Affirmed and Memorandum Opinion filed August 8, 2023

In The

Fourteenth Court of Appeals

NO. 14-22-00544-CV

CINDY SUE ROE, INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF MARGARET CATHERINE ROE, Appellant

V.

FERRER POIROT WANSBROUGH FELLER DANIEL & ABNEY AND DAVID P. MATTHEWS, LLP D/B/A MATTHEWS & ASSOCIATES, Appellees

On Appeal from the 157th District Court
Harris County, Texas
Trial Court Cause No. 2020-75451

MEMORANDUM OPINION

This is a summary judgment case. Appellant Cindy Sue Roe, individually and as representative of the Estate of Margaret Catherine Roe ("Margaret"), filed suit against two law firms, appellees Ferrer Poirot Wansbrough Feller Daniel & Abney ("Ferrer Poirot") and David P. Matthews, LLP d/b/a Matthews & Associates ("Matthews"), alleging claims for legal malpractice, breach of contract,

breach of fiduciary duty, and violations of the Deceptive Trade Practices Act ("DTPA"). Roe's claims arose out of appellees' handling of Margaret's potential lawsuit against the manufacturer of the Inferior Vena Cava (IVC) filter Margaret had surgically implanted into her body. Ferrer Poirot moved for summary judgment on Roe's claims against it, which the trial court granted. Later, Matthews and Roe each filed motions for summary judgment. The trial court granted Matthews' motion and denied Roe's, thereby rendering a final take-nothing judgment against Roe. Roe timely filed a motion for new trial, which was overruled by operation of law. On appeal, Roe challenges each of the trial court's orders. Because we conclude that the trial court did not err when it granted appellees' motions for summary judgment and denied Roe's, we overrule Roe's issues on appeal challenging those orders. Finally, we conclude that the trial court did not abuse its discretion when it allowed Roe's motion for new trial to be overruled by operation of law. We therefore affirm the trial court's judgment.

BACKGROUND

An IVC filter is a medical device surgically placed in a patient to prevent blood clots from traveling to the heart or lungs. Margaret received an IVC filter manufactured by Boston Scientific in 2010. Margaret was hospitalized in 2015 as a result of pain in her lower right leg. Margaret developed compartment syndrome, an increased pressure inside a muscle, during that hospitalization. She also developed a bowel obstruction and a bowel perforation. While Margaret was discharged from that hospital in October, she was subsequently admitted to another hospital on November 1, 2015. During this hospital stay Margaret complained of pain in both of her legs. Examinations during the second hospitalization documented "severe 4+ bilateral upper leg and bilateral lower leg edema and 2+ generalized edema." Margaret was discharged from this hospital stay on

November 18, 2015. All of these events occurred in Arizona.

Margaret died almost a year later in Arizona. The Arizona death certificate lists the immediate cause of death as "atherosclerotic cardiovascular disease." It further lists the "other contributing conditions contributing to death but not resulting in the underlying causes" listed on the death certificate as "diabetes mellitus, chronic kidney disease, hypertension, chronic obstructive pulmonary disease, [and] procal malnutrition."

Roe, Margaret's daughter, filed suit against appellees alleging claims both individually and as the representative of her mother's estate. Roe alleged that Margaret's IVC filter caused her injuries in August and September 2015. Roe further alleged that Margaret retained Ferrer Poirot to pursue claims against the parties responsible for the allegedly defective IVC filter. According to Roe, Ferrer Poirot associated Matthews as counsel. Roe alleged that Ferrer Poirot and Matthews failed to timely prosecute Margaret's claims, causing Margaret to lose the opportunity to bring the IVC filter claims because they were barred by the statute of limitations. In her lawsuit, Roe asserted claims for professional negligence, breach of fiduciary duty, violations of the Deceptive Trade Practices Act ("DTPA"), and breach of contract. Ferrer Poirot and Matthews both filed answers to Roe's lawsuit in which they denied Roe's allegations and also asserted numerous defenses.

Eventually, Ferrer Poirot filed a hybrid motion for summary judgment on Roe's claims. Ferrer Poirot argued Roe could not meet the case within a case requirement for legal-malpractice claims because she had no evidence that Margaret's IVC filter was defective nor that the allegedly defective condition was the proximate cause of Roe's alleged injuries or death. Ferrer Poirot moved for a traditional summary judgment on Roe's legal malpractice and DTPA claims

asserting that the statute of limitations had expired before Roe filed suit. Finally, Ferrer Poirot moved for a traditional summary judgment on Roe's DTPA, breach of contract, and breach of fiduciary duty causes of action because, as a matter of law, they violated Texas' rule against fracturing legal malpractice claims. Prior to the hearing on Ferrer Poirot's motion for summary judgment, Roe sought leave to late designate a medical expert, Perez Siddiqui, M.D. Roe had previously designated a nurse as her only medical expert.

The trial court eventually held an oral hearing on both Ferrer Poirot's motion for summary judgment and Roe's motion for leave to late designate Dr. Siddiqui. The trial court announced it was granting Roe's motion for leave during the oral hearing but did not sign the order until several weeks later. The trial court also announced during the hearing that it was taking Ferrer Poirot's motion for summary judgment under advisement, but it then signed the order granting the motion the same day. The trial court granted Ferrer Poirot's motion without specifying the grounds.

While Ferrer Poirot's motion for summary judgment was pending, Roe filed a traditional motion for summary judgment on her legal malpractice and breach of contract claims. Roe could not obtain a hearing date before the trial court's dispositive motion deadline, so she filed a motion for leave asking for her summary judgment motion to be heard after the dispositive-motion deadline. After the trial court granted Ferrer Poirot's motion for summary judgment, Matthews filed a motion (1) joining in the arguments raised in Ferrer Poirot's motion for summary judgment; (2) raising additional grounds for no-evidence summary judgment; and (3) seeking leave to have the motion heard after the trial court's dispositive-motion deadline. The trial court eventually signed orders: (1) granting both Roe and Matthews leave for their summary judgment motions to be

considered after the deadline; (2) granting Matthews' summary judgment motion; (3) sustaining Matthews' evidentiary objections; and (4) denying Roe's motion for summary judgment.

Roe then timely filed an unverified motion for new trial arguing that the orders granting appellees' motions for summary judgment should be set aside and a new trial granted because the trial judge should have voluntarily recused herself due to campaign contributions Matthews and his assistant made to the trial judge's re-election campaign. Roe did not attach evidence to her motion for new trial. Additionally, Roe did not actually move for recusal prior to the summary judgments being granted. Instead, she waited until after the motions were granted before she filed her motion for new trial asserting only that the trial court should have, sua sponte, recused itself based on the alleged campaign contributions. Even in her motion for new trial, Roe did not request recusal. Instead, she asserted that "a new trial should be granted and the donations returned if the Court does not recuse itself voluntarily." Roe reserved "the right to seek recusal prior to any hearing on [her] motion for new trial." Roe's motion for new trial was overruled by operation of law. *See* Tex. R. Civ. P. 329b(c). This appeal followed.

ANALYSIS

I. The trial court did not abuse its discretion when it allowed Roe's motion for new trial to be overruled by operation of law.

Roe argues in her first issue that the trial court abused its discretion when it allowed her motion for new trial to be overruled by operation of law. We disagree.

We review the denial of a motion for new trial for an abuse of discretion. *Waffle House, Inc. v. Williams*, 313 S.W.3d 796, 813 (Tex. 2010); *Hunter v. Ramirez*, 637 S.W.3d 858, 862 (Tex. App.—Houston [14th Dist.] 2021, no pet.). The test for an abuse of discretion is whether the trial court acted arbitrarily or

without reference to guiding legal principles. *Cire v. Cummings*, 134 S.W.3d 835, 838–39 (Tex. 2004). This standard applies when, as here, the motion for new trial is overruled by operation of law. *See Awoniyi v. McWilliams*, 261 S.W.3d 162, 165 (Tex. App.—Houston [14th Dist.] 2008, no pet.) (citing *Bank One v. Moody*, 830 S.W.2d 81, 81, 85 (Tex. 1992)).

The procedural requirements for recusal are found in Rule 18a of the Texas Rules of Civil Procedure. These requirements are mandatory and a party who fails to comply with Rule 18a waives the right to complain about a trial judge's failure to recuse. *Vickery v. Texas Carpet Co., Inc.*, 792 S.W.2d 759, 763 (Tex. App.—Houston [14th Dist.] 1990, writ denied). The same rule provides the deadline for a party to file a motion to recuse. It provides that a motion to recuse "must be filed as soon as practicable after the movant knows of the ground stated in the motion." *See* Tex. R. Civ. P. 18a(b)(1). If a party waits until after the trial or hearing to move for recusal, then the party waives any claim that the trial judge recuse itself. *Vickery*, 792 S.W.2d at 763.

Here, Roe never filed a motion to recuse and did not even raise the subject of recusal until she filed her motion for new trial after the trial court had granted both appellees' motions for summary judgment and denied her own. Such conduct is "indicative of judge shopping with a litigant waiting to see if he is to prevail and only after failing, declaring a mulligan." *AVPM Corp. v. Childers*, 583 S.W.3d 216, 218 (Tex. App.—Dallas 2018, no pet.). On appeal, Roe seeks to explain away this delay by asserting that Rule 18a(b) prohibited her from filing a motion for recusal because she did not learn of the campaign contributions until shortly before the May 6, 2022 hearing on her own motion for summary judgment and the trial court's May 9, 2022 order granting Matthews' motion for leave to hear its motion for summary judgment after the dispositive motion deadline. *See* Tex. R. Civ. P.

18a(b)(1)(B) (providing, in part, that a motion to recuse "must not be filed after the tenth day before the date set for trial or other hearing"). Even if we accept Roe's unsupported representation about when she first learned of the campaign contributions, she was not excused from pursuing a motion to recuse "as soon as practicable after the movant knows of the ground stated in the motion" because Rule 18a(b)(1)(B) provides an exception to the ten-day deadline when "the movant neither knew nor should have known . . . that the ground stated in the motion existed." *Id.* Because Roe was not excused from filing a motion to recuse prior to the trial court ruling on the various motions for summary judgments, we conclude she has waived any claim, however indirectly stated, that the trial judge should have recused. *See Vickery*, 792 S.W.2d at 763 ("By filing their motion after trial, appellants waived any claims that the trial judge recuse himself."). We overrule Roe's first issue on appeal.

II. The trial court did not abuse its discretion when it granted Matthews' motion for leave for Matthews' motion for summary judgment to be heard after the trial court's dispositive motion deadline.

The trial court had issued a docket control order establishing April 29, 2022, as the deadline for all dispositive motions to be heard by the trial court. Matthews filed a motion for leave to have its motion for summary judgment heard on May 9, 2022, which was ten days after the trial court's deadline. The trial court granted Matthews' motion. In her fourth issue, Roe argues that the trial court abused its discretion when it did so.

A trial court has broad discretion to manage its docket, and we will not interfere with a trial court's exercise of its discretion absent a showing of clear abuse. *In re Estate of Parrimore*, No. 14-14-00820-CV, 2016 WL 750293, at *10 (Tex. App.—Houston [14th Dist.] Feb. 25, 2016, no pet.) (mem. op.).

Here, Roe initially argues that the trial court abused its discretion because Matthews was aware of the trial court's dispositive motion deadline "and chose not to file" within that time. Roe makes this argument even though she herself had late filed a motion for summary judgment and sought leave for it to be submitted after the trial court's dispositive motion deadline. We conclude that granting Matthews' motion for leave despite Matthews' awareness of the trial court's docket control order does not demonstrate that the trial court clearly abused its discretion. *See J.W. Garrett & Sons, Inc. v. Snider*, No. 09-14-00306-CV, 2015 WL 5731291, at *4 (Tex. App.—Beaumont Oct. 1, 2015, pet. denied) (mem. op.) (holding trial court implicitly modified its scheduling order by setting hearing on summary judgment filed after deadline). Next, Roe argues that the trial court abused its discretion because she was uncertain if the trial court would grant Matthews leave to late file its motion for summary judgment and she was therefore uncertain when her response was due. We conclude this does not establish an abuse of discretion because Matthews' motion for summary judgment stated that it would be submitted on May 9, 2022. Further, Roe did not request a continuance pursuant to Rule 166a(g) of the Rules of Civil Procedure so that she could adequately respond to Matthews' motion. In fact, Roe filed a response to the motion more than seven days before the May 9, 2022 submission date. In addition, Roe sought leave to late file Dr. Siddiqui's letter, which the trial court granted during the May 6, 2022 hearing. We conclude that Roe has not shown a clear abuse of discretion here. *See Palmer v. Performing Arts Fort Worth, Inc.*, No. 02-11-00434-CV, 2012 WL 2923290, at *2 (Tex. App.—Fort Worth July 19, 2012, no pet.) (mem. op.) ("Because Palmer received adequate notice and an opportunity to respond, the trial court did not abuse its discretion by allowing the late submission of the motion."). We overrule Roe's fourth issue on appeal.

III. The trial court did not err when it granted appellees' motions for summary judgment and denied Roe's.

Roe complains in her second and third issues that the trial court erred when it granted appellees' motions for summary judgement and denied her own. We address these issues together.

A. Standard of review and applicable law

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 consider all of the summary judgment evidence in the light most favorable to the nonmovant, crediting evidence favorable to the nonmovant if a reasonable factfinder could and disregarding contrary evidence unless a reasonable factfinder could not. *See Mack Trucks, Inc. v. Tamez*, 206 S.W.3d 572, 582 (Tex. 2006). When a party moves for summary judgment on both traditional and no-evidence grounds, we ordinarily address the no-evidence grounds first. *See Ford Motor Co. v. Ridgway*, 135 S.W.3d 598, 600 (Tex. 2004). If the trial court grants summary judgment without specifying the grounds, we affirm the judgment if any of the grounds presented are meritorious. *Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 242 (Tex. 2001) (per curiam). And, if an appellant does not challenge every possible ground for summary judgment, we will uphold the summary judgment on the unchallenged ground. *Durham v. Accardi*, 587 S.W.3d 179, 183 (Tex. App.—Houston [14th Dist.] 2019, no pet.).

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). The burden then shifts to the nonmovant to present evidence raising a genuine issue of material fact as to the elements specified in the motion. *Tamez*, 206 S.W.3d at 582.

Evidence raises a genuine issue of material fact if reasonable and fair-minded jurors could differ in their conclusions in light of all of the summary judgment evidence. *See Goodyear Tire & Rubber Co. v. Mayes*, 236 S.W.3d 754, 755 (Tex. 2007) (per curiam). A no-evidence summary judgment will be sustained 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 establishes conclusively the opposite of a vital fact. *King Ranch, Inc. v. Chapman*, 118 S.W.3d 742, 751 (Tex. 2003) (citing *Merrell Dow Pharms. v. Havner*, 953 S.W.2d 706, 711 (Tex. 1997)). To prevail on a traditional motion for summary judgment, a movant must prove entitlement to judgment as a matter of law on the issues pled and set out in the motion for summary judgment. Tex. R. Civ. P. 166a(c); *Masterson v. Diocese of Nw. Texas*, 422 S.W.3d 594, 607 (Tex. 2013).

When both parties move for summary judgment, each party bears the burden of establishing that it is entitled to judgment as a matter of law. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 356 (Tex. 2000). When the trial court grants one motion and denies the other, the appellate court reviews both motions and determines all questions presented. *Id.* The reviewing court should then render the judgment that the trial court should have rendered, or reverse and remand if neither party met its summary judgment burden. *Id.*

B. The trial court did not err when it granted Ferrer Poirot's no-evidence motion for summary judgment on Roe's legal-malpractice claim.

We turn first to Roe's arguments challenging the trial court's order granting Ferrer Poirot's motion for summary judgment on her legal-malpractice claim. Roe filed suit against Ferrer Poirot claiming the law firm was negligent when it failed

to file suit against the manufacturer of Margaret's allegedly defective IVC filter. To prove a legal-malpractice claim, the client must establish that: (1) the lawyer owed a duty of care to the client; (2) the lawyer breached that duty; and (3) the lawyer's breach proximately caused damage to the client. *Rogers v. Zanetti*, 518 S.W.3d 394, 400 (Tex. 2017). When, as here, a legal-malpractice case arises out of prior litigation, the malpractice plaintiff must prove that she would have obtained a more favorable result in the underlying litigation had the attorney met the proper standard of care. *Id.* In other words, "the legal-malpractice plaintiff must prove that his or her lawyer's negligence was the proximate cause of cognizable damage." *Id.* at 402. This methodology is usually referred to as the "case-within-a-case" or "suit-within-a-suit" requirement and it "is the accepted and traditional means of resolving the issues involved in the underlying proceeding in a legal malpractice action." *Id.* at 401 (internal quotations omitted).

Here, the underlying claim was Margaret's possible product liability action against the manufacturer of her IVC filter. The parties agree that Arizona law would have governed this litigation. In Arizona, under negligence or strict liability, to establish a prima facie case of products liability, the plaintiff must, at a minimum, show that the product is defective and unreasonably dangerous, the product was defective when it left the defendant's control, and the defective condition is the proximate cause of the plaintiff's injury.[1] *Gebhardt v. Mentor*

[1] Even if Arizona law did not apply to the underlying claim, Texas products liability law requires similar elements of proof. Under Texas law, "[t]o recover for a products liability claim alleging a design defect, a plaintiff must prove that (1) the product was defectively designed so as to render it unreasonably dangerous; (2) a safer alternative design existed; and (3) the defect was a producing cause of the injury for which the plaintiff seeks recovery." *Emerson Electric Co. v. Johnson*, 627 S.W.3d 197, 203 (Tex. 2021). A producing cause is a substantial factor in bringing about an injury, and without which the injury would not have occurred. *Ford Motor Co. v. Ledesma*, 242 S.W.3d 32, 46 (Tex. 2007). To recover on a negligence claim arising out of an allegedly defective product, a plaintiff must prove: (1) the defendant failed to exercise ordinary care in the design, manufacturing, or marketing of the product; and (2) the defendant's

Corp., 191 F.R.D. 180, 184 (D. Ariz. 1999) (citing *Gosewich v. Am. Honda Motor Co., Inc.*, 737 P.2d 376, 379 (Ariz. 1987), superseded on other grounds by statute, A.R.S. § 12-2505). In addition, the proximate cause of an injury is that which, in a natural and continuous sequence, unbroken by any efficient intervening cause, produces an injury, and without which the injury would not have occurred. *Id.*

In its motion for summary judgment, Ferrer Poirot asserted Roe had no evidence that (1) Margaret's IVC filter was defective and unreasonably dangerous; (2) the filter was defective when it left the manufacturer's control; and (3) the allegedly defective condition was the proximate cause of Margaret's alleged injuries or death. Ferrer Poirot continued that because Roe could not meet the case-within-a-case requirement, it was entitled to summary judgment. The trial court granted Ferrer Poirot's motion without specifying the grounds and, on appeal, Roe addresses each in her briefing. Ferrer Poirot on the other hand initially focuses on the third element, the requirement that Roe produce evidence that, but for Ferrer Poirot's alleged negligence, Margaret would have recovered on her IVC filter product liability claim against the manufacturer. In other words, Ferrer Poirot argues that we should affirm the trial court's summary judgment because Roe had no evidence that a defective IVC filter was a proximate cause of Margaret's injuries and therefore no evidence that she would have recovered but for Ferrer Poirot's alleged negligence. *See Rogers*, 518 S.W.3d at 404 ("Certainly,

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breach proximately caused the alleged injuries. *Gonzales v. Caterpillar Tractor Co.*, 571 S.W.2d 867, 871, 872 (Tex. 1978). "To recover under a negligence theory, the plaintiff must establish proximate causation, while recovery under a products liability theory requires proof of producing causation. Proximate cause and producing cause share the common element of causation in fact . . . ." *Bostic v. Georgia-Pacific Corp.*, 439 S.W.3d 332, 343 n.42 (Tex. 2014). In addition, when, like here, the plaintiff alleges no negligence other than whether the product was unreasonably dangerous when it was sold, the negligence theory is subsumed within the defective product theory. *Shaun T. Mian Corp. v. Hewlett-Packard Co.*, 237 S.W.3d 851, 857 (Tex. App.—Dallas 2007, pet. denied).

when the client alleges that his lawyer's negligence caused him to lose his case, we require proof that but for the attorney's breach of duty, the malpractice plaintiff would have prevailed on the underlying cause of action and would have been entitled to judgment.") (internal quotations omitted). We therefore turn first to causation.

Roe attached a letter from her late-designated medical expert, Dr. Siddiqui, to her summary judgment response. In Roe's view, we should reverse the summary judgment in favor of Ferrer Poirot because Dr. Siddiqui's letter "concludes that [Margaret's] injuries were related to a complication caused by the implanted [IVC] filter, i.e. IVC thrombosis." Dr. Siddiqui's conclusion provides, in its entirety:

> Patient suffered from severe left lower extremity swelling and pain that can be a direct causally related injury caused by the IVC thrombosis that was identified on the 9/9/2015 CT abdomen and pelvis. I, Pervez Siddiqui MD, certify these findings are true and accurate within a reasonable degree of medical certainty.

Even if we assume for purposes of appeal that Dr. Siddiqui's letter meets the requirements for admissible summary judgment evidence, we still conclude that it was insufficient to create a genuine issue of material fact because nowhere within the single-page letter does Dr. Siddiqui render an opinion that Margaret's IVC filter was defective.[2] Additionally, Dr. Siddiqui does not link the identified IVC thrombosis to Margaret's IVC filter nor did he render an opinion that Margaret's IVC filter was connected to Margaret's condition on September 9, 2015, much less that it caused any injury to Margaret.

[2] Because we have affirmed the trial court's summary judgment orders after considering Roe's summary judgment evidence, we need not address Roe's arguments raised in her appellate briefing challenging the trial court's order sustaining Matthews' objections to that summary judgment evidence.

A lawyer can be negligent and yet cause no harm. *Rogers*, 518 S.W.3d at 400. Therefore, if a lawyer's breach of a duty of care does not cause harm, no valid claim for legal malpractice exists. *Id.* Because Roe's summary judgment evidence did not create a genuine issue of material fact that she would have been successful in the underlying products liability lawsuit, we hold that the trial court did not err when it granted Ferrer Poirot's motion for summary judgment on her legal-malpractice claim. *Id.*

C. The trial court did not err when it granted summary judgment on Roe's remaining claims against Ferrer Poirot.

Roe also alleged a breach of contract claim, a breach of fiduciary duty claim, and claims under the DTPA against Ferrer Poirot. Ferrer Poirot moved for traditional summary judgment on each of these claims, which the trial court granted. Among the grounds asserted in Ferrer Poirot's motion was that, by filing these additional claims, Roe was impermissibly attempting to fracture her legal-malpractice claim into multiple lawsuits. We agree.

Under Texas law, a plaintiff is not permitted to divide or "fracture" a legal-malpractice claim into additional claims that do not sound in negligence. *Perkins v. Walker*, No. 14-17-00579-CV, 2018 WL 3543525, at *2 (Tex. App.—Houston [14th Dist.] July 24, 2018, no pet.) (mem. op.). Although other claims can co-exist with a legal-malpractice claim, "the plaintiff must do more than merely reassert the same claim for legal malpractice under an alternative label." *Duerr v. Brown*, 262 S.W.3d 63, 70 (Tex. App.—Houston [14th Dist.] 2008, no pet.). "If the gist of a client's complaint is that the attorney did not exercise that degree of care, skill, or diligence as attorneys of ordinary skill and knowledge commonly possess, then that complaint should be pursued as a negligence claim, rather than some other claim." *Deutsch v. Hoover, Bax & Slovacek, L.L.P.*, 97 S.W.3d 179, 189 (Tex.

App.—Houston [14th Dist.] 2002, no pet.). Whether a claim styled as breach of contract, fraud, breach of fiduciary duty, or violation of the DTPA is actually a claim for legal malpractice is a question of law to be determined by the court. *See Powell v. Grijalva*, No. 14-19-00080-CV, 2020 WL 4097274, at *5 (Tex. App.—Houston [14th Dist.] July 21, 2020, no pet.) (mem. op.). This rule does not preclude clients from asserting claims other than negligence against their attorneys if supported by the facts. *See Deutsch*, 97 S.W.3d at 189.

In her live pleading Roe based each of her non-negligence claims on the same facts supporting her legal malpractice cause of action. Roe also seeks to recover the same damages for each of her asserted causes of action. Turning to Roe's breach of fiduciary duty claim, Roe alleged that Ferrer Poirot breached its duty to inform her that they had been negligent by "allowing limitations to expire." With respect to Roe's DTPA claims, she alleged that Ferrer Poirot violated the DTPA by misrepresenting material facts, failing to disclose information, and by committing unconscionable acts. The only alleged conduct identified is the same alleged conduct supporting her legal-malpractice cause of action. Finally, in her breach of contract claim, Roe alleged that the purpose of the attorney representation agreement was to prosecute Margaret and Roe's claims which Ferrer Poirot failed to properly perform. After reviewing Roe's breach of contract, breach of fiduciary duty, and DTPA allegations, we conclude that the gist of each is that Ferrer Poirot did not exercise that degree of care, skill, or diligence as attorneys of ordinary skill and knowledge commonly possess and exercise and they are thus components of a fractured malpractice claim. We conclude that the trial court did not err when it granted Ferrer Poirot's traditional motion for summary judgment on Roe's causes of action for breach of contract, breach of fiduciary duty, and DTPA violations.

D. The trial court did not err when it granted Matthews' motion for summary judgment and denied Roe's.

We turn next to the motion for summary judgments filed by Matthews and Roe. The trial court signed the orders granting Matthews' motion and denying Roe's on the same day.

In this case, Roe alleged the same causes of action against Matthews that she had alleged against Ferrer Poirot. Matthews' motion for summary judgment incorporated by reference Ferrer Poirot's motion and added additional no-evidence grounds. The trial court granted Matthews' motion without specifying the grounds. Roe moved for summary judgment on her legal malpractice and breach of contract claims. Having already affirmed Ferrer Poirot's motion, we also affirm the trial court's granting of Matthews' motion for the same reasons stated above.

When a plaintiff moves for summary judgment on its own causes of action, it must conclusively prove all essential elements of its claims as a matter of law. *Leonard v. Knight*, 551 S.W.3d 905, 909 (Tex. App.—Houston [14th Dist.] 2018, no pet.). We have already determined that Roe did not produce sufficient evidence to create a genuine issue of material fact that she would have been successful in the underlying products liability lawsuit to avoid Ferrer Poirot's motion for summary judgment. We therefore hold that the same evidence cannot conclusively prove the essential elements of her legal-malpractice claim against Matthews. Therefore, the trial court did not err when it denied Roe's motion for summary judgment on her legal-malpractice claim against Matthews. In addition, because we have already concluded that Roe's breach of contract claim was an impermissible attempt to fracture her legal-malpractice cause of action, we also conclude that the trial court did not err when it denied Roe's motion for summary judgment on her breach of contract claim against Matthews. We overrule Roe's second and third issues on

appeal.

CONCLUSION

Having overruled Roe's issues raised this appeal, we affirm the trial court's judgment.

/s/ Jerry Zimmerer
Justice

Panel consists of Chief Justice Christopher and Justices Zimmerer and Poissant.