

Affirmed and Memorandum Opinion filed July 7, 2016.



In The

Fourteenth Court of Appeals

NO. 14-14-00407-CV

SANTOS SAN JUAN D/B/A SANTOS WRECKER REPAIR, Appellant

V.

JOSE SEGOVIA, Appellee

**On Appeal from the 80th District Court
Harris County, Texas
Trial Court Cause No. 2012-06117**

M E M O R A N D U M O P I N I O N

In two issues, appellant challenges the legal and factual sufficiency of the evidence to support the jury's answer to Jury Question No. 3 regarding appellee's damages. We affirm because appellant has not preserved error.

We may not consider unpreserved issues. *Fed. Deposit Ins. Corp. v. Lenk*, 361 S.W.3d 602, 604 (Tex. 2012); *see also* Tex. R. App. P. 33.1; *Allright, Inc. v. Pearson*, 735 S.W.2d 240, 240 (Tex. 1987). In a case tried to a jury, legal and factual sufficiency issues must be preserved in the trial court. *See Daniels v.*

Empty Eye, Inc., 368 S.W.3d 743, 748–49 (Tex. App.—Houston [14th Dist.] 2012, pet. denied). A legal sufficiency challenge may be preserved in one of five ways: “(1) a motion for directed verdict, (2) a motion for judgment notwithstanding the verdict, (3) an objection to the submission of the issue to the jury, (4) a motion to disregard the jury’s answer to a vital fact issue, or (5) a motion for new trial.” *Id.* A factual sufficiency challenge must be raised in a motion for new trial. *Id.* at 749 (citing Tex. R. Civ. P. 324(b)(2)).

Appellant filed a motion for new trial and challenged the legal and factual sufficiency of the evidence to support the jury’s answers to Question Nos. 1 and 2 concerning liability. But he did not challenge the sufficiency of the evidence supporting the jury’s answer to Question No. 3 or any of the elements of damages he now challenges on appeal. Thus, appellant’s motion for new trial did not preserve any error urged on appeal. *See Halim v. Ramchandani*, 203 S.W.3d 482, 487 (Tex. App.—Houston [14th Dist.] 2006, no pet.) (no error preserved when arguments in motion for new trial differed from legal and factual sufficiency arguments made on appeal); *see also City of Houston v. Precast Structures*, 60 S.W.3d 331, 335–36 (Tex. App.—Houston [14th Dist.] 2001, pet. denied).

Neither the Reporter’s Record nor the Clerk’s Record show that appellant urged any of the other motions or objections necessary to preserve a legal sufficiency challenge. Thus, appellant has not preserved error. *See Halim*, 203 S.W.3d at 487. We affirm the trial court’s judgment.

/s/ Sharon McCally
Justice

Panel consists of Justices Christopher, McCally, and Busby.