

FOURTH COURT OF APPEALS OF TEXAS, SAN ANTONIO

Bruce Kneese v. Wells Fargo Bank, N.A.; Wells Fargo Home Mortgage, Inc.; Mark C. Sparrow; and Dawn M. Sparrow

No. 04-20-00277-CV · No. 04-20-00277-CV · Decided August 18, 2021

SUMMARY

The Fourth Court of Appeals of Texas affirmed summary judgments favoring Wells Fargo and Mark and Dawn Sparrow in a contractor’s claims arising from the release of a construction lien and the contractor’s inability to collect an arbitration judgment. The court held that the appellant’s brief challenged only the traditional summary-judgment grounds and failed to present adequate legal arguments, record citations, and supporting authority addressing the independent no-evidence grounds. Because the no-evidence grounds independently supported the judgments, the court affirmed.

CASE DETAILS

COURT	Fourth Court of Appeals of Texas, San Antonio
WRITING FOR THE COURT	Patricia O. Alvarez; Luz Elena D. Chapa; Lori I. Valenzuela
JURISDICTION	Texas
DECIDED	August 18, 2021
DOCKET	04-20-00277-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from final summary judgments entered for Wells Fargo and the Sparrows after the trial court severed claims against another remaining defendant.
STANDARD OF REVIEW	The court applied the rule that an appellant seeking reversal must challenge every independent ground that fully supports the judgment. A failure to present a legally adequate appellate argument against an independent ground requires affirmance.
PRECEDENTIAL VALUE	published
PARTIES	Bruce Kneese v. Wells Fargo Bank, N.A., Wells Fargo Home Mortgage, Inc., Mark C. Sparrow, Dawn M. Sparrow

TOPICS

summary judgment

appellate procedure

preservation of error

civil procedure

construction law

PRACTICE AREAS

appellate procedure

civil procedure

construction law

contracts

real estate

QUESTIONS PRESENTED

1. Whether Kneese's appeal could succeed when his brief challenged the traditional summary-judgment grounds but failed to present legal arguments challenging the independent no-evidence grounds.
2. Whether the trial court's summary judgments had to be affirmed because the unchallenged no-evidence grounds independently supported the judgments.

HOLDINGS

1. An appellant seeking reversal must challenge every independent ground that fully supports the judgment or appealable order; if the appellant fails to present a legal argument against one such ground, the court must affirm.
2. Kneese's single-sentence challenge to the no-evidence grounds did not present a legally adequate appellate argument and therefore did not preserve a basis for reversal.

KEY QUOTATIONS

"An appellant must challenge all independent bases or grounds that fully support a judgment or appealable order." (2)

"A brief in the court of appeals 'must contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record.'" (3)

FACTUAL BACKGROUND

In 2006, Mark and Dawn Sparrow hired Bruce Kneese to construct an addition to their home and executed a contract secured by a deed of trust and power of sale. Wells Fargo's predecessor funded the construction loan, and Kneese assigned his mechanic's and materialmen's lien to the lender. After Kneese obtained an approximately \$134,000 arbitration judgment against the Sparrows, the property was refinanced in 2014 and Wells Fargo released the 2006 lien. Kneese then sued Wells Fargo and the Sparrows, alleging that the lien was released without ensuring payment of his judgment.

PROCEDURAL HISTORY

Kneese, a general contractor, sued the Sparrows and Wells Fargo relating to the release of a construction-lien interest and his inability to collect an arbitration judgment. Wells Fargo and the Sparrows moved for traditional and no-evidence summary judgment, and the trial court granted both motions. After severance made the summary judgments final, Kneese appealed, challenging the traditional grounds but failing to present developed legal arguments against the no-evidence grounds.

DISPOSITION

affirmed

CASES CITED

- FM Props. Operating Co. v. City of Austin, 22 S.W.3d 868, 872 (Tex. 2000)
- Ford Motor Co. v. Ridgway, 135 S.W.3d 598, 600 (Tex. 2004)
- In re M.J.M.G., 543 S.W.3d 862, 864 (Tex. App.—San Antonio 2017, no pet.)
- Mass. Bay Ins. Co. v. Adkins, 615 S.W.3d 580, 612 (Tex. App.—Houston [1st Dist.] 2020, no pet.)
- Britton v. Tex. Dep’t of Criminal Justice, 95 S.W.3d 676, 681 (Tex. App.—Houston [1st Dist.] 2002, no pet.)
- Oliphant Fin. LLC v. Angiano, 295 S.W.3d 422, 424 (Tex. App.—Dallas 2009, no pet.)
- ERI Consulting Eng’rs, Inc. v. Swinnea, 318 S.W.3d 867, 880 (Tex. 2010)
- Canton-Carter v. Baylor Coll. of Med., 271 S.W.3d 928, 931 (Tex. App.—Houston [14th Dist.] 2008, no pet.)
- Ross v. St. Luke’s Episcopal Hosp., 462 S.W.3d 496, 500 (Tex. 2015)
- Lowry v. Tarbox, 537 S.W.3d 599, 620 (Tex. App.—San Antonio 2017, pet. denied)
- RSL Funding, LLC v. Newsome, 569 S.W.3d 116, 126 (Tex. 2018)
- Blake v. Intco Invs. of Tex., Inc., 123 S.W.3d 521, 525 (Tex. App.—San Antonio 2003, no pet.)
- Aleman v. Ben E. Keith Co., 227 S.W.3d 304, 309 (Tex. App.—Houston [1st Dist.] 2007, no pet.)

OPINION

Bruce Kneese v. Wells Fargo Bank, N.A. Wells Fargo Home Mortgage, Inc. Mark C. Sparrow And Dawn M. Sparrow

PER CURIAM.

Fourth Court of Appeals San Antonio, Texas

MEMORANDUM OPINION

No. 04-20-00277-CV Bruce KNEESE, Appellant v. WELLS FARGO BANK, N.A.; Wells Fargo Home Mortgage, Inc.; Mark C. Sparrow; and Dawn M. Sparrow, Appellees From the 216th Judicial District Court, Gillespie County, Texas Trial Court No. 15115 Honorable N. Keith Williams, Judge Presiding Opinion by: Patricia O. Alvarez, Justice Sitting: Patricia O. Alvarez, Justice Luz Elena D. Chapa, Justice Lori I. Valenzuela, Justice Delivered and Filed: August 18, 2021

AFFIRMED

This appeal arises from a general contractor’s claims against the homeowners and the construction loan lender relating to work the contractor performed but for which he was not paid. Separately, the homeowners and the lender moved for summary judgment on traditional and no-evidence grounds, and the trial court granted the motions. Because Appellant’s brief failed to present legal arguments challenging the no-evidence grounds, we affirm the trial court’s order. 04-20-00277-CV

BACKGROUND

In 2006, Appellees Mark and Dawn Sparrow hired Appellant Bruce Kneese to construct an addition to their home. Kneese and the Sparrows executed a “Contract for Improvements with Deed of Trust and Power of Sale.” Wells Fargo Bank, N.A.’s predecessor in interest, Wells Fargo Home Mortgage, Inc., funded the construction loan, and Kneese assigned his mechanic’s and

materialmen's lien to Wells Fargo's predecessor in interest. 1 In 2009, Kneese sued the Sparrows for breach of contract and other causes of action. Three years later, an arbitrator awarded Kneese damages, costs, attorney's fees, and interest, and the trial court rendered judgment on the award for about \$134,000. Despite Kneese's repeated attempts to execute on the judgment, he was not able to collect the monies owed. In 2014, the Sparrows refinanced a 2004 loan and the 2006 construction loan with a new promissory note secured by a new deed of trust. Under the terms of the 2006 contract, Wells Fargo released its 2006 lien. Kneese sued Wells Fargo, the Sparrows, and others for releasing the lien without ensuring that his \$134,000 judgment was paid. Later, Kneese nonsuited, or the trial court dismissed, the other defendants except for Wells Fargo, the Sparrows, and one other. In their respective motions, Wells Fargo and the Sparrows moved for summary judgment on traditional and no-evidence grounds, which the trial court granted. After the court severed Kneese's claims against the other remaining defendant, Wells Fargo's and the Sparrows' interlocutory summary judgments became final, and Kneese appealed. We begin by reviewing the applicable law. 1 Appellant Wells Fargo Bank, N.A. asserts that it is the successor by merger to Wells Fargo Home Mortgage, Inc. -2- 04-20-00277-CV

APPLICABLE LAW

A. Challenging Independent Grounds Traditional and no-evidence motions for summary judgment are independent grounds for the trial court to grant summary judgment for the movant. TEX. R. CIV. P. 166a(c) (traditional motion); *id.* R. 166a(i) (no-evidence motion); see *FM Props. Operating Co. v. City of Austin*, 22 S.W.3d 868, 872 (Tex. 2000); see also *Ford Motor Co. v. Ridgway*, 135 S.W.3d 598, 600 (Tex. 2004) (same). To obtain a reversal of a trial court's judgment or order, "[a]n appellant must challenge all independent bases or grounds that fully support a judgment or appealable order." In *re M.J.M.G.*, 543 S.W.3d 862, 864 (Tex. App.—San Antonio 2017, no pet.); accord *Mass. Bay Ins. Co. v. Adkins*, 615 S.W.3d 580, 612 (Tex. App.—Houston [1st Dist.] 2020, no pet.). Otherwise, if an independent ground fully supports the judgment, but the appellant fails to challenge the independent ground by presenting a legal argument for appellate review, we must affirm the judgment or order. See *Britton v. Tex. Dep't of Criminal Justice*, 95 S.W.3d 676, 681 (Tex. App.—Houston [1st Dist.] 2002, no pet.); see also *Oliphant Fin. LLC v. Angiano*, 295 S.W.3d 422, 424 (Tex. App.—Dallas 2009, no pet.). B. Brief Requirements "The Texas Rules of Appellate Procedure require adequate briefing." *ERI Consulting Eng'rs, Inc. v. Swinnea*, 318 S.W.3d 867, 880 (Tex. 2010) (citing TEX. R. APP. P. 38.1(i)); accord *Canton-Carter v. Baylor Coll. of Med.*, 271 S.W.3d 928, 931 (Tex. App.—Houston [14th Dist.] 2008, no pet.). "A brief in the court of appeals 'must contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record.'" *Ross v. St. Luke's Episcopal Hosp.*, 462 S.W.3d 496, 500 (Tex. 2015) (quoting TEX. R. APP. P. 38.1(i)); accord *ERI Consulting Eng'rs*, 318 S.W.3d at 880. A brief that does not provide "clear and concise argument -3- 04-20-00277-CV for the contentions made, with appropriate citations to authorities and to the record," TEX. R. APP. P. 38.1(i), fails to present a legal argument for appellate review, *Lowry v. Tarbox*, 537 S.W.3d 599,

620 (Tex. App.—San Antonio 2017, pet. denied); see *RSL Funding, LLC v. Newsome*, 569 S.W.3d 116, 126 (Tex. 2018).

DISCUSSION

In their separate motions, Wells Fargo and the Sparrows moved for summary judgment against all of Kneese's claims on traditional and no-evidence grounds. Their traditional and no-evidence motions for summary judgment were independent grounds to support the trial court's judgment. See TEX. R. CIV. P. 166a(c), (i); *Ridgway*, 135 S.W.3d at 600; *FM Props. Operating Co.*, 22 S.W.3d at 872. The trial court granted summary judgment for Wells Fargo and the Sparrows on both traditional and no-evidence grounds. To obtain appellate relief, it was Kneese's burden to present legal arguments to challenge both the traditional and no-evidence grounds. See *In re M.J.M.G.*, 543 S.W.3d at 864; see also *Mass. Bay Ins. Co.*, 615 S.W.3d at 612. Kneese's brief presented arguments challenging the traditional grounds, but his brief failed to present legal arguments on the no-evidence grounds. To address the no-evidence grounds, Kneese's brief provides a single sentence: The Court erred by granting Wells Fargo[']s and [the] Sparrows['] no-evidence motion for summary judgment because Plaintiff provided summary-judgment evidence that raised a fact issue on [its] equitable claims and causes of action for being left with no viable collection remedy (i.e., secured interest) to enforce the judgment obtained through the arbitration provisions of the contract between the three parties. TEX. R. CIV. P. 166a(i). Kneese's brief does not identify the evidence that supports each essential element of each of his claims, it does not provide citations to the record to show where the evidence was presented to the trial court, and it does not provide appropriate citations to supporting authorities. Contra TEX. R. APP. P. 38.1(i); see *Lowry*, 537 S.W.3d at 620 (briefing waiver); *Canton-Carter*, 271 -4- 04-20-00277-CV S.W.3d at 931 (same); *Blake v. Intco Invs. of Tex., Inc.*, 123 S.W.3d 521, 525 (Tex. App.—San Antonio 2003, no pet.) ("As an appellate court, we are not required to search the record for a scintilla of evidence raising a material fact issue without more specific guidance."); see also *Aleman v. Ben E. Keith Co.*, 227 S.W.3d 304, 309 (Tex. App.—Houston [1st Dist.] 2007, no pet.) ("In determining whether a respondent to a no-evidence motion for summary judgment has produced sufficient evidence to raise a genuine issue of material fact, courts are not required to search the record without guidance."). Kneese's brief failed to present legal arguments challenging the trial court's judgments granting summary judgment for Wells Fargo and for the Sparrows on no-evidence grounds. See *Canton-Carter*, 271 S.W.3d at 931; *Blake*, 123 S.W.3d at 525. Because Kneese's brief failed to challenge independent grounds that fully support the trial court's summary judgments, we must affirm the trial court's severance order (which made the summary judgments final). See *Britton*, 95 S.W.3d at 681; see also *Oliphant Fin.*, 295 S.W.3d at 424.

CONCLUSION

To obtain reversal of the trial court's judgment, Kneese's brief was required to challenge and overcome each independent ground supporting the summary judgments. Because Kneese's brief failed to present legal arguments challenging Wells Fargo's and the Sparrows' no-evidence

grounds, and the no-evidence grounds support the judgments, we affirm the trial court's order.
Patricia O. Alvarez, Justice -5-

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