

08-16-00334-CV

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**IN THE EIGHTH COURT OF APPEALS
EL PASO, TEXAS**

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**TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES, ET AL.,
*Appellants,***

v.

**GRASSROOTS LEADERSHIP, INC., ET AL.,
*Appellees.***

On Appeal from the 353rd Judicial District Court
Travis County, Texas, Cause No. D-1-GN-15-004336

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The State and the Private Prison Companies assert in their reply briefs that Appellees seek greater relief than the trial court granted. They are mistaken: The trial court held the FRC Rule invalid, and appellees seek to affirm the judgment—nothing more.

Appellees moved for summary judgment on five grounds—including DFPS’s lack of statutory authority to regulate immigration detention facilities as GROs under Texas Human Resources Code §42.002(4), CR 3009, 3033, 3038-41—the issue the State and the Private Prison Companies say this Court cannot reach because Appellees did not cross appeal. State Reply at 22-23, GEO Reply. at 14; CoreCivic Reply at 1. But no cross appeal was necessary.

The trial court granted Appellees’ summary-judgment motion on two of the five grounds, declaring the FRC Rule invalid because it:

- “contravenes TEX. HUM. RES. CODE § 42.002(4)” and
- “runs counter to the general objectives of the Texas Human Resources Code.”

CR 4214. The trial court denied the State’s, and the Private Prison Companies’, motions for summary judgment on all claims. *Id.*

Because the trial court granted summary judgment on the specific ground that DFPS lacks statutory authority under §42.002(4), this Court must determine whether the grant was appropriate on those grounds. *Hernandez v. Porter*, 406 S.W.3d 789,

792 (Tex. App.—El Paso 2013, pet. denied). The Court may also consider the grounds the trial court did not reach because Appellees preserved all five grounds in the appellate briefing. *See id.* The appellate court’s ultimate goal is to render the judgment the trial court should have rendered. *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005); *Battista v. City of Alpine*, 345 S.W.3d 769, 774 (Tex. App.—El Paso 2011, no pet.). Thus, all five grounds in the Appellees’ motion for summary judgment are before the Court, and any one of them can be the basis for affirming the trial court’s judgment. *See id.*

Therefore, the State and Private Prison Companies are mistaken when they say the §42.002(4) statutory-authority issue is not before the Court. They justify this position by stating that the trial court did not specifically grant the summary judgment on that ground. State Reply at 22; GEO Reply. at 14; CoreCivic Reply at 1. First, regardless of whether the trial court expressly ruled in Appellees’ favor on that ground, it is preserved by the appellate briefing, and the Court has discretion to consider it. *See Hernandez*, 406 S.W.3d at 792.

Second, the trial court *did* grant summary judgment expressly on that ground. The Amended Final Judgment speaks for itself. It declares the FRC Rule invalid because the Rule “contravenes TEX. HUM. RES. CODE § 42.002(4).” CR 4214. The State’s opening brief acknowledges this. State Br. at 31 (“The district court specified that judgment was based on plaintiffs’ grounds that [the Rule] violates section

42.004 and ‘the general objectives of the Human Resources Code.’”). And both the State and the Private Prison companies treated the §42.002(4) statutory authority issue as live in their appellants’ briefs and asked this Court to decide it. State Br. at 32-36, GEO Br. at 41-50, CoreCivic Br. at 22-26.

The State and the Private Prison Companies nevertheless change course in their replies, asserting that the judgment was based only on the trial court’s rejection of the Rule’s exceptions from state minimum standards. Reply at 22; GEO Reply. at 14; CoreCivic Reply at 1. But this was the *second* ground the trial court expressly approved—because the exceptions conflicted with the general objectives of the Human Resources Code. CR 4214. The first ground was DFPS’s lack of statutory authority under §42.002(4). *Id.*

Tellingly, the State and the Private Prison Companies do not cite the summary-judgment section of the Amended Final Judgment for their misguided contention. Rather, they cite the *supersedeas* section of the judgment, in which the trial court elected to maintain the status quo (*i.e.*, DFPS regulation) while the appeal is pending. State Reply at 22 (citing CR 4215-16); CoreCivic Reply at 3 (citing CR 4216); GEO Reply at 14 (citing 1 SCR 8-9). The summary-judgment and supersedeas sections of the Amended Final Judgment are independent, and neither the State nor the Private Prison Companies appealed the supersedeas ruling. Finally, CoreCivic goes even farther afield by quoting the temporary injunction—an

interlocutory ruling that was superseded by the Amended Final Judgment. *See* CoreCivic Reply at 2-3 (citing CR 1111).

The State and Private Prison Companies wish to foreclose this Court from affirming the judgment based on a lack of statutory authority because, if the Court so holds, DFPS will be without the power to enact another similar rule. State Reply at 23; GEO Reply at 13-14; CoreCivic Reply at 3. But this policy complaint is misdirected: *the Legislature* dictates state agencies' authority. The Private Prison Companies themselves recognized that the trial court's judgment necessitated additional authority from the Legislature when they tried, and failed, to secure greater authority during the 2017 legislative session.¹ If these parties want to broaden DFPS's jurisdiction, their remedy is to again petition the Legislature, not complain to the judiciary.

¹ Texas Legislature Online, Bill History, H.B. 2225, 85th R.S., available at <http://www.capitol.state.tx.us/BillLookup/History.aspx?LegSess=85R&Bill=HB2225> (last visited Oct. 17, 2017).

Respectfully submitted,

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Based on a word count run in Microsoft Word 2016, this brief contains 860 words, excluding the portions of the brief exempt from the word count under Texas Rule of Appellate Procedure 9.4(i)(1).

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