

Affirm and Opinion Filed September 8, 2022



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

No. 05-21-00925-CV

**BENITA NELSON, Appellant
V.
METHODIST DALLAS MEDICAL CENTER A/K/A METHODIST
HEALTH SYSTEM,¹ Appellee**

**On Appeal from the 191st Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-19-16949**

MEMORANDUM OPINION

Before Justices Osborne, Nowell, and Smith
Opinion by Justice Nowell

Benita Nelson² sued Methodist Hospitals of Dallas d/b/a Methodist Dallas Medical Center after allegedly slipping and falling on a wet floor on Methodist's premises. Methodist filed a hybrid motion for no-evidence and traditional summary judgment. Nelson did not respond. After the hearing on the motion was continued several times, the trial court granted the motion. Nelson raises several issues on

¹ Appellee asserts its correct name is Methodist Hospitals of Dallas d/b/a Methodist Dallas Medical Center.

² Although Nelson is pro se on appeal, she was represented by counsel in the trial court.

appeal, including arguing she did not receive notice of Methodist's motion for summary judgment and the trial court erred by concluding Methodist met its summary judgment burden.³

A. Notice

Nelson asserts she did not receive notice of Methodist's motion for summary judgment and, accordingly, she did not respond. Nelson filed her original petition in October 2019. On May 14, 2021, Methodist filed its motion for summary judgment. Three days later, Methodist's counsel sent a notice of hearing stating the motion would be heard on June 8, 2021. On May 25, 2021, Nelson filed a motion to continue the hearing. Nelson's motion for continuance states her response would be due by June 1 and requested the summary judgment hearing be reset to a date after the discovery deadline in August 2021. Nelson filed a Notice of Hearing on Plaintiff's Motion for Continuance of Hearing on Defendant's No Evidence and Traditional Motion for Summary Judgment, which indicates the hearing on the motion for continuance would occur on June 4.

On May 27, 2021, Methodist notified Nelson that its motion for summary judgment hearing would occur on July 14, 2021. On July 9, 2021, Nelson filed a second motion for continuance, which was set to be heard on July 16, 2021. On August 26, 2021, Methodist's counsel filed another notice of hearing, which states

³ In her brief, Nelson raises several complaints about her trial counsel's performance. Those complaints are not before this Court as part of this appeal.

Methodist's motion for summary judgment was set for hearing on September 22, 2021. The trial court signed an order granting the motion for summary judgment on September 28, 2021.

Nelson's motions to continue the summary judgment hearings and the notices of hearings on her motions to continue are signed by Nelson's counsel. While Nelson argues that she personally did not have notice of the motion for summary judgment and only her counsel had notice, "in the context of an enduring attorney-client relationship, knowledge acquired by the attorney is imputed to the client." *Am. Flood Research, Inc. v. Jones*, 192 S.W.3d 581, 584 (Tex. 2006). Accordingly, because Nelson's counsel was on notice of the motion for summary judgment, that notice is imputed to Nelson. Based on this record, we conclude Nelson had notice of Methodist's no-evidence and traditional motion for summary judgment.

B. No-Evidence Summary Judgment

Nelson argues the trial court erred by granting Methodist's motion for summary judgment because there was "clear evidence" that Methodist failed to safely maintain the floors of its building. Nelson sued Methodist for premises liability and negligence. In its no-evidence motion, Methodist asserted Nelson had no evidence of the following essential elements of her premises liability claim: (1) a condition on Methodist's premises created an unreasonable risk of harm; (2) Methodist had actual knowledge of the condition; (3) Methodist failed to exercise ordinary care to protect Nelson from danger; and (4) Methodist's failure was a

proximate cause of Nelson’s injury. As to Nelson’s negligence claim, Methodist asserted Nelson had no evidence: (1) Methodist owed a legal duty to her; (2) Methodist breached the duty; or (3) any breach proximately caused Nelson’s injury. Nelson did not respond to the motion.

A no-evidence motion for summary judgment allows a party to seek summary judgment without presenting evidence; rather, the party asserts that, after adequate time for discovery, no evidence supports one or more essential elements of a claim or defense on which the adverse party would have the burden of proof at trial. *See Draughon v. Johnson*, 631 S.W.3d 81, 88 (Tex. 2021) (discussing TEX. R. CIV. P. 166a(i)). After the movant files its no-evidence motion for summary judgment, “[t]he burden then falls entirely on the adverse party to produce summary judgment evidence raising a genuine issue of material fact.” *Draughon*, 631 S.W.3d at 88 (discussing TEX. R. CIV. P. 166a(i)). The trial court must grant the motion unless the nonmovant produces summary judgment evidence that raises a genuine issue of material fact. *In re Estate of Melton*, No. 05-18-01245-CV, 2020 WL 1547146, at *2 (Tex. App.—Dallas Apr. 1, 2020, no pet.) (mem. op.) (citing TEX. R. CIV. P. 166a(i) & cmt.; *Hamilton v. Wilson*, 249 S.W.3d 425, 426 (Tex. 2008)).

Methodist moved for no-evidence summary judgment on Nelson’s causes of action on which she would have had the burden at trial. Because Nelson did not file a response, the trial court was required to grant the no-evidence summary judgment.

C. Conclusion

We affirm the trial court's judgment.

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/Erin A. Nowell//

ERIN A. NOWELL

JUSTICE



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

JUDGMENT

BENITA NELSON, Appellant

No. 05-21-00925-CV V.

METHODIST DALLAS MEDICAL
CENTER A/K/A METHODIST
HEALTH SYSTEM, Appellee

On Appeal from the 191st Judicial
District Court, Dallas County, Texas
Trial Court Cause No. DC-19-16949.
Opinion delivered by Justice Nowell.
Justices Osborne and Smith
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 8th day of September 2022.