



**NUMBER 13-16-00041-CV**

**COURT OF APPEALS**

**THIRTEENTH DISTRICT OF TEXAS**

**CORPUS CHRISTI - EDINBURG**

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**GARRY SPILLER,**

**Appellant,**

**v.**

**TEXAS A&M UNIVERSITY SYSTEM AND TEXAS  
A&M ENGINEERING EXTENSION SERVICE,**

**Appellees.**

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**On appeal from the 85th District Court  
of Brazos County, Texas.**

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**MEMORANDUM OPINION**

**Before Justices Rodriguez, Benavides, and Perkes  
Memorandum Opinion by Justice Benavides**

By two issues, appellant Garry Spiller appeals an adverse summary judgment rendered against him and in favor of Texas A&M University System ("TAMUS") and Texas A&M Engineering Extension Service ("TAMEES") (collectively "A&M" unless otherwise noted) related to an automobile collision that took place in Galveston County. Spiller

asserts that the trial court (1) reversibly erred by failing to grant his motion for new trial; and (2) violated his constitutional due process rights by allowing his original trial counsel to withdraw. Because we agree that the trial court reversibly erred in denying Spiller's motion for new trial, we reverse and remand.

### I. BACKGROUND<sup>1</sup>

The factual and procedural background of this underlying lawsuit are relatively straight-forward. On March 10, 2014, Spiller sued TAMUS and Karlsen Bruner, in his capacity as an employee of TAMUS, for personal injuries, after Bruner allegedly crashed his 2008 Chevrolet 2500 pickup into Spiller's 1987 Oldsmobile Cutlass at an intersection in Galveston. After answering the lawsuit, TAMUS filed a motion to transfer venue asserting that Brazos County is the appropriate and mandatory venue for Spiller's lawsuit. See TEX. EDUC. CODE ANN. § 85.18 (West, Westlaw through 2015 R.S.). On June 13, 2014, pursuant to an agreed order, Spiller's cause of action was transferred to Brazos County.

Spiller subsequently amended his petition to include TAMEES and alleged that Bruner was an employee of TAMUS and TAMEES. TAMEES answered and contemporaneously moved for summary judgment to dismiss Bruner from the lawsuit under section 101.106 of the civil practice and remedies code's election of remedies provision. See TEX. CIV. PRAC. & REM. CODE ANN. § 101.106(e)–(f) (West, Westlaw through 2015 R.S.). On March 4, 2015, Spiller's counsel, Ayesha Rafi, filed an

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<sup>1</sup> This case is before the Court on transfer from the Tenth Court of Appeals in Waco pursuant to an order issued by the Supreme Court of Texas. See TEX. GOV'T CODE ANN. § 73.001 (West, Westlaw through 2015 R.S.).

appearance of counsel, and on the same day, filed a motion to dismiss Bruner from the lawsuit. The next day, the trial court ordered Bruner dismissed without prejudice.

On July 16, 2015, TAMEES filed a notice of intent to take Spiller's oral deposition on August 11, 2015. This notice was filed in the trial court and also served on Spiller's counsel the same day. On August, 7, 2015, Rafi filed a motion to withdraw as Spiller's counsel. The one-and-a-half page motion to withdraw states, in relevant part, that: (1) "Good cause exists for withdrawal of Movants as counsel."; (2) "There are no upcoming settings and deadlines in this case."; (3) a copy of the motion had been delivered to Spiller's last known address of 1305 56th Street, Galveston, Texas 77551; and (4) Spiller was notified through this motion that he had a right to object to the requested withdrawal. On August 14, 2015, the trial court permitted Spiller's counsel to withdraw and ordered all notices sent to Spiller at the 56th Street address in Galveston.

Twenty-five days after the trial court granted Spiller's counsel's motion to withdraw, A&M filed a no-evidence motion for summary judgment, alleging that "there is no evidence" that: (1) A&M was negligent in entrusting its vehicle to Bruner; (2) Bruner negligently operated a motor vehicle; and (3) A&M was negligent in hiring, training, or supervising Bruner. Furthermore, A&M requested that the trial court rule on the no-evidence motion without an oral hearing. A copy of this notice was sent via U.S. certified mail to Spiller at 2919 Avenue R Rear, Galveston, Texas 77550. On September 18, 2015, the trial court sent notice to A&M and Spiller that A&M's no-evidence motion for summary judgment would be submitted on October 14, 2015. On October 15, 2015, the trial court received Spiller's pro se reply to A&M's no-evidence motion for summary judgment asserting that there are "facts [and] cause" to deny A&M's motion.

Additionally, Spiller attached a copy of the police report and photograph of the accident. Later that same day, the trial court granted A&M's no-evidence motion.

Spiller subsequently obtained new counsel and filed a motion for new trial along with exhibits including an affidavit from Spiller, which asserted that he was entitled to a new trial because: (1) Spiller's original trial counsel failed to comply with the rule governing withdrawal of counsel, and the trial court improperly granted such motion to withdraw, see TEX. R. CIV. P. 10; and (2) Spiller believed that he was still represented by counsel at the time that he received A&M's no-evidence motion for summary judgment and filed his response. A&M responded to Spiller's motion for new trial by alleging that Spiller consciously acted pro se after receiving A&M's no-evidence motion for summary judgment and should be held to the same standard as licensed attorneys. On December 29, 2015, Spiller filed an amended motion for new trial, which was denied by operation of law. This appeal followed.

## **II. RULE 10 WITHDRAWAL**

By his first issue, Spiller asserts that the trial court reversibly erred by denying Spiller's motion for new trial because his original trial counsel failed to comply with Rule 10 in withdrawing from this case, and the trial court abused its discretion by allowing his counsel to withdraw.

### **A. Standard of Review and Applicable Law**

We review a trial court's refusal to grant a motion for new trial for abuse of discretion. See *Dolgencorp of Tex., Inc. v. Lerma*, 288 S.W.3d 922, 926 (Tex. 2009). Under an abuse of discretion standard, we may reverse the trial court's ruling only if the trial court acted without reference to any guiding rules and principles, such that its ruling

was arbitrary or unreasonable. *Low v. Henry*, 221 S.W.3d 609, 614 (Tex. 2007).

Texas Rule of Civil Procedure 10 governs withdrawals of attorneys, and states in pertinent part that:

An attorney may withdraw from representing a party only upon written motion for good cause shown. . . . If another attorney is not to be substituted as attorney for the party, the motion shall state: that a copy of the motion has been delivered to the party; that the party has been notified in writing of his right to object to the motion; whether the party consents to the motion; the party's last known address and all pending settings and deadlines. If the motion is granted, the withdrawing attorney shall immediately notify the party in writing of any additional settings or deadlines of which the attorney has knowledge at the time of the withdrawal and has not already notified the party. The Court may impose further conditions upon granting leave to withdraw. Notice or delivery to a party shall be either made to the party in person or mailed to the party's last known address by both certified and regular first class mail.

TEX. R. CIV. P. 10. Although a client may discharge his attorney at any time even without cause, an attorney may withdraw from representation of a client only if he satisfies the requirements of Rule 10. See *Rogers v. Clinton*, 794 S.W.2d 9, 10 n.1 (Tex. 1990) (orig. proceeding). A trial court abuses its discretion when it grants a motion to withdraw that fails to comply with the mandatory requirements of Rule 10. See *Gillie v. Boulas*, 65 S.W.3d 219, 221 (Tex. App.—Dallas 2001, pet. denied) (citing *Williams v. Bank One, Tex., N.A.*, 15 S.W.3d 110, 114 (Tex. App.—Waco 1999, no pet.); *Moss v. Malone*, 880 S.W.2d 45, 51 (Tex. App.—Tyler 1994, writ denied). However, such error may be harmless if the court allows the party time to secure new counsel and time for the new counsel to investigate the case and prepare for trial. *Gillie*, 65 S.W.3d at 221.

## **B. Discussion**

The motion to withdraw in this case is deficient under Rule 10 because the motion lacks the requisite demonstration of “good cause.” With regard to “good cause,” the

motion in this case simply states that “good cause exists for withdrawal . . . .” Although the rule does not define “good cause,” courts view the Texas Disciplinary Rules of Professional Conduct as guidelines articulating considerations relevant to a “good cause” determination supporting a Rule 10 motion to withdraw. See *Thompson v. Thompson*, 387 S.W.3d 769, 770–71 (Tex. App.—El Paso 2012, no pet.) (finding that a withdrawing attorney demonstrated good cause by alleging that the attorney believed “there had been a break down in the attorney-client relationship which could not be reconciled due to a disagreement on the method of prosecution of the case”); see also *In re Posadas USA, Inc.*, 100 S.W.3d 254, 257 (Tex. App.—San Antonio 2001, no pet.) (orig. proceeding) (“The moving party [to a withdrawal] bears the burden to establish with specificity a violation of the disciplinary rules. . . . Evidence showing a remote possibility of a violation of the rules will not suffice under this standard. . . .”). Spiller’s withdrawing counsel failed to meet its burden by failing to show, explain, or demonstrate any good cause absent the single-line representation that “good cause” existed for the withdrawal. See, e.g., TEX. DISCIPLINARY R. PROF’L CONDUCT 1.15(a)–(b) (outlining non-exhaustive reasons why a lawyer shall withdraw). Accordingly, we hold that the trial court abused its discretion in granting Spiller’s original trial counsel’s motion to withdraw because this motion fails to satisfy Rule 10.

Having concluded that the trial court abused its discretion, we will now evaluate such error for harm. See *Gillie*, 65 S.W.3d at 221. In his motion for new trial, Spiller states in his affidavit that the 1305 56th Street, Galveston, Texas address listed on the motion for withdrawal is an incorrect address and that he “[has] not lived at that address for over two years.” A&M apparently was aware of this fact because it served its no-

evidence motion for summary judgment to Spiller at his 2919 Avenue R Rear address on September 8, 2015 and not to his 1305 56th Street address. Furthermore, according to the record, A&M's motion was submitted to the trial court on October 14, 2015, which required Spiller to file a response to A&M's motion by October 7, 2015. See TEX. R. CIV. P. 166a(c) ("Except on leave of court, the adverse party, not later than seven days prior to the day of hearing may file and serve opposing affidavits or other written response). Therefore, assuming that Spiller received A&M's no-evidence motion for summary judgment on September 8, 2015 (the date that it was mailed to him, according to A&M's certificate of service), Spiller had twenty-nine days to, for the first time, understand and appreciate that he was no longer represented by counsel, secure new counsel, investigate the facts of his case, conduct discovery, and file a response to A&M's no-evidence summary judgment. Attorneys are obligated under the disciplinary rules of professional conduct to ensure, to the extent reasonable following a withdrawal of representation, that their client's interests are protected. See TEX. DISCIPLINARY R. PROF'L CONDUCT 1.15(d). For Spiller, however, his interests were not protected and resulted in harm from this withdrawal. Therefore, we hold that Spiller had an inadequate amount of time to remedy a defective motion to withdraw. See *Villegas v. Carter*, 711 S.W.2d 624, 626 (Tex. 1986) (holding that two days to secure new counsel was inadequate); *Moss*, 880 S.W.2d at 51 (holding that sixteen days to secure new counsel was inadequate); *but see Gillie*, 65 S.W.3d at 222 (holding that four months was adequate time for party to secure new counsel); *Williams*, 15 S.W.3d at 114 (holding that forty-two days to secure new counsel was adequate).

In summary, we hold that the Rule 10 withdrawal in this case was deficient, the trial court abused its discretion in granting the withdrawal, and the order allowing withdrawal was harmful. We sustain Spiller's first issue.<sup>2</sup>

### III. CONCLUSION

We reverse the trial court's denial of Spiller's motion for new trial and remand this cause for a new trial.

GINA M. BENAVIDES,  
Justice

Delivered and filed the  
4th day of August, 2016.

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<sup>2</sup> Having sustained Spiller's first issue, we need not address his remaining issue on appeal because addressing it will not afford Spiller any greater relief than what is already being ordered. See TEX. R. APP. P. 47.1.