

REVERSED and REMANDED and Opinion Filed February 27, 2023



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-22-00215-CV

**J.G., Appellant
V.
JERRY JONES AND
DALLAS COWBOYS FOOTBALL CLUB, LTD., Appellees**

**On Appeal from the 160th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-20-13127**

OPINION

Before Chief Justice Burns, Justice Molberg, and Justice Reichek
Opinion by Justice Reichek

Appellant J.G. appeals from the trial court’s order dismissing with prejudice her claims against Jerry Jones and the Dallas Cowboys Football Club, Ltd. (“DCFC”) upon special exceptions. For reasons that follow, we conclude the trial court abused its discretion by dismissing appellant’s claims and reverse and remand.

Background

Appellant filed her original petition against the DCFC and its owner Jones on September 14, 2020. To protect her identity, she used the pseudonym Jane Doe. She alleged that “in September 2018,” Jones kissed her on the mouth and forcibly

grabbed her without her consent and that the DCFC knew or should have known of Jones's misconduct. Appellant did not specify where the incident occurred. She asserted claims for assault and battery, intentional infliction of emotional distress, negligence, and gross negligence. Appellees each filed an answer in November 2020. Their answers did not include special exceptions.

Appellant, still using the pseudonym Jane Doe, amended her petition on August 4, 2021, to add the National Football League as a defendant. About a month later, appellees filed special exceptions to the original petition. (Appellees would later assert they were not served with the amended petition.) Appellees named six alleged pleading defects. The first was appellant's failure to identify herself. Appellees complained of appellant's use of the Doe pseudonym, as well as her failure to provide the last three digits of her Social Security and driver's license numbers. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 30.014 (in civil action, party's initial pleading shall include last three numbers of party's driver's license number and Social Security number). They also argued she failed to provide fair notice of her claims because she failed to allege (1) where the incident occurred, (2) when the incident occurred, (3) how the DCFC was negligent, (4) facts that would support a finding of gross negligence, and (5) facts that would support a finding of special damages.

Appellant responded that the special exceptions were moot because they attacked her original petition, not her amended petition, and also argued that her

amended petition contained sufficient information. In reply, appellees argued their special exceptions were still relevant to the amended petition.

The trial court held a short hearing on appellees' special exceptions. The court took the matter under advisement and later signed an order granting the special exceptions. The trial court's order does not specify how appellant's pleading was deficient or order appellant to correct specific problems. The trial court granted the special exceptions and ordered appellant to amend her petition by November 8, 2021. On that date, appellant filed a second amended petition. This time, she identified herself by the initials J.G. and stated her belief that the parties would be able to enter into a protective order to protect her identity. She alleged the incident with Jones occurred on September 16, 2018, at AT&T Stadium and provided a few more details about what allegedly happened.

Appellees did not file further special exceptions. Instead, they moved to dismiss appellant's claims with prejudice. Appellees' motion to dismiss was based on two of the previously alleged pleading deficiencies—appellant's failure to provide “full identifying information” and failure to specify where the misconduct occurred. Appellees did not move to dismiss on their other special exceptions about the failure to plead when the incident occurred, how the DCFC was negligent, and facts that would support findings of gross negligence and special damages. Appellees asserted appellant had not attempted to agree on a protective order regarding her identity and also argued that because AT&T Stadium is “expansive

and complex,” appellant’s allegation that the incident occurred there was just as vague as saying it occurred in a “particular town.” Appellees argued dismissal with prejudice was appropriate because appellant failed to comply with the court’s order granting the special exceptions.

Before the trial court heard the motion to dismiss, appellant’s counsel provided appellant’s name to appellees’ counsel by email. Appellant also filed a third amended petition on January 24, 2022, still identifying herself by her initials. Appellant specified that the incident occurred in the Tom Landry room at AT&T Stadium. The trial court held a hearing on the motion to dismiss and a few days later, on February 1, 2022, issued an “Order Granting Motion to Dismiss on Defendants’ Special Exceptions.” The trial court dismissed appellant’s claims against appellees with prejudice and severed them from her claims against the NFL.

Appellant moved for reconsideration and later supplemented her motion. At the hearing on the motion for reconsideration, appellant’s counsel represented that appellant was willing to amend her pleadings to provide her full name and the required portions of her driver’s license and Social Security numbers. The trial court denied appellant’s motion, and this appeal followed.

In four issues, appellant challenges the trial court’s dismissal of her claims with prejudice. She argues the trial court erred because (1) appellees never filed special exceptions to her live pleadings; (2) it granted the motion to dismiss her claims after she made a good faith attempt to amend her petition and no further

special exceptions were made; (3) special exceptions were not the appropriate vehicle by which to challenge failure to plead driver's license and Social Security numbers; and (4) to the extent the trial court dismissed her claims as a sanction, it was an improper death penalty sanction. Appellant's second issue is dispositive of this appeal.

Applicable Law

Texas Rule of Civil Procedure 79 requires a petition to state the parties' names. TEX. R. CIV. P. 79. In addition, our procedural rules require pleadings to provide fair notice of the claim and the relief sought such that the opposing party can prepare a defense. *Thomas v. 462 Thomas Family Props., LP*, 559 S.W.3d 634, 639 (Tex. App.—Dallas 2018, pet. denied). A petition is sufficient if it gives fair and adequate notice of the facts upon which the pleader bases her claim. *Id.* at 639–40. Under this standard, courts assess whether an opposing party can ascertain from the pleading the nature of the controversy, its basic issues, and the type of evidence that might be relevant. *Id.* at 640.

Special exceptions may be used to challenge the sufficiency of a pleading. *Gatten v. McCarley*, 391 S.W.3d 669, 673 (Tex. App.—Dallas 2013, no pet.). The purpose of a special exception is to compel clarification of pleadings when the pleadings are not sufficiently specific or fail to plead a cause of action. *Id.* If a trial court grants special exceptions, the pleader may either amend her petition to cure the defect or stand on the pleadings and test the decision on appeal. *Doe v. Univ. of the*

Incarnate Word, No. 04-19-00453-CV, 2020 WL 3260080, at *1 (Tex. App.—San Antonio June 17, 2020, no pet.) (mem. op.).

We review the trial court’s decision to dismiss for insufficient pleadings under an abuse of discretion standard. *Humphreys v. Meadows*, 938 S.W.2d 750, 753 (Tex. App.—Fort Worth 1996, writ denied). A trial court may not dismiss a plaintiff’s case for pleading defects unless an opportunity is first afforded to amend and cure the defect. *Id.* (citing *Tex. Dep’t of Corr. v. Herring*, 513 S.W.2d 6, 9–10 (Tex. 1974)); *cf. Zaremba v. Cliburn*, 949 S.W.2d 822, 829 (Tex. App.—Fort Worth 1997, writ denied) (when there is defect in pleadings that cannot be cured by amendment, trial court may dismiss claims without providing opportunity to amend defect). Further, if a plaintiff makes a good faith attempt to amend her petition in response to the granting of special exceptions, the trial court may not dismiss the amended petition unless the defendant files special exceptions to the revised pleadings, the court sustains the new special exceptions, and the court gives the plaintiff the opportunity to amend the revised pleadings. *Isbell v. Russell*, No. 13-20-00193-CV, 2022 WL 52590, at *6 (Tex. App.—Corpus Christi-Edinburg Jan. 6, 2022, no pet.) (mem. op.); *Humphreys*, 938 S.W.2d at 753; *see Albright v. Tex. Dep’t of Human Servs.*, 859 S.W.2d 575, 582–83 (Tex. App.—Houston [1st Dist.] 1993, no writ).

Analysis

In her second issue, appellant contends the trial court erred in dismissing her claims after she made a good faith attempt to amend her petition and appellees did

not file further special exceptions. Appellees respond that appellant has waived error, and even if she preserved error, she did not make a good faith attempt to amend.

Appellees contend appellant waived any error in the dismissal of her claims because she did not properly challenge the trial court's ruling sustaining the special exceptions. They rely on our decision in *Cole v. Hall*, 864 S.W.2d 563 (Tex. App.—Dallas 1993, writ dismissed w.o.j.), for this argument. In *Cole*, the trial court sustained defendants' special exceptions and specifically stated that failure to amend would result in the dismissal of the plaintiff's case with prejudice. *Id.* at 565. When the plaintiff failed to amend her pleadings, the trial court dismissed her claims. *Id.* On appeal, the plaintiff argued the trial court erred in dismissing one of her claims, but she did not challenge the correctness of the trial court's ruling on the special exceptions. *Id.* at 567. Our opinion stated that in a case where the trial court sustained special exceptions and dismissed a claim *following the plaintiff's failure to amend*, the controlling issue is the propriety of the trial court's ruling sustaining the special exceptions. *Id.* at 566. Because the plaintiff in *Cole* had not challenged the ruling on the special exceptions, she waived any error in the trial court's granting the special exceptions. *Id.* at 567. As a result, we held the trial court did not abuse its discretion in dismissing her claim. *Id.*

We do not find *Cole* dispositive in this case, as *Cole* involved a plaintiff who made no attempt to amend her pleadings in response to a special exceptions order.

Here, appellant filed her second amended petition in response to the trial court's order. Appellant's failure to challenge the ruling on the special exceptions is not inconsistent with her position that the trial court erred in dismissing her claims. She argues the court erred in dismissing her claims after a good faith attempt to amend without another round of special exceptions. She preserved this argument by raising it in her written opposition to appellees' motion to dismiss, at the hearings on appellees' motion to dismiss and on her motion for reconsideration, and in her appellate brief.

Appellees alternatively contend appellant was not entitled to another opportunity to amend because her second amended petition was not a good faith attempt to comply with the special exceptions order. They maintain appellant did not act in good faith because she did not include her real name or portions of her Social Security or driver's license number, or provide the exact location where the conduct occurred.

The trial court's special exceptions order did not expressly order appellant to include certain information. As noted, appellees raised six pleading deficiencies in their special exceptions. The trial court granted the special exceptions and generally ordered appellant to amend her petition. Appellant's second amended petition apparently corrected most of the alleged deficiencies to appellees' satisfaction; when they moved to dismiss, they did so on just two of their six special exceptions—appellant's identity and the incident location. The second amended petition provided

appellant’s initials instead of the Doe pseudonym and an allegation that the incident occurred at AT&T Stadium. We are not persuaded that appellant needed to specify where in the stadium the conduct occurred to meet the fair notice standard. But even if she did need to be more specific about the location in the stadium, her second amended petition was at least a good faith attempt to allege where the incident occurred. We conclude appellant made a good faith attempt to comply with the special exceptions order.

The cases appellees rely on to support their argument that the trial court did not need to provide appellant further opportunity to amend her pleadings are distinguishable. *See Doe*, 2020 WL 3260080; *Ahmed v. Mallory*, No. 03-10-00405-CV, 2011 WL 2993298 (Tex. App.—Austin July 21, 2011, no pet.) (mem. op.). In each case, the court of appeals upheld the trial court’s decision to dismiss the plaintiff’s suit with prejudice for failure to comply with a special exceptions order. In *Ahmed*, the trial court’s order granting the special exceptions was specific in informing the plaintiff, who asserted a conversion claim, how he needed to amend his pleadings. 2011 WL 2993298, at *1. The pleading deficiency involved the merits of the plaintiff’s claim—the property involved and its value. He was expressly ordered to specify each item that was converted and the value of that item, and he made “no discernible effort to comply.” *Id.* at *4. *Doe* involved a medical student who brought suit against his former university after he was expelled. 2020 WL 3260080, at *1. The student used a Doe pseudonym, and the university claimed

to not know the student's identity. *Id.* at *2 & n.1. The trial court ordered Doe to amend his petition to state his name and warned him it would dismiss the lawsuit with prejudice if he did not. *Id.* at *1. After Doe failed to amend his petition, the trial court dismissed his claims with prejudice. *Id.* *2–3.

Here, unlike the cases cited by appellees, appellant amended her pleadings in an attempt to comply with the special exceptions order. This is not a case where the plaintiff's pleadings failed to sufficiently plead a cause of action. *See, e.g., Zaremba*, 949 S.W.2d at 829 (in case arising from oral contract, plaintiff could not amend pleadings to cure statute of frauds issue). The only real pleading deficiency raised by appellees in their motion to dismiss was appellant's failure to sufficiently identify herself in her pleadings. Appellees do not dispute that they were informed of appellant's identity before the trial court ruled on their motion to dismiss. We recognize that a trial court has broad discretion in ruling on special exceptions and in dismissing a case when a plaintiff fails to cure pleading defects. But because appellant made a good faith attempt to amend her pleadings in response to the court's special exceptions order and no further special exceptions were made, the trial court abused its discretion in dismissing appellant's claims.¹ *See Humphreys*, 938 S.W.2d

¹ Even if the trial court had acted within its discretion in dismissing appellant's claims, we question whether those claims should have been dismissed with prejudice, as opposed to without prejudice. A dismissal with prejudice functions as a final adjudication on the merits. *Mossler v. Shields*, 818 S.W.2d 752, 754 (Tex. 1991). If the special exceptions could have been cured by amendment, dismissal should be without prejudice. *Hajdik v. Wingate*, 753 S.W.2d 199, 202 (Tex. App.—Houston [1st Dist.] 1988), *aff'd*, 795 S.W.2d 717 (Tex. 1990); *see Kutch v. Del Mar Coll.*,

at 753. We sustain appellant's second issue, and as a result, need not address her remaining issues.² *See* TEX. R. APP. P. 47.1.

We reverse the trial court's order and remand for further proceedings consistent with this opinion.

/Amanda L. Reichek/
AMANDA L. REICHEK
JUSTICE

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831 S.W.2d 506, 508 (Tex. App.—Corpus Christi-Edinburg 1992, no writ). In light of our conclusion that dismissal was improper, however, we need not consider this issue.

² Use of a pseudonym is permitted in state court under certain circumstances. *See, e.g., Topheavy Studios, Inc. v. Doe*, No. 03-05-00022-CV, 2005 WL 1940159, at *7 (Tex. App.—Austin Aug. 11, 2005, no pet.) (in plaintiff's suit to enjoin defendant from using topless video of her in video game, trial court's granting of plaintiff's motion to proceed under pseudonym did not hinder defendant's ability to prepare adequate defense); *Mother & Unborn Baby Care of N. Tex., Inc. v. Doe*, 689 S.W.2d 336, 337 (Tex. App.—Fort Worth 1985, writ dismissed) (pregnant and unmarried women used pseudonyms in suit against anti-abortion organization). The issue of whether the trial court abused its discretion in refusing to allow appellant to use a pseudonym is not squarely presented to us in this appeal.



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

J.G., Appellant

No. 05-22-00215-CV V.

JERRY JONES and DALLAS
COWBOYS FOOTBALL CLUB,
LTD., Appellees

On Appeal from the 160th Judicial
District Court, Dallas County, Texas
Trial Court Cause No. DC-20-13127.
Opinion delivered by Justice
Reichek. Chief Justice Burns and
Justice Molberg participating.

In accordance with this Court's opinion of this date, the trial court's order granting appellees' motion to dismiss is **REVERSED** and this cause is **REMANDED** to the trial court for further proceedings consistent with this opinion.

It is **ORDERED** that appellant J.G. recover her costs of this appeal from appellees JERRY JONES and the DALLAS COWBOYS FOOTBALL CLUB, LTD.

Judgment entered this 27th day of February 2023.