

**REVERSE and REMAND; Opinion Filed August 28, 2012.**

**In The  
Court of Appeals  
Fifth District of Texas at Dallas**

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**No. 05-11-00621-CV**

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**DAVID EOFF, Appellant**

**V.**

**AHERN RENTALS, INC., Appellee**

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**On Appeal from the 101st Judicial District Court  
Dallas County, Texas  
Trial Court Cause No. DC-10-06023-E**

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**MEMORANDUM OPINION**

Before Moseley, Lang-Miers, and Murphy  
Opinion By Justice Moseley

David Eoff appeals a summary judgment rendered against him and in favor of Ahern Rentals, Inc. He asserts, among other things, that the motion did not expressly state the specific grounds on which it was made. The background and facts of the case are well-known to the parties; thus, we do not recite them here in detail. Because all dispositive issues are settled in law, we issue this memorandum opinion. TEX. R. APP. P. 47.2(a), 47.4. We reverse the trial court's judgment and remand the case for further proceedings.

A traditional motion for summary judgment must state "the specific grounds therefor." TEX. R. CIV. P. 166a(c); *see also Fed. Deposit Ins. Corp. v. Lenk*, 361 S.W.3d 602, 609 (Tex. 2012)

("[C]ourt cannot grant summary judgment on grounds that were not presented." (Citation omitted)); *McConnell v. Southside Indep. Sch. Dist.*, 858 S.W.2d 337, 339 (Tex. 1993) (motion must expressly present grounds for summary judgment). "Grounds" refers to the reasons entitling the movant to summary judgment. *McConnell*, 858 S.W.2d at 339 n.2. We "cannot read between the lines, infer or glean from the pleadings or the proof any grounds for granting the summary judgment other than those grounds expressly set forth before the trial court." *Id.* at 343 (citation omitted). Additionally, when a plaintiff moves for summary judgment, it must prove it is entitled to judgment as a matter of law on each element of its cause of action. *Rhone-Poulenc, Inc. v. Steel*, 997 S.W.2d 217, 222-23 (Tex. 1999).

Ahern's motion includes four sections: "Evidence," "Facts," "Affidavits," and "Prayer and Request for Relief." However, the motion does not state the grounds on which it is made. It does not identify the alleged cause(s) of action on which it seeks summary judgment, or identify the elements of such cause(s) of action. Ahern claims on appeal that "[t]he ground presented in Ahern's summary judgment motion is contained in Ahern's pleadings." However, the grounds must be set forth in the motion itself, not in the pleadings. *McConnell*, 858 S.W.2d at 341, 343.

Because Ahern's motion fails to present to the trial court the "specific grounds" for granting summary judgment, the motion is insufficient and cannot support summary judgment. *See* TEX. R. CIV. P. 166a(c); *Lenk*, 361 S.W.3d at 609; *McConnell*, 858 S.W.2d at 342.

Accordingly, we reverse the trial court's judgment and remand this case for further proceedings.<sup>1</sup>

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<sup>1</sup> Because we sustain Eoff's second issue, which necessitates remanding this case to the trial court for further proceedings, we do not consider Eoff's first, third, or fourth issues. *See* TEX. R. APP. P. 47.1.

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JIM MOSELEY  
JUSTICE

**Court of Appeals  
Fifth District of Texas at Dallas**

**JUDGMENT**

DAVID EOFF, Appellant

No. 05-11-00621-CV            V.

AHERN RENTALS, INC., Appellee

Appeal from the 101st Judicial District Court  
of Dallas County, Texas. (Tr.Ct.No. Cause  
No. DC-10-06023-E).

Opinion delivered by Justice Moseley,  
Justices Lang-Miers and Murphy  
participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **REVERSED** and this cause is **REMANDED** to the trial court for new trial. It is **ORDERED** that appellant David Eoff recover his costs of this appeal from appellee Ahern Rentals, Inc.

Judgment entered August 28, 2012.

/Jim Moseley/

JIM MOSELEY

JUSTICE