

**AFFIRMED; Opinion Filed December 21, 2016.**



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

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**No. 05-16-00180-CV**

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**FERREOL FLORES, Appellant**

**V.**

**GRAYSON COUNTY CENTRAL APPRAISAL DISTRICT, Appellee**

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**On Appeal from the 59th Judicial District Court  
Grayson County, Texas  
Trial Court Cause No. CV-14-1486**

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**MEMORANDUM OPINION**

Before Justices Bridges, Evans, and Schenck  
Opinion by Justice Evans

This is a dispute over a property tax valuation. Ferreol Flores appeals from a directed verdict in favor of appellee Grayson County Central Appraisal District (GCAD).<sup>1</sup> Flores brings four issues asserting the trial court erred in (1) failing to request GCAD to provide certain evidence supporting its valuation, (2) excluding certain evidence, and (3) granting the directed verdict. In two additional issues, Flores complains the court reporter's record is incomplete or inaccurate. For the reasons that follow, we affirm the trial court's order.

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<sup>1</sup> Flores also named the Grayson County Appraisal Review Board as an appellee in this appeal. Our review of the record, however, reveals that the trial court dismissed all claims against the review board on November 10, 2014. Flores has not challenged the dismissal order on appeal. Accordingly, the review board is not a party to this appeal.

## BACKGROUND

This case involves the 2014 valuation for residential property Flores owned in Sherman, Texas. At a trial before the court sitting without a jury, Flores testified that GCAD overvalued the property when it appraised it at around \$58,000. When asked, “what do you think the property value is?” Flores responded, “[a]round \$37,000.” The trial court then sustained GCAD’s objection to a follow-up question seeking the basis of Flores’s property valuation.<sup>2</sup> GCAD asserted there was no proper foundation for anything other than a personal opinion. On cross-examination, Flores admitted he had paid \$61,000 for the property in an arms-length transaction in September 2013. He also acknowledged that he financed his purchase of the property with a \$48,800 mortgage loan.

GCAD’s deputy chief appraiser testified on its behalf. He identified the property as a wood-frame, single-family residential home of roughly 1,500 square feet. The appraiser stated the property’s 2014 appraised value was \$58,134. He also explained GCAD’s process for valuing the property. Additionally, the appraiser testified that he believed the sales price on Flores’s purchase of the property was a full indication of the property’s market value. After both sides rested, GCAD moved for a directed verdict arguing that there was no credible evidence that the property’s appraised value exceeded its market value.<sup>3</sup> The trial court granted the motion, ordered that Flores take nothing by his pleadings, and dismissed Flores’s claims with prejudice. This appeal followed.<sup>4</sup>

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<sup>2</sup> Flores does not complain about the trial court’s ruling on appeal.

<sup>3</sup> GCAD first moved for a directed verdict after Flores rested. The trial court denied the motion.

<sup>4</sup> In the trial court below, Flores was represented by counsel. On appeal, Flores represents himself without an attorney.

## ANALYSIS

Flores's first issue is "Did the trial court err in failing to request the Appellees the support evidence as defined by Title 1. Property Tax Code Chapter 23. Appraisal Methods and Procedures, Sec. 23.01. Appraisals Generally (b)?" As we understand Flores's complaint, he appears to argue the trial court had an independent obligation to ensure the GCAD appraisal at issue was supported by evidence in compliance with the cited statute. We disagree. In a civil case, the burden of proof generally rests upon the party against whom judgment must be entered under the pleadings if neither side introduced any evidence. *See Estate of Smith v. Ector Cty. Appraisal Dist.*, 480 S.W.3d 796, 800 (Tex. App.—Eastland 2015, pet. denied). Here, Flores sought affirmative relief in the form of a reduced appraisal value and, thus, had the burden of proof. *Id.* at 801. Accordingly, it was Flores's burden to provide evidence in support of his contention that the property was overvalued or that the 2014 appraisal was incorrect. Neither the trial court nor GCAD were required to request or produce evidence to support Flores's contention that GCAD's 2014 appraisal value should be reduced. We resolve Flores's first issue against him.

In his second issue, Flores asserts that the trial court erred in excluding his comparative market value analysis. We review the trial court's evidentiary rulings for an abuse of discretion. *See Owens-Corning Fiberglas Corp. v. Malone*, 972 S.W.2d 35, 43 (Tex. 1998). Additionally, we may not reverse based on an erroneous evidentiary ruling unless the error probably caused the rendition of an improper judgment. *See id.* The record reveals that GCAD objected to the admission of Flores's comparative market analysis because it had not been provided in discovery and therefore asserted should be excluded under rule 193.6 of the Texas Rules of Civil Procedure. GCAD also objected to the evidence on the ground of hearsay. On appeal, Flores does not address either of the objections raised by GCAD as bases for excluding the evidence.

Instead, he merely argues the evidence was critical and should have been considered. Because Flores fails to present any argument or analysis in his brief with respect to the propriety of the trial court's rulings on GCAD's objections, he has waived this complaint and has not established any error in connection with the trial court's evidentiary rulings. *See* TEX. R. APP. P. 38.1(i) (brief must contain a clear and concise argument for contentions made with appropriate citations to authorities and record); *see also In re Estate of Marley*, 390 S.W.3d 421, 425 (Tex. App.—El Paso 2012, pet. denied) (appellant bears burden to establish trial court committed reversible error).

Regardless, Rule 193.6 provides for the automatic exclusion of evidence that was not timely disclosed in discovery unless the court finds there was good cause for the failure to timely disclose or the failure to timely disclose will not unfairly surprise or unfairly prejudice the other party. TEX. R. CIV. P. 193.6(a). The burden to show good cause or lack of unfair surprise or unfair prejudice is on the party seeking to introduce the evidence. TEX. R. CIV. P. 193.6(b). Flores did not contest GCAD's assertion that the market analysis was not provided in discovery and made no showing that there was good cause for his failure to timely provide the market analysis in discovery or that the failure to timely provide the evidence in discovery would not unfairly surprise or unfairly prejudice GCAD. Accordingly, Flores has not established that the trial court abused its discretion in excluding the market analysis. We resolve Flores's second issue against him.

In his third and fourth issues, Flores challenges the trial court's order granting GCAD's motion for a directed verdict. In issue three, Flores specifically contends that there is "factually insufficient evidence to support the directed verdict of the trial court."<sup>5</sup>

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<sup>5</sup> In issue four, Flores complains that the trial court erred in signing the order granting a directed verdict "without reading the trial court transcripts that do not represent the ruling." In the argument section of his brief,

A directed verdict is proper if there is no probative evidence to raise a fact issue on the material questions presented. *See Szczepanik v. First S. Trust Co.*, 883 S.W.2d 648, 649 (Tex. 1994). A trial court properly directs a verdict when a plaintiff fails to present evidence raising a fact issue essential to his right of recovery or the evidence conclusively establishes the movant’s right to judgment as a matter of law. *Gomer v. Davis*, 419 S.W.3d 470, 475 (Tex. App.—Houston [1st Dist.] 2013, no pet.). In reviewing a directed verdict, we utilize the standard of review for assessing the legal sufficiency of the evidence; we must determine if there is any conflicting evidence of probative value that raises a material fact issue. *Id.*

The only question before the court involved the valuation of Flores’s property for 2014. Generally, a property owner is qualified to testify to the value of her property even if she is not an expert and would not be qualified to testify to the value of other property. *See Porras v. Craig*, 675 S.W.2d 503, 504 (Tex. 1984). But even when a property owner is qualified to testify to the value of his property, the testimony must still “meet the ‘same requirements as any other opinion evidence.’” *Nat. Gas Pipeline Co. of Am. v. Justiss*, 397 S.W.3d 150, 156 (Tex. 2012) (quoting *Porras*, 675 S.W.2d at 504). In other words, an owner must provide the factual basis on which his opinion rests – bare conclusions are legally insufficient evidence. *See id.* at 156, 159. Here, like in *Justiss*, Flores did not explain the factual basis behind his valuation opinion. And although his attorney asked Flores the basis of his valuation opinion, the trial court sustained GCAD’s objection to the question. On appeal, Flores does not complain of or ascribe error to that ruling. Absent evidence explaining the basis of his opinion, Flores’s valuation testimony was conclusory and no evidence to support a judgment in his favor. *See id.* at 159, 161. Because the only evidence admitted in support of Flores’s

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Flores does nothing more than restate this issue in two sentences. Because Flores presents no argument or legal authority to support his complaint of error, this issue presents nothing for our review. *See* TEX. R. APP. P. 38.1(i).

claim that GCAD's 2014 valuation was excessive was legally insufficient, the trial court did not err in granting GCAD's motion for a directed verdict. We resolve Flores's third issue against him.

In his fifth and sixth issues, Flores complains about inaccuracies in the court reporter's record. Specifically, he complains about the inclusion in the record of the trial court's statement granting the motion and asking defense counsel if he had an order. He also alleges an exchange between the trial court and defense counsel was omitted from the record and that the "judge dismiss[e]d the case without granting any motion or relief to the defendant." GCAD denies there are any inaccuracies in the record and nothing in the record support Flores's assertions. Inaccuracies in the record are governed by rule 34.6(e) of the Texas Rules of Appellate Procedure. If a dispute arises after the record was filed in the appeal, we *may* submit the dispute to the trial court. *See* TEX. R. APP. P. 34.6(e)(3). Here, Flores has not filed a motion to cure any alleged inaccuracies and he has failed to put forth any argument about how he has been harmed by these alleged inaccuracies or how they might affect our ability to conduct an appellate review. Moreover, three days after the trial, on January 22, 2016, the trial court signed an order granting GCAD a directed verdict, ordering Flores take nothing by his claims and dismissing Flores's case with prejudice. There is no indication in the record that Flores objected to the order on the basis that at trial, the trial court denied or did not grant the relief requested by the order. Because Flores has not demonstrated any alleged inaccuracies prevented him from properly presenting his appeal or otherwise merit relief, we resolve his fifth and sixth issues against him.

In his reply brief, Flores raises new issues including accusations of fraud against GCAD's counsel without any citation to the record or other proof. GCAD moved to strike those portions of Flores's reply brief that made the allegations on the basis that the allegations were not supported by the record and one party may not attack the other by attacking the other party's

attorney.<sup>6</sup> Generally, a new issue may not be raised for the first time after the opening brief. *See, e.g.*, TEX. R. APP. P. 33.1(i) (appellant’s brief must include “a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record”); 38.3 (reply brief to address “any matter in the appellee's brief”); *Stull v. LaPlant*, 411 S.W.3d 129, 135 n.3 (Tex. App.—Dallas 2013, no pet.). We do not consider Flores’s new issues raised for the first time in his reply brief. By separate order we grant GCAD’s motion to strike portions of Flores’s reply brief to the extent that we do not consider those matters in disposing of the issues on appeal.

We affirm the trial court’s order.

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/David W. Evans/

DAVID EVANS  
JUSTICE

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<sup>6</sup> GCAD cited authorities that conclude attacks on opposing counsel during jury argument are improper. *See Circle Y of Yoakum v. Blevins*, 826 S.W.2d 753, 758 (Tex. App.—Texarkana 1992, writ denied); *Beavers v. Northrop Worldwide Aircraft Servs., Inc.*, 821 S.W.2d 669, 680 (Tex. App.—Amarillo 1991, writ denied); *Am. Petrofina, Inc. v. PPG Indus., Inc.*, 679 S.W.2d 740, 755 (Tex. App.—Fort Worth 1984, writ dism’d by agr.).



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

**JUDGMENT**

FERREOL FLORES, Appellant

No. 05-16-00180-CV V.

GRAYSON COUNTY CENTRAL  
APPRAISAL DISTRICT, Appellee

On Appeal from the 59th Judicial District  
Court, Grayson County, Texas  
Trial Court Cause No. CV-14-1486  
Opinion delivered by Justice Evans, Justices  
Bridges and Schenck participating.

In accordance with this Court's opinion of this date, the order of the trial court is  
**AFFIRMED.**

It is **ORDERED** that appellee Grayson County Central Appraisal District recover its  
costs of this appeal from appellant Ferreol Flores.

Judgment entered this 21st day of December, 2016.