Affirmed and Memorandum Opinion filed March 9, 2017.

In The

Fourteenth Court of Appeals

NO. 14-16-00460-CV

MORGAN CORNELIUS AND DANIELLE M. JONES, Appellants

V.

PARK HOUSTON AFFORDABLE HOUSING PARTNERS LP, PARK HOUSTON HOUSING PARTNERS LLC, AND ROBERT CRESS, Appellees

On Appeal from the 190th District Court
Harris County, Texas
Trial Court Cause No. 2015-53604

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

Appellants Morgan Cornelius and Danielle M. Jones filed suit against appellees Park Houston Affordable Housing Partners LP, Houston Housing Partners LLC, and Robert Cress (collectively, the "Park Houston Parties"), asserting a premises-liability claim and seeking to recover exemplary damages based on allegations of gross negligence. In a single issue, Cornelius and Jones contend the trial court erred in granting the Park Houston Parties' no-evidence

motion for summary judgment on the premises-liability claim. Concluding there is no evidence that the Park Houston Parties leased the premises, we affirm.

I. BACKGROUND

Cornelius and Jones were injured when the roof of an apartment unit collapsed. During the collapse, pigeons, bird waste, insects, sheetrock, and wooden beams fell on them. Cornelius and Jones sued the Park Houston Parties for premises liability and gross negligence. In their original petition, Cornelius and Jones alleged they were the Park Houston Parties' tenants or guests of the Park Houston Parties' tenants. Requests for disclosure were served with the original petition. No additional written discovery was propounded.

Six and a half months after Cornelius and Jones filed their petition, the Park Houston Parties filed a no-evidence motion for summary judgment. The Park Houston Parties alleged that there was no evidence supporting premises liability or gross negligence. Cornelius and Jones filed a response attaching ambulance records and two affidavits in support thereof. In the affidavits, Cornelius and Jones swore that the roof-collapse caused their injuries, that the pigeons and bird waste "built up" and caused the roof to collapse, and the apartment complex "failed to monitor, clean, and repair ceiling and roof where pigeons were nesting."

The Park Houston Parties filed a reply and Cornelius and Jones responded to the reply. After a hearing on the motion, the trial court granted the Park Houston Parties' no-evidence summary judgment motion. No record was made of the hearing and the trial court's summary judgment order did not specify the grounds on which it relied to grant the summary judgment.

II. STANDARD OF REVIEW

We review a trial court's granting of a summary judgment *de novo*. *KCM*

Fin. LLC v. Bradshaw, 457 S.W.3d 70, 79 (Tex. 2015). A no-evidence motion for summary judgment is essentially a motion for a pretrial directed verdict and is governed by the standards of Texas Rule of Civil Procedure 166a(i). *Timpte Indus., Inc. v. Gish*, 286 S.W.3d 306, 310 (Tex. 2009). After an adequate time for discovery, a party without the burden of proof may, without presenting evidence, seek summary judgment on the ground that there is no evidence to support one or more essential elements of the nonmovant's claim or defense. Tex. R. Civ. P. 166a(i).

The nonmovant then must present more than a scintilla of probative evidence that raises a genuine issue of material fact supporting each element contested in the motion. *See Forbes Inc. v. Granada Bioscis.*, Inc., 124 S.W.3d 167, 172 (Tex. 2003). More than a scintilla exists when the evidence would enable reasonable and fair-minded people to reach different conclusions. *Burbage v. Burbage*, 447 S.W.3d 249, 259 (Tex. 2014). "However, if the evidence is so weak that it only creates a mere surmise or suspicion of its existence, it is regarded as no evidence." *Waste Mgmt. of Tex., Inc. v. Tex. Disposal Sys. Landfill, Inc.*, 434 S.W.3d 142, 156 (Tex. 2014). Unless the nonmovant raises a genuine issue of material fact, the trial court must grant summary judgment. Tex. R. Civ. P. 166a(i). If the nonmovant satisfies its burden of production on the no-evidence motion, then the court cannot properly grant summary judgment. *See Smith v. O'Donnell*, 288 S.W.3d 417, 424 (Tex. 2009).

On appeal, appellants must challenge all grounds when, as here, there are multiple grounds for summary judgment and the order granting the summary judgment does not specify on which ground it was granted. *DeWolf v. Kohler*, 452 S.W.3d 373, 389 (Tex. App.—Houston [14th Dist.] 2014, no pet.); *Lewis v. Adams*, 979 S.W.2d 831, 833 (Tex. App.—Houston [14th Dist.] 1998, no pet.). We

sustain a no-evidence summary judgment 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. *DeWolf*, 452 S.W.3d at 387.

III. ANALYSIS

A. Cornelius and Jones have not waived the issue through inadequate briefing.

To begin, we address the Park Houston Parties' first argument that Cornelius and Jones waive the issue on appeal due to inadequate briefing. The Park Houston Parties contend that Cornelius and Jones fail to provide legal authority or cite to the clerk's record in their argument. *See* Tex. R. App. P. 38.1(i) (requiring a concise argument with appropriate citations to authorities and to the record). We are obliged to construe appellate rules of procedure "reasonably yet liberally" so that the right to appellate review is not lost by waiver. *Republic Underwriters Ins. Co. v. Mex–Tex, Inc.*, 150 S.W.3d 423, 427 (Tex. 2004) (quoting *Verburgt v. Dorner*, 959 S.W.2d 615, 616–17 (Tex. 1997)). Cornelius and Jones cite the record and legal authority after some assertions in their section entitled "Argument and Authorities." Therefore, we conclude Cornelius and Jones have not waived the issue on appeal.

B. Alleged failure to challenge every ground on appeal.

The Park Houston Parties argue that Cornelius and Jones fail to challenge all grounds on which the no-evidence motion for summary judgment could have been granted. The Park Houston Parties moved for summary judgment asserting that Cornelius and Jones provided no evidence supporting any element of their premises-liability claim. Cornelius and Jones state in their appellate brief that they

have provided evidence on each element of their premises-liability claim.[1] In support of their assertion, Cornelius and Jones direct us to their response to the Park Houston Parties' no-evidence motion for summary judgment. We assume without deciding that appellant's challenge to the trial court's granting of summary judgment is properly before us.

C. There is no evidence that the Park Houston Parties were lessors of the premises.

We now address the merits of the single issue on appeal. In a premises-liability case, the plaintiff must establish a duty owed to the plaintiff, breach of the duty, and damages proximately caused by the breach. *Del Lago Partners, Inc. v. Smith*, 307 S.W.3d 762, 767 (Tex. 2010).

In a premises-liability case, the duty owed to the plaintiff depends on the plaintiff's status. *See id.* Generally, a lessor has no duty to tenants or their invitees for dangerous conditions on the leased premises. *See Johnson Cty. Sheriff's Posse v. Endsley*, 926 S.W.2d 284, 285 (Tex. 1996); *Palermo v. Bolivar Yacht Basin, Inc.*, 84 S.W.3d 746, 748 (Tex. App.—Houston [1st Dist.] 2002, no pet.). However, a lessor owes a duty to tenants and tenant's invitees to maintain portions of the leased premises in a safe condition. *Parker v. Highland Park, Inc.*, 565 S.W.2d 512, 514–15 (Tex. 1978) (citing Restatement (Second) of Torts § 361). Further, the exception to the general rule that a lessor owes no duty to its tenants

[1] Without offering any supportive authority, Cornelius and Jones also argue that they do not have to challenge all summary-judgment grounds because the Park Houston Parties "narrowed" the grounds challenged in the Park Houston Parties' reply to their response. We disagree. The Park Houston Parties did not abandon any of their original grounds for summary judgment in their reply. Instead, the Park Houston Parties merely emphasized that the affidavits and records of the ambulance service are not evidence showing the Park Houston Parties' actual or constructive knowledge. Therefore, Cornelius and Jones were required to challenge each ground on which the summary judgment may have been granted. *See DeWolf*, 452 S.W.3d at 389.

regarding unreasonably dangerous conditions applies only to the portion of the premises that remain under the lessor's control. *See Johnson Cty.*, 926 S.W.2d at 285 (citing Restatement (Second) of Torts § 361); *Palermo*, 84 S.W.3d at 748.

When an injury is caused by an unreasonably dangerous condition, the lessor is liable for it if, by the exercise of reasonable care, the lessor could have discovered the condition and its unreasonable risk and then made the condition safe. *Wilson v. Braeburn Presbyterian Church*, 244 S.W.3d 469, 471 (Tex. App.—Houston [14th Dist.] 2007, pet. denied). However, this duty applies only to lessors. *See, e.g., Johnson Cty.*, 926 S.W.2d at 285. Here, no evidence shows the Park Houston Parties (or any of them) were lessors of the apartment. Cornelius and Jones contend that the Park Houston Parties have "not denied that [they were] in possession of the premises." We disagree. Cornelius and Jones alleged in their original petition that the Park Houston Parties owned or possessed the premises. The Park Houston Parties denied this allegation in their original answer. Further, the Park Houston Parties were not required to submit any evidence, such as a denial or admission that they leased the apartment, in support of their no-evidence motion for summary judgment. *See* Tex. R. Civ. P. 166a(i). The burden rested on Cornelius and Jones to produce evidence raising a fact issue on this first contested element. *See Forbes*, 124 S.W.3d at 172. Because there is no such evidence, we affirm the summary judgment. *See DeWolf*, 452 S.W.3d at 387.

Because we affirm the judgment on the ground that Cornelius and Jones presented no evidence that the Park Houston Parties were lessors, we need not and do not address the propriety of summary judgment on the remaining elements of Cornelius's and Jones's claim. *See* Tex. R. App. P. 47.1.

We conclude the trial court did not err in granting summary judgment. We

overrule the single issue on appeal. *See DeWolf*, 452 S.W.3d at 387.

III. CONCLUSION

We affirm the judgment of the trial court.

/s/ Marc W. Brown
Justice

Panel consists of Chief Justice Frost and Justices Brown and Jewell.