

Avery comments on this Texas Summary Judgment Standard Link:

<http://www.texas-opinions.com/law-summary-judgment-standards.html>

This is Texas Law but most likely very similar if not identical to Wisconsin Law. All bolding below is by Avery.

law-summary-judgment-standard | [no-evidence motion for summary judgment](#) |  
summary judgment evidence - affidavits in support |

To prevail on a traditional summary-judgment motion, a movant must show that **no genuine issue of material fact exists and that it is entitled to judgment as a matter of law**. Tex. R. Civ. P. 166a(c). “A movant who conclusively negates at least one essential element of a cause of action is entitled to summary judgment on that claim.” See IHS Cedars Treatment Ctr. of DeSoto, Texas, Inc. v. Mason, 143 S.W.3d 794, 798 (Tex. 2004)(citing Sw. Elec. Power Co. v. Grant, 73 S.W.3d 211, 215 (Tex. 2002)).

#### SUMMARY JUDGMENT STANDARD & STANDARD OF REVIEW FOR SUMMARY JUDGMENT ON APPEAL

The standard for reviewing a traditional summary judgment is well established. See Nixon v. Mr. Prop. Mgmt. Co., 690 S.W.2d 546, 548 (Tex. 1985); McAfee, Inc. v. Agilysys, Inc., 316 S.W.3d 820, 825 (Tex. App.-Dallas 2010, no pet.). **The movant has the burden** of showing that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. Tex. R. Civ. P. 166a(c). In deciding whether a disputed material fact issue exists precluding summary judgment, **evidence favorable to the nonmovant will be taken as true**. Nixon, 690 S.W.2d at 548-49; In re Estate of Berry, 280 S.W.3d 478, 480 (Tex. App.-Dallas 2009, no pet.). **Every reasonable inference must be indulged in favor of the nonmovant and any doubts resolved in its favor**. City of Keller v. Wilson, 168 S.W.3d 802, 824 (Tex. 2005). **We review a summary judgment de novo to determine whether a party's right to prevail is established as a matter of law**. Dickey v. Club Corp. of Am., 12 S.W.3d 172, 175 (Tex. App.-Dallas 2000, pet. denied).

Summary judgment is proper only when a movant establishes that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law.

TEX. R. CIV. P. 166a(c).

A matter-of-law summary judgment is proper only when the movant establishes that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c). The motion must state the specific grounds relied upon for summary judgment. Id.

The standard of review for a traditional summary judgment is well established: **(1) the movant for summary judgment has the burden of showing that no genuine issue of material fact exists and that it is therefore entitled to summary judgment as a matter of law; (2) in deciding whether there is a disputed material fact issue precluding summary judgment, evidence favorable to the nonmovant will be taken**

**as true; and (3) every reasonable inference must be indulged in favor of the nonmovant and any doubts resolved in the nonmovant's favor.** See, e.g., *Nixon v. Mr. Prop. Mgmt. Co.*, 690 S.W.2d 546, 548–49 (Tex. 1985).

In a traditional motion for summary judgment, the movant has the burden to show there is no genuine issue of material fact and it is entitled to judgment as a matter of law. *Nixon v. Mr. Prop. Mgmt. Co.*, 690 S.W.2d 546, 548 (Tex. 1985). In determining whether there is a genuine fact issue precluding summary judgment, evidence favorable to the non-movant is taken as true and the reviewing court makes all reasonable inferences and resolves all doubts in the non-movant's favor. *Id.* at 548–49. If there is no genuine issue of material fact, summary judgment should issue as a matter of law. *Haase v. Glazner*, 62 S.W.3d 795, 797 (Tex. 2001). A defendant who conclusively negates at least one of the essential elements of a plaintiff's cause of action is entitled to a summary judgment on that claim. *IHS Cedars Treatment Ctr. of DeSoto, Tex., Inc. v. Mason*, 143 S.W.3d 794, 798 (Tex. 2004). **Once a defendant establishes its right to summary judgment, the burden then shifts to the plaintiff to come forward with competent controverting summary judgment evidence raising a genuine issue of material fact.** *Centeq Realty, Inc. v. Siegler*, 899 S.W.2d 195, 197 (Tex. 1995).

To prevail on a traditional summary judgment motion, the movant has the burden of proving that it is entitled to judgment as a matter of law and that there are no genuine issues of material fact. *Tex. R. Civ. P. 166a(c)*; *Cathey v. Booth*, 900 S.W.2d 339, 341 (Tex. 1995). *Res judicata* is an affirmative defense. *Tex. R. Civ. P. 94*; *W. Dow Hamm III Corp. v. Millennium Income Fund, L.L.C.*, 237 S.W.3d 745, 755 (Tex. App.—Houston [1st Dist.] 2007, no pet.). A defendant is entitled to summary judgment based upon an affirmative defense when the defendant proves all elements of the affirmative defense. *Henry v. Masson*, No. 01-07-00522-CV, 2010 WL 5395640, at \*16 (Tex. App.—Houston [1st Dist.] Dec. 31, 2010, no pet.) (citing *Havlen v. McDougall*, 22 S.W.3d 343, 345 (Tex. 2000)).

To prevail on a traditional summary judgment motion, a movant must prove that there is no genuine issue regarding any material fact and that it is entitled to judgment as a matter of law. See *TEX. R. CIV. P. 166a(c)*; *Little v. Tex. Dep't of Criminal Justice*, 148 S.W.3d 374, 381 (Tex. 2004). **A party moving for summary judgment on one of its own claims (Plaintiff) must conclusively prove all essential elements of the claim.** See *Rhone-Poulenc, Inc. v. Steel*, 997 S.W.2d 217, 223 (Tex. 1999). **A defendant may also prevail by traditional summary judgment if it conclusively negates at least one essential element of a plaintiff's claim or conclusively proves an affirmative defense.** See *IHS Cedars Treatment Ctr. of DeSoto, Tex., Inc. v. Mason*, 143 S.W.3d 794, 798 (Tex. 2004). A movant seeking traditional summary judgment on an affirmative defense has the initial burden of establishing its entitlement to judgment as a matter of law by conclusively establishing each element of its affirmative defense. See *Chau v. Riddle*, 254 S.W.3d 453, 455 (Tex. 2008) (per curiam); see also *TEX. R. CIV. P. 166a(b)–(c)*. **A matter is conclusively established if reasonable people could not differ as to the conclusion to be drawn from the evidence.** See *City of Keller v. Wilson*, 168 S.W.3d 802, 816 (Tex. 2005).

If the movant meets its burden, the burden then shifts to the nonmovant to raise a genuine issue of material fact precluding summary judgment. See *Centeq Realty, Inc. v. Siegler*, 899 S.W.2d 195, 197 (Tex. 1995). **The evidence raises a genuine issue of fact if reasonable and fair-minded jurors could differ in their conclusions in light of all of the summary-judgment evidence.** See *Goodyear Tire & Rubber Co. v. Mayes*, 236 S.W.3d 754, 755 (Tex. 2007) (per curiam).

**We review a grant of summary judgment de novo.** *Tex. Mun. Power Agency v. Pub. Util. Comm'n of Tex.*, 253 S.W.3d 184, 192 (Tex. 2007). [Ferguson v. Building Materials Corp. of America](#), No. 08-0589 (Tex. Jul. 3, 2009)(per curiam) (judicial [estoppel](#) based on [bankruptcy proceeding](#) held inapplicable)

Standard of Review (Tex.App., pet. denied)

08-0275

[PANQUITA CARTER v. UNIVERSITY TEXAS SYSTEMS](#); from Dallas County; 5th district (05-07-00592-CV, \_\_\_ SW3d \_\_\_, 02-25-08, pet. denied Oct. 2008)([workers comp, compensable injury](#), carpal tunnel syndrome, [frivolous appeal sanctions](#) denied) The standard for review of a traditional summary judgment is well-settled. **We review a summary judgment de novo to determine whether a party has established its right to summary judgment as a matter of law.** See *Dallas Cent. Appraisal Dist. v. Cunningham*, 161 S.W.3d 293, 295 (Tex. App.-Dallas 2005, no pet.).

A party moving for a traditional summary judgment must show no material fact issue exists and it is entitled to judgment as a matter of law. *Tex. R. Civ. P.166a(c)*; *Cunningham*, 161 S.W.3d at 295. **When reviewing a summary judgment, we must examine the entire record in the light most favorable to the nonmovant, indulging every reasonable inference and resolving any doubts against the motion.** [City of Keller v. Wilson](#), 168 S.W.3d 802, 824-25 (Tex. 2005).

### **Avery Summary:**

1. The Summary Judgment will be tried all over again on appeal as it is like a new fresh start (de novo):
2. Truth is really irrelevant in a Summary Judgement as the facts are not on trial by a jury to find them:
  - a. Even if all the Plaintiff says were true a summary judgment cannot be awarded under the standards of pre-trial summary judgment because the defendant's facts contradict them and there is no fact finder in a summary judgment.
3. All things filed in the record must be reviewed anew as they should have been at trial court.
  - a. Therefore, it is false to say Dr. Fetzer waived his assertions of fact and any inference that could be drawn at some hearing.

- b. Or that Fetzer failed to bring something up at a hearing and has therefore waived it.
  - c. All of Dr. Fetzer's evidence and inferences made from it was to be taken as true and any questions about them resolved in his favor. But this was applied to Pozner not Fetzer. This is fatal to the summary judgment.
- 4. A summary judgment against Dr. Fetzer could only stand if it was justified even after the judge had accepted Dr. Fetzer's assertions and evidence as true indicating that:
  - a. The Sandy Hook mass shooting did not happen.
- 5. The facts in evidence of Dr. Fetzer at least dispute the facts asserted by Mr. Pozner being sufficient to preclude a Summary Judgment in favor of Mr. Pozner.
  - a. And the fumbling of Dr. Fetzer in hearings cannot dismiss these facts that he has plead on record in the case.
- 6. This summary judgment must be vacated at Trial Court or overturned on appeal as it is impossible to stand according to the well established rules of law.