SUBJECT: Requiring courts to specify grounds for summary judgment

COMMITTEE: Civil Practices — committee substitute recommended

VOTE: 6 ayes — Bosse, Janek, Hope, Martinez Fischer, Smithee, Zbranek

2 nays — Clark, Nixon

1 absent — Dutton

WITNESSES: For — Richard Hile, Texas Trial Lawyers Association

Against — Alan Waldrop, Texans for Lawsuit Reform

On — Chris Griesel, Supreme Court of Texas

BACKGROUND: Under the Texas Rules of Civil Procedure, a party who believes that there are no relevant factual issues in dispute regarding one or more of the claims in a lawsuit can request that the judge grant a summary judgment on those claims without having to have a trial. Often the party seeking summary judgment has multiple grounds for requesting it, but if the judge grants the request, the judge often does not indicate the grounds on which the summary judgment is granted. Not specifying grounds makes it more likely that a summary judgment can be upheld on appeal on any of the grounds argued by the party seeking it. However, if the summary judgment is appealed, the appealing party must argue against all the possible reasons for which the trial judge may have granted the summary judgment.

DIGEST: CSHB 740 would require a trial judge who granted a motion for summary judgment to indicate in the order the ground(s) on which the summary judgment was based. It also would allow an appellate court to uphold the trial judge's decision on only those ground(s) that the trial judge indicated were the basis for the order. It would not be grounds for reversing an order that the judge specified more than one ground for granting the motion.

The bill would require the party seeking the summary judgment to list the specific grounds for summary judgment in the motion and to file a proposed

order that specified those grounds. The order would have to provide a place for the trial judge to mark any or all grounds on which the order was granted. If the party seeking the judgment failed to do either of these things and the party responding to the motion objected to the omission at least seven days before the hearing on the motion, the court would have to continue the hearing, and the moving party would have to refile the motion or submit a proper order. If the moving party refiled, all of the timelines for notice and responding to a motion for summary judgment would begin again.

The bill would take effect September 1, 2001, and would apply only to summary judgments granted after that date.

SUPPORTERS SAY:

CSHB 740 would reduce the burden and expense of appellate litigation by limiting the grounds for summary judgment that an appealing party would have to argue against. The bill would accomplish this without imposing any significant burden on the trial court, because it would require the party seeking the summary judgment to provide the court a proposed order on which the judge could indicate the grounds for granting the order.

The bill would set up a fair procedure for dealing with a situation in which the party seeking the summary judgment fails to provide the necessary order in advance. The omission would become an issue only if the party opposing the motion raised it a reasonable amount of time in advance of the hearing. At the same time, the bill would give the party a means to correct the error without undue hardship.

The Texas Supreme Court has had proposed amendments to the rules of civil procedure to add a provision like this pending since shortly after the last legislative session. Because the court has been too slow, the Legislature in this instance should take back the rulemaking authority it has delegated to the court and should enact the rule itself.

OPPONENTS SAY:

By permitting an appellate court to affirm a summary judgment only on the grounds that the trial judge provided, CSHB 740 would increase the frequency of situations in which the court of appeals agreed with the trial court’s result but disagreed with the trial court’s reason, and therefore would have to reverse and remand the case for reconsideration. This would make

the judicial system less efficient and increase both the trial and appellate court workloads with remanded and re-appealed cases. Moreover, this unfortunate situation would only happen when the trial judge was conscientious and refused to check all the grounds for summary judgment offered by the defendant.

Rules such as these should be left to the Supreme Court's rulemaking process. Removing such issues from the court's purview would set a bad precedent. The court is in the process of approving rules that would do substantially the same thing. Because the court's rulemaking procedure allows broader input from judges, attorneys, and legal scholars than the legislative process does, the Legislature should wait for the court to act.

In fact, the Supreme Court's proposed rule would avoid the situation where the appellate court disagrees with the trial judge's reasons, but agrees that a summary judgment was proper, and sends the case back to the trial court. The Court's proposed rule would permit a party defending a summary judgment on appeal to argue that the judgment should be affirmed for reasons that the trial court did not offer and would permit the court of appeals to affirm for those reasons.

Because the bill would apply to orders granted after the effective date of the bill instead of to motions filed after the effective date, the bill could force a moving party who filed before the effective date, but whose motion was scheduled to be heard after the effective date, to refile with the proper form of motion and order. Under the bill, this would restart the time for notice and responding to the motion, causing a significant delay.

NOTES:

The committee substitute added the provisions that would require the party requesting a summary judgment to list the specific grounds in the motion and to submit a proposed order. It also added the procedure for handling a situation where the moving party failed to comply with those requirements.

The substitute deleted a provision that would have required the clerk of a justice court to include with the citation a notice that a suit on a sworn account required the responding party to file a sworn answer to avoid summary judgment. The substitute also deleted a provision stating that the bill would govern in the event of any conflict with the procedural rules.

The 76th Legislature in 1999 enacted a similar bill, HB 2186 by Dutton, but Gov. George W. Bush vetoed it, stating that it proposed an unnecessary and confusing change, conflicted with rules adopted by the Supreme Court, and would “discourage the speedy resolution of civil cases and encourage frivolous lawsuits.”