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OPINIONS AND ORDERS

REHEARING ORDERS

ORDER OF THE SUPREME COURT OF TEXAS
(DECEMBER 10, 2021)

IN THE SUPREME COURT OF TEXAS

MICHELLE HERCZEG

v.

CITY OF DALLAS, TEXAS

Case No. 21-0537

COA No. 05-19-01023-CV

TC No. DC-16-16429

Today the Supreme Court of Texas denied the petition for review in the above-referenced case.

District Clerk Dallas County
Dallas County Courthouse
George L. Allen, Sr. Courts Building
600 Commerce, Suite 103
Dallas, TX 75202
* Delivered via E-Mail *

MEMORANDUM OPINION OF THE COURT OF APPEALS FIFTH DISTRICT OF TEXAS AT DALLAS (MARCH 29, 2021)

IN THE COURT OF APPEALS
FIFTH DISTRICT OF TEXAS AT DALLAS

MICHELLE HERCZEG,

Appellant,

v.

CITY OF DALLAS, TEXAS,

Appellee.

No. 05-19-01023-CV

On Appeal from the 191st Judicial District Court Dallas County, Texas Trial Court Cause No. DC-16-16429

Before: SCHENCK, SMITH, and GARCIA, Justices.

MEMORANDUM OPINION

Opinion by Justice Garcia

Appellant Michelle Herczeg appeals the dismissal of her discrimination lawsuit against appellee the City of Dallas. We affirm because Herczeg has not challenged all independent bases for the trial court's judgment.

I. Background

Herczeg alleged that she was a Dallas police officer who "suffered discrimination and retaliation because of her gender." She also alleged that she was subjected to a hostile work environment.

Herczeg sued the City under Chapter 21 of the Texas Labor Code. After the City answered, she filed her first amended petition, which was her live pleading at the time of judgment. In that pleading, she asserted four counts under Chapter 21 for (1) gender discrimination, (2) wrongful termination based on gender, (3) retaliation based on gender, and (4) aiding and abetting discrimination.

The City filed a plea to the jurisdiction based on immunity from suit. The City raised multiple grounds in its plea. Some grounds attacked the merits of Herczeg's claims, arguing that she could not establish that the City committed Chapter 21 violations for which the City's immunity was waived. Other grounds asserted that (1) some of Herczeg's liability theories were time-barred because she did not timely present them to the Texas Workforce Commission and (2) all of Herczeg's remaining liability theories were barred because she failed to exhaust administrative remedies as to those theories.

Herczeg filed a response to the City's plea to the jurisdiction.

After a hearing, the trial judge signed an order granting the City's plea, and Herczeg appealed.

The City filed a document suggesting that Herczeg's appeal was untimely because the trial court's judgment did not dispose of all of Herczeg's claims, which

would make the judgment interlocutory and thus make Herczeg's notice of appeal untimely. *See* Tex. R. App. P. 26.1(b) (deadline for notice of appeal in accelerated appeals). At our request, Herczeg filed a jurisdictional brief. After reviewing the record, this Court issued an order concluding that the trial judge intended the order to be a final judgment granting the City's plea as to all of Herczeg's claims. Thus, Herczeg's notice of appeal was timely.

II. Analysis

A. Summary of the Arguments

Herczeg raises three issues on appeal. First, she argues that the trial court erred by granting the City's plea to the jurisdiction because the evidence raised numerous genuine issues of material fact. Second, she argues that the trial court erred by granting the City's plea because her expert witness's testimony created genuine issues of material fact. Third, she argues that the trial court erred by failing to sustain her objections to certain evidence filed by the City.

In its brief, the City argues, among other things, that we must affirm the judgment because Herczeg's brief did not address all independent grounds supporting the judgment. For example, the City argues that Herczeg's brief did not address the untimeliness and failure-to-exhaust grounds asserted in the City's plea.

In her reply brief, Herczeg disputes that she waived any issues in her opening brief and insists that she demonstrated reversible error. But neither her opening brief nor her reply brief addresses or even

mentions the City's untimeliness and failure-to-exhaust grounds for dismissal.

B. Applicable Law

It is a well-settled rule that an appellant must attack all independent bases or grounds that fully support a ruling or judgment. *See, e.g.*, *Oliphant Fin. LLC v. Angiano*, 295 S.W.3d 422, 423 (Tex. App.—Dallas 2009, no pet.). This rule is a corollary of the harmless-error rule:

> If an independent ground fully supports the complained-of ruling or judgment, but the appellant assigns no error to that independent ground, we must accept the validity of that unchallenged independent ground, and thus any error in the grounds challenged on appeal is harmless because the unchallenged independent ground fully supports the complained-of ruling or judgment.

Id. at 424; *see also Malooly Bros., Inc. v. Napier*, 461 S.W.2d 119, 121 (Tex. 1970). The rule applies to a dismissal based on a plea to the jurisdiction. *See Douglas v. City of Kemp*, No. 05-14-00475-CV, 2015 WL 3561621, at *3 (Tex. App.—Dallas June 9, 2015, no pet.) (mem op.).

When the trial court's judgment does not specify the ground or grounds on which it is based, the appellant must attack all grounds the judgment could have been based on. *See Wilhite v. Glazer's Wholesale Drug Co., Inc.*, 306 S.W.3d 952, 954 (Tex. App.—Dallas 2010, no pet.). To carry its burden, an appellant may either assert a separate issue challenging each possible ground for the judgment or assert a general issue assailing the judgment and within that issue present

argument defeating all possible grounds on which the judgment could be based. *See id*.

C. Applying the Law to the Facts

First, we agree with the City that the untimeliness and failure-to-exhaust-administrative-remedies grounds it raised in its plea to the jurisdiction are separate and independent from its grounds that Herczeg could not establish the elements of her Chapter 21 claims. *See Douglas*, 2015 WL 3561621, at *3–4 (failure to exhaust administrative remedies was independent ground supporting judgment); *cf. Reliford v. BNSF Ry. Co.*, No. 02-09-00322-CV, 2011 WL 255795, at *1 (Tex. App.—Fort Worth Jan. 27, 2011, no pet.) (mem. op.) (statute of limitations was independent ground supporting judgment). We also agree that the City's untimeliness and failure-to-exhaust grounds covered every liability theory that Herczeg asserted in her live petition. Herczeg does not dispute these points.

Next, we agree with the City that the trial court's order did not specify the grounds on which it was granting the City's plea. The order consists of thirty statements that the City's plea is granted or denied as to Herczeg's various claims and theories, and it allowed the trial judge to circle "GRANTED" or "DENIED" as appropriate. Two representative examples follow:

> GRANTED/DENIED as to Plaintiff's aiding and abetting discrimination claim.

> GRANTED/DENIED as to Plaintiff's disparate treatment gender discrimination claim based on her purported "battle" for proper monetary compensation.

None of the trial court's rulings references a specific ground for the ruling. Accordingly, on appeal Herczeg must attack every ground the City asserted in its plea. *See Wilhite*, 306 S.W.3d at 954.

Finally, we conclude that Herczeg's opening appellate brief does not attack the City's untimeliness or failure-to-exhaust grounds for dismissal. The brief does not mention them by name, discuss their elements, or allude to them in any way. Although an appellant who has failed to challenge all independent grounds on appeal is not allowed to cure the defect in the reply brief, *Douglas*, 2015 WL 3561621, at *4, we also note that Herczeg has not attempted to do so here. Instead, her reply brief (1) invokes the general principle that an appellate court should reach the merits of an appeal whenever possible and (2) includes a footnote with a string citation to numerous cases, which we address below.

Herczeg cites *St. John Missionary Baptist Church v. Flakes*, 595 S.W.3d 211 (Tex. 2020) (per curiam), without explanation. In that case, we held that the appellants failed to challenge one of two independent grounds for the trial court's judgment, but the supreme court concluded that the two grounds were not actually independent but were inextricably intertwined. *Id.* at 214. Thus, we erred by holding that the appellant had omitted one of the two grounds from its brief. *Id.* at 215. In this case, by contrast, untimeliness and failure to exhaust administrative remedies are independent of the City's other grounds, which focused on the merits of Herczeg's claims. Thus, *St. John* is distinguishable.

Herczeg's other cases generally support the proposition that appellate courts should reach the merits whenever reasonably possible, but they are not similar

enough to this case to be illuminating. *See, e.g.*, *Rohrmoos Venture v. UTSW DVA Healthcare, LLP*, 578 S.W.3d 469, 480 (Tex. 2019); *Weeks Marine, Inc. v. Garza*, 371 S.W.3d 157, 162 (Tex. 2012); *Perry v. Cohen*, 272 S.W.3d 585, 587 (Tex. 2008) (per curiam). By contrast, the rule stated in *Oliphant Financial* and the other cases cited above is precisely on point. Herczeg did not challenge all independent grounds on which the trial court may have dismissed her case, so we must affirm. *See Oliphant Fin.*, 295 S.W.3d at 424; *see also State Bar of Tex. v. Evans*, 774 S.W.2d 656, 658 n.5 (Tex. 1989) (per curiam) (appellate court may not raise an argument sua sponte and reverse based on that argument).

III. Disposition

We affirm the trial court's judgment.

/s/ Dennise Garcia
Dennise Garcia
Justice

Schenck, J., dissenting.

JUDGMENT OF THE COURT OF APPEALS FIFTH DISTRICT OF TEXAS AT DALLAS (MARCH 29, 2021)

COURT OF APPEALS
FIFTH DISTRICT OF TEXAS AT DALLAS

MICHELLE HERCZEG,

Appellant,

v.

CITY OF DALLAS, TEXAS,

Appellee.

No. 05-19-01023-CV

On Appeal from the 191st Judicial District Court, Dallas County, Texas Trial Court Cause No. DC-16-16429.

In accordance with this Court's opinion of this date, the judgment of the trial court is AFFIRMED.

It is ORDERED that appellee CITY OF DALLAS, TEXAS recover its costs of this appeal from appellant MICHELLE HERCZEG.

Judgment entered March 29, 2021.

DISSENTING OPINION BY JUSTICE SCHENCK (MARCH 29, 2021)

IN THE COURT OF APPEALS
FIFTH DISTRICT OF TEXAS AT DALLAS

MICHELLE HERCZEG,

Appellant,

v.

CITY OF DALLAS, TEXAS,

Appellee.

No. 05-19-01023-CV

On Appeal from the 191st Judicial District Court Dallas County, Texas Trial Court Cause No. DC-16-16429

Before: SCHENCK, SMITH, and GARCIA, Justices.

DISSENTING OPINION

Opinion by Justice Schenck

The appellant in this case contends that she was the subject of discrimination and retaliation because of her gender by her employer, the City of Dallas. The City filed a plea to the jurisdiction which, according to a helpful chart appended to its brief in this Court, contained a comprehensive matrix of jurisdic-

tional hurdles totaling 34, by my count.[1] I, of course, have no opinion as to whether appellant's claims of discrimination and retaliation would prove viable if they were ultimately permitted to be heard at trial, though I am obliged at this jurisdictional stage to assume so. Likewise, at this stage, I am uncertain whether the trial court would have jurisdiction to proceed to trial. While that is the sole issue presented in this appeal, we do not reach it on its merits.

My understanding is that we are generally obliged by rule and mandate of a superior court to answer dispositive questions, such as the one presented here, on the merits despite being confronted with a brief we determine to be deficient in either form or substance. Tex. R. App. P. 38.9(b).[2] In addition, we are clearly directed to provide notice and an opportunity to cure before we affirm or reverse a judgment on the basis of "defects or irregularities" of any kind. *Id.* 44.3. That said, it seems equally clear that we may, as a matter of discretion, deem a case "satisfactorily submitted" without affording an opportunity to cure a briefing defect. *Id.* 38.9(b); *St. John Missionary Baptist Church v. Flakes*, 595 S.W.3d 211 (Tex. 2020) (per curiam); *Fredonia State Bank v. Gen. Am. Life Ins. Co.*, 881

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[1] I note that the substantive portion of the plea to the jurisdiction the City of Dallas filed in the trial court contains 67 pages. Various exhibits are attached thereto. The "helpful chart" the City presented to this Court is not appended thereto.

[2] Rule 38.9(b) provides, "If the court determines, either before or after submission, that the case has not been properly presented in the briefs, or that the law and authorities have not been properly cited in the briefs, the court may postpone submission, require additional briefing, and make any other order necessary for a satisfactory submission of the case."

S.W.2d 279, 284 (Tex. 1994). But where we are exercising discretion to terminate a case without a substantive decision, I believe we should acknowledge that we are exercising that discretion and give a reason why we reach that result. *Maresca v. Marks*, 362 S.W.2d 299, 301 (Tex. 1962) (court abuses discretion by failing to exercise discretion where it is conferred); Tex. R. App. P. 47.1 (court's opinion "must . . . address every issue . . . necessary to final disposition").

The majority decision, in my view, reverts to a line of authority that is contrary to the rules of appellate procedure and controlling authority of a superior court, by which this Court had treated the submission of a deficient brief as a terminal "waiver" of the appealed issue. Because these authorities mandated termination of the appeal without regard to its merits or Rules 38.9(b) and 44.3, and without acknowledging the Court's discretion, much less the reason for its exercise, I respectfully dissent.

I. I Agree That the Brief Is Deficient Under Prior Panel Precedent

My friends in the majority have concluded that this case has not been adequately presented in the briefs so as to permit us to reach a merits disposition. In doing so, the majority suggests that the appellant's brief failed to address the City of Dallas's assertion appellant failed to satisfy the prerequisites to suit because she failed to exhaust the administrative process set forth in Chapter 21 of the Texas Labor Code. I am willing to assume, at this point, that exhaustion and waiver of immunity are "distinct" grounds upon which the City of Dallas sought dismissal of appellant's claims. I also recognize prior panels of this

Court have treated jurisdictional appeals as embracing the doctrine of *Malooly*—by which each appeal of a summary judgment order must separately attack each "ground" on which judgment was sought in the trial court with potentially as many as 34 such "grounds" in this case, according to the City's chart.[3] We are constrained by the rule of orderliness to find that this case has not been adequately presented in the briefs.[4] Tex. R. App. P. 38.9(b) (providing directives "if the court determines, either before or after submission that the case has not been properly presented in the briefs"). To that extent, I fully agree with the majority. Where I depart, and the cause for my dissent, is with the majority's treatment of what happens next.

II. I Disagree with the Majority's Conclusion that Failure to Address a "Ground" Results in Automatic Waiver

Prior precedent, like *Oliphant*, *Douglas*, and countless others of their era, maintained, despite earlier, contrary Texas Supreme Court authority, that a deficient brief created a "waiver" foreclosing us from considering supplementation, either by an order from the court or on application for rehearing with attempt to cure. *Douglas v. City of Kemp*, No. 05-14-00475-CV, 2015 WL 3561621, at *3 (Tex. App.—Dallas June 9, 2015, no pet.) (mem. op.); *Oliphant Fin. LLC v. Angiano*,

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[3] *Malooly Bros., Inc. v. Napier*, 461 S.W.2d 119, 121 (Tex. 1970).

[4] Under the rule of orderliness, panels of the court lack the ability to reverse each other. *MobileVision Imaging Servs., L.L.C. v. LifeCare Hosps. of N. Tex., L.P.*, 260 S.W.3d 561, 566 (Tex. App.—Dallas 2008, no pet.).

295 S.W.3d 422, 423 (Tex. App.—Dallas 2009, no pet.). I believe the supreme court has recently reaffirmed that those cases failed in two important respects. First, they failed to acknowledge or comport themselves in any substantive way to Texas Rules of Appellate Procedure 38.9(b) and 44.3 and controlling cases applying them. Those rules require liberal construction of briefing and the rules governing same, and direct the court to request additional briefing or enter some other order permitting "a satisfactory submission" of the case. Accordingly, these rules would generally preclude a termination of an appeal without allowing a reasonable time to cure defects or irregularities unless doing so would, for some reason in that particular case, still amount to "a satisfactory submission."

In addition, these older decisions also conflicted with the Texas Supreme Court's decision in *Inpetco*, which should have excised the concept of automatic "waiver" from our lexicon entirely, when it instructed that "briefing requirements" had to be read in conjunction with then rule 83 (now 44.3) that "[a] judgment shall not be affirmed or reversed or an appeal dismissed for defects or irregularities in appellate procedure, either of form or substance, without allowing a reasonable time to correct or amend such defects or irregularities." *Inpetco Inc. v. Tex. Am. Bank* 729 S.W.2d 300 (Tex. 1987) (per curiam). While the supreme court would later clarify in *Fredonia* that we retained "some discretion" to deny an opportunity to cure, it made quite clear that this authority was to be exercised on a case-by-case basis. *Fredonia*, 881 S.W.2d at 284.

In the two decades that followed *Fredonia*, our Court declined to acknowledge this discretion in any case and treated the prospect of a cure as foreclosed

by *Malooly* and by the notion that providing notice somehow transcends norms of neutrality. *Malooly Bros., Inc. v. Napier*, 461 S.W.2d 119, 121 (Tex. 1970). In defense of those old decisions, all of them were bound by the first published post-*Inpetco/Fredonia* panel opinion to say this, but all were incorrect and contrary to the rules and the Texas Supreme Court's decisions to the extent they suggest that no notice and opportunity to cure can be afforded to a substantive briefing defect.

Moreover, recently the Texas Supreme Court considered whether courts have the discretion to make (and thus are accountable for) the decision to allow or disallow correction of a brief that is substantively deficient by supplementation or rehearing. *St. John*, 595 S.W.3d 211. Following an en banc decision of this Court that was closely divided on the narrow question of whether that discretion existed, the supreme court granted review and issued its decision in *St. John*. While the opinion did not provide comprehensive guidance on the problem, it clearly directed us back to *Fredonia* and confirmed its holding that "the decision to permit amendment or deem a point waived 'depends on the facts of the case'" and further held "that the court of appeals had authority under Rule 38.9 to request additional briefing." *Id.* at 215–16. In my view, these holding should have been fatal to old cases like *Douglas* and *Oliphant*, cases upon which the majority relies. *See id.* at 215.

I agree that where we have a brief that wholly fails to articulate an issue or cite to law or the record, the filing is inadequate. Nevertheless, under those circumstances we should, and generally do, give the offen-

ding party one opportunity to file a sufficient brief.[5] Thereafter, if the brief still fails, we can dismiss the appeal or affirm the trial court's judgment.[6]

In the case of a more substantive "*Malooly*" deficiency, the court may also exercise discretion to dismiss a case without reaching the merits and without giving notice and an opportunity to cure, but only *if the panel concludes, per Rule 38.9(b), that the submission at that stage is* "*satisfactory*"; that is to say, we must have reason to believe that the case can be disposed of without affording at least one opportunity to supplement. When a panel exercises this discretion to terminate an appeal without affording leave, I believe that it should acknowledge that discretion and articulate a reason for doing so. *See Maresca*, 362 S.W.2d at 201; *Brooks-PHS Heirs, LLC v. Bowerman*, No. 05-18-00356-CV, 2019

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[5] When the court's first communication of a briefing deficiency comes in the form of an opinion accompanying its judgment, in my view we have not provided notice or an opportunity to cure. While we may proceed to judgment without affording that opportunity, that decision requires a conscious exercise of discretion.

[6] Where the brief is not so obviously deficient and makes it to a panel for a decision, and the panel then discovers that the appellant has failed to cite the court to the correct portion of the record or the correct law, the panel may, but is not required to, look at the record and the applicable law. *See Horton v. Stovall*, 591 S.W.3d 567, 569–70 (Tex. 2019) (per curiam); *B.C. v. Steak N Shake Operations, Inc.*, 613 S.W.3d 338, 343 (Tex. App.—Dallas 2020, no pet.) (Schenck, J., concurring from the court's denial of en banc reconsideration). In all events, if the party cites the court to page 325 of the record to show that she filed the necessary paperwork to exhaust her administrative remedies, and we do not undertake our own examination to discover the paperwork appears at page 326, if that typographical error is later raised in a motion for rehearing, that error should not be fatal to the motion, despite some of the language in other, like waiver cases.

WL 1219323, at *3 (Tex. App.—Dallas Mar. 15, 2019, pet. denied) (mem. op.) (quoting *United States v. Campo*, 140 F.3d 415, 419 (2d Cir. 1998) ("refusal to exercise discretion accorded [the court] by law . . . constitutes an error of law")). Our reasons for doing so may be numerous and can be presumably simply stated. We may, for example, think the party is unreasonably gaming or delaying the process, or the record may suggest that supplementation would likely be futile. But whatever our reason for exercising this case-dispositive discretion, we should say what it is. *See* Tex. R. App. P. 47.1 (opinion must address every issue necessary to disposition).

In my view, what we cannot do is retreat to the suggestion that a non-merits disposition is automatic when a party fails to address a potential basis for the trial court's decision, because it is not. Where, as here, we are exercising discretion, we should acknowledge we are doing so in keeping with the requirement that our opinion explain what was necessary to the final disposition. *Id.* Because the majority fails to do so, I respectfully dissent.

/s/ David J. Schenck
Justice

ORDER ON DEFENDANT CITY OF DALLAS'S PLEA TO THE JURISDICTION (JULY 30, 2019)

IN THE DISTRICT COURT, DALLAS COUNTY, TEXAS, 191ST JUDICIAL DISTRICT

MICHELLE HERCZEG,

Plaintiff,

v.

CITY OF DALLAS, TEXAS,

Defendant.

Cause No. DC-16-16429

Before: Gena N. SLAUGHTER, Presiding Judge.

ORDER ON DEFENDANT CITY OF DALLAS'S PLEA TO THE JURISDICTION

On February 8, 2019, came on for hearing the Defendant City of Dallas's Plea to the Jurisdiction and Brief in Support (the "Plea") in the above-styled and numbered case. Having considered the Plea, Plaintiff Michelle Herczeg's response thereto, the parties' evidence, and the arguments of counsel, the Court finds that the City's Plea should be, and hereby is GRANTED or DENIED as follows:

GRANTED as to Plaintiffs disparate impact gender discrimination claim.

GRANTED as to Plaintiffs hostile work environment claim.

GRANTED as to Plaintiffs constructive discharge claim.

GRANTER as to Plaintiff's aiding and abetting discrimination claim.

***Disparate Treatment Gender Discrimination Claims*:**

GRANTED/DENIED as to Plaintiffs disparate treatment gender discrimination claim based on Plaintiff's reassignment from first watch at the Crime Reduction Team ("CRT") to third watch at the Fusion Center ("Fusion") and the corresponding change in shift differential pay.

GRANTED as to Plaintiff's disparate treatment gender discrimination claim based on Plaintiff's inability to grieve her reassignment from CRT.

GRANTED as to Plaintiffs disparate treatment gender discrimination claim based on her purported inability to receive SWAT quarterly training and TCOLE license updates.

GRANTED as to Plaintiff's disparate treatment gender discrimination claim based on her purported inability to earn bike or DWI-related overtime or compensation time.

GRANTED as to Plaintiffs disparate treatment gender discrimination claim based on her purported inability to work off-duty jobs.

GRANTED as to Plaintiffs disparate treatment gender discrimination claim based on a purported adverse effect on Plaintiff's promotion process.

GRANTED as to Plaintiffs disparate treatment gender discrimination claim based on the selection of Esteban Cabello for a vacant position on CRT.

GRANTED as to Plaintiffs disparate treatment gender discrimination claim based on her purported "battle" for proper monetary compensation.

GRANTED as to Plaintiffs disparate treatment gender discrimination claim based on her purported lack of training and access to databases at Fusion.

GRANTED as to Plaintiff's disparate treatment gender discrimination claim based on her purported inability to earn overtime at Fusion.

GRANTED as to Plaintiffs disparate treatment gender discrimination claim based on the requirement that she re-interview for a CRT assignment in 2016.

GRANTED as to Plaintiff's disparate treatment gender discrimination claim based on Plaintiff not being selected for a CRT assignment after she re-interviewed in 2016.

GRANTED as to Plaintiff's disparate treatment gender discrimination claim based on her purported "wrongful termination."

Retaliation Claims:

GRANTED as to Plaintiff's retaliation claim based on Plaintiff's reassignment from first watch at CRT to third watch at the Fusion and the corresponding change in shift differential pay.

GRANTED as to Plaintiffs retaliation claim based on Plaintiff's inability to grieve her reassignment from CRT.

GRANTED as to Plaintiff's retaliation claim based on her purported inability to receive SWAT quarterly training and TCOLE license updates.

GRANTED as to Plaintiffs retaliation claim based on her purported inability to earn bike or DWI-related overtime or compensation time.

GRANTED as to Plaintiffs retaliation claim based on her purported inability to work off-duty jobs.

GRANTED as to Plaintiff's retaliation claim based on a purported adverse effect on Plaintiffs promotion process.

GRANTED as to Plaintiffs retaliation claim based on the selection of Esteban Cabello for a vacant position on CRT.

GRANTED as to Plaintiff's retaliation claim based on her purported "battle" for proper monetary compensation.

GRANTED as to Plaintiff's retaliation claim based on her purported lack of training an access to databases at Fusion.

GRANTED as to Plaintiffs retaliation claim based on her purported inability to earn overtime at Fusion.

GRANTED as to Plaintiff's retaliation claim based on the requirement that she re-interview or a CRT assignment in 2016.

GRANTED as to Plaintiff's retaliation claim based on Plaintiff not being selected for a CRT assignment after she re-interviewed in 2016.

GRANTED as to Plaintiff's retaliation claim based on her purported "wrongful termination."

It is accordingly ORDERED, ADJUDGED, and DECREED that the preceding claims as to which the City's Plea has been granted are DISMISSED WITH PREJUDICE as to their refiling.

The proceeding claims as to which the City's Plea has been denied are ALLOWED TO GO FORWARD.

Signed on July 30th, 2019. At 4:45pm.

/s/ Gena N. Slaughter
Presiding Judge

ORDER OF THE SUPREME COURT OF TEXAS DENYING MOTION FOR RHEARING EN BANC (FEBRUARY 11, 2022)

IN THE SUPREME COURT OF TEXAS

MICHELLE HERCZEG

v.

CITY OF DALLAS, TEXAS

Case No. 21-0537

COA No. 05-19-01023-CV

TC No. DC-16-16429

Today the Supreme Court of Texas denied the motion for rehearing of the above-referenced petition for review.

District Clerk Dallas County
Dallas County Courthouse
George L. Allen, Sr. Courts Building
600 Commerce, Suite 103
Dallas, TX 75202
* Delivered via E-Mail *

ORDER OF THE COURT OF APPEALS FIFTH DISTRICT OF TEXAS DENYING MOTION FOR REHEARING EN BANC (MAY 11, 2021)

IN THE COURT OF APPEALS
FIFTH DISTRICT OF TEXAS AT DALLAS

MICHELLE HERCZEG,

Appellant,

v.

CITY OF DALLAS, TEXAS,

Appellee.

No. 05-19-01023-CV

On Appeal from the 191st Judicial District Court Dallas County, Texas Trial Court Cause No. DC-16-16429

Before: Robert D. BURNS, III, Chief Justice.

Before the Court is appellant's April 13, 2021 motion for reconsideration *en banc*. Appellant's motion is DENIED.

/s/ Robert D. Burns, III
Chief Justice