REVERSE and REMAND and Opinion Filed May 29, 2020

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-19-00892-CV

LOIS HUNTRESS, Appellant
V.
HICKORY TRAIL HOSPITAL, L.P., AND JELIL ONANUGA, M.D., Appellees

On Appeal from the 298th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-17-14354

MEMORANDUM OPINION

Before Justices Myers, Partida-Kipness, and Reichek
Opinion by Justice Reichek

Lois Huntress sued appellees Hickory Trail Hospital, L.P., and Jelil Onanuga, M.D., alleging she was detained against her will at the hospital. The trial court granted appellees' no-evidence motion for summary judgment on Huntress's claims for false imprisonment, unconscionable conduct under the Deceptive Trade Practices Act, and negligence. On appeal, Huntress argues she presented more than a scintilla of evidence to support her claims. For reasons set out below, we reverse the trial court's order and remand for further proceedings consistent with this opinion.

FACTUAL BACKGROUND

In 2013, Huntress sold her home in Massachusetts and agreed to use the proceeds to help her son and daughter-in-law, Eric and Ruth Douglass, buy a house in Texas where she could live with them for the rest of her life. Within two years, the Douglasses and Huntress were not on speaking terms, were communicating by notes, and the Douglasses had told Huntress they wanted her to move out.

The dispute came to a head on October 18, 2015, when Huntress, then seventy-nine years old, either threw a coffee cup on the ground or at her daughter-in-law. The cup did not hit anyone but broke into pieces. Huntress, who characterized the incident as a "temper tantrum," immediately went outside. Her daughter-in-law called the Ellis County Sheriff's Office, which responded to the disturbance call.

After talking with Huntress and the Douglasses, the deputies decided to detain Huntress for evaluation at Hickory Trail Hospital, a mental health treatment facility offering both inpatient and outpatient care. According to the Peace Officer Application for Emergency Detention Without Warrant (APOWW), emergency detention was necessary because Huntress made statements indicating she presented a substantial risk of harm to herself. In particular, the deputy noted that Huntress had stated (1) she thought about parking her running car in the garage and shutting the door while she was inside the car and (2) she had enough medication to "really

hurt" herself and had thought about doing it. Huntress also told the deputies, "You can put a bullet in my head right now." The time on the APOWW was 6 p.m.

Once at Hickory Trail, Huntress agreed to be assessed and was evaluated by a tele-physician, Leo Criep, M.D. Huntress, a former surgical nurse, told Dr. Criep what happened and that she wanted to leave, but Dr. Criep told her she was going to be admitted. According to the admission order, Dr. Criep involuntarily admitted Huntress at 10:20 p.m. Other than general health information and a diagnosis of "[m]ajor depressive disorder, single episode, severe without psychotic features," the admission order does not state on what basis Dr. Criep made his decision to involuntarily admit Huntress. Shortly after midnight, Dr. Onanuga was assigned as Huntress's attending psychiatrist. Huntress said she was taken to a room where the doors were locked and she was roused from sleep every fifteen minutes by someone shining a flashlight in her face.

Huntress's hospital Progress Notes began on October 19. The first entry shows that Huntress was added to the caseload and notified of a treatment plan with Dr. Onanuga. The second entry shows that clinical services checked her chart for "APOWW, Emergency Detention, OPC application, or signed consent for treatment forms." The entry states that there were "unsigned consent forms" in Huntress's chart, and the person making the entry stated he or she would "contact doctor if

[Huntress] refuses to sign the forms." A later entry states: "OPC[1] pt if won't sign consent per Dr. Onanuga." The notes then show that Huntress "signed consent forms at 1:26 p.m." Although Huntress did not remember signing the consent forms for treatment and admission, she did recognize her signatures on the forms.

Over the course of her ten-day stay, Huntress said she repeatedly told staff that she did not need to be there and wanted to go home. Several of her requests were documented in her medical records. For example, over the course of her stay, Huntress told staff that, "I'm doing okay – I need to go home to my dog"; "I want to go home soon"; "I want to go home to my dog"; "I am doing just fine. I want to get home to my dog"; "I am fine. I am great. I want to get out of here so I can see my dog"; "I'm fine – everything is fine – I want to go home." Huntress was not discharged, however, and said no one explained why her wishes were not being honored.

Hospital records show that during this time, staff was looking for a place that Huntress could go upon discharge because her son and daughter-in-law initially did not want her to return to their home, at least in part, because they did not feel she could be alone for ten hours a day. Hickory Trail was unable to find any alternative. Ultimately, ten days after her admission, on October 28, Huntress was discharged

[1] The record does not explain the meaning of "OPC."

and returned to her son's home. Five months later, she moved back to Massachusetts after her son gave her three weeks to vacate the house.[2]

Huntress said her time at Hickory Trial was a "terrible experience" that continued to affect her. For example, she recalled one night being awakened at 1 a.m. by the "blood-curdling screams" of a 96-year-old woman who had been brought there from a nursing home "bruised and petrified." Huntress said it was "awful" and said she wakes up at night and can still "hear her screaming." She also described the outbursts of a male patient who would "just scream for no reason." Although she said she did not suffer any "ongoing depression," night sweats, or nightmares, Huntress said she suffered "anxiousness" over what she had been through. She said her time at Hickory Trail had been "extremely frustrating and degrading," and she was frustrated, angry, and distraught because she did not need to be confined. According to Huntress, she asked Dr. Onanuga why she needed to be there when she was mentally sound and why was he keeping her there. When she told him she wanted to go home, he would tell her she could not leave and needed to stay "another two or three days."

Two years after her discharge, Huntress brought this lawsuit against Hickory Trail and Dr. Onanuga. Huntress sued Hickory Trail for false imprisonment for

[2] After Huntress moved out of the home, she sued her son and daughter-in-law when they refused to reimburse her for the money she expended to purchase and improve the house. *See Douglass v. Huntress*, No. 06-17-00103-CV, 2018 WL 4224898, at *1 (Tex. App.—Texarkana Sept. 15, 2018, no pet.). She claimed she extended the funds in reliance on their promise that she would have a place to live for life. Following a bench trial, the trial court rendered judgment in her favor. *Id*.

allegedly detaining her without her consent or legal authority and for unconscionable conduct under the DTPA for "knowingly and intentionally taking advantage" of her "lack of ability and capacity to a grossly unfair advantage by detaining her against her will."[3] She sued both the Hospital and Onanuga for negligence by failing to act "in accordance with their applicable standards of care" set out in Chapters 573 and 574 of the Texas Health and Safety Code when involuntarily detaining her.

Appellees filed a Joint Hybrid No-Evidence and Traditional Summary Judgment Motion. In their no-evidence motion, appellees asserted Huntress had no evidence of (1) the elements of false imprisonment, (2) bad faith or unreasonable acts by appellees to "rebut the presumption of immunity" in section 571.019 of the health and safety code, (3) non-economic mental anguish damages, (4) the standard of care, and (5) a causal link between her alleged damages and the alleged negligence of Hickory Trail and Dr. Onanuga. As for the latter two grounds, appellees complained that Huntress never presented her expert for deposition and, therefore, had no evidence.

Huntress responded to appellees' motion with the expert report of Dr. Sanjay Adhia; a copy of Huntress's deposition; Hickory Trail's discovery responses; a psychiatric evaluation of Huntress by Dr. Onanuga on October 19, 2015; Hickory

[3] Although she alleged that Dr. Onanuga was complicit, she asserted in her response to the motion for summary judgment and again in her brief that she did not sue him for either false imprisonment or DTPA violations.

Trail's medical and billing records; and the trial court's findings of fact and the appellate court's memorandum opinion in a separate lawsuit by Huntress against her son and daughter-in-law. In addition, Huntress relied on her medical records that were attached to appellees' motion for summary judgment.

In their reply, appellees argued that Huntress's claims were health care liability claims which must satisfy the requirements of expert testimony under Chapter 74. They argued Huntress failed to present any competent summary judgment evidence on the standard of care or causation because her expert evidence, the report of Dr. Adhia, was inadmissible hearsay and was defective in failing to show knowledge, competence, and the requisite jurat.

The trial court granted appellees' motion. In its order, the trial court determined the claims were health care liability claims as defined by Texas Civil and Practice Remedies Code Chapter 74 (Texas Medical Liability Act). The order further stated, "As a result, the Court finds Plaintiff failed to put forward more than a scintilla of evidence as to one or more essential elements of her health care liability claim, and as such, the No-Evidence Motion must be **GRANTED**." Although both sides objected to the other's summary judgment evidence, the trial court did not rule on any of these objections. This appeal ensued.

STANDARD OF REVIEW

Because the trial court specifically granted the no-evidence motion for summary judgment, we limit our review to that particular motion and do not address

the grounds set out in the traditional motion. *See Fitness Evolution, L.P. v. Headhunter Fitness, L.L.C.*, No. 05-13-00506-CV, 2015 WL 6750047, at *22 (Tex. App.—Dallas Nov. 4, 2015, no pet.) (mem. op. on mot. for reh'g) ("[O]rdinarily, when a trial court grants summary judgment on specific grounds, appellate courts limit their consideration on appeal to the grounds upon which the trial court granted summary judgment.").

A no-evidence motion for summary judgment must be granted if (1) the moving party asserts there is no evidence of one or more specified elements of a claim or defense on which the adverse party would have the burden of proof at trial and (2) the respondent produces no summary judgment evidence raising a genuine issue of material fact on those elements. *See* TEX. R. CIV. P. 166a(i); *Navy v. College of the Mainland*, 407 S.W.3d 893, 898 (Tex. App.—Houston [14th Dist.] 2013, no pet.). The nonmovant may raise a genuine issue of material fact by producing "more than a scintilla of evidence establishing the existence of the challenged element. *Town of Shady Shores v. Swanson*, 590 S.W.3d 544, 551 (Tex. 2019). More than a scintilla of evidence exists when the evidence rises to a level that would enable fair-minded people to differ in their conclusions. *Burroughs Wellcome Co. v. Crye*, 907 S.W.2d 497, 499 (Tex. 1995).

We review a trial court's decision to grant a summary judgment motion de novo. *Travelers Ins. Co. v. Joachim*, 315 S.W.3d 860, 862 (Tex. 2010). In

conducting our review, we view the evidence in the light most favorable to the nonmovant. *Town of Shady Shores*, 590 S.W.3d at 551.

ANALYSIS

The trial court's order identified the grounds on which it based its take-nothing summary judgment: Huntress failed to put forth more than a scintilla of evidence on one or more elements of her claim. On appeal, Huntress argues she presented legally sufficient evident on all elements challenged.

A. Standard of Care and Causation

We begin with appellees' assertion below and on appeal that Huntress failed to present competent expert testimony of (1) the standard of care and (2) a causal link between her damages and the alleged negligence of Hickory Trail and Dr. Onanuga.[4]

Huntress relied on the six-page, single-spaced expert report of Dr. Adhia. Dr. Adhia provided his address and date of birth, declared under penalty of perjury that the "foregoing is true and correct," and asserted the document was executed in Harris County on March 16, 2018. Accordingly, the report meets the statutory requirements for unsworn declarations. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 132.001(c) (requiring declaration to be in writing and subscribed by person making

[4] In her brief, Huntress does not dispute that the claims are health care liability claims (and, in fact, notes that she filed an expert report to comply with Chapter 74's requirements) or that expert testimony was needed on the standard of care. She does dispute whether Chapter 74, as a matter of law, precludes any claim other than negligence. Because that ground was raised in appellees' traditional motion for summary judgment and was not the basis for the trial court's ruling, we do not address it.

declaration as true under penalty of perjury); *Bonney v. U.S. Bank Nat'l Assoc.*, No. 05-15-01057-CV, 2016 WL 3902607, at *3 (Tex. App.—Dallas July 14, 2016, no pet.) (mem. op.) (concluding that in context of summary judgment, main requirements of section 132.001 are that declaration be in writing and subscribed by declarant as true under penalty of perjury); § 132.001(d) (form of jurat).

In his report, Dr. Adhia set out his education, medical training, and experience. He stated that he (1) had treated people at mental health treatment facilities where a multidisciplinary approach to patient care was used; (2) was familiar with the criteria for civil commitment in the State of Texas; and (3) had civilly committed patients and was familiar with the requisite paperwork and procedures. Dr. Adhia further stated that he had evaluated numerous patients presenting for admission for in-patient care, many with reported "suicide ideation." He said he was "well-versed" in the standards of care to which a mental health facility and physicians "should adhere for involuntary commitment for in-patient care, the steps required to obtain authorization to involuntarily detain and admit such patients, and the criteria for discharging patients who present at such facilities for a preliminary examination."

Adhia said that, in preparing his report, he had reviewed the medical records from Hickory Trail pertaining to Huntress's admission from October 18 to October 28, 2015; her original petition; and a telephone interview with Huntress on March 16, 2018.

As to the standard of care, Dr. Adhia stated the following:

> Because involuntary commitment of a patient necessarily impinges on the patient's liberty interests and right of self-determination, the applicable standard of care allows Hickory Trail and Dr. Onanuga to detain a person such as Ms. Huntress against her will only after strict compliance with Chapters 573 and 574 of the Texas Health and Safety Code. Among other things, the standard of care requires Hickory Trail and Dr. Onanuga (1) not temporarily accept a person brought to the facility by a peace officer for evaluation or treatment unless the officer has filed a notification of detention in compliance with Section 573.002 and 573.021(a) of the Texas Health and Safety Code, which notification must be included in the person's clinical file at the facility, (2) the person must be examined by a qualified physician as soon as possible within 12 hours after the time the person is transported to the facility by a peace officer for emergency detention, (3) the person shall be released on completion of the preliminary examination unless the person is admitted to a facility in accordance with the requirements of 573.022 of the Texas Health and Safety Code discussed in greater detail below, and (4) to not detain in custody a person accepted for preliminary examination for longer than 48 hours after the time the person is presented to the facility unless a written court order for protective custody is obtained.

For purposes of discussion, Dr. Adhia went on to assume that Huntress was properly detained by Hickory Trail to be examined and evaluated for potential emergency admission. He then explained that section 573.002(a) of the health and safety code required that a person may be admitted to a facility only if the physician conducting the preliminary examination made a written statement that:

> (1) is acceptable to the facility,
>
> (2) states that after a preliminary examination it is the physician's opinion that:
>
> (A) the person is a person with a mental illness;

(B) the person evidences a substantial risk of serious harm to the person or to others;

(C) the described risk of harm is imminent unless the person is immediately restrained; and

(D) emergency detention is the least restrictive means by which the necessary restraint may be accomplished; and

(3) includes:

(A) a description of the nature of the person's mental illness;

(B) a specific description of the risk of harm the person evidences that may be demonstrated either by the person's behavior or by evidence of severe emotional distress and deterioration in the person's mental condition to the extent that the person cannot remain at liberty; and

(C) the specific detailed information from which the physician formed the opinion in Subdivision (2) above.

Dr. Adhia further explained that once admitted, under section 573.021, a person could not be detained in custody for longer than forty-eight hours after presentment to the facility unless a written court order for protective custody is obtained. Dr. Adhia explained that a protective custody order required an application supported by a written physician's certificate establishing the legal requisite for such an order. Dr. Adhia then explained how these standards of care were breached in Huntress's case.[5]

[5] Appellees' no-evidence motion did not seek summary judgment on the basis that appellees breached the standard of care. To the extent they raised that ground in their reply to the response, new grounds for summary judgment are not properly considered on appeal. *See Atmos Energy Corp. v. Paul*, No. 02-19-00042-CV, 2020 WL 1057331, at *26 (Tex. App.—Fort Worth Mar. 5, 2020, no pet.). But, even if we construed their ground as fairly raising the challenge, Dr. Adhia explained that the standard of care was breached because the medical records did not contain a written report by a physician who stated a written opinion that Huntress presented a substantial risk of serious harm to herself or others, that the described

As for causation, Dr. Adhia opined that Huntress sustained damages resulting from her involuntary commitment at Hickory Trail. Specifically, Dr. Adhia stated that Huntress's economic damages incurred as a consequence of the involuntary commitment include her medical expenses. In addition, he stated that Huntress claimed non-economic damages for mental anguish, emotional distress, and the loss of her personal liberty due to the circumstances surrounding her confinement at Hickory Trail. Dr. Adhia stated that Huntress had described her experience as "a traumatizing event" that was "frightening, degrading, and humiliating." Dr. Adhia said Huntress was (1) deprived of her personal freedom and autonomy, (2) suffered physical pain and discomfort because she was denied the use of her cane required for mobility, (3) was frightened by other patients who were severely disturbed and who would yell and scream both day and night, (4) was compelled to take medication and undergo lab tests to which she did not consent, and (5) reported distressing memories and dreams related to her confinement.

Dr. Adhia specifically noted that a jury would need to determine the amount of money, if any, that Huntress should be awarded, but that it was "clear that her damages were directly tied to Hickory Trail's and Dr. Onanuga's breach of the

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risk was imminent unless she was immediately restrained, and that emergency detention was the least restrictive means by which the necessary restraint could not accomplished. Nor was there a report that contained a specific description of the risk of harm Huntress evidenced to the extent she could not remain at liberty. Nevertheless, Dr. Adhia stated, Huntress was detained against her will until October 28. Further, he noted that she repeatedly stated her desire to Hickory Trail and Dr. Onanuga that she wanted to return home. Dr. Adhia opined: "As such, it was abundantly clear that her admission and treatment at Hickory Trail was involuntary and without her consent."

standard of care described herein." Dr. Adhia opined that but for Huntress's detention in violation of the applicable standard of care, Huntress would not have suffered any of the harms described; rather, she would have been released to her home and "not suffered the expense, trauma, and indignities of being confined in a mental institution against her will for ten days."

Dr. Adhia's report constitutes more than a scintilla of evidence to establish the standard of care for involuntarily detaining a person in a mental health facility in Texas as well as the causal link between Huntress's damages and her confinement. In reaching this conclusion, we reject appellees' arguments that it does not constitute proper summary judgment proof because (1) Dr. Adhia did not attach sworn or certified copies of all papers referred to in his report and (2) it is conclusory because (i) it does not discuss Huntress's "voluntary consent" for admission and treatment and therefore there is no evidence on standard of care for voluntary patients or for changing a patient from voluntary to involuntary status, (ii) Dr. Adhia did not identify the facilities from which Huntress's medical expenses were incurred, what amounts were actually paid or incurred on her behalf, and whether the medical expenses were reasonable and necessary, and (iii) all of Huntress's "subjective complaints" that Dr. Adhia ascribed to her stay at Hickory Trail "do not constitute legally cognizable non-economic damages."

1. Failure to Attach Medical Records to Report

We begin with appellees' assertion that the report is not competent summary judgment evidence, whether as an affidavit or unsworn declaration, because it does not attach sworn or certified copies of all papers referred to in the report. As legal authority, they rely on rule of civil procedure 166a(f) and this Court's decision in *Brown v. Brown*, 145 S.W.3d 745 (Tex. App.—Dallas 2004, pet. denied).

Texas Rule of Civil Procedure 166a(f) provides, in part, that sworn or certified copies of all papers referred to in an affidavit must be attached to the affidavit or served with it. TEX. R. CIV. P. 166a(f). In *Brown*, this Court considered rule 166a(f) in affirming a no-evidence summary judgment in a legal malpractice case after concluding the plaintiff's expert's affidavit was conclusory for failure to attach documents that he relied on for his opinions. *Brown*, 145 S.W.3d at 752. The affidavit in that case was the only expert testimony purporting to present evidence that appellees breached their duty to the plaintiff while representing him in his divorce, proximate causation from the breach of that duty, and damages. In her affidavit, the expert stated she based her conclusions on the facts shown in the records of appellant's divorce case and the plaintiff's affidavit, but the divorce records "were not attached to her affidavit, filed with it, or *otherwise included in the summary judgment evidence*." *Id*. (emphasis added). We therefore concluded that the lack of the records rendered the affidavit conclusory and substantively defective. *Id*.

In this case, Huntress's medical records were part of the summary judgment evidence as they were attached to appellees' motion. Moreover, Huntress, in her response, specifically relied on the records attached to appellees' motion. A party achieves the task of ensuring that the evidence is properly before the court either by requesting in the motion that the trial court take judicial notice of the evidence that is already in the record or by incorporating that document or evidence in the party's motion. *Steinkamp v. Caremark*, 3 S.W.3d 191, 194–95 (Tex. App.—El Paso 1999, pet. denied). With regard to incorporation by reference, magic language is not necessary; it is only that the party makes the court aware of that particular evidence to which the party is referring. *Id*. Because Huntress referenced this specific summary judgment evidence in her response, it was properly before the trial court when ruling on the no-evidence motion for summary judgment. *Id*; *see Campbell v. Mortg. Elec. Registration Sys., Inc.*, No. 03-11-00429-CV, 2012 WL 1839357, at *4 (Tex. App.—Austin May 18, 2012, pet. denied) (mem. op.). We therefore reject appellees' assertion that Dr. Adhia's report was conclusory for failure to attach Huntress's medical records.

2. Failure to Address Huntress's Alleged Consent

Next, appellees argue that Dr. Adhia failed to address Huntress's alleged consent, rendering the report conclusory on its face. They provide no authority for this proposition. Regardless, at the very least, whether Huntress signed a form consenting to admission and treatment at some point *after* she was allegedly

involuntarily committed does not impact Dr. Adhia's opinions regarding her initial alleged involuntarily commitment. Morever, Dr. Adhia noted that Hickory Trail and Dr. Onanuga detained Huntress "against her will until October 28, 2018," despite the fact she "repeatedly informed Hickory Trail that she wanted to return to her home." Dr. Adhia further noted that clinical records "clearly evidence" that she repeatedly expressed her wishes that she did not want to stay, and Huntress confirmed as much with him during his interview of her. We therefore reject this argument.

3. Failure to Draw Connection between Negligence and Damages

Appellees also assert Dr. Adhia's report is conclusory "because he draws no connection between any alleged breach of the standard of care and compensable medical expenses." They first argue Dr. Adhia (1) "does not identify the facilities from which such expenses were incurred and, equally problematic, what amounts were actually paid or incurred on behalf of Ms. Huntress" and (2) "fails to opine as to whether the medical expenses charged were reasonable and necessary." They also assert the report is conclusory because Dr. Adhia "fails to distinguish those expenses that would have been incurred regardless of Hickory Trail and Dr. Onanuga's actions, in comparison to those that were incurred because of Hickory Trail and Dr. Onanuga's supposed negligence." They contend Dr. Adhia was required to "segregate expenses amongst those damages that related to voluntary treatment and those that related to allegedly negligent treatment, which he failed to do."

Appellees misperceive Huntress's burden on a no-evidence summary judgment. Huntress was required only to present enough evidence to raise a fact issue on her damages resulting from appellee's negligence in involuntarily confining her. *See* TEX. R. CIV. P. 166a(i). Dr. Adhia presented evidence that Huntress incurred medical expenses as a result of her involuntary confinement "at Hickory Trail" and that but for her wrongful detention, she would not have suffered the expense. Nothing more was required.[6] Huntress was not required to marshal her proof and present evidence that established the amount of those medical expenses. *Johnson v. Felts*, 140 S.W.3d 702, 707 (Tex. App.—Houston [14th Dist.] 2004, pet. denied) ("To defeat a no-evidence motion, a respondent is not required to marshal its proof, but only to point out evidence that raises a fact issue on the challenged element(s)."). The fact that she incurred any expenses charged by appellees related to wrongful confinement is sufficient to raise a fact issue.

Nor are we persuaded by appellees' ironic suggestion that Dr. Adhia's failure to opine on the reasonableness and necessity of appellees' own charges rendered his report conclusory. For this proposition, appellees rely on *Haygood v. De Escabedo*, 356 S.W.3d 390 (Tex. 2011). In *Haygood*, the plaintiff was injured in a car collision, sued the driver of the other vehicle for negligence, and, as part of his damages,

[6] We note that in addition to Dr. Adhia's testimony, Huntress presented billing records from Hickory Trail Hospital showing total charges of $13,650, adjustments of $5004.01, and payments of $8,645.99. Additionally, Huntress testified she testified she received a bill for more than $13,000 for her stay at Hickory Trail from her insurance company.

sought to recover his medical expenses. *Id*. at 392. Unlike here, the plaintiff in *Haygood* did not sue the health care providers for damages directly associated with their negligence. Whether the expenses charged by appellees and incurred by Huntress were reasonable and necessary is simply not pertinent to the analysis. Having concluded Huntress presented some evidence of economic damages resulting from her involuntary confinement, we need not address Dr. Adhia's report as it relates to Huntress's non-economic damages.

We conclude Huntress presented more than a scintilla of expert evidence to establish the standard of care for involuntary commitment to a mental health facility by a facility and physician and to show a causal link between her alleged damages and the alleged negligence of Hickory Trail and Dr. Onanuga. To the extent the trial court granted appellees' no-evidence summary judgment on this ground, it erred.

Appellees brought a separate no-evidence issue, asserting Huntress had no evidence as to her "claimed non-economic damages for mental anguish." Huntress argues that mental anguish is not an essential element of any of her causes of action; thus, a no-evidence summary judgment would be improper on this ground. Given our conclusion that Huntress has presented some evidence of damages (economic), we need not address separately whether she likewise presented some evidence of yet another damage to avoid summary judgment. *See* TEX. R. APP. P. 47.1.

B. False Imprisonment

Appellees also asserted Huntress had no evidence of all three elements of false imprisonment. The elements of false imprisonment are (1) willful detention, (2) without consent, and (3) without authority of law. *Sears, Roebuck & Co. v. Castillo*, 693 S.W.2d 374, 375 (Tex. 1985). A detention can be accomplished by any means "which restrains the party so detained from removing from one place to another as he may see proper." *Martinez v. Goodyear Tire & Rubber Co.,* 651 S.W.2d 18, 20 (Tex. App.—San Antonio 1983, no writ).

Huntress argues that Hickory Trail's authority to detain her against her will ended when Dr. Criep completed his examination and evaluation at 10:20 p.m. on October 18. She argues that neither Dr. Criep nor any other physician at Hickory Trail made the required written statements necessary to admit her, and because she did not consent to voluntary admission and because Hickory Trail did not obtain a court order, Hickory Trail was obligated to release her following the examination. She asserts that her confinement after 10:20 p.m. was false imprisonment.

The evidence shows that, on October 18, 2015, Ellis County deputies transported Huntress to Hickory Trail, where the she was accepted for preliminary evaluation. Huntress consented to this evaluation, which was performed by Dr. Criep. The medical records show that Dr. Criep involuntarily committed Huntress at 10:20 p.m.

As set out by Dr. Adhia, the health and safety code provides that a person may be admitted to a facility for emergency detention only if the physician who conducted the preliminary examination makes a written statement that the person has a mental illness, the person evidences a substantial risk of harm to the person or others, the risk of harm is imminent unless the person is immediately restrained, and emergency detention is the least restrictive means to accomplish the necessary restrain. TEX. HEALTH & SAFETY CODE ANN. § 573.022(a)(2). The written statement must also include (A) a description of the nature of the person's mental illness, (B) a specific description of the nature of the risk of harm the person evidences that may be demonstrated either by the person's behavior or by evidence of severe emotional distress and deterioration in the person's mental condition to the extent the person cannot remain at liberty, and (C) the specific detailed information from which the physician formed the opinion in subsection (2). *Id*. at 573.022(a)(3).

Dr. Criep's order shows he admitted Huntress on an involuntary basis to the inpatient psychiatric unit. His diagnosis was "[m]ajor depressive disorder, single episode, severe without psychotic features." The order lists precautions as suicide, and level of observation "Q15 mins." Although appellees argue Dr. Criep's assessment "satisfied the spirit and letter of Section 573.022," we cannot agree. Viewing the assessment in a light most favorable to appellees as movant is contrary to summary judgment review. Regardless, among other things, the order does not set out that Huntress presented a "substantial risk of harm" to herself or others that

was imminent unless immediately restrained nor does it provide any specific detailed information from which Dr. Criep could have formed that opinion. Moreover, Huntress testified that she told Dr. Criep that night that she wanted to go home, and he responded that she was going to be admitted. The record also contains a psychiatric evaluation conducted by Dr. Onangua on October 19, but that evaluation states only that Huntress was a "[p]otential danger to self/others," not that she presented a substantial risk of harm.

Appellees also rely on the fact that the records contain a consent to admission and treatment apparently signed by Huntress on October 19. We note that Huntress testified she did not remember signing any consent to admission form and told staff and Dr. Onanuga on numerous occasions over the next ten days that she wanted to leave but was not discharged. Regardless, whether Huntress later consented to admission, an issue we need not decide, Huntress presented at least some evidence that she was detained, without her consent, and without lawful authority from the time of her admission at 10:20 p.m. October 18 until the time of any such alleged consent. This evidence alone was sufficient to avoid a no-evidence summary judgment on Huntress's false imprisonment claim against Hickory Trail. Accordingly, the trial court erred in granting summary judgment on this claim.

C. Immunity

Finally, appellees asserted that Huntress had "no evidence of bad faith or unreasonable acts by Hickory Trail or Dr. Onanuga to rebut the presumption as required by §571.019."

Section 571.019, entitled "Limitation of Liability," provides:

> (a) A person who participates in the examination, certification, apprehension, custody, transportation, detention, treatment, or discharge of any person or in the performance of any other act required or authorized by this subtitle and who acts in good faith, reasonably, and without negligence is not criminally or civilly liable for this action.

TEX. HEALTH & SAFETY CODE ANN. § 571.019(a).

First, we note that the trial court granted a no-evidence summary judgment for the reason that Huntress had not presented more than a scintilla of evidence on the elements of her claim; section 571.019 is not an element of any of Huntress's claims. Moreover, as Huntress argues, nothing in this provision creates a "presumption;" rather, the language of the statute provides immunity if the person acts "in good faith, reasonably and without negligence." Immunity is an affirmative defense. *See c.f., City of Lancaster v. Chambers*, 883 S.W.2d 650, 653 (Tex. 1994) (official immunity); *City of Dallas v. Half Price Books, Records, Magazine, Inc.*, 883 S.W.2d 374, 376 (Tex. App.—Dallas 1994, no writ) (qualified immunity). An affirmative defense is an independent reason why a plaintiff should not recover. *Haver v. Coats*, 491 S.W.3d 877, 881 (Tex. App.—Houston [14th Dist.] 2016, no pet.). Ordinarily, the party asserting an affirmative defense has the burden of both pleading and

proving the defense. *Id*. As a result, under Texas procedural rules, a defendant cannot use a no-evidence motion for summary judgment to establish an affirmative defense. *Id.* Accordingly, the no-evidence summary judgment was not proper on this basis.

We conclude that none of appellees' grounds support a no-evidence summary judgment; accordingly, we sustain Huntress's issues. We reverse the trial court's order and remand for further proceedings consistent with this opinion.

/Amanda L. Reichek/
AMANDA L. REICHEK
JUSTICE

190892F.P05

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

LOIS YVONNE HUNTRESS,
Appellant

No. 05-19-00892-CV V.

HICKORY TRAIL HOSPITAL, L.P. AND JELIL ONANUGA, M.D.,
Appellees

On Appeal from the 298th Judicial District Court, Dallas County, Texas
Trial Court Cause No. DC-17-14354.
Opinion delivered by Justice Reichek; Justices Myers and Partida-Kipness participating.

In accordance with this Court's opinion of this date, the trial court's order granting appellees' Joint Hybrid No-Evidence and Traditional Motion for Summary Judgment is **REVERSED** and this cause is **REMANDED** to the trial court for further proceedings consistent with this opinion.

It is **ORDERED** that appellant LOIS YVONNE HUNTRESS recover her costs of this appeal from appellees HICKORY TRAIL HOSPITAL, L.P. AND JELIL ONANUGA, M.D..

Judgment entered May 29, 2020