation that Sheriff Brown's alleged insufficient COVID-19 response had violated mandatory duties arising from statute—specifically, statutes requiring that the county jail must be maintained in a "clean and sanitary condition." The Court held that Officer Lewis had not identified a specific statute, or a statutorily required action, that

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Sheriff Brown had failed to perform. In fact, Officer Lewis's pleadings had alleged numerous acts that the sheriff had taken to respond to and mitigate COVID-19 in the jail. Officer Lewis's complaint was that these acts had not gone far enough—for example, the sheriff needed to increase existing testing, provide additional training on COVID-19 and increase cleanliness at the jail. But because Officer Lewis failed to identify a statute requiring Sheriff Brown to perform these steps in addition to the steps Officer Lewis conceded the sheriff had already taken, he failed to establish that Sheriff Brown acted without lawful authority.

The Court also held that Officer Lewis did not show that Sheriff Brown failed to perform a ministerial act. The Court's analysis here focused on the Texas Supreme Court's 2018 decision in *City of Houston v. Houston Municipal Employees Pension System*, which found a ministerial duty in a statute which "[left] no room for the City to exercise judgment" in how to apply a statute requiring pension payments. 549 S.W.3d 566, 576 (Tex. 2018). In Officer Lewis's case, the statutes governing Sheriff Brown's duties and the public nuisance statutes did not require Sheriff Brown to act in a specific way, but instead provided her with significant discretion. What Officer Lewis complained about was how the sheriff exercised that discretion. As the Court put it: "Thus, unlike *Houston Municipal Employees Pension System*, the instant controversy is not **whether** Sheriff Brown fulfilled her duties as sheriff but, rather, **how** Sheriff Brown has fulfilled her ministerial duties." Because the pleadings failed to establish a ministerial act the sheriff did not perform, her governmental immunity applied.

Finally, in what appears to be the first holding to this effect by at least the Dallas County of Appeals, the Court also held that the Texas Tort Claims Act waiver of sovereign immunity applies only to claims seeking money damages and not—like Officer Lewis's case—claims for solely injunctive relief.

What this means to you

This case confirms the breadth of the governmental immunity available to government actors in Texas who enjoy the ability to exercise discretion in carrying out their duties. The *Lewis* case indicates that with a broad grant of statutory authority (e.g., the sheriff's responsibility to maintain a "clean and sanitary" jail), a government actor is likely to enjoy immunity when a plaintiff's complaint is, fundamentally, simply a disagreement with how the government actor exercises that authority.

Contact us

If you have questions regarding how this recent decision may impact legal best practices as you do business in the public sector, contact Kate David, Jeffery Nobles, Ben Stephens, Nicholas Stepp or your Husch Blackwell attorney.

Your Comprehensive COVID-19 Legal Resource

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