

**AFFIRMED and Opinion Filed June 8, 2020**



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

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**No. 05-19-00385-CV**

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**KIMBERLY D. HOGAN, Appellant  
V.  
ASPIRE FINANCIAL, INC., D/B/A ASPIRES LENDING, Appellee**

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**On Appeal from the 162nd Judicial District Court  
Dallas County, Texas  
Trial Court Cause No. DC-18-01806**

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**MEMORANDUM OPINION**

Before Justices Bridges, Whitehill, and Nowell  
Opinion by Justice Bridges

Kimberly D. Hogan appeals the trial court's summary judgment in favor of Aspire Financial, Inc. d/b/a Aspires Lending. This Court, by letter dated May 30, 2019, notified Hogan that her pro se brief did not comply with the rules of appellate procedure and ordered Hogan to file an amended brief that complied with rule 38.1 or her appeal might be dismissed. Hogan did not file an amended brief.

The facts as set forth in Hogan's original petition are as follows: In January 2013, Hogan and her daughter lived in Colorado but planned to move to Austin. Hogan applied to Aspire for a home loan. In February 2013, Aspire approved pre-

qualification for a \$100,000 loan after reviewing Hogan's "submitted income and assets." Aspire incorrectly included child support payments as part of Hogan's income, but the child support obligation had less than three years remaining, making it ineligible to be considered as income. After Aspire approved Hogan for the purchase loan, Hogan asked Aspire about a second mortgage so she could keep her Colorado home as a rental property. Aspire determined Hogan had insufficient income to support two mortgages and advised Hogan to sell her Colorado home. Hogan sold her Colorado home on April 9, 2013.

Hogan then moved to Austin where she signed a contract to buy an Austin home for \$92,120 and deposited \$1000 in earnest money. Hogan advised Aspire of the contract to buy the house. On June 14, 2013, Aspire told Hogan she did not actually qualify for the loan because her child support could not be counted as income.

On May 15, 2017, Hogan sued Aspire in Williamson County and asserted claims of negligence, gross negligence, fraud in the sale of real estate, negligent misrepresentation, common law fraud, fraudulent inducement, promissory estoppel, and deceptive trade practices. There were no exhibits or affidavits attached to Hogan's petition. Aspire filed a motion to transfer venue, original answer, and a counterclaim for defamation.

After the case was transferred to Dallas County, Aspire filed a motion for partial summary judgment asserting that Hogan's claims of negligence, gross

negligence, negligent misrepresentation, and deceptive trade practices were barred by the applicable two-year statute of limitations, and Hogan's claim of fraud in the sale of real estate failed because it did not apply to claims against a mortgage lender. By order dated September 13, 2018, the trial court granted Aspire's motion and dismissed Hogan's claims of negligence, gross negligence, negligent misrepresentation, deceptive trade practices, and fraud in the sale of real estate.

In December 2018, Hogan filed an amended petition that alleged the same facts as her original petition and the same causes of action, including the causes of action dismissed in the trial court's order granting partial summary judgment. Hogan's amended petition contained no affidavits or exhibits.

In February 2019, Aspire filed a no-evidence motion for summary judgment on Hogan's remaining claims of fraud, fraudulent inducement, and promissory estoppel. At the outset, Aspire argued a pre-qualification is not a guarantee of a loan. As to Hogan's fraud claim, Aspire argued there was no evidence Aspire provided any false information to Hogan or had any intent to mislead Hogan or induce any action on her part. Aspire argued fraudulent inducement is a form of fraud that arises only in the context of a contract, and there was no evidence the parties ever entered into a legally binding loan agreement. Finally, as to promissory estoppel, Aspire argued there was no evidence Aspire made a specific promise or loan commitment including all material terms, and statements of an intention to

reach agreement were too vague and indefinite to survive summary judgment on promissory estoppel.

In response, Hogan filed a pleading seeking reinstatement of her deceptive trade practices claim and opposing Aspire's motion for summary judgment on the basis that her loan approval was not a pre-qualification but "was a Loan Approval and we were under Contract." Hogan asserted her contract with Aspire was "admitted and Accepted as Evidence in Exhibits," and Aspire's "Breaching/Terminating Contract Letter" was "also in Accepted Exhibits." Hogan's response had no attached affidavit or exhibits. On March 7, 2019, the trial court signed an order granting Aspire's motion for summary judgment on Hogan's remaining claims.

Following a hearing on Aspire's defamation claim, the trial court entered a final judgment dismissing Aspire's defamation claim with prejudice and taxing costs against the parties incurring same. This appeal followed.

We construe liberally pro se pleadings and briefs; however, we hold pro se litigants to the same standards as licensed attorneys and require them to comply with applicable laws and rules of procedure. *Mansfield State Bank v. Cohn*, 573 S.W.2d 181, 184-85 (Tex. 1978). To do otherwise would give a pro se litigant an unfair advantage over a litigant who is represented by counsel. *Shull v. United Parcel Serv.*, 4 S.W.3d 46, 53 (Tex. App.—San Antonio 1999, pet. denied). The law is well established that, to present an issue to this Court, a party's brief shall contain, among

other things, a concise, nonargumentative statement of the facts of the case, supported by record references, and a clear and concise argument for the contention made with appropriate citations to authorities and the record. TEX. R. APP. P. 38.1; *McIntyre v. Wilson*, 50 S.W.3d 674, 682 (Tex. App.—Dallas 2001, pet. denied). Bare assertions of error, without argument or authority, waive error. *See Sullivan v. Bickel & Brewer*, 943 S.W.2d 477, 486 (Tex. App.—Dallas 1995, writ denied); *see also Fredonia State Bank v. Gen. Am. Life Ins. Co.*, 881 S.W.2d 279, 284 (Tex. 1994) (appellate court has discretion to waive point of error due to inadequate briefing). When a party fails to adequately brief a complaint, he waives the issue on appeal. *Devine v. Dallas County*, 130 S.W.3d 512, 514 (Tex. App. —Dallas 2004, no pet.).

In her pro se brief, Hogan argues the accrual date for statute of limitations purposes was never proven; alleged missing exhibits were provided to Aspire's counsel; the trial court should have allowed reasonable accommodations to her as a pro se litigant; she was denied meaningful access to the courts and denied a fair trial; and she was denied equal protection and due process of law by being denied meaningful access to the courts. As Hogan did in her petition and amended petition in the trial court, she restates her claims of negligence, gross negligence, fraud in the sale of real estate, negligent misrepresentation, common law fraud, fraudulent inducement, promissory estoppel, and deceptive trade practices. Hogan fails to provide a clear and concise argument for her contentions with appropriate citations to authorities and the record. *See* TEX. R. APP. P. 38.1; *McIntyre*, 50 S.W.3d at 682.

Because Hogan’s issues are bare assertions of error, without supporting argument or authority, we conclude she has waived our review of her complaints. *Washington v. Bank of New York*, 362 S.W.3d 853, 854 (Tex. App.—Dallas 2012, no pet.).

Moreover, A no-evidence summary judgment motion under Rule 166a(i) is essentially a motion for a pretrial directed verdict; it requires the nonmoving party to present evidence raising a genuine issue of material fact supporting each element contested in the motion. TEX. R. CIV. P. 166a(i); *Timpte Indus., Inc. v. Gish*, 286 S.W.3d 306, 310 (Tex. 2009). Here, Hogan failed to present any evidence to support any of her claims or to contest the arguments raised in Aspire’s motions for summary judgment. Under these circumstances, we conclude the trial court did not err in granting summary judgment in favor of Aspire on all of Hogan’s claims. *See Gish*, 286 S.W.3d at 310. We overrule Hogan’s issues.

We affirm the trial court’s judgment.

/David L. Bridges/  
DAVID L. BRIDGES  
JUSTICE

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

**JUDGMENT**

KIMBERLY D. HOGAN, Appellant

No. 05-19-00385-CV      V.

ASPIRE FINANCIAL, INC., D/B/A  
ASPIRES LENDING, Appellee

On Appeal from the 162nd Judicial  
District Court, Dallas County, Texas  
Trial Court Cause No. DC-18-01806.  
Opinion delivered by Justice Bridges.  
Justices Whitehill and Nowell  
participating.

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

It is **ORDERED** that appellee ASPIRE FINANCIAL, INC., D/B/A ASPIRES LENDING recover its costs of this appeal from appellant KIMBERLY D. HOGAN.

Judgment entered June 8, 2020