AFFIRMED and Opinion Filed February 24, 2025

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-23-00789-CV

ARTRIA MILES-EDMOND, Appellant
V.
SKILLMAN PROPERTY INVESTMENT DALLAS LLC AND SHERWOOD PIM, Appellees

On Appeal from the 14th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-21-18340

MEMORANDUM OPINION

Before Justices Smith, Miskel, and Breedlove
Opinion by Justice Miskel

This is an appeal from the trial court's order and final judgment granting traditional and no-evidence summary judgment in favor of Appellees Skillman Property Investment Dallas LLC and Sherwood PIM on Appellant Artria Miles-Edmond's premises-liability claim. In two issues, Appellant argues: (1) Appellees improperly raised a new ground for summary judgment in their reply to Appellant's summary judgment response, and the trial court erred by granting summary judgment on that new ground; and (2) the trial court had no basis to grant summary judgment on any ground. We resolve both issues against Appellant and conclude

that we must affirm the trial court's summary judgment because Appellant failed, on appeal, to challenge all possible grounds on which the summary judgment could have been based and, alternatively, because at least one ground supports summary judgment. Accordingly, we affirm the trial court's judgment.

BACKGROUND

According to his original petition, an unknown person shot and injured Appellant Miles-Edmond at a party at an event space known as The Ballroom in Dallas County. Miles-Edmond filed suit against Appellees Skillman and Sherwood, the owners of the building where The Ballroom was located. He also sued Michael Drane d/b/a DJ Money Mike Entertainment, who leased The Ballroom and allegedly hosted the party on the night in question. Miles-Edmond alleged that the area around The Ballroom is a notoriously dangerous part of the city, where many violent crimes had occurred in the preceding years. Miles-Edmond further alleged that Skillman, Sherwood, and Drane knew or had reason to know about these violent crimes and, therefore, owed him a duty to use ordinary care to protect him from third-party criminal acts. They breached this duty proximately causing his injuries, Miles-Edmond alleged, by allowing a gunman to enter the party at The Ballroom and fire a handgun into the crowd, striking him.

Based on these allegations, Miles-Edmond asserted claims of negligence, premises liability, and gross negligence against all three defendants. After the fact-discovery period closed, Miles-Edmond nonsuited Drane, and Skillman and

Sherwood moved for traditional and no-evidence summary judgment on all claims. The parties submitted their respective response and reply on the motion for summary judgment and their respective objections to the other side's summary-judgment evidence. The trial court held a hearing, granted summary judgment in favor of Skillman and Sherwood without ruling on any objection, and issued a written order to that effect with clear and unequivocal language that it was a final judgment. Miles-Edmond now appeals from that order.

Miles-Edmond argues that the trial court's summary judgment was in error. Although the challenged order granted summary judgment on all his claims, Miles-Edmond conceded at the summary-judgment hearing that he had abandoned his claims of negligence and gross negligence. And on appeal, he challenges the summary-judgment order only as to his premises-liability claim. We limit our review of the summary-judgment order accordingly.

APPLICABLE LAW AND STANDARD OF REVIEW

I. Summary judgment

We review both traditional and no-evidence summary judgments de novo. *See First United Pentecostal Church of Beaumont v. Parker*, 514 S.W.3d 214, 219 (Tex. 2017). In our review we take as true all evidence favorable to the non-movant, indulge every reasonable inference in favor of the non-movant, and resolve any doubts in the non-movant's favor. *Id.*

When, as here, a trial court does not specify the ground on which it granted the motion for summary judgment, we must affirm if any ground asserted in the motion is meritorious. *Cmty. Health Sys. Prof'l Servs. Corp. v. Hansen*, 525 S.W.3d 671, 680 (Tex. 2017). Similarly, when the summary judgment order does not specify the ground on which it is based, the appellant must negate each ground upon which the judgment could have been based. *Rosetta Res. Operating, LP v. Martin*, 645 S.W.3d 212, 226 (Tex. 2022) (citing *Malooly Bros. v. Napier*, 461 S.W.2d 119, 120–21 (Tex. 1970); *Jarvis v. Rocanville Corp.*, 298 S.W.3d 305, 313 (Tex. App.—Dallas 2009, pet. denied)).

When the motion for summary judgment asserts both no-evidence and traditional grounds, we first review the no-evidence grounds. *Hansen*, 525 S.W.3d at 680. If the non-movant fails to meet its burden under the no-evidence motion, there is no need to address the challenge to the traditional motion as it necessarily fails. *Parker*, 514 S.W.3d at 219.

In a no-evidence motion, the movant contends that, after adequate time for discovery, no evidence supports one or more essential elements of a claim for which the non-movant would bear the burden of proof at trial. *See* TEX. R. CIV. P. 166a(i). The motion must state the elements as to which there is no evidence. *Id*. The motion must be specific in challenging the evidentiary support for an element of a claim or defense; the rule does not authorize conclusory motions or general no-evidence challenges to an opponent's case. *Timpte Indus., Inc. v. Gish*, 286 S.W.3d 306, 311

(Tex. 2009). The underlying purpose of this requirement is to provide the opposing party with fair notice of the issues and adequate information for opposing the motion. *See id*. The trial court must grant the motion unless the non-movant produces summary-judgment evidence raising a genuine issue of material fact on each challenged element. TEX. R. CIV. P. 166a(i).

II. Premises liability

Generally, property owners have no legal duty to protect persons from third-party criminal acts. *UDR Tex. Props., L.P. v. Petrie*, 517 S.W.3d 98, 100 (Tex. 2017). But a property owner who "controls the premises does have a duty to use ordinary care to protect invitees from criminal acts of third parties if he knows or has reason to know of an unreasonable and foreseeable risk of harm to the invitee." *Id.* (quoting *Lefmark Mgmt. Co. v. Old*, 946 S.W.2d 52, 53 (Tex. 1997)).[1] A complaint that a property owner owed and breached such a duty causing an injury ordinarily sounds in premises liability. *See Timberwalk Apartments, Partners, Inc. v. Cain*, 972 S.W.2d 749, 753 (Tex. 1998).

Parties to a dispute like this might typically concentrate their litigation efforts on whether the defendant controlled the premises in question and owed the invitee a duty to use ordinary care to protect against third-party criminal conduct, particularly

1 Skillman and Sherwood's motion for summary judgment did not challenge Miles-Edmond's status as an invitee, so we presume he was an invitee for purposes of this appeal. *See Parker*, 514 S.W.3d at 219 (a reviewing court indulges every reasonable inference in favor of the non-movant and resolves any doubts in the non-movant's favor).

whether the risk of criminal conduct is foreseeable under a *Timberwalk* analysis. *See UDR*, 517 S.W.3d at 100–02. But the claimant must still prove all the essential elements of a premises-liability claim, which collectively invoke the concepts of duty, breach, and causation: (1) the property owner had actual or constructive knowledge of the condition causing the injury; (2) the condition posed an unreasonable risk of harm; (3) the property owner failed to take reasonable care to reduce or eliminate the risk; and (4) the property owner's failure to use reasonable care to reduce or eliminate the risk was the proximate cause of injuries to the invitee. *See Henkel v. Norman*, 441 S.W.3d 249, 251–52 (Tex. 2014); *Del Lago Partners, Inc. v. Smith*, 307 S.W.3d 762, 767–76 (Tex. 2010).

ANALYSIS

In his first issue, Miles-Edmond argues that the trial court erroneously granted summary judgment on a ground that Skillman and Sherwood first raised in their reply to his summary judgment response. In his second issue, Miles-Edmond argues that the trial court had no basis to grant summary judgment on any ground. We conclude that the trial court did not tie the summary judgment to any particular ground and, therefore, Miles-Edmond was required to negate all possible grounds for summary judgment. We further conclude that Miles-Edmond failed to challenge, let alone negate, all possible grounds for summary judgment, requiring us to affirm the trial court's judgment.

I. The summary-judgment order was not limited to any specific ground.

Under his first issue, Miles-Edmond argues that (1) Skillman and Sherwood based their motion for summary judgment only on the element of duty, (2) Skillman and Sherwood raised "the issue of Miles-Edmond being shot on their premises for the first time in their reply [to his summary judgment response]," and (3) the trial court granted summary judgment on this basis. We disagree with Miles-Edmond's third contention because the summary-judgment order does not specify any basis on which it was granted. Miles-Edmond relies on statements made by the trial court at the hearing on the motion for summary judgment. However, written orders control over oral pronouncements. *See, e.g.*, *Kaur-Gardner v. Keane Landscaping, Inc.*, No. 05-17-00230-CV, 2018 WL 2191925, at *4 (Tex. App.—Dallas May 14, 2018, no pet.) (mem. op.). This is especially true in the summary-judgment context, where appellate courts must rely on the summary-judgment order to determine the trial court's grounds for its ruling. *See Gonzales v. Thorndale Coop. Gin & Grain Co.*, 578 S.W.3d 655, 657–58 (Tex. App.—Houston [14th Dist.] 2019, no pet.) (explaining the "fairly sound policy basis" for this longstanding rule); *Gilmore v. Rotan*, No. 11-16-00253-CV, 2018 WL 4496232, at *1 (Tex. App.—Eastland Sept. 20, 2018, no pet.) (mem. op.) (concluding that the general written order controlled over specific oral statements made at summary-judgment hearing); *Richardson v. Johnson & Higgins of Tex., Inc.*, 905 S.W.2d 9, 11–12 (Tex. App.—Houston [1st Dist.] 1995, writ denied) (same).

II. Under a fair-notice standard, Skillman and Sherwood's no-evidence motion for summary judgment challenged the elements of Miles-Edmond's premises-liability claim.

Because the summary-judgment order here does not specify the grounds on which it is based, Miles-Edmond must negate each ground upon which the judgment could have been based. *See Rosetta Res.*, 645 S.W.3d at 226. A party may negate each ground by raising separate issues "or asserting a general issue that the trial court erred in granting summary judgment and within that issue providing argument negating all possible grounds upon which summary judgment could have been granted." *Id.* at 227 (quoting *Jarvis*, 298 S.W.3d at 313).

A trial court cannot grant a summary judgment motion on a ground not presented in the motion. *Timpte Indus.*, 286 S.W.3d at 310; *see also G & H Towing Co. v. Magee*, 347 S.W.3d 293, 297–98 (Tex. 2011) (per curiam) (also discussing a limited exception for harmless error). Therefore, to determine the grounds on which summary judgment could have been granted, we look to Skillman and Sherwood's motion for summary judgment to see what issues were raised under a fair notice standard. *See Timpte Indus.*, 286 S.W.3d at 311; *see also Rosetta Res.*, 645 S.W.3d at 227 (examining the grounds on which the party moved for summary judgment and whether the opposing party attacked each of those grounds in its court-of-appeals briefing). Their no-evidence motion for summary judgment asserted that there was no evidence of each essential element of Miles-Edmond's premises-liability claim. As for the specific underlying grounds, Skillman and Sherwood stated:

> Defendants are entitled to Summary Judgment as to Plaintiff's premise liability claim because Plaintiff has no evidence of an essential element of this claim. Specifically, Plaintiff has no evidence that either Skillman or Sherwood owed him a duty. Additionally, Plaintiff has no evidence that either Skillman or Sherwood breached any duty owed to Plaintiff.
>
> Additionally, Plaintiff has no evidence that any breach of duty owed to Plaintiff was a cause-in-fact to his injuries. Additionally, Plaintiff has failed to produce evidence that the risk of being shot on the premises owned by Defendant [sic] was unreasonable.

Sherwood also specifically sought summary judgment on the ground that Miles-Edmond had no evidence that Sherwood controlled the premises.

We conclude that Skillman and Sherwood's motion gave fair notice to Miles-Edmond that they were challenging his premises-liability claim on the grounds that he had no evidence to create a genuine issue of material fact whether Skillman and Sherwood owed him a duty, whether they breached any duty they may have owed him, and whether any breach of any duty was a cause in fact of Miles-Edmond's injury.[2] Therefore, we reject Miles-Edmond's argument that Skillman and Sherwood's motion for summary judgment was based only on the duty element.

We must likewise reject Miles-Edmond's related argument that Skillman and Sherwood raised a new summary-judgment ground in their reply, specifically the ground that there was no evidence that Miles-Edmond was shot on the premises.

2 Cause in fact is a sub-element of the essential element of proximate causation. *See Rattray v. City of Brownsville*, 662 S.W.3d 860, 874 (Tex. 2023). Control of the premises and an unreasonable risk of harm to the invitee are sub-elements of the essential element of duty. *See UDR*, 517 S.W.3d at 100–01.

Skillman and Sherwood pointed out in their reply brief that Miles-Edmond presented "no evidence that he was on Defendants' premises and that he actually sustained any injury on Defendants' premises such that Plaintiffs [sic] cannot demonstrate that he was owed a duty or that any breach of that duty caused him to suffer an injury." This does not raise a new ground for summary judgment. It simply highlights that Miles-Edmond cannot have raised a genuine issue of material fact on the essential elements of a premises-liability claim without having produced certain threshold evidence, namely that he sustained an injury on the premises. This issue falls squarely within the cause-in-fact element originally challenged in the no-evidence summary judgment motion. *See Rattray*, 662 S.W.3d at 874 ("Cause in fact is established when 'the act or omission was a substantial factor in bringing about the injury' and, without it, the harm would not have occurred.").

We conclude that Skillman and Sherwood's motion gave fair notice to Miles-Edmond that they were challenging, among other things, whether any breach of any duty that they may have owed to him was a substantial factor in bringing about his injury and, without it, the harm would not have occurred.

III. Miles-Edmond failed on appeal to challenge each possible ground for summary judgment.

In his second issue, Miles-Edmond argues that the trial court had no basis to grant summary judgment on any ground. When challenging a summary judgment, an appellant may simply raise a single broad appellate point: "The trial court erred in granting the motion for summary judgment." *Malooly Bros., Inc. v. Napier*, 461

S.W.2d 119, 121 (Tex. 1970). In other words, a party may assert a general issue that the trial court erred in granting summary judgment and, within that issue, provide argument that negates all possible grounds. *Rosetta Res.*, 645 S.W.3d at 226–27. A general statement that the trial court erred by granting the movant's motion for summary judgment may be sufficient to *allow argument* on all possible grounds that the summary judgment motion was granted, but if a party does not brief those arguments to the court of appeals, the court of appeals cannot properly reverse the summary judgment. *Id*. at 227.

Miles-Edmond's broad argument might be construed as a *Malooly* issue—that the trial court erred in granting summary judgment. "However, an appellant raising a *Malooly* issue must go a step further and substantively attack each basis upon which the summary judgment could have been granted." *Smith v. Kirchen Appraisal Co.*, No. 02-20-00318-CV, 2021 WL 2006473, at *2 (Tex. App.—Fort Worth May 20, 2021, no pet.) (mem. op.). If an appellant does not brief to the court of appeals arguments negating all possible grounds upon which summary judgment could have been granted, the court of appeals must uphold the summary judgment on the unchallenged grounds, regardless of their merits. *Id*.; *see also Rosetta Res.*, 645 S.W.3d at 227; *Jarvis*, 298 S.W.3d at 313.

Miles-Edmond failed to brief any arguments on whether he produced summary-judgment evidence raising a genuine issue of material fact on each

challenged element of premises liability.[3] Specifically, Miles-Edmond did not provide a clear and concise argument on appeal, with appropriate citations to authorities and to the record, showing that he directed the trial court's attention to evidence raising a fact issue on whether Skillman or Sherwood owed him a duty to protect him from criminal acts of third parties, that either breached any duty that might have been owed to him, and that any breach of any duty was a cause in fact of Miles-Edmond's injury. *See* TEX. R. APP. P. 38.1(i). Because the summary judgment could have been based on these no-evidence grounds, and because Miles-Edmond failed to challenge these grounds, we must affirm the trial court's summary judgment. *See Rosetta Res.*, 645 S.W.3d at 226–27.

IV. Miles-Edmond failed in trial court to meet his burden to survive a no-evidence summary judgment.

Even if Miles-Edmond had challenged on appeal each possible ground on which summary judgment could have been granted, we would still be constrained to affirm, because the record conclusively establishes that the trial court had no discretion but to grant a no-evidence summary judgment.

A trial court must grant a no-evidence motion for summary judgment unless the respondent produces summary-judgment evidence raising a genuine issue of material fact as to each of the challenged elements. *See* TEX. R. CIV. P. 166a(i). To meet this burden, the respondent is required to identify in his response the specific

3 Apart from the new-ground-raised-in-reply argument, the substantive arguments that Miles-Edmond briefed concern the proper scope and components of the *Timberwalk*-duty analysis.

summary-judgment evidence that he asserts raises a fact issue and explain why that evidence raises a fact issue on the challenged elements. *See Gillham v. Sanchez*, No. 05-17-01449-CV, 2019 WL 2082466, at *5 (Tex. App.—Dallas May 13, 2019, pet. denied) (mem. op.). Merely attaching summary-judgment evidence or generally citing to it is insufficient. *See id.*; *see also Comm'n for Law. Discipline v. Powell*, 689 S.W.3d 620, 630 (Tex. App.—Dallas 2024, no pet.) (mem. op.) ("In short, a trial court does not abuse its discretion when it does not consider summary judgment proof to which a movant does not specifically direct the trial court's attention." (internal quotation marks omitted)).

In his response to the motion for summary judgment, Miles-Edmond failed to identify the specific summary-judgment evidence raising a fact issue as to each of the challenged elements and explain why that evidence raised a fact issue as to each of the challenged elements. *See Gillham*, 2019 WL 2082466, at *5. Miles-Edmond's response did not specifically address the no-evidence motion for summary judgment or explain how any specifically identified summary-judgment evidence raised a fact issue as to each of the challenged elements of premises liability. At the hearing, the trial court judge asked very directly what summary judgment evidence showed that the injury occurred on the premises, and Miles-Edmond conceded that he could not direct the trial court to any competent summary-judgment evidence. As such, we conclude that the trial court did not err in granting Skillman and Sherwood's motion for summary judgment. *See id.*

CONCLUSION

Because our resolution of the no-evidence summary judgment motion is dispositive, we need not address the traditional summary judgment motion. *Parker*, 514 S.W.3d at 219. We affirm the trial court's summary-judgment order.

/Emily A. Miskel/
EMILY A. MISKEL
JUSTICE

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

ARTRIA MILES-EDMOND,
Appellant

No. 05-23-00789-CV V.

SKILLMAN PROPERTY INVESTMENT DALLAS LLC AND SHERWOOD PIM, Appellees

On Appeal from the 14th Judicial District Court, Dallas County, Texas
Trial Court Cause No. DC-21-18340.
Opinion delivered by Justice Miskel.
Justices Smith and Breedlove participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellee SKILLMAN PROPERTY INVESTMENT DALLAS LLC AND SHERWOOD PIM recover their costs of this appeal from appellant ARTRIA MILES-EDMOND.

Judgment entered this 24th day of February 2025.