COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-16-00272-CV

MURIEL ANN MATNEY — APPELLANT

V.

HARBOR GARDENS CONDOMINIUMS (PHASE II) ASSOCIATION OF OWNERS — APPELLEE

FROM COUNTY COURT AT LAW NO. 2 OF WISE COUNTY
TRIAL COURT NO. CV-6553

MEMORANDUM OPINION[1]

In this dispute over governance of a condominium owners' association, common-area maintenance, and the calculation of monthly assessments, owner Muriel Ann Matney appeals a summary judgment and attorney's-fees award for

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

Harbor Gardens Condominiums (Phase II) Association of Owners. Because Matney did not brief all possible grounds on which the summary judgment could have been granted and because we overrule her complaint about the attorney's-fees award, we affirm the trial court's judgment.

Factual and Procedural Background

In 1970, Lake Bridgeport Building Corporation, a developer, executed a Declaration of Condominium Regime and recorded it in the Wise County property records. The Declaration established a condominium complex, Harbor Gardens Condominium (Phase II), in Runaway Bay. The complex comprises thirty units in four buildings—Buildings A, B, C, and D—and surrounding common areas. The units in Building A have almost three times as much square footage as the units in the other buildings. Matney owns one of the larger Building A units.

Beginning in 2010, Matney and Harbor Gardens's council of owners started disagreeing about the necessity of repairs to some of the buildings and adjacent common areas and about how any repair costs should be assessed among the unit owners. In April 2011, voters at a special meeting replaced the entire council and elected Matney the new president. Matney's council authorized and began the repairs that Matney had proposed. But at a special meeting in November 2011, all those council members were themselves replaced. The new council halted the repairs authorized by Matney's council and changed the method by which unit owners' monthly assessments were calculated in order to

conform to the method set forth in the recorded Declaration.[2] That method calculates each unit owner's monthly assessment based on that owner's proportionate share of the total square footage of all units in the complex. Matney protested this change, arguing that each unit owner should be responsible for only one-thirtieth of the common expenses, regardless of unit size.

In November 2016, Matney sued Harbor Gardens alleging multiple causes of action and seeking various types of relief. Her primary complaints are that council members have engaged in malfeasance and violated state law; that the method of calculating the monthly assessments violates state law and the Declaration; and that as a Building A unit owner, she is entitled to a refund for amounts Harbor Gardens paid for repairs attributable only to Buildings B, C, and D. Matney also claimed that the council wrongfully refused to seek attorney's fees in a 2011 suit brought by Ken Kilpatrick, the owner of two Building B units and a current member of the owners' council, and violated both state law and the bylaws attached to the Declaration by failing to conduct an annual audit for five years. Matney further asked the trial court to declare the Declaration provision setting forth the method of calculating monthly assessments invalid. In support of her arguments about the monthly-assessments calculation, Matney claimed that after the developer filed the Declaration with the Wise County Clerk, sometime

[2]Matney told the trial court that she had always paid about double the monthly assessment that the Building B, C, and D owners paid and that even though she had always thought that amount was incorrect, she paid it anyway.

later it illegally altered the document by cutting and pasting into it the current provision requiring the monthly assessments to be calculated based on a unit owner's pro rata share of the complex's total square footage.

Harbor Gardens moved for a traditional summary judgment primarily on limitations grounds. But Harbor Gardens also argued that neither the Declaration, Harbor Gardens's bylaws, nor the Texas Condominium Act authorizes Matney to bring any of her claims. In the last few pages of her response to Harbor Gardens's motion, Matney sought a partial summary judgment on her own request for relief that she had included in her initial petition's prayer: that the trial court remove Kilpatrick from the council of owners and bar him from future service.

Without stating its reasons or expressly ruling on Matney's partial-summary-judgment motion, the trial court granted summary judgment in favor of Harbor Gardens, dismissed Matney's claims with prejudice, and awarded Harbor Gardens $10,000 in attorney's fees. Matney has appealed.

Complaints Raised in Matney's Brief

Matney raises a single issue containing three complaints: (1) the trial court erred by granting Harbor Gardens's motion for summary judgment; (2) the trial court erred by denying her cross motion for partial summary judgment; and (3) the attorney's-fees award to Harbor Gardens should be reversed.

Matney has not challenged all possible summary-judgment grounds.

Although Matney brings a general issue challenging the summary judgment for Harbor Gardens and includes argument in her brief responsive to Harbor Gardens's limitations grounds as to each claim in her amended petition, under even the most liberal construction of her brief she does not challenge Harbor Gardens's summary-judgment ground that neither the Declaration, Harbor Gardens's bylaws, nor the Texas Condominium Act authorizes her to bring any of her claims. *See* Tex. R. App. P. 38.1(f), 38.9.

An appellant may challenge a summary judgment by making either a general assignment of error covering all possible summary-judgment grounds (a "*Malooly* issue") or specific assignments of error for each individual ground. *See Malooly Bros. v. Napier*, 461 S.W.2d 119, 121 (Tex. 1970). But an appellant who assigns error generally must still support the challenge with argument and citations to legal authority. *Fuhrmann v. C & J Gray Invs. Partners*, No. 05-15-01387-CV, 2016 WL 7217252, at *7 (Tex. App.—Dallas Dec. 13, 2016, pet. denied) (mem. op.); *Rollins v. Denton Cty.*, No. 02-14-00312-CV, 2015 WL 7817357, at *2 (Tex. App.—Fort Worth Dec. 3, 2015, no pet.) (mem. op.); *Cruikshank v. Consumer Direct Mortg., Inc.*, 138 S.W.3d 497, 502 (Tex. App.—Houston [14th Dist.] 2004, pet. denied). "When an argument is not made challenging every ground on which the summary judgment could be based, we are required to affirm the summary judgment, regardless of the merits of the unchallenged ground." *Rollins*, 2015 WL 7817357, at *2.

Because Matney failed to offer any argument or legal authority in her appellate brief on Harbor Gardens's summary-judgment ground that she was not authorized to bring any of her claims, we must affirm the trial court's summary judgment without regard to the merits. *See, e.g.*, *id.* Likewise, because Harbor Gardens raised this unargued ground concerning all of Matney's claims—including her request that the trial court remove Kilpatrick from the council of owners and bar him from future service—we must also affirm the denial of her cross motion for partial summary judgment. *Cf. Jones v. Strauss*, 745 S.W.2d 898, 900 (Tex. 1988) (explaining that when an appellate court determines that a trial court granted a summary judgment in error, the appellate court need not remand the case for further consideration if it can render judgment on a cross motion for summary judgment). We therefore overrule Matney's summary-judgment related complaints.

The attorney's-fees complaint was inadequately briefed or fails on the merits anyway.

Matney's remaining complaint is that the attorney's-fees award should be reversed because it is "in keeping with [the trial judge's] decision to grant summary judgment." She includes no argument or citations to authority but simply asks us to review all trial-court pleadings relating to Harbor Gardens's attorney's-fees request. Harbor Gardens understandably asserts that Matney has waived this complaint. *See* Tex. R. App. P. 38.1(i). We agree.

Pro se litigants are not exempt from the rules of procedure, *Wheeler v. Green*, 157 S.W.3d 439, 444 (Tex. 2005), and "must comply with the applicable procedural rules, or else they would be given an unfair advantage over litigants represented by counsel," *Mansfield State Bank v. Cohn*, 573 S.W.2d 181, 184–85 (Tex. 1978). Even so, the Texas Supreme Court has made clear that Texas courts should be slow to dismiss claims based on waiver or failure to preserve an issue. *First United Pentecostal Church of Beaumont v. Parker*, 514 S.W.3d 214, 221–22 (Tex. 2017); *Nath v. Tex. Children's Hosp.*, 446 S.W.3d 355, 365 (Tex. 2014). We must therefore "construe briefing 'reasonably, yet liberally, so that the right to appellate review is not lost by waiver.'" *First United Pentecostal Church*, 514 S.W.3d at 222 (quoting *Perry v. Cohen*, 272 S.W.3d 585, 587 (Tex. 2008)). "Simply stated, appellate courts should reach the merits of an appeal whenever reasonably possible." *Perry*, 272 S.W.3d at 587.

Liberally construing Matney's brief, we discern two possible arguments: we should reverse the attorney's-fees award (1) for the reasons contained in Matney's trial-court pleadings opposing attorney's fees or (2) because Harbor Gardens was not entitled to summary judgment and thus was not entitled to attorney's fees. Matney's first theoretical argument is inadequate to require us to address the issue on appeal. *See, e.g.*, Tex. R. App. P. 38.1(f), (i); *Earthkeepers, LLC v. Haag*, No. 03-13-00135-CV, 2014 WL 1432663, at *4 n.4 (Tex. App.—Austin Apr. 11, 2014, pet. denied) (mem. op.) (declining to "independently review" appellant's pleadings on misrepresentation and failure to disclose claims

to determine whether summary judgment was proper); *Galilee Partners, L.P. v. Tex. Comm'n on Envtl. Quality*, No. 11-12-00033-CV, 2014 WL 358287, at *5 (Tex. App.—Eastland Jan. 31, 2014, no pet.) (mem. op.) (holding that appellant failed to adequately brief argument on over 100 objections when appellant merely directed court to those objections in the trial court record). Even if we were to review the discernible arguments in Matney's responses to Harbor Gardens's attorney's-fees pleadings in the interest of justice, none of them would prevail. The trial court was authorized to award fees under section 82.161(b) of the property code. Tex. Prop. Code Ann. § 82.161(b) (West 2014). Additionally, the evidence presented by Harbor Gardens supports the trial court's finding of reasonableness. *See Arthur Andersen & Co. v. Perry Equip. Corp.*, 945 S.W.2d 812, 818 (Tex. 1997). Matney's second possible argument fails because we have determined that we must affirm the summary judgment for Harbor Gardens.

We therefore overrule Matney's attorney's-fees complaint.

Conclusion

Having overruled all the complaints in Matney's sole issue, we affirm the trial's court judgment.

/s/ Elizabeth Kerr
ELIZABETH KERR
JUSTICE

PANEL: SUDDERTH, C.J.; WALKER and KERR, JJ.

DELIVERED: November 16, 2017