Affirmed and Memorandum Opinion filed July 21, 2020.

In The

Fourteenth Court of Appeals

NO. 14-19-00376-CV

LENNIE JACKSON, Appellant

V.

PATTEN LAW FIRM, PC, Appellee

On Appeal from the 234th District Court
Harris County, Texas
Trial Court Cause No. 2018-34839

M E M O R A N D U M O P I N I O N

Appellant Lennie Jackson appeals a summary judgment granted in favor of Patten Law Firm, PC, on Jackson's legal malpractice claims. The law firm filed a no-evidence summary-judgment motion based on several independent grounds. The trial court granted the motion without stating the ground or grounds on which it relied. Because on appeal Jackson does not challenge all grounds that could have supported the trial court's judgment, we affirm.

Background

This appeal involves legal malpractice claims against Patten Law Firm, PC (the "Firm"). In his Original Petition, Jackson purported to bring suit individually and derivatively on behalf of BL Enterprise LLC ("BLE"). According to Jackson, the Firm negligently performed a real estate title search and negligently advised Jackson or BLE. Jackson signed the Original Petition himself and was not represented by counsel in either his individual or derivative capacities.

The Firm specially excepted to the Original Petition on the ground that Jackson could not represent BLE because it is a corporation and Jackson is not a licensed attorney. According to the Firm, the trial court granted that special exception and required BLE to obtain legal representation, though a copy of that order is not contained in our record. In any event, Jackson filed a First Amended Original Petition, which stated that "[t]he original petition is hereby amended to dismiss BL Enterprise LLC as a party in interest" and listed Jackson as the only plaintiff. According to Jackson, "dismiss[ing]" BLE as a plaintiff "cures the defect in the court's order that [BLE] retain corporate counsel." In his Amended Petition, which we construe liberally, Jackson asserted negligence and fraud claims. *See SmithKline Beecham Corp. v. Doe*, 903 S.W.2d 347, 354-55 (Tex. 1995).

The Firm filed a "Motion for Traditional and No-Evidence Partial Summary Judgment."[1] In the no-evidence part of the motion, the Firm argued that it was entitled to judgment as a matter of law because: (1) no evidence supports Jackson's standing to sue the Firm; (2) there exists no evidence of an attorney-client

[1] Although entitled a "partial" motion for summary judgment, the motion's substance reveals that the Firm sought summary judgment on all of Jackson's claims and dismissal of the lawsuit. We construe a motion in accordance with its substance. *See Surgitek, Bristol-Myers Corp. v. Abel*, 997 S.W.2d 598, 601 (Tex. 1999) (courts look to substance of pleading rather than its caption or form to determine its nature).

relationship between Jackson and the Firm; (3) there exists no evidence the Firm owed Jackson a negligence duty; (4) there exists no evidence the Firm breached a negligence duty; (5) there exists no evidence of damages to Jackson proximately caused by the Firm's breach of a negligence duty; and (6) the negligence claims asserted by Jackson may not be fractured into other claims, such as fraud.

The trial court signed an order granting the Firm's no-evidence motion for summary judgment. The order does not state the ground(s) on which the motion was granted, nor does it purport to grant the Firm's traditional motion for summary judgment. The court ordered that Jackson take nothing on all his claims and dismissed the lawsuit with prejudice.

Jackson timely appealed.

Analysis

Continuing to represent himself in our court, Jackson filed an appellant's brief. After the Firm filed an appellee's brief and after we set the case for submission on the briefs, Jackson tendered for filing an amended brief without a motion for leave. On our own motion, and in the interest of justice, we grant leave and order Jackson's amended brief filed.[2]

Jackson's issues focus on whether he has standing to sue the Firm. Jackson says he owns BLE, a closely-held corporation, and, as such, he has standing to sue derivatively for BLE's alleged injury. He also argues that the trial court was wrong to compel BLE to retain counsel.

Neither in his original brief nor his amended brief, however, does Jackson address the Firm's other stated grounds for a no-evidence summary judgment. For

[2] *See* Tex. R. App. P. 38.7 (appellate court may allow amendment of briefs when justice requires).

example, in neither brief does Jackson argue that an attorney-client relationship existed between Jackson and the Firm, that he presented some evidence on each required element of his negligence claim, or that he may assert a fraud claim in addition to professional negligence. The Firm says these failures are fatal to Jackson's appeal.

At the outset, we observe that Jackson and the Firm are the only parties to this appeal. When the trial court granted the Firm's no-evidence motion for summary judgment, any claims by or on behalf of BLE had been non-suited by the filing of the Amended Petition and were no longer part of the case. Jackson was the only named plaintiff, and the trial court's order dismissed all his claims. Only Jackson filed a notice of appeal. Although Jackson complains on appeal that the trial court erred in granting the Firm's special exception and requiring BLE to retain counsel, Jackson waived the right to complain of either of these alleged errors by dismissing in his Amended Petition the claims he asserted on behalf of BLE. *See* Tex. R. Civ. P. 65 (substituted pleading supersedes previous pleading); *Cont'l Alloy & Servs. (Del.) LLC v. YangZhou Chengde Steel Pipe Co., Ltd*., 597 S.W.3d 884, 897-98 (Tex. App.—Houston [14th Dist.] 2020, no pet. h.). In his Amended Petition, Jackson stated that he was amending the Original Petition to dismiss BLE "as a party in interest"; Jackson listed himself as the only plaintiff; and Jackson did not refer to BLE either specifically or generally as a plaintiff. Thus, in his Amended Petition, Jackson dismissed his claims on behalf of BLE, and from that point forward, no claim on behalf of BLE was pending before the trial court. *See Amerigroup Tex., Inc. v. True View Surgery Ctr., L.P*., 490 S.W.3d 562, 570-71 (Tex. App.—Houston [14th Dist.] 2016, no pet.); *Randolph v. Walker*, 29 S.W.3d 271, 274 (Tex. App.—Houston [14th Dist.] 2000, pet. denied); *Radelow-Gittens Real Prop. Mgmt. v. Pamex Foods*, 735 S.W.2d 558, 559 (Tex. App.—Dallas 1987, writ ref'd n.r.e.).

We review a grant of summary judgment under a de novo standard of review. *See Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding*, 289 S.W.3d 844, 848 (Tex. 2009). When, as here, a summary-judgment motion asserts multiple grounds and the order granting summary judgment does not specify the ground on which judgment was rendered, the appellant must challenge and negate all summary-judgment grounds on appeal. *See, e.g.*, *Collins v. D.R. Horton-Tex. Ltd*., 574 S.W.3d 39, 44 (Tex. App.—Houston [14th Dist.] 2018, pet. denied); *Heritage Gulf Coast Props., Ltd. v. Sandalwood Apartments, Inc*., 416 S.W.3d 642, 653 (Tex. App.—Houston [14th Dist.] 2013, no pet.); *Petroleum Analyzer Co. LP v. Olstowski*, No. 01-09-00076-CV, 2010 WL 2789016, at *16 (Tex. App.—Houston [1st Dist.] July 15, 2010, no pet.) (mem. op.). If summary judgment may have been rendered, properly or improperly, on a ground not challenged on appeal, the judgment must be affirmed. *Collins*, 574 S.W.3d at 44; *Olstowski*, 2010 WL 2789016, at *16; *Britton v. Tex. Dep't of Crim. Justice*, 95 S.W.3d 676, 682 (Tex. App.—Houston [1st Dist.] 2002, no pet.).

As the Firm correctly notes, Jackson challenges only some of the grounds raised in the Firm's no-evidence motion for summary judgment. He fails to address the Firm's alternative arguments that there exists no evidence to support each element of Jackson's negligence claim, or that Texas law precludes Jackson from fracturing his negligence claim into an additional claim for fraud.[3] Because summary judgment may have been rendered on a ground not challenged on appeal,

[3] The rule against fracturing a negligence claim prevents a legal-malpractice plaintiff from opportunistically transforming a claim that sounds only in negligence into some other claim. *See Deutsch v. Hoover, Bax & Slovacek, L.L.P.*, 97 S.W.3d 179, 189 (Tex. App.—Houston [14th Dist.] 2002, no pet.). If the gist of the client's complaint is that the attorney did not exercise that degree of care, skill, or diligence as attorneys of ordinary skill and knowledge commonly possess, then that complaint should be pursued as a negligence claim, rather than some other claim. *See id.* If, however, the client's complaint is more appropriately classified as another claim, for example, fraud, then the client can assert a claim other than negligence. *See id*.

we uphold the summary judgment, whether it may have been rendered properly or improperly. *See Collins*, 574 S.W.3d at 44; *Olstowski*, 2010 WL 2789016, at *16.

We overrule Jackson's issues.

We affirm the trial court's judgment.

/s/ Kevin Jewell
Justice

Panel consists of Chief Justice Frost and Justices Jewell and Bourliot.