



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-20-00548-CV

Bret CALI,
Appellant

v.

SISTERDALE GENERAL HOLDINGS, LLC, Jason Underwood, and Tom Underwood,
Appellees

From the 451st Judicial District Court, Kendall County, Texas
Trial Court No. 18-372
Honorable Kirsten Cohoon, Judge Presiding

Opinion by: Beth Watkins, Justice

Sitting: Luz Elena D. Chapa, Justice
Beth Watkins, Justice
Liza A. Rodriguez, Justice

Delivered and Filed: November 3, 2021

AFFIRMED

Appellant Bret Cali appeals the trial court's grant of summary judgment in favor of his former landlord, appellees Sisterdale General Holdings, LLC, Jason Underwood, and Tom Underwood (collectively, "Sisterdale"). In his opening brief, Cali identifies two issues on appeal. We affirm the trial court's summary judgment.

BACKGROUND

Cali leased property from Sisterdale to run a general store. In a previous lawsuit, Sisterdale sued Cali for breach of the lease contract, claiming he was using the property for purposes

prohibited by the lease. Sisterdale obtained a temporary restraining order and a temporary injunction enjoining Cali's prohibited uses and posted a \$1,000 bond. It then nonsuited its suit. Cali sought to recover on the bond Sisterdale posted for the temporary restraining order. The trial court denied that relief, Cali appealed, and we affirmed concluding he presented no evidence that the issuance of the temporary restraining order caused him damages. *Cali v. Sisterdale Gen. Holdings, LLC*, No. 04-16-00736-CV, 2017 WL 3270365, at *1 (Tex. App.—San Antonio Aug. 2, 2017, no pet.) (mem. op.).

Cali then sued Sisterdale asserting numerous contract- and tort-based causes of action, and again sought to recover on the bond Sisterdale posted in the first lawsuit. The parties filed competing motions for summary judgment. After sustaining several of Sisterdale's evidentiary objections to Cali's summary judgment evidence, the trial court granted Sisterdale's motion for summary judgment and denied Cali's. Cali filed this appeal.

ANALYSIS

Nonsuit

In his first issue presented, Cali asks:

May a Plaintiff seek and obtain a Temporary Restraining Order without notice to the enjoined defendant which effectively provides the plaintiff with the ultimate relief sought in the case; shuts down (and decimates) the enjoined defendant's entire business; and then (after having accomplished the Plaintiff's goals) dismiss the case?

Standard of Review

Nonsuits are governed by the Texas Rules of Civil Procedure. TEX. R. CIV. P. 162. Rule interpretation is a question of law over which the trial court has no discretion, and which we review de novo. *MedFin Manager, LLC v. Stone*, 613 S.W.3d 624, 628 (Tex. App.—San Antonio 2020, no pet.); see also *Zorrilla v. Aypco Constr. II, LLC*, 469 S.W.3d 143, 155 (Tex. 2015) (“The scope

of a procedural rule is a question of law, which we review de novo by applying the same canons of construction applicable to statutes.”).

Applicable Law

At “any time before the plaintiff has introduced all of his evidence other than rebuttal evidence, the plaintiff may dismiss a case, or take a non-suit[.]” TEX. R. CIV. P. 162. “Any dismissal pursuant to this rule shall not prejudice the right of an adverse party to be heard on a pending claim for affirmative relief or excuse the payment of all costs taxed by the clerk. A dismissal under this rule shall have no effect on any motion for sanctions, attorney’s fees or other costs, pending at the time of dismissal, as determined by the court.” *Id.* Thus, a “plaintiff’s right to take a nonsuit is *unqualified and absolute* as long as the defendant has not made a claim for affirmative relief.” *BHP Petroleum Co. v. Millard*, 800 S.W.2d 838, 840 (Tex. 1990). “Parties have an absolute right to nonsuit *their own* claims, but not *someone else’s* claims they are trying to avoid.” *Tex. Mut. Ins. Co. v. Ledbetter*, 251 S.W.3d 31, 37 (Tex. 2008).

Caselaw from the Supreme Court of Texas, this court, and our sister courts provides that the issuance of a temporary injunction does not prevent a plaintiff from taking a nonsuit. *Gen. Land Office of State of Tex. v. OXY U.S.A., Inc.*, 789 S.W.2d 569, 571 (Tex. 1990); *Alvarado v. Hyundai Motor Co.*, 885 S.W.2d 167, 173 n.7 (Tex. App.—San Antonio 1994), *rev’d on other grounds*, 892 S.W.2d 853 (Tex. 1995); *see also Energy Transfer Fuel, L.P. v. Bryan*, 322 S.W.3d 409, 413 (Tex. App.—Tyler 2010, no pet.). When an underlying action is dismissed through a nonsuit, the temporary injunction dissolves automatically. *Gen. Land Office of State of Tex.*, 789 S.W.2d at 571.

Application

As required by Rule 162, Sisterdale filed its notice of nonsuit prior to the time it had introduced all its evidence other than rebuttal evidence and before a judicial pronouncement had

been made on the entire case. At the time, Cali had not made a claim for affirmative relief. Under the plain language of the rule, Sisterdale’s right to nonsuit its claims was therefore absolute and unqualified. The trial court had a ministerial duty to dismiss the suit. *In re Fort Bend Indep. Sch. Dist.*, 589 S.W.3d 301, 311 (Tex. App.—Houston [1st Dist.] 2019, orig. proceeding). The nonsuit nullified the trial court’s grant of temporary relief to Sisterdale, which was dependent upon the vitality of the pleaded causes of action. *Gen. Land Office of State of Tex.*, 789 S.W.2d at 571; *Alvarado*, 885 S.W.2d at 173 n.7. We overrule Cali’s first issue.

Summary Judgment

In the second issue he identifies in the Issues Presented section of his brief, Cali asks whether the trial court erred in granting summary judgment in favor of Sisterdale.

Applicable Law on Brief Waiver

The Texas Rules of Appellate Procedure provide specific requirements for appellate briefs, and appellants bear the burden to present their arguments in compliance with the rules. TEX. R. APP. P. 38.1; *Cruz v. Van Sickle*, 452 S.W.3d 503, 511 (Tex. App.—Dallas 2014, pet. denied). “These rules require appellants to state their complaint concisely; to provide understandable, succinct, and clear argument for why their complaint has merit in fact and in law; and to cite and apply law that is applicable to their complaint along with record references that are appropriate.” *Eco Planet, LLC v. ANT Trading*, No. 05-19-00239-CV, 2020 WL 6707561, at *5 (Tex. App.—Dallas Nov. 16, 2020, pet. denied) (mem. op.) (Osborne, J., concurring) (citing TEX. R. APP. P. 38.1(f), (h), (i)). Failure to provide substantive analysis will result in a waiver of complaints. *Id.*

Application

Sisterdale’s motion set forth numerous grounds on which summary judgment could have been granted. The summary judgment order does not specify which ground or grounds the trial court found persuasive. Therefore, on appeal, Cali is required to challenge every ground to prevail.

See Britton v. Tex. Dep't of Criminal Justice, 95 S.W.3d 676, 681–82 (Tex. App.—Houston [1st Dist.] 2002, no pet.). This, he does not do. *See Canton-Carter v. Baylor Coll. of Med.*, 271 S.W.3d 928, 931 (Tex. App.—Houston [14th Dist.] 2008, no pet.); *see also* TEX. R. APP. P. 38.1(f), (h), (i). He does not argue that the trial court misapplied summary judgment standards; nor does he point to evidence he contends should have precluded summary judgment on any of his causes of action. Instead, he appears to return to his first argument—that Sisterdale's nonsuit of its previous lawsuit frustrated his ability to raise fact issues on his claims in this lawsuit.

We may not perform an independent review of the record and applicable law to craft these allegations into a coherent legal argument. *See Canton-Carter*, 271 S.W.3d at 931–32. To do so would require us to abandon our roles as judges and become advocates for Cali. *See id.* Accordingly, even though we generally disfavor resolving an appeal on inadequate briefing, we hold Cali waived any second issue on appeal. We therefore overrule Cali's second issue.

CONCLUSION

We affirm the trial court's judgment.

Beth Watkins, Justice