

PUBLICATION UPDATE

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Summary Judgments in Texas: Practice, Procedure and Review

Publication 82681

Release 21

November 2020

HIGHLIGHTS

Recent Cases

- Recent decisions from the Texas Supreme Court and the courts of appeals on summary judgment practice and procedure have been added and analyzed throughout this release.

Updated Substantive Discussions

- Multiple chapters have updated with revised substantive discussions and additional case law.

numerous areas based on recent Texas Supreme Court and courts of appeals cases, including:

Baseless Claims. Ch. 1 analyzes the Texas Supreme Court’s decision in *Bethel v. Quilling*, 595 S.W.3d 651 (Tex. 2020) which held that even though Rule 91a refers to dismissal based on “the pleading of the cause of action” (i.e., the allegations in the plaintiff’s petition), the trial court may consider the defendant’s pleading of an affirmative defense when deciding whether the plaintiff’s cause of action may be dismissed as baseless.

Late-Filed Response. *Impact of Untimely Response*, in Ch. 2 includes a discussion of the holding by the Supreme Court, in *B.C. v. Steak N Shake*, 598 S.W.3d 256 (Tex. 2020)

Revised and Updated Discussions Based on Recent Cases.

In this release, *Summary Judgments in Texas—Practice, Procedure and Review* has been updated with revised and improved discussions in

that a broadly-worded recital in the summary judgment that the trial court considered “the evidence” may qualify as the requisite affirmative indication establishing that the late-filed response and evidence were considered by the trial court and are properly part of the record to be reviewed on appeal – particularly if the movant objected to the late filing but did not obtain a ruling on that objection.

Non-Suit as Response. Ch. 4 includes an expanded analysis of the factors that may support an inference that the plaintiff non-suited to avoid an adverse summary judgment ruling so as to expose the plaintiff to potential liability for attorney’s fees.

No-Evidence Motions. As discussed in Ch. 5, the Texas Supreme Court in *Town of Shady Shores v. Swanson*, 590 S.W.3d 544 (Tex. 2020) resolved a conflict among courts of appeals and held that governmental immunity may be asserted in a no-evidence motion for summary judgment because the plaintiff has the burden to establish the trial court’s jurisdiction which necessarily encompasses the burden to establish a waiver of a government defendant’s immunity from suit.

Summary Judgment Evidence—Substance vs. Form. *Summary Judgment Evidence*, Ch. 6, has been updated with significant decisions and additional analysis on the continuing debate over defects in the form of summary judgment proof versus defects in the substance of

proof for purposes of preservation of error.

Finality. Ch. 8, *Appellate Review of Summary Judgments*, has been updated to address the Texas Supreme Court’s decisions in *Palma v. Young*, 601 S.W.3d 799 (Tex. 2020) and *In re R.R.K.*, 590 S.W.3d 535 (Tex. 2020) in which the Texas Supreme Court reaffirmed (emphatically) its prior decisions holding that Mother Hubbard clauses are not conclusive of finality and reiterated that if the trial court provides a clear and unequivocal statement of its intent for the appealed-from order to be a final judgment, that statement of finality must be given effect even if review of the record would undermine finality.

No-Evidence Review. The discussion in Ch. 8 regarding the potential and actual impact of the Texas Supreme Court’s seminal no-evidence decision in *City of Keller* on appellate review of no-evidence summary judgments has been substantially revised and supplemented to reflect subsequent decisions.

Substantive Law. Throughout Ch. 9, case law has been added to address recent developments in medical malpractice, limitations, contract law, attorney’s fees, legal malpractice and other substantive legal issues often litigated through summary judgment proceedings.

Updated Index and Table of Cases. The Index and Table of Cases have been completely updated in this release to reflect changes to the text.

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