



**Fourth Court of Appeals**  
**San Antonio, Texas**

**MEMORANDUM OPINION**

No. 04-19-00721-CV

Rufina Reyes **YANEZ**,  
Appellant

v.

**AMERICAN GENERAL LIFE INSURANCE COMPANY**,  
Appellee

From the 341st Judicial District Court, Webb County, Texas  
Trial Court No. 2019CVK001146D3  
Honorable Rebecca Ramirez Palomo, Judge Presiding

Opinion by: Sandee Bryan Marion, Chief Justice

Sitting: Sandee Bryan Marion, Chief Justice  
Luz Elena D. Chapa, Justice  
Beth Watkins, Justice

Delivered and Filed: September 9, 2020

**AFFIRMED**

Appellant Rufina Reyes Yanez (“Yanez”) appeals the trial court’s order sustaining appellee’s special exceptions and dismissing Yanez’s petition for bill of review with prejudice, as well as the trial court’s order denying Yanez’s motion for new trial. Because we conclude Yanez’s bill of review is barred by limitations, we affirm the trial court’s judgment.

**Background**

In 2014, Yanez sued appellee American General Life Insurance Company (“American”) asserting claims related to a life insurance policy. On May 13, 2015, the trial court granted

American's motion for summary judgment and signed a final judgment dismissing Yanez's claims with prejudice. Yanez appealed, and this court dismissed the appeal for want of prosecution and for failure to pay the appellate filing fee. *Yanez v. Am. Gen. Life Ins. Co.*, No. 04-15-00548-CV, 2015 WL 6500996, at \*1 (Tex. App.—San Antonio Oct. 28, 2015, no pet.) (mem. op., per curiam).

On June 19, 2019, Yanez filed an original petition for bill of review in the trial court seeking review of the May 13, 2015 judgment. American filed two special exceptions arguing the petition (1) is barred by limitations and (2) fails to show sufficient cause for relief because Yanez actively participated in post-judgment proceedings. The trial court held a hearing on American's special exceptions. At the conclusion of the hearing, the trial court signed an order sustaining the first special exception on limitations grounds and dismissing Yanez's petition with prejudice. Yanez then filed a motion for new trial, which the trial court denied. Yanez appeals.

### **Special Exceptions**

In her first three issues, Yanez argues the trial court erred by concluding Yanez's petition for bill of review was barred by limitations, failing to give Yanez adequate notice of its intent to dismiss the petition, and failing to give Yanez an opportunity to amend the petition.

#### **A. Standard of review**

We review the trial court's ruling on special exceptions for abuse of discretion. *Hefley v. Sentry Ins. Co.*, 131 S.W.3d 63, 65 (Tex. App.—San Antonio 2003, pet. denied). The trial court does not abuse its broad discretion in granting special exceptions unless it acts without reference to any guiding rules or principles. *Id.* (citing *Goode v. Shoukfeh*, 943 S.W.2d 441, 446 (Tex. 1997)).

#### **B. Analysis**

In her first issue, Yanez argues the trial court abused its discretion in granting American's special exception on the basis of limitations. Absent proof of extrinsic fraud, a petition for bill of

review must be filed within four years of the date of the disputed judgment. *Defee v. Defee*, 966 S.W.2d 719, 722 (Tex. App.—San Antonio 1998, no pet.) (citing TEX. CIV. PRAC. & REM. CODE ANN. § 16.051). “Extrinsic fraud is fraud which is collateral to the matter tried, and not something that was actually or potentially at issue in the trial.” *Id.*; see also *King Ranch, Inc. v. Chapman*, 118 S.W.3d 742, 752 (Tex. 2003) (defining extrinsic fraud as fraud that denied a party the opportunity to fully litigate at trial all the rights or defenses that could have been asserted). Here, the disputed judgment was signed May 13, 2015. Because Yanez did not file her petition until June 19, 2019—more than four years after the date the disputed judgment was signed—and does not allege extrinsic fraud,<sup>1</sup> her petition is barred by limitations. *See id.*

In her second and third issues, Yanez argues the trial court abused its discretion in dismissing her petition for bill of review without adequate notice and without affording her an opportunity to amend. Citing authorities reviewing dismissals for want of prosecution, Yanez argues the trial court never gave her notice that her petition might be dismissed if the special exceptions were sustained.

If a pleading fails to state a cause of action, the trial court may dismiss the whole case. *Mowbray v. Avery*, 76 S.W.3d 663, 677 (Tex. App.—Corpus Christi 2002, pet. denied). Generally, the trial court must first afford the plaintiff an opportunity to amend before doing so. *Id.*; *McAlister v. Medina Elec. Co-op., Inc.*, 830 S.W.2d 659, 662 (Tex. App.—San Antonio 1992, writ denied). The general rule does not apply, however, if the defect is not curable. *Mowbray*, 76 S.W.3d at 678; *McAlister*, 830 S.W.2d at 662. Here, Yanez does not argue she had no notice of the special exceptions or the hearing on the special exceptions. Indeed, Yanez admits she responded to the

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<sup>1</sup> Although Yanez alleges American committed fraud in delaying payment on the life insurance policy at the heart of this case, that is intrinsic fraud, or fraud that “relates to the merits of the issues that were presented and presumably were or should have been settled in the former action.” *King Ranch*, 118 S.W.3d at 752.

special exceptions and does not dispute American's assertion that her counsel appeared at the hearing on the special exceptions. Therefore, Yanez had notice her petition might be dismissed if the special exceptions were sustained. Because the limitations issue is not curable, we conclude the trial court did not abuse its discretion in dismissing the case without affording Yanez an opportunity to amend her petition. *See id.*

For these reasons, Yanez's first three issues are overruled.

### **Motion for New Trial**

In her fourth issue, Yanez challenges the trial court's denial of her motion for new trial.

Yanez's entire argument on appeal is as follows:

A motion for new trial affords the Court with an opportunity to correct its reversible error. The Trial Court, with a modicum of review pertaining to (1) dismissal of cases, (2) notice of hearings, (3) special exceptions, (4) limitations, and applicable sections of the Texas Business Code would have readily seen that Appellant had complied with Rule 44.1(a) of the Texas Rules of Appellate Procedure regarding reversible error.

Appellate briefs must contain clear and concise arguments with appropriate citations to authorities and the record. TEX. R. APP. P. 38.1(i). Failure to satisfy these requirements with regard to a particular issue on appeal waives the issue. *Dove v. Graham*, 358 S.W.3d 681, 685 (Tex. App.—San Antonio 2011, pet. denied). Because Yanez has failed to set forth any clear or concise arguments regarding her fourth issue, we hold this issue is waived due to inadequate briefing. *See id.*

### **Conclusion**

Having overruled or waived each of Yanez's four issues on appeal, we affirm the trial court's judgment.<sup>2</sup>

Sandee Bryan Marion, Chief Justice

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<sup>2</sup> In the prayer of her brief, Yanez also requests this court direct the trial court to conduct a hearing regarding an award of attorney's fees. Because we conclude the trial court did not err in dismissing the case, we do not address this request.