COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-16-00087-CV

STEPHANIE MILLER — APPELLANT

V.

GREAT LAKES MANAGEMENT SERVICE, INC., D/B/A SUBWAY — APPELLEE

FROM THE 48TH DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NO. 048-275125-14

MEMORANDUM OPINION[1]

I. INTRODUCTION

This is a summary-judgment appeal from the trial court's order granting judgment in favor of Appellee Great Lakes Management Service, Inc., d/b/a Subway on Appellant Stephanie Miller's claims for hostile work environment sexual harassment; quid pro quo sexual harassment; and retaliation and seeking

[1]*See* Tex. R. App. P. 47.4.

actual, compensatory, and punitive damages. In four issues, Miller challenges the summary judgment on her quid pro quo sexual harassment claim and on the damages related to that claim, the exclusion of a portion of her summary-judgment evidence based on Great Lakes's objections, and the denial of her combined motion for reconsideration and motion for new trial. Because Miller does not challenge on appeal the summary judgment on her claims for hostile work environment sexual harassment and retaliation, we will affirm the trial court's summary judgment in favor of Great Lakes on those claims. Because we hold that the trial court erred by granting either a no-evidence or a traditional summary judgment in favor of Great Lakes on liability as to Miller's quid pro quo sexual harassment claim and a no-evidence summary judgment on the damages related to that claim, we will reverse and remand on that claim.

II. FACTUAL AND PROCEDURAL BACKGROUND

In October 2013, Miller applied for a job at the Subway restaurant inside the Walmart located at 930 Walnut Creek. Miller interviewed with the store manager, Donnie McGuire. McGuire liked Miller and made a hiring recommendation to the area supervisor, who gave her approval for McGuire to hire Miller.

On Miller's first day, she was working with McGuire and fellow coworker Cathy Pike when the event forming the basis of her claims transpired:

> Well, . . . Cathy and Donnie were talking, and I was prepping the vegetables. And Cathy had asked Donnie if she could step out to go smoke a cigarette. And she had stepped out, and it was just

> me and Donnie. And I had called Donnie to ask him a question about the -- how to change the setting on the machine to cut the vegetables, the -- to change the setting to cut the vegetables correctly. And when I was proceeding to ask him, he was coming towards me. And when he was coming towards me, he said to me, "What? You want to exchange sex for a raise?"
>
> And I told him bluntly, "Hell, no."

The next time that Miller worked a shift with McGuire, he treated her differently. During her deposition, Miller said that McGuire "would catch an attitude" with her whenever she asked for help on the register and that he "talk[ed] to [her] like [she] wasn't his employee." McGuire also posted a note on the bulletin board stating that $20 was missing from the cash register, that Miller and another coworker needed to pay back the money, and that McGuire would fire them if the money was not paid back. Miller denied taking any money, but her boyfriend paid the money.

In the weeks following Miller's rejection of McGuire's alleged sexual proposal, her hours, which were set by McGuire, decreased from almost twenty-seven hours the first week to eight hours the second week and to three hours the third week.[2] During the third week of her employment, Miller was terminated.

[2]In its brief, Great Lakes calculates Miller's total hours per week based on a Sunday-through-Saturday work week. McGuire testified, and the summary-judgment evidence reflects, that Subway's work week was Wednesday through Tuesday. We therefore utilize Subway's Wednesday-through-Tuesday work week when calculating the total number of hours Miller worked each week. *See Stanfield v. Neubaum*, 494 S.W.3d 90, 96 (Tex. 2016) (requiring reviewing court to take "all evidence favorable to the nonmovant as true").

Following her termination, Miller filed a claim for unemployment benefits, which was denied. Miller also filed a "Charge of Discrimination" form with the Equal Employment Opportunity Commission (EEOC), alleging the following:

> My manager, in a quid pro quo form of sexual harassment, asked me for sex in exchange for a raise. I told him that I wasn't interested in that exchange. When I told him I wasn't interested in having sex with him, he lied and falsely suggested that I and another co-worker took $20 (shortage in the drawer). More importantly, he took me off the schedule. My days working were reduced from 5 to 3 to 2 to 1 to 0. He fired me. The company's actions violate both Title VII of the Civil Rights Act of 1964, as amended, and the Texas Labor Code.

Miller ultimately filed suit against Great Lakes and McGuire under the Texas Commission on Human Rights Act (TCHRA) alleging claims for quid pro quo sexual harassment, hostile work environment sexual harassment, and retaliation. Miller pleaded that as a result of Great Lakes's violations of the TCHRA, she had suffered "mental trauma, actual damages in the form of lost wages and benefits (past and future), and other losses" and requested that the trial court award her actual damages, compensatory damages, punitive damages, and attorney's fees.

Great Lakes filed a combined no-evidence and traditional motion for summary judgment on all of Miller's claims and also filed objections to multiple pieces of Miller's summary-judgment evidence. Miller filed a response to Great Lakes's motion for summary judgment.

The trial court granted all of Great Lakes's objections to Miller's summary-judgment evidence and also granted Great Lakes's combined no-evidence and

traditional motion for summary judgment without specifying the grounds on which the judgment was based.[3] This appeal followed.

III. MILLER DID NOT SHOW THAT THE EXCLUDED PORTIONS OF HER SUMMARY-JUDGMENT EVIDENCE PROBABLY RESULTED IN AN IMPROPER JUDGMENT

In her third issue, Miller argues that the trial court erred when it sustained Great Lakes's objections to portions of her summary-judgment evidence.[4] We address this issue first because Miller relies on her summary-judgment evidence as support for her other arguments, and we may not consider properly-struck portions of the record as such evidence is not part of the summary-judgment record. *See McCollum v. Bank of N.Y. Mellon Trust Co.*, 481 S.W.3d 352, 362 (Tex. App.—El Paso 2015, no pet.).

We review a trial court's decision to exclude summary-judgment evidence for an abuse of discretion. *Pipkin v. Kroger Tex., L.P.*, 383 S.W.3d 655, 667

[3]After the trial court ruled on Great Lakes's motion for summary judgment, Miller nonsuited her claims against McGuire, thus converting the partial summary judgment into a final, appealable judgment. *See Hyundai Motor Co. v. Alvarado*, 974 S.W.2d 1, 3 (Tex. 1998).

[4]During oral argument, Great Lakes relied on three cases from our sister courts in contending that Miller was required to object to the trial court's ruling sustaining Great Lakes's objections to portions of her summary-judgment evidence in order to preserve for appeal her complaint regarding the exclusion of that evidence. *See Cantu v. Horany*, 195 S.W.3d 867, 871 (Tex. App.—Dallas 2006, no pet.); *Cmty. Initiatives, Inc. v. Chase Bank of Tex.*, 153 S.W.3d 270, 281 (Tex. App.—El Paso 2004, no pet.); *Brooks v. Sherry Lane Nat'l Bank*, 788 S.W.2d 874, 878 (Tex. App.—Dallas 1990, no writ). We do not believe a party is required to object to the sustaining of an objection in order to complain of the sustaining of the objection on appeal; to the extent these decisions by our sister courts hold otherwise, we decline to follow them.

(Tex. App.—Houston [14th Dist.] 2012, pet. denied); *In re Estate of Denman*, 362 S.W.3d 134, 140 (Tex. App.—San Antonio 2011, no pet.). Even if a trial court errs by excluding summary-judgment evidence, to obtain a reversal based on the exclusion, the appellant must demonstrate that the exclusion probably resulted in an improper judgment. *Chandler v. CSC Applied Techs., LLC*, 376 S.W.3d 802, 824 (Tex. App.—Houston [1st Dist.] 2012, pet. denied) (citing Tex. R. App. P. 44.1(a)(1); *Interstate Northborough P'ship v. State*, 66 S.W.3d 213, 220 (Tex. 2001)). A successful challenge to the trial court's evidentiary rulings generally requires the complaining party to demonstrate that the judgment turns on the particular evidence excluded. *Id.* Ordinarily, we will not reverse a judgment due to the erroneous exclusion of evidence when the evidence in question is cumulative and is not controlling on a material issue dispositive to the case. *Id.*

Here, Miller generally argues that the trial court abused its discretion when it sustained all eighteen of Great Lakes's objections to portions of her summary-judgment evidence. She then specifically challenges nine of Great Lakes's objections. Although Miller argues on appeal that Great Lakes's objections were not meritorious, she does not demonstrate how the allegedly erroneous exclusion of portions of her summary-judgment evidence probably resulted in an improper judgment.[5] *See id.* at 824–25. She also failed to demonstrate that the summary

[5]The one sentence in Miller's brief—stating that she "will focus on the sustained objections that likely cause[d] a rendition of an improper judgment"—does not explain how the trial court's rulings probably caused the rendition of an improper judgment. *See Sierra Assoc. Grp., Inc. v. Hardeman*, No. 03-08-00324-

judgment turns on the particular evidence that was excluded. *See id.* Moreover, our review of the excluded evidence reveals that it is cumulative and is not controlling on a dispositive material issue. *See id.*

Because Miller has not demonstrated that the exclusion of portions of her summary-judgment evidence probably resulted in an improper judgment or that the summary judgment turns on the particular evidence excluded, we conclude that any error by the trial court in sustaining Great Lakes's objections was harmless. *See id.* We overrule Miller's third issue.

IV. THE TRIAL COURT ERRED BY GRANTING SUMMARY JUDGMENT ON MILLER'S QUID PRO QUO SEXUAL HARASSMENT CLAIM

In her first issue, Miller argues that the trial court erred when it granted Great Lakes's combined motion for no-evidence and traditional summary judgment on her quid pro quo sexual harassment claim. Miller argues that she suffered a tangible employment action when her employment was terminated. In her second issue, Miller argues that the trial court erred by granting Great Lakes's motion for no-evidence summary judgment on her claim for damages resulting from her quid pro quo sexual harassment claim.[6]

CV, 2009 WL 416465, at *10, n.11 (Tex. App.—Austin Feb. 20, 2009, no pet.) (mem. op.) (stating that single statement—that "[t]he erroneous rulings on summary judgment objections led to the incorrect result and judgment"—was not enough to explain how the trial court's rulings probably caused the rendition of an improper judgment).

[6]Great Lakes did not move for traditional summary judgment on Miller's claim for damages.

A. Summary Judgment Standards of Review

When a party moves for summary judgment under both rules 166a(c) and 166a(i), we will first review the trial court's judgment under the standards of rule 166a(i). *Ford Motor Co. v. Ridgway*, 135 S.W.3d 598, 600 (Tex. 2004). If the nonmovant meets her burden under rule 166a(i), then we analyze whether the movant satisfied her rule 166a(c) burden. *Cf. id.*

1. No-Evidence Summary Judgment Review

After an adequate time for discovery, the party without the burden of proof may, without presenting evidence, move for summary judgment on the ground that there is no evidence to support an essential element of the nonmovant's claim or defense. Tex. R. Civ. P. 166a(i). The motion must specifically state the elements for which there is no evidence. *Id.*; *Timpte Indus., Inc. v. Gish*, 286 S.W.3d 306, 310 (Tex. 2009). The trial court must grant the motion unless the nonmovant produces summary-judgment evidence that raises a genuine issue of material fact. *See* Tex. R. Civ. P. 166a(i) & cmt.; *Hamilton v. Wilson*, 249 S.W.3d 425, 426 (Tex. 2008).

When reviewing a no-evidence summary judgment, we examine the entire record in the light most favorable to the nonmovant, indulging in every reasonable inference and resolving any doubts against the motion. *Sudan v. Sudan*, 199 S.W.3d 291, 292 (Tex. 2006). If the nonmovant brings forward more than a scintilla of probative evidence that raises a genuine issue of material fact on the element challenged by the no-evidence motion, then a no-evidence

summary judgment is not proper. *Smith v. O'Donnell*, 288 S.W.3d 417, 424 (Tex. 2009).

2. Traditional Summary Judgment Review

In a traditional summary judgment case, the issue on appeal is whether the movant met the summary judgment burden by establishing that no genuine issue of material fact exists and that the movant is entitled to judgment as a matter of law. Tex. R. Civ. P. 166a(c); *Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding*, 289 S.W.3d 844, 848 (Tex. 2009). We review a summary judgment de novo. *Travelers Ins. Co. v. Joachim*, 315 S.W.3d 860, 862 (Tex. 2010).

We take as true all evidence favorable to the nonmovant, and we indulge every reasonable inference and resolve any doubts in the nonmovant's favor. *20801, Inc. v. Parker*, 249 S.W.3d 392, 399 (Tex. 2008); *Provident Life & Accident Ins. Co. v. Knott*, 128 S.W.3d 211, 215 (Tex. 2003). We consider the evidence presented in the light most favorable to the nonmovant, crediting evidence favorable to the nonmovant if reasonable jurors could and disregarding evidence contrary to the nonmovant unless reasonable jurors could not. *Mann Frankfort*, 289 S.W.3d at 848. We must consider whether reasonable and fair-minded jurors could differ in their conclusions in light of all of the evidence presented. *See Wal-Mart Stores, Inc. v. Spates*, 186 S.W.3d 566, 568 (Tex. 2006); *City of Keller v. Wilson*, 168 S.W.3d 802, 822–24 (Tex. 2005). The summary judgment will be affirmed only if the record establishes that the movant has conclusively proved all essential elements of the movant's cause of action or

defense as a matter of law. *City of Houston v. Clear Creek Basin Auth.*, 589 S.W.2d 671, 678 (Tex. 1979).

B. The Relationship Between the TCHRA and Title VII of the Civil Rights Act of 1964 as Amended[7]

Under the TCHRA "[a]n employer commits an unlawful employment practice if because of . . . sex . . . the employer: . . . discharges an individual, or discriminates in any other manner against an individual in connection with compensation or the terms, conditions, or privileges of employment." *See* Tex. Lab. Code Ann. § 21.051(1) (West 2015). The legislature intended that the TCHRA "correlat[e] . . . state law with federal law in the area of discrimination in employment" and "coordinate and conform with federal law under Title VII." *Caballero v. Cent. Power & Light Co.*, 858 S.W.2d 359, 361 (Tex. 1993); *Schroeder v. Tex. Iron Works, Inc.*, 813 S.W.2d 483, 485 (Tex. 1991), *overruled on other grounds by In re United Servs. Auto. Ass'n*, 307 S.W.3d 299 (Tex. 2010) (orig. proceeding). Thus, we may look to federal case law under Title VII when construing its Texas counterpart. *Twigland Fashions, Ltd. v. Miller*, 335 S.W.3d 206, 217 (Tex. App.—Austin 2010, no pet.).

C. The Elements of a Quid Pro Quo Sexual Harassment Claim

Under Title VII and the TCHRA, an employer may be held vicariously liable for quid pro quo sexual harassment by its supervisor. *See Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 753, 118 S. Ct. 2257, 2264 (1998); *Wal–Mart Stores,*

[7] *See* 42 U.S.C.A. §§ 2000e–2000e-17 (West 2003).

Inc. v. Itz, 21 S.W.3d 456, 470 (Tex. App.—Austin 2000, pet. denied). To succeed on a Title VII quid pro quo claim against an employer, a plaintiff must show (1) that she suffered a tangible employment action and (2) that the tangible employment action resulted from the acceptance or rejection of a supervisor's sexual advances. *Higgins v. Lufkin Indus., Inc.*, 633 F. App'x 229, 232 (5th Cir. 2015). A "tangible employment action" is a "significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits." *Id.* (quoting *Ellerth*, 524 U.S. at 761–62, 765, 118 S. Ct. at 2268–70).

D. Great Lakes's No-Evidence Motion for Summary Judgment[8]

Great Lakes's no-evidence motion for summary judgment on Miller's quid pro quo sexual harassment claim is set forth in its entirety as follows:

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[8]Great Lakes's brief on appeal tracks the arguments in its reply to Miller's summary-judgment response. In its reply, Great Lakes asserted new grounds for summary judgment on Miller's quid pro quo sexual harassment claim. But grounds for summary judgment must be asserted in a summary-judgment motion; because new grounds for summary judgment asserted by a movant in a reply to a summary-judgment response are not properly considered on appeal, we will not address arguments raised by either party on appeal that pertain to summary-judgment grounds not raised in Great Lakes's motion for summary judgment. *See Seber v. Union Pac. R.R. Co.*, 350 S.W.3d 640, 650 n.6 (Tex. App.—Houston [14th Dist.] 2011, no pet.) (stating that because argument was raised for the first time in defendant's reply to plaintiffs' summary-judgment response, appellate court would not consider that argument on appeal); *Sanchez v. Mulvaney*, 274 S.W.3d 708, 711 (Tex. App.—San Antonio 2008, no pet.) ("[A] movant may not use a reply brief to meet the specificity requirement [of rule 166a] or to assert new grounds for summary judgment."); *see also* Tex. R. App. P. 47.1.

> 19. Plaintiff cannot establish at least three of the necessary elements of her *hostile work environment claim*. Plaintiff has no evidence that (1) she suffered actionable sexual harassment, (2) [] the alleged harassment resulted in a tangible employment action[,] or ([3]) Great Lakes knew or should have known about the harassment yet failed to address it. As such, Great Lakes is entitled to judgment as a matter of law on Plaintiff's *quid pro quo sexual harassment claim*. [Emphasis added.]

As reflected in the preceding paragraph, Great Lakes challenges only the liability elements of a hostile work environment claim, not of a quid pro quo sexual harassment claim.

Because Great Lakes's no-evidence motion for summary judgment failed to identify any liability element of Miller's quid pro quo sexual harassment claim on which Great Lakes contended no evidence existed, Great Lakes's no-evidence motion for summary judgment on Miller's quid pro quo sexual harassment claim is insufficient as a matter of law to support summary judgment for Great Lakes on this claim. *See, e.g.*, *Neurodiagnostic Tex, L.L.C. v. Pierce*, 506 S.W.3d 153, 175, 177 (Tex. App.—Tyler 2016, no pet.) (explaining that "[i]f a no[-]evidence motion for summary judgment is not specific in challenging a particular element or is conclusory, the motion is legally insufficient as a matter of law" and holding no-evidence motion insufficient as a matter of law); *Jose Fuentes Co. v. Alfaro*, 418 S.W.3d 280, 283–88 (Tex. App.—Dallas 2013, pet. denied) (holding no-evidence motion for summary judgment, which listed elements of claim and asserted motion challenged "one or more" of the listed elements without identifying which element, was insufficient as a matter of law).

We sustain the portion of Miller's first issue challenging the granting of a no-evidence summary judgment for Great Lakes on liability for her quid pro quo sexual harassment claim.

Great Lakes's motion for summary judgment asserts in a separate, later paragraph that it is entitled to summary judgment "[o]n Plaintiff's claim for quid pro quo because Plaintiff has no evidence that she suffered any damage as a result of her rebuff of Mr. McGuire's alleged harassment." Assuming that this general, no-evidence complaint is not insufficient as a matter of law, we note Miller pleaded that "[a]s a result of Defendant's violations of the TCHRA, Plaintiff has suffered mental trauma, actual damages in the form of lost wages and benefits (past and future), and other losses" and requested that "she be awarded all compensatory and punitive damages, to which she is entitled, as outlined in the TCHRA, as well as all equitable relief, and attorney fees and costs." In support of these pleaded damages, Miller attached to her summary-judgment response summary-judgment evidence in the form of records from Great Lakes and Subway showing that her hours were reduced after the date of the harassment and that she was ultimately terminated from her position; pay records in her possession reflecting her earnings, including documents indicating some of her earnings from her subsequent employers; and the Texas Workforce Commission file on her claim, which contains the wages reported by her

subsequent employers.[9] Viewing the summary-judgment evidence in the light most favorable to Miller, she produced some summary-judgment evidence sufficient to raise a genuine issue of material fact on the issue of damages in her alleged quid pro quo sexual harassment claim. *See, e.g.*, *Mathis v. Restoration Builders, Inc.*, 231 S.W.3d 47, 50 (Tex. App.—Houston [14th Dist.] 2007, no pet.) (recognizing a no-evidence summary judgment is improperly granted if the nonmovant brings forth more than a scintilla of probative evidence to raise a genuine issue of material fact on the challenged element). Accordingly, we sustain Miller's second issue.

E. Great Lakes's Traditional Motion for Summary Judgment

In its traditional motion for summary judgment on Miller's quid pro quo sexual harassment claim, Great Lakes challenges the same hostile work environment sexual harassment elements as those in its no-evidence motion, including that (1) Miller did not suffer actionable sexual harassment because the alleged harassment was not severe or pervasive, (2) the alleged harassment did not result in a tangible employment action because a reduction in hours does not qualify as a tangible employment action, and (3) Miller cannot prove that Great Lakes knew or should have known about the alleged harassment yet failed to address it. To the extent that Great Lakes's efforts to conclusively negate the

[9]Although Great Lakes objected to some of Miller's summary-judgment evidence, no objections were lodged to this documentary evidence prior to the trial court's order granting summary judgment.

second element of Miller's hostile work environment sexual harassment claim could also constitute an attempt to conclusively negate the first element of her quid pro quo sexual harassment claim—whether Miller suffered a tangible employment action[10]—we review the summary-judgment evidence concerning this element in the light most favorable to Miller as the nonmovant. In attempting to conclusively negate that Miller suffered a tangible employment action, Great Lakes argues that the reduction in Miller's hours does not qualify as a tangible employment action.

Miller submitted summary-judgment evidence demonstrating that within two weeks of rejecting McGuire's sexual proposal, her employment was terminated.[11] As set forth above, firing or termination undoubtedly constitutes a

[10]We held Great Lakes's no-evidence motion insufficient as a matter of law because it failed to meet rule 166a(i)'s requirement of specifically identifying the element on which Great Lakes claimed no-evidence existed. Great Lakes's traditional motion for summary judgment attempts to conclusively negate whether Miller suffered a tangible employment action. Because whether a person suffered a tangible employment action is an element of both her hostile work environment and quid pro quo sexual harassment claims, we examine the summary-judgment evidence concerning this element.

[11]Great Lakes bases its traditional summary-judgment motion on the ground that Miller "claims that the only action taken against her as a result of her refusing Mr. McGuire's alleged advance was that her daily work hours were reduced." To support this contention, Great Lakes relies solely on Miller's deposition. But Miller presented other summary-judgment evidence to support the statement in her first amended petition that "she was subjected to . . . quid pro quo sexual harassment" and that "[t]hese actions . . . *ultimately led to the termination of Plaintiff*," including the claim she filed with the EEOC and paperwork signed by McGuire stating that he terminated her. [Emphasis added.] Moreover, Great Lakes does not dispute the fact that Miller was terminated.

"tangible employment action" as that term has been defined by the Supreme Court. *See Ellerth*, 524 U.S. at 761, 118 S. Ct. at 2268; *Giddens v. Cmty. Educ. Ctrs., Inc.*, 540 F. App'x 381, 387 (5th Cir. 2013) ("Giddens's termination constituted a tangible employment action."); *McCombs v. Festival Fun Parks, L.L.C.*, No. H-08-1093, 2009 WL 972976, at *3 (S.D. Tex. Apr. 9, 2009) (mem. & order) ("It is undisputed that Plaintiff suffered a tangible employment action when her employment was terminated on May 28, 2007."); *Davis v. Maha Trading, Inc.*, No. 3:05-CV-0832-M, 2006 WL 2239222, at *3 (N.D. Tex. Aug. 3, 2006) (mem. op. & order) ("Davis's termination clearly constitutes a tangible employment action"). Consequently, we need not determine whether a reduction in Miller's scheduled hours also constitutes "a decision causing a significant change in benefits" and thus qualifies as a tangible employment action. *See Ellerth*, 524 U.S. at 761–62, 765, 118 S. Ct. at 2268–70.

Viewing the evidence in the light most favorable to Miller as the nonmovant, we conclude that she produced competent controverting summary-judgment evidence that raised a fact issue on whether she suffered a tangible employment action. *See id.*, 118 S. Ct. at 2268; *Giddens*, 540 F. App'x at 387; *McCombs*, 2009 WL 972976, at *3; *Davis*, 2006 WL 2239222, at *3. Accordingly, we hold that Great Lakes did not meet its rule 166a(c) burden of conclusively negating this element of Miller's quid pro quo sexual harassment claim. We hold that the trial court erred by granting Great Lakes's traditional motion for summary

judgment on Miller's quid pro quo sexual harassment claim, and we sustain the remainder of Miller's first issue.

V. MILLER'S COMBINED MOTION FOR RECONSIDERATION AND MOTION FOR NEW TRIAL REITERATES ARGUMENTS ADDRESSED ABOVE

Following the trial court's ruling on Great Lakes's summary-judgment motion, Miller filed a combined motion for reconsideration and motion for new trial, arguing, among other things, that Great Lakes had misrepresented the law on quid pro quo sexual harassment and that the trial court had erred by sustaining Great Lakes's objections to portions of Miller's summary-judgment evidence. Great Lakes filed a response in which it countered the arguments in Miller's combined motion and for the first time asserted an objection to the payroll register that Miller had previously submitted with her summary-judgment response. The trial court sustained Great Lakes's objection, struck the payroll register from the summary-judgment record, and denied Miller's combined motion for reconsideration and motion for new trial.

In her fourth issue, Miller argues that the trial court abused its discretion when it denied her combined motion to reconsider and motion for new trial "for the reasons stated more fully above (and are the same reasons the trial court erred in granting the no-evidence and traditional motions for summary judgment)." Miller also argues that the trial court abused its discretion by excluding the payroll register attached to her summary-judgment response because the trial court "had no basis to exclude this evidence." Because we

have sustained Miller's first issue challenging the summary judgment on her quid pro quo sexual harassment claim and because Miller's fourth issue does not entitle her to additional relief, we decline to address the portion of Miller's fourth issue seeking reversal of the order denying her combined motion for reconsideration and motion for new trial as to the summary judgment on her quid pro quo sexual harassment claim. *See* Tex. R. App. P. 47.1.

With regard to the portion of Miller's fourth issue challenging the trial court's ruling sustaining Great Lakes's objection to the payroll register, the trial court's ruling striking the payroll register from the summary-judgment record *after* summary judgment had been granted has no effect on our holding above that Miller's pay records raised a genuine issue of material fact on damages on Miller's quid pro quo sexual harassment claim because Great Lakes's objection to Miller's pay records did not alter the summary-judgment record. *See Hall v. Huff*, 957 S.W.2d 90, 99 (Tex. App.—Texarkana 1997, pet. denied) (holding that trial court's order striking expert one day after granting summary judgment had no effect on summary judgment order, which was based on an examination of the pleadings and summary-judgment evidence that included the expert's testimony). Instead, as noted in the trial court's summary-judgment order, the trial court considered the summary-judgment evidence, which included Miller's pay records, when it made its ruling. Miller has therefore not demonstrated how the trial court's decision to sustain Great Lakes's objection to the payroll register after-the-fact probably resulted in an improper judgment. *See Chandler*, 376

S.W.3d at 824–25. Accordingly, we overrule the remainder of Miller's fourth issue.

VI. CONCLUSION

Having sustained Miller's first and second issues, we reverse the trial court's judgment on Miller's quid pro quo sexual harassment claim and on any damages related to that claim and remand for further proceedings consistent with this opinion. *See* Tex. R. App. P. 43.2(d). Having overruled Miller's third and fourth issues, we affirm the remainder of the trial court's summary judgment in favor of Great Lakes.

/s/ Sue Walker
SUE WALKER
JUSTICE

PANEL: LIVINGSTON, C.J.; WALKER, J.; and CHARLES BLEIL (Senior Justice, Retired, Sitting by Assignment).

DELIVERED: March 16, 2017