COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

ABIOLA ROBINSON,		§	No. 08-22-00012-CV
	Appellant,	§	Appeal from the
v.		§	414th District Court
SMART DRY, LLC,		§	of McLennan County, Texas
	Appellee.	§	(TC# 2020-1959-5)

O P I N I O N

Appellant, Abiola Robinson, appearing pro se, appeals the default judgment against her granted in favor of Appellee, Smart Dry, LLC.[1] We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

Smart Dry sued Robinson for breach of contract after it provided certain remediation services to repair water damage at her home. Robinson filed an answer and appeared at a hearing on Smart Dry's motion for summary judgment; however, she failed to answer requests for admissions and failed to appear at trial.

The trial took place on December 1, 2021, and although Robinson was given proper notice, she did not appear. At trial, Smart Dry told the court the requests for admission had not been

[1] This case was transferred from the Waco Court of Appeals pursuant to the Texas Supreme Court's docket equalization efforts. *See* TEX.GOV'T CODE ANN. section 73.001. We follow the precedent of the Waco Court of Appeals to the extent it might conflict with our own. *See* TEX.R.APP.P. 41.3.

answered. Through these deemed admissions, Robinson admitted (1) the account made the basis of the suit was just and true; (2) all offsets, credits, and payments had been allowed; (3) there was a balance due of $7,396.93; (4) the reasonable and customary value for the services rendered was $7,396.93; (5) she agreed to pay the prices stated for the items or services described; (6) the prices reflected in the account were reasonable; (7) she promised to pay; (8) a reasonable and necessary attorney fee was at least $2,500; (9) she executed the contract; (10) she failed to pay; and (11) Smart Dry substantially performed the contract. Also during the trial, Smart Dry entered 27 exhibits into evidence, including the contract and invoice. Finally, Smart Dry's attorney testified as to the reasonableness of his attorney's fees for trial and through appeal.

The trial court entered judgment on December 7, 2021, awarding Smart Dry $7,396.93 in damages, pre-judgment and post-judgment interest, attorney's fees of $6,125.00 plus interest, and attorney's fees on appeal. On December 20, 2021, Robinson filed a letter with the trial court addressed to Smart Dry's attorney which read, verbatim:

> I would like to appeal the judgment against me made by smart dry .llc. Because of an medical emergency I miss my trial date on December 1 2020. I am asking the court/judge to give me a fair chance to prove my side of the case of why I am not responsible for that unfair amount .. This company did not have an agreement with me for this amount.. P..S I have attached information[.]

Robinson attached photos of an open wound on her left ring finger along with a copy of the trial court's judgment. The trial court docketed this letter as a notice of appeal.

On appeal, Robinson states in her brief she missed the court date because she was sick with corona virus, she did not sign the contract, and the work was not completed. Smart Dry filed a letter with this Court stating it would not be filing a brief on appeal and stating Robinson did not raise her complaints with the trial court. Finally, Smart Dry's letter also notes Robinson did not file a motion for continuance before trial or a motion for new trial.

II. DISCUSSION

Robinson does not raise an issue on appeal. Rather, she states she was ill on the date of trial and again asserts her positions that she did not sign a contract with Smart Dry and the job was never completed. We will liberally construe her brief as an argument that the trial court erred in granting default judgment.

"[A] motion for new trial is a prerequisite to a complaint on appeal on which evidence must be heard." *Hendricks v. Barker*, 523 S.W.3d 152, 157 (Tex. App.—Houston [14th Dist.] 2016, no pet.) (citing TEX.R.CIV.P. 324(b)(1)); *see Hortenstine v. McKlemurry*, 402 S.W.2d 946, 947 (Tex. Civ. App.—Waco 1966, writ ref'd n.r.e.). Rule 324 lists specifically the failure to set aside a default judgment as one of the types of appellate complaints that must be preserved through a motion for new trial. TEX.R.CIV.P. 324(b)(1).

By failing to file a motion for new trial, Robinson has failed to preserve error on the issue that the trial court improperly granted default judgment. The arguments she raises in her brief demonstrate that an evidentiary hearing was needed in the trial court. On appeal, Robinson asserts she missed the trial because she was sick with corona virus. In her notice of appeal she alleged she had had a medical emergency with a wound on her finger. Both in her brief and in her notice of appeal she alleges she did not sign a contract with Smart Dry and the job was never completed.

Factual issues such as those raised by Robinson "must be resolved in the trial court before we, the appellate court, can address them." *Hendricks*, 523 S.W.3d at 157. Robinson never requested an evidentiary hearing or presented these issues in a motion for new trial; thus, she has not preserved any error for us to review. *See id.*[2]

[2] Even if we were to consider the letter Robinson filed on December 20, 2021, as a motion for new trial rather than a notice of appeal, the motion alone would not have been sufficient to overcome the trial court's judgment. Robinson did not answer the requests for admissions sent to her along with Smart Dry's petition. "Unanswered requests for

III. CONCLUSION

Because Robinson failed to preserve any complaints regarding the default judgment, we affirm the trial court's default judgment.

SANDEE B. MARION, Chief Justice (Ret.)

November 10, 2022

Before Rodriguez, C.J., Alley, J., and Marion, C.J. (Ret.)
Marion, C.J. (Ret.)(Sitting by Assignment)

admissions are automatically deemed admitted, unless the court on motion permits their withdrawal or amendment." *Marshall v. Vise*, 767 S.W.2d 699, 700 (Tex. 1989); *see Sherman Acquisition II LP v. Garcia*, 229 S.W.3d 802, 812 (Tex. App.—Waco 2007, no pet.). Matters thus admitted are conclusively established as being true. *Sherman*, 229 S.W.3d at 812-13. A party may not introduce controverting evidence at trial. *Id.* at 813 (citing *Marshall*, 767 S.W.2d at 700). Robinson did not answer the requests for admissions or file any objections to them. She thus judicially admitted the elements of Smart Dry's cause of action, and this conclusive evidence could not be contradicted. *Id.*