



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

NO. 02-16-00232-CV

MICHAEL D. WILSON

APPELLANT

V.

WESTDALE ASSET
MANAGEMENT, LP

APPELLEE

FROM THE 141ST DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NO. 141-283108-16

MEMORANDUM OPINION¹

I. INTRODUCTION

This is an appeal from a suit for retaliation by a landlord. See Tex. Prop. Code Ann. § 92.331 (West 2014). Appellant Michael D. Wilson, who appeared pro se in the trial court and is proceeding pro se on appeal, appeals from a

¹See Tex. R. App. P. 47.4.

directed verdict and take-nothing judgment issued in favor of Appellee Westdale Asset Management, LP. We will affirm.

II. BACKGROUND

After Wilson was evicted from three different apartment complexes, he sued Westdale, alleging causes of action for personal injury, damages to personal property, and retaliation and seeking damages of \$75,000,000.² *See id.*

During the jury trial, Wilson testified about the circumstances surrounding his evictions. Wilson lived at an unnamed apartment complex in Irving from November 2004 to June 2011. During that time, Wilson alerted “a national agency” to suspicious activity at the apartments and allegedly thwarted a terrorist attack. After Wilson made that report, he was evicted from his apartment.

Wilson was homeless for seven months before moving to The Bluffs at Paradise Creek Apartments in Euless. The basis of Wilson’s retaliation claim involving his eviction from The Bluffs is vague. He claimed that The Bluffs overcharged him \$269 for a garage, but he later admitted that the money was returned to him. Wilson testified that the day after he received the \$269 refund, he received a notice of non-renewal of his lease. When Wilson failed to vacate his apartment, The Bluffs sent him a notice to vacate and demand for possession; the notice states that it is based on “TAA Lease Contract dated 04/01/13 between residents named above and The Bluffs at Paradise Creek

²Wilson attempted to sue two of the apartment complexes in the current lawsuit, but he served his petition only on Westdale.

(owner).” When Wilson continued to hold over, The Bluffs removed Wilson’s personal property from his apartment and placed it in the parking lot while it was raining. Wilson testified that he retrieved his personal property; he did not, however, present any evidence showing monetary damages to his personal property or Westdale’s involvement in removing and allegedly damaging his personal property.

Wilson then moved back to Irving and lived in an apartment at the Woodland Hills Apartments, which Wilson said were managed by Numacorp.³ Wilson testified that after he complained about his refrigerator not working, Numacorp evicted him and removed all of his belongings. Wilson believed that Numacorp and Westdale were affiliated, but he admitted that an interrogatory response had stated that there was no affiliation between the two entities. Wilson presented no documentation to support his belief that the two entities were affiliated or that his property was removed from this apartment by Westdale.

During Wilson’s case in chief, the trial court questioned Wilson about his non-retaliation claims. Wilson said that his personal injury claim was based on “contributory negligence and personal injury for this property damage and mental anguish, mental distress, the fact that [he had] been homeless, . . . [and] the

³During the trial, Wilson and the trial court referred to the management company as Numacorp, Luminus, and Lumicorp. Based on our reading of the record, it appears that Wilson and the trial court were referring to the same entity.

personal injury for burdening [him,]" but he presented no evidence to support these claims.⁴

After Wilson rested his case, Westdale moved for a directed verdict, arguing that "[t]here has been no liability established in damages" to support Wilson's claims for personal injury and damage to personal property, that Wilson's retaliation claims related to his eviction from the first apartment in Irving were barred by the statute of limitations, and that Wilson had not offered any evidence to establish retaliation related to his eviction from The Bluffs.

The trial court stated on the record that the retaliation claims related to Wilson's eviction from the first apartment in Irving, which had accrued more than five years prior to the date suit was filed, were barred by the statute of limitations. The trial court also stated that Wilson had not offered any testimony on the monetary damages he was seeking. Wilson then asked whether he could offer his receipts in closing argument, and the trial court denied Wilson's request and granted Westdale's motion for a directed verdict. The trial court signed a final judgment, ordering that Wilson "take nothing by way of all of his causes of action" against Westdale.

⁴To the extent that Wilson has attempted to present evidence of damages by attaching documents to his corrected brief and to other motions he has filed in this court, we cannot consider documents that were not admitted into evidence in the trial court. See *Barnard v. Barnard*, 133 S.W.3d 782, 789 (Tex. App.—Fort Worth 2004, pet. denied) ("As a general rule, documents not admitted into evidence are not considered by an appellate court.").

III. WILSON’S ISSUES ON APPEAL

In his amended brief, Wilson fails to set forth a list of issues presented. See Tex. R. App. P. 38.1(f) (requiring appellant’s brief to “state concisely all issues or points presented for review”). We broadly construe his summary of the argument as raising two issues: (1) the trial court abused its discretion by granting a directed verdict, and (2) the trial court abused its discretion by failing to permit Wilson to reopen the case. We will address each of these issues below.

A. Directed Verdict Was Proper

Wilson argues in his first issue that the trial court abused its discretion by granting a directed verdict on all of his claims. Wilson argues that his claims for personal injury and property damages “su[r]faced subsequent to an act of retaliation against him by the Defendants who were at the time . . . operating in the capacity of his landlord” and that he “has evidence to support his claim . . . of . . . retaliation [that] has continued over a period of years and that such acts of [retaliation were] committed against [Wilson] to intentionally cause him harm.”

A trial court may direct a verdict when a plaintiff fails to present evidence raising a fact issue essential to its right of recovery or when the evidence conclusively proves a fact that establishes the movant’s right to judgment as a matter of law. *Prudential Ins. Co. of Am. v. Fin. Review Servs., Inc.*, 29 S.W.3d 74, 77 (Tex. 2000). We must affirm the directed verdict if the record establishes any ground that entitles the movant to judgment as a matter of law, even if it was

not raised in the motion. *Elloway v. Pate*, 238 S.W.3d 882, 889 (Tex. App.—Houston [14th Dist.] 2007, no pet.).

Here, Wilson filed suit against Westdale under Texas Property Code section 92.331, which prohibits a landlord from retaliating against a tenant. See Tex. Prop. Code Ann. § 92.331. “Landlord” is defined as “the owner, lessor, or sublessor of a dwelling, but does not include a manager or agent of the landlord unless the manager or agent purports to be the owner, lessor, or sublessor in an oral or written lease.” *Id.* § 92.001(2) (West 2014). Wilson, however, presented no evidence that Westdale was “the owner, lessor, or sublessor” of The Bluffs or of Woodland Hills.⁵ The documentary evidence that Wilson did present—the notice to vacate his apartment at The Bluffs—conclusively established that The Bluffs was the owner of that apartment complex. Moreover, Wilson’s testimony—that he believed Westdale was affiliated with Numacorp—constitutes no evidence that Westdale was the landlord of Woodland Hills. Wilson also failed to present any evidence showing that Westdale was responsible for his alleged personal injuries and alleged personal property damage.

Because Wilson failed to present evidence establishing that Westdale was a landlord for purposes of his retaliation claims and because Wilson failed to

⁵Because the trial court held that Wilson’s retaliation claims against the first apartment complex in Irving were barred by the statute of limitations and because Wilson does not specifically challenge that ruling on appeal, we need not address Wilson’s retaliation claims that arose out of his eviction from the first apartment complex in Irving. See Tex. R. App. P. 47.1.

present evidence showing that Westdale was the party responsible for his alleged personal injury and personal property damages, we hold that the trial court did not abuse its discretion by granting Westdale's motion for a directed verdict on all of Wilson's claims. See *id.*; *Elloway*, 238 S.W.3d at 889, 896 (upholding directed verdict). Accordingly, we overrule Wilson's first issue.

B. No Abuse of Discretion by Refusing to Reopen Case

Wilson argues in his second issue that the trial court abused its discretion by refusing to reopen the case so that he could present "new and additional evidence supportive of his claim."⁶ Wilson makes no mention in his brief of what this "new and additional evidence" consists of and fails to specify which of his three claims the "new and additional evidence" supports. Absent a clear abuse of discretion, a reviewing court should not disturb a trial court's refusal to reopen a case for the purpose of admitting additional evidence. See *Naguib v. Naguib*, 137 S.W.3d 367, 372 (Tex. App.—Dallas 2004, pet. denied); *Lopez v. Lopez*, 55 S.W.3d 194, 201 (Tex. App.—Corpus Christi 2001, no pet.). Because we have held above that Wilson failed to present any evidence that Westdale was a landlord and that Westdale was responsible for his alleged personal injury and personal property damages, and because Wilson's attempt to reopen the record during the trial after he had rested his case did not encompass a request to present evidence to support these elements of his claims, we hold that the trial

⁶We note that during the trial, the majority of the items that Wilson attempted to admit into evidence consisted of inadmissible hearsay.

court did not abuse its discretion by refusing to reopen the case. See *Naguib*, 137 S.W.3d at 373 (holding that trial court did not abuse its discretion by denying appellant’s request to reopen the evidence because appellant did not show that evidence was unavailable to her at the time of trial and that evidence was decisive); *Lopez*, 55 S.W.3d at 201–02 (same). Accordingly, we overrule Wilson’s second issue.⁷

IV. CONCLUSION

Having overruled the two issues we broadly construed from the summary of the argument in Wilson’s brief, we affirm the trial court’s judgment.⁸

⁷To the extent Wilson attempted to raise other issues in his brief, we overrule them as inadequately briefed. See *Magana v. Citibank, N.A.*, 454 S.W.3d 667, 680–81 (Tex. App.—Houston [14th Dist.] 2014, pet. denied) (deeming issue waived due to inadequate briefing); see also *Fredonia State Bank v. Gen. Am. Life Ins. Co.*, 881 S.W.2d 279, 284–85 (Tex. 1994) (recognizing long-standing rule that error may be waived due to inadequate briefing).

⁸After this case was set for submission, Wilson filed numerous documents. With regard to “Appellant’s Objection [to] No Availability Of Counsel For Appellee,” “Appellant[’]s Motion To Set Aside Judgment And Remand,” “Interested Part[y]’s Motion To Set Aside Judgment,” and “Appellant[’]s Request For Reasonable Accommodations,” all relief requested in those documents is denied as moot.

Wilson also filed two documents entitled “Notice Of Appeal Of Interlocutory Orders,” which appear to be duplicates and which we construe as seeking reconsideration of three prior orders from this court that he attached to his notice: our order dated January 26, 2017, denying Wilson’s motion for extension of time to correct his brief; our order dated February 28, 2017, denying Wilson’s motion requesting additional time to argue and his motions seeking reconsideration of our prior order denying oral argument; and our order dated January 25, 2017, denying Wilson’s request to supplement the clerk’s record. We deny as moot Wilson’s request that we reconsider our prior orders.

PER CURIAM

PANEL: WALKER, GABRIEL, and PITTMAN, JJ.

DELIVERED: April 13, 2017

Moreover, despite that Wilson’s docketing statement specifically indicated that this appeal did not involve the constitutionality of a statute, Wilson filed documents entitled “Challenge to Constitutionality of a State Statute” and “Question Challenging The Constitutionality Of A State Statute,” in which he argues that Texas Property Code chapter 92 “and other laws” prohibit the appointment of court-appointed counsel in civil actions. We provided notice of Wilson’s claim to the Texas Attorney General pursuant to Texas Government Code section 402.010(a). See Tex. Gov’t Code Ann. § 402.010 (West Supp. 2016). Because Wilson could have but failed to raise this argument in his initial brief, it is not properly before us. See *generally Stovall & Assocs., P.C. v. Hibbs Fin. Ctr., Ltd.*, 409 S.W.3d 790, 802–03 (Tex. App.—Dallas 2013, no pet.) (stating that appellant “could have but did not make such an argument in its opening brief does not allow it to do so for the first time in its reply brief” and thus issue was waived and was not properly before appellate court). Moreover, pursuant to Wilson’s request for pro bono counsel in his docketing statement, this case was referred to the pro bono counsel program, which ultimately denied Wilson’s request to represent him on appeal.