NUMBER 13-18-00086-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

CARLOS GOMEZ AMAYA, **Appellant,**

v.

BISSELL HOMECARE, INC., **Appellee.**

On appeal from the 370th District Court of Hidalgo County, Texas.

MEMORANDUM OPINION

Before Chief Justice Contreras and Justices Benavides and Hinojosa
Memorandum Opinion by Justice Benavides

Appellant Carlos Gomez Amaya appeals a summary judgment rendered against him in favor of appellee, Bissell HomeCare, Inc. (Bissell), in a bill of review proceeding. We affirm.

I. BACKGROUND

On May 25, 2011, Amaya filed a "Petition for Bill of Review" against Bissell seeking to set aside a summary judgment rendered on May 14, 2009, in favor of Bissell. In the proceeding which culminated in the summary judgment subject to appeal here, Bissell and Bissell Mexico S. de R.L. de C.V. (Bissell Mexico) sued Amaya, a former employee, for, inter alia, fraud and embezzlement. Bissell and Bissell Mexico moved for summary judgment on their claims against Amaya, and the trial court ultimately rendered a $1,765,301.00 summary judgment in favor of Bissell and Bissell Mexico against Amaya.[1] Amaya's petition for bill of review attacking this judgment alleges, in relevant part, as follows:

> JURISDICTION
>
> 5. On September 6, 2006, Defendant filed suit in the 370th Judicial District Court against Plaintiff, Cause No C-2215-06-G, styled Bissell Homecare, Inc. and Bissell Mexico S de R.L. C.V. v. Carlos Ramirez Gomez, claiming that Carlos Gomez Amaya embezzled funds from the Plaintiff and its Mexican counterpart. A Summary Judgment was taken against Plaintiff on May 14, 2009. More than thirty days have passed since the Summary Judgment was signed. Jurisdiction is proper in this Court in which the original suit was filed.
>
> FRAUD
>
> 6. The previous suit was based on fraudulent representations and evidence. Defendant Bissell had no evidence that Plaintiff embezzled funds. A criminal investigation was conducted by Mexican authorities. This investigation found no evidence of theft or any wrongdoing on the part of Plaintiff. Defendant was aware of the results of this investigation before obtaining a judgment against Plaintiff. Further, Defendant never had any evidence of any kind that Plaintiff had embezzled funds, but even if any embezzlement had taken place, it would have taken place in Mexico and this Court would not have had subject matter jurisdiction. Defendant fraudulently represented that the proceeds from the alleged embezzlement

[1] Amaya filed his petition for bill of review against Bissell but not against Bissell Mexico.

> were removed to Texas. Since Plaintiff was terminated from his employment with Defendant, he could not afford to hire an attorney to defend him in Plaintiff's suit thus resulting in a summary judgment. In a deposition taken by Defendant's attorney on November 28, 2007, Plaintiff stated that rather than moving funds from Mexico to the U.S., he had moved funds from the U.S. to Mexico.
>
> 7. The summary judgment obtained against Plaintiff was not based on any summary judgment evidence filed by Defendant, but rather was based solely on Plaintiff's alleged failure to respond to discovery requests at a time when he could not afford to hire counsel to represent him as shown by the attached affidavit of Plaintiff.

Amaya's petition for bill of review was verified and supported by an affidavit from Amaya but it did not include argument or allegation other than those set forth above.

On June 23, 2011, Bissell filed "Defendant [Bissell's] Original Answer in Response to Plaintiff's Original Petition." In its answer, Bissell generally denied Amaya's claims, denied making fraudulent representations or presenting fraudulent evidence regarding the 2009 summary judgment, and argued that despite Amaya's "repeated attempts to challenge [the] jurisdiction of the Court through removal to federal court, plea to the jurisdiction, and motion to dismiss on the basis of forum non conveniens, this Honorable Court had jurisdiction" over the lawsuit. Bissell further raised additional, numerous affirmative defenses and asserted that Amaya had not met the requirements to obtain a bill of review.

On May 15, 2012, Bissell filed "Defendant Bissell Homecare, Inc.'s Motion for Summary Judgment." This pleading comprises a hybrid traditional and no-evidence motion for summary judgment. Bissell alleged, in short, that Amaya was unable to establish any of the elements of a bill of review. Bissell argued that Amaya could not present a prima facie meritorious defense; that he could not prove he was prevented from

making such a defense by the fraud, accident, or wrongful act of the opposing party or by official mistake; and that he could not show that the failure to present the defense was not unmixed with fault or negligence on his part.

On June 26, 2012, the trial court informed the parties that it would rule on all summary judgment motions by submission on July 30, 2012, and that the deadline for filling responses to motions for summary judgment was July 23, 2012. On July 23, 2012, the parties entered into a Rule 11 agreement allowing Amaya a one-week extension, until July 30, 2012, to file his response to Bissell's motion for summary judgment. The trial court thereafter set Bissell's motion for summary judgment for hearing on August 8, 2012.

On July 30, 2012, Amaya filed "Plaintiff's Response to Defendant's Motion for Final Summary Judgment." Amaya's response states, in its entirety, as follows:

> TO THE HONORABLE JUDGE OF SAID COURT:
>
> NOW COMES Plaintiff, Carlos Gomez Amaya, Non-Movant herein, and requests this Honorable Court to DENY Movant's Motion for Final Summary Judgment.
>
> I.
>
> INTRODUCTION
>
> A. When a movant files a motion for summary judgment based on summary judgment evidence, the court can grant the motion only when the movant's evidence proves, as a matter of law, all the elements of the movant's cause of action or defense, or disproves the facts of at least one element in the non-movant's cause or defense.
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> B. When evaluating a motion for summary judgment, the court must:
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> 1. Assume all the non-movant's proof is true;
>
> 2. Indulge every reasonable inference in favor of the non-movant; and

3. Resolve all doubts about the existence of a genuine issue of material fact against the movant.

II.

BACKGROUND

A. Non-Movant filed a claim against Movant seeking affirmative relief in a Bill of Review.

B. Movant alleges Movant is entitled to a summary judgment as a matter of law and alleges that Movant can disprove at least one element of Non-Movant's claim for Bill of Review.

1. Non-Movant claims a genuine issue of material fact exists as to Non-Movant's claim of Bill of Review and submits affidavits and documentary evidence, as summary judgment evidence, referenced in an appendix attached hereto, filed with this response and incorporated by such reference for all purposes as if recited verbatim herein.

[sic]

III.

FACTS

A. Movant had previously employed Non-Movant in its plant in Mexico. At some point, Movant concluded with no hard evidence that Non-Movant had somehow embezzled funds from the plant cafeteria operations in Mexico. Movant filed criminal charges in Mexico which terminated in Non-Movant's favor. After an unsuccessful attempt to criminally prosecute Non-Movant in Mexico, Movant filed an action in County Court at Law No. 2 of Hidalgo County, Texas and later in this Court. The action in County Court at Law No. 2 was dismissed when the issue of jurisdiction was raised. Later, a summary judgment was taken in this Court based on Non-Movant's attorney's failure to answer requests for admission. This bill of review proceeding seeks to set aside that judgment.

IV.

ARGUMENT AND AUTHORITIES

A. In seeking summary judgment, Movant relies on the test stated in the case of *Alexander v Hagedorn*,148 Tex. 565, 262 SW2d 996

(1950). While this test may be applicable in the "usual" bill of review case, it does not apply as a "one size fits all" test to all bill of review cases. *Hanks v. Rosser*, 378 SW2d 31 (Tex. 1964). Each case will depend on its facts. (In *Hanks v. Rosser*, an attorney failed to file a motion for new trial as opposed to an answer). Further, the issue of jurisdiction may be raised at any time.

B. Non-Movant has attached documents to this response that preclude summary judgment. These documents include Non-Movant's affidavit and the affidavit of Cesar Martin Guerrero, an expert in Mexican law as well as other documents pertaining to the income earned by Non-Movant. Movant has produced numerous documents claiming to show evidence of embezzlement by Non-Movant, yet a careful examination of these documents yields nothing more than unsubstantiated allegations. It is absolutely clear that any alleged embezzlement took place in Mexico. Movant's claim that somehow proceeds from the alleged embezzlement were deposited in bank accounts in Hidalgo County is not supported by any evidence. Non-Movant submits that this lack of proof together with the undisputed fact that the embezzlement is alleged to have taken place in Mexico means that this Court never had jurisdiction of the subject matter of the original suit. At the very least, a fact issue concerning jurisdiction is raised. In addition, the actions of Movant in bringing this suit after the Mexican criminal proceeding terminated in Non-Movant's favor and after the jurisdiction issue was raised in County Court at Law No. 2, constitutes a fraud on this Court. Non-Movant does not accuse Movant's current or previous counsel of wrongdoing, but Non-Movant does maintain that the claims of embezzlement and the deposit of embezzled funds in Hidalgo County Bank accounts by Movant are not supported by any evidence of probative value and the pursuit of this suit without sufficient basis constitutes fraud.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Non-Movant prays that this Court will deny Defendant's Motion for Final Summary Judgment, or order such other relief as may be appropriate.

Amaya attached various items of summary judgment evidence to his response which comprise more than four hundred pages of the supplemental clerk's record. Amaya did not identify those exhibits or provide an index of those exhibits in his response to the motion for summary judgment.

On July 30, 2012, the parties entered a Rule 11 agreement resetting the hearing scheduled for August 8, 2012, until August 29, 2012.

On August 28, 2012, Bissell filed "Defendant's Reply to Plaintiff's Response to Defendant's Motion for Summary Judgment and Objections to and Motion to Strike Summary Judgment Evidence." Bissell argued that Amaya failed to address the elements of a bill of review claim and that Amaya's response to the motion for summary judgment "attempt[ed] to create a fact issue with no argument or authorities but with mere attachments of alleged evidence preventing summary judgment." Bissell argued that Amaya's affidavit conflicted with his deposition testimony in numerous different respects and contained unsubstantiated factual and legal conclusions and inadmissible hearsay. Bissell further objected to all of Amaya's evidence as "irrelevant and inadmissible." Bissell alleged that Amaya's "broad or even absent references to the summary judgment proof does not allow the court to even determine [its] relevance or support because of the way in which [it is] presented."

The trial court held a hearing on Bissell's motion for summary judgment as scheduled on August 29, 2012. The trial court did not rule on the motion for summary judgment, but instead requested the parties to furnish additional briefing.

On September 19, 2012, Amaya filed "Plaintiffs' Brief in Response to Defendant's Motion for Final Summary Judgment," which was filed "in compliance with the Court's request for further briefing." He stated that the judgment should be set aside because the trial court lacked subject matter jurisdiction. He asserted that the "only alleged contact with the State of Texas is the claim that [Amaya] moved money he allegedly embezzled into Texas." Amaya asserted that his previous inconsistent testimony regarding the

movement of stolen funds into Texas merely created "issues of fact that can only be determined by a fact finder after a trial on the merits." According to Amaya, all acts and omissions which formed the basis of the judgment were alleged to have occurred in Mexico and one of the parties who brought the original suit is a Mexican corporation. Amaya argued that jurisdictional issues are appropriate for consideration in a bill of review proceeding, although he conceded that "[m]ost jurisdictional issues are raised before trial either by a plea to the jurisdiction or a special appearance." Amaya's brief stated: "The undersigned attorney cannot address the issue of why Plaintiff's previous attorney did not file these pleadings early on in the proceedings, but for whatever reason, we are now dealing with a post-judgment bill of review." Amaya asserted that, "[i]n this case, the issue is whether this Court had subject matter jurisdiction at the time that the previous judgment was entered."

On September 19, 2012, Bissell filed "Defendant's Brief in Support of Motion for Summary Judgment." This brief noted that the trial court had requested briefing on the potential res judicata effect of a prior civil complaint or lawsuit filed in Mexico against Amaya, whether the proper procedure for attacking subject matter jurisdiction was a bill of review, and if so, whether Amaya was required to prove all of the elements of a bill of review. According to Bissell's briefing, authorities in Mexico entered an "Order of No Prosecution" against Amaya after a criminal investigation, and there were no civil actions pertaining to Bissell's claims against Amaya filed in Mexico. Bissell alleged that the results of the criminal prosecution in Mexico had no bearing on a subsequent civil lawsuit, and even if it did, the record failed to meet the requirements for res judicata to apply to any such determination. Bissell conceded that subject matter jurisdiction could be attacked

through a bill of review proceeding but argued that the facts illustrated that the court had jurisdiction. Bissell noted that Amaya had litigated subject matter jurisdiction through numerous pleadings, including a motion to dismiss, which the trial court had previously denied. Bissell further alleged that the allegations in Amaya's motion to dismiss mirrored those claims currently raised regarding jurisdiction in this bill of review proceeding.

On August 30, 2013, Amaya filed "Plaintiff's Supplementary Response to Defendant's Motion for Final Summary Judgment." This pleading asserted that the trial court lacked subject matter jurisdiction and that Amaya's due process rights were violated by entry of the summary judgment because it was "based solely on deemed admissions."

On November 1, 2013, Bissell filed "Defendant's Reply to Plaintiff's Supplemental Response to Defendant's Motion for Summary Judgment." Bissell's reply objected to Amaya's supplementary response as untimely because it was "outside the response time as allowed" by the Texas Rules of Civil Procedure. Subject to that objection, Bissell asserted that Amaya's arguments had been fully briefed and Bissell reiterated many of the arguments previously made in support of its motion. Bissell argued, in part:

> In regard to Plaintiff's argument that this Court lacks [s]ubject [m]atter jurisdiction, the following procedural history is pertinent to this argument: In May 2006, Amaya removed the state court action from County Court 2 of Hidalgo County to the United States District Court for the Southern District of Texas based on diversity jurisdiction. He also filed a Motion to Dismiss pursuant to F.R.C.P. 12 arguing that [Bissell] had not alleged any conduct on the part of Amaya, which occurred in the state of Texas or the United States and asserted that neither the County Court nor the Federal District Court had [s]ubject [m]atter [j]urisdiction. The case was remanded back to County Court Two of Hidalgo County. Defendant also filed a Plea to the Jurisdiction on September 1, 2006. County Court Two overruled the Plea to the Jurisdiction. On February 19, 2008 . . . Defendant filed a Motion to Dismiss for Lack of Jurisdiction. In April 2008, the Court overruled the Motion to Dismiss. On April 28, 2009, Defendant filed its Motion to Dismiss for Forum Non Conveniens in County Court Two arguing that the Court

> lacked [s]ubject [m]atter [j]urisdiction and that Mexican Law in a Mexican forum applied. On June 11, 2009, the Court overruled Defendant's Motion to Dismiss on Forum Non Conveniens.
>
> Through no less than FIVE pleadings, Amaya sought to attack the jurisdiction of the state courts of Texas. Specifically, in his Motion to Dismiss on Forum Non Conveniens, Amaya argued that the allegations complained of were committed in Mexico, that BISSELL Homecare, Inc. and BISSELL Mexico are subject to Mexican laws pursuant to their bylaws and that both companies voluntarily submitted themselves to the laws of the Republic of Mexico. Amaya further argued that because a criminal suit was brought in Mexico, BISSELL is subject to the laws of Mexico. This Motion and BISSELL's response [were] considered by the Court and overruled by County Court 2.

(Internal footnotes omitted).

On October 30, 2017, the trial court granted Bissell's motion for summary judgment and dismissed Amaya's petition for bill of review. In this appeal, Amaya raises one issue asserting that the trial court erred by granting summary judgment against him "instead of proceeding to a merits hearing." By four sub-issues, Amaya asserts: (1) Bissell "judicially admitted" that its claims against Amaya are based on Amaya's alleged actions injuring Bissell Mexico, which employed Amaya as financial controller and human resources director of its manufacturing facility in Reynosa, Mexico; (2) Bissell "has no standing" to pursue claims for injuries to its subsidiary, Bissell Mexico; (3) because Bissell has no standing to pursue claims for injuries to its subsidiary, the trial court had no jurisdiction to award Bissell judgment for those claims; and (4) the trial court committed reversible error by granting Bissell's motion for summary judgment (a) on traditional grounds because "none of the exhibits listed as summary judgment evidence were attached or filed," and (b) on no-evidence grounds because Bissell's lack of standing negated any need to prove any of the challenged elements of a bill of review.

II. BILL OF REVIEW

A bill of review is an equitable proceeding brought by a party seeking to set aside a judgment that is no longer subject to challenge by a motion for a new trial or direct appeal. *Katy Venture, Ltd. v. Cremona Bistro Corp*., 469 S.W.3d 160, 163–64 (Tex. 2015) (per curiam); *Mabon Ltd. v. Afri-Carib Enters., Inc*., 369 S.W.3d 809, 812 (Tex. 2012) (per curiam); *Caldwell v. Barnes*, 154 S.W.3d 93, 96 (Tex. 2004) (per curiam). Ordinarily, a plaintiff must plead and prove: (1) a meritorious defense to the underlying cause of action, (2) which the plaintiff was prevented from making by the fraud, accident, or wrongful act of the opposing party or by official mistake, (3) unmixed with any fault or negligence on his or her own part. *Katy Venture, Ltd*., 469 S.W.3d at 163; *Caldwell*, 154 S.W.3d at 96; *King Ranch, Inc*. *v. Chapman*, 118 S.W.3d 742, 751–52 (Tex. 2003). A meritorious defense is one, that if ultimately proved, will cause a different outcome when the case is tried again. *Titan Indem. Co. v. Old S. Ins. Grp., Inc*., 221 S.W.3d 703, 711 (Tex. App.—San Antonio 2006, no pet.). Once evidence of a meritorious defense is established, the allegations supporting it must be taken as true despite controverting evidence. *Id.* Generally, a bill of review is available only if a party has exercised due diligence in pursuing all adequate legal remedies against a former judgment and, through no fault of its own, has been prevented from making a meritorious claim or defense by the fraud, accident, or wrongful act of the opposing party. *Wembley Inv. Co. v. Herrera*, 11 S.W.3d 924, 927 (Tex. 1999) (per curiam).

The law places a heavy burden on a bill of review petitioner to set aside a judgment because it is fundamentally important that judgments be accorded some finality. *King Ranch, Inc*., 118 S.W.3d at 751. Courts narrowly construe the grounds on which a plaintiff

may obtain a bill of review due to Texas's public policy favoring the finality of judgments. *Mabon Ltd.*, 369 S.W.3d at 812. Consequently, a bill of review seeking relief from an otherwise final judgment must be scrutinized by reviewing courts "with extreme jealousy, and the grounds on which interference will be allowed are narrow and restricted." *Montgomery v. Kennedy*, 669 S.W.2d 309, 312 (Tex. 1984) (quoting *Alexander v. Hagedorn*, 226 S.W.2d 996, 998 (Tex. 1950)). Injustice alone is an insufficient basis to grant a bill of review. *Wembley Inv. Co*., 11 S.W.3d at 927.

III. SUMMARY JUDGMENT

While abuse of discretion is the proper review standard for the ruling on a bill of review, *see Manley v. Parsons*, 112 S.W.3d 335, 337 (Tex. App.—Corpus Christi–Edinburg 2003, pet. denied), and that is the effect of the judgment here, this case was appealed from a summary judgment. Thus, the appropriate standard in this case is that for the review of a summary judgment. *Bowers v. Bowers*, 510 S.W.3d 571, 576 (Tex. App.—El Paso 2016, no pet.); *Clarendon Nat'l Ins. Co. v. Thompson*, 199 S.W.3d 482, 487 (Tex. App.—Houston [1st Dist.] 2006, no pet.); *see also Tummel v. MMG Bank Corp*., No. 13-19-00097-CV, 2020 WL 2213966, at *2–3 (Tex. App.—Corpus Christi–Edinburg May 7, 2020, no pet.) (mem. op.).

We perform a de novo review of an order granting summary judgment. *Henkel v. Norman*, 441 S.W.3d 249, 250 (Tex. 2014) (per curiam); *Merriman v. XTO Energy, Inc.*, 407 S.W.3d 244, 248 (Tex. 2013). When a party moves for summary judgment on hybrid no-evidence and traditional grounds, we address the no-evidence grounds first before turning, if necessary, to the traditional grounds. *Merriman*, 407 S.W.3d at 248. Texas Rule of Civil Procedure 166a(i) governs no-evidence motions for summary judgment and

provides:

> After adequate time for discovery, a party without presenting summary judgment evidence may move for summary judgment on the ground that there is no evidence of one or more essential elements of a claim or defense on which an adverse party would have the burden of proof at trial. The motion must state the elements as to which there is no evidence. The court must grant the motion unless the respondent produces summary judgment evidence raising a genuine issue of material fact.

TEX. R. CIV. P. 166a(i); *see Town of Shady Shores v. Swanson*, 590 S.W.3d 544, 551–52 (Tex. 2019). The nonmovant may raise a genuine issue of material fact by producing "more than a scintilla of evidence establishing the existence of the challenged element." *Ford Motor Co. v. Ridgway*, 135 S.W.3d 598, 600 (Tex. 2004); *see Town of Shady Shores*, 590 S.W.3d at 551. Less than a scintilla of evidence exists when the evidence is so weak as to do no more than create a mere surmise or suspicion of a fact. *KMS Retail Rowlett, LP v. City of Rowlett*, 593 S.W.3d 175, 181 (Tex. 2019); *King Ranch, Inc.*, 118 S.W.3d at 751. "[T]he respondent is not required to marshal its proof; its response need only point out evidence that raises a fact issue on the challenged elements." TEX. R. CIV. P. 166a(i) cmt.; *see Guerrero-McDonald v. Nassour*, 516 S.W.3d 198, 211 (Tex. App.—Eastland 2017, no pet.). "When reviewing a no-evidence summary judgment, we review the evidence presented by the motion and response in the light most favorable to the party against whom the summary judgment was rendered, crediting evidence favorable to that party if reasonable jurors could, and disregarding contrary evidence unless reasonable jurors could not." *Timpte Indus., Inc. v. Gish*, 286 S.W.3d 306, 310 (Tex. 2009) (internal quotation marks omitted).

If the nonmovant survives a no-evidence motion for summary judgment, we then review the case under the traditional summary judgment standard. *Merriman*, 407 S.W.3d

at 248. To succeed on a traditional summary judgment motion, the summary judgment movant must establish that there is no genuine issue of material fact and it is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *Katy Venture, Ltd.*, 469 S.W.3d at 163; *W. Invs., Inc. v. Urena*, 162 S.W.3d 547, 550 (Tex. 2005); *Lear Siegler, Inc. v. Perez*, 819 S.W.2d 470, 471 (Tex. 1991). "When a movant meets that burden of establishing each element of the claim or defense on which it seeks summary judgment, the burden then shifts to the non-movant to disprove or raise an issue of fact as to at least one of those elements." *Amedisys, Inc. v. Kingwood Home Health Care, LLC*, 437 S.W.3d 507, 511 (Tex. 2014). In deciding which party should prevail in this situation, "[w]e examine the record in the light most favorable to the non-movant, indulge every reasonable inference against the motion and likewise resolve any doubts against it." *Henkel*, 441 S.W.3d at 250; *see also Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding*, 289 S.W.3d 844, 848 (Tex. 2009); *Smith v. O'Donnell*, 288 S.W.3d 417, 424 (Tex. 2009); *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005).

If a trial court's order granting summary judgment does not specify the grounds for the ruling, as in this case, the appellant bears the burden of negating all possible grounds for the trial court's ruling. *Star-Telegram, Inc. v. Doe*, 915 S.W.2d 471, 473 (Tex. 2001). "If summary judgment may have been rendered, properly or improperly, on a ground not challenged [on appeal], the judgment must be affirmed." *Ellis v. Precision Engine Rebuilders, Inc.*, 68 S.W.3d 894, 898 (Tex. App.—Houston [1st Dist.] 2002, no pet.).

IV. ANALYSIS

Amaya attacks the trial court's order granting summary judgment in favor of Bissell. We first review the summary judgment under the no-evidence standard of review. *Ford*

Motor Co., 135 S.W.3d at 600; *Rico v. L-3 Commc'ns Corp*., 420 S.W.3d 431, 439 (Tex. App.—Dallas 2014, no pet.).

As a threshold matter, because it is dispositive, we address the sufficiency of Amaya's response to the motion for summary judgment. Bissell asserted that Amaya failed to meet his burden to avoid summary judgment because Amaya, inter alia, failed to address the elements of a bill of review claim, attempted to create a fact issue with no argument or authorities and by merely attaching alleged evidence, and including only broad or absent references to the summary judgment evidence. We agree with Bissell that Amaya's response to the motion for summary judgment is fatally flawed.

Amaya's response to the no-evidence motion for summary judgment is both vague and conclusory. The entire response, which is set forth above, comprises four pages of argument. Amaya obliquely states that the "usual" test for a bill of review does not apply to all bill of review cases and asserts that "the issue of jurisdiction may be raised at any time." He does not expressly argue that the bill of review requirements are inapplicable in *this* case. He argues that the claims against him in the lawsuit constituted "nothing more than unsubstantiated allegations." He contends that "any alleged embezzlement took place in Mexico," and that "the claim that proceeds from the alleged embezzlement were deposited in bank accounts in Hidalgo County is not supported by any evidence." He thus asserts that this "means that this Court never had jurisdiction of the subject matter of the original suit," or that, "[a]t the very least, a fact issue concerning jurisdiction is raised." He further argues that Bissell's actions in bringing a civil suit, despite the fact that the Mexican criminal proceeding terminated in his favor, and after the issue of jurisdiction had been raised, "constitutes a fraud on this court" and "the pursuit of this suit without sufficient

basis constitutes fraud."

Construed as liberally and broadly as possible, Amaya's response suggests that he is not required to prove the elements of a bill of review because he is attacking the jurisdiction of the trial court. *See Henkel*, 441 S.W.3d at 250; *c.f. First United Pentecostal Church of Beaumont v. Parker*, 514 S.W.3d 214, 222 (Tex. 2017) (discussing a response to a no-evidence motion for summary judgment that failed to produce evidence of one of the challenged elements of a cause of action, but instead asserted that the element was inapplicable). That argument resonates with his first three sub-issues on appeal where he asserts: (1) Bissell "judicially admitted" that its claims against Amaya are based on Amaya's alleged actions injuring Bissell Mexico, which employed Amaya as financial controller and human resources director of its manufacturing facility in Reynosa, Mexico; (2) Bissell "has no standing" to pursue claims for injuries to its subsidiary, Bissell Mexico; and (3) because Bissell has no standing to pursue claims for injuries to its subsidiary, the trial court had no jurisdiction to award Bissell judgment for those claims.

Amaya's response to Bissell's motion for summary judgment was accompanied by more than four hundred pages of largely unidentified documents. In his response, Amaya "claims a genuine issue of material fact exists as to Non-Movant's claim of Bill of Review and submits affidavits and documentary evidence, as summary judgment evidence, referenced in an appendix attached hereto, filed with this response and incorporated by such reference for all purposes as if recited verbatim herein." He further alleges that he "has attached documents to this response that preclude summary judgment," and "[t]hese documents include Non-Movant's affidavit and the affidavit of Cesar Martin Guerrero, an expert in Mexican law as well as other documents pertaining to the income earned by

Non-Movant." Amaya's response does not otherwise identify, refer to, or discuss the attached exhibits. Amaya's response does not specifically identify the portion or portions of the generally referenced exhibits that provide supporting evidence. Further, Amaya's response does not provide any explanation of how the evidence within any exhibit raises a genuine issue of material fact.

Amaya's conclusory statements, which do not provide the underlying facts to support his conclusions, are insufficient to defeat a no-evidence motion for summary judgment. *See Gonzales v. Shing Wai Brass & Metal Wares Factory, Ltd*., 190 S.W.3d 742, 746 (Tex. App.—San Antonio 2005, no pet.) ("A conclusory statement is one that does not provide the underlying facts to support the conclusion and is insufficient to create a question of fact to defeat summary judgment."); *see also Doherty v. Old Place, Inc.*, 316 S.W.3d 840, 844 (Tex. App.—Houston [14th Dist.] 2010, no pet.); *Velasquez v. Waste Connections, Inc.*, 169 S.W.3d 432, 438 (Tex. App.—El Paso 2005, no pet.). Further, in response to a no-evidence ground for summary judgment, the nonmovant must specifically point out the evidence that raises a genuine issue of material fact as to each challenged element. *CHW-Lattas Creek, L.P. by GP Alice Lattas Creek, L.L.C. v. City of Alice*, 565 S.W.3d 779, 793 (Tex. App.—San Antonio 2018, pet. denied); *BP Am. Prod. Co. v. Zaffirini*, 419 S.W.3d 485, 507–08 (Tex. App.—San Antonio 2013, pet. denied); *Burleson v. Lawson*, 487 S.W.3d 312, 323 (Tex. App.—Eastland 2016, no pet.); *San Saba Energy, L.P. v. Crawford*, 171 S.W.3d 323, 330 (Tex. App.—Houston [14th Dist.] 2005, no pet.). The nonmovant cannot meet its summary judgment burden to raise a fact issue by merely incorporating voluminous pages of evidence and generally claiming that the evidence raises a fact issue. *In re Guardianship of Virgil*, 508 S.W.3d 591, 595 (Tex.

App.—El Paso 2016, no pet.); *BP Am. Prod. Co.*, 419 S.W.3d at 507–08. Attaching entire documents to a motion for summary judgment or to a response and referencing them only generally does not relieve the party of pointing out to the trial court where in the documents the issues set forth in the motion or response are raised. *Burleson*, 487 S.W.3d at 323; *San Saba Energy, L.P*., 171 S.W.3d at 330–32. In determining whether Amaya successfully carried his burden, neither this court nor the trial court is required to wade through a voluminous record to marshal his proof. *See Rogers v. Ricane Enters., Inc*., 772 S.W.2d 76, 81 (Tex. 1989); *CHW-Lattas Creek, L.P.*, 565 S.W.3d at 793; *Guerrero-McDonald*, 516 S.W.3d at 211; *BP Am. Prod. Co.*, 419 S.W.3d at 507–08.

Based on the foregoing, we conclude Amaya failed to raise a genuine issue of material fact by producing more than a scintilla of evidence in support of his petition for bill of review. *See BP Am. Prod. Co.*, 419 S.W.3d at 507–08; *Gonzales*, 190 S.W.3d at 746. Therefore, Bissell was entitled to summary judgment and the trial court did not err by granting summary judgment in its favor. *See Town of Shady Shores*, 590 S.W.3d at 551; *Ford Motor Co*., 135 S.W.3d at 600.

Further, even if we were to conclude otherwise and construe Amaya's response as sufficient, our result would be the same under the applicable law. If a bill of review petitioner seeks to set aside a judgment on grounds that the trial court lacked subject matter jurisdiction,[2] then the petitioner need not satisfy the formal bill of review requirements for the court to consider the jurisdictional challenge. *Joyner v. Joyner*, 352 S.W.3d 746, 748–49 (Tex. App.—San Antonio 2011, no pet.); *Sweetwater Austin Props.*

[2] Standing is a component of subject matter jurisdiction. *See Douglas v. Delp*, 987 S.W.2d 879, 882 (Tex. 1999); *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 443 (Tex.1993); *In re Stern*, 436 S.W.3d 41, 47 (Tex. App.—Houston [14th Dist.] 2014, orig. proceeding [mand. dism'd]).

L.L.C. v. SOS Alliance, Inc., 299 S.W.3d 879, 889 (Tex. App.—Austin 2009, pet. denied); *Narvaez v. Maldonado*, 127 S.W.3d 313, 317 (Tex. App.—Austin 2004, no pet.); *see also Walker v. Walker*, No. 05-13-00481-CV, 2014 WL 4294967, at *2 (Tex. App.—Dallas Aug. 21, 2014, no pet.) (mem. op.); *In re J.G.H*., No. 04-13-00027-CV, 2014 WL 2002846, at *2 (Tex. App.—San Antonio May 14, 2014, no pet.) (mem. op.); *Ferrice v. Legacy Ins. Agency, Inc.*, No. 2-05-363-CV, 2006 WL 1714535, at *2 (Tex. App.—Fort Worth June 22, 2006, pet. denied) (mem. op.). "Jurisdictional power" in this context is defined as "jurisdiction over the subject matter, the power to hear and determine cases of the general class to which the particular one belongs." *Middleton v. Murff*, 689 S.W.2d 212, 213 (Tex. 1985) (per curiam) (op. on motion for reh'g) (quoting *Deen v. Kirk*, 508 S.W.2d 70, 72 (Tex. 1974)); *see Fuentes v. Zaragoza*, 555 S.W.3d 141, 153 (Tex. App.—Houston [1st Dist.] 2018, no pet.); *In re C.M.V*., 479 S.W.3d 352, 357 (Tex. App.—El Paso 2015, no pet.); *Wagner v. D'Lorm*, 315 S.W.3d 188, 193–94 (Tex. App.—Austin 2010, no pet.); *Sweetwater Austin Props., L.L.C*., 299 S.W.3d at 885; *see also Walker*, 2014 WL 4294967, at *2; *Ferrice*, 2006 WL 1714535, at *2.

Here, Amaya's arguments pertaining to jurisdiction appear to focus on whether the underlying suit should have been brought in Mexico rather than Texas, and he speculates that his attorney should have filed a special appearance or a plea to the jurisdiction. On appeal, Amaya's arguments focus on standing. However, Amaya does not argue or show that the underlying court, the 370th District Court of Hidalgo County, Texas, lacked jurisdictional power to determine a monetary claim for damages such as the case underlying this bill of review. *See* TEX. CONST. art. V, § 8 (stating in relevant part that district court jurisdiction "consists of exclusive, appellate, and original jurisdiction of all

actions, proceedings, and remedies, except in cases where exclusive, appellate, or original jurisdiction may be conferred by this Constitution or other law on some other court, tribunal, or administrative body"); TEX. GOV'T CODE ANN. § 24.007 (providing that the "district court has the jurisdiction provided by Article V, Section 8, of the Texas Constitution" and has "original jurisdiction of a civil matter in which the amount in controversy is more than $500, exclusive of interest"). In other words, Amaya does not contend or assert that the trial court lacked the power to hear and determine cases of the general class to which this case belongs. *See Fuentes*, 555 S.W.3d at 153; *In re C.M.V.*, 479 S.W.3d at 357; *Wagner*, 315 S.W.3d at 193–94; *Sweetwater Austin Props., L.L.C.*, 299 S.W.3d at 885. Because Amaya's jurisdictional challenge, including his allegations pertaining to standing, is not of the type for which compliance with the traditional bill of review requirements is excused, Amaya was required to satisfy the traditional requirements for a bill of review.

Amaya did not do so. Bissell asserted that Amaya had no evidence of: (1) a meritorious defense to the underlying cause of action, (2) which he was prevented from making by the fraud, accident, or wrongful act of the opposing party or by official mistake, (3) unmixed with any fault or negligence on his own part. *Katy Venture, Ltd.*, 469 S.W.3d at 163; *Caldwell*, 154 S.W.3d at 96; *King Ranch, Inc.*, 118 S.W.3d at 751–52. Even if we construe Amaya's putative jurisdictional or standing challenge as a meritorious defense to the underlying cause of action, and Amaya's broad allegations regarding fraud as an excuse preventing Amaya from bringing this defense prior to judgment, Amaya did not present evidence, argument, or authority that his failure to raise the defense was unmixed with any fault or negligence on his own part. *See Katy Venture, Ltd.*, 469 S.W.3d at 163;

Caldwell, 154 S.W.3d at 96; *King Ranch, Inc*., 118 S.W.3d at 751–52.

Based on the foregoing, we overrule Amaya's first three sub-issues.

Finally, in sub-issue four, Amaya contends that: (a) a traditional motion for summary judgment was improper because none of the exhibits listed as summary judgment evidence were attached or filed; and (b) a no-evidence motion for summary judgment was improper because Bissell's lack of standing negated any need to prove the challenged elements of a bill of review. In his brief, Amaya specifically contends that Bissell "failed to attach any evidence to support its Motion for Summary Judgment."

We have resolved the issues presented here based on Bissell's no-evidence motion for summary judgment and have not reached the issue of Bissell's traditional motion for summary judgment. *See Ford Motor Co.*, 135 S.W.3d at 600; *Rico*, 420 S.W.3d at 439. Accordingly, we overrule the first part of Amaya's fourth sub-issue. In terms of the second part of Amaya's fourth sub-issue, we have resolved Amaya's jurisdictional argument pertaining to standing against him. Further, under Rule 166a(i), as the rule itself recognizes, the party moving for no-evidence summary judgment has no burden to produce evidence. *See* TEX. R. CIV. P. 166a(i); *City of Keller v. Wilson*, 168 S.W.3d 802, 825 (Tex. 2005) *see also Sparkman v. Reliastar Life Ins. Co.*, No. 13-03-500-CV, 2008 WL 2058216, at *6 (Tex. App.—Corpus Christi–Edinburg May 15, 2008, pet. denied) (mem. op.). As the movant for a no-evidence summary judgment, Bissell had no need to attach evidence to its motion. Accordingly, we reject Amaya's argument that Bissell's no-evidence motion was insufficient. *See* TEX. R. CIV. P. 166a(i). We overrule the remainder of Amaya's fourth sub-issue.

V. CONCLUSION

Having overruled Amaya's issues, we affirm the judgment of the trial court.

GINA M. BENAVIDES,
Justice

Delivered and filed the
30th day of July, 2020.