**Affirmed and Memorandum Opinion filed September 7, 2017.**

**In The**

# Fourteenth Court of Appeals

**NO. 14-16-00609-CV**

**TRENTON GARRETT, Appellant**

**V.**

**TRACY GRAHAM, ET AL, Appellee**

**On Appeal from the County Civil Court at Law No. 1**
**Harris County, Texas**
**Trial Court Cause No. 1072042**

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

Appellant Trenton Garrett sued his employer, ADESA Texas Inc., d/b/a Adesa Houston, and two individual employees of Adesa, Tracy Graham and Clara Morales, alleging a negligence cause of action for failure to provide a safe work place. His petition alleged a hostile altercation between himself and another unnamed person while he was at work.

Garrett now appeals a summary judgment in favor of Adesa and an order

dismissing his case against Graham and Morales pursuant to Texas Rule of Civil Procedure 91a. We conclude (1) the trial court did not err in granting Adesa's no-evidence motion for summary judgment because Garrett did not present summary judgment evidence raising a genuine issue of material fact on the foreseeability of the criminal act; and (2) the trial court did not err in dismissing the claim against Graham and Morales as individuals because Garrett did not allege facts in his petition showing that Graham and Morales owed Garrett an independent duty of reasonable care. Therefore, we affirm.

## BACKGROUND

Garrett filed this negligence suit against his employer Adesa and his supervisors Tracy Graham and Clara Morales individually, alleging that the defendants failed to provide a safe work place. He alleged there was an extremely hostile altercation between himself and another unnamed person while he was at work. After the altercation, he reported the incident to Graham, who released Garrett from work early. Garrett alleged that Graham and Morales never investigated the incident.

Defendants filed a motion to dismiss, arguing Garrett's claim was barred by the Texas Workers' Compensation Act (TWCA) and that he had not stated facts that could support his claim for negligence. *See* Tex. R. Civ. P. 91a. The trial court granted the motion to dismiss in part, dismissing the claim against Graham and Morales but not Adesa.

Adesa filed a motion re-urging its motion to dismiss, or in the alternative, a no-evidence motion for summary judgment. Adesa argued Garrett's claim was barred by the TWCA, and that there was no evidence Adesa owed a duty to protect him from an unforeseeable criminal act or that Adesa breached a duty. Garrett responded with his own affidavits, pay stubs, subpoenas for written depositions, and

a photo of his timesheet after the incident with the words "No Return." Garrett's affidavits explained he did not know who assaulted him, the altercation happened at work, the altercation was with a violent employee, he never saw his supervisor talk to the person who assaulted him after the incident, and he was restricted from his job. In one motion filed leading up to the summary judgment hearing, Garret argued that section 406.032(1)(C) of the TWCA, the so-called "personal animosity" exception, applied to his case.

The trial court denied Adesa's motion to dismiss, but granted its no-evidence motion for summary judgment on grounds there was no evidence of negligence and his claim was barred by the TWCA. Garrett appealed.

## ANALYSIS

Because Garrett is pro se, we will liberally construe the issues raised in his brief. *See Guishard v. Money Mgmt. Int'l, Inc.*, No. 14–14–000362–CV, 2015 WL 4984853, at *1 (Tex. App.—Houston [14th Dist.] Aug. 20, 2015, no pet.) (mem. op.). So construed, the issues before us are whether the trial court erred in (1) granting Adesa's no-evidence motion for summary judgment and (2) dismissing Garrett's claim against Graham and Morales.[1]

### I. The trial court did not err in granting Adesa's no-evidence motion for summary judgment because evidence of negligence was lacking.

In Adesa's no-evidence motion for summary judgment, it argued that the TWCA bars Garrett's claim and attached an exhibit of Adesa's coverage verification

[1] At one point, the parties to this case reached a settlement agreement, but Garrett later withdrew his consent. Garrett then filed a pleading labeled "cross claim" against the attorneys for the defendants, alleging the attorneys interfered with his employment. The allegations stem from the settlement agreement's terms. The record does not reflect, however, that Garrett properly joined the attorneys as parties to this case under the Rules of Civil Procedure. *See* Tex. R. Civ. P. 37, 40. Therefore, we do not address any issues relating to the defendants' attorneys or the settlement agreement.

under the act. Adesa also asserted there is no evidence it owed a duty to protect Garrett from an unforeseeable criminal act and no evidence it breached a duty.

### A. Standard of review

We review the trial court's grant of summary judgment de novo. *See e.g.*, *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005). We take as true all evidence favorable to the nonmovant, and indulge every reasonable inference and resolve any doubts in the nonmovant's favor. *Id.* In a no-evidence motion for summary judgment, the movant represents that there is no evidence of one or more essential elements of the claims for which the nonmovant bears the burden of proof at trial. Tex. R. Civ. P. 166a(i). A no-evidence motion for summary judgment must be granted if the party opposing the motion does not respond with competent evidence that raises a genuine issue of material fact on the challenged elements. *Allen v. Connolly*, 158 S.W.3d 61, 64 (Tex. App.—Houston [14th Dist.] 2005, no pet.).

### B. Garrett did not present evidence raising a fact issue that the altercation was foreseeable.

In this case, Garrett alleged that a hostile altercation occurred between himself and another unnamed person while he was at work, and that Adesa failed to provide proper security. According to Garrett's affidavits, the altercation was with a violent employee. Although Garrett alleges the altercation was with another unnamed employee, his cause of action is for a failure to provide a safe work place, not for negligent hiring or supervision.

Employers are not insurers of employees' safety, but employers do owe a duty to use ordinary care to provide a safe work place. *Austin v. Kroger Tex., L.P.*, 465 S.W.3d 193, 198 (Tex. 2015); *Kroger Co. v. Milanes*, 474 S.W.3d 321, 335 (Tex. App.—Houston [14th Dist.] 2015, no pet.). Generally, an employer owes the same

premises-liability duty to its employees as other landowners owe to invitees, and a landowner's duty to invitees is to exercise reasonable care in making the premises safe. *Austin*, 465 S.W.3d at 201–02. An employer has a duty to protect an employee from criminal acts of third parties if "the criminal conduct is so great that it is both unreasonable and foreseeable." *Id.* at 205 (quoting *Timberwalk Apartments, Partners, Inc. v. Cain*, 972 S.W.2d 749, 756 (Tex. 1998)). The duty does not arise if the risk was unforeseeable. *Allen*, 158 S.W.3d at 65. To establish foreseeability of injury resulting from criminal activity, the evidence must reveal specific, previous crimes on or near the premises. *Timberwalk*, 972 S.W.2d at 756; *Allen*, 158 S.W.3d at 65.

Garrett's response to Adesa's no-evidence motion for summary judgment does not present any evidence on specific previous crimes on the premises, or of previous crimes by the unnamed employee of which Adesa was aware. Therefore, the summary judgment evidence does not raise a fact issue that Adesa could have foreseen a criminal act might occur on the premises. Because Garrett did not provide summary judgment evidence raising a fact issue on foreseeability, the trial court properly granted Adesa's no-evidence motion for summary judgment.

Even if Garrett's petition could be read as alleging a cause of action for negligent hiring or supervision, Garrett did not present summary judgment evidence that Adesa breached a duty. An employer owes a duty to its employees and to the public to adequately hire, train, and supervise employees. *Fort Worth Elevators Co. v. Russell*, 70 S.W.2d 397, 401 (Tex. 1934), *disapproved on other grounds by Wright v. Gifford-Hill & Co.*, 725 S.W.2d 714 (1987); *Houser v. Smith*, 968 S.W.2d 542, 544 (Tex. App.—Austin 1998, no pet.). Determining whether an employer owes a legal duty to prevent an employee's intentional tort requires a balance of relevant factors. *Pagayon v. Exxon Mobil Corp.*, No. 15–0642, 2017 WL 2705530, at *5–6

(Tex. June 23, 2017). To prove a cause of action for negligent hiring or supervision, the plaintiff must show that the employer's breach proximately caused the plaintiff's injuries. *Wrenn v. G.A.T.X. Logistics, Inc.*, 73 S.W.3d 489, 496 (Tex. App.—Fort Worth 2002, no pet.). Garrett's response to Adesa's no-evidence motion for summary judgment does not present any evidence of who the employee was or how Adesa breached its duty in hiring or supervising the unnamed employee. We therefore overrule Garrett's issue challenging the trial court's order granting Adesa's no-evidence motion for summary judgment.

## II. The trial court did not err in dismissing Garrett's claim against Graham and Morales.

### A. Standard of review and applicable law

Rule 91a provides that a party may move to dismiss a cause of action on the grounds that it has no basis in law or fact. Tex. R. Civ. P. 91a; *In re Sheshtawy*, 478 S.W.3d 82, 86 (Tex. App.—Houston [14th Dist.] 2015, no pet.). A cause of action has no basis in law if the allegations, taken as true, together with inferences reasonably drawn from them, do not entitle the claimant to the relief sought. Tex. R. Civ. P. 91a. A cause of action has no basis in fact if no reasonable person could believe the facts pleaded. *Id.*

We review de novo whether a cause of action has any basis in law or fact. *City of Dallas v. Sanchez*, 494 S.W.3d 722, 724 (Tex. 2016) (citing *Wooley v. Schaffer*, 447 S.W.3d 71, 75 (Tex. App.—Houston [14th Dist.] 2014, pet. denied)). We look solely to the pleading and any attachments to determine if the dismissal standard is satisfied. *Id.* To determine whether the cause of action has a basis in law or fact, we construe the pleadings liberally in favor of the plaintiff, look to the pleader's intent, and accept as true the factual allegations in the pleading. *Wooley*, 447 S.W.3d at 76. In doing so, we apply the fair notice standard of pleading. *Id.*

For a negligence cause of action alleging a failure to provide a safe work place, the law charges the duty element to the corporation itself, not any individual corporate officer or agent. *Leitch v. Hornsby*, 935 S.W.2d 114, 117 (Tex. 1996); *see Werner v. Colwell*, 909 S.W.2d 866, 868 (Tex. 1995). A corporate officer or agent can be individually liable only if the officer or agent owes an independent duty of reasonable care to the injured party apart from the employer's duty. *Leitch*, 935 S.W.2d at 117. As an example, an agent would have individual liability if his negligence while driving in the course and scope of employment causes a car accident that injures the plaintiff employee. *Id.*

### B. Garrett's petition did not allege facts that Graham or Morales owed an independent duty of reasonable care to him.

Garrett's negligence claim against his supervisors, Graham and Morales, in their individual capacities has no basis in law because he did not allege facts showing they owed an independent duty of reasonable care to him. *See id.* His petition alleges Graham neglected a duty to protect him as a supervisor, and that both Graham and Morales did not investigate the altercation as supervisors. Graham and Morales have no separate, independent duty as individuals to provide a safe workplace. *See id.* at 118. Therefore, Garrett's claim against Graham and Morales has no basis in law. We overrule Garrett's issue challenging the trial court's dismissal of his claim against Graham and Morales as individuals.

## CONCLUSION

Having overruled Garrett's issues on appeal, we affirm the trial court's judgment.

/s/ J. Brett Busby
Justice

Panel consists of Justices Christopher, Busby, and Jewell.