



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-17-00081-CV

Robert David **RANGEL**,
Appellant

v.

TEXAS WORKFORCE COMMISSION and Jamco International,
Appellees

From the 341st Judicial District Court, Webb County, Texas
Trial Court No. 2016CVZ002059 D3
Honorable Melissa Joy Garcia, Judge Presiding

Opinion by: Marialyn Barnard, Justice

Sitting: Marialyn Barnard, Justice
Rebeca C. Martinez, Justice
Irene Rios, Justice

Delivered and Filed: October 4, 2017

AFFIRMED

Appellant Robert David Rangel brought suit against appellees the Texas Workforce Commission (“the TWC”) and Jamco International, his former employer, seeking judicial review of the TWC’s administrative decision denying his request for unemployment benefits. The trial court granted summary judgment in favor of the TWC and Jamco International, and Rangel appealed. We affirm the trial court’s summary judgment.

BACKGROUND

A detailed rendition of the facts is unnecessary to our disposition. Accordingly, we include an abbreviated version of the factual and procedural background for context.

Jamco International employed Rangel as a clerk. Rangel complained about scents and odors in the office. Jamco International attempted to accommodate Rangel, but Rangel ultimately resigned his position because he felt the use of common cleaning products and perfumes was detrimental to his health. It is undisputed that prior to his resignation, Rangel failed to provide Jamco International with proof of a diagnosed medical condition resulting from the office scents and odors.

Rangel filed a claim for unemployment benefits with the TWC. The TWC determined Rangel was not entitled to unemployment benefits because he: (1) voluntarily left his position with Jamco International without good cause — no medical doctor had advised Rangel to leave his job; and (2) failed to seek work he was able to perform. *See* TEX. LAB. CODE ANN. § 207.045 (West 2015) (stating individual is disqualified from receiving unemployment benefits if he left last work voluntarily without good cause connected with his work); *id.* § 207.021(a)(3) (West Supp. 2016) (stating individual is eligible for unemployment benefits if he is able to work); *id.* § 207.021(a)(5) (stating individual is eligible for unemployment benefits if he is actively seeking work in accordance with TWC rules). These initial determinations were affirmed after an administrative hearing before the TWC Appeal Tribunal. The TWC adopted the decision of the Appeal Tribunal as its final decision.

Thereafter, Rangel filed suit seeking review of the administrative decision. *See id.* § 212.201 (stating party aggrieved by final decision of TWC may obtain judicial review by bringing action in court of competent jurisdiction for review on or after date on which decision is final, but not later than 14th day after that date). The TWC filed a motion for summary judgment

on its own behalf and on behalf of Jamco International.¹ Rangel filed a response. The summary judgment motion was based on Rangel's resignation without good cause and failure to seek work he was able to perform. *See id.* §§ 207.045, 207.021(a)(3), (4). The trial court granted the motion for summary judgment. Rangel then perfected this appeal.

ANALYSIS

Before we conduct a substantive analysis, we must first determine whether Rangel has presented anything for our review. The TWC asserts Rangel has waived any appellate complaint by failing to brief this matter in accordance with the Texas Rules of Appellate Procedure. We agree.

Rule 38.1(i) of the Texas Rules of Appellate Procedure specifically states that an appellant's brief must contain clear and concise arguments with appropriate citations to authorities *and to the record*. TEX. R. APP. P. 38.1(i) (emphasis added). Rangel's brief contains conclusory statements unsupported by citations to the record. The Texas Supreme Court has specifically held that "[t]he Texas Rules of Appellate Procedure require adequate briefing." *ERI Consulting Eng'rs, Inc. v. Swinnea*, 318 S.W.3d 867, 880 (Tex. 2010); *see also Fredonia State Bank v. Gen. Am. Life Ins. Co.*, 881 S.W.2d 279, 284–85 (Tex. 1994) (holding appellate court has discretion to deem issues waived due to inadequate briefing). Failure to satisfy the briefing requirements of Rule 38.1(i) waives the issue on appeal. *In re Estate of Valdez*, 406 S.W.3d 228, 235 (Tex. App.—San Antonio 2013, pet. denied).

Numerous appellate courts, including this court, have held issues were waived in summary judgment cases where the appellant failed to provide citations to the appellate record in the brief. *See, e.g., Torres v. Garcia*, No. 04–11–00822–CV, 2012 WL 3808593, at *3 (Tex. App.—San

¹ Rangel filed a motion for sanctions alleging the original answer, and affirmative defense included therein, was a frivolous pleading filed only for delay. The trial court denied the motion.

Antonio Aug. 31, 2012, no pet.) (mem. op.); *Gann v. Anheuser—Busch, Inc.*, 394 S.W.3d 83, 87–88 (Tex. App.—El Paso 2012, no pet.); *Meachum v. JP Morgan Chase Bank, N.A.*, No. 05–08–00318–CV, 2011 WL 477885, at *2 (Tex. App.—Dallas Feb. 11, 2011, pet. denied) (mem. op.); *Stephens v. Dolcefino*, 126 S.W.3d 120, 129–30 (Tex. App.—Houston [1st Dist.] 2003), *pet. denied*, 181 S.W.3d 741 (Tex. 2006); *Trebesch v. Morris*, 118 S.W.3d 822, 825 (Tex. App.—Fort Worth 2003, pet. denied). In *Gann v. Anheuser—Busch*, appellant attempted to challenge a summary judgment in a products liability and negligence action. 394 S.W.3d at 85. With regard to the products liability claim, the court noted the appellant’s argument consisted of conclusory allegations unsupported by citations to the record. *Id.* at 88–89. The court held “[t]he failure to provide citations to the record in a brief ... results in the waiver on appeal of the contentions made.” *Id.* at 89. Based on brief waiver, the court overruled the appellant’s point of error. *Id.*

Similarly, in *Torres v. Garcia*, this court was faced with an appeal from a summary judgment in which appellant failed to provide any record citations within his discussion of an issue. 2012 WL 3808593, at *3. We held we were within our authority to hold the issue was waived due to inadequate briefing. *Id.* This court reached this same decision in *Niera v. Frost Nat’l Bank*, No. 04–09–00224–CV, 2010 WL 816191, at *3 (Tex. App.—San Antonio Mar. 10, 2010, pet. denied) (mem. op.), overruling an issue for failure to provide record citations, among other things.

As an appellate court, it is not our duty to perform an independent review of the summary judgment record for evidence supporting an appellant’s position. *Priddy v. Rawson*, 282 S.W.3d 588, 595 (Tex. App.—Houston [14th Dist.] 2009, pet. denied). Rather, the duty rests with the appellant to cite to the record to support his arguments. *See Dunn v. Bank—Tec South*, 134 S.W.3d 315, 327 (Tex. App.—Amarillo 2003, no pet.). Were we to undertake this task, we would be abandoning our role as neutral adjudicators, becoming an advocate for the appellant. *Plummer v. Reeves*, 93 S.W.3d 930, 931 (Tex. App.—Amarillo 2003, pet. denied). As stated by this court in

Blake v. Intco Invs. of Tex., Inc., “[a]s an appellate court, we are not required to search the record for a scintilla of evidence raising a material fact issue without more specific guidance.” 123 S.W.3d 521, 525 (Tex. App.—San Antonio 2003, no pet.) (citing *Hall v. Stephenson*, 919 S.W.2d 454, 467 (Tex. App.—Fort Worth 1996, writ denied)).

CONCLUSION

Given Rangel’s failure to provide a single record citation in this summary judgment case, we hold his issues are waived due to inadequate briefing. Accordingly, we affirm the trial court’s summary judgment.

Marialyn Barnard, Justice