

Reversed and Remanded and Opinion Filed August 3, 2016



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

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No. 05-15-01283-CV

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**TEXAS HEALTH RESOURCES, TRUMBULL INSURANCE COMPANY AND TEXAS  
HEALTH PRESBYTERIAN HOSPITAL DALLAS, Appellants**

**V.**

**NINA PHAM, Appellee**

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**On Appeal from the 68th Judicial District Court  
Dallas County, Texas  
Trial Court Cause No. DC-15-02252**

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**MEMORANDUM OPINION**

Before Justices Myers, Stoddart, and Whitehill  
Opinion by Justice Whitehill

This is an accelerated interlocutory appeal from a temporary injunction. A threshold issue is whether Pham produced some evidence on each element of at least one recognized cause of action to show a probable right of recovery that could support a temporary injunction. We conclude that she did not. Therefore, we reverse the trial court's order and dissolve the injunction.

**I. BACKGROUND**

**A. Factual Allegations.**

Appellee Nina Pham alleges the following facts in her live pleading:

In the fall of 2014, Pham was working as a nurse in the intensive care unit at appellant Texas Health Presbyterian Hospital Dallas (Presbyterian), a hospital in the THR hospital system.

On 25 September 2014, a patient named Thomas Duncan sought treatment at Presbyterian's emergency room. He returned three days later, and he was formally admitted and transferred to Presbyterian's ICU the next day. That same day, Pham was told that Thomas would be her patient and that he was suspected to have the Ebola virus, which causes a hemorrhagic disease known for its very high mortality rate. The next day, test results confirmed that Thomas had Ebola. Pham cared for him over the next several days. Thomas died a week later.

Pham began to run a fever on 10 October. She sought treatment at Presbyterian and late the next day was told that she tested positive for Ebola. She was eventually transferred to the National Institutes of Health in Bethesda, Maryland. She survived the virus and was discharged.

**B. Procedural History.**

Pham sued THR alleging that THR's (i) deficient policies, (ii) failure to train, and (iii) failure to supply adequate protective equipment caused her injuries. She also alleged that THR violated her privacy in its efforts to mitigate the negative publicity from its hospital's handling of the Ebola crisis. She asserted claims for negligence, negligent undertaking, premises liability, invasion of privacy, fraud, securing the execution of a document by deception, and gross negligence.

THR filed a plea to the jurisdiction, request for abatement, and original answer. THR argued that Pham's pleading alleged facts that raised a question as to whether she was a THR employee for purposes of Texas's workers' compensation statute. This question is important because Pham could be subject to the workers compensation statute's exclusive remedy provisions if THR was her employer. *See* TEX. LAB. CODE § 408.001. THR further argued that

the employee status issue was within the Texas Department of Insurance, Division of Workers' Compensation's (DWC) exclusive jurisdiction, and thus the trial court lacked subject matter jurisdiction over the issue.

Pham filed a supplemental petition that added applications for a temporary restraining order and a temporary injunction seeking to stop THR and Presbyterian from litigating the co-employer issue in any other forum. She alleged that she was employed by Presbyterian, not THR. She further alleged that one of THR's lawyers had recently submitted, on Presbyterian's behalf, a "Request to Schedule a Benefit Review Conference" to the Texas Department of Insurance. She attached the request and its cover letter to her supplemental petition. The cover letter states that the request was actually being filed on behalf of "the carrier, Trumbull Insurance Company." The request identified the following "disputed issue": "Whether Texas Health Resources and Texas Health Presbyterian Hospital Dallas are co-employers of Nina Pham for the purposes of Texas workers' compensation." Pham argued that the request was a "direct affront" to the trial court's jurisdiction and an attempt to deny her right to adjudicate her claims in court. She asked the court to restrain and enjoin THR and Presbyterian from proceeding with the benefits review conference and from submitting any matters before the court to any other court, tribunal, or administrative agency.

Pham later filed a first amended petition that continued to assert the same claims against THR but expressly denied she was THR's employee. That same day, THR filed a response to the applications for temporary restraining order and temporary injunction. The trial court held a hearing and signed a temporary restraining order.

On 4 May, the trial court held a temporary injunction hearing. It did not rule on the temporary injunction application, but it extended the TRO for two more weeks.

Two weeks later, the court held another hearing. A discovery issue arose at that hearing, and the temporary injunction issue was not reached.<sup>1</sup>

The parties extended the TRO by agreement, and the court heard the temporary injunction application on 5 October. No witnesses testified at the hearing. The trial court admitted 34 exhibits at the hearing, including Pham's affidavit previously filed with the court.

The court then issued a temporary injunction prohibiting "the Enjoined Parties" from certain acts, including "attempting to adjudicate whether THR and Presbyterian Hospital are co-employers before the Division of Workers Compensation to establish an exclusive remedy affirmative defense based on TEXAS LABOR CODE § 408.001 [or] an exhaustion of remedies affirmative defense based on TEXAS LABOR CODE § 410.025 *et seq.* to Pham's claims in this lawsuit." The injunction does not define the term "Enjoined Parties."

Appellants timely filed a joint notice of accelerated appeal. *See* TEX. CIV. PRAC. & REM. CODE § 51.014(a)(4). The notice identified appellants Trumbull Insurance Company and Texas Health Presbyterian Hospital Dallas as "parties-in-interest."

## II. ISSUES

Appellants assert three issues:

1. The trial court abused its discretion because (i) co-employer status is an issue within the DWC's exclusive jurisdiction, and (ii) the trial court therefore lacks jurisdiction to enjoin appellants from proceeding before the DWC.

2. To the extent the temporary injunction is an anti-suit injunction, the trial court abused its discretion because Pham presented no evidence to support an anti-suit injunction.

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<sup>1</sup> The discovery issue resulted in a mandamus proceeding in this Court. *In re Tex. Health Res.*, 472 S.W.3d 895 (Tex. App.—Dallas 2015, orig. proceeding).

3. The trial court abused its discretion because Pham presented no evidence of certain required elements of a temporary injunction, namely probable right to recovery and probable harm.

We sustain appellants' third issue, concluding that Pham did not present sufficient evidence to support a probable right to recovery on any of her claims. We thus need not address issues one and two.<sup>2</sup>

### III. ANALYSIS

#### A. Applicable Standards.

To obtain a temporary injunction, the applicant must plead and prove three specific elements: (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002).

The probable right of recovery requirement stems from injunctive relief's extraordinary nature. The applicant seeks to bar the respondent from a course of conduct that it may well have a legal right to pursue. Accordingly, "[t]he applicant has, and in equity and good conscience ought to have, the burden of offering some evidence which, under applicable rules of law, establishes a probable right of recovery." *Camp v. Shannon*, 348 S.W.2d 517, 519 (Tex. 1961).

"The party seeking an injunction must have at least one valid legal theory to support a probable right to recover." *Marketshare Telecom, L.L.C. v. Ericsson, Inc.*, 198 S.W.3d 908, 922 (Tex. App.—Dallas 2006, no pet.); see also *Branch Banking & Trust Co. v. TCI Luna Ventures, LLC*, No. 05-12-00653-CV, 2013 WL 1456651, at \*2–6 (Tex. App.—Dallas Apr. 9, 2013, no

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<sup>2</sup> Although appellants' first issue argues that the temporary injunction is erroneous because the trial court lacks jurisdiction to decide whether THR was Pham's co-employer, we resolve this appeal based on appellants' third issue. This is not a situation in which the trial court's jurisdiction over the entire case is in question. The question presented is whether the temporary injunction is erroneous for any of the reasons preserved and raised by appellants, and we conclude, based on appellants' third issue, that it is. We express no opinion regarding whether the trial court would otherwise have jurisdiction regarding the question of Pham's employer.

pet.) (mem. op.) (reversing temporary injunction after holding that there was no evidence of at least one element of each of appellee's claims); *INEOS Grp. Ltd. v. Chevron Phillips Chem. Co., LP*, 312 S.W.3d 843, 848 (Tex. App.—Houston [1st Dist.] 2009, no pet.) (applicant “must, at the very least, present some evidence that, under the applicable rules of law, tends to support its cause of action”). Thus, determining whether the applicant has shown a probable right to recover “entails a thorough review of the law applicable to the parties’ claims and defenses.” *Cameron Int’l Corp. v. Guillory*, 445 S.W.3d 840, 846 (Tex. App.—Houston [1st Dist.] 2014, no pet.).

We note that, at a temporary injunction hearing, the trial court determines whether the applicant has shown a probability of success on the merits; the parties do not present the underlying merits of the controversy. *Marketshare Telecom*, 198 S.W.3d at 922. This means that the applicant need not prove that it will actually prevail at trial; additionally, the trial court’s decision that the applicant has a probable right to recover has no precedential or preclusive effect at trial. *See Intercontinental Terminals Co., LLC v. Vopak N. Am., Inc.*, 354 S.W.3d 887, 897 (Tex. App.—Houston [1st Dist.] 2011, no pet.). Nevertheless, the applicant must raise a bona fide issue as to its right to ultimate relief, *id.*, and it cannot do this without presenting some evidence to support every element of at least one valid legal theory, *see Branch Banking & Trust*, 2013 WL 1456651, at \*2–6.

Whether to grant or deny a temporary injunction is within the trial court’s sound discretion. *Butnaru*, 84 S.W.3d at 204. We reverse a temporary injunction only if the trial court abused its discretion. *Id.* We must not substitute our judgment for the trial court’s judgment unless the trial court’s action was so arbitrary that it exceeded the bounds of reasonable discretion. *Id.*

A temporary injunction is an abuse of discretion if the evidence does not reasonably support the existence of a probable right of recovery or probable injury. *Bureaucracy Online, Inc. v. Schiller*, 145 S.W.3d 826, 829 (Tex. App.—Dallas 2004, no pet.). We draw all legitimate inferences from the evidence in the light most favorable to the trial court’s order. *Marketshare Telecom*, 198 S.W.3d at 916.

**B. Issue Three: Did Pham offer sufficient evidence of a probable right of recovery?**

Concluding that it is dispositive, we turn to appellant’s third issue. The question is whether Pham presented some evidence showing a probable right of recovery on at least one claim. *See Branch Banking & Trust*, 2013 WL 1456651, at \*2–6 (using the same claim-by-claim analysis). For the following reasons, we conclude that she did not.

**1. Negligence, Negligent Undertaking, and Gross Negligence.**

“The elements of negligence are a duty, a breach of that duty, and damages proximately caused by the breach.” *Ostrovitz & Gwinn, LLC v. First Specialty Ins. Co.*, 393 S.W.3d 379, 399 (Tex. App.—Dallas 2012, no pet.). A negligent undertaking claim has the same elements, plus additional elements that are not material here. *See Nall v. Plunkett*, 404 S.W.3d 552, 555 (Tex. 2013) (per curiam). Proximate cause is also an element of gross negligence. *Gray v. Woodville Health Care Ctr.*, 225 S.W.3d 613, 617 (Tex. App.—El Paso 2006, pet. denied); *see also Santana v. Arpin Am. Moving Sys., LLC*, No. 2-08-132-CV, 2009 WL 2462500, at \*6 (Tex. App.—Fort Worth Aug. 13, 2009, no pet.) (mem. op.) (“[C]ausation is an element of Appellant’s negligence, negligence per se, and gross negligence claims[.]”).

Proximate cause has two components: foreseeability and cause in fact. *Rodgers v. Weatherspoon*, 141 S.W.3d 342, 345 (Tex. App.—Dallas 2004, no pet.). Cause in fact requires proof that (i) the negligence was a substantial factor in bringing about the harm and (ii) absent

the negligence, the harm would not have occurred. *Stanfield v. Neubaum*, No. 15-0387, 2016 WL 3536865, at \*4 (Tex. June 24, 2016).

Appellants argue that Pham presented no evidence that THR breached its duty of care or that any such breach caused her injuries. They also argue that expert testimony is required to establish these elements because they involve matters beyond the knowledge of the ordinary lay person.

Pham responds that expert testimony is not required to support a temporary injunction and that she presented some evidence of breach and causation. Specifically, she points to her affidavit and to an exhibit called “Claim Notes Report” that was apparently generated by Trumbull.

Pham testified as follows in her affidavit:

4. “I cared for Mr. Duncan as a nurse while he was admitted to Texas Health Dallas Presbyterian Hospital. I can describe the personal protection equipment that I was provided while caring for Mr. Duncan and confirm that the descriptions of that equipment in my Original Petition and this Application are true and correct. Likewise, I can testify that I was never given any training about how to protect myself while treating a patient with ebola as described in the Petition and Application filed by my attorneys. Likewise, I can confirm that the persons who gave me directions while I cared for Mr. Duncan were employed by Texas Health Dallas Presbyterian Hospital because I had worked with them in the years leading up to these events.
5. “I can also testify that the events surrounding my own diagnosis of ebola described in the Original Petition and this Application are true and correct, including the statements about my personal expectations of privacy when I went to Presbyterian after discovering I had a fever.

Trumbull’s Claim Notes Report contains the following notes, dated 22 October 2014, by an adjuster named Steven Fisher:

This is one of two, thus far, claims related to exposure to an Ebola patient in TX: Y03 58815 ([name omitted]) and Y03 58589 (Pham). Neither claim has been accepted yet. There does not appear at this time to be any subrogation potential, as the exposure appears to be due to the insured’s inadequate procedures related

to employee exposure to a patient infected with Ebola. The employees were not required to be completely covered.

Five days later, Fisher wrote another note on the same subject:

To clarify my previous recovery note, my tentative comments regarding inadequate safety measures stemmed from certain news reports, not from our workers' compensation investigation. [news website address omitted] To the best of our knowledge, the insured claims that it followed applicable CDC guidelines with respect to its treatment of the original patient.

We will assume without deciding that Pham presented some evidence that THR breached its duty of care and acted with gross negligence regarding its policies and procedures, its training of nurses, and the personal protective equipment it provided to nurses. Instead, the question is whether she presented any evidence that, more likely than not, she would not have contracted Ebola had THR acted without negligence or gross negligence. She did not, because (i) her affidavit does not address cause in fact and (ii) the Fisher notes (a) do not clearly assign causation to THR's conduct and (b) are not expert testimony of causation, which is required on the facts of this case.

Pham's affidavit presents no evidence of cause in fact. It contains no testimony that she would not have contracted Ebola had THR adopted different policies and procedures, provided her with different training, or provided her with different personal protective equipment.

This leaves adjuster Steven Fisher's notes. He wrote that Pham's exposure to Ebola "appears to be due to the insured's inadequate procedures related to employee exposure to a patient infected with Ebola. The employees were not required to be completely covered." Fisher's statement, by using the phrase "due to," arguably draws a causal connection between Pham's injuries and "the insured's inadequate procedures." But Fisher does not identify "the insured," nor does anything else in the five-page Claim Notes Report. There was evidence, in the form of deposition testimony, that both THR and all of its wholly owned hospitals were insured by the relevant workers compensation insurance policy. So Fisher's reference to "the

insured's" procedures is no evidence that any conduct or omission by THR in particular in fact caused Pham's injuries.

Moreover, even if we assume that Fisher was referring to THR when he wrote that Pham's exposure to Ebola was caused by "the insured's inadequate procedures," we would conclude that his statement is not competent evidence of causation because there is no evidence Fisher was an expert qualified to address causation in this case. When an issue involves matters beyond the common understanding of the ordinary lay person, it must be proved by expert testimony. *See Mack Trucks, Inc. v. Tamez*, 206 S.W.3d 572, 583 (Tex. 2006); *accord Gharda USA, Inc. v. Control Solutions, Inc.*, 464 S.W.3d 338, 348 (Tex. 2015). We conclude that the causation question here, involving the likelihood of transmitting the Ebola virus assuming different policies, different nurse training, and the use of different protective equipment, is beyond a lay person's common understanding.

Pham argues that the expert testimony requirement should not apply at a case's temporary injunction stage. But as appellants argue, the Texas Supreme Court requires the injunction applicant to "offer[] some evidence which, *under applicable rules of law*, establishes a probable right of recovery." *Camp*, 348 S.W.2d at 519 (emphasis added). The expert-testimony requirement stated in *Mack Trucks* and other cases is a rule of law applicable to Pham's claims in this case. Under that rule, mere lay testimony about causation cannot establish that a claimant has a probable right of recovery.

Moreover, we reiterate that the purpose of requiring a temporary injunction applicant to prove a probable right of relief is to protect the respondent from being barred from engaging in otherwise lawful conduct unless the applicant has actually shown an ability to prevail on the merits of the case. *See id.* If the applicant must have expert testimony to prevail on the merits but has none at the temporary injunction hearing, it would be unjust to "immobilize" the

respondent based on the suspicion or surmise that the applicant will be able to produce expert testimony at the merits trial. *See id.* (“Writs of injunction should not issue on mere surmise.”).

Accordingly, Pham presented no competent evidence of cause in fact as is necessary to show a probable right of recovery for negligence, negligent undertaking, or gross negligence.

## **2. Premises Liability.**

It appears undisputed that Pham was a Presbyterian invitee. Accordingly, the premises liability elements are (i) a premises condition posed an unreasonable risk of harm, (ii) the owner or occupier had actual or constructive knowledge of the condition, (iii) the owner or occupier did not use reasonable care to reduce or eliminate the unreasonable risk, and (iv) the owner’s or occupier’s failure to use reasonable care proximately caused the claimant’s injuries. *Gillespie v. Kroger Tex., L.P.*, 415 S.W.3d 589, 592 (Tex. App.—Dallas 2013, pet. denied). Thus, proximate cause is an element of premises liability. *See LMB, Ltd. v. Moreno*, 201 S.W.3d 686, 688 (Tex. 2006) (per curiam) (explaining and applying proximate cause principles in a premises liability case).

Pham pleads that unreasonably dangerous conditions existed at Presbyterian because “of the presence of a highly communicable viral agent and . . . the inadequacy of the safety measures in place to deal with that dangerous condition.” And she pleads that THR’s negligent failure to address these conditions proximately caused her injuries.

Appellants argue that Pham failed to present evidence of any elements of premises liability, and that she had to produce expert testimony to support those elements in this case.

We conclude that our analysis of Pham’s negligence claim also applies here. *See Occidental Chem. Corp. v. Jenkins*, 478 S.W.3d 640, 644 (Tex. 2016) (noting that premises liability is “a branch of negligence law”). She was required to present evidence that the allegedly dangerous premises were a cause in fact of her injuries. Whether Pham would have

been infected had the premises conditions been different is not within the common knowledge of ordinary lay people. Accordingly, Pham had to present expert testimony of causation. She did not do so.

We thus conclude that Pham presented no competent evidence of cause in fact as is necessary to show a probable right of recovery on her premises liability claim.

### **3. Invasion of Privacy.**

“Invasion of privacy” encompasses several different forms of tortious behavior. Pham alleges three distinct theories, all regarding the publicity she received after her Ebola diagnosis. One is public disclosure of private facts, which requires proof that (i) the defendant gave publicity to matters about the plaintiff’s personal life, (ii) the publicity would be highly offensive to a reasonable person of ordinary sensibilities, and (iii) the matter publicized is not of legitimate public concern. *Blanche v. First Nationwide Mortg. Corp.*, 74 S.W.3d 444, 454 (Tex. App.—Dallas 2002, no pet.). Another is intrusion, which requires proof of (i) an intentional intrusion (ii) upon the seclusion, solitude, or private affairs of another (iii) that would be highly offensive to a reasonable person. *Id.* at 455. The third is misappropriation, which requires proof that (i) the defendant appropriated the plaintiff’s name or likeness for the value associated with it, (ii) the plaintiff can be identified from the publication, and (iii) there was some advantage or benefit to the defendant. *Express One Int’l, Inc. v. Steinbeck*, 53 S.W.3d 895, 900 (Tex. App.—Dallas 2001, no pet.).

Appellants argue that Pham presented no evidence of any of the above-listed elements. Pham’s brief does not respond to this argument.

We have reviewed the exhibits admitted at the temporary injunction hearing, and the only one that potentially presents some evidence of invasion of privacy is Pham’s affidavit, which is a copy of the one attached to her injunction application. The affidavit verified parts of Pham’s

original petition and her injunction application by reciting, “I can testify that the portions of these documents describing what happened to me are true and correct because those events happened to me.” The affidavit also includes paragraph 5, already quoted above:

5. “I can also testify that the events surrounding my own diagnosis of ebola described in the Original Petition and this Application are true and correct, including the statements about my personal expectations of privacy when I went to Presbyterian after discovering I had a fever.

The Pham affidavit that was admitted into evidence at the hearing had no attachments, and her original petition or injunction application were not admitted into evidence at the injunction hearing. Nor did it incorporate her petitions by reference, or did she ask the trial court to take judicial notice of them.

The injunction application contains only a few conclusory sentences about Pham’s invasion of privacy claims, and we conclude that it presents no evidence supporting those claims even if it was properly before the trial court for consideration. But Pham’s original petition alleges facts that arguably support the elements of intrusion. Specifically, the petition alleges that:

- a physician entered Pham’s hospital room with a tiny video camera before she left Presbyterian for the National Institutes of Health,
- the physician recorded his interactions with Pham,
- THR later edited the resulting video, released it to the press, and published it on the THR YouTube site, and
- THR did this without Pham’s permission.

The question, then, is whether Pham’s original petition became evidence before the trial court when Pham’s affidavit was admitted into evidence. We conclude that it did not.

The supreme court holds that, although a temporary restraining order may issue based on a sworn petition, a temporary injunction requires evidence admitted at a hearing. *Millwrights*

*Local Union No. 2484 v. Rust Eng'g Co.*, 433 S.W.2d 683, 686–87 (Tex. 1968); *see also Pierce v. State*, 184 S.W.3d 303, 306 (Tex. App.—Dallas 2005, no pet.) (analyzing *Millwrights*).

In *Pierce*, we held that affidavits could support a temporary injunction if they were admitted into evidence at the hearing. 184 S.W.3d at 307. But generally, pleadings and affidavits filed with the court cannot be considered as evidence unless they are admitted into evidence. *See, e.g., Bennett v. Cisco Sys., Inc.*, No. 05-04-01548-CV, 2005 WL 1819607, at \*1 (Tex. App.—Dallas Aug. 3, 2005, no pet.) (mem. op.); *see also Hines v. Taylor*, 476 S.W.2d 81, 82 (Tex. Civ. App.—Houston [14th Dist.] 1971, no writ) (“There was no agreement of the parties and plaintiff’s sworn petition does not therefore constitute evidence supporting the trial court’s order.”).

Here, the parties agreed only that Pham’s affidavit would be admitted into evidence, and it was admitted without attachments. But Pham’s pleadings and injunction application were not admitted into evidence and thus were not before the trial court as evidence. Pham’s affidavit, standing alone, does not contain evidence supporting any of the various elements of her invasion of privacy theories.

We therefore conclude that Pham presented no competent evidence of the elements necessary to show a probable right to recover on her invasion of privacy claim.

#### **4. Securing the Execution of a Document by Deception and Fraud.**

Finally, we consider Pham’s claims for securing the execution of a document by deception and fraud.

Securing the execution of a document by deception is a crime under the penal code. *See* TEX. PENAL CODE § 32.46. Pham cites no authority, and we have found none, holding that there is a civil cause of action for violations of § 32.46. Penal statutes generally do not create private rights of action. *See A.H. Belo Corp. v. Corcoran*, 52 S.W.3d 375, 379 (Tex. App.—Houston

[1st Dist.] 2001, pet. denied); *see also Martin v. Clinical Pathology Labs., Inc.*, 343 S.W.3d 885, 894 (Tex. App.—Dallas 2011, pet. denied) (declining to recognize civil cause of action based on penal provision in the election code). We decline to recognize a new civil cause of action based on § 32.46. Accordingly, Pham’s attempt to assert a civil claim for securing the execution of a document by deception cannot support the temporary injunction.

“The elements of fraud are (1) the defendant made a material representation; (2) the representation was false; (3) when the defendant made the representation, he knew it was false or made it recklessly without any knowledge of the truth and as a positive assertion; (4) the defendant made the representation with the intent that the plaintiff should act on it; (5) the plaintiff acted in reliance on the representation; and (6) the plaintiff thereby suffered injury.” *Baleares Link Express, S.L. v. GE Engine Servs.—Dallas, LP*, 335 S.W.3d 833, 839 (Tex. App.—Dallas 2011, no pet.). To be actionable in fraud, a representation generally must be one of fact. *Trenholm v. Ratcliff*, 646 S.W.2d 927, 930 (Tex. 1983).

Appellants contend that Pham presented no evidence of any elements of fraud. Her appellate brief does not respond to this contention.

We have reviewed the exhibits admitted at the temporary injunction hearing, and we agree with appellants that Pham presented no evidence of fraud’s elements. Her affidavit does not address fraud. She introduced two depositions about employment and workers compensation issues, but they do not address fraud. Nor do the other exhibits that were introduced, which included employment records, pleadings in other cases involving THR, and Pham’s medical bills, present any evidence of fraud.

Accordingly, we conclude that Pham failed to present any evidence that would support a probable right of recovery for fraud.

#### IV. CONCLUSION

The record does not support a determination that Pham has shown a probable right to recovery on any of her claims. Accordingly, we sustain appellants' third issue and conclude that the trial court abused its discretion by granting the temporary injunction. We thus need not address appellants' other issues. We reverse the trial court's order granting temporary injunction, dissolve the temporary injunction, and remand the case to the trial court for further proceedings consistent with this opinion.

/Bill Whitehill/  
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BILL WHITEHILL  
JUSTICE

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

**JUDGMENT**

TEXAS HEALTH RESOURCES,  
TRUMBULL INSURANCE COMPANY  
AND TEXAS HEALTH PRESBYTERIAN  
HOSPITAL DALLAS, Appellants

On Appeal from the 68th Judicial District  
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Opinion delivered by Justice Whitehill.  
Justices Myers and Stoddart participating.

No. 05-15-01283-CV      V.

NINA PHAM, Appellee

In accordance with this Court's opinion of this date, we **REVERSE** the trial court's order granting temporary injunction, **DISSOLVE** the temporary injunction, and **REMAND** the case to the trial court for further proceedings.

It is **ORDERED** that appellants Texas Health Resources, Trumbull Insurance Company and Texas Health Presbyterian Hospital Dallas recover their costs of this appeal from appellee Nina Pham.

Judgment entered August 3, 2016.