

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-17-00164-CV

In re S. O.

ORIGINAL PROCEEDING FROM TRAVIS COUNTY

MEMORANDUM OPINION

Relator S.O., a former University of Texas student who was awarded a Ph.D. in Chemistry by the University in 2008, filed a petition for writ of injunction and, in the alternative, a petition for writ of prohibition seeking to prevent the real parties in interest¹ from conducting a hearing concerning alleged violation of the University of Texas’s “Institutional Rules.” S.O. seeks to enjoin real parties in interest from conducting the hearing during the pendency of S.O.’s appeal, which challenges, in part, whether the trial court correctly concluded that her claims were not ripe until the hearing had occurred.²

¹ Real parties in interest are identified by S.O. as the following University of Texas officials, in their official capacities: Gregory L. Fenves, President; Vincent Shelby Stanfield, Registrar; Soncia Reagins-Lilly, Dean of Students and Senior Associate Vice-President for Student Affairs; Jeana Lungwitz, Clinical Professor and Faculty Member; Paul L. Foster, Chairman of the University of Texas Board of Regents; R. Steven Hicks, Vice-Chairman of the University of Texas Board of Regents; Jeffrey D. Hildebrand, Vice-Chairman of the University of Texas Board of Regents; and University of Texas Board of Regents Members Alex Cranberg, Wallace L. Hall, Jr., Brenda Pejovich, Ernest Aliseda, David J. Beck, and Sara Martinez Tucker. We will refer to these parties, collectively, as “the University officials.”

² At the Court’s request, the University officials filed a response in opposition to S.O.’s petition for writ of injunction and, in the alternative, writ of prohibition.

S.O. filed suit against the University officials seeking declaratory and injunctive relief prohibiting the University officials from holding an internal disciplinary proceeding for the purpose of deciding whether to revoke her Ph.D. degree. S.O. alleged that such action was *ultra vires* and a violation of her constitutional rights to due process and equal protection. S.O. also sought a temporary injunction to prevent the University from conducting any proceedings related to her Ph.D. degree pending resolution of her claims. The University officials filed a plea to the jurisdiction in which they asserted that the trial court lacked jurisdiction over S.O.'s claims because they were not ripe. *See Waco Indep. Sch. Dist. v. Gibson*, 22 S.W.3d 849, 851 (Tex. 2000) (“The ripeness doctrine prevents premature adjudication of hypothetical or contingent situations.”). The University officials also asserted that sovereign immunity barred S.O.'s claims “concerning due process and equal protection” because, in addition to the claims not being ripe, her petition failed to set forth a “viable claim” of a violation of either of these rights. *See City of Elsa v. M.A.L.*, 226 S.W.3d 390, 392 (Tex. 2007) (per curiam) (holding that “suits for injunctive relief” may be maintained against governmental entities to remedy violations of the Texas Constitution” (quoting *City of Beaumont v. Bouillion*, 896 S.W.2d 143, 149 (Tex. 1995))); *see also Andrade v. NAACP of Austin*, 345 S.W.3d 1, 11 (Tex. 2011) (sovereign immunity retained unless plaintiff has pleaded viable claim of violation of constitutional right).

On February 17, 2016, the trial court held a hearing on S.O.'s request for a temporary injunction and on the University officials' plea to the jurisdiction. The trial court did not grant temporary injunctive relief nor did it rule on the University officials' plea. In March, S.O. filed a motion for summary judgment. While that motion was pending, the University informed S.O.

that it would conduct its disciplinary hearing on October 21, 2016.³ S.O. then served the University officials with a request for production of documents and a set of interrogatories related to the disciplinary proceedings. The University officials filed a motion for protection against the discovery requests and for a stay of discovery until resolution of the plea to the jurisdiction. The trial court conducted a hearing on the motion for protection. A week after the hearing, the trial court signed an order reciting that S.O.'s claims were not ripe for review and granting the University officials' plea to the jurisdiction. The trial court dismissed S.O.'s claims and S.O. perfected an appeal to this Court. That appeal is currently pending in this Court as cause number 03-16-00726-CV.

As it currently stands, there is nothing to prevent the University from going forward with a disciplinary proceeding for the purpose of deciding whether to revoke S.O.'s Ph.D. degree, an action S.O. has alleged to be an *ultra vires* act. This Court has authority to issue writs of injunction if necessary to enforce its own jurisdiction. *See* Tex. Gov't Code § 22.221(a) ("Each court of appeals . . . may issue a writ of mandamus and all other writs necessary to enforce the jurisdiction of the court."). This authority extends to the issuance of writs necessary to preserve the subject matter of an appeal. *See In re Texas Ass'n of Sports Officials*, No. 03-10-00029-CV, 2010 WL 392342, at *1 (Tex. App.—Austin Feb. 5, 2010, orig. proceeding) (mem. op.) (citing *Beall v. Strake*, 602 S.W.2d 394, 395 (Tex. Civ. App.—Austin 1980, orig. proceeding)). Here, the subject matter of S.O.'s appeal is, in part, whether the trial court correctly concluded that her claims were not ripe until the disciplinary proceeding had occurred. Once that proceeding has occurred, S.O.'s

³ The record reflects that the hearing did not occur on October 21, 2016, and it is currently scheduled to take place on April 28, 2017.

ultra vires claim seeking to enjoin the allegedly unauthorized action will be moot. *See VE Corp. v. Ernst & Young*, 860 S.W.2d 83, 84 (Tex. 1993) (per curiam) (if court's action on merits cannot affect rights of parties, case is moot). If a case becomes moot, the parties lose standing to maintain their claims. *See Williams v. Lara*, 52 S.W.3d 171, 184 (Tex. 2001). Standing is a prerequisite to subject-matter jurisdiction, and subject-matter jurisdiction is essential to a court's power to decide a case. *See Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 553-54 (Tex. 2000). Thus, we agree that an injunction to prevent the University officials from committing the allegedly *ultra vires* act S.O. complains of is necessary to preserve the subject matter of the underlying suit and enforce our jurisdiction over S.O.'s appeal.

The petition for writ of injunction is hereby granted. It is the order of this Court that, pending disposition of the appeal in cause number 03-16-00726-CV or further order of this Court, the University officials and any persons or entities acting in connection therewith are enjoined from conducting any proceeding for the purpose of deciding whether to revoke or otherwise take action with regard to S.O.'s Ph.D. degree conferred by the University in 2008. The Clerk of this Court is directed to issue the writ of injunction. No bond is required as a condition to the issuance of this injunction. *See Duncan v. Dripping Springs Indep. Sch. Dist.*, 612 S.W.2d 644, 647 (Tex. Civ. App.—Austin 1981, orig. proceeding) (per curiam) (no bond required of relator as condition to issuance of injunction issued for purpose of protecting jurisdiction of this Court).

Scott K. Field, Justice

Before Chief Justice Rose, Justices Field and Bourland

Filed: April 20, 2017