

CAUSE NO. C-4564-25-M

**RAUL ROCHA, AS NEXT
FRIEND OF N.R.,
Plaintiff,**

v.

**ERNIE ALONZO, MICHELE PENA,
AND OSCAR SALINAS,
Defendants.**

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IN THE DISTRICT COURT

476TH JUDICIAL DISTRICT

HIDALGO COUNTY, TEXAS

DEFENDANTS' PLEA TO THE JURISDICTION AND ORIGINAL ANSWER

TO THE HONORABLE COURT:

Defendants Ernie Alonzo, Michele Pena, and Oscar Salinas file this Plea to the Jurisdiction and Original Answer to Plaintiff's Original Petition and would show the Court the following:

I. GENERAL DENIAL

1. Pursuant to Rule 92, Tex. R. Civ. Proc., Defendants generally deny the allegations in Plaintiff's Original Petition

II. AFFIRMATIVE DEFENSES

2. Defendants reserve the right to raise affirmative defenses if necessary.

III. PLEA TO THE JURISDICTION

3. Governmental Immunity. A plea to the jurisdiction challenges a court's subject matter jurisdiction. *See Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 555 (Tex. 2000); *Tex. Dept Transp. v. Jones*, 8 S.W.3d 636, 638 (Tex. 1999). A plea may be based solely on the pleadings because a plaintiff has the burden to allege facts in the petition affirmatively

demonstrating that the trial court has subject matter jurisdiction. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 446 (Tex. 1993).

4. Under Texas law each professional employee of a school district is entitled to immunity from liability under the provisions of Tex. Educ. Code § 22.0511(a), which provide that:

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.

5. As set forth in Paragraphs 4.6-4.8 of Plaintiff's Original Petition, on the date of the incident giving rise to this suit, i.e. March 22, 2024, all Defendants were employees of Edinburg Consolidated Independent School District ("ECISD"). Ernie Alonzo ("Coach Alonzo") was the head football coach, Michele Peña ("Principal Peña") was the school Principal, and Oscar Salinas ("AD Salinas") was the Athletic Director.
6. Coach Alonzo. Plaintiff has asserted civil assault, intentional infliction of emotional distress, false imprisonment, and intrusion upon seclusion. All claims are barred by governmental immunity.
7. Principal Peña and AD Salinas. Plaintiff has asserted intentional infliction of emotional distress and aiding and abetting claims. Both claims are barred by governmental immunity.
8. The ECISD Police Department investigator noted in a police report dated April 18, 2024, that on March 22, 2024, head football coach of Robert Bela High School, Coach Alonzo, disciplined several football players for taking too long to get to their lunch period. The

discipline consisted of Coach Alonzo instructing Plaintiff, along with other football players, to do up/downs (i.e. football drills) in the locker room. After Coach Alonzo gave the verbal instruction he walked out of the locker room and did not stay to ensure the football players did the drills.

9. Neither Principal Peña nor AD Salinas was present during the incident.
10. Coach Alonzo's verbal command to discipline Plaintiff involved the exercise of judgment and/or was a discretionary act within the scope of his duties.
11. Additionally, Coach Alonzo's verbal command did not involve force as he nor any other Defendant physically touched Plaintiff. And even if Coach Alonzo's verbal command could constitute force it was not excessive force. *See Spacek v. Charles*, 928 S.W.2d 88, 95 (Tex. App.—Houston [14th Dist.] 1996, writ dismiss'd w.o.j.) (teachers may employ reasonable force both to discipline misconduct and to ensure students follow instructional directives); Tex. Penal Code Ann. § 9.62 (public school teachers have the authority to use reasonable force to discipline students because they act in the parents' role).
12. As a result, all of Plaintiff's claims against Defendants are barred by governmental immunity under section 22.0511(a) because all the alleged actions involved professional school employees exercising judgment, were discretionary acts, no Defendant used excessive force and there was no negligence resulting in bodily injury.
13. All of plaintiff's claims are further barred by governmental immunity because despite Plaintiff's assertion to the contrary, in Paragraph 6.2, the Texas Tort Claims Act ("TTCA") does not waive governmental immunity for intentional torts. The TTCA "specifically excludes waiver for a claim 'arising out of assault, battery, false imprisonment, or any other intentional tort'" *Tex. Dept Pub. Safety v. Petta*, 44 S.W.3d 575, 580 (Tex. 2001) (quoting

Tex. Civ. Prac. & Rem. Code § 101.057); *Midland Indep. Sch. Dist. v. Watley*, 216 S.W.2d 374, 382 (Tex. App.- Eastland 2006, no pet.) (“There is no waiver of immunity for intentional torts under the Tort Claims Act.”); *Dallas County Schools v. Vallet*, No. 05-16-00385-CV, 2016 WL 7163824, at *6 (Tex. App.-Dallas Dec. 8, 2016, no pet.) (A “claim for intentional infliction of emotional distress is an intentional tort for which immunity has not been waived under the Tort Claims Act.”). A cause of action for aiding and abetting “does not exist in Texas.” *Hampton v. Equity Tr. Co.*, 607 S.W.3d 1, 5 (Tex. App.-Austin 2020, pet. denied).

14. In Paragraph 3.2 Plaintiff alleges that this incident in question was *ultra vires*, but in Paragraph 6.2 Plaintiff states that “[e]ach Defendant is sued in their personal capacity.” To assert an *ultra vires* claim the Plaintiff must sue governmental officials in their official capacity. *See Chambers-Liberty Counties Navigation District v. State*, 575 S.W.3d 339, 344 (Tex. 2019). And even if Plaintiff had sued Defendants in their official capacities, Plaintiff’s suit fails to fall within the *ultra vires* exception because an *ultra vires* “suit must not complain of a government [official’s] exercise of discretion, but rath must allege and ultimately prove, that the [official] acted without legal authority or failed to perform a purely ministerial act.” *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009). All the alleged acts in Plaintiff’s suit involve Defendants’ exercise of discretion and Plaintiff fails to allege that any Defendant acted without legal authority or failed to perform a purely ministerial act.

15. Standing. Plaintiff lacks standing to bring this lawsuit on behalf of an adult.

16. In Paragraph 2.1, Plaintiff alleges that he is next friend to N.R., a minor.

17. Texas Rule of Civil Procedure 44 provides the exclusive framework for next friend representation, stating that only “[m]inors, lunatics, idiots, or persons non compos mentis who have no legal guardian may sue” by next friend. Tex. R. Civ. P. 44. This rule creates four distinct categories of individuals eligible for such representation and notably excludes competent adults from this form of representation. *See id.*
18. Texas Civil Practice and Remedies Code Section 129.001 establishes that “[t]he age of majority in this state is 18 years.” Upon reaching this age, individuals gain comprehensive legal rights and responsibilities, as “persons 18 years of age or older are adults and have the right and corresponding responsibility to make their own choices.” *Smith v. Merritt*, 940 S.W.2d 602, 606 (Tex. 1997).
19. Texas case law unequivocally establishes that next friend authority terminates automatically when a minor reaches the age of majority. “[T]he authority of a next friend to act on a minor’s behalf expires when the minor reaches the age of majority.” *Garza v. Fliedner*, No. 05-15-01067-CV, 2016 WL 7438756, at *3 (Tex. App.-Dallas Dec. 27, 2016, pet. denied) (mem. op.).
20. The ECISD Police Department investigator noted in a police report dated April 18, 2024, that N. R. was an adult at the time of the incident.
21. If N. R. was an adult in April 2024, then N. R. clearly was an adult at the time of the filing of this lawsuit.

IV. CONCLUSION AND PRAYER

Defendants pray the Court grant the plea to the jurisdiction, that Plaintiff take nothing, and the Defendants be awarded costs and all further relief at law or in equity to which they may be justly entitled.

Respectfully Submitted,

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/s/ Eric D. Flores

Eric D. Flores
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ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Defendants' Plea to the Jurisdiction and Original Answer** has been served on all counsel of record in accordance with the Texas Rules of Civil Procedure.

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Eric D. Flores
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