In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth

No. 02-19-00398-CV

SABRINA TAYLOR, Appellant

V.

TRISTAR RISK MANAGEMENT, Appellee

On Appeal from the 352nd District Court
Tarrant County, Texas
Trial Court No. 352-307308-19

Before Gabriel, Bassel, and Womack, JJ.
Memorandum Opinion by Justice Gabriel

MEMORANDUM OPINION

Appellant Sabrina Taylor was injured on the job in two separate accidents. After disputes arose between herself and her employer—the Dallas Independent School District—a hearing officer with the Texas Department of Insurance issued a ruling mostly in DISD's favor. Taylor eventually filed suit in the trial court against DISD's third-party insurance administrator—appellee Tristar Risk Management—seeking a judicial review of the administrative determination. The trial court granted Tristar's summary-judgment motion, and Taylor now argues that the summary judgment deprived her of the statutory and due-process right to judicial review and was based on inapplicable "rules." Because we conclude that the summary-judgment rule applies to the judicial-review petition and because Tristar conclusively established an affirmative defense to Taylor's claim, we affirm the trial court's summary-judgment order.

I. BACKGROUND

Taylor was employed by DISD, which provides workers'-compensation insurance as a self-insurer. *See* Tex. Lab. Code Ann. § 504.011(1). She hit her head on November 24, 2014, by walking into a glass door, and on December 3, 2014, by running into a cabinet shelf.[1] Taylor filed claims for workers'-compensation benefits from DISD. *See id.* §§ 408.021, 408.121, 409.003.

[1]Taylor had previously injured her head on November 14, 2014, by falling out of a chair while at work. The May 2017 contested case hearing regarding this injury

The hearing officer heard the claims for the November 24 and December 3 injuries as companion cases. Although the parties stipulated that Taylor had sustained compensable injuries, they disagreed about whether she had reached maximum medical improvement. *See id.* § 410.166. After a hearing held over multiple days in 2017 and 2018, the hearing officer issued a decision in which he determined that Taylor had reached maximum medical improvement on March 6, 2015, with a 0% impairment rating, and ordered DISD to pay Taylor the appropriate benefits. *See id.* § 410.168. The hearing officer specifically provided in his decision that the "true corporate name of the Self-Insured is **DALLAS INDEPENDENT SCHOOL DISTRICT**" and that DISD could be served through its superintendent. DISD, as the insurance carrier, similarly notified Taylor of its true corporate name and its registered agent for service of process. *See id.* § 410.164(c).

Taylor sought review before the appeals panel. *See id.* § 410.202. The panel did not issue a decision; thus, the hearing officer's administrative decision became final and was considered to be the final decision of the appeals panel. *See id.* § 410.204(c); 28 Tex. Admin. Code § 143.5(b) (Tex. Dep't of Ins., Decision of the Appeals Panel). On April 13, 2018, the appeals panel notified Taylor of the determination and that any

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resulted in a determination that the injury "extend[ed] to include post-traumatic headaches, . . . [but did] not extend to include disc bulges at C4-5 or C5-6, cervical radiculopathy, cognitive communication deficit disorder, major depressive disorder, or migraines." The outcome of this hearing is not at issue in this appeal.

lawsuit seeking judicial review was due no later than 45 days after April 18, 2018. *See id.* § 410.252(a).

Taylor filed a petition for judicial review in a Dallas County district court on June 3, 2018, which was within the 45-day filing period. *See* Tex. R. Civ. P. 4; 28 Tex. Admin. Code § 102.3(a)(3) (Tex. Dep't of Ins., Computation of Time). Taylor named Tristar as the sole defendant. The trial court clerk issued a citation to Tristar on November 26, 2018; Tristar received the citation by certified mail on November 29, 2018. Tristar filed an answer and pleaded, as affirmative defenses, the statute of limitations and that it was an improper party defendant. Tristar also moved to transfer venue to Tarrant County where Taylor lived, which the trial court granted. *See* Tex. Lab. Code Ann. § 410.252(b)(1).

Tristar moved for a traditional summary judgment, arguing that because Taylor failed to use due diligence and ensure Tristar had been served within the 45-day limitations period, her claims were time-barred. *See* Tex. R. Civ. P. 166a(c). Tristar also argued that because it was DISD's third-party administrator and not the insurance carrier, it was not a proper defendant to Taylor's suit seeking judicial review of the administrative determination of her workers'-compensation claims. Although Taylor responded to the motion, she asserted only her statutory right to judicial review. The trial court granted Tristar's motion, without specifying the grounds upon which it was based, and dismissed Taylor's suit with prejudice.

II. PROPRIETY OF SUMMARY JUDGMENT

Now on appeal, Taylor contends that the trial court abused its discretion by dismissing her claim "based on rules that do not govern this type of case" and by conducting the summary-judgment hearing with Taylor by telephone instead of in person. She also generally argues that the trial court's summary judgment impermissibly "bypass[ed]" her right to judicial review. We liberally construe Taylor's pro se brief and assume that she is challenging each ground upon which the trial court could have granted summary judgment in Tristar's favor. *See Rohrmoos Venture v. UTSW DVA Healthcare, LLP*, 578 S.W.3d 469, 480 (Tex. 2019).

We review a summary judgment de novo. *Travelers Ins. Co. v. Joachim*, 315 S.W.3d 860, 862 (Tex. 2010). We consider the evidence presented in the light most favorable to Taylor, indulging every reasonable inference and resolving any doubts in her favor. *See 20801, Inc. v. Parker*, 249 S.W.3d 392, 399 (Tex. 2008). Tristar was entitled to summary judgment on an affirmative defense if it conclusively proved, through summary-judgment evidence, all elements of that defense. *Frost Nat'l Bank v. Fernandez*, 315 S.W.3d 494, 508–09 (Tex. 2010); *Chau v. Riddle*, 254 S.W.3d 453, 455 (Tex. 2008) (per curiam) (op. on reh'g). And because the trial court's order did not specify the grounds upon which summary judgment was granted, "we must affirm the trial court's judgment if any of the theories advanced are meritorious." *W. Invs., Inc. v. Urena*, 162 S.W.3d 547, 550 (Tex. 2005).

Tristar's assertion that it was an improper party is an affirmative defense; thus, we must determine whether Tristar conclusively established it.[2] *See Edlund v. Bounds*, 842 S.W.2d 719, 725 (Tex. App.—Dallas 1992, writ denied). The Texas Labor Code provides that an "insurance carrier" is liable for compensation for an employee's injury. Tex. Lab. Code Ann. § 406.031(a). The statutory definition of an insurance carrier does not include a third-party insurance administrator but it does include "a certified self-insurer for workers' compensation insurance." *Id.* § 401.011(27)(B); *see also* 28 Tex. Admin. Code § 41.30 (Tex. Dep't of Ins., Self-insureds). Here, the undisputed summary-judgment evidence established that DISD was self-insured for purposes of the Texas Workers' Compensation Act and that Taylor had been notified that DISD was the insurance carrier. Accordingly, Tristar was "not the proper defendant" to Taylor's suit for judicial review of the administrative determination of her claim for workers'-compensation benefits. *Flour Bluff ISD v. Bass*, 133 S.W.3d 272, 273 (Tex. 2004) (per curiam). This legal theory, therefore, supports the trial court's summary judgment.

[2]A parties defect, while an affirmative defense, is also subject to the rule requiring that the issue be raised in a verified pleading. *See* Tex. R. Civ. P. 93(4). Here, Tristar did not assert the parties defect in a verified pleading. But because the truth of the defect was apparent in the record and was before the trial court at the time summary judgment was rendered, the lack of a verified pleading does not waive the defense. *See* Tex. R. Civ. P. 93; *Cantu v. Holiday Inns, Inc.*, 910 S.W.2d 113, 116–17 (Tex. App.—Corpus Christi–Edinburg 1995, writ denied).

Taylor argues that the law applied by the trial court—presumably Rule 166a(c)—does not govern her judicial-review petition. She contends that such review instead is governed by Chapter 410, Subchapter G of the Texas Labor Code. *See* Tex. Lab. Code Ann. § 410.301. However, the Texas Rules of Civil Procedure apply to the extent they do not conflict with Subchapter G. *Id.* § 410.305(a); *Adkins v. Ector Cty. ISD*, 969 S.W.2d 142, 144–45 (Tex. App.—El Paso 1998), *pet. denied & disapproved on other grounds*, 989 S.W.2d 363 (Tex. 1999) (per curiam). Here, we find no conflict between the right to judicial review under Subchapter G and the application of the summary-judgment rule to that review.

Taylor finally argues that her attendance at the summary-judgment hearing by telephone violated her statutory right to judicial review and the right to a jury trial. But Taylor was not entitled to an oral hearing on Tristar's motion; she was only entitled to timely notice that a hearing would occur, which she received. *See Martin v. Martin, Martin & Richards, Inc.*, 989 S.W.2d 357, 359 (Tex. 1998) (per curiam). This procedural complaint does not affect the propriety of the trial court's summary judgment.

III. CONCLUSION

Although judicial review of a workers'-compensation, administrative determination is authorized by the Texas Labor Code, the summary-judgment rules apply to that review. Because Tristar conclusively established that it was an improper party defendant, the trial court did not err by granting summary judgment on this

pleaded affirmative defense, which was apparent from the face of the record. Accordingly, we overrule Taylor's issues and affirm the trial court's summary-judgment order.

/s/ Lee Gabriel

Lee Gabriel
Justice

Delivered: May 7, 2020