



NUMBER 13-16-00383-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

JAIRUS PEGUES,

Appellant,

v.

ADECCO USA, INC.,

Appellee.

**On appeal from the 53rd District Court
of Travis County, Texas.**

MEMORANDUM OPINION¹

**Before Chief Justice Valdez and Justices Longoria and Hinojosa
Memorandum Opinion by Justice Hinojosa**

Appellant Jairus Pegues, a pro se litigant, appeals from a judgment granting

¹ This appeal was transferred to this Court from the Third Court of Appeals by order of the Texas Supreme Court. See TEX. GOV'T CODE ANN. § 22.220(a) (West, Westlaw through 2017 R.S.) (delineating the jurisdiction of appellate courts); *id.* at §73.001 (West, Westlaw through 2017 R.S.) (granting the supreme court the authority to transfer cases from one court of appeals to another at any time when there is "good cause" for the transfer).

appellee Adecco USA, Inc. declaratory and permanent injunctive relief. Pegues' brief purports to raise twenty-one issues, of which only two are cognizable. As best we can tell, Pegues complains that (1) the trial court erred in granting summary judgment in Adecco's favor on the ground that its suit was barred by the statute of limitations and (2) the summary judgment rule is unconstitutional. We affirm.

I. BACKGROUND²

Adecco, a temporary staffing company, employed Pegues. In August 2005, Adecco placed Pegues with Pittsburgh Glass Works (PWG). At some point, PWG requested that Pegues be removed from the temporary assignment. In January 2009, Adecco terminated Pegues. Thereafter, Pegues instituted a lawsuit in state court,³ obtained two erroneously-granted default judgments, filed two judgment liens premised on the vacated default judgments, had his state-court claims dismissed by the trial court, had an appeal of the dismissal order dismissed by the Third Court of Appeals, and lost to Adecco in a summary-judgment proceeding. These events span three different lawsuits. The third lawsuit ended in the judgment that is at issue in this appeal. We briefly chronicle all three lawsuits because they are interrelated and their history helps explain the judgment at issue.

² Because this is a memorandum opinion and the parties are familiar with the facts, we will not recite them here except as necessary to advise the parties of the Court's decision and the basic reasons for it. See TEX. R. APP. P. 47.4.

³ Pegues also filed a federal lawsuit. *Pegues v. PGW Auto Glass LLC, et al*, No. A-10-CA-086-LY, 2010 WL 4665955, at *4 (W.D. Tex. Nov. 9, 2010), *aff'd by* 451 Fed. Appx. 417, 418–19 (5th Cir. 2011). But his claims were dismissed by a federal magistrate's court, and the dismissal was affirmed on appeal. 451 Fed. Appx. 417, 418–19 (5th Cir. 2011).

A. Initial Lawsuit, Default Judgments, and Their Vacatur

After being terminated, Pegues sued, among others, the Texas Workforce Commission, PGW, and Adecco in state district court (the first lawsuit). Adecco answered Pegues' suit. According to Adecco, the trial court severed Pegues' judicial review of the Texas Workforce Commission's decision on unemployment compensation benefits from the claims Pegues asserted against Adecco⁴ and PWG.

In March 2011, the trial court signed a default judgment that provided in part:

Defendant Adecco USA, Inc.'s ("Defendant") severance of all of the Answers from the above styled referenced case; Adecco USA, Inc.'s statement that it is still a party to the case and recent court action against the Plaintiff; and Adecco USA, Inc.'s failure to file answers with the Court regarding the issues it claims to have in the case that are different from those severed out; and because there are no answers on file for Adecco USA, Inc. in the above styled referenced case; the Court is of the opinion that the Plaintiffs Motion is meritorious, and that Plaintiff's request that judgment be rendered against Defendant Adecco USA, Inc. is meritorious pursuant to the Texas Rules of Civil Procedure 99(b).

THEREFORE, it is ADJUDGED, ORDERED AND DECREED that the Plaintiffs Motion for Default Judgment Against Adecco USA, Inc. for the full amount of damages in Plaintiffs Petition is hereby GRANTED.

There is no indication that any of the parties received notice of the hearing that resulted in the first default judgment. Two days later, the trial court signed an order setting aside and vacating the first default judgment. Eight days after the vacatur, the trial court signed a second default judgment that is identical to the first default judgment. Again, there is no indication that any of the parties received notice of the hearing that resulted in the second default judgment. According to the clerk's file stamp, the second default

⁴ The record is not clear as to the specific claims Pegues asserted against Adecco. They are not necessary to our disposition of this appeal.

judgment was signed at 9:22 a.m. At 3:05 p.m. on the same day, the trial court signed an order setting aside and vacating the second default judgment.

In April 2011, the trial court dismissed, with prejudice, Pegues' claims against, among others, Adecco and assessed attorneys' fees against Pegues in the event he appealed. Pegues attempted to appeal from the dismissal order, but the Third Court of Appeals dismissed his appeal. See *Pegues v. Tex. Workforce Comm'n*, No. 03-11-00299-CV, 2012 WL 1959325, at *2 (Tex. App.—Austin May 25, 2012, no pet.) (mem. op.).

B. Judgment Liens

On Friday, October 21, 2011, while the appeal from the dismissal order was pending, Pegues filed a judgment lien in a Travis County justice court in the amount of \$5,639,180.80 against Adecco based on the first vacated default judgment. Adecco instituted a new legal proceeding with the filing of a "Motion for Judicial Review of Documentation Purporting to Create a Judgment Lien and Motion to Vacate and Set Aside Same" (the second lawsuit). In February 2012, the trial court held:

[The judgment lien premised on the first vacated default judgment] IS NOT an equitable, constructive, or other lien imposed by a court with jurisdiction created or established by the constitution or laws of this state or of the United States. There is no valid judgment lien created by the documentation. Accordingly, the Judgment Lien is hereby VACATED.

On Friday, March 9, 2012, Pegues filed a second judgment lien in a Travis County justice court. The second judgment lien was premised on the second vacated default judgment and was also in the amount of \$5,639,180.80.

C. Collection Correspondence

In addition to filing judgment liens, Pegues tried to collect on the two vacated default judgments directly and through what appears to be a collection agency.

In October 2014, the comment section of a fax coversheet Pegues sent to a representative of Adecco stated, “liens have been active for two years and have accrued considerable interest. Also notice the court dismissed Adecco USA INC case to get lien removed (see notice of court setting).” Adecco’s counsel responded to Pegues:

As you are fully aware, I represent Adecco USA, Inc. regarding your claims. I understand you contacted my client recently regarding a purported lien. Do not contact my client and direct all correspondence and communications directly to me.

Despite your representations, you do not have a judgment or a lien against my client. The [first] default judgment you improperly and fraudulently obtained was vacated Further, the lien you filed was [also] vacated

Pegues replied:

I am aware that you misrepresented Adecco USA, Inc. Yes, I contacted them and will continue until they pay in full the lien that I have against them. I will direct my dis[d]ain for you and your crooked practices to you. The next time you contact me it best be enclosed with a check made payable to me.

Despite your misrepresentations, I do have BOTH a judgement and a lien against your client. Your case 3708 was dismissed on August 18, 2014. Do not bother contacting the court I already made multiple copies of the original record.

I have no concern for you or your client, both of you are despicable. As for them I will continue to contact them by any means possible until payment is received in full plus interest owed. You, I just do not like. Your incompetence knows no limits[;] everything you do just continues to fail. If you continue causing me additional expense[s,] I will seek available relief against you.

In November 2014, the same Adecco representative received correspondence from Jillian Martin with Silverstone, Taylor & Klein⁵ seeking \$7,050,855.69. Adecco's counsel responded to Martin's letter, and there is no indication of further communication between the two.

In May 2015, Pegues sent a second fax coversheet to an Adecco representative with the comment section stating, "The lien has not been satisfied and is currently at \$9,051,957.07."

D. Adecco's Request for Declaratory and Injunctive Relief

In October 2015, Adecco filed the underlying lawsuit seeking declaratory relief regarding the two judgment liens and injunctive relief to restrict Pegues from filing further judgment liens premised on the two vacated default judgments (the third lawsuit).

Pegues answered and filed a "countersuit," asserting:

Defendant Jairus Pegues countersues Plaintiff Adecco USA, INC. for harassment, retaliation, and violation of his civil rights pursuant to Title VII of the Civil Rights Act of 1964 et. Seq., and for filing a frivolous lawsuit. Defendant seeks injunctions against Plaintiff for harassment, retaliation, and filing frivolous lawsuits.

Adecco moved for traditional summary judgment on its request for relief and a no-evidence summary judgment on Pegues' "countersuit." On May 3, 2016, the trial court set Adecco's summary-judgment motions for hearing on May 25, 2016. On May 13, 2016, Pegues responded to Adecco's motion for traditional summary judgment. Attached to Pegues' response is an affidavit wherein he states, "I attest and affirm that

⁵ The return address on Silverstone, Taylor & Klein's letterhead is 11519 Kingston Pike, #181, Knoxville, Tennessee 37934. We do not believe that it is a law firm as its letterhead fails to reference a license to practice law from any state.

the statements of fact and the evidence attached to it are true and correct.” Also attached to Pegues’ response are letters from Adecco’s counsel, postal tracking receipts, a receipt from the district clerk’s office, and various filings. On May 23, 2016, Pegues filed his own motion for summary judgment.

On May 25, 2016, the trial court heard Adecco’s motions for summary judgment and signed a “Final Judgment and Permanent Injunction,” which provides in relevant part:

It is ORDERED, ADJUDGED AND DECREED the Judgment Lien [stemming from the first vacated default judgment], IS NOT an equitable, constructive, or other lien imposed by a court with jurisdiction created or established by the constitution or laws of this state or of the United States. There is no valid judgment lien created by the documentation. Accordingly, the Judgment Lien is hereby VACATED.

....

It is further ORDERED, ADJUDGED AND DECREED a permanent injunction should be granted enjoining Jarius Pegues from attempting to file judgment liens on judgments allegedly obtained from any of the above-identified lawsuits, attempting to collect upon any past or future judgment lien based upon a judgment allegedly obtained in any of the above-identified lawsuits, or representing to any individual or entity that he has a judgment or judgment lien or from any of the above-identified lawsuits.

The trial court also ordered Pegues to pay Adecco \$8,700 for attorneys’ fees that it had incurred at the trial-court level and attorneys’ fees at the appellate level. Pegues filed a “Motion to Vacate Final Judgment and Permanent Injunction and for Re-Trial.” No ruling was obtained on Pegues’ filing. This appeal followed.

II. DISCUSSION

Initially, we note that pro se litigants must comply with the same procedural rules followed by represented parties, and we cannot hold pro se litigants to a different standard than applied to represented parties. *Mansfield State Bank v. Cohn*, 573 S.W.2d 181,

184-85 (Tex. 1978). In Pegues' brief, he purports to raise twenty-one issues but fails to reference a single appellate court opinion. Pegues' brief is, without question, multifarious. An issue is multifarious when it generally attacks the trial court's order with numerous arguments. See *Hollifield v. Hollifield*, 925 S.W.2d 153, 155 (Tex. App.—Austin 1996, no writ); *Clancy*, 705 S.W.2d at 823. We may disregard any assignment of error that is multifarious. See *Hollifield*, 925 S.W.2d at 155; *Clancy*, 705 S.W.2d at 824. Alternatively, we may consider a multifarious issue if we can determine, with reasonable certainty, the error about which complaint is made. See *Green v. Kaposta*, 152 S.W.3d 839, 842 n. 2 (Tex. App.—Dallas 2005, no pet.).

We have reviewed Pegues' brief, and conclude with reasonable certainty that it presents only two cognizable issues: (1) the trial court erred in granting summary judgment in Adecco's favor because its suit was barred by the statute of limitations; and (2) the summary judgment rule is unconstitutional.

A. Limitations

1. Standard of Review

We review a trial court's granting of a traditional motion for summary judgment under a de novo standard of review. *Creditwatch, Inc. v. Jackson*, 157 S.W.3d 814, 816 n.7 (Tex. 2005). To obtain relief via a traditional motion for summary judgment, the movant must establish that no material fact issue exists and that it is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); see *Garza v. Exel Logistics, Inc.*, 161 S.W.3d 473, 475 n.10 (Tex. 2005); *Mowbray v. Avery*, 76 S.W.3d 663, 690 (Tex. App.—Corpus Christi 2002, pet. denied). After the movant produces evidence sufficient to show it is

entitled to summary judgment, the non-movant must then present evidence raising a fact issue. See *Walker v. Harris*, 924 S.W.2d 375, 377 (Tex. 1996).

To defeat summary judgment by raising an affirmative defense, such as limitations, see TEX. R. CIV. P. 94, the non-movant, Pegues in this case, must do more than just plead the affirmative defense.⁶ *American Petrofina, Inc. v. Allen*, 887 S.W.2d 829, 830 (Tex. 1994). The non-movant must present summary judgment evidence that raises that defense. *Brownlee v. Brownlee*, 665 S.W.2d 111, 112 (Tex. 1984). If the non-movant does not raise a fact issue on each element, there is no defense. *Id.* at 112.

2. Applicable Law and Analysis

As best we can tell, Pegues believes that the four-year residual statute of limitations, see TEX. CIV. PRAC. & REM. CODE ANN. § 16.051 (West, Westlaw through 2017 R.S.), controls Adecco's request for declaratory and injunctive relief. He argues that Adecco's lawsuit is barred by limitations because it was filed on October 23, 2015, and the first lien, premised on the first vacated default judgment, was filed in the Travis County justice court on Friday, October 21, 2011. Assuming, without deciding, that the four-year residual statute of limitation applies, we are not convinced that Adecco's claim in the instant case accrued on Friday, October 21, 2011. *Cf. Diversicare Gen. Partner, Inc. v. Rubio*, 185 S.W.3d 842, 846 (Tex. 2005) (holding that a defendant moving for summary judgment on the affirmative defense of limitations has the burden to

⁶ We note that Pegues did not plead the affirmative defense of limitations in his answer, see TEX. R. CIV. P. 94, and that he raised it in his response to Adecco's motion for traditional summary judgment. In *Proctor v. White*, 172 S.W.3d 649, 652 (Tex. App.—Eastland 2005, no pet.), the Eleventh Court of Appeals held that when a non-movant relies on an unpleaded affirmative defense to defeat a motion for summary judgment, the movant must object in order to avoid trying the issue by consent. We assume, without deciding, that the issue of limitations was tried by consent.

conclusively establish that defense, including the accrual date of the cause of action).

When a cause of action accrues is question of law, not fact. *Holy Cross Church of God in Christ v. Wolf*, 44 S.W.3d 562, 567 (Tex. 2001). On this record, it is clear that Pegues obtained two default judgments against Adecco, a party who had answered, without notifying Adecco of the hearings that resulted in the default judgments. The default judgments were vacated and set aside. A reasonable and prudent person would not expect the filing of judgment liens premised on vacated default judgments. We conclude that, under the facts of this case, Adecco's claim as to each judgment lien accrued when it received actual notice of the judgment lien in question.

Pegues failed to present sufficient evidence to raise the affirmative defense of limitations. See *Brownlee*, 665 S.W.2d at 112. The first event in the record that evidences Adecco's actual knowledge of the first judgment lien occurred on December 2, 2011, when it instituted a proceeding in state district court to vacate and set aside the lien. Accordingly, Adecco's lawsuit was timely filed.

Pegues' first issue is overruled.

B. Constitutionality of the Summary Judgment Rule

In what we consider to be Pegues' second issue, he contends that the rendition of relief in a summary judgment is unconstitutional "pursuant to the Seventh Amendment" because it denies him his "Constitutional Right to a Jury Trial." But, when a party cannot show a material fact issue, there is nothing to submit to a jury, and the granting of summary judgment to the opposing party does not violate the constitutional right to a jury trial. *Fertic v. Spencer*, 247 S.W.3d 242, 251 (Tex. App.—El Paso 2007, no pet.) (citing

Martin v. Commercial Metals Co., 138 S.W.3d 619, 627 (Tex. App.—Dallas 2004, no pet.);
Lattrell v. Chrysler Corp., 79 S.W.3d 141, 150 (Tex. App.—Texarkana 2002, no pet.)).

Pegues' second issue is overruled.

III. CONCLUSION

We affirm the judgment of the trial court.

LETICIA HINOJOSA
Justice

Delivered and filed the
24th day of August, 2017.