

No. 24A548

SUPREME COURT OF THE UNITED STATES

Jana Shepherd,

Petitioner,

v.

Helen Painter & Co., Catherine Taylor, Amy DeForest,
Younger Ranch, LLC, Scott Real Estate, Inc., and Shila
Manley,

Respondents.

On Petition for Writ of Certiorari to the
Seventh Court of Appeals of Texas

APPENDIX FOR A WRIT OF CERTIORARI

Petitioner, Pro Se
Jana Shepherd
P.O. BOX 123768
Fort Worth, Texas 76121

APPENDIX

- A Judgment of trial court / or order appealed from :
- A1 Order for summary judgment on attorney fees September 18, 2022.
- A2 Order denying Motion to Modify or Correct Judgment.
- A3 Order to dismiss want for Prosecution
- A4 Order dismissing Defendant's Motion for Summary Judgment, October 07, 2020
- B Memorandum Opinion of Court of Appeals December 1, 2023.
- C Judgment of Court of Appeals, December 1, 2023
- C2 Judgment of District Court, December 14, 2022
- D Petitioner August 14, 2017 to Respondent she has the cash to close, no contingency needed, address needed to be able to close
- E Petitioner August 16, 2017 begging for a copy of executed contract and has the cash to close
- F1 Respondent August 25, 2017 requesting proof of funds
- F2 Petitioner August 28, 2017 providing cash proof of funds
- G Title policy for Petitioner ending in 0025

- H Title policy October 27, 2017 ending in 0025 of Petitioner, using Petitioner policy for new buyer when Petitioner was no longer in play as of September 8, 2017.
- I Respondent August 18, 2017 under oath TREC acknowledged Petitioner will have address on property Monday August 21, 2017
- J Petitioner August 27, 2017 asking for survey or address to be able to close
- K Respondent August 23, 2017 under Oath accepted another higher cash offer even though Petitioner had cash but needed an address to close
- L Respondent August 28, 2017 under oath TREC acknowledged petitioner can close on property without contingency
- M Respondent September 1, 2017 under oath TREC acknowledged Petitioner is permitted to close on property without contingency
- N Respondent to Title September 12, 2017 showing title policy for new buyer using Petitioner title policy 0025,
- O Texas Supreme Court August 8, 2024 denied petition for Review:
- O1 Texas Supreme Court August 8, 2024 denied petition for Review to Petitioner
- O2 O2 - 06 copies to Defendants, District Clerk, and 7th Court of Appeals
- P Petitioner to Attorney, discovery, schedule depositions, P1 - P10

APPENDIX A1
348-295290-17

Cause No. 348-295290-17

Jana Shepherd § IN THE DISTRICT
COURT OF
§
Plaintiff, § TARRANT
COUNTY, TEXAS vs, §
§
Helen Painter & Co., §
Catherin E. Taylor,
§ Amy Deforest, and
§ Younger Ranch, LLC §
§ Tarrant County, Texas

**Defendants,
vs.
Scott Real Estate Inc.,
and Shila Manley
Third-Party Defendants.**

§ 348th JUDICIAL DISTRICT

ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT ON
ATTORNEYS' FEES

On this date, the Court considered the Joint Motion for Summary Judgment on Attorneys' Fees ("Defendants' Motion") filed by Defendants Helen Painter & Co., Catherine Taylor, Amy DeForest, Scott Real Estate, Inc., Shila Manley, and Younger Ranch, LLC (collectively, "Defendants").

After reviewing Defendants' Motion, all evidence attached thereto (including the attorneys' fees invoices, billing

records, and corresponding affidavits from Defendants' attorneys submitted with Defendants' Motion, which is incorporated here by reference), and considering the fact that Plaintiff did not file a response to or controvert Defendants' Motion, and that Plaintiff did not file a verified motion for continuance as required by Texas Rule of Civil Procedure 251, the Court finds that Defendants' Motion should be and is hereby GRANTED.

It is therefore ORDERED that Defendants' Joint Motion for Summary Judgment on Attorneys' Fees is GRANTED in its entirety.

The Court FINDS that Defendants Helen Painter & Co., Catherine Taylor, Amy DeForest, YOU11ger Ranch, LLC, Scott Real Estate, Inc., and Shila Manley are each a "prevailing party" under Paragraph 17 of the Real Estate Sales Contract at issue in this lawsuit.

The Court further FINDS, based on the summary judgment evidence, including evidence of (1) particular services performed, (2) who performed those services, (3) approximately when the services were performed, (4) the reasonable amount of time required to perform the services, and (5) the reasonable hourly rate for each person performing such services, that the hours worked in this matter by the Defendants' respective counsel as reflected in their summary judgment evidence (including attorneys' fees invoices and the attorney's affidavits) were reasonable and necessary for the tasks such counsel performed, and that the respective hourly rate

each attorney charged for such work is reasonable.

The Court ORDERS Plaintiff Jana Shepherd a/k/a Jayna Shepherd a/k/a Janet Shepherd to pay the attorneys' fees of the named defendants in this lawsuit as follows:

- To Defendants Helen Painter & Co., Catherine Taylor, and Amy DeForest: \$88,706.60.
- To Defendants Scott Real Estate, Inc. and Shila Manley: \$30,872.00.
- To Defendant Younger Ranch, LLC: \$6,237.50.

On September 2, 2021, this Court previously granted the Helen Painter Defendants' and Younger Ranch's Motion for Summary Judgment, dismissing Plaintiffs claims with prejudice pursuant to Rule 166a(c). Also on September 2, 2021, this Court also dismissed Plaintiffs claims with prejudice for want of prosecution. With this Order, all claims and counterclaims now have been adjudicated in this lawsuit.

All relief not previously granted or granted herein is hereby denied.

This Judgment is final and Appealable. Signed:

September 18, 2022.

ORDER GRANTING DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT ON
ATTORNEYS' FEES

JUDGE PRESIDING

APPENDIX A2
348-295290-17

CAUSE NO. 348-295290-17

FILED
TARRANT COUNTY
11/29/2021 5:02 PM
THOMAS A. WILDER
DISTRICT CLERK

Jana Shepherd	§ IN THE DISTRICT COURT
	§
Plaintiff,	§ TARRANT COUNTY, TEXAS
V,	§
	§348 th JUDICIAL DISTRICT
	§
HELEN PAINTER & CO.,	
§ CATHERINE TAYLOR,	
AND § AMY DEFOREST §.	
	§
	§ TARRANT COUNTY, TEXAS
Defendants,	§

ORDER DENYING MOTION TO MODIFY OR
CORRECT JUDGMENT

On this day came on for consideration Jana Shepherd's Motion to Modify or Correct a Judgment and the Court is of the opinion that the Motion to Modify or Correct Judgment should be Denied.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED that Jana Shepherd's Motion to Modify or Correct Judgment is hereby denied.

SIGNED this 30th day of November, 2021.

JUDGE PRESIDING

APPENDIX A3

348-295290-17

Jana Shepherd	§ IN THE DISTRICT COURT
	§
Plaintiff,	§ TARRANT COUNTY, TEXAS
V,	§
	§
	§
Helen Painter & Co.,	§
Catherine Taylor, and	§
Amy DeForest	§.
	§
	§
Defendants,	§ 348 th JUDICIAL DISTRICT

ORDER GRANTING HELEN PAINTER DEFENDANTS'
AMENDED MOTION
TO DISMISS FOR WANT OF PROSECUTION

On this date, the Court considered Defendants Helen Painter & Co., Catherine Taylor, and Amy DeForest's (collectively, "Helen Painter Defendants") Amended motion to dismiss for want of Prosecution (the "Motion") After reviewing the motion . related evidence, argument of counsel and ant response or reply thereto, the Court finds that the motion should be and is hereby **GRANTED**.

It is therefore **ORDERED** That all of Plaintiff Jana Shepherd's claims in this lawsuit against the Helen Painter Defendants are hereby DISMISSED with prejudice in their entirety, and that Plaintiff Jana Shepherd take nothing from the Helen Painter Defendants.

SO ORDERED on this 2nd day of September, 2021

JUDGE PRESIDING

APPENDIX A4

CAUSE NO. 348-295290-17

FILED
TARRANT COUNTY
10/6/2020 9:41 AM
THOMAS A. WILDER
DISTRICT CLERK

Jana Shepherd	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
vs,	§	
	§	
	§	
	§	TARRANT COUNTY,
Helen Painter & Co.,	§	TEXAS
Catherine Taylor, And	§§	
Younger Ranch. LLC	§	
	§	
Defendants,	§	
	§	
vs,	§	
	§	
	§	
Scott Real Estate Inc.,	§	
and Shila Manley	§	
	§	
	§	
Third-Party Defendants	§	348th JUDICIAL DISTRICT

ORDER DENYING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT

BE IT REMEMBERED that on this day came on to be considered Defendants' Motion for Summary Judgment. The Court, having read the pleadings and considered the Motion and response, and arguments of counsel, if any, is of the opinion that such Motion

should be denied. It is therefore, ORDERED that Defendants' Motion for Summary Judgment is DENIED.

SIGNED this the 7th day of October 2020.

JUDGE PRESIDING

Submitted by:
THE LAW OFFICES OF DAVID C. COWDEN, P.C.
4410 West Vickery Blvd, Ste. 103
Fort Worth, TX 76107
Tel: (817)8 82-9000
Fax: (817)882-8448
Email: david@cowdenfirm.com
By: /s/David C, Cowden
State Bar No. 04921450
Attorney for J Shepherd

APPENDIX B

In The Court of Appeals
Seventh District of Texas at Amarillo

No. 07-22-00314-CV

JANA SHEPHERD, APPELLANT

V.

HELEN PAINTER & CO., CATHERINE TAYLOR, AMY
DEFOREST, YOUNGER RANCH, LLC, SCOTT REAL
ESTATE, INC., AND SHILA MANLEY, APPELLEES

On Appeal from the 348th District Court Tarrant County,
Texas

Trial Court No. 348-295290-17, Honourable Megan Fahey,
Presiding

December 1, 2023

MEMORANDUM OPINION¹

Before QUINN, C.J., and PARKER and YARBROUGH, JJ.

¹ Because this matter was transferred from the Second Court of Appeals, we apply its precedent when it conflicts with that of the Seventh Court of Appeals. TEX. R. APP. P. 41.3.

Jana Shepherd, acting pro se, appealed from an order dismissing her claims against several parties for want of prosecution and a final summary judgment. The dispute arose from her failed attempt to acquire a parcel of realty owned by Younger Ranch, LLC. Those sued were Scott Real Estate, Inc. and its employee Shila Manley (together referred to as Scott), Helen Painter & Co. and its employees Catherine Taylor and Amy DeForest (referred to as Painter), and Younger Ranch, LLC (Younger). Shepherd asserted a myriad of contentions on appeal. Most concern the propriety of the dismissal and summary judgment. Others implicate the trial court's refusal to reinstate her claims after dismissal and the attorney's fees awarded her opponents. We affirm.

Background

The property in question consisted of six acres owned by Younger. Shepherd contracted to buy it in July 2017. Painter acted as real estate agent for both parties.

Per an addendum to the sales contract, consummation of the deal was contingent upon Shepherd's selling a separate parcel of realty. Consequently, Younger was free to entertain and accept other offers in case Shepherd's purchase came to naught. Yet, if it received and accepted a subsequent offer during the interim, Younger was obligated to afford Shepherd opportunity to waive the contingency and proceed with the acquisition if she also deposited \$1,000 in escrow. Failing to do both within three days of her receiving notice resulted in the automatic termination of the agreement. Younger received another offer during the interim. Painter notified Shepherd of it. At that point,

Shepherd informed Painter that she would waive the contingency and pay cash for the property. This was not followed by a deposit of \$1,000 within three days, though. Around that same time, Shepherd discharged Painter and retained Scott to represent her in the transaction. Nevertheless, the sale never transpired, even though Younger afforded Shepherd another opportunity to perform the conditions within the addendum.

Believing herself aggrieved, Shepherd sued Painter and Younger in September 2017. So too did she sue Scott after they were joined as third-party defendants.

Painter and Younger eventually moved to dismiss the action for want of prosecution in July 2021. So too did those parties simultaneously seek reconsideration of the earlier denial of their motion for summary judgment. Scott acted similarly. In August 2021, they too moved to dismiss the cause for want of prosecution and, alternatively for summary judgment.

The trial court convened a hearing on the pending motions. Thereafter, it granted 1) Scott's motion to dismiss and 2) Painter's motions to dismiss and for summary judgment. Shepherd moved to reinstate the proceedings, which motion the trial court denied after conducting a live hearing upon it. So too did it grant motions for attorney's fees, thereby disposing of all claims and issues involved.

Issues

Needless to say, the number of parties, course of proceedings, and the multiple trial court orders ultimately disposing of the cause render the issues before us somewhat

difficult to follow. We divide them into three categories: 1) dismissal for want of prosecution, 2) summary judgment on the merits, and 3) summary judgment on attorney's fees.

Dismissal for Want of Prosecution

Again, all defendants other than Younger moved to dismiss Shepherd's suit for want of prosecution. Shepherd contends that the trial court erred in granting their motions and failing to conduct a hearing on her subsequent motion to reinstate. We overrule those issues.

Due to its ease of disposition, we begin with her allegation that the trial court did not conduct a live hearing on her motion to reinstate the causes after dismissing them. Her argument is disingenuous. The record before us contains the transcript of a September 15, 2022 hearing whereat the motion was heard. Moreover, Shepherd personally attended the proceeding, as did other parties through legal counsel. During this very same hearing, the trial court also commented on Shepherd's latest motion to continue proceedings. Thus, it too was before the court at the time, contrary to her allegations otherwise.

Regarding the orders dismissing the claims for want of prosecution, same is reviewed under the standard of

abused discretion, *Pence v. S&D Builders, LLC*, No. 07-21-00080- CV, 2021 Tex. App. LEXIS 9916, at *6-7 (Tex. App.— Amarillo Dec. 15, 2021 pet. denied) (mem. op.), as is the denial of a motion to reinstate. *Cummings v. Billman*, 634 S.W.3d 163, 166-67 (Tex. App.—Fort Worth 2021, no pet.). Furthermore, a trial court has inherent power to dismiss a cause when the plaintiff fails to prosecute it with due diligence. *Pence*, 2021 Tex. App. LEXIS 9916, at *6. Multiple factors may be considered when assessing such diligence, or lack thereof. They include 1) the age of the case; 2) the activity undertaken to develop it during its life, if any; 3) the requests for trial settings, if any; and 4) the existence of reasonable excuses for the delay. *Id.* at *9-10.

With those indicia in mind, we first note that the case was about four years old when dismissed. That period is at least about 30 months longer than the time in which our Supreme Court expects a trial court to dispose of non-family civil proceedings. See TEX. R. JUD. ADMIN. 6.1(a) (providing that civil cases other than family law matters be tried within 18 months from appearance date for jury cases and within 12 months from appearance date in nonjury cases). Thus, its time had passed under the administrative rule.

As for activity, Shepherd had two different attorneys represent her since the inception of the suit. Both withdrew. The most recent did so because she failed to pay and effectively communicate with him, at least that is what the attorney represented to the trial court when it granted leave to withdraw. That happened in June 2021, or a bit over two months before the trial court signed its dismissal orders. Moreover,

the particular attorney also represented to the court that no depositions had been taken and little other discovery had transpired. Shepherd cited us to nothing of record contradicting this.

The record also illustrates that she failed to appear for a deposition set by the opposing parties. Nor did Shepherd cooperate with effort to reschedule it. As said by opposing counsel: "with respect to cooperation between Ms. Shepherd and her counsel, we requested her deposition numerous times throughout the month of May and June." What they "kept getting back was, 'Not available,' 'Can't do it,' 'Needs to be pushed off to maybe August, September.'" So, the trial court heard not only that she conducted nominal discovery but also hindered the ability of others to do so.

Next, the record reflects that the cause had been set for trial several times. Those dates were met with multiple motions for continuance, which motions were granted. Though most were jointly filed between the parties, they, nonetheless, illustrate continuing delay in which Shepherd intentionally acquiesced.

Of further note is Shepherd's comment about mediation at the hearing on the motion to dismiss and her continuing attempt to pursue it. Her latest invitation to do so was rejected in June 2021. Interestingly, effort to resolve the case through settlement negotiations or mediation served as the basis for many of the earlier motions to continue.

Obviously, those efforts proved fruitless, for whatever reason. Nevertheless, her persistent effort to follow a

path which much earlier proved untenable tends to contradict her interest in trying the cause. And, as those efforts at settlement proved fruitless, discovery apparently remained stagnant.

As for excuses, she placed the blame on her ex-attorneys. Allegedly, they refused to heed her numerous pleas to conduct discovery. None of these attorneys were present to confirm the allegation. Nor did she tender into the record any other evidence supporting her contention, despite alluding to the existence of emails. Moreover, the latest withdrew due to Shepherd's refusal to pay and effectively communicate with him. The latter can be viewed as some evidence that Shepherd impeded her attorney's ability to answer her purported pleas. Most importantly, though, ex-attorneys' supposed inaction does not explain her own failure to cooperate with the discovery efforts of others.

Shepherd also interjected Covid and its widespread effect. No doubt, it caused people to minimize physical interaction and impacted litigation. Then again, Zoom developed as a means by which people could overcome some obstacles created by the germ and move forward. Shepherd did not address why that medium went unutilized in preparation for trial.

The trial court's observations and questions to Shepherd best capture the situation.

It uttered:

"I mean, the problem here is this case has been

pending for four years, and there's been no forward progress at great expense to the Defendants."

- "I think you were back here 11 months ago asking for more time on your case. Eleven months have passed, nothing's happened, and you failed to show up for your deposition. What am I supposed to do with this case? It's not moving forward after four years."
- "Because your attorney was in here two months ago saying that you weren't cooperating with them and they needed to be removed from this case "
- "But they asked you to show up for your deposition, and you just didn't show up and didn't reschedule it. So how can you go to trial when you're not showing up for your deposition? You say that you have claims against them, and they're trying to conduct discovery so they can get ready for trial, which is scheduled in less than three weeks, and they don't even understand what your claims are against them

because you won't show up for your deposition, and this case has been pending for four years."

- "What I see is it looks like this is the ninth trial setting in this case. Is that correct? I'm just looking at my docket sheet."
- "I see eight trial dates that have been scratched through."

Given the trial court's perception of the circumstances and the evidence alluded to above, its decision to dismiss is not unreasonable. Nor does it deviate from controlling rules and principles. The same is no less true of the trial court's refusal to reinstate the four-year-old case. Her excuses for the delay and proof supporting same were tenuous, or so the trial court could have reasonably concluded.

Accordingly, no discretion was abused in either instance. See *Preslar v. Garcia*, No. 03-13-00449-CV, 2014 Tex. App. LEXIS 2156, at *6-8 (Tex. App.—Austin Feb. 26, 2014, no pet.) (mem. op.) (affirming the decision to dismiss a case for want of prosecution when it was over 40 months old with at least 21 months of inaction and no reasonable excuse was offered for the delay); *In re McBryde Family Trust*, No. 13-20-00473-CV, 2021 Tex. App. LEXIS 8539, at *16-17 (Tex.

App.—Corpus Christi Oct. 21, 2021, no pet.) (mem. op.) (finding, among other things, that Covid-19 was not a reasonable excuse for the delay given the "overall minimal" activity in a case that had been on file for 18 months).

Summary Judgments

As mentioned earlier, the trial court also entered summary judgments denying Shepherd's claims against Painter, Younger, and Scott. Having affirmed its orders of dismissal, we need not consider the summary judgments awarded to anyone other than Younger. Again, the claims against

Younger were the only ones outside the umbrella of the dismissal orders.

Shepherd alleged only one cause of action against Younger. It consisted of breached contract. It allegedly breached it by refusing to sell her the realty in question. Younger moved for summary judgment on the claim, contending that her failure to perform various conditions ended its contractual obligation to her. Those conditions were 1) waiving the contingency that her duty to buy depended upon selling her house and 2) depositing \$1,000 in escrow, which contingencies had to be completed within three days of being notified of the decision to accept the second offer.

Shepherd admitted that "[t]he standard written form contract unambiguously required an additional deposit to escrow as part of waiving the contingency." That is, the addendum she executed contained the following:

B. If Seller [Younger] accepts a written offer to sell the Property, Seller shall notify Buyer [Shepherd] (1) of such acceptance AND (2) that Seller requires Buyer to waive the Contingency. Buyer must waive the Contingency on or before the 3rd day after Seller's notice to Buyer; otherwise the contract will terminate automatically and the earnest money will be refunded to Buyer.

C. Buyer may waive the Contingency only by notifying

Seller of the waiver and depositing \$1,000.00 with escrow agent as additional earnest money. All notices must be in writing and are effective when delivered in accordance with the contract.

So, within three days of being informed of Younger's accepting a subsequent offer, Shepherd had to waive the contingency. **And**, there was only one way to do it. The agreement obligated her by notifying Younger she waived the contingency "and depositing \$1000.00 with [the] escrow agent as additional earnest money." (Emphasis added).

No one disputes that Younger accepted a subsequent offer and twice afforded Shepherd notice of it. Nor does anyone deny that Shepherd failed to perform both conditions required of her within three days of either notification.

Indeed, Shepherd acknowledged her failure to timely deposit the \$1,000 through an email and attachment sent on August 28, 2017. The attachment, according to her, was a "[s]igned . . . response to Notice regarding Contingency, indicating 'Buyer waives the contingency and deposits the additional earnest money with the escrow agent.'"

Following that, we find her attestation that "I did not make the additional deposit to escrow." Her thus having failed to comply, the contract terminated per its own terms.

Nevertheless, effort was made to excuse the default. It came in the form of waiver. Purportedly, Younger waived the condition about depositing the additional \$1,000. That occurred, in her view, when Younger's

real estate agent
only requested proof of financial ability to buy the
property when delivering notice of the second offer.
According to Shepherd, the real estate agent had
“apparent authority” to waive the condition on behalf of
Younger.

Yet, in urging the theory, she cited us to neither 1) legal
authority specifying the elements of apparent authority
nor

2) evidence raising an issue of fact as to their
existence. Such was required by an appellant and one
attempting to defend against a summary judgment
motion by interjecting some defense. See *Hines v.*
Deutsche Bank Nat'l Trust Co., No. 02-14-00368-CV,
2015 Tex. App. LEXIS 11715, at *6-7

(Tex. App.—Fort Worth Nov. 12, 2015, pet. denied)
(mem. op.) (noting the nonmovant's burden to come
forward with evidence sufficient to raise an issue of
fact on each element of the defense to avoid summary
judgment). Similarly missing is substantive analysis
supporting her contention, that is, analysis applying
legal authority to evidence of record. We have no
obligation to do any of that for her, *sua sponte*.
Jackson Walker, LLP v. Kinsel, 518 S.W.3d 1, 18
(Tex. App.—Amarillo 2015), *aff'd* on other grounds,
526 S.W.3d 411 (Tex. 2017); see *Hornbuckle v. State*
Farm Ins., No. 02-15-00387-CV, 2016 Tex. App.
LEXIS 11197, at *7-8 (Tex. App.—Fort Worth Oct. 13,
2016, no pet.) (mem. op.) (stating that the court has no
duty to brief issues for an appellant). It matters not
that she acted *pro se*. Such parties must also comply
with the rules of appellate procedure. *Hornbuckle*,
2016 Tex. App. LEXIS 11197, at *7. And her omission
is of particular importance here since the doctrine of

apparent authority normally does not apply to real estate transactions. *Hugginie v. Loyd*, 483 S.W.2d 696, 701 (Tex. Civ. App.—Tyler 1972 writ ref'd n.r.e.); *Bugh v. Word*, 424 S.W.2d 274, 279 (Tex. Civ. App.—Austin 1968, writ ref'd n.r.e.) (quoting *Goode v. Westside Developers, Inc.*, 258 S.W.2d 844, 847 (Tex. Civ. App.—Waco 1953, writ ref'd n.r.e.)). Together, this means that Shepherd did not carry her appellate burden to establish the impropriety of summary judgment.

In short, the contract to buy the realty ended when Shepherd failed to perform the conditions required of her. Thus, Younger established its entitlement to summary judgment, as a matter of law, and we overrule her issue.

Attorney's Fees

Lastly, Shepherd challenges the summary judgment through which the trial court awarded attorney's fees to her opponents. In support thereof, she asserts that 1) Younger did not plea for attorney's fees and 2) everyone failed to prove the fees awarded were reasonable and necessary. We overrule the issue.

Regarding Younger's purported failure to seek fees through a pleading, Shepherd again misrepresents the record.

Younger prayed for same in its original answer.

As for proving the amount of fees recoverable, Shepherd said much about applicable legal authority. Yet, no substantive analysis followed. As with her argument about "apparent authority," we are left to answer that on

our own.

But, again, that is not our duty. So, her effort again constitutes inadequate briefing resulting in the waiver of the complaint. Hornbuckle, 2016 Tex. App. LEXIS 11197, at *7-8 (holding that argument must include substantive analysis and by omitting it, one waives the complaint).

Possibly, her omission may be explained by the tenor of the evidence. Simply put, it negated her conclusory allegations. Indeed, the trial court had before it affidavits from legal counsel and their respective detailed bills for services provided. Those items illustrated 1) the qualifications of those performing services; 2) the services performed, who performed them, when they were performed, and the time necessary to perform them; and 3) the reasonable hourly rates for each of the services by each professional. More importantly, such addressed and satisfied the criteria deemed relevant by our Supreme Court in Rohrmoos Venture v. UTSW DVA Healthcare, LLP, 578 S.W.3d 469 (Tex. 2018). So too did and does it constitute ample evidence to establish, as a matter of law, the fees awarded were reasonable and necessary. Those fees were \$88,706.60 to Helen Painter & Co, Catherine Taylor, and Amy DeForest, \$30,872.00 to Scott Real Estate, Inc. and Shila Manley, and \$6,237.50 to Younger.

To reiterate, we overrule each of Shepherd's issues and affirm the judgments of the trial court.

Brian Quinn

Chief Justice

FILE COPY

APPENDIX C

BRIAN
QUINN
Chief Justice

JUDY C.
PARKER
Justice

LAWRENCE
M. DOSS
Justice

ALEX
YARBROUGH
Justice

Court of Appeals
Seventh District of Texas
Potter County Courts
Building 501 S. Fillmore,
Suite 2-A Amarillo, Texas
79101-2449

www.txcourts.gov/7thcoa.aspx

BOBBY
RAMIREZ
Clerk

MAILING
ADDRESS:
P. O. Box 9540
79105-9540

(806) 342-2650

December 1, 2023

Jana Shepherd *DELIVERED VIA E-MAIL * Jennifer M. Covington Manuel Ramos BRACKETT & ELLIS, P.C. 100 Main Street, Suite 400 Fort Worth, TX 76102	Scott A. Wheatley Jeffrey Gilmore Trevor Paul JACKSON WALKER L.L.P. 777 Main Street, Suite 2100 Fort Worth, TX 76102 *DELIVERED VIA E-MAIL *
--	---

*DELIVERED VIA E-MAIL *	Brian J. Hall BARNETT & HALL, LLP 5944 Luther Lane, Suite 755 Dallas, TX 75225 *DELIVERED VIA E-MAIL *
-------------------------	--

RE: Case Number: 07-22-00314-CV; Trial
Court Case Number: 348-295290-17

Style: Jana Shepherd v. Helen Painter & Co.,
Catherine Taylor, Amy Deforest, Younger Ranch,
LLC, Scott Real Estate, Inc., and Shila Manley

Dear Ms. Shepherd and Counsel:

The Court this day issued an opinion and judgment in
the referenced appeal. See TEX. R. APP. P. 48.

Pursuant to Section 51.204(b)(2) of the Texas
Government Code, exhibits on file with this Court, if
any, will be
destroyed three years after final disposition of the
case or at an earlier date if ordered by the Court.

Sincerel

y, Bobby

Ramirez

Bobby Ramirez, Clerk

CC: Honourable Megan Fahey (DELIVERED VIA E-
MAIL) Thomas A. Wilder (DELIVERED VIA E-MAIL)

FILE COPY

APPENDIX C2

No. 07-22-00314-CV

Jana Shepherd	§ From the 348th District Court
Appellant	§ of Tarrant County
	§
v,	§ December 1, 2023
	§
	§
Helen Painter & Co.,	§
Catherine Taylor,	§ Opinion by
Amy Deforest,	§ Chief Justice Quinn
Younger Ranch, LLC	§
Scott Real Estate, Inc.,	§
and Shila Manley	§
	§
	§
Appellees	§

J U D G M E N T

Pursuant to the opinion of the Court dated December 1, 2023, it is ordered, adjudged, and decreed that the judgments of the trial court be affirmed.

It is further ordered that appellant pay all costs in this behalf expended for which let execution issue.

It is further ordered that this decision be certified below for observance.***

APPENDIX D

Petitioner August 14, 2017 emailed and text Respondent she has cash to close, no contingency needed, just an address to close

Gmail
I HAVE THE CASH TO CLOSE

Mon Aug,14 2017 at 11:23 AM

From: Petitioner
To: Amy Deforest <adeforest@helenpainter.com>

Just to let you know I have the cash now to close and all we need is the address. I no longer need to use the funds from my house selling. What is the status on getting the address and could you Please send me the contract I have still never received it.

Thanks
J Shepherd

APPENDIX E

Petitioner August 16, 2017 begging for a copy of the executed contract and has the cash to close

Gmail

Copy of Executed Contract

Fron: Petitioner

To: Amy Deforest <adeforest@helenpainter.com>

Wed, Aug 16,2017 at 9:02 AM

Would you PLEASE send me a copy of the executed contract that Mr. Younger signed. I'm ready to close because I have the funds and all I need is an address. What is the name and number of the surveyor or whoever is getting the address and why is it taking so long.

Thanks
J Shepherd

APPENDIX F1

Respondent August 20, 2017 requesting proof of funds

:Email:

Subject: Notice regarding contingency Under
addendum for sale of Other property by Buyer
From: Amy Deforest
To: Petitioner
Date: Friday, August 20, 2017 11:15 AM

Hello Jana,
Please see attached addendum addressing the
contingency on your offer for 301 Younger Ranch Rd.
Should you decide to waive the contingency the seller
will require proof of obtaining financing. Please note
that we must respond on or before the third day after
this notice is received.

Thank you,
Amy

Amy Deforest

Attachments

- 20170824173914611.pdf(316.36KB)

APPENDIX F2

Petitioner August 28, 2017 providing proof of funds,
need address to close

Gmail

Proof of Funds

From: Petitioner

To: Amy Deforest <adeforest@helenpainter.com>

Sent: August 28, 2017

Attached is the proof of funds. PLEASE get me whatever is needed to close asap. I have begged you for weeks to get me whatever the title company need to close. I have told you since the beginning of August that I have been ready to close and waiting on you to get me the address or survey and whatever else is needed by the title company. But you keep putting me off.

Thanks

Jana

Attachment

APPENDIX G

Title Policy for Petitioner ending in 0025

Alamo Title Company

Title Officer/

Examiner; Escrow

Officer:

6000501700025

Vicki Garvin

Vicki@TXAlmo.com

Processor / Assistant:

Barbara Bums

Barbara@TXAlmo.com

Source of Business: Younger Ranch, LLC

Marketing Rep(s): Brandon Baker

Transaction Type Order Type

Purchase

Title & Escrow

Product Type

Resale

Policy Type

Owners Only

Order Opened Date:

August 1, 2017

Order Opened By:

Barbara Burrs

Product Due :

August 4, 2017

Closing Date:

September 21.2017

Disbursement Data:

September 21.2017

Sale Price:

\$189,000.00

Loan Amount(s):

\$0.00

Policy Code:

Loan Policy(ies):

Owners Policy(ies):

Owners Policy of Title Insurance (T-1)-2014

Liability: \$ 189,000.00
Premium: \$0.00
Order Status: In Process
Title Status:
Escrow Status: In Process

Underwriter: Alamo Title Insurance
Related Order(s):

PROPERTY(IES)
301 Younger Ranch Road, Azle, TX 76020

APN/ Parcel ID(s): R000090645
Tax/Map ID(s): 19933.001.001.00

County: Parker
Subdivision: Younger Ranch
Property Type: Unimproved

Brief Legal: Lot(s): 1 Younger Ranch Parcel ID(s):
R000090645 Tax/Map ID(s): 19933.001.001.00

BUYER:
Name: J Shepherd
AKA:
Home: Work:
Cell: Fax:
Email:

Current Address:
Forwarding Address:

APPENDIX H

Title policy October 27, 2017 ending in 0025 of petitioner. Her policy being used for new buyer.

From: Barbara Burns
Subject. 6000501700025 PLEASE RUSH
Recipient(s): Approval, Survey (Title
Company)<Surveysdfw@fnf.com>; Worthington,
Michelle (Closer/Escrow Officer)
<michelle@txalamo.com >
Sent: Friday, October 27 2017 12:26 PM CT

Need final review of survey today and updated
commitment with exceptions on survey, if any.

Barbara Burns
Paralegal/Escrow Officer
Carista M. Ragan PC
Alamo Title Company
1320 Santa Fe Drive, Ste 300
Weatherford Texas 76086
(P)817-596-9952 / (F)817-596-5684
barbara@txalamo.com

This message (including all attachments) may
contain information that is private, confidential, and
privileged. If you are not the named addressee,
please notify the sender immediately, delete this
communication from all data storage devices, and

This transaction Involves:
Opened Date: Tuesday, August 1 2017 10:41 AM CT

Project Name :
Customer Ref :
Property : 301 Younger Ranch Road, Azle TX 76020
Buyer: J Shepherd
Seller: Younger Ranch/ LLC Herbert W. Younger
External Order Number: SoftPro - 6000501700025
Internal Order Number: 25 659 337

APPENDIX I

Respondent August 18, 2017 under oath TREC
acknowledged Petitioner will have address on
Monday, August 21, 2017

August 18, 2017

Ms. Deforest contacted Ms. Shepherd that it was
looking positive that the address might be
forthcoming on Monday. Ms. Shepherd texted
back "Okey Dokey, have a wonderful day".

APPENDIX J

Petitioner requesting surveyor or address

Email:
From: Petitioner
To: Amy DeForest
Sent: August 27, 2017
SURVEYOR

Please send me the name of the surveyor and his
phone number so I can get the address.

Thank you

APPENDIX K

Respondent August 23, 2017 under Oath TREC
another higher offer even though Petitioner had cash and
needed an address to close.

August 23, 2017

Amy Deforest received an offer with a Back-Up Contract
Addendum attached. The offer was cash with a closing
date of September 25, 2017. Sales price was more than
the existing contract with Ms. Shepherd.

APPENDIX L

Respondent August 28, 2017 under Oath TREC
acknowledged Petitioner can close on property
without contingency

August 28, 2017

Cathy Taylor received Ms. Shepherd's proof of funds
from Ms. Manley illustrating that she had the funds
available in her bank account to close on the sale
thus demonstrating that she could continue with the
purchase of 301 Younger Ranch Road without the
proceeds from the sale of her home.

APPENDIX M

Respondent under Oath TREC September 1, 2017
acknowledging Petitioner permitted to close without
contingency.

September 1, 2017

By noon this day, Ms Shepherd was officially under
contract to purchase 301 Younger Ranch Road with
no contingency upon the sale of her home.
She had supplied proof of funds, Ms. Manley was
her Realtor.

APPENDIX N

Respondent to Title showing title policy for new
buyer using Petitioner title policy 0025

Email:

From: Amy DeForest

To: Vicki Gsrvin

Sent: September 12, 2017

Hello Vicki

This Transaction went in to affect Friday,
September 8th

Thank you

Amy DeForest

Helen Painter & Co

2242 Forest park Blvd

Fort Worth 76110

817-602-1708

APPENDIX O

FILE COPY

RE: Case No. 24-0026 DATE: 8/30/2024
COA * : 07-22-00314- TC#: 348-295290-17
CV
STYLE: SHEPHERD v.
HELEN PAINTER &
CO.

Today the Supreme Court of Texas denied the petition
for review in the above-referenced case. (Justice Devine
not participating)

APPENDIX O1

FILE COPY

RE: Case No. 24-0026 DATE: 8/30/2024
COA * : 07-22-00314-CV TC#: 348-295290-17
STYLE: SHEPHERD v.
HELEN PAINTER & CO.

Today the Supreme Court of Texas denied the
petition for review in the above-referenced case.
(Justice Devine not participating)

JANA SHEPHERD
* DELIVERED VIA E-MAIL & POSTAL *

APPENDIX O2

FILE COPY

RE: Case No. 24-0026 DATE: 8/30/2024
COA * : 07-22-00314- TC#: 348-295290-17
CV
STYLE: SHEPHERD v.
HELEN PAINTER &
CO.

Today the Supreme Court of Texas denied the petition
for review in the above-referenced case. (Justice Devine
not participating)

MS. JENNIFER M • COVINGTON
BRACKET G ELLIS, P.C.
100 MAIN ST. STE 400
FORT WORTH, TX 76102
* DELIVERED VIA E-MAIL *

APPENDIX O3

FILE COPY

RE: Case No. 24-0026 DATE: 8/30/2024
COA * : 07-22-00314- TC#: 348-295290-17
CV
STYLE: SHEPHERD v.
HELEN PAINTER &
CO.

Today the Supreme Court of Texas denied the petition
for review in the above-referenced case. (Justice Devine
not participating)

MR. SCOTT A. WHEATLEY
JACKSON WALKER LLP
777 MAIN ST STE 2100
FORT WORTH, TX 76102
* DELIVERED VIA E-MAIL *

APPENDIX 04

FILE COPY

RE: Case No. 24-0026 DATE: 8/30/2024
COA * : 07-22-00314-CV TC#: 348-295290-17
STYLE: SHEPHERD v.
HELEN PAINTER & CO.

Today the Supreme Court of Texas denied the
petition for review in the above-referenced case.
(Justice Devine not participating) \

MR. BOBBY RAMIREZ
SEVENTH COURT OF APPEALS
501 S FILLMORE ST RM 2A
AMARILLO, TX 79101-2449
* DELIVERED VIA E-MAIL *

APPENDIX O5

FILE COPY

RE: Case No. 24-0026 DATE: 8/30/2024
COA * : 07-22-00314-CV TC#: 348-295290-17
STYLE: SHEPHERD v.
HELEN PAINTER & CO.

Today the Supreme Court of Texas denied the
petition for review in the above-referenced case.
(Justice Devine not participating)

BRIAN J. HALL
BARNETT, HALL, P.L.L.C.
5944 LUTHER LN STE 755
DALLAS, TX 75225-6051
DELIVERED VIA E-MAIL

APPENDIX O6

FILE COPY

RE: Case No. 24-0026 DATE: 8/30/2024
COA * : 07-22-00314-CV TC#: 348-295290-17
STYLE: SHEPHERD v.
HELEN PAINTER & CO.

Today the Supreme Court of Texas denied the
petition for review in the above-referenced case.
(Justice Devine not participating)

DISTRICT CLERK TARRANT COUNTY
TARRANT COUNTY COURT
TOM VANDERGRIFF CIVIL COURTS BLDG
100 N. CALHOUN ST, 2ND FLOOR
FORT WORTH, TX 76196-0402
* DELIVERED VIA E-MAIL *

APPENDIX P1

Petitioner requesting attorney send out discovery

Email:

From: Petitioner

To: David Cowden

Sent: February 10, 2020

QUESTION

If you want me to come help you type up the interrogatories, I will. I need these sent out as soon as possible please, along with discovery to all of the defendants. You keep telling me you will send them out.

Thanks

APPENDIX P2

Petitioner requesting attorney send out
interrogatories and discovery

Email:

From: Petitioner

To: David Cowden

Sent: March 25, 2020

INTERROGATORIES

I know things are at a standstill with covid, but I am asking you to Please, Please send out the interrogatories and discovery to the Defendants. I will come type it for you if that will help you.

Thanks

APPENDIX P3

Petitioner requesting attorney send out interrogatories and discovery to review

Email:

From: Petitioner

To: David Cowden

Sent: February 23, 2021

INTERROGATORIES

Please send copies of the interrogatories that yall are sending out. Before they are sent out, please let me review them.

Also, please schedule Defendant's Depositions. What dates are you available. Please, we need to get this done asap.

Thank you

APPENDIX P4

Petitioner to Attorney having surgery. Requesting attorney send out interrogatories and schedule Depositions.

Email:

From: Petitioner

To: David Cowden

Sent: February 25, 2021

QUESTION, INTERROGATORIES

I am just checking on you since you have surgery tomorrow. I hope everything goes ok, and sending prayers.

I wanted to see if you ever sent out those interrogatories to Amy, Catherine, Mr. Younger., and and Sheila. Please don't forget to get dates to schedule their depositions. We can't miss the deadline on this and need to get things moving along please.

Thank you

APPENDIX P5

Petitioner to Attorney to send out discovery. What is the hold up. Paid lots of money

Email:
From: Petitioner
To: David Cowden
Sent: March 28, 2021
HELEN PAINTER CASE

David when are you sending the interrogatories. We need to get the answers back. Please send out the questions to the defendants. Please send me a copy of what you are sending them. What is the hold up, I have paid you thousands and thousands of dollars. What have you been doing on my case the past 2 years?

Thanks

APPENDIX P6

Petitioner to Attorney to please send out
interrogatories, paid lots of money

Email:

From: Petitioner

To: David Cowden

Sent: May 19, 2021

IMPORTANT

David, please send out interrogatories to ALL
defendants. What is the hold up? I have paid you
so much money, I need you to PLEASE send these.

Thank you

APPENDIX P7

Petitioner requesting attorney schedule depositions

Email:

From: Petitioner

To: David Cowden

Sent: May 27, 2021

DATES FOR DEFENDANTS DEPOSITIONS

David, please contact the other attorneys and schedule their depositions. Please get some dates and you MUST send out the interrogatories and Discovery. We can't miss the deadline.

Thank you

APPENDIX P8

Petitioner to Attorney on depositions and discovery.
Paid lots of money

Email:

From: Petitioner

To: David Cowden

Sent: June 3, 2021

IMPORTANT

You told me weeks and weeks ago that you would do Amy's and Defendant's depositions. I am asking you to schedule their depositions. You keep telling me you're going to send out the interrogatories to these people and schedule depositions. I don't understand why when I've paid you so much money and you're not working on these important things.

T.hank you

APPENDIX P9

Petitioner to all defendants, hiring new attorney,
reschedule deposition, scheduling defendants
depositions, mediation

Email:

From: Petitioner

To: Jennifer Covington, Scott Wheatley, Brian Hall,
Shila Manley, Helen Painter, Scott Real Estate

Sent: June 10, 2021

QUESTION

Hello. As you know I am in the process of hiring a
new attorney. He will have to get caught up on the
case, do interrogatories, schedule depositions with
everyone, etc.

Do you have any interest in meeting with Wade
Mullins Mediator again on trying to settle this before
all this happens and it goes to court.

Sincerely,
J. Shepherd

APPENDIX P10

Petitioner begging attorney's to send out discovery to all defendants, scheduling defendants

From: Petitioner

To: Jennifer Covington, Scott Wheatley, Brian Hall, Shila Manley, Helen Painter, Scott Real Estate

Sent: August 17, 2022

DISCOVERY

I pleaded with Attorney Brian Smith in person, by phone, and emails to send out interrogatories and discovery to the defendants and to schedule depositions for all. Below are dates of the emails, phone calls, and/or in person

February 5, 2018

April 17, 2018

May 16, 2018

August 22, 2018

September 5, 2018

November 29, 2018

December 27, 2018

January 4, 2019

January 13, 2019

January 18, 2019

January 29, 2019

I pleaded with Attorney David Cowden in person by phone, and emails to send out interrogatories and discovery to the Defendants and to schedule

depositions. Below are the dates of the emails, phone calls, and/or in person.

March 31, 2019
May 15, 2019
May 16, 2019
May 24, 2019
May 28, 2019
January 20, 2020
January 30, 2020
February 10, 2020
March 05, 2020
March 16, 2020
March 20, 2020
March 25, 2020
April 03, 2020
April 10, 2020
July 29, 2020
August 24, 2020
August 31, 2020
September 06, 2020
September 16, 2020
September 21, 2020
February 23, 2021
February 25, 2021
March 26, 2021
April 14, 2021
May 04, 2021
May 19, 2021
May 23, 2021
May 27, 2021
May 28, 2021
June 03, 2021