

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-15-00617-CV

Diane V. Wade, Appellant

v.

David's Landscaping; and David's Landscaping, Inc., Appellees

**FROM THE DISTRICT COURT OF TRAVIS COUNTY, 419TH JUDICIAL DISTRICT
NO. D-1-GN-13-004070, HONORABLE AMY CLARK MEACHUM, JUDGE PRESIDING**

MEMORANDUM OPINION

Diane V. Wade appeals from a no-evidence summary judgment granted to David's Landscaping and David's Landscaping, Inc., (collectively, David's Landscaping). Wade filed a negligence claim against David's Landscaping to recover damages for injuries she sustained when she tripped over debris she alleges it left on the sidewalk outside her rental home. We will affirm the district court's summary judgment.

In her sole issue, Wade maintains that the affidavit she submitted in response to David's Landscaping's motion for no-evidence summary judgment raises genuine issues of material fact regarding the elements of her negligence claim. But the district court sustained David's Landscaping's objection to Wade's affidavit in its order granting summary judgment, and Wade has not challenged the merits of that ruling. Consequently, we may not consider the affidavit

in reviewing the summary judgment.¹ Because Wade offered no other evidence to support her negligence claim, summary judgment was proper.²

The summary judgment is affirmed.

Jeff Rose, Chief Justice

Before Chief Justice Rose, Justices Pemberton and Bourland

Affirmed

Filed: August 19, 2016

¹ See *Little v. Needham*, 236 S.W.3d 328, 331 (Tex. App.—Houston [1st Dist.] 2007, no pet.) (refusing to consider evidence excluded by trial court where appellant had not challenged merits of trial court’s ruling excluding such evidence (citing *English v. Prudential Ins. Co. of Am.*, 928 S.W.2d 702, 706 (Tex. App.—Houston [1st Dist.] 1996, writ denied)).

² See Tex. R. Civ. P. 166a(i).