AFFIRM; and Opinion Filed April 6, 2018.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-16-01460-CV

JACQUELINE C. DU BOIS, Appellant
V.
MARTIN LUTHER KING, JR., FAMILY CLINIC D.B.A FOREMOST FAMILY HEALTH CENTERS, Appellee

On Appeal from the 68th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-15-14073

MEMORANDUM OPINION

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

Jacqueline C. Du Bois, pro se, appeals the trial court's order granting summary judgment in favor of Martin Luther King, Jr., Family Clinic d/b/a Foremost Family Heath Centers ("Foremost") in a suit Du Bois initiated after Foremost terminated her employment. We construe Du Bois' issues on appeal to be that the judgment must be reversed because: (1) material fact issues exist; (2) she was deprived of her right to a jury trial; (3) the judgment punishes her for refusing to settle her lawsuit; (4) the trial court refused to allow her to use certain documents in response to Foremost's motion; and (5) the trial court was biased in favor of Foremost. We affirm the trial court's judgment. Because all issues are settled in law, we issue this memorandum opinion. TEX. R. APP. P. 47.4.

FACTUAL AND PROCEDURAL BACKGROUND

As an initial matter, we note that Du Bois includes statements in her brief and appends to it documents that are not included in the record before this Court. "[A]n appellate court cannot consider documents or hearings that are cited in the brief and attached as appendices if they are not formally included in the record on appeal." *Berardinelli v. Pickels*, No. 05-12-01390-CV, 2014 WL 6560029, at *2 (Tex. App.—Dallas Oct. 23, 2014, no pet.) (mem. op.). This Court is limited to considering only the evidence before the trial court at the time of the summary judgment proceedings. *Blankinship v. Brown*, 399 S.W.3d 303, 309 (Tex. App.—Dallas 2013, pet. denied). Accordingly, we will not consider Du Bois' references to evidence outside the record and our analysis will be confined to the facts in the record that is actually before this Court that are relevant to the issues presented. *Hogg v. Lynch, Chappell & Alsup, P.C.*, 480 S.W.3d 767, 773–774 (Tex. App.—El Paso 2015, no pet.) ("documents attached to a brief as an exhibit or appendix, but not appearing in the appellate record, cannot be considered on appellate review").

The record before us shows that Foremost is a community health center providing medical care to the underinsured population. It depends on government funds, grants, and incentives to remain in business and provide the necessary medical care to the underinsured population.

In August 2013, Foremost hired Du Bois as a Pediatrician and Chief Medical Officer ("CMO"). Foremost and Du Bois entered into an Employment Agreement setting forth the terms and conditions of Du Bois' employment, including grounds for termination and compensation. Du Bois' employment term was from September 1, 2013 through November 30, 2015.

Du Bois' Employment Agreement required Du Bois to have a controlled substances registration. The Employment Agreement specified that Foremost could terminate Du Bois if her controlled substances registration expires. While not required to do so, Foremost reminded Du Bois on April 27, 2015 that her controlled substance registration would expire on May 31,

2015. Du Bois, nevertheless, allowed her certification to prescribe controlled substances to expire. She did not renew her certification until August 2015. Du Bois prescribed controlled substances to at least four patients while her certification was expired.

As a federally qualified healthcare center, Foremost is required to re-credential healthcare providers every two years. Du Bois did not turn in her re-credentialing paperwork as required in August 2015. Du Bois' failure to do so affected Foremost's federal malpractice insurance coverage. On August 27, 2015, Foremost terminated Du Bois' employment, citing that her controlled substances registration had expired and she failed to complete a re-credentialing application.

DuBois filed suit against Foremost on November 18, 2015. On August 31, 2016, Foremost filed a motion for partial summary judgment—on traditional and no-evidence grounds—on DuBois' claims for (1) breach of fiduciary duty, (2) intentional infliction of emotional distress, (3) breach of contract, money had and received and unjust enrichment based on Du Bois' claim she was owed bonuses, (4) breach of contract, money had and received and unjust enrichment based on Du Bois' claim she was entitled to receive the Electronic Health Record (EHR) Attestation incentives. On the morning of the hearing on Foremost's motion, DuBois filed a response and an amended petition asserting the following causes of action: (1) breach of contract, (2) wrongful termination for allegedly reporting ethical and legal violations to governing authorities, (3) violations of the Texas Whistleblower Statute, (4) violation of Chapter 61 of the Texas Labor Code/ Texas Pay Day Act, (5) unjust enrichment, (6) conversion, (7) money had and received, (8) intentional infliction of emotional distress, (9) breach of fiduciary duty, (10) fraud in the inducement, (11) defamation, and (12) conspiracy to commit the aforementioned offenses.

On October 10, 2016, the trial court dismissed Du Bois' claims of breach of fiduciary duty based on Foremost's status as an employer, intentional infliction of emotional distress, and breach of contract, money had and received and unjust enrichment based on bonuses.

On November 11, 2016, Foremost filed a second motion for summary judgment, on both traditional and no-evidence grounds, seeking judgment on all of Du Bois' remaining causes of action. Three days later, on November 14, 2016, Du Bois filed a response with nine documents attached. Foremost filed objections to Du Bois' summary judgment evidence. The trial court conducted a hearing on Foremost's motion on December 5, 2016, a week before the scheduled trial date. During the hearing, Du Bois referenced deposition transcripts of current or former employees or contractors of Foremost that had not been filed or made a part of the summary judgment record. The trial court asked Du Bois if she had filed a motion for leave to file the documents and/or a motion for continuance. Du Bois indicated she had the documents with her, but they had not been filed. Du Bois did not attempt to file and obtain a ruling on a motion for leave or motion for continuance during the hearing, despite the trial court's comments and questioning. The trial court granted summary judgment in favor of Foremost on all of Du Bois' claims in an order that did not specify the grounds on which the judgment was granted, and ruled on Foremost's objections to Du Bois' evidence. This appeal followed.

DISCUSSION

A. Summary Judgment - Standard of Review

We review the granting of a motion for summary judgment de novo. *Merriman v. XTO Energy, Inc.*, 407 S.W.3d 244, 248 (Tex. 2013). When, as here, an appellate court reviews both no-evidence and traditional summary-judgment motions, we typically first review the trial court's summary judgment under the standards of review for no-evidence summary judgment, potentially pretermitting the need for further analysis. *Id.* No-evidence summary judgments are

reviewed under the same legal sufficiency standard as directed verdicts. *Id.* Under that standard, evidence is considered in the light most favorable to the non-movant, crediting evidence a reasonable jury could credit and disregarding contrary evidence and inferences unless a reasonable jury could not. *Id.*

After an 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 on which an adverse party has the burden of proof at trial. TEX. R. CIV. P. 166a(i). Du Bois argues she did not have an adequate time for discovery before she was required to respond to Foremost's second motion for summary judgment. To preserve a complaint that a no-evidence summary judgment was premature, the party claiming it did not have adequate time for discovery must file either an affidavit explaining the need for further discovery or a verified motion for continuance. *Willms v. Americas Tire Co.*, 190 S.W.3d 796, 807 (Tex. App.—Dallas 2006, pet denied). Du Bois does not direct this Court to a place in the record where she filed an affidavit or verified motion for continuance of the summary judgment hearing, nor did we locate either when reviewing the record. We conclude Du Bois failed to preserve this complaint for review.

Next, Du Bois appears to urge summary judgment was improper because Foremost did not comply with the requirements of rule 166a. She does not support this position with argument or facts. Rule 166a(i) of the Texas Rules of Civil Procedure requires a party seeking no-evidence summary judgment to specifically identify the elements of the non-movant's claim or claims that lack the requisite supporting evidence. TEX. R. CIV. P. 166a(i). The rule does not reintroduce evidentiary demurrer practice, but requires the motion to be "specific in challenging the evidentiary support for an element of a claim or defense," and the rule "does not authorize conclusory motions or general no-evidence challenges to an opponent's case." *See id.* 1997 cmt.

Foremost's motion for no-evidence summary judgment addresses Du Bois' claims for wrongful termination, violation of the Texas Whistleblower Act, defamation, conspiracy, breach of fiduciary duty, breach of contract, conversion, and fraudulent inducement, and request for exemplary damages. Foremost set forth the elements of Du Bois' claims it contends lack evidentiary support. Accordingly, Foremost complied with rule 166(a)(i)'s requirements.

Consequently, Du Bois had the burden to produce summary judgment evidence raising a genuine issue of material fact as to each challenged element of her causes of action. TEX. R. CIV. P. 166a(i). A no-evidence challenge will be sustained when (a) there is a complete absence of evidence of a vital fact, (b) the court is barred by rules of law or of 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. *Id.*

In response to Foremost's second motion for summary judgment, Du Bois presented nine documents. They are: two versions of Exhibit A to her Employment Agreement for Services, which sets forth compensation, the only difference in which appears to be the calculation of base compensation due to Foremost moving from 24 to 26 pay periods; Du Bois' notice of intention to take the oral deposition of David Hobson, M.D. (a doctor affiliated with Foremost) and request for production of documents; letter from Curt Baggett, a purported handwriting expert, stating someone forged Du Bois' signature on documents Q1 and Q2, which are not attached to his letter or otherwise identified; Texas Department of Public Safety registration; controlled substance registration certificate from the Drug Enforcement Administration; email from Du Bois to Foremost employees concerning her certifications; email from Foremost employee Brittnee Berry to various personnel concerning their failure to clock in and out for lunch and work; Texas Board of Nursing letter to Du Bois concerning her complaint about Brittnee Berry; and a document that

appears to have been created by Du Bois concerning employment verification. Foremost objected to all of the documents, except the first version of Exhibit A to Du Bois' employment contract, and the trial court sustained objections to all of the challenged documents except the second version of Exhibit A and Du Bois' email concerning her certifications. On appeal, Du Bois complains only about the trial court's exclusion of Baggett's letter[1] and the current and previous DEA and DPS certificates.[2] Thus, we limit our review of the trial court's ruling on Foremost's objections to those documents.

Prior panel decisions of this Court suggest that when a party fails to object to the trial court's ruling that sustains an objection to his summary judgment evidence, he has not preserved the right to complain on appeal about the trial court's ruling. *See Brooks v. Sherry Lane Nat'l Bank*, 788 S.W.2d 874, 878 (Tex. App.—Dallas 1990, no writ). We are aware that this holding has come under criticism recently. *See Miller v. Great Lakes Mgmt. Serv., Inc.*, No. 02-16-00087-CV, 2017 WL 1018592, at *2 n.4 (Tex. App.—Fort Worth Mar. 16, 2017, no pet.) (mem. op.). Absent a decision from a higher court or this Court sitting en banc that is on point, this Court is bound by the prior holdings of other panels of this Court. *MobileVision Imaging Servs. v. LifeCare Hosp. of N. Tex.*, 260 S.W.3d 561, 566 (Tex. App.—Dallas 2008, no pet.).

Putting aside any question surrounding the rule set forth in *Brooks*, we conclude that the trial court did not abuse its discretion in excluding Baggett's letter and the DEA and DPS certificates. *Southwestern Energy Prod. Co. v. Berry–Helfand*, 491 S.W.3d 699, 721 (Tex. 2016) (we review the admission or exclusion of evidence under an abuse of discretion standard). The trial court sustained Foremost's objections to Baggett's letter on the bases that it is hearsay, Du Bois did not timely disclose Baggett as an expert, it lacks foundation, and is conclusory. DuBois

[1] Du Bois claims Baggett's report shows Foremost was stealing her incentive payments, but it does not do so. In addition, Du Bois characterizes Baggett as a "consultant" and claims as such she did not have to disclose him in response to Foremost's requests for disclosure.

[2] Du Bois argues the certifications show Foremost's address, but she does not explain the relevance of same.

argues she did not have to disclose Baggett as a witness because she considered him to be a "consultant," not an expert. Whether a witness is a consultant or an expert witness is determined by whether they will testify. *See* TEX. R. CIV. P. 192.3(e); *see also Tom L. Scott, Inc. v. McIlhany*, 798 S.W.2d 556, 559–560 (Tex. 1990). The trial court treated Baggett as an expert witness and Du Bois does not cite any reason we should treat him otherwise on appeal. Du Bois offered his testimony via his letter in response to Foremost's second motion for summary judgment and did not designate Baggett as an expert witness at any time, let alone before the deadline to do so. When a party fails to make, amend, or supplement a discovery response in a timely manner, he may not introduce in evidence the material or information that was not timely disclosed, or offer the testimony of a witness (other than a named party) who was not timely identified. TEX. R. CIV. P. 193.6(1). The automatic exclusion of evidence under Rule 193.6 applies equally to both summary judgments and trial. *Fort Brown Villas III Condo. Ass'n v. Gillenwater*, 285 S.W.3d 879, 882 (Tex. 2009); *see also Carbonara v. Tex. Stadium Corp*., 244 S.W.3d 651, 657 (Tex. App.—Dallas 2008, no pet.) (affirming the trial court's judgment and exclusion of an expert witness not disclosed until Plaintiff filed an affidavit "at the last possible moment—after a motion for summary judgment had been filed"). Moreover, contrary to Du Bois' assertions, Baggett's letter does not establish Foremost illegally obtained incentive payments that were ear-marked for Du Bois. The documents Baggett references are not attached to the letter and are not otherwise identified. At best, Baggett's testimony establishes some undisclosed person forged Du Bois' signature on unidentified documents.

As to the DEA and DPS certifications Du Bois attempted to use in response to Foremost's second motion for summary judgment, the trial court sustained Foremost's objections to them as unauthenticated and hearsay. Authentication is a condition precedent to the admissibility of a document into evidence. TEX. R. EVID. 901(a). A document is considered authentic if a

sponsoring witness vouches for its authenticity or if the document meets the requirements of self-authentication. *In re G.F.O.*, 874 S.W.2d 729, 731 (Tex. App.—Houston [1st Dist.] 1994, no writ). Unauthenticated or unsworn documents are not entitled to consideration as summary judgment evidence. *Llopa, Inc. v. Nagal*, 956 S.W.2d 82, 87 (Tex. App.—San Antonio 1997, pet. denied). Du Bois did not authenticate these documents and they are not self-authenticating. Accordingly, the trial court did not abuse its discretion in excluding Baggett's letter and the certifications Du Bois offered.

In her fourth issue, Du Bois argues that once her evidence was excluded she attempted, but was precluded from, using Foremost's summary judgment evidence to create a fact issue. Du Bois did not object to the trial court's alleged refusal to allow her to rely on Foremost's summary judgment evidence and did not make an offer of proof as to what that evidence was or how it would have created a fact issue. Thus, she has failed to preserve this issue for review. TEX. R. EVID. 103(a)(2); TEX. R. APP. P. 33.1(a)(1)(B). Moreover, the record shows the trial court repeatedly asked Du Bois during the summary judgment hearing whether her arguments were supported by any of Foremost's evidence and Du Bois could not identify any evidence that actually supported her arguments. We overrule Du Bois's fourth issue.

Du Bois also challenges the trial court's grant of summary judgment on her defamation, conversion, intentional infliction of emotional distress, conspiracy, breach of fiduciary duty, breach of contract and wrongful termination claims. She does not challenge the trial court's grant of summary judgment on her claims of fraudulent inducement, violations of the Texas Whistleblower Act, violations of the Texas Pay Day Act, and breach of contract based on administrative time and failing to provide notice, and on her request for exemplary damages. Thus, we limit our review and discussion to the challenged claims. *See McAfee, Inc. v. Agilysis, Inc.*,

316 S.W.3d 820, 824 n.2 (Tex. App.—Dallas 2010, no pet.) (because appellant did not address several dismissed claims, it waived its appeal as to those unaddressed claims).

In its second motion for summary judgment, Foremost asserted Du Bois has no evidence Foremost published any defamatory statements as to her and no evidence of damages to support her defamation claim. *See In re Lipsky*, 460 S.W.3d 579, 593 (Tex. 2015) (elements of defamation include the publication of a false statement of fact to a third party, that was defamatory concerning the plaintiff, with the requisite degree of fault, and damages, in some cases). In response, Du Bois simply stated, "Plaintiff Du Bois' claims of negative evaluations and employment verification are not barred as a matter of law and fact and Defendant making a statement to the contrary does nothing toward the disposition of this legal action," and cited to the exhibit it appears she created concerning employment verification, which the trial court struck and which action Du Bois does not complain about on appeal. Consequently, Du Bois failed to present evidence of a defamatory statement. Moreover, Du Bois made no attempt to present evidence of any damages to support her defamation claim, which in itself supports the grant of a no-evidence summary judgment. Accordingly, we conclude the trial court did not err in granting Foremost summary judgment on Du Bois' defamation claims.

As to Du Bois' conversion claim, Foremost asserted she has no evidence she was entitled to possession of any property, that Foremost unlawfully and without authorization assumed and exercised control over property to the exclusion of, or inconsistent with, Du Bois' rights as an owner, that Foremost acquired her property lawfully but used in a way that departed from the conditions under which it was received, and damages. *See United Mobile Networks, L.P. v. Deaton*, 939 S.W.2d 146, 147 (Tex. 1997) (per curiam); *Grand Champion Film Prod., L.L.C. v. Cinemark USA, Inc.*, 257 S.W.3d 478, 485 (Tex. App.—Dallas 2008, no pet.) (essential elements of a conversion claim are the plaintiff owned or had possession of the property or entitlement to

possession, the defendant unlawfully and without authorization assumed and exercised control over the property to the exclusion of, or inconsistent with, the plaintiff's rights as an owner, the plaintiff demanded return of the property, and the defendant refused to return the property). Du Bois did not address this challenge in her response to Foremost's motion and did not cite to any evidence to overcome Foremost's challenges. Consequently, the trial court did not err in granting summary judgment on Du Bois' conversion claim. *See De La Cruz v. Kailer*, 526 S.W.3d 588, 595 (Tex. App.—Dallas 2017, pet. denied) (non-movant is obligated to point out with specificity where in his filings there was evidence on each of the challenged elements of his claims).

As to Du Bois' conspiracy claim, Foremost asserted she has no evidence of a meeting of the minds of the various alleged participants to participate in an underlying tort, and no evidence of any unlawful means, any intentional tort, unlawful, overt act, and no evidence the parties acted in a capacity other than as a corporate agent of Foremost, and no evidence of defamation or damages. *Tri v. J.T.T.*, 162 S.W.3d 552, 556 (Tex. 2005) (essential elements of a conspiracy claim are two or more persons, an object to be accomplished, a meeting of the minds on the object or course of action, one or more unlawful, overt acts, and plaintiff was damaged). In response, Du Bois stated, "[t]he testimony in recent depositions has shown not only that Defendant committed several offenses, but also that various individuals conspired to see the wrongdoings to fruition." This conclusory statement without evidence is insufficient to overcome the no evidence challenge to her conspiracy claim. Consequently, the trial court did not err in granting Foremost summary judgment on her conspiracy claim.

As to Du Bois' breach of fiduciary duty claim, Foremost asserted she has no evidence of a formal or informal fiduciary relationship or a breach of any duty to Du Bois. *Graham Mortg. Corp. v. Hall*, 307 S.W.3d 472, 479 (Tex. App.—Dallas 2010, no pet.) (element of breach of a

fiduciary duty are the existence of a fiduciary relationship, breach of a fiduciary duty, and injury to the plaintiff or benefit to the defendant). In response, Du Bois states what she believes the evidence will show. Because Du Bois failed to present any evidence as to the challenged elements of her breach of fiduciary duty claim, the trial court did not err in granting Foremost summary judgment on this claim.

As to Du Bois' breach of contract claims, Foremost asserted she has no evidence of an agreement to provide Du Bois with administrative time, or an agreement to provide Du Bois with notice prior to termination, or an agreement to compensate her for EHR Attestation incentive, and no evidence Foremost breached the employment agreement with Du Bois. *Petras v. Criswell*, 248 S.W.3d 471, 477 (Tex. App.—Dallas 2008, no pet.) (essential elements of a breach of contract claim are a valid, enforceable contract, plaintiff performed, tendered performance of, or was excused from performing her contractual obligations, defendant breached the contract, and damages). Again, in response, Du Bois speaks in general terms of what she could prove to a jury without presenting any evidence to defeat the motion for no-evidence summary judgment. Therefore, the trial court did not err in granting Foremost summary judgment on Du Bois' breach of contract claims.

As to Du Bois' wrongful termination claim, Foremost asserted she has no evidence that she was an at-will employee, that she refused to commit an illegal act, and that she was terminated solely for refusing to perform an illegal act. *See Sabine Pilot Serv. v. Hauck*, 687 S.W.2d 733, 735 (Tex. 1985) (essential elements of a wrongful termination claim are the plaintiff is an at-will employee, she refused to commit an illegal act, and she was terminated solely for refusing to perform an illegal act). In response, Du Bois claimed she refused to participate in an illegal act of not properly paying hourly employees and her intervention was an intricate part of the reason she was terminated. She then again went on to state generally that the jury will decide when the

evidence is presented. Because Du Bois wholly failed to cite to or present any evidence as to the challenged elements of her wrongful termination claim, the trial court did not err in granting Foremost summary judgment on her wrongful termination claim.

As to Du Bois' intentional infliction of emotional distress claim, Foremost asserted in its motion for partial summary judgment that Du Bois has no evidence Foremost acted intentionally or recklessly, Foremost's conduct was extreme and outrageous, Du Bois' emotional distress was the intended or primary consequence of Foremost's conduct, Du Bois suffered severe emotional distress, or that there is no other cause of action that would provide a remedy for her allegedly severe emotional distress. *See Espinoza v. Aaron's Rents, Inc.*, 484 S.W.3d 533, 545 (Tex. 2016); *Creditwatch, Inc. v. Jackson*, 157 S.W.3d 814, 816 (Tex. 2005). In response, Du Bois stated this is a fact issue that should be decided by a jury and summarily concludes "[t]he evidence will show Foremost's conduct was so outrageous, so extreme in degree, beyond decency, atrocious, utterly intolerable by civilized society, involves criminal acts." Du Bois wholly failed to present any evidence on the challenged elements of her intentional infliction of emotional distress claim. As a result, the trial court did not err in granting Foremost summary judgment.

We conclude Du Bois failed to meet her burden to overcome Foremost's motion for no-evidence summary judgment on her defamation, conversion, intentional infliction of emotional distress, conspiracy, breach of fiduciary duty, breach of contract and wrongful termination claims. On appeal, Du Bois did not challenge the trial court's ruling on her remaining causes of action. We further conclude the trial court properly granted Foremost no-evidence summary judgment on these claims and pretermit discussion of traditional grounds for summary judgment. We overrule Du Bois' first issue.

In her second issue, Du Bois complains that she was denied her right to trial by jury. The right to a jury trial in civil cases is not absolute. *See, e.g., Green v. W.E. Grace Mfg. Co.*, 422

S.W.2d 723, 725 (Tex. 1968); *Martin v. Commercial Metals Co.*, 138 S.W.3d 619, 626 (Tex. App.—Dallas 2004, no pet.). The summary judgment process provides a method of terminating a case when only questions of law are involved and there are no genuine issues of fact. *See Lattrell v. Chrysler Corp.*, 79 S.W.3d 141, 150 (Tex. App.—Texarkana 2002, pet. denied). The process will not deprive litigants of a jury trial where material questions of fact exist. However, if there is nothing to submit to a jury, then the grant of summary judgment cannot violate a party's constitutional right to a jury trial. *See id.; see also Martin*, 138 S.W.3d at 627. We have already concluded that the trial court did not err in granting Foremost summary judgment. Accordingly, Du Bois' right to a trial by jury was not violated. We overrule Du Bois' second issue.

In her third issue, Du Bois contends the trial court illegally used the summary judgment process to punish her for not settling her claims with Foremost. We have already concluded that the trial court did not err in granting Foremost's summary judgment. Accordingly, we overrule Du Bois' third issue.

In her fifth issue, Du Bois contends the trial court's judgment should be vacated because the trial court judge was biased in favor of Foremost. The record shows Du Bois failed to preserve this complaint for appellate review. If Du Bois believed the trial judge could not be impartial, in order to complain on appeal, she needed to move to recuse him from the case. *See Janicek & Ol'Don, Inc. v. Kikk Inc.*, No. C14–94–00228–CV, 1995 WL 227929, at *1 (Tex. App.—Houston [14th Dist.] Apr. 13, 1995, writ. denied) (not designated for publication) (noting that the appropriate vehicle to preserve a complaint claiming the judge should be recused for bias is a motion to recuse). We overrule Du Bois' fifth issue.

CONCLUSION

We affirm the trial court's judgment.

/David J. Schenck/
DAVID J. SCHENCK
JUSTICE

161460F.P05

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

JACQUELINE C. DU BOIS, Appellant	On Appeal from the 68th Judicial District Court, Dallas County, Texas
No. 05-16-01460-CV V.	Trial Court Cause No. DC-15-14073. Opinion delivered by Justice Schenck.
MARTIN LUTHER KING, JR., FAMILY CLINIC D.B.A FOREMOST FAMILY HEALTH CENTERS, Appellee	Justices Bridges and Myers participating.

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

It is **ORDERED** that appellee MARTIN LUTHER KING, JR., FAMILY CLINIC D.B.A FOREMOST FAMILY HEALTH CENTERS recover its costs of this appeal from appellant JACQUELINE C. DU BOIS.

Judgment entered this 6th day of April, 2018.