



Kimberly Burnett v. Rayshun Jackson

2012 | Cited 0 times | Court of Appeals of Texas | April 17, 2012

MEMORANDUM OPINION

Before Justices O'Neill, Richter, and Francis

Opinion By Justice O'Neill

Appellant Kimberly Burnett appeals a no-evidence summary judgment granted in favor of appellee Rayshun Jackson. Burnett sued attorney Jackson for fraud in association with a medical malpractice lawsuit Burnett had filed against medical providers. According to Burnett, Jackson deceived her into retaining him to represent her in the lawsuit that she had already filed, and then allowed her claims against one defendant doctor be dismissed without her knowledge, and then refused to represent her against the other defendant resulting in those claims also being dismissed.

After Jackson answered, he filed a no-evidence motion for summary judgment asserting there was no evidence on each element of Burnett's fraud claim. The trial court granted the motion.

On appeal, Burnett raises several complaints about the proceedings in the trial court and in the underlying medical malpractice proceedings. Burnett's complaints are not directed to the motion for summary judgment or the trial court's ruling thereon. Specifically, she does not reference any evidence that she brought forward to raise a fact issue on each element of her claim. Absent a showing that the trial court's summary judgment was erroneous, Burnett cannot establish error. Cf. *Martinez v. ACCC Ins. Co.*, 343 S.W.3d 924, 931 (Tex. App.-Dallas 2011, no pet.) (we must uphold a summary judgment if the appellant does not challenge and negate every ground on which summary judgment could have been granted.).

To the extent Burnett complains that Jackson did not "disclose" or "turn over" certain evidence before the summary judgment was granted, she does not direct this court to any discovery requests, any motions to compel, or any adverse rulings from the trial court. To preserve a complaint for appellate review, a party must have presented to the trial court a timely request, objection, or motion that states the specific grounds for the desired ruling and obtain an adverse ruling from the trial court. Tex. R. App. P 33.1(a). Because Burnett does not direct this court any evidence she properly requested or any adverse rulings from the trial court, no error is preserved. Burnett also complains no record was made of the summary judgment hearing. She has not shown she objected to the absence of a court reporter, or that she obtained an adverse ruling from the trial court. To complain that the court reporter failed to record a proceeding, a party must object in the trial court and obtain a ruling.



Kimberly Burnett v. Rayshun Jackson

2012 | Cited 0 times | Court of Appeals of Texas | April 17, 2012

Reyes v. Credit Based Asset Servicing & Securitization, 190 S.W.3d 736, 740 (Tex. App.-San Antonio 2005, no pet.). Moreover, because both the reasons for and the objections to summary judgment must be in writing and before the trial judge at the hearing, court reporters are neither necessary nor appropriate at a summary judgment hearing. Olsen v. Comm'n for Lawyer Discipline, 347 S.W.3d 876, 885 (Tex. App.-Dallas 2011, pet. filed); Tex. R. Civ. P. 166a(c).

Because Burnett has not shown the trial court's judgment was erroneous, we must affirm the judgment.

Court of Appeals Fifth District of Texas at Dallas

JUDGMENT KIMBERLY BURNETT, Appellant

V.

RAYSHUN JACKSON, Appellee

No. 05-10-01534-CV

Appeal from the 116th District Court of Dallas County, Texas. (Tr.Ct.No. 09-17437- F).

Opinion delivered by Justice O'Neill, Justices Richter and Francis.

In accordance with this Court's opinion of this date, the judgment of the trial court is AFFIRMED. It is ORDERED that appellee Rayshun Jackson recover his costs of this appeal from appellant Kimberly Burnett.

Judgment entered April 17, 2012.

MICHAEL J. O'NEILL JUSTICE

