REVERSED and REMANDED and Opinion Filed March 14, 2025

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-23-00588-CV

RALPH ELSELL, Appellant
V.
ENCORE WIRE CORPORATION, Appellee

On Appeal from the 471st Judicial District Court
Collin County, Texas
Trial Court Cause No. 471-04957-2021

MEMORANDUM OPINION

Before Justices Clinton, Lewis, and Rossini[1]
Opinion by Justice Clinton

In this case of alleged retaliatory employment discharge, appellant Ralph Elsell complains the trial court (1) erred in granting appellee Encore Wire Corporation's combined no-evidence and traditional motion for summary judgment and (2) abused its discretion in sustaining Encore's motion to strike his "sham affidavit." We reverse the trial court's judgment and remand the case for proceedings consistent with this opinion.

[1] Justices Bill Pedersen, III, Robbie Partida-Kipness, and Cory Carlyle were members of the original panel; however, as of January 1, 2025, they were replaced by Justices Tina Clinton, Jessica Lewis, and Gino J. Rossini, respectively. Justices Clinton, Lewis, and Rossini have listened to the recording of oral argument and reviewed the record and all briefing in this case.

Background

Elsell filed this lawsuit against Encore in district court. Elsell alleged Encore terminated his employment and discriminated against him "because he filed a workers' compensation claim in good faith, instituted or caused to be instituted a workers' compensation claim in good faith, and/or testified or was prepared to testify in a workers' compensation proceeding." Elsell alleged Encore would not have terminated his employment when it did had he not engaged in activity protected by § 451.001 of the Texas Labor Code. *See* TEX. LAB. CODE ANN. § 451.001. Elsell sought past and future earnings and benefits, compensatory damages, exemplary damages, reinstatement to his former position of employment, costs, and other relief.

Encore filed a combined no-evidence and traditional motion for summary judgment. Encore produced the declaration of its director of human resources, Ronald Bouchard, in support of its motion for summary judgment. Bouchard declared he fired Elsell because Elsell had lied to him on March 11, 2019, about an Encore supervisor's coercing Elsell to sign a document on January 4, 2019.

Elsell filed a response to Encore's motion and an appendix of summary-judgment evidence. The appendix included Elsell's declaration.

Subsequently, Encore filed a motion to strike Elsell's "sham affidavit." In it, Encore alleged Elsell's declaration directly contradicted his prior deposition testimony. Elsell filed a response to Encore's motion to strike.

The trial court granted Encore's no-evidence and traditional motion for summary judgment without providing reasons for the decision. It sustained Encore's objection that Elsell's declaration was a sham affidavit. The trial court dismissed Elsell's claim with prejudice.

Elsell filed a notice of appeal. This appeal followed.

Summary Judgment

Elsell complains in his first issue on appeal that the trial court erred in granting Encore's combined no-evidence and traditional motion for summary judgment.

Standard of Review

We review an order granting summary judgment de novo. *See Merriman v. XTO Energy, Inc.*, 407 S.W.3d 244, 248 (Tex. 2013).

In a no-evidence motion for summary judgment, the movant need only allege there is no evidence to support an essential element of a claim on which a nonmovant has the burden of proof at trial. *See* TEX. R. CIV. P. 166a(i); *Sw. Elec. Power Co. v. Grant*, 73 S.W.3d 211, 215 (Tex. 2002). Then, the burden shifts to the nonmovant to present evidence that raises a fact issue on the challenged elements. *See* TEX. R. CIV. P. 166a(i); *Swan v. GR Fabrication, LLC*, No. 05-17-00827-CV, 2018 WL 1959486, at *1 (Tex. App.—Dallas Apr. 26, 2018, no pet.) (mem. op.). The nonmovant defeats a no-evidence summary judgment by presenting more than a scintilla of evidence to raise a genuine issue of material fact. *See Swan*, 2018 WL 1959486, at *1. More than a scintilla of evidence exists if the evidence rises to a

level that would enable reasonable and fair-minded people to differ in their conclusions. *See Ford Motor Co. v. Ridgway*, 135 S.W.3d 598, 601 (Tex. 2004).

When reviewing a traditional summary judgment in favor of a defendant, we determine whether the defendant conclusively disproved an element of the plaintiff's claim or conclusively proved every element of an affirmative defense. *See Durham v. Children's Med. Ctr. of Dallas*, 488 S.W.3d 485, 489 (Tex. App.—Dallas 2016, pet. denied). A matter is conclusively established if ordinary minds could not differ as to the conclusion to be drawn from the evidence. *See id*. We take as true all evidence favorable to the nonmovant and indulge every reasonable inference and resolve any doubts in the nonmovant's favor. *See Exxon Mobil Corp. v. Rincones*, 520 S.W.3d 572, 579 (Tex. 2017).

If a combined no-evidence motion for summary judgment and traditional motion for summary judgment asserts the plaintiff has no evidence of an element of its claim and alternatively asserts the movant has conclusively negated that same element of the claim, we address the no-evidence motion for summary judgment first. *See Great Hans, LLC v. Liberty Bankers Life Ins. Co.*, No. 05-17-01144-CV, 2019 WL 1219110, at *3 (Tex. App.—Dallas Mar. 15, 2019, no pet.) (mem. op.). But if the traditional motion challenges a cause of action on an independent ground, we consider that ground first because it would be unnecessary to address whether a plaintiff met his burden as to the no-evidence challenge if the cause of action is barred as a matter of law. *See id.*

Where, as here, the trial court's judgment does not specify the grounds on which summary judgment is granted, the appellate court may affirm on any meritorious ground presented to the trial court. *See Joe v. Two Thirty Nine Joint Venture*, 145 S.W.3d 150, 157 (Tex. 2004). Where there are multiple grounds for summary judgment and the order does not specify the ground on which the summary judgment was granted, the appellant must negate all grounds on appeal. *See Lewis v. Adams*, 979 S.W.2d 831, 833 (Tex. App.—Houston [14th Dist.] 1998, no pet.). If the appellant fails to negate each ground on which the judgment might have been granted, the appellate court must uphold the summary judgment. *See id*.

Applicable Law

Elsell brought his claim for retaliatory discharge under § 451.001 of the Texas Labor Code. *See* LAB. § 451.001; *Tex. Div.-Tranter, Inc. v. Carrozza*, 876 S.W.2d 312, 313 (Tex. 1994) (per curiam) (referring to claims under section 451.001 as "retaliatory discharge" claims). Section 451.001 prohibits an employer from discharging or otherwise discriminating against an employee for filing a workers' compensation claim in good faith. Section 451.001 provides:

> A person may not discharge or in any other manner discriminate against an employee because the employee has:
>
> (1) filed a workers' compensation claim in good faith;
>
> (2) hired a lawyer to represent the employee in a claim;
>
> (3) instituted or caused to be instituted in good faith a proceeding under Subtitle A; or

(4) testified or is about to testify in a proceeding under Subtitle A.

LAB. § 451.001.

Analysis of alleged violations of § 451.001 involves a three-step process. First, plaintiff bears the burden of establishing a prima facie case of retaliatory discharge, which includes demonstrating a causal link between the discharge and the filing of his workers' compensation claim. *See Benners v. Blanks Color Imaging, Inc.*, 133 S.W.3d 364, 369 (Tex. App.—Dallas 2004, no pet.). That is, appellant must show appellee's action "would not have occurred when it did had [plaintiff's] protected conduct—filing a workers' compensation claim—not occurred." *Haggar Clothing Co. v. Hernandez*, 164 S.W.3d 386, 388 (Tex. 2005) (per curiam) (citing *Cont'l Coffee Prods. Co. v. Cazarez*, 937 S.W.2d 444, 450 (Tex. 1996)). Appellant may establish the required causal link by direct or circumstantial evidence. *See Benners*, 133 S.W.3d at 369. A plaintiff does not have to prove that her discharge was solely because of her workers' compensation claim. *See Cont'l Coffee Prods. Co.*, 937 S.W.2d at 450.

In the second step, if plaintiff meets his or her burden, the burden shifts to defendant to rebut the alleged improper termination by offering proof of a legitimate reason for the termination or other alleged retaliatory action. *See Benners*, 133 S.W.3d at 369. Only the burden of production shifts to the employer in this process; the burden of persuasion always remains with the employee. *See Tawil v. Cook*

Children's Healthcare Sys., 582 S.W.3d 669, 682 (Tex. App.—Fort Worth 2019, no pet.).

In the third step, if defendant presents summary-judgment evidence that the termination was for a legitimate, non-discriminatory reason, plaintiff must, to survive the motion for summary judgment, rebut defendant's summary-judgment evidence by either producing controverting evidence raising a fact issue on whether the reason for termination was a pretext for discrimination or by challenging defendant's summary-judgment evidence as failing to prove as a matter of law that the reason given was a legitimate, non-discriminatory reason. *See id.* at 684–85. Summary judgment for defendant is proper if plaintiff fails to produce controverting evidence. *See Benners*, 133 S.W.3d at 369 ("This Court has held that a no-evidence summary judgment should be granted on behalf of an employer when there is evidence sufficient to support the termination for reasons other than filing a worker's compensation claim.").

Analysis: No-Evidence Motion for Summary Judgment

We initially address Encore's no-evidence motion for summary judgment. *See Great Hans, LLC*, 2019 WL 1219110, at *3.

Encore argued in its no-evidence motion for summary judgment:

> Defendants are entitled to a no-evidence summary judgment on Plaintiff's . . . Workers' Compensation Retaliation claim because Plaintiff has no evidence that Encore Wire would not have discharged Plaintiff when it did but for Plaintiff's involvement in the workers' compensation claim.

Encore's challenge is directed at Elsell's step-one burden to establish a prima facie case of retaliatory discharge. *See Benners*, 133 S.W.3d at 369. Elsell had the burden to produce summary judgment evidence raising a genuine issue of material fact in support of step one of his claim. *See* TEX. R. CIV. P. 166a(i); *Benners*, 133 S.W.3d at 369.

Encore argued in the trial court that no evidence, including circumstantial evidence, supports Elsell's Chapter 451 claim. *See Benners*, 133 S.W.3d at 369 (plaintiff bears the burden of establishing a prima facie case of retaliatory discharge, which includes demonstrating a causal link between the discharge and the filing of his workers' compensation claim); *see also Haggar Clothing Co.*, 164 S.W.3d at 388 ("To prove a 'retaliatory discharge' claim, the employee must show that the employer's action would not have occurred when it did had the employee's protected conduct—filing a workers' compensation claim—not occurred.").

Circumstantial evidence sufficient to establish a causal link between termination and filing a compensation claim includes: (1) knowledge of the compensation claim by those making the decision on termination; (2) expression of a negative attitude toward the employee's inured condition; (3) failure to adhere to established company policies; (4) discriminatory treatment in comparison to similarly situated employees; and (5) evidence that the stated reason for the discharge was false. *See Cont'l Coffee Prods. Co.*, 937 S.W.2d at 451.

Encore conceded—concerning evidence of a causal link—"Encore Wire obviously knew about [Elsell's] injury and workers' compensation claim . . . ." Moreover, the summary judgment evidence reflects that Bouchard—the decision-maker who fired Elsell—knew of the workers' compensation claim when he fired Elsell. *See Cont'l Coffee Prods. Co.*, 937 S.W.2d at 451. Encore argues, "[K]nowledge of the claim standing alone is insufficient to establish causation." In support of that argument, Encore cites *Hernandez v. AT&T Co.*, 198 S.W.3d 288, 293–94 (Tex. App.—El Paso 2006, no pet.).

However, Elsell argues Encore's stated reason for his discharge—that Elsell lied in violation of company policy—is false. *See Cont'l Coffee Prods. Co.*, 937 S.W.2d at 451. Encore asserts its reason for firing Elsell is that on March 11, 2019, Elsell lied to Encore's director of human services, Ronald Bochard, that Elsell had signed a work-related document due to coercion.[2] Encore argues Bouchard fired Elsell due to Elsell's alleged dishonesty.

The January 4, 2019 document states, in part:

> During the summer 2018, I, Ralph Elsell fell while working on the test tank and bumped my knee and did not report it to [the on-site clinic]. I did report it to my manager, Jimmy Davis and explained that I had pre-existing knee issues from an old Soccer injury.

[2] Elsell disputes Bouchard's account of the March 11, 2019 meeting as well as having signed the January 4, 2019 document.

The document bears four signatures: "Ralph Elsell," "Jimmy Davis," "Robert Rogers," and "Aaron Gazar." A separate notation of "1-4-19" is adjacent to each signature. Davis, Rogers, and Gazar were Encore employees.

Bouchard declared that, in their meeting, Elsell claimed he was "forced to sign" that document, implying coercion, and that such a claim was "obviously false." Bouchard declared he based his decision on three Encore employees, other than Elsell, having signed the document. Bouchard testified Elsell's assertions of coercion were "ridiculous" because "I know those people [the witnesses]. I know them to be credible." He testified, "I didn't have any reason to doubt any of the other people in there. I've worked with them all." However, Bouchard also testified he was involved in firing *Davis*—the Encore supervisor who drafted and signed the disputed January 4, 2019 document and had two other employees witness and sign the document—for document fraud and dishonesty in time keeping.

Bouchard's heavy reliance on the credibility of Davis, given Davis's own termination by Encore for document fraud and dishonesty, raises genuine issues of material fact as to whether (1) Bouchard actually considered Davis to be credible, (2) Bouchard actually grounded his decision to fire Elsell on Davis's above-described record of credibility, and (3) Bouchard actually decided to fire Elsell for the stated reason that Elsell lied. "A genuine issue of material fact exists if more than a scintilla of evidence establishing the existence of the challenged element is produced." *Boswell v. Pappy's Pet Lodge Grp., LLC*, No. 05-23-00040-CV, 2024

WL 396621, at *3 (Tex. App.—Dallas Feb. 2, 2024, no pet.) (mem. op.). "More than a scintilla of evidence exists when the evidence rises to a level that would enable reasonable and fair-minded people to differ in their conclusions." *Id.*

Additionally, reasonable and fair-minded persons could differ on whether Bouchard's stated reason for firing Elsell was actually based on an interview of Elsell that was objectively brief, conjectural, and uninformed. *See Boswell*, 2024 WL 396621, at *3. Bouchard testified about his interview with Elsell as follows:

- Bouchard did not ask Elsell why Elsell felt coerced. Rather, Bouchard testified he instead implied and presumed the nature and circumstances of the alleged coercion;

- (1) Bouchard's meeting with Elsell was "very short. . . . I'd say five minutes, at the most"; (2) Bouchard had no direct knowledge of whether the contents of Davis's January 4, 2019 document were "true"; and (3) Bouchard did not make any effort to investigate whether the contents of the document were true before firing Elsell; and

- Elsell's purported claim of coercion was "ridiculous" because Bouchard had "never had anybody question a document, a signed document, in my career."

We conclude Encore's knowledge of Elsell's pending workers' compensation claim and the testimony of Elsell and Bouchard would enable reasonable and fair-minded people to differ in their conclusions of whether Bouchard's stated reason for firing Elsell was false. *See Boswell*, 2024 WL 396621, at *3. Accordingly, the summary judgment evidence of Encore's knowledge of Elsell's claim and the testimony of Elsell and Bouchard raised a genuine issue of material fact of whether

Encore's stated reason for firing Elsell was false. *See* TEX. R. CIV. P. 166a(i); *Cont'l Coffee Prods. Co.*, 937 S.W.2d at 451.

Consequently, we conclude the trial court erred in granting Encore's no-evidence motion for summary judgment.

Analysis: Traditional Motion for Summary Judgment

In its traditional motion for summary judgment, Encore made two main arguments. First, it argued, "[Elsell] cannot establish that, but for his workers' compensation claim, he would not have been terminated when he was." However, Encore essentially repeats here its already asserted "no-evidence" arguments concerning Elsell's step-one burden that we addressed and disposed of above. For example, Encore argues "there is *no evidence* . . . that Encore Wire's stated reason for discharge was false." (Emphasis added.) Encore also argues, "Simply put, *there is no evidence* of a causal link between any alleged protected activity and [Elsell's] termination and, thus, Encore Wire is entitled to summary judgment." (Emphasis added.) We reject Encore's repeated no-evidence argument for reasons stated above.

Second, Encore argued, "Even if plaintiff could meet his prima facie burden (which he cannot), he cannot rebut Encore Wire's legitimate, non-discriminatory reason for termination." Encore argues an employer can lawfully terminate an employee who fails to comply with company policies because such reasons are legitimate and non-retaliatory. *See Tex. Div.-Tranter, Inc. v. Carrozza*, 876 S.W.2d 312, 313–14 (Tex. 1994) (per curiam). Encore asserts, "As at the trial court, Elsell

fails to put forth any credible evidence establishing Encore Wire's reasoning is false or mere pretext." *See Benners*, 133 S.W.3d at 369 (stating if an employer meets its step-two burden to demonstrate a legitimate reason for the discharge, then employee must meet the step-three burden to either present evidence raising a fact issue on whether the reason for termination was pretext for discrimination, or challenge the employer's summary judgment evidence as failing to prove as a matter of law the reason given was a legitimate, nondiscriminatory reason).

However, in deciding Encore's no-evidence motion for summary judgment concerning step one of Elsell's claim, above, we concluded that summary judgment evidence reflects a fact issue of whether Encore's stated reason for Elsell's discharge was false or pretext. *See Cont'l Coffee Prods. Co.*, 937 S.W.2d at 451. For those same reasons stated above, we conclude that summary judgment evidence reflects a fact issue and rebuts Encore's stated reason for Elsell's discharge as being false or pretext. *See Benners*, 133 S.W.3d at 369.

Consequently, we conclude the trial court erred in granting Encore's traditional motion for summary judgment.[3]

[3] Due to our disposition of Elsell's first issue on appeal, we need not and do not address his second issue on appeal: "The trial court erred in sustaining Encore's objections to [Elsell's] declaration." Our analysis of appellant's first issue on appeal does not rely on Elsell's declaration.

Conclusion

We reverse the trial court's judgment and remand the case for proceedings consistent with this opinion.

/Tina Clinton/
TINA CLINTON
JUSTICE

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

RALPH ELSELL, Appellant	On Appeal from the 471st Judicial District Court, Collin County, Texas
No. 05-23-00588-CV V.	Trial Court Cause No. 471-04957-2021.
ENCORE WIRE CORPORATION, Appellee	Opinion delivered by Justice Clinton. Justices Lewis and Rossini participating.

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

It is **ORDERED** that appellant Ralph Elsell recover his costs of this appeal from appellee ENCORE WIRE CORPORATION.

Judgment entered this 14th day of March, 2025.