



Fourth Court of Appeals
San Antonio, Texas

OPINION

No. 04-15-00644-CV

Brett **RADCLIFFE**, Robert Radcliffe, and Mamba Minerals, LLC,
Appellants

v.

TIDAL PETROLEUM, INC.,
Appellee

From the 218th Judicial District Court, La Salle County, Texas
Trial Court No. 13-07-00176-CVL
Honorable Donna S. Rayes, Judge Presiding

OPINION ON MOTION FOR REHEARING

Opinion by: Patricia O. Alvarez, Justice

Sitting: Sandee Bryan Marion, Chief Justice
Karen Angelini, Justice
Patricia O. Alvarez, Justice

Delivered and Filed: August 24, 2016

REVERSED AND REMANDED

On May 11, 2016, we issued an opinion and judgment in this appeal. Appellee Tidal Petroleum, Inc. timely filed a motion for rehearing, and Appellants timely filed a response. Having considered the motion and response, we deny the motion for rehearing. To clarify the basis for our disposition of the appeal, we withdraw our May 11, 2016 opinion and judgment, and we substitute this opinion and judgment in their stead.

Appellants Brett Radcliffe, Robert Radcliffe, and Mamba Minerals, LLC (collectively the Radcliffes) sued appellee Tidal Petroleum, Inc. The Radcliffes alleged Tidal was removing minerals from their mineral estate without the Radcliffes' permission. Tidal moved for traditional and no-evidence summary judgment on the grounds that, inter alia, the Radcliffes submitted no evidence of any ownership interest in the subject tract, and the trial court granted the motion. Because the Radcliffes provided more than a scintilla of evidence of ownership and Tidal failed to conclusively disprove any essential element of the Radcliffes' claims, we reverse the trial court's order and remand the cause for further proceedings consistent with this opinion.

BACKGROUND

Emma Simmons Radcliffe, now deceased, owned 120 acres of land in La Salle County, Texas. In 1945, Emma conveyed the entire surface estate and half of the mineral estate to Tidal Petroleum, Inc.'s predecessor-in-interest. The parties dispute what interest Emma reserved.

Emma Simmons Radcliffe was married to Robert Taylor (R.T.) Radcliffe. They had only one child, Robert Daniel (R.D.) Radcliffe. R.D. had three children: Robert, Brett, and Amber. In October 2011, the Radcliffes (Brett Radcliffe, Robert Radcliffe, and Mamba Minerals, LLC) advised Tidal that Emma's mineral interest had passed to them, and Tidal was producing minerals from their mineral estate without their permission. When Tidal rejected the Radcliffes' claim of ownership, the Radcliffes sued Tidal for trespass to try title, bad faith trespass, and other intentional torts. Tidal contended there is a gap in the chain of title and the Radcliffes offered no evidence that the Radcliffes own *any* mineral interest in the tract. Both sides moved for summary judgment, but not on the same claims. The trial court held a hearing but did not contemporaneously rule on the motions.

In the months between the hearing and when the trial court signed the summary judgment order, the Radcliffes moved for reconsideration and for a new trial, and submitted a number of documents including a file-stamped copy of Emma's will.

In its written order, the trial court sustained Tidal's objections to any late-filed summary judgment evidence, including Emma's will, and it granted Tidal's summary judgment motion without specifying the grounds for its decision.

On appeal, the Radcliffes raise two issues: (1) even without Emma's will, Tidal was not entitled to no-evidence summary judgment because the Radcliffes produced some evidence of ownership and Tidal was not entitled to traditional summary judgment because the evidence, at a minimum, raised a fact question as to ownership of the disputed interest; and (2) the trial court abused its discretion in refusing to consider Emma's will as part of the summary judgment evidence. We begin by reviewing the no-evidence motion.

TIDAL'S NO-EVIDENCE MOTION FOR SUMMARY JUDGMENT

Tidal moved for summary judgment against all of the Radcliffes' claims on both no-evidence and traditional grounds. Because the trial court's order does not state the basis on which it granted Tidal's motion,¹ we review the evidence under both standards, beginning with the no-evidence standard. *See Merriman v. XTO Energy, Inc.*, 407 S.W.3d 244, 248 (Tex. 2013) (citing *Ford Motor Co. v. Ridgway*, 135 S.W.3d 598, 600 (Tex. 2004)) (evaluate no-evidence ground first).

¹ The Radcliffes argue the trial court's oral statements that it had denied the no-evidence motion means the trial court did not grant Tidal's no-evidence motion. But a "written judgment controls over the court's oral pronouncements." *Nine Greenway Ltd. v. Heard, Goggan, Blair & Williams*, 875 S.W.2d 784, 787 (Tex. App.—Houston [1st Dist.] 1994, writ denied); accord *Heritage Gulf Coast Props., Ltd. v. Sandalwood Apartments, Inc.*, 416 S.W.3d 642, 657 (Tex. App.—Houston [14th Dist.] 2013, no pet.). The trial court's written order does not state the basis on which it granted the motion, and we must consider both the traditional and no-evidence motions. *See Heritage Gulf Coast Props.*, 416 S.W.3d at 657–58.

A. Standard of Review

We review a no-evidence summary judgment using a legal sufficiency standard. *King Ranch, Inc. v. Chapman*, 118 S.W.3d 742, 750–51 (Tex. 2003). “We review the evidence presented by the motion and response in the light most favorable to the party against whom the summary judgment was rendered, crediting evidence favorable to that party if reasonable jurors could, and disregarding contrary evidence unless reasonable jurors could not.” *Mack Trucks, Inc. v. Tamez*, 206 S.W.3d 572, 582 (Tex. 2006) (citing *City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005)). “Whether reviewing a traditional or a no-evidence summary judgment, we accept the non-movant’s evidence as true and ‘indulge every reasonable inference and resolve any doubts in the non-movant’s favor.’” *Strandberg v. Spectrum Office Bldg.*, 293 S.W.3d 736, 738 (Tex. App.—San Antonio 2009, no pet.) (quoting *Joe v. Two Thirty Nine Joint Venture*, 145 S.W.3d 150, 157 (Tex. 2004)).

If the nonmovant’s summary judgment evidence contains “more than a scintilla of probative evidence to raise a genuine issue of material fact,” the trial court may not properly grant the no-evidence motion. *Smith v. O’Donnell*, 288 S.W.3d 417, 424 (Tex. 2009); *see* TEX. R. CIV. P. 166a(i). “More than a scintilla of evidence exists when the evidence ‘rises to a level that would enable reasonable and fair-minded people to differ in their conclusions.’” *King Ranch*, 118 S.W.3d at 751 (quoting *Merrell Dow Pharms., Inc. v. Havner*, 953 S.W.2d 706, 711 (Tex. 1997)).

B. Trespass-to-Try-Title Claim

To prevail in a trespass-to-try-title suit, a plaintiff must prove a superior right to title and may do so by proving “a regular chain of conveyances from the sovereign.” *Martin v. Amerman*, 133 S.W.3d 262, 265 (Tex. 2004); *Gaut v. Daniel*, 293 S.W.3d 764, 766 (Tex. App.—San Antonio 2009, pet. denied). Here, the parties agree on a valid chain of title from the sovereign to Emma. They disagree on whether there is a gap in the chain of conveyances from Emma to the Radcliffes.

1. *Tidal's Motion for Summary Judgment*

In its third amended motion for summary judgment, Tidal contends “Plaintiffs failed to offer *any* evidence that they actually own *any* mineral or royalty interest in the subject tract.” Tidal argues the deed records do not show what happened to Emma’s reserved mineral interest on her death, and it did not pass to her husband R.T. According to Tidal, after R.T. died in California, Emma’s reserved mineral interest was not listed in the Inventory and Appraisal of R.T.’s estate or the Notice of Filing Report of Inheritance Tax Referee, and no taxes were assessed on any such interest. Tidal contends this is evidence that Emma’s interest did not pass from R.T. to his son R.D., and the Radcliffes cannot be successors-in-interest to Emma’s reserved interest.

2. *Radcliffes' Response*

In their response to Tidal’s motion, the Radcliffes argued there is some evidence of an unbroken chain of title from Emma to them based on the following:

- Emma’s interest passed to R.T. and R.D. by intestate succession,
- R.T.’s portion of Emma’s interest passed to R.D. by will or intestacy,
- Emma’s entire mineral interest passed from R.D. to his three heirs by intestacy, and
- Amber’s portion of Emma’s interest passed to Mamba Minerals by deed.

As summary judgment evidence, the Radcliffes offered, inter alia, two affidavits of heirship showing Robert, Brett, and Amber as R.D.’s only heirs; death certificates for Emma, R.T., and R.D.; and birth certificates for Robert and Brett.

3. *Scope of Evidence Reviewed*

The trial court sustained Tidal’s objections to any late-filed summary judgment evidence, including Emma’s will; thus, for purposes of analyzing the no-evidence motion, we do not consider it. But the trial court’s order expressly states the court considered the responses to the motions for summary judgment and the affidavits of heirship. Thus, we consider the timely-filed summary

judgment evidence, the affidavits of heirship, and the responses. *See K-Six Television, Inc. v. Santiago*, 75 S.W.3d 91, 96 (Tex. App.—San Antonio 2002, no pet.) (considering late-filed responses when the trial court’s order stated it considered them). In the Radcliffes’ response, they included, inter alia, the following documents:

- Emma’s death certificate,
- R.T.’s (Robert Taylor Radcliffe’s) death certificate,
- R.D.’s (Robert Daniel Radcliffe’s) death certificate,
- Robert’s and Brett’s birth certificates,
- Robert and Brett’s mother’s Affidavit of Heirship,
- Amber’s mother’s Affidavit of Heirship, and
- Amber’s deed to Mamba Minerals.

We address each document, and the reasonable inferences we may draw therefrom, *see Strandberg*, 293 S.W.3d at 738, as we consider the evidence pertaining to each challenged link in the chain of title.

4. *Some Evidence of Each Link in Chain*

Under the no-evidence standard of review, we take the Radcliffes’ evidence as true, disregard all contrary evidence and inferences, *King Ranch*, 118 S.W.3d at 751, and “indulge every reasonable inference and resolve any doubts in the [Radcliffes’] favor,” *Strandberg*, 293 S.W.3d at 738 (quoting *Joe*, 145 S.W.3d at 157). For our discussion, we assume there are three parts to this chain of title: (1) the links down from the sovereign to Emma, (2) the links up from the Radcliffes to R.T., and (3) the alleged gap—the cross-link from Emma to R.T.

a. Sovereign Down to Emma

Tidal does not dispute the chain of title from the sovereign to Emma. It did not assert there was no evidence of those links, and the trial court could not have properly granted summary judgment on that basis. *See* TEX. R. CIV. P. 166a(i) (“The motion must state the elements as to

which there is no evidence.”); *Timpte Indus., Inc. v. Gish*, 286 S.W.3d 306, 310 (Tex. 2009) (analyzing the grounds for a no-evidence motion and observing “a trial court cannot grant a summary judgment motion on grounds not presented in the motion”).

b. Radcliffes Up to R.D.

To work their way up the chain to Emma, the Radcliffes filed various documents including the following: (1) a July 1, 2011 deed in which Amber conveyed all of her interest in Emma’s mineral interest to Mamba Minerals; (2) an affidavit of heirship from Amber’s mother, Misti Lammert, in which she avers that Amber was R.D.’s child; (3) an affidavit of heirship from Robert’s and Brett’s mother, Barbara Radcliffe, in which she avers that Robert and Brett were born to her and R.D. Radcliffe; and (4) Robert’s and Brett’s birth certificates showing they were born to R.D. Radcliffe. Both affidavits of heirship also aver R.D. died unmarried and intestate, and Robert, Brett, and Amber were R.D.’s only heirs.

Taking the Radcliffes’ evidence as true, and making all reasonable inferences and resolving doubts in their favor, *see Strandberg*, 293 S.W.3d at 738, we conclude there is more than a scintilla of summary judgment evidence of Robert’s, Brett’s, and Amber’s rights to take under intestate succession whatever interest R.D. owned at his death. *See* TEX. EST. CODE ANN. § 201.001 (West 2014) (“Estate of an Intestate Not Leaving Spouse,” formerly Texas Probate Code section 38(a)); *King Ranch*, 118 S.W.3d at 751 (scintilla).

c. R.D. Up to R.T.

To show the link from R.D. to R.T., the Radcliffes referred to Tidal’s summary judgment evidence Exhibit J-1, R.T.’s will. In R.T.’s will, which the Radcliffes assert was probated in California, he identifies his wife as Emma Simmons Radcliffe, and his son as Robert Daniel Radcliffe (R.D.). The “FIFTH” provision in R.T.’s will states that if Emma predeceases R.T., all of R.T.’s property shall pass to his son R.D. In the “SIXTH” provision, R.T. intentionally omits

to provide for his heirs. In their summary judgment evidence, the Radcliffes offered Emma's death certificate; it shows she died on October 11, 1968, and her surviving spouse is Robert T. Radcliffe (R.T.). The Radcliffes also offered R.T.'s death certificate; it shows Robert Taylor Radcliffe (R.T.), a widower, died on November 20, 1972.

Taking the evidence favoring the Radcliffes as true, and making all reasonable inferences and resolving doubts in their favor, we conclude there is more than a scintilla of summary judgment evidence of R.D.'s right to take under R.T.'s will whatever interest R.T. owned at his death. *See King Ranch*, 118 S.W.3d at 751 (scintilla); *Strandberg*, 293 S.W.3d at 738 (inferences, doubts).

d. Emma to R.T. and R.D.

The most disputed matter in this appeal is what summary judgment evidence, if any, shows that upon Emma's death, the disputed mineral interest passed to her husband R.T.

Tidal insists there is no evidence that the interest transferred from Emma to R.T.—who died in California. It notes that the Inventory and Appraisalment of R.T.'s estate does not list the Texas mineral interest, the interest is not reported in the Notice of Filing Report of Inheritance Tax Referee, and no taxes were assessed on any such interest in the Order Fixing Inheritance Tax. Tidal insists there is a gap in the chain of title, and the trial court properly granted its no-evidence motion against the Radcliffes' trespass-to-try-title claim.

In their response to Tidal's motion, the Radcliffes proffered evidence and argued section 38(b) of the Texas Probate Code (intestate succession) applied. They argued that Emma predeceased R.T., and if there was no evidence of any will from Emma, the presumption of intestacy applied, and by operation of Texas law, any mineral interest Emma had in the property passed by intestate succession to her husband R.T. and her son R.D.

Taking the evidence favoring the Radcliffes as true, it shows the following. *See Strandberg*, 293 S.W.3d at 738. Emma's death certificate shows R.T. as Emma's surviving

spouse. R.T.'s will shows R.D. was the sole child of the marriage of R.T. and Emma. R.T.'s death certificate shows he was a widower when he died and that he had no surviving spouse.

Because Emma died more than seven years before the hearing and there was no summary judgment evidence of her will, the presumption of intestacy applied. *See* TEX. PROP. CODE ANN. § 71.003 (West 2014). Under intestate succession, because Emma's mineral interest was her separate property, on Emma's death, R.T. received a life estate in one-third of Emma's mineral interest and R.D. received the other two-thirds and the remainder.² *See* TEX. ESTATES CODE ANN. § 201.002(b) (formerly Texas Probate Code section 38(b)); *Haile v. Holtzclaw*, 414 S.W.2d 916, 923 (Tex. 1967).

We conclude there is more than a scintilla of evidence to show that when R.T. died, whether by operation of law for the remainder, or under R.T.'s will for the devises, all of R.T.'s property passed to R.D.

Having taken the evidence favoring the Radcliffes as true, and making reasonable inferences and resolving doubts in their favor, we conclude there is more than a scintilla of summary judgment evidence of ownership—of an unbroken chain of title in the mineral interest from Emma to the Radcliffes. *See Smith*, 288 S.W.3d at 424; *King Ranch*, 118 S.W.3d at 751. We necessarily conclude the trial court could not have properly granted Tidal's no-evidence motion for summary judgment against the Radcliffes' trespass-to-try-title claim.

C. Bad Faith Trespass Claim

In its motion, Tidal argued the Radcliffes "have no evidence to support their cause of action for bad faith trespass as a matter of law." It adds that "Tidal had an absolute right to lease from

² Under Texas law, a mineral estate and a royalty interest are real property rights. *Lesley v. Veterans Land Bd. of State*, 352 S.W.3d 479, 480–81, 487 (Tex. 2011) (mineral estate); *Lyle v. Jane Guinn Revocable Trust*, 365 S.W.3d 341, 351 (Tex. App.—Houston [1st Dist.] 2010, pet. denied) (royalty interest).

[other] covenants in the mineral estate and therefore did not commit a trespass.” In other parts of its motion, Tidal asserts there is no evidence (1) that the Radcliffes have any ownership to the interest reserved in the 1945 deed or (2) of any bad faith trespass because one cannot—as a matter of law—have an unauthorized entry onto a nonpossessory interest.

We construe Tidal’s assertions as no-evidence challenges to the bad faith trespass elements of ownership and lack of consent. *See Env’tl. Processing Sys., L.C. v. FPL Farming Ltd.*, 457 S.W.3d 414, 425 (Tex. 2015) (“[L]ack of consent or authorization is an element of a trespass cause of action that a plaintiff must prove.”); *Prize Energy Res., L.P. v. Cliff Hoskins, Inc.*, 345 S.W.3d 537, 557 (Tex. App.—San Antonio 2011, no pet.) (bad faith trespass elements). Because we have already concluded the Radcliffes met their burden to produce more than a scintilla of evidence of ownership, we consider Tidal’s grounds that there can be no evidence of lack of consent because (1) one cannot commit an unauthorized entry onto a nonpossessory interest and (2) Tidal had an absolute right to enter under the doctrine of cotenancy.

In deciding a bad faith trespass claim, the fact-finder may consider whether the defendant continued to remove minerals after it received notice of the plaintiff’s adverse claim to ownership of the mineral interest. *See Prize Energy Res.*, 345 S.W.3d at 557; *see also Hous. Prod. Co. v. Mecom Oil Co.*, 62 S.W.2d 75, 75 (Tex. Comm’n App. 1933, judgm’t adopted).

1. No Evidence of Trespass Against Nonpossessory Interest

Here, Tidal admits it is removing minerals from the tract but argues there is no evidence of trespass because, even if the Radcliffes own the reserved interest, it is a nonpossessory interest and, as a matter of law, one cannot trespass against a nonpossessory interest. The parties dispute the nature of the reserved interest, but deciding that question is not “necessary to final disposition of the appeal.” *See TEX. R. APP. P. 47.1; Sloan v. Law Office of Oscar C. Gonzalez, Inc.*, 479 S.W.3d 833, 834 (Tex. 2016).

If, as the Radcliffes argue, the reserved interest is a mineral interest, Tidal's admission satisfies the requirement for some evidence of the trespass elements of a physical, intentional, and voluntary entry onto the plaintiff's property that injured plaintiff's right to the property. *See Wilen v. Falkenstein*, 191 S.W.3d 791, 798 (Tex. App.—Fort Worth 2006, pet. denied).

If, as Tidal argues, the reserved interest is a nonparticipating royalty interest, the Radcliffes may still bring a trespass action even for a nonpossessory interest. *See Coastal Oil & Gas Corp. v. Garza Energy Trust*, 268 S.W.3d 1, 9–10 (Tex. 2008) (recognizing common law trespass includes “an action for injury to a nonpossessory interest”); *Nat. Gas Pipeline Co. of Am. v. Pool*, 124 S.W.3d 188, 192 (Tex. 2003) (NPRI is a nonpossessory interest). Thus, Tidal's admission is more than a scintilla of evidence of trespass against an NPRI.

We conclude there is more than a scintilla of evidence of trespass regardless of whether the reserved interest is a mineral interest or a nonparticipating royalty interest.

2. *Cotenancy*

Citing *Byrom v. Pendley*, Tidal's motion also argued cotenancy gives it an “absolute right” to produce minerals without the Radcliffes' permission. *See Byrom v. Pendley*, 717 S.W.2d 602, 605 (Tex. 1986) (addressing a cotenant's rights under an oil and gas lease). But the summary judgment evidence includes a copy of the 1945 deed, and the deed limits that right. The reservation states future leases “shall require the joinder by Grantors, their successors or assigns, in any such lease or leases.” The Radcliffes vigorously asserted, and Tidal did not dispute, that Tidal did not obtain the Radcliffes' consent to produce from the subject tract, and *Byrom* did not address a lease with an express reservation requiring joinder. *See id.*

We conclude the Radcliffes met their burden to provide more than a scintilla of evidence on each challenged essential element of bad faith trespass.

D. Other Claims

Besides trespass-to-try-title and bad faith trespass, the Radcliffes sued Tidal for several other causes of action.³ In its motion, Tidal argues there is no evidence that the Radcliffes own *any* interest in the subject tract. It contends that because the Radcliffes' ownership of Emma's interest is an essential element of each of the Radcliffes' other claims, all of the Radcliffes' other claims must fail. In their response, the Radcliffes complain that Tidal's no-evidence motion is insufficient because it does not state the elements for which there was no evidence; the Radcliffes' complaint challenges the legal sufficiency of the motion. *See Jose Fuentes Co., Inc. v. Alfaro*, 418 S.W.3d 280, 283 (Tex. App.—Dallas 2013, pet. denied) (en banc).

In its motion, Tidal expressly identifies and specifically challenges only one essential element for the trespass-to-try-title claim: the Radcliffes' ownership of Emma's interest. *See* TEX. R. CIV. P. 166a(i); *Jose Fuentes Co.*, 418 S.W.3d at 283. Tidal's motion also specifically identifies bad faith trespass as an essential element of all of the Radcliffes' other claims. We conclude Tidal's no-evidence motion is legally sufficient to challenge these two elements (i.e., ownership, bad faith trespass) in each claim to which they apply. *See* TEX. R. CIV. P. 166a(i); *Jose Fuentes Co.*, 418 S.W.3d at 283. Because we have already concluded there was some evidence of both ownership and bad faith trespass, we further conclude the trial court could not have granted the no-evidence motion on either of these grounds.

Tidal also asserts "Plaintiffs have no evidence to support all the elements of their remaining causes of action, as listed in the foregoing Section I.4. All such causes of action are predicated on Plaintiffs proving that Tidal committed bad faith trespass and other illegal and wrongful actions."

³ The Radcliffes' claims and theories include common law fraud, fraud by nondisclosure, conspiracy to defraud Plaintiffs, disregarding corporate form—piercing the corporate veil, vice principal theory of liability, conversion, misapplication of trust funds, breach of fiduciary duty, theft under the Theft Liability Act, and unjust enrichment.

Except for bad faith trespass, this general challenge does not specifically identify any other essential element of any of the Radcliffes' other claims. *Contra* TEX. R. CIV. P. 166a(i); *N. Tex. Mun. Water Dist. v. Ball*, 466 S.W.3d 314, 320–21 (Tex. App.—Dallas 2015, no pet.) (determining a motion for summary judgment that stated “Plaintiffs can produce no evidence which supports the essential elements of breach of contract” did not meet Rule 166a(i)’s requirement to “state the elements as to which there is no evidence” and was legally insufficient to be a no-evidence motion); *Jose Fuentes Co.*, 418 S.W.3d at 283 (“A no-evidence motion that only generally challenges the sufficiency of the non-movant’s case and fails to state the specific elements that the movant contends lack supporting evidence is fundamentally defective and cannot support summary judgment as a matter of law.”). We conclude Tidal’s motion was legally insufficient to challenge any other elements of the Radcliffes’ remaining claims. *See* TEX. R. CIV. P. 166a(i); *Ball*, 466 S.W.3d at 320–21; *Jose Fuentes Co.*, 418 S.W.3d at 283. Therefore, the Radcliffes had no burden to produce evidence on the unchallenged elements—those that were not specifically stated in the motion—for any of the other claims, and we need not address the evidence pertaining to the unchallenged elements. *See* TEX. R. CIV. P. 166a(i); *Jose Fuentes Co.*, 418 S.W.3d at 283.

TIDAL’S TRADITIONAL MOTION FOR SUMMARY JUDGMENT

Tidal also moved for traditional summary judgment against all of the Radcliffes’ claims. Tidal’s motion asserts its “summary judgment evidence negates this key element (title) of all the causes of action (that [the Radcliffes] have title to the interest claimed).”

A. Standard of Review

To prevail on a traditional motion for summary judgment, the movant must show “there is no genuine issue as to any material fact and the [movant] is entitled to judgment as a matter of law.” TEX. R. CIV. P. 166a(c); *accord Nixon v. Mr. Prop. Mgmt. Co.*, 690 S.W.2d 546, 548 (Tex. 1985). We examine “the evidence presented in the motion and response in the light most favorable

to the party against whom the summary judgment was rendered, crediting evidence favorable to that party if reasonable jurors could, and disregarding contrary evidence unless reasonable jurors could not.” *Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding*, 289 S.W.3d 844, 848 (Tex. 2009); see *City of Keller*, 168 S.W.3d at 827. “We indulge every reasonable inference and resolve any doubts in the nonmovant’s favor.” *Rhône-Poulenc, Inc. v. Steel*, 997 S.W.2d 217, 223 (Tex. 1999); accord *Goodyear Tire & Rubber Co. v. Mayes*, 236 S.W.3d 754, 756 (Tex. 2007) (per curiam).

A defendant moving for traditional summary judgment may prevail on its motion if it conclusively disproves at least one essential element of each of the plaintiff’s claims. *Elliott–Williams Co. v. Diaz*, 9 S.W.3d 801, 803 (Tex. 1999); *Doe v. Boys Clubs of Greater Dall., Inc.*, 907 S.W.2d 472, 476–77 (Tex. 1995).

B. Conclusively Disproving Ownership

In Tidal’s motion, it recognizes its traditional summary judgment burden to conclusively disprove an essential element of each of the Radcliffes’ claims. See *Elliott–Williams Co.*, 9 S.W.3d at 803; *Doe*, 907 S.W.2d at 476–77. Tidal contends it is entitled to traditional summary judgment against all of the Radcliffes’ claims because it conclusively disproved the essential element of ownership in the trespass-to-try-title and bad faith trespass claims, and the essential elements of ownership and bad faith (i.e., wrongful conduct) in the remaining claims.

As we have previously concluded, the Radcliffes presented more than a scintilla of evidence of ownership in Emma’s reserved interest and in the challenged elements of bad faith trespass. Because we take the Radcliffes’ evidence as true, and make all reasonable inferences and resolve any doubts in their favor, we necessarily conclude fact issues exist, and Tidal’s evidence does not conclusively disprove any essential element of any of the Radcliffes’ claims. See *Neely v. Wilson*, 418 S.W.3d 52, 59 (Tex. 2013) (noting that in a hybrid traditional and no-

evidence motion, “the ultimate issue is whether a fact issue exists”); *accord Buck v. Palmer*, 381 S.W.3d 525, 527, n.2 (Tex. 2012). Therefore, Tidal failed to meet its traditional summary judgment burden, and it was not entitled to traditional summary judgment against the trespass-to-try-title, bad faith trespass, or any of the Radcliffes’ other claims.

EXCLUSION OF LATE-FILED EVIDENCE

In its second issue, the Radcliffes argue the trial court abused its discretion by sustaining Tidal’s objection to admitting Emma’s will as late-filed summary judgment evidence. Because we have already concluded Tidal was not entitled to summary judgment even without Emma’s will, we need not address the Radcliffes’ second issue. *See* TEX. R. APP. P. 47.1.

CONCLUSION

Having reviewed the evidence under the applicable standards of review, we conclude the Radcliffes’ summary judgment evidence was more than a scintilla for each of the challenged elements on their claims against Tidal for trespass-to-try-title, bad faith trespass, and their other claims. We also conclude the evidence favoring the Radcliffes raised fact questions on each of the Radcliffes’ claims. Thus, Tidal was not entitled to summary judgment on either no-evidence or traditional grounds, and the trial court erred by granting summary judgment for Tidal.

We reverse the trial court’s order and remand this cause to the trial court for further proceedings consistent with this opinion.

Patricia O. Alvarez, Justice