



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-20-00229-CV

ANTHONY WALKER, APPELLANT

V.

ROB HANSFORD, APPELLEE

On Appeal from the 249th District Court
Somervell County, Texas¹
Trial Court No. C10645, Honorable D. Wayne Bridewell, Presiding

October 21, 2021

MEMORANDUM OPINION

Before QUINN, C.J., and PARKER and DOSS, JJ.

Appellant, Anthony Walker, appeals the trial court's summary judgment granted in favor of appellee, Rob Hansford.² We affirm the judgment of the trial court.

¹ Originally appealed to the Tenth Court of Appeals, this case was transferred to this Court by the Texas Supreme Court pursuant to its docket equalization efforts. See TEX. GOV'T CODE ANN. § 73.001. Should a conflict exist between precedent of the Tenth Court of Appeals and this Court on any relevant issue, this appeal will be decided in accordance with the precedent of the Tenth Court of Appeals. TEX. R. APP. P. 41.3.

² Although Walker was initially represented by counsel in the underlying proceeding, he is representing himself on appeal.

Background

This case involves a claim for damages based on theories of trespass and nuisance. Walker initiated the present suit in March of 2019, claiming Hansford removed trees near the boundary line of their adjacent property in Somervell County, Texas. Walker asserted that Hansford committed a trespass and created a nuisance, causing a decrease in the value of his property. Walker was represented by counsel at the time he filed suit. In November of 2019, Walker's counsel was granted leave to withdraw.

In December of 2019, Hansford filed his no-evidence motion for summary judgment. A hearing on the motion was scheduled for January 15, 2020. In response, on January 6, Walker filed a letter to the judge enclosing twenty pages of photographs with handwritten notations and a command log from the Somervell County Sheriff's Office consisting of six pages. At the hearing on the motion for summary judgment, Hansford's counsel objected to the photographs and the records from the Somervell County Sheriff's Office on the grounds that they were not authenticated and they contained hearsay. The trial court did not rule on the motion at that time.

In May of 2020, Hansford filed a "motion for order on no-evidence motion for summary judgment" and renewed his objections to Walker's summary judgment evidence. On May 26, 2020, Walker filed "Answer to No Evidence Summary Judgment" and requested damages against Hansford "under Code 41.008." Walker attached exhibits to his answer, including the same photographs and command logs that he filed on January 6, nine additional pages of photographs with handwritten notations, a map, development plan and permit for a proposed RV park, a copy of chapter 41 of the Civil

Practice and Remedies Code, and a letter and invoice from Urban Forestry Consultant. Hansford filed an objection to Walker's answer as untimely and lodged specific objections to each of the documents and photographs attached as exhibits.

At a hearing in July of 2020, the trial court sustained Hansford's objections to Walker's summary judgment evidence and entered an order granting summary judgment in favor of Hansford. Walker timely filed this appeal.

Law and Analysis

As an initial matter, we note that a self-represented litigant is held to the same standards as licensed attorneys and must comply with applicable laws and rules of procedure. *Pettigrew v. Gastineau*, No. 10-18-00203-CV, 2020 Tex. App. LEXIS 8156, at *11 (Tex. App.—Waco Oct. 14, 2020, no pet.) (mem. op.).

The rules of appellate procedure govern the required contents and organization of an appellant's brief. See TEX. R. APP. P. 38.1. One of those requirements is that an appellant's brief must contain a clear and concise argument including appropriate citations to the record. TEX. R. APP. P. 38.1(i). Failure to cite appropriate legal authority or provide substantive analysis of the legal issue presented effects a waiver of that issue on appeal. *Martinez v. El Paso Cnty.*, 218 S.W.3d 841, 844 (Tex. App.—El Paso 2007, pet. struck). An appellate court has no duty to perform an independent review of the record and applicable law to determine whether there was error in the lower court. *Id.*

Initially, Hansford argues that Walker has waived his appeal by filing a non-compliant brief. Although it is appellant's burden to properly raise and discuss the issues presented for review, we are instructed to reach the merits on appeal whenever

reasonably possible. *Perry v. Cohen*, 272 S.W.3d 585, 587 (Tex. 2008) (per curiam). While Walker has provided minimal argument and has failed to cite appropriate authorities or the record, we will address the issue he raises.

In his sole issue, Walker disputes the summary judgment “denying his claims for nuisance, trespass in a private property and denial of his claims against [Hansford] for damages.” We construe this issue as asserting error in the trial court’s granting of the motion for summary judgment. *See id.*

After adequate time for discovery, a party may move for summary judgment on the ground that there is no evidence of one or more essential elements of a claim or defense on which an adverse party would have the burden of proof at trial. TEX. R. CIV. P. 166a(i); *Western Invs., Inc. v. Urena*, 162 S.W.3d 547, 550 (Tex. 2005). The movant must state the elements as to which there is no evidence. TEX. R. CIV. P. 166a(i). Unless the respondent produces summary judgment evidence raising a genuine issue of material fact, the trial court must grant the motion. *Id.*; *Urena*, 162 S.W.3d at 550.

An appellate court reviews a no-evidence summary judgment under the same standard as a directed verdict. *See Mack Trucks, Inc. v. Tamez*, 206 S.W.3d 572, 581 (Tex. 2006). Once such a motion is filed, the burden shifts to the nonmoving party to present evidence raising an issue of material fact as to each challenged element of its cause of action. *Id.* at 582. In reviewing a no-evidence summary judgment, we must consider all the evidence “in the light most favorable to the party against whom the summary judgment was rendered, crediting evidence favorable to that party if reasonable jurors could, and disregarding contrary evidence unless reasonable jurors could not.”

Gonzalez v. Ramirez, 463 S.W.3d 499, 504 (Tex. 2015) (per curiam) (quoting *Mack Trucks*, 206 S.W.3d at 582). A no-evidence summary judgment is properly granted when “(a) there is a complete absence of evidence of a vital fact, (b) the court is barred by rules of law or evidence from giving weight to the only evidence offered to prove a vital fact, (c) the evidence offered to prove a vital fact is no more than a mere scintilla, or (d) the evidence conclusively establishes the opposite of the vital fact.” *King Ranch, Inc. v. Chapman*, 118 S.W.3d 742, 751 (Tex. 2003). “Thus, a no-evidence summary judgment is improperly granted if the respondent brings forth more than a scintilla of probative evidence to raise a genuine issue of material fact.” *Id.* A court must grant the motion unless the respondent produces summary judgment evidence raising a genuine issue of material fact. TEX. R. CIV. P. 166a(i).

Trespass is the “unauthorized entry upon the land of another.” *Envtl. Processing Sys., L.C. v. FPL Farming Ltd.*, 457 S.W.3d 414, 424 (Tex. 2015). In his no-evidence motion for summary judgment, Hansford contends that Walker has no evidence of: (1) entry by Hansford; (2) onto Walker’s property; (3) without Walker’s consent or authorization; and (4) damages caused by the trespass in the form of decrease in market value.

A nuisance is a condition that substantially interferes with the use and enjoyment of land by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities. *Crosstex N. Tex. Pipeline, L.P. v. Gardiner*, 505 S.W.3d 580, 600 (Tex. 2016). “Nuisance is not a cause of action, but a type of legal injury.” *Town of Dish v. Atmos Energy Corp.*, 519 S.W.3d 605, 607 n.2 (Tex. 2017) (citing *Crosstex*, 505 S.W.3d at 594-95). Whether a defendant may be held liable for causing a nuisance depends on

the culpability of the defendant's conduct in addition to proof that the interference is a nuisance. *Crosstex*, 505 S.W.3d at 604.³ To the extent that Walker alleged a nuisance injury, Hansford's motion alleged that Walker has no evidence establishing: (1) a condition; (2) that substantially interferes with the use and enjoyment of land; (3) by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities attempting to use or enjoy it.

Hansford's no-evidence motion also challenged the damages sought by Walker and alleged that Walker could not establish the fair market value of his property immediately before the injury complained of and the fair market value of his property immediately after the injury. See *Meridien Hotels, Inc. v. LHO Fin. P'ship I, L.P.*, 255 S.W.3d 807, 821 (Tex. App.—Dallas, 2008 no pet.) (damages for permanent injury to real property include the difference in the market value of the land before and after the injury).

The record thus reflects that, in moving for no-evidence summary judgment, Hansford specified one or more of the essential elements of each of the claims that Walker alleged in his petition and on which he would have the burden of proof at trial. Accordingly, the motion complied with Rule 166a(i) and was sufficient to warrant a no-evidence summary judgment on each of those claims. *Kang v. Derrick*, Nos. 14-13-00086-CV, 14-13-00088-CV, 2014 Tex. App. LEXIS 5264, at *14 (Tex. App.—Houston [14th Dist.] May 15, 2014, pet. denied) (mem. op.). Because the motion was sufficient to

³ In *Crosstex*, the Supreme Court explained that courts "have broken actionable nuisance into three classifications: negligent invasion of another's interests; intentional invasion of another's interests; or other conduct, culpable because abnormal and out of place in its surroundings, that invades another's interests." *Id.* at 602 (quoting *City of Tyler v. Likes*, 962 S.W.2d 489, 503 (Tex. 1997)). Here, Walker has not alleged negligence, intentional conduct, or any culpable conduct by Hansford with respect to his alleged nuisance injury.

warrant a no-evidence summary judgment, the burden shifted to Walker to file a response sufficient to raise a fact issue on the challenged elements. See TEX. R. CIV. P. 166a(i) cmt.; *Ford Motor Co. v. Ridgway*, 135 S.W.3d 598, 600 (Tex. 2004).

Walker responded to the no-evidence motion for summary judgment by filing a response on January 6, 2020, and an “answer” on May 26, 2020. The filing on January 6 consisted of a letter addressed to the judge, twenty pages of photographs with handwritten notations, and a command log from the sheriff’s office. The filing on May 26 duplicated what Walker filed on January 6 and included nine additional pages of photographs with handwritten notations; a map, development plan, and permit for a proposed RV park; a copy of chapter 41 of the Civil Practices and Remedies Code; and a letter and invoice from Urban Forestry Consultant. Walker did not file an affidavit of testimony or lay any predicate for the admissibility of the evidence attached to his letter or to his answer. Hansford filed written objections to Walker’s January 6 evidence asserting that the photographs were not authenticated and contained hearsay notations, and the call logs were not authenticated. Hansford also objected to the answer and exhibits filed on May 26 because the answer in its entirety was untimely, and he specifically objected on the grounds that the documents and photographs were not authenticated and contained inadmissible hearsay. At the hearing on July 14, 2020, the trial court sustained Hansford’s objections.

The “answer” and documents filed by Walker on May 26, 2020, were not timely filed in response to Hansford’s summary judgment motion. To be timely, a summary judgment response must be filed and served at least seven days before the hearing. TEX. R. CIV. P. 166a(c). For an untimely response to be considered by the court, leave of court

is required. See *id.*; *B.C. v. Steak N Shake Operations, Inc.*, 598 S.W.3d 256, 259 (Tex. 2020). Nothing in the record indicates that Walker requested leave of court to file his answer. If there is nothing in the record to suggest the trial court granted leave, then we “must presume that the trial court did not consider [the untimely response].” *INA of Texas v. Bryant*, 686 S.W.2d 614, 615 (Tex. 1985).

Here, Hansford made, and the trial court sustained, an objection to Walker’s summary judgment evidence as untimely, not properly authenticated, and hearsay that does not fall within any exception. Unauthenticated or unsworn documents, or documents not supported by any affidavit, are not entitled to consideration as summary judgment evidence. *Consol. Health Care Servs., LLC v. Mainland Shopping Ctr., Ltd.*, 589 S.W.3d 915, 923-24 (Tex. App.—Houston [14th Dist.] 2019, no pet.). The same rule applies to unauthenticated photographs. *Segrest v. Haseltine*, No. 09-01-00524-CV, 2002 Tex. App. LEXIS 8970, at *6 (Tex. App.—Beaumont, Dec. 19, 2002, pet. denied) (admissibility of photograph conditioned upon its identification as accurate depiction of relevant facts and verification by person with knowledge as correctly representing those facts); *Paselk v. Rabun*, 293 S.W.3d 600, 611 (Tex. App.—Texarkana 2009, pet. denied) (merely attaching unauthenticated documents and photographs to a response does not make the attachments competent summary judgment evidence). Because none of the documents or photographs attached to Walker’s response were authenticated, he did not properly present any evidence for consideration. *Mayo v. Suemaur Exploration & Prod. LLC*, No. 14-07-00491-CV, 2008 Tex. App. LEXIS 7164, at *16 (Tex. App.—Houston [14th Dist.] Aug. 26, 2008, pet. denied) (mem. op.).

Hansford also objected on the grounds that the documents and photographs in Walker's response contained inadmissible hearsay. "Objected-to hearsay is not competent summary judgment evidence." *Bennett v. Miller*, 137 S.W.3d 894, 897 (Tex. App.—Texarkana 2004, no pet.). As such, the trial court properly sustained Hansford's objection as to hearsay.

In light of the record before us, Walker has failed to meet his burden to defeat Hansford's no-evidence motion for summary judgment. We conclude the trial court did not err by granting Hansford's motion for summary judgment because Walker failed to present any evidence that created a genuine issue of material fact concerning whether a trespass or nuisance occurred or whether Hansford caused a diminution to the value of Walker's property. See TEX. R. CIV. P. 166a(i). We overrule Walker's sole issue.

Conclusion

Having overruled Walker's sole issue, we affirm the summary judgment.

Judy C. Parker
Justice