



NUMBER 13-18-00462-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

**MICHAEL SCOTT HANSON
A/K/A MIKE HANSON,**

Appellant,

v.

**AMERICAN EXPRESS NATIONAL
BANK F/K/A AMERICAN EXPRESS
BANK, FSB,**

Appellee.

**On appeal from the 25th District Court
of Gonzales County, Texas.**

MEMORANDUM OPINION

**Before Justices Hinojosa, Perkes, and Tijerina
Memorandum Opinion by Justice Tijerina**

By four issues, pro se appellant Michael Scott Hanson a/k/a Mike Hanson argues the trial court erred by: (1–2) refusing to dismiss the case for lack of diligent prosecution and allowing this case to “languish on the docket for five years and one month”; (3)

misapplying Rule 169 of the Texas Rules of Civil Procedure; and (4) granting summary judgment in favor of appellee American Express National Bank f/k/a American Express Bank, FSB (AENB). See TEX. R. CIV. P. 169. We affirm.

I. BACKGROUND

AENB sued Hanson on July 1, 2013 for breach of contract, asserting that Hanson failed to repay a credit card debt in the amount of \$28,846.40. AENB asserted its cause of action was governed by Rule 169 as it sought monetary relief in an amount less than \$100,000. See *id.* (applying an expedited action process to suits that seek only monetary relief of \$100,000 or less). Hanson filed an answer on November 4, 2013, asserting that although he had “not reduced the balance due . . . to zero,” AENB “has been unreasonable in its demands.”

On September 17, 2014, AENB filed a request for disclosure, and on July 26, 2015, it filed a request for admissions.¹ On August 26, 2015, Hanson responded to the request for admissions. On April 20, 2017, AENB filed a motion for summary judgment on its breach of contract claim. In December 2017, Hanson filed an “answer to motion for summary judgment and request for dismissal for want of prosecution.” AENB filed an amended petition on April 11, 2018.

The trial court set a hearing for July 25, 2018. After considering the pleadings, the summary judgment evidence, and the argument of the parties, the trial court granted AENB’s motion for summary judgment and awarded damages in the amount of \$28,846.38. This appeal followed.

II. LACK OF DILIGENT PROSECUTION

¹ It appears Hanson did not respond to AENB’s request for disclosure.

By his first two issues, Hanson asserts that the trial court erred when it refused to dismiss the case for lack of diligent prosecution and allowed the case to “languish” for five years. However, “[a] trial court’s erroneous refusal to dismiss a case for want of prosecution cannot effectively be challenged on appeal.” *In re Conner*, 458 S.W.3d 532, 535 (Tex. 2015) (per curiam); see also *Tex. Wrecker Serv. v. Resendez*, No. 13-16-00515-CV, 2017 WL 711642, at *6 (Tex. App.—Corpus Christi—Edinburg Feb. 23, 2017, orig. proceeding) (mem. op.). Therefore, we lack jurisdiction over Hanson’s first two issues as there is no adequate remedy on appeal. See *In re Conner*, 458 S.W.3d at 535. We overrule Hanson’s first and second issues.²

III. RULE 169

By his third issue, Hanson asserts the trial court violated Rule 169 requiring that expedited actions “on any party’s request,” be set for a trial date that is “within 90 days after the discovery period in Rule 190.2(b)(1) ends.” TEX. R. CIV. P. 169(d)(2); see *In re State Farm Mut. Auto. Ins. Co.*, 551 S.W.3d 858, 864 (Tex. App.—Amarillo 2018, no pet.). Here, the record provides that neither party requested that a trial be set within ninety days after the discovery period. Therefore, Rule 169 is inapplicable. We overrule his third issue.

IV. SUMMARY JUDGMENT

By his fourth issue, Hanson argues that the trial court erred when it granted summary judgment on AENB’s “original petition when it had been superseded by an

² Nonetheless, § 74.024 of the Texas Government Code provides that the supreme court may consider the adoption of rules relating to nonbinding time standards for pleading, discovery, motions, and dispositions, TEX. GOV’T CODE ANN. § 74.024(c)(1), (2), and Hanson concedes that these standards are nonbinding and discretionary.

Original Amended Petition” because the trial court awarded judgment to “American Express Bank” an entity that Hanson claims was no longer a party to the case.

AENB filed a motion for summary judgment in 2017. In 2018, AENB amended its petition stating that American Express Bank “merged with AENB, which is the surviving entity after the merger,” and it filed a business records affidavit to that effect. Following a hearing, the trial court granted AENB’s motion for summary judgment and awarded American Express Bank \$28,846.38 in damages.

On appeal, Hanson states that this judgment is an “impossibility” because American Express Bank (rather than AENB) obtained a judgment, and it is “no longer a party to the case.” However, Hanson cites no authority for such argument. See TEX. R. APP. P. 38.1 (“The brief must contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record.”). Nonetheless, “a corporate name change has no effect on the identity of the company or its rights and liabilities.” *Zuniga v. Wooster Ladder Co.*, 119 S.W.3d 856, 862 (Tex. App.—San Antonio 2003, no pet.). Thus, AENB was not required to substitute itself as a party in order to be entitled to judgment because its name change had no effect on the proceedings. See *N. Nat. Gas Co. v. Vanderburg*, 785 S.W.2d 415, 421 (Tex. App.—Amarillo 1990, no writ) (“As a matter of law a corporate name change does not affect its identity, property rights, or liabilities.”); see also *Sanchez v. Deutsche Bank Nat’l Trust Co.*, No. 14–13–00272–CV, 2015 WL 3609100, at *2 (Tex. App.—Houston [14th Dist.] June 9, 2015, no pet.) (mem. op. on reh’g) (holding that a party was not required to substitute itself as a party because it underwent a name change). Therefore, we overrule Hanson’s last issue.

V. CONCLUSION

We affirm the trial court's judgment.

JAIME TIJERINA,
Justice

Delivered and filed the
18th day of June, 2020.