

Affirmed and Memorandum Opinion filed July 21, 2016.



In The

Fourteenth Court of Appeals

NO. 14-15-00652-CV

LINDA M. SMITH, Appellant

V.

MARY DAVIS, Appellee

**On Appeal from the 269th District Court
Harris County, Texas
Trial Court Cause No. 2014-09413**

MEMORANDUM OPINION

Pro se appellant, Linda M. Smith, appeals the trial court's granting of appellee Mary Davis's motion for summary judgment in a negligence suit arising out of an automobile accident. We affirm.

FACTUAL BACKGROUND

Smith and Davis were involved in an automobile accident on March 9,

2012.¹ On February 24, 2014, Smith filed suit against State Farm Insurance and the adjuster handling the claim. Smith did not amend her petition to file suit against Davis until April 22, 2014. The trial court granted Davis's Motion to Quash Service but ordered Davis to answer Smith's suit. Davis filed an answer and a traditional motion for summary judgment, arguing in both that Smith filed her suit against Davis outside of the two-year statute of limitations for negligence actions. Smith then retained a lawyer to prepare a response to Davis's summary judgment motion. The entirety of Smith's argument stated the following:

At the time both the original petition and the amended petition were filed, Plaintiff was acting as her own counsel. She was not aware that she needed to sue Mary Davis, the driver that caused the accident in question. Plaintiff corrected her mistake immediately after discovering it, and filed an amended petition. Plaintiff had no legal background and therefore should not be held to the same standards as someone with legal knowledge and experience.

The trial court granted Davis's motion on May 8, 2015, and rendered a final judgment disposing of all claims against Davis. Smith subsequently filed a "Motion to Reinstate Case on Docket,"² a second and third amended petition, and a motion for summary judgment. The trial court denied both of Smith's motions, and this appeal followed.

ISSUES AND ANALYSIS

On appeal, Smith raises four issues: (1) whether Davis followed the "Laws and rules of the Texas Transportation [Code]"; (2) whether Davis "use[d] proper

¹ In her Original Petition and her Response to Defendant's Motion for Summary Judgment, Smith claimed the accident occurred on March 9, 2012. However, in her First Amended Petition, Smith stated that the accident happened in "September 2011." Calculating two years from either date, Smith's suit against Davis was barred by the statute of limitations.

² It appears the trial court interpreted this motion as a motion for reconsideration of the summary judgment decision.

look out”; (3) whether Davis “maintain[ed] proper speed in bad weather and heavy traffic”; and (4) whether Davis “maintain[ed] a proper distance from Appellant Vehicle before being rear ended.” Although Smith never directly states in her appellate brief that she is challenging the summary judgment, we construe Smith’s issues to challenge the trial court’s grant of Davis’s summary judgment motion.³

We review the trial court’s summary judgment order de novo. *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005). In a traditional motion for summary judgment, the movant must establish that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. Tex. R. Civ. P. 166a(c); *M.D. Anderson Hosp. & Tumor Inst. v. Willrich*, 28 S.W.3d 22, 23 (Tex. 2000) (per curiam). If the moving party produces evidence entitling it to summary judgment, the burden shifts to the non-movant to present evidence that raises a material fact issue. *Walker v. Harris*, 924 S.W.2d 375, 377 (Tex. 1996).

When, as here, the appellant fails to challenge every possible ground upon which summary judgment could have been granted, we must uphold the summary judgment on those grounds. *See Star-Telegram, Inc. v. Doe*, 915 S.W.2d 471, 473 (Tex. 1995); *Rodarte v. Investeco Group, L.L.C.*, 299 S.W.3d 400, 412 (Tex. App.—Houston [14th Dist.] 2009, no pet.); *see also Marsh v. Livingston*, No. 14-09-00011-CV, 2010 WL 1609215, at *3 (Tex. App.—Houston [14th Dist.] Apr. 22, 2010, pet. denied) (mem. op.) (“[I]f the appellees moved for summary judgment on a particular ground, and the appellant did not raise the ground as one on which the trial court erred in granting the summary judgment, the appellant waived any challenge to that ground.”).

Although Smith raises several issues regarding Davis’s alleged negligence,

³ We review Smith’s second amended brief. Appellant’s two earlier briefs were struck for failure to comply with the Rules of Appellate Procedure.

Smith fails to challenge the only ground raised by Davis in her traditional motion for summary judgment—the statute of limitations. Davis’s motion focused solely on Smith’s failure to timely file suit against her. Because Davis raised only one ground in her summary judgment motion, that was the only possible ground upon which the trial court could have granted Davis’s motion. Smith wholly ignores the limitations issue, and focuses entirely upon Davis’s alleged negligence. The phrase “statute of limitations” appears nowhere in Smith’s brief, and the only two references to dates in Smith’s brief are incorrect.⁴ Smith makes no attempt to explain how the trial court erred in granting Davis’s motion based on the statute of limitations for filing a negligence action. Accordingly, we affirm the trial court’s grant of Davis’s motion for summary judgment. *See Star-Telegram*, 915 S.W.2d at 473; *Rodarte*, 299 S.W.3d at 412.

CONCLUSION

We overrule all of Smith’s issues and affirm the judgment of the trial court.

/s/ Ken Wise
Justice

Panel consists of Chief Justice Frost and Justices Boyce and Wise.

⁴ In her “Statement of the Case” section, Smith asserts: “Appellant/Plaintiff Linda M. Smith brought a civil Automobile Personal Injury cause of action against Appellee/Defendant Mary Davis March 9, 2012.” March 9, 2012 was the date of the accident; Smith did not file suit against Davis until April 2014. Smith then states: “On July 28, 2015 a summary judgement was denied and granted.” The summary judgment at issue was granted on May 8, 2015.