

Affirm and Opinion Filed September 3, 2026



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

No. 05-25-01046-CV

**GARLAND INDEPENDENT SCHOOL DISTRICT, Appellant
V.
REEDER GENERAL CONTRACTORS, INC., Appellee**

**On Appeal from the 162nd Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-21-15806**

MEMORANDUM OPINION

Before Justices Goldstein, Barbare, and Lee
Opinion by Justice Lee

In a breach of contract action, Garland Independent School District appeals from the denial of its second plea to the jurisdiction. In two issues, the District contends that section 271.152 of the Texas Local Government Code does not waive immunity for appellee Reeder General Contractors, Inc.'s claims against it because Texas Constitution article III, section 55 prohibits the Legislature from releasing an individual's or corporation's indebtedness to the State, and that courts have no power to determine the enforceability of liquidated damages provisions in contracts entered into by governmental entities. In a third issue, the District argues the trial court erred in failing to dismiss the suit under Texas Education Code section 11.161. We reject

the District's first two issues, and we conclude we do not have jurisdiction to consider its third issue. Reeder raises a cross-issue seeking sanctions under Texas Rule of Appellate Procedure 45, which we overrule. Accordingly, we affirm the trial court's order denying the District's second plea to the jurisdiction.

Background

A. Prior proceedings

Reeder General Contractors, Inc. sued the District, alleging breach of a construction contract covering multiple campuses, including Jackson and Lyles Middle Schools. Reeder claimed that, during construction at Jackson Middle School, it discovered undisclosed underground electrical feeder lines that conflicted with the foundation design, forcing work to stop in May 2018. According to Reeder, the District, its architect (VLK Architects), and the project manager took approximately 151 days to redesign the project, causing substantial delays and increased costs. Reeder submitted change orders seeking compensation for the delays, eventually reducing its request to \$154,504 after negotiations. Although Reeder alleged the District's Board acknowledged that Reeder was not responsible for the delay and was entitled to payment, the District allegedly refused to execute the change order and withheld additional contract balances and retainage. Reeder sought more than \$1 million in damages, Prompt Payment Act interest, and attorney's fees.

In response, the District filed a plea to the jurisdiction on, arguing that governmental immunity barred Reeder's claims. The District contended that Reeder

could not establish a breach of contract, sought damages not recoverable under the applicable statutory waiver of immunity, and failed to comply with contractual claims and dispute-resolution procedures. Through an affidavit from its facilities director, Javier Fernandez, the District asserted that Reeder failed to submit required claims, appeals, and notices under the contract and maintained that all compensation owed had already been paid. The District also argued that Reeder's allegations were essentially equitable rather than contractual and that its Prompt Payment Act claim fell outside any waiver of governmental immunity.

Reeder amended its pleadings and expanded on its original allegations, asserting that the District's plans and specifications contained significant errors and omissions that were not reasonably discoverable before construction. Reeder alleged that the undisclosed electrical lines at Jackson and other design problems at both Jackson and Lyles caused major delays, that the District and its consultants failed to respond promptly to requests for direction, and that the District later reversed course by blaming Reeder and imposing liquidated damages. Reeder claimed the District breached the contract in numerous ways, including providing defective plans, delaying redesign decisions, refusing to pay approved change-order amounts, and withholding project payments based on an unenforceable liquidated damages provision.

After considering the parties' briefing, evidence, and arguments, and after Reeder amended its pleadings to remove certain fee claims, the trial court denied the District's plea to the jurisdiction, allowing the lawsuit to proceed.

B. The first appeal

The District brought an interlocutory appeal, citing article III, section 53 of the Texas Constitution in arguing that Texas Local Government Code section 271.152 did not waive the District's immunity from Reeder's breach of contract claim. Section 271.152 provides that a "local governmental entity that is authorized by statute to enter into a contract and that enters into a contract subject to this subchapter waives immunity to suit for the purpose of adjudicating a claim for breach of contract, subject to the terms and conditions of this subchapter." TEX. LOC. GOV'T CODE § 271.152. And article III, section 53 provides as follows: "The Legislature shall have no power to grant, or to authorize any county or municipal authority to grant, any extra compensation, fee or allowance to a public officer, agent, servant or contractor, after service has been rendered, or a contract has been entered into, and performed in whole or in part" TEX. CONST. art. III, § 53.

The District argued that Reeder's challenge to the enforceability of the liquidated damages clause would render section 271.152 unconstitutional because, if allowed, it would authorize the granting of "extra compensation" after the parties' contract had been entered into and performed in whole or in part. This Court rejected the District's argument and reasoned as follows:

We do not read Reeder's pleadings to seek extra compensation but instead only the amount it alleges is due and owing under the contract. The District contends it properly withheld liquidated damages pursuant to the contract, while Reeder disputes this and argues the liquidated damages clause is unenforceable. We cannot conclude this disagreement converts Reeder's claim into something other than a breach of contract claim; instead, this question goes to the merits dispute between the parties and the question of the amount due and owing to Reeder. Accordingly, we cannot conclude Reeder seeks extra compensation beyond the contract or that § 271.152 does not waive immunity for Reeder's claim seeking amounts improperly withheld by the District in reliance on the liquidated damages provision. *Cf. Zachry*, 449 S.W.3d at 119–20 (in breach of contract suit where immunity was waived, plaintiff was entitled to recover amounts improperly withheld by defendant under liquidated damages provision).

Likewise, we reject the District's argument that Reeder failed to allege a substantial claim because it failed to allege a breach of the liquidated damages provisions of the contract and failed to provide evidence of a breach of the liquidated damages provision. Reeder does not seek liquidated damages independently; instead, Reeder alleged the District breached the contract by failing to pay the full amount due and owing under the contract, and it argues it raises the enforceability of the liquidated damages provision in anticipation of the District's defense based upon that provision operating as an offset. Given this, for purposes of the immunity question before us, we conclude Reeder sufficiently pleaded a breach of contract claim that falls within the clear waiver of immunity in § 271.152.

Garland Indep. Sch. Dist. v. Reeder Gen. Contractors, Inc., No. 05-22-00855-CV, 2024 WL 1208304, at *7 (Tex. App.—Dallas Mar. 21, 2024, pet. denied) (mem. op.). Thus, the Court affirmed the trial court's denial of the first plea to the jurisdiction. *Id.* at *8.

C. Returning to the trial court

Following the first interlocutory appeal, the parties filed an agreed uniform scheduling order, under which amended pleadings asserting new claims or defenses were to be filed by January 17, 2025, other amended pleadings were to be filed by May 3, 2025, and all dispositive motions were to be heard by May 16, 2025. The order identified June 17, 2025 as the non-jury trial date.

Reeder filed a motion for partial summary judgment, contending “that GISD’s amended responses establish it sustained no quantifiable actual delay damages” and that therefore the liquidated damages provisions were unenforceable and the trial court should grant the motion.

The District then filed a motion for summary judgment, contending that its assessment and withholding of liquidated damages was expressly authorized by the contract and therefore was not a breach of contract; and Reeder cannot maintain a breach-of-contract claim because the undisputed evidence shows Reeder failed to meet the substantial completion deadlines, despite the contract making time of the essence and expressly defining late completion as a breach. Thus, the District contended Reeder could not establish breach as a matter of law.

The District filed special exceptions to Reeder’s second amended petition, contending, among other things, that Reeder’s liquidated damages challenge attacked the enforceability of the liquidated damages clause, but did not adequately

plead how the District's assessment of liquidated damages violated any specific contractual obligation owed to Reeder.

Reeder filed a fourth amended petition, adding a section to the factual background section on the "parapet roof delay" at the Lyles Project, alleging that "conflict between the architectural and structural drawings with respect to the tie-in of the roof at the band hall on the Lyles Project to the existing structure that prevented Reeder from proceeding[.]" It also added factual allegations that months before 'certificates of substantial completion' were issued on the Lyles and Jackson Projects, GISD began occupying the existing facilities and the additions. The amended petition further alleged that District personnel made representations at Facilities Committee Meetings to board members that the projects were 'substantially complete' well before the 'certificates of substantial completion' were issued."

Reeder also expanded its allegations regarding the liquidated damages clause in the fourth amended petition. It alleged that the liquidated damages provisions were "void as unenforceable penalties," that they were "facially invalid" as "prohibited one-size-fits-all provisions," that the liquidated damages rates were not a reasonable forecast of just compensation, and that actual damages sustained were much less than the liquidated damages assessed. It further alleged the District had waived reliance on the liquidate damages provisions. Finally, Reeder added allegations that, "[t]o the extent that GISD relies on any purported contractual waiver

of REEDER's right to challenge the enforceability of the Contract's liquidated damages provisions, they are void as against public policy," and that "[t]he no-damage-for-delay clause in the Contract is unenforceable under well recognized exceptions to its enforceability under Texas law."

The trial court denied the District's motion for summary judgment.

The District specially excepted to the fourth amended petition, broadly attacking the pleading on numerous fronts. As to the liquidated damages question, the District argued that enforcing a contractual provision is not wrongful simply because a court might later determine the provision is unenforceable; that Reeder does not identify a contractual provision prohibiting the District from enforcing the liquidated damages clause; that Reeder has not properly pleaded a separate claim seeking adjudication that the liquidated damages provision is void or unenforceable; that the trial court lacked jurisdiction to declare a provision of a government contract void in the manner Reeder requested; that the challenge was not ripe because it depends on a future declaration of unenforceability and is moot because the contract has already been completed; that damages based on the alleged unenforceability of the liquidated damages provisions were barred by immunity; and that once liquidated damages have accrued and been assessed, a court cannot compel the District to refund or forgive those amounts.

On March 3, 2025, the case was set for a non-jury trial on September 16, 2025.

On April 1, 2025, the parties filed a rule 11 agreement to amend several scheduling order deadlines, amending them to provide that August 15 was the new close of discovery and August 1 was the new deadline for amended pleadings.

Reeder filed its fifth amended petition on April 7, 2025. It largely echoed the fourth amended petition and made several cosmetic and grammatical changes. It also added allegations that the District assessed liquidated damages based “on October 18, 2019 being the date it substantially completed its work on the Lyles Project” and “December 5, 2019 being the date it substantially completed its work” as to the Jackson project. As to its allegation in the fourth amended petition that the liquidated damages provisions were a one-size-fits-all penalty, Reeder further alleged that the provisions imposed the same measure of damages for breaches of varying magnitudes by “purportedly allowing GISD to assess liquidated damages beyond the point at which REEDER’s work had progressed sufficiently to allow GISD to occupy and use REEDER’s work on the Lyles and Jackson Projects for its intended purpose.” To its prior allegation that the District waived reliance on the liquidated damages provisions, Reeder alleged the waiver was implied.

On July 11, 2025, the District filed a second plea to the jurisdiction, arguing that Reeder’s “liquidated damage claim is one that seeks to relieve Reeder of its obligations to pay liquidated damages to Garland ISD and because the Legislature has no power to authorize the political subdivision, the courts, or anyone, to grant such a release,” *see* TEX. CONST. art. III, § 55, “section 271.152 cannot be a waiver

of sovereign immunity for Reeder's a claim." The District also argued that Reeder's suit was frivolous under Texas Education Code section 11.161, arguing it was "patently frivolous to sue a school district for doing what the plaintiff agreed to in the contract."

The trial court denied the second plea to the jurisdiction, and this interlocutory appeal followed.

Discussion

A. Standard of review and applicable law

A trial court's subject matter jurisdiction is defeated by sovereign immunity, which is properly asserted in a plea to the jurisdiction. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004). Whether a court has subject matter jurisdiction is a question of law. *Id.* at 226. Generally, a plaintiff has the burden to plead facts affirmatively demonstrating the court's subject matter jurisdiction. *State v. Holland*, 221 S.W.3d 639, 642 (Tex. 2007). Whether a plaintiff has alleged facts that affirmatively demonstrate a trial court's subject matter jurisdiction is a question of law we review de novo. *Miranda*, 133 S.W.3d at 226. However, disputed evidence of jurisdictional facts implicating the merits of the case may require determination by the fact finder in some cases. *Id.* When a plea to the jurisdiction challenges the pleadings,

we determine if the pleader has alleged facts that affirmatively demonstrate the court's jurisdiction to hear the cause. We construe the pleadings liberally in favor of the plaintiffs and look to the pleaders'

intent. If the pleadings do not contain sufficient facts to affirmatively demonstrate the trial court's jurisdiction but do not affirmatively demonstrate incurable defects in jurisdiction, the issue is one of pleading sufficiency and the plaintiffs should be afforded the opportunity to amend. If the pleadings affirmatively negate the existence of jurisdiction, then a plea to the jurisdiction may be granted without allowing the plaintiffs an opportunity to amend.

Id. at 226–27 (citations omitted). “When assessing a plea to the jurisdiction, our analysis begins with the live pleadings.” *Heckman v. Williamson Cnty.*, 369 S.W.3d 137, 150 (Tex. 2012). If a plea to the jurisdiction challenges the existence of jurisdictional facts,

we consider relevant evidence submitted by the parties when necessary to resolve the jurisdictional issues raised, as the trial court is required to do. When the consideration of a trial court's subject matter jurisdiction requires the examination of evidence, the trial court exercises its discretion in deciding whether the jurisdictional determination should be made at a preliminary hearing or await a fuller development of the case, mindful that this determination must be made as soon as practicable. Then, in a case in which the jurisdictional challenge implicates the merits of the plaintiffs' cause of action and the plea to the jurisdiction includes evidence, the trial court reviews the relevant evidence to determine if a fact issue exists.... If the evidence creates a fact question regarding the jurisdictional issue, then the trial court cannot grant the plea to the jurisdiction, and the fact issue will be resolved by the fact finder. However, if the relevant evidence is undisputed or fails to raise a fact question on the jurisdictional issue, the trial court rules on the plea to the jurisdiction as a matter of law.

Miranda, 133 S.W.3d at 227–28 (citations omitted).

“Political subdivisions of the state—such as counties, municipalities, and school districts—share in the state's inherent immunity.” *Wasson Interests, Ltd. v. City of Jacksonville*, 489 S.W.3d 427, 429–30 (Tex. 2016). Like sovereign

immunity, the governmental immunity of a political subdivision can be waived, and we defer to the Legislature to do so by statute. *City of Houston v. Williams*, 353 S.W.3d 128, 134 (Tex. 2011). Statutory immunity waivers must be expressed in “clear and unambiguous language.” *Byrdson Servs., LLC v. S. E. Tex. Reg’l Planning Comm’n*, 516 S.W.3d 483, 485 (Tex. 2016).

In the Local Government Contract Claims Act, the Legislature has waived governmental immunity for certain breach of contract claims. Texas Local Government Code section 271.152 provides:

A local governmental entity that is authorized by statute to enter into a contract and that enters into a contract subject to this subchapter waives immunity to suit for the purpose of adjudicating a claim for breach of contract, subject to the terms and conditions of this subchapter.

TEX. LOC. GOV’T CODE § 271.152. A “contract subject to this subchapter” means:

[A] written contract stating the essential terms of the agreement for providing goods or services to the local governmental entity that is properly executed on behalf of the local governmental entity[.]

Id. § 271.151(2)(A).

B. Plea to the Jurisdiction

Turning to the facts before us here, we conclude that Reeder’s fifth amended petition – the live pleading before us – pleaded facts affirmatively demonstrating the trial court’s jurisdiction by pleading a substantial claim meeting the Act’s conditions. *See Zachry Const. Corp. v. Port of Houston Auth. of Harris Cnty.*, 449 S.W.3d 98, 109 (Tex. 2014). In its fifth amended petition, as before, Reeder alleged the District

entered into a contract subject to the Act and breached the contract by failing to pay Reeder all sums due and owing under the contract and by withholding payment owed Reeder “based on the purported assessment of liquidated damages for periods of excusable performance delays that were the result of act[ions] or neglect on the part of GISD, VLK, or that were otherwise not REEDER’s fault.” Reeder requested damages recoverable under section 271.153 because it sought damages it alleged were due and owing under the contract, including amounts for increased costs resulting from the “concealed lines delay” on the Jackson project.

Despite the above, the District argues the trial court erred in denying its second plea to the jurisdiction because it failed to read the waiver of immunity in section 271.152 of the local government code against the backdrop of article III, section 55 of the Texas Constitution. That provision reads as follows:

The Legislature shall have no power to release or extinguish, or to authorize the releasing or extinguishing, in whole or in part, the indebtedness, liability or obligation of any corporation or individual, to this State or to any county or defined subdivision thereof, or other municipal corporation therein, except delinquent taxes which have been due for a period of at least ten years.

TEX. CONST. art. III, § 55. The District argues that Reeder’s challenge to the enforceability of the liquidated damages provisions of the parties’ contract necessarily fall outside section 271.152’s immunity waiver because that waiver cannot be read to release or extinguish Reeder’s indebtedness, liability, or obligation to the District in violation of section 55.

We disagree. As with the first plea to the jurisdiction, the District attempts to transform a merits dispute about the amount due under the contract into a jurisdictional hurdle for Reeder. *See Garland Indep. Sch. Dist.*, 2024 WL 1208304, at *7 (concluding question of the enforceability of liquidated damages provision and amount due under the contract “goes to the merits dispute between the parties and the question of the amount due and owing to Reeder”). The District assumes Reeder has an “indebtedness, liability or obligation” based upon the operation of the liquidated damages provision, while Reeder disputes the enforceability of that provision. This question goes beyond the scope of the jurisdictional inquiry before us.

The District relies on an attorney general opinion from 1954, *see* Tex. Att’y Gen. Op. No. S-145 (1954), which concluded, after reviewing the pertinent facts before it, that the liquidated damages provision in a construction contract was enforceable. The opinion explained that the plaintiff university had “suffered substantial actual damage caused by the delay. . . . The liquidated damages provided in the contract have a reasonable relation to the actual damages, are not punitive, and therefore are valid charges against the Contractor.” *Id.* In closing, the opinion stated that, because “the charge for liquidated damages has accrued against the Contractor, it is now mandatory that the Board of Directors of Texas Southern University collect this liquidated sum. Sections 53 and 55 of Article III of the Constitution of Texas

prohibit the release of any indebtedness, liability or obligation of any corporation or individual to this State.” *Id.*

Thus, the facts at issue there involved a valid liquidated damages clause. The record before us does not reflect that the trial court has made any such determination as to the liquidated damages provisions at issue here. The District’s argument and reliance on the attorney general opinion thus begs the question of the full extent of any “indebtedness, liability or obligation” Reeder might owe the District or vice versa.

The District also contends in its reply brief that Reeder’s fifth amended petition seeks rescission of the liquidated damages provisions, which invokes a power of the court for which immunity is not waived by section 271.152. We cannot agree. As described above, Reeder alleges only a breach of contract claim against the District, which includes a challenge to the enforceability of the liquidated damages provisions of the contract. An assertion that a liquidated damages provision is a penalty is generally an affirmative defense that the defendant has the burden of pleading and proving. *Urban Television Network Corp. v. Liquidity Sols., L.P.*, 277 S.W.3d 917, 919 (Tex. App.—Dallas 2009, no pet.). Whether a liquidated damages clause is an unenforceable penalty is a question of law for the court, but sometimes factual issues must be resolved before the court can decide the legal question. *Magill v. Watson*, 409 S.W.3d 673, 680 (Tex. App.—Houston [1st Dist.] 2013, no pet.). In certain cases, as here, the plaintiff may challenge the enforceability of a liquidated

damages provision. *See Johnson Engineers, Inc. v. Tri-Water Supply Corp.*, 582 S.W.2d 555, 557 (Tex. App.—Texarkana 1979, no writ) (plaintiff sought to raise enforceability of liquidated damages provision given defendant’s alleged offset under the provision). And the enforceability of a liquidated damages provision may be raised in a breach of contract action. *See Urban Television Network Corp. v. Liquidity Sols., L.P.*, 277 S.W.3d 917, 919 (Tex. App.—Dallas 2009, no pet.) (liquidated damages enforceability raised in context of breach of contract suit). The District points us to no authority, and we have found none, providing that a challenge to the enforceability of a liquidated damages provision invokes some extraordinary power of the court for which there is no waiver of immunity here. And we reject the District’s contentions that Reeder’s fifth amended petition alleges something other than an ordinary challenge to the enforceability of a liquidated damages provision.

In reaching the above conclusion, we necessarily reject the arguments raised in the District’s second issue, where it contends that courts have no power to determine the enforceability of liquidated damages provisions in contracts entered into by Chapter 271 entities. It argues that, under *Tooke v. City of Mexia*, 197 S.W.3d 325, 329 (Tex. 2006), courts should defer to the Texas Legislature on government contract and immunity issues because contract terms in public works projects, including liquidated damages provisions, reflect complex policy and appropriations decisions made to protect taxpayer funds. The District argues that liquidated damages clauses are valid legislative-policy choices built into government contracts,

and that if the Legislature wanted such clauses prohibited, void, or restricted, it would have expressly done so as it has with other contract provisions.

First, we observe that Reeder does not argue that liquidated damages provisions are prohibited generally but only that the provisions here are unenforceable in this case. In so arguing, it relies on a well-developed body of case law regarding the enforceability of such provisions. In providing that a governmental entity's immunity is waived in section 271.152 as to breach of contract claims, the Legislature did not exclude liquidated damages withheld by a governmental entity from damages available to the other party. *See* TEX. LOC. GOV'T CODE § 271.153(b) (specifying the types of damages not available in an adjudication brought against a local governmental entity arising under a contract subject to the waiver). The District directs us to no authority holding that Chapter 271 entities are carved out of the body of case law dealing with the enforceability of liquidated damages provisions, and we are aware of none. We decline the District's invitation to adopt such a categorical rule.

We overrule the District's first two issues.

In its final issue, the District argues the trial court erred in failing to dismiss the suit under Texas Education Code section 11.161. That statute provides that, "[i]n a civil suit brought under state law, against an independent school district or an officer of an independent school district acting under color of office, the court may award costs and reasonable attorney's fees if: (1) the court finds that the suit is

frivolous, unreasonable, and without foundation; and (2) the suit is dismissed or judgment is for the defendant.” TEX. EDUC. CODE § 11.161(a).

Generally, Texas appellate courts have jurisdiction only over final judgments. *Rusk State Hosp. v. Black*, 392 S.W.3d 88, 92 (Tex. 2012). An exception exists for certain interlocutory orders. *Id.* This appeal was brought pursuant to section 51.014(a)(8) of the civil practice and remedies code, which provides that a person may appeal from “an interlocutory order of a district court, county court at law, or county court that . . . grants or denies a plea to the jurisdiction by a governmental unit” TEX. CIV. PRAC. & REM. CODE § 51.014(a)(8).

Thus, our appellate jurisdiction in this case is limited to reviewing the jurisdictional questions presented in the District’s plea to the jurisdiction. The District does not contend that section 11.161 is jurisdictional or deprives the trial court of jurisdiction. Because the District cites no statute, and our research has not revealed such a statute, providing for interlocutory appeal of the trial court’s denial of dismissal under section 11.161, we do not have jurisdiction to reach the District’s third issue. *See Rotella v. Nelson Architectural Engineers, Inc.*, 251 S.W.3d 216, 218 (Tex. App.—Dallas 2008, no pet.) (stating we “have jurisdiction over an interlocutory appeal only if it is allowed by statute”).

We reject the District’s third issue.

C. Rule 45 Sanctions

Reeder raises the question of rule 45 sanctions in its brief and requests that we sanction the District for pursuing a frivolous appeal. If the court of appeals determines that an appeal is frivolous, it may – on motion of any party or on its own initiative, after notice and a reasonable opportunity for response – award each prevailing party just damages. TEX. R. APP. P. 45. In determining whether to award damages, we do not consider any matter that does not appear in the record, briefs, or other papers filed in the court of appeals. *Id.* An appeal is frivolous if, at the time asserted, the advocate had no reasonable grounds to believe judgment would be reversed or when an appeal is pursued in bad faith. *Dallas Cnty. v. Sides*, 430 S.W.3d 649, 654 (Tex. App.—Dallas 2014, no pet.). The question whether to grant appellate sanctions is a matter of discretion we exercise with caution, and we grant sanctions only after careful deliberation and only under circumstances we find truly egregious. *Owen v. Jim Allee Imports, Inc.*, 380 S.W.3d 276, 290 (Tex. App.—Dallas 2012, no pet.); *D Design Holdings, L.P. v. MMP Corp.*, 339 S.W.3d 195, 205 (Tex. App.—Dallas 2011, no pet.); *see also R. Hassell Builders, Inc. v. Texan Floor Serv., Ltd.*, 546 S.W.3d 816, 833 (Tex. App.—Houston [1st Dist.] 2018, pet. denied) (“Rule 45 does not require an award of damages in every frivolous appeal.”).

We decline Reeder’s request to impose sanctions on the District in this case, although we acknowledge that the circumstances before us present a “close question.” *See City of Houston v. Ledesma*, No. 01-22-00377-CV, 2023 WL

5535668, at *7 (Tex. App.—Houston [1st Dist.] Aug. 29, 2023, pet. denied) (mem. op.). First, the District presents a similar question to the question presented in the first appeal. Despite this, the District failed to address or even cite this Court’s prior opinion in its opening brief.¹ We also observe that the District filed its second plea to the jurisdiction on July 11, 2025, just two months before the September trial setting, despite being aware of its section 55 complaint at least as early as the motion for rehearing filed in this Court in February 2024. The District contends it filed its second plea to the jurisdiction in response to changes in Reeder’s fifth amended petition filed in April 2025; but we note that the expanded liquidated damages attack the District points to in its reply brief as the pertinent change was first made in the fourth amended petition. The fourth amended petition was filed in January 2025, some six months before the District filed the second plea.

Thus, there is some basis in the record before us for concluding this appeal was brought in bad faith.

Ultimately, however, we decline to impose sanctions. Though the District presents a similar challenge as before, a decision rendered on an issue before the appellate court does not absolutely bar re-consideration of even the same issue on a second appeal. *See Briscoe v. Goodmark Corp.*, 102 S.W.3d 714, 716 (Tex. 2003)

¹ We acknowledge that the District argued the inapplicability of that decision in its reply brief, contending that Reeder’s amended pleading changed the basis for its jurisdictional complaint. We also recognize that the District raises a constitutional provision in section 55 not addressed in this Court’s first decision.

(stating that, “[b]ecause application of the law of the case doctrine is discretionary, the court of appeals had the authority to re-visit its jurisdictional decision”). And other factors tending to indicate a sanctionable appeal are not present here. *See D Design Holdings, L.P.*, 339 S.W.3d at 205 (explaining four factors tending to indicate an appeal is frivolous include (1) the unexplained absence of a statement of facts, (2) the unexplained failure to file a motion for new trial when it is required to successfully assert factual sufficiency on appeal, (3) a poorly written brief raising no arguable points of error, and (4) the appellant’s unexplained failure to appear at oral argument).

Conclusion

We overrule the District’s first two issues, and we dismiss its third issue for lack of jurisdiction. We overrule Reeder’s cross-issue seeking rule 45 sanctions. Accordingly, we affirm the order of the trial court denying the District’s second plea to the jurisdiction.

/Mike Lee/

MIKE LEE
JUSTICE