

**NO. 12-12-00098-CV**

**IN THE COURT OF APPEALS**

**TWELFTH COURT OF APPEALS DISTRICT**

**TYLER, TEXAS**

*JAMES MICHAEL BRADBERRY,* § *APPEAL FROM THE 2ND*  
*APPELLANT*

*V.* § *JUDICIAL DISTRICT COURT*

*NOEL BRIDGES AND ROBERT*  
*BRIDGES,*  
*APPELLEES* § *CHEROKEE COUNTY, TEXAS*

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***MEMORANDUM OPINION***

James Michael Bradberry appeals the trial court's order granting summary judgment in favor of Noel Bridges and Robert Bridges (Appellees) in which the trial court rendered judgment that Appellees recover money damages from Bradberry. Bradberry, who is pro se, raises three issues on appeal.<sup>1</sup> We affirm.

**BACKGROUND**

Noel Bridges and his father, Robert, owned separate cattle operations. Because Noel Bridges was working overseas, Bradberry agreed to oversee Noel Bridges's cattle operation. However, Bradberry instead used the opportunity to steal from Appellees and from William Todd.

On numerous occasions, Bradberry contacted Appellees for money for the cattle operations but instead used the money for his own living expenses. Bradberry also sold cattle and equipment and absconded with the money. He sold some of the equipment to William Todd.

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<sup>1</sup> Bradberry also lists William David Todd as an appellee. However, Todd nonsuited all of his claims against Bradberry, and Bradberry made no affirmative claims against Todd. Thus, there is no judgment in favor of Todd and against Bradberry from which Bradberry can appeal.

Eventually, Appellees discovered Bradberry's deceitful tactics and retrieved their equipment that Bradberry wrongfully sold to Todd.

Todd was unhappy with Bradberry and Appellees because he paid for equipment that he was required to return. He brought suit against Bradberry and Appellees. Appellees countersued Todd and brought their own claims against Bradberry. Later, Todd nonsuited all of his claims, and Appellees nonsuited their claims against Todd. Appellees expressly reserved their claims against Bradberry.

Appellees filed a motion for summary judgment as to their claims against Bradberry. Bradberry did not file a response to the motion. By the time Appellees' motion for summary judgment was heard, Bradberry was incarcerated as a result of his conduct. His wife appeared at the hearing, but was unable to represent him. The trial court found Appellees entitled to judgment as a matter of law. Three days later, the trial court granted Appellees' motion to immediately issue an abstract of judgment and a writ of execution.

Bradberry filed a motion in arrest of judgment. He also filed a motion for new trial, but filed it more than thirty days after the trial court's judgment was signed. The trial court did not rule on either motion. Bradberry timely filed this appeal.

### **MOTION FOR SUMMARY JUDGMENT**

In Bradberry's first issue, he argues that the trial court abused its discretion by granting judgment as a matter of law to Appellees. Specifically, Bradberry argues that he was "entitled to a trial to present evidence that raises a genuine fact issue . . . ."

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

The movant for traditional summary judgment has the burden of showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *Nixon v. Mr. Prop. Mgmt. Co.*, 690 S.W.2d 546, 548 (Tex. 1985). The movant must prove all elements of the movant's cause of action. *Rhône-Poulenc, Inc. v. Steel*, 997 S.W.2d 217, 223 (Tex. 1999). Once the movant has established a right to summary judgment, the nonmovant has the burden to respond to the motion and present to the trial court any issues that would preclude summary judgment. See *City of Houston v. Clear Creek Basin Auth.*, 589 S.W.2d 671, 678-79 (Tex. 1979).

We review de novo the entire record in the light most favorable to the nonmovant, indulging every reasonable inference and resolving any doubts against the motion. *Sudan v. Sudan*, 199 S.W.3d 291, 292 (Tex. 2006) (per curiam); *KPMG Peat Marwick v. Harrison Cnty. Hous. Fin. Corp.*, 988 S.W.2d 746, 748 (Tex. 1999). All theories in support of or in opposition to a motion for summary judgment must be presented in writing to the trial court. See TEX. R. CIV. P. 166a(c). A party who fails to present a written response in opposition to a motion for summary judgment waives the right to raise any arguments or issues postjudgment. *Unifund CCR Partners v. Weaver*, 262 S.W.3d 796, 797 (Tex. 2008).

### **Discussion**

Appellees' summary judgment evidence conclusively established each element of their causes of action. Once they filed their motion, Bradberry had the burden to respond to the motion and raise any fact issues. See *City of Houston*, 589 S.W.2d at 678-79. Instead, Bradberry failed to file a response. By failing to file a response to Appellees' motion for summary judgment, Bradberry waived any arguments against the trial court's judgment. See *Weaver*, 262 S.W.3d at 797.

Bradberry argues that he was entitled to wait until the trial to present evidence to raise a fact issue. However, he cites no authority for this proposition, and the law is clearly to the contrary. See *id.* We note that Bradberry, as a pro se litigant, is held to the same standard as a licensed attorney under the law, and he must comply with all applicable laws and rules of procedure. See *Wheeler v. Green*, 157 S.W.3d 439, 444 (Tex. 2005) (per curiam). To allow otherwise would give pro se litigants an unfair advantage over litigants represented by counsel. *Mansfield State Bank v. Cohn*, 573 S.W.2d 181, 184-85 (Tex. 1978). Bradberry had the burden to respond to Appellees' motion for summary judgment, and he failed to do so. Therefore, the trial court properly granted summary judgment in favor of Appellees and against Bradberry.

Bradberry's first issue is overruled.

### **MOTION FOR NEW TRIAL**

In Bradberry's second issue, he contends that his motion in arrest of judgment must be construed as a motion for new trial.

A motion in arrest of judgment is a motion available in criminal cases by which the defendant argues that the judgment rendered was contrary to law. TEX. R. APP. P. 22. However,

we give effect to the substance, rather than the form or the title, of a motion. *Tex.-Ohio Gas, Inc. v. Mecom*, 28 S.W.3d 129, 142 (Tex. App.—Texarkana 2000, no pet.). Thus, Bradberry’s motion in arrest of judgment conceivably could be construed as a motion for new trial.

However, even if we agreed with Bradberry that his motion in arrest of judgment should be construed as a motion for new trial, he still would not be entitled to relief. By failing to file a response to Appellees’ motion for summary judgment, Bradberry waived the right to raise any arguments or issues postjudgment. See *Weaver*, 262 S.W.3d at 797. Therefore, a motion for new trial was not available to Bradberry. See *id.*

Bradberry’s second issue is overruled.

#### **NONSUIT**

In Bradberry’s third issue, he argues that Todd’s nonsuit terminated the case.

A party may nonsuit a claim at any time before a party has introduced all of his evidence other than rebuttal evidence. TEX. R. CIV. P. 162. If a claim is timely nonsuited, the controversy as to that claim is extinguished. *City of Dallas v. Albert*, 354 S.W.3d 368, 375 (Tex. 2011). However, a nonsuit does not prejudice the right of an adverse party to be heard on a pending claim for affirmative relief. *Id.*

Here, when Todd nonsuited all of his claims, Appellees’ claims against Bradberry already were before the trial court. Therefore, Todd’s nonsuit did not completely terminate the case because Todd’s nonsuit had no effect on Appellees’ pending claims for affirmative relief from Bradberry. *Id.*

Bradberry’s third issue is overruled.

#### **DISPOSITION**

Having overruled Bradberry’s first, second, and third issues, we *affirm* the judgment of the trial court. All pending motions are overruled as *moot*.

**BRIAN HOYLE**  
Justice

Opinion delivered October 31, 2012.  
*Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.*

(PUBLISH)



**COURT OF APPEALS  
TWELFTH COURT OF APPEALS DISTRICT OF TEXAS  
JUDGMENT**

**OCTOBER 31, 2012**

**NO. 12-12-00098-CV**

**JAMES MICHAEL BRADBERRY,**

Appellant

V.

**NOEL BRIDGES AND ROBERT BRIDGES,**

Appellees

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Appeal from the 2nd Judicial District Court  
of Cherokee County, Texas. (Tr.Ct.No. 2010-07-0479)

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THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the judgment.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the court below **be in all things affirmed**, and that all costs of this appeal are hereby adjudged against the appellant, **JAMES MICHAEL BRADBERRY**, for which execution may issue, and that this decision be certified to the court below for observance.

Brian Hoyle, Justice.

*Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.*