In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-17-00030-CV

JULENDA LEWIS, Appellant

V.

TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES, Appellee

On Appeal from the County Court at Law No. 2
Montgomery County, Texas
Trial Cause No. 16-10-12111-CV

MEMORANDUM OPINION

Julenda Lewis (Lewis or Appellant) challenges the trial court's sua sponte dismissal for want of prosecution of her lawsuit against the Texas Department of Family and Protective Services (the Department or Appellee). We affirm the trial court's judgment.

BACKGROUND

On October 18, 2016, Lewis filed an Original Petition alleging that the Department discriminated against Lewis based on her race and gender in violation of Title VII of the Civil Rights Act of 1964 and section 21.001 of the Texas Labor Code. On December 6, 2016, the trial court signed an "Amended Show Cause Order (Court's Motion to Dismiss for Want of Prosecution)" stating that the trial court "takes judicial notice that this case was filed on October 18, 2016[,]" and that "[a]ll parties seeking affirmative relief are ordered to appear before this Court on January 06, 2017, at 9:00 AM to show cause why this case should not be dismissed for want of prosecution." As part of the order, the trial court advised the parties that "[f]ailure to appear and show good cause why this case should not be dismissed for want of prosecution will result in dismissal by the Court and removal from the docket of this Court." On December 12, 2016, a citation was issued by the clerk of the trial court and, on that same day, Lewis filed her Response to Amended Show Cause Order. In her Response, Appellant asserted that (1) she has diligently prosecuted the case and continues to prosecute the case; (2) "plaintiff has offered with opposing counsel to withhold seeking service of citation by constable in return for defendant's agreement to remove the action to federal court[;]" (3) based on the Department's removal of a similar previous action to federal court, she "reasonably believed . . . this action will

similarly be removed without the necessity for service of citation in this court[;]" and (4) "Defendant's recent expressed reason for non-removal is that defendant is uncertain as to which section or division of the Attorney General's office will represent the defendant in this action." Appellant asked the trial court to deny the motion to dismiss for want of prosecution and to retain the case on its docket based on "defendant's failure to remove the pending action to federal court" or to "grant defendant leave to file its removal to federal court."

According to the appellate record, Lewis served the Department with her petition on December 19, 2016. On January 6, 2017, the trial court signed an Order at Dismissal for Want of Prosecution Docket decreeing that "[n]o party seeking affirmative relief to said suit appeared, and the Court, having considered the facts surrounding same, finds that this cause of action should be dismissed for lack of prosecution[.]" The docket sheet entry for January 6, 2017, provides "Case Called / No answer / the Order of Dismissal for Want of Prosecution signed by Judge[.]" Lewis did not file any post-judgment motions with the trial court.

ANALYSIS

In one issue, Lewis argues the trial court erred by dismissing her case for want of prosecution. Rule 165a allows a trial court to dismiss a case sua sponte: (1) when a party seeking affirmative relief fails to appear for a hearing or trial of which it had

notice; or (2) when a case is not disposed of within the time standards promulgated by the Supreme Court. Tex. R. Civ. P. 165a(1), (2); *Villarreal v. San Antonio Truck & Equip.*, 994 S.W.2d 628, 630 (Tex. 1999). "In addition, the common law vests the trial court with the inherent power to dismiss independently of the rules of procedure when a plaintiff fails to prosecute his or her case with due diligence." *Villarreal*, 994 S.W.2d at 630.

As a general rule, we must affirm a trial court's judgment if an appellant does not challenge all independent bases or grounds that fully support that judgment. *See Blackstone Med., Inc. v. Phoenix Surgicals, L.L.C.*, 470 S.W.3d 636, 650 (Tex. App.—Dallas 2015, no pet.); *Britton v. Tex. Dep't of Criminal Justice*, 95 S.W.3d 676, 681 (Tex. App.—Houston [1st Dist.] 2002, no pet.); *Harris v. Gen. Motors Corp.*, 924 S.W.2d 187, 188 (Tex. App.—San Antonio 1996, writ denied). The rule "is based on the premise that an appellate court normally cannot alter an erroneous judgment in favor of an appellant in a civil case who does not challenge that error on appeal." *Britton*, 95 S.W.3d at 681.

Here the trial court's Amended Show Cause Order informed Lewis that "[f]ailure to appear and show good cause why this case should not be dismissed for want of prosecution will result in dismissal by the Court and removal from the docket of this Court." The trial court's dismissal order identified the reason for the dismissal

for want of prosecution as Appellant's failure to appear at the Show Cause hearing of which the appellate record shows Appellant had timely notice. Appellant's brief asserts the same argument as in Appellant's Response to Amended Show Cause Order—that Appellant delayed service of citation based on Appellant's belief that Appellee intended on removing the action to federal court—and does not address Appellant's failure to appear at the dismissal hearing. Because Appellant has failed to challenge an independent ground in support of the trial court's ruling, we overrule Appellant's issue and affirm the trial court's judgment.[1]

AFFIRMED.

LEANNE JOHNSON
Justice

[1] Additionally, we note that the Appellant cites to no legal authority to support her argument that the trial court erred in dismissing her case. By presenting inadequately briefed arguments, she waived such complaint. *See* Tex. R. App. P. 38.1; *Johnson v. Oliver*, 250 S.W.3d 182, 187 (Tex. App.—Dallas 2008, no pet.) (issue inadequately briefed and error waived when party presented no authority to support contention or argument); *Ratsavong v. Menevilay*, 176 S.W.3d 661, 666 (Tex. App.—El Paso 2005, pet. denied) (issues inadequately briefed and error waived when party recited evidence at trial followed by conclusory statements without any supporting case law and only stating the standard of review); *Wheeler v. Methodist Hosp.*, 95 S.W.3d 628, 646 (Tex. App.—Houston [1st Dist.] 2002, no pet.) (issue inadequately briefed and error waived when party did little more than summarily state point of error, without citations to legal authority or substantive analysis).

Submitted on June 15, 2017
Opinion Delivered June 22, 2017

Before McKeithen, C.J., Kreger and Johnson, JJ.