

**Affirmed and Opinion Filed August 24, 2017.**



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

---

**No. 05-16-00077-CV**

---

**STAN ODAM, Appellant  
V.  
TEXANS CREDIT UNION, Appellee**

---

**On Appeal from the 59th Judicial District Court  
Grayson County, Texas  
Trial Court Cause No. CV-15-1730**

---

**MEMORANDUM OPINION**

Before Justices Lang, Fillmore, and Schenck  
Opinion by Justice Lang

Appellant Stan Odam, pro se, claims the trial court erred when it granted Texans Credit Union's ("Texans") rule 91a motion to dismiss all of Odam's claims and awarded Texans its attorney's fees. Odam raises nine issues on appeal, arguing: (1) "[t]he [trial] court erred [sic] in its ruling of dismissal and nonsuit . . . predicated on an untimely filing subject to Tex. R. Civ. P. Rule 91a.5(b)"; (2) "[t]he trial court abused its discretion by not giving the requisite 14 day notice to Appellant before the hearing of the motion to dismiss"; (3) "[t]he trial court failed in its duty to rule on the verified 'Claimant's Judicial Notice of State Law and Demand for Reinstatement,' filed within 30 days after the order, as required by law"; (4) "Appellants' 'Motion to Reconsider Emergency Injunction and Notice of Fraud Upon the Court' was not heard . . . thereby concealing the fraud by the trial court"; (5) "[t]he trial court acted fraudulently

in taking Appellants' filing fee by their failure in their duty to issue or set a hearing for the injunction, which amounts to unjust enriched [sic]"; (6) the trial court erred by failing to set a hearing for his "Motion to Reconsider Emergency Injunction and Notice of Fraud Upon the Court"; (7) "[t]he evidence that Appellee's Motion to Dismiss for failure to state a claim is based upon, brings fraud upon this court"; (8) "[i]n the alternative that the Dismissal Order of the trial court stands, the question is raised as to the award of attorneys' fees to Appellee"; (9) "[a]nd further, the question is raised as to whether the order is made without prejudice and thereby not precluded by res judicata[.]"

We decide Odam's issues against him. The trial court's order dismissing Odam's case is affirmed.

### **I. Factual and Procedural Context**

On November 7, 2015, Odam filed his original petition against a justice of the peace, the clerk of the justice of the peace court, a county sheriff, and Texans for claims which he alleged arose from a proceeding before the justice of the peace about repossession of his motor vehicle. Specifically, he alleged claims for "negligence" and "organized crime," and he sought "special" damages, "exemplary" damages, and injunctive relief.

On November 20, 2015, Texans filed its answer and a motion to dismiss under Texas Rule of Civil Procedure 91a, seeking dismissal of all the alleged causes of action and to recover attorney's fees. In this motion to dismiss, Texans argued, in part: "A requirement for every cause of action in Texas is that a wrongful act was committed. Plaintiff's pleading does not identify any specific wrongful act committed by any Defendant. Accordingly, there is no basis in law or fact for any cause of action." Texans also attached two exhibits to its motion to dismiss. The first exhibit was a copy of the "Final Judgment" from the justice court that dealt with Odam's motor

vehicle. The second exhibit was the affidavit of counsel for Texans offering proof in support of an award of attorney's fees.

Counsel for Texans obtained a hearing date for its motion to dismiss. He sent a letter to the clerk of the court notifying the clerk of a hearing set for December 22, 2015 at 10 a.m., and in the letter stated a copy of the letter was served on Odam by certified mail.

On December 14, 2015, Odam filed a "Motion to Reconsider Emergency Injunction and Notice of Fraud Upon the Court" seeking temporary injunctive relief against the seizure of his motor vehicle and/or the return of the vehicle. On December 17, 2015, Odam filed a "Notice of Objection to Documents" in the trial court, in which he objected to Texans' Exhibit A (the justice court judgment) attached to its motion to dismiss. He also filed a "Motion for Production of Documents." Finally, on December 21, 2015, the day before the hearing on Texans' motion to dismiss, Odam filed his "First Amended Claim for Trespass, Damages in Tort, Emergency Injunction and Notice of Removal of Steven Seider, Nuria Ascon, and J. Keith Gary." In that pleading, Odam brought causes of action against Texans for "negligence" and "fraudulent accounting," and sought monetary damages and injunctive relief. Odam claimed Texans had "defaulted on the agreement" and, as a result, the agreement was "void." He then enumerated various errors in the justice court, including that it had wrongfully dismissed his claims. Odam further asserted in his pleading his motor vehicle had been "repossessed by way of a fraudulent or void judgment" and that, "[w]hile Texans Credit Union's claim (vend[or]'s lien) appears valid on its face, it is interfering with and hindering the Claimant's title." Odam contended that "[his] legal and equitable interest in the property in question, [was] superior to all others." Finally, he stated he was "drop[ping] the suit against Dallas County and Grayson County."

On December 22, 2015, the trial court held a hearing on Texans' motion to dismiss. After the hearing, the trial court signed an "Order Granting Nonsuit" and all defendants except for

Texans were dismissed at this point. Then, on January 4, 2016, the trial court granted Texans' motion to dismiss and signed an "Order Dismissing Case," which dismissed Odam's claims "with prejudice." That order reads as follows:

ON THIS DAY, a hearing was held on Defendant Texans Credit Union's Motion to Dismiss. Defendant Texans Credit Union appeared by and through counsel. Plaintiff Stan Odam appeared Pro Se/appeared through Next Friend \_\_\_\_\_. The court considered Defendant's motion and the arguments of the parties present. Plaintiff's Amended Claim filed on December 21, 2015 was untimely under Texas Rule of Civil Procedure 91a.5(b). The court finds that the Motion should be granted.

ORDERED, that the Defendant Texans Credit Union's Motion to Dismiss is granted and Plaintiff's claims are hereby dismissed with prejudice as to Defendant Texans Credit Union.

IT IS FURTHER ORDERED that Defendant Texans Credit Union have and recover its reasonable and necessary attorneys fees of \$2,500 from Plaintiff Stan Odam.

This order disposes of all claims and all parties and is appealable.

The trial court sent a copy of this order to Odam and counsel for Texans on January 5, 2016.

On January 22, 2016, Odam filed documents titled, "Judicial Notice of State Law and Demand for Reinstatement," "Motion for Summary Judgment," and "Notice of Accelerated Appeal."

On February 11, 2015, the court reporter for this case sent a letter to this Court which stated, in part: "I have never been notified or paid for preparation of the Reporter's Record in this case. Also, in reviewing the file, there's no documentation requesting the Reporter's Record that was not forwarded to me." On June 3, 2016, Odam filed with this Court a "Supplemental Docketing Statement." In this document Odam states he "does not require the record of [the] court reporter."

After requesting and receiving three extensions of time for correcting and filing his brief, on September 27, 2016, Odam filed a "Brief of Appellant" which this Court addresses.

## **II. Waiver for Failure to Adequately Brief**

"The Texas Rules of Appellate Procedure have specific requirements for briefing." *Berardinelli v. Pickels*, No. 05-12-01390-CV, 2014 WL 6560029, at \*1 (Tex. App.—Dallas

Oct. 23, 2014, no pet.) (mem. op.). “Texas Rule of Appellate Procedure 38.1(g) requires appellate briefs to contain a statement of facts that is supported by record references.” *Id.* “If record references are not made or are inaccurate, misstated, or misleading, ‘the brief fails.’” *Id.* (quoting *Bolling v. Farmers Branch Indep. Sch. Dist.*, 315 S.W.3d 893, 896 (Tex. App.—Dallas 2010, no pet.)). “Also, Texas Rule of Appellate Procedure 38.1(i) requires appellate briefs to ‘contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record.’” *Id.* at \*2 (quoting TEX. R. APP. P. 38.1(i)). “This requirement is not satisfied by merely making brief conclusory statements unsupported by legal citations.” *Id.* “If an appellate court is not provided with existing legal authority that can be applied to the facts of the case, ‘the brief fails.’” *Id.* (quoting *Bolling*, 315 S.W.3d at 896). “The failure to cite to applicable authority or provide substantive analysis waives an issue on appeal.” *Id.*

“It is the appellant’s burden to properly raise and discuss the issues presented for review.” *Id.* “Pro se litigants are held to the same standards as attorneys and must comply with all applicable and mandatory rules of pleading and procedure.” *Id.* “Pro se litigants may not be versed in the form of briefing favored by seasoned appellate practitioners.” *Id.* “However, appellate courts examine briefs for compliance with prescribed briefing rules, including, Texas Rule of Appellate Procedure 38.1.” *Id.* “When the appellate issues are unsupported by argument or lack citation to the record or legal authority, nothing is presented for review.” *Id.*

### **III. Order Dismissing Case**

#### ***A. Standard of Review***

This Court reviews de novo a trial court’s order granting a motion to dismiss pursuant to Texas Rule of Civil Procedure 91a. *City of Dallas v. Sanchez*, 494 S.W.3d 722, 724 (Tex. 2016); *see Highland Capital Mgmt., L.P. v. Looper Reed & McGraw, P.C.*, No. 05–15–00055–CV, 2016 WL 164528, at \*2 (Tex. App.—Dallas Jan. 14, 2016, pet. denied) (mem. op.).

## ***B. Applicable Law***

### *1. When Dismissal is Appropriate*

Under Texas Rule of Civil Procedure 91a, “a party may move to dismiss a cause of action on the grounds that it has no basis in law or fact,” except in certain situations not applicable to this case. TEX. R. CIV. P. 91a.1; *Sanchez*, 494 S.W.3d at 724; *Highland Capital*, 2016 WL 164528, at \*4. A trial court must grant or deny a motion to dismiss under rule 91a “within forty-five days after the motion is filed.” TEX. R. CIV. P. 91a.3(c). “Any response to the motion must be filed no later than 7 days before the date of the hearing.” TEX. R. CIV. P. 91a.4. When a defendant moves to dismiss a cause of action on the grounds that it has no basis in law or fact, a plaintiff may amend the pleadings at least three days before the date of the hearing. *See* TEX. R. CIV. P. 91a.5(b). “In ruling on the motion, the court must not consider a nonsuit or amendment not filed as permitted by paragraphs (a) or (b) [of rule 91a.5].” TEX. R. CIV. P. 91a.5(c). Further, except as required to determine an award of attorney’s fees under rule 91a.7, “the court may not consider evidence in ruling on the motion and must decide the motion based solely on the pleading of the cause of action, together with any pleading exhibits permitted by Rule 59.” TEX. R. CIV. P. 91a.6.

### *2. Notice of Hearing on Motion to Dismiss*

“Each party is entitled to at least 14 days’ notice of the hearing on the motion to dismiss.” TEX. R. CIV. P. 91a.6. Notice served “by mail or commercial delivery service shall be complete upon deposit of the document, postpaid and properly addressed, in the mail or with a commercial delivery service.” TEX. R. CIV. P. 21a(b).

When an appellant alleges there is error due to the lack of sufficient notice, the appellant must provide a record that “affirmatively show[s] appellant did not receive notice of the . . . hearing.” *Belohlavy v. Belohlavy*, No. 05–98–02096–CV, 2001 WL 804507, at \*3 (Tex. App.—

Dallas July 18, 2001, no pet.) (mem. op.) (noting that the “appropriate avenue for challenging a judgment based on lack of notice . . . is by motion for new trial, if within the applicable time frame, or by bill of review.”).

“A party waives a complaint regarding insufficient notice if the party fails to preserve the complaint.” *In re K.C.*, No. 02–08–00023–CV, 2008 WL 4180335, at \*1 (Tex. App.—Fort Worth Sept. 11, 2008, no pet.) (mem. op.) (citing TEX. R. APP. P. 33.1(a); *Low v. Henry*, 221 S.W.3d 609, 618 (Tex. 2007); *Prade v. Helm*, 725 S.W.2d 525, 526 (Tex. App.—Dallas 1987, no writ)). “To preserve a notice complaint, a party must bring the lack of adequate notice to the trial court’s attention at the hearing and object to the hearing going forward or move for a continuance.” *Id.* “If a party receives notice that is untimely, but is sufficient to enable the party to attend the hearing, the party must file a motion for continuance or raise the complaint of late notice before the trial court during the hearing.” *Id.* “Only when a party is not given notice of the hearing, or a party is deprived of its right to seek leave to file affidavits or other written response, may he preserve error in a post-trial motion.” *Id.*; *Gaskill v. VHS San Antonio Partners, LLC*, 456 S.W.3d 234, 239 (Tex. App.—San Antonio 2014, pet. denied) (complaint of no notice of rule 91a hearing preserved in motion for new trial).

### *3. Award of Attorney’s Fees*

This Court reviews “the trial court’s decision to grant or deny attorney’s fees for an abuse of discretion.” *Glass Cars, Inc. v. Ortiz*, No. 05–15–00117, 2016 WL 4368449, at \*2 (Tex. App.—Dallas Aug. 16, 2016, no pet.) (mem. op.) (citing *Ridge Oil Co., Inc. v. Guinn Invs., Inc.*, 148 S.W.3d 143, 163 (Tex. 2004); *Spector Gadon & Rosen, P.C. v. Sw. Sec., Inc.*, 372 S.W.3d 244, 251 (Tex. App.—Dallas 2012, no pet.)).

Texas Rule of Civil Procedure 91a.7, titled “Award of Costs and Attorney Fees Required,” reads as follows:

Except in an action by or against a governmental entity or a public official acting in his or her official capacity or under color of law, *the court must award the prevailing party on the motion all costs and reasonable and necessary attorney fees* incurred with respect to the challenged cause of action in the trial court. *The court must consider evidence regarding costs and fees in determining the award.*

TEX. R. CIV. P. 91a.7 (emphasis added).

### ***C. Application of the Law to the Facts***

#### ***1. First Issue – Failure to Consider Amended Pleadings at Rule 91a Hearing***

In his first issue, Odam argues “the [trial] court err[ed] in its ruling of dismissal and nonsuit . . . predicated on an untimely filing subject to TEX. R. CIV. P. Rule 91a.5(b).” In the argument section for issue one, Odam enumerates the following nine points: (1) Texas Rule of Civil Procedure 91a.5 “does not even discuss allowance for dismissal”; (2) his amended petition did not amend the substance of the claims, it merely dropped parties; (3) even if his amended petition added new claims, the trial court should have denied Texans’ motion to dismiss based on his original petition; (4) even if his pleadings were insufficient, Texans knew the basis of his claims because they arose out of a prior cause of action in the justice of the peace court; (5) he had the “right to amend his pleadings up to seven days before trial” and no trial date had been set; (6) his amended petition should have been construed as “a request for leave of court under Texas Rule of Civil Procedure 166, which shall be granted when there is no showing of surprise by the opposing party”; (7) the rules of procedure “are to have a liberal construction”; (8) “if [he] misinterpreted the code it is void for vagueness”; and (9) he “should prevail on the issue of untimely filing.”

Texans responds that Odam appears to argue only that his amended pleading should have been considered and does not appear to challenge the propriety of the trial court’s order of dismissal. Also, Texans argues that, because Odam did not timely amend his pleadings, the trial court could not consider the amendments.



We agree with Texans that Odam's amended pleading was not timely filed. Rule 91a requires a party to amend its pleadings "at least 3 days before the date of the hearing." TEX. R. CIV. P. 91a.5(b). The clerk's record shows that Odam filed his amended petition on December 21, 2015, one day before the hearing on the motion to dismiss. Because Odam failed to amend his pleadings in a timely manner, the trial court did not err if it failed to consider the amended pleadings at the hearing. *See* TEX. R. CIV. P. 91a.5(c).

We decide Odam's first issue against him.

*2. Second Issue – "Notice of Hearing Deficiency"*

In the argument section for issue two, Odam complains the trial court "abused its discretion by not giving the requisite 14 day notice" before the hearing on the rule 91a motion to dismiss. Texans responds that, while the file-stamped "Notice of Hearing" is not included in the clerk's record, the clerk's record does include a letter to the clerk of the court from Texans, dated December 7, 2015, and file-stamped December 9, 2015, which does show Odam was served with notice. Texans further argues that Odam's argument is "conclusory" and that Odam has "not established that he was given insufficient notice of the hearing."

Odam does not state whether he had no notice of the hearing, or whether notice was simply insufficient under the rule. If Odam's complaint was he received insufficient notice, he was obligated to bring it to the trial court's attention at the hearing. *Prade*, 725 S.W.2d at 526–27. The record does not show Odam preserved any insufficient notice point. If Odam's claim was he received no notice of the hearing, Odam was obligated to raise this objection in a timely postjudgment motion, such as a motion for new trial. *Gaskill, LLC*, 456 S.W.3d at 239. Neither of Odam's postjudgment filings shown in the record, and titled respectively, "Claimant's Judicial Notice of State Law and Demand for Reinstatement" and "Motion for Summary Judgment,"

raise any notice issue. Accordingly, this complaint is not preserved for our review. *See* TEX. R. APP. P. 33.1(a).

We decide Odam’s second issue against him.

### *3. Third Issue – Effect of Rule 91a Motion to Dismiss*

In Odam’s third issue,<sup>1</sup> titled “Dismissal of Parties,” he argues that “the principal obligor of the suit should not have been dismissed . . . .” In support of his argument, Odam cites two rules of civil procedure, rules 163 and 301. We construe Odam’s argument to be that the trial court should not have dismissed Texans as a party when “[a]ppellants’ ‘amended’ suit was for the purpose of removing subsequent parties” only. Although not explained by Odam, we interpret the term “subsequent parties” to mean parties other than Texans.

However, the record shows the trial court did not dismiss Texans as a party to the case. Rather, pursuant to rule 91a, Texans was dismissed on a motion claiming Odam’s suit had no basis in law or fact. Before the hearing on the motion to dismiss, the trial court signed an Order Granting Nonsuit dismissing the defendants other than Texans. This left Texans as the sole defendant. Then, the trial court granted Texans’ motion to dismiss Odam’s claims.

We decide Odam’s third issue against him.

### *4. Fourth Issue – “Failure to Reinstate”*

In his fourth issue,<sup>2</sup> Odam argues the trial court erred by failing “in its duty to rule” on his “Claimant’s Judicial Notice of State Law and Demand for Reinstatement.” Odam asserts that the

---

<sup>1</sup> In Odam’s brief, his third issue statement reads as follows: “The trial court failed in its duty to rule on the verified ‘Claimant’s Judicial Notice of State Law and Demand for Reinstatement,’ filed within 30 days after the order, as required by law.” Odam then re-states his third issue in his “Statement of Facts” as the “Dismissal of Parties” and contends the “trial court ruled that the Defendant’s Motion to Dismiss for failure to state a claim was factually and legally sufficient.” Finally, in the body of his “Argument and Authorities” section, Odam states his third issue as “Dismissal of Parties” and asserts that “Appellants’ [sic] ‘Amended’ suit was for the purpose of removing subsequent parties, the principal obligor of the suit should not have been dismissed; . . . [n]o time frame is given for the dismissal; and . . . [j]udgment can be separated as to the parties.”

<sup>2</sup> In Odam’s brief, his fourth issue statement reads, in part, as follows: “Appellants’ [sic] ‘Motion to Reconsider Emergency Injunction and Notice of Fraud Upon the Court’ was not heard . . . .” Odam then re-states his fourth issue in his “Statement of Facts” as “Failure to Hear or Reinstate” and argues that “Appellants’ [sic] Emergency Injunction . . . was never granted, nor was a time set for a hearing” and “Appellants’ ‘Motion to Reconsider Emergency Injunction and Notice of Fraud Upon the Court’ was not heard . . . .” Finally, in the body of his “Argument

“[f]ailure to hold such a hearing [on his motion] is an abuse of discretion and requires reversal.” According to Odam, he “did file a verified motion to reinstate and did serve it on the parties within 30 days” with “the grounds set forth therein entitled ‘Motion to Reconsider Emergency Injunction and Notice of Fraud Upon the Court.’” “The motion [to reinstate] was not heard, which failure caused a harm injury and loss to Appellant.”

Odam relies on rule 165a and rule 329b for the proposition that a party may file a “motion to reinstate,” for which a trial judge “shall set a hearing on the motion as soon as practicable.” TEX. R. CIV. P. 165a(3). However, rule 165a applies to dismissals “for want of prosecution.” *See* TEX. R. CIV. P. 165a(1). Similarly, rule 329b addresses the timing for filing motions for new trial. *See* TEX. R. CIV. P. 329b. Texans’ motion to dismiss was filed pursuant to rule 91a. Odam cites no rule obligating a trial court to set a hearing on a “motion for reinstatement” after a rule 91a motion to dismiss has been granted. Even were this Court to treat Odam’s motion for reinstatement as a motion for new trial, no hearing is required to be held on motions for new trial. *See* TEX. R. CIV. P. 329b(c).

We decide Odam’s fourth issue against him.

#### *5. Fifth Issue – Payment of Filing Fees*

In his fifth issue, titled “Fraudulent Misrepresentation/Unjust Enrichment,” Odam complains the clerk of the court accepted his payment of filing fees for the “petition with an application for injunction,” yet failed to set a hearing for that motion and request for injunction, which, according to Odam, amounts to “fraudulent misrepresentation/unjust enrichment.” More specifically, he argues the “trial court took [his] money, and in doing so the trial court acted

---

and Authorities” section, Odam states his fourth issue as the “Failure to Reinstate” and asserts the trial court erred by failing to set a hearing on his motion to reinstate, filed after the trial court’s “Order Dismissing Case.”

fraudulently.” Odam argues he should recover “the services paid for, or a return of his money and recovery of damages received due to the court’s failure to act.”

Odam cites no authority for his argument other than rule of civil procedure 685,<sup>3</sup> which has no application to the issue he articulates. Odam has failed to adequately brief this issue. There is nothing for us to review. *See* TEX. R. APP. P. 38.1(i).

We decide Odam’s fifth issue against him.

*6. Sixth Issue – Failure to Hold a Hearing on “Motion to Reconsider Emergency Injunction and Notice of Fraud Upon the Court”*

In his sixth issue,<sup>4</sup> titled “Fraud Upon the Court,” Odam complains the trial court erred in failing to set a hearing for his “Motion to Reconsider Emergency Injunction and Notice of Fraud Upon the Court,” even though it was timely filed. He further contends the trial court erred by “disregard[ing] Appellants’ [sic] ‘Affidavit of Fraud by the Court,’” thereby “concealing the fraud by the trial court.” This part of Odam’s argument as to his sixth issue is similar to his fourth issue. We construe Odam’s sixth issue to claim, in part, the trial court erred in failing to set a hearing for and rule upon his motion. Yet, as we indicated as to issue four, the trial court was not required to set and hold a hearing on his “motion.”

Odam’s sixth issue also makes this argument: “The ruling made by the trial court on Appellee’s Motion to Dismiss for failure to state a claim is in error by factual and legal insufficiency.” This quoted language is Odam’s only statement on this topic. Odam cites no legal

---

<sup>3</sup> Rule of civil procedure 685 states: “Upon the grant of a temporary restraining order or an order fixing a time for hearing upon an application for a temporary injunction, the party to whom the same is granted shall file his petition therefor, together with the order of the judge, with the clerk of the proper court; and, if such orders do not pertain to a pending suit in said court, the cause shall be entered on the docket of the court in its regular order in the name of the party applying for the writ as plaintiff and of the opposite party as defendant.” TEX. R. CIV. P. 685.

<sup>4</sup> In Odam’s brief, his sixth issue statement reads as follows: “The ruling made by the trial court on Appellee’s Motion to Dismiss for failure to state a claim is in error by factual and legal sufficiency.” Odam then re-states his sixth issue in his “Statement of Facts” as “Fraud Upon the Court” and argues that, “[t]he trial court failed to hear injunction, taking Appellants’ [sic] payment and receiving unjust enrichment, and further disregarded Appellants’ [sic] notice of fraud upon the court and Appellants’ [sic] notice of objection to Appellees [sic] documents.” Finally, in the body of his “Argument and Authorities” section, Odam states his sixth issue as “Fraud Upon the Court” and contends that the trial court erred in not setting a hearing for his “Motion to Reconsider Emergency Injunction and Notice of Fraud upon the Court.” The Court addresses, in this issue, what Odam argues in the body of his sixth issue argument: that the trial court erred in not setting a hearing for his motion.

authority, nor to any part of the record. To the extent Odam contends the trial court erred in granting the motion to dismiss, his argument is inadequately briefed. There is nothing for us to review. *See* TEX. R. APP. P. 38.1(i).

We decide Odam's sixth issue against him.

*7. Seventh Issue – “Fraud Upon the Court”*

In his seventh issue, Odam argues “[t]he evidence that Appellee’s Motion to Dismiss for failure to state a claim is based upon, brings fraud upon this court.” In the argument section of his brief, Odam claims that, “not only should Texans Credit Union’s Motion to Dismiss not be granted, but should further be disregarded and excluded from the record because it is fraudulent, prejudicial, has no bearing on the issue at hand, and Appellant objects to its use in Defendant’s Motion to Dismiss, until such time that it can be properly argued before the court.” Odam also “objects to its introduction and use by the appellate court, except for sanctions issued upon the attorney and proper reprimand against any other party within the jurisdiction of the court; otherwise it brings fraud upon this [C]ourt.”

Odam’s objections are general. He does not identify with particularity the objectionable language or evidence. Nor does he cite any legal authority or to the record as to any specific, lawful objections made in the trial court. There is nothing for us to review. *See* TEX. R. APP. P. 38.1(i).

We decide Odam's seventh issue against him.

*8. Eighth Issue – “Award of Attorney Fees”*

Odam’s eighth issue statement reads as follows: “In the alternative that the Dismissal Order of the trial court stands, the question is raised as to the award of attorney’s fees to Appellee.” In the body of his argument section, Odam asserts the trial court erred in awarding attorney’s fees to Texans for two reasons: (1) “[i]f Appellants’ [sic] amended cause of action was

time barred in fact, then as the original action is against a public official acting under color of law, in this instance award of attorney fees are exempted from the mandatory rule according to TEX. R. CIV. P. 91a.7”]; and (2) “no evidence was submitted for determination of the award” and there is “no contract, nor sworn affidavit as to the reasonableness of the fees, nor any live testimony presented and evaluated using the Arthur Andersen factors.”

The record shows Odam brought this suit against four defendants. Three were public officials. It is undisputed that Texans, the fourth defendant, is a business that is not a governmental entity or a public official acting in his or her official capacity, or under color of law. Odam has not cited any authority to support his contention that, because some of the initial defendants were public officials, Texans cannot recover its attorney’s fees under rule 91a. *See* TEX. R. CIV. P. 91a.7.

Further, Odam argues there was no evidence to support the award of attorney’s fees. However, the record includes an “Attorney’s Fee Affidavit,” which was an exhibit attached to Texans’ motion to dismiss. As required by rule 91a.7, the trial court had before it evidence for determination of the award. TEX. R. CIV. P. 91a.7.

We decide Odam’s eighth issue against him.

*9. Ninth Issue – Was Order of Dismissal Made with Prejudice*

Odam articulates his ninth issue in various ways,<sup>5</sup> but it is titled, “Question of Law.” We construe Odam’s ninth issue to inquire about whether this case was dismissed “with” or “without prejudice.” We refer Odam to the record that includes the trial court’s “Order Dismissing Case” dated January 4, 2016. That is the order from which appeal was taken in this case. The order

---

<sup>5</sup> Odam’s ninth issue statement reads as follows: “And further, the question is raised as to whether the order is made without prejudice and thereby not precluded by res judicata?” In Odam’s “Statement of Facts” he describes his ninth issue as: “The trial courts order fails to state whether it is issued with or without prejudice.” Finally, in the argument section of Odam’s brief, he states, “If the ruling of the trial court stands, clarification is needed as to what the legal relationship between the parties are in regards to the Dismissal Order, such as, is it precluded by res judicata . . . .”

states, in part, “Ordered, that Defendant Texans Credit Union’s Motion to Dismiss is granted and Plaintiff’s claims are hereby dismissed with prejudice as to Defendant Texans Credit Union.”

There is nothing for us to review on this issue.

We decide Odam’s ninth issue against him.

#### **IV. Conclusion**

We decide against Odam on his issues. The judgment of the trial court is affirmed.

/Douglas S. Lang/  
DOUGLAS S. LANG  
JUSTICE

160077F.P05



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

**JUDGMENT**

STAN ODAM, Appellant

No. 05-16-00077-CV      V.

TEXANS CREDIT UNION, Appellee

On Appeal from the 59th Judicial District  
Court, Grayson County, Texas  
Trial Court Cause No. CV-15-1730.  
Opinion delivered by Justice Lang. Justices  
Fillmore and Schenck participating.

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

It is **ORDERED** that each party bear its own costs of this appeal.

Judgment entered this 24th day of August, 2017.