

Reversed and Remanded and Memorandum Opinion filed July 26, 2018.



In The

Fourteenth Court of Appeals

NO. 14-17-00020-CV

ANDRINA DE ANDA F/K/A ANDRINA GARZA, Appellant

V.

**JASON C. WEBSTER, P.C. D/B/A THE WEBSTER LAW FIRM AND JASON
C. WEBSTER, Appellees**

**On Appeal from the 127th District Court
Harris County, Texas
Trial Court Cause No. 2016-69776**

M E M O R A N D U M O P I N I O N

This is a case about summary judgment procedure. Appellees Jason C. Webster, P.C. d/b/a The Webster Law Firm, and Jason C. Webster (collectively Webster) represented both appellant Andrina De Anda and the husband she was divorcing, Ricardo Garza, in a lawsuit with a third party concerning ownership of two companies. When the suit settled at mediation, Webster paid his other clients involved in the litigation, but did not pay De Anda any of the settlement proceeds. Instead, Webster

allegedly notified Garza that De Anda had requested proceeds, and Garza obtained a favorable ruling from the court hearing the divorce regarding his ownership of the proceeds.

De Anda sued Webster alleging that he committed legal malpractice, fraud, and breaches of the fiduciary duties he owed as her attorney. Webster responded by filing a plea to the jurisdiction challenging De Anda's standing. The trial court instructed Webster to refile the plea as a traditional motion for summary judgment, which Webster did. Just 83 days after the lawsuit was filed, and before Webster had answered De Anda's discovery requests, the trial court granted Webster's motion and dismissed De Anda's claims with prejudice.

De Anda raises three issues on appeal, but we reach only two. In her third issue, De Anda argues the trial court abused its discretion when it denied her combined motions for continuance of the summary judgment hearing and to compel discovery. We conclude the trial court abused its discretion when it denied De Anda's combined motions because De Anda established that the lawsuit had been pending for a very short time when the motion was filed, and that she had diligently pursued, but not received, discovery relevant to the issue of her damages in that time

In her second issue, De Anda argues the trial court abused its discretion when it sustained Webster's objections to two paragraphs of her legal expert's affidavit. We reach this issue in the interest of judicial economy because it will provide guidance to the trial court upon remand. We conclude the challenged paragraphs of the expert's affidavit are not conclusory or speculative because the expert included the factual bases upon which his challenged conclusions were drawn. We further conclude that the expert laid an adequate foundation for the opinions he expressed in the challenged paragraphs. We therefore reverse the trial court's summary judgment and remand the case to the trial court for further proceedings.

BACKGROUND

De Anda and Garza were once husband and wife. They were friends with Gomez, the founder of two energy companies, Cornell Solutions, LLC and Cornell Holdings LLC (collectively Cornell). Gomez convinced them to invest in the two companies. De Anda and Garza borrowed \$50,000 from Garza's father, using the money to purchase a ten-percent ownership interest in Cornell. Garza's father, brother, and sister-in-law also purchased interests in Cornell.

Two years later, Gomez told De Anda and Garza that Cornell was in financial trouble. Gomez convinced them that he needed total financial control of Cornell so he could negotiate with creditors. According to Gomez, once the financial issues had been resolved, their ownership interest would be restored. De Anda and Garza executed a Bill of Sale and Release of Claims releasing their ownership interest in Cornell in exchange for \$55,457.33. Soon thereafter, they learned that Gomez had secretly negotiated the sale of Cornell to another company for a substantial sum of money.

When word of the sale leaked, Gomez filed a declaratory judgment action against De Anda, Garza, Garza's family members who had purchased interests, and others. Gomez sought a declaration that the defendants had no ownership interest in Cornell. While the Cornell lawsuit was pending, De Anda and Garza began divorce proceedings. Garza, his father, and his brother and sister-in-law retained Webster to represent their interests in the Cornell lawsuit, including the filing of a counterclaim.

De Anda also decided to retain Webster. Because De Anda and Garza were involved in a divorce, Webster prepared a waiver of conflicts, which he presented to De Anda. Among other things, the waiver informed De Anda that "a single sum may be offered in settlement for the benefit of all Client Parties" and that Webster would be "relieved of advocating one Client Party's rights, interests or shares over another's interests or shares." The waiver also advised De Anda that Webster "may not take

sides against any Client Parties to the disadvantage or detriment of any other Client.”

The Cornell lawsuit was scheduled for mediation soon after Webster filed an answer on De Anda’s behalf. Webster sent De Anda an email encouraging her to attend the mediation because “her permission [would be] needed to finalize any agreement” made at the mediation. During the mediation, Cornell offered to pay a global sum to all adverse parties to settle the lawsuit. According to De Anda, the parties agreed at the mediation that the global settlement amount would be split equally. Webster advised De Anda, both during the mediation and in the days leading up to the signing of the release documents, that if she agreed to the settlement and released her claims against Cornell and Gomez, she and Garza would receive \$1,750,000. Webster also advised De Anda, both orally and in a written Final Settlement Statement, “that, after attorney’s fees and expenses were deducted, the ‘Andrina and Rick Garza Settlement’ would amount to \$1,161,139.51.” Webster also orally advised De Anda that she and Garza would split this amount equally.

According to De Anda, “all parties signed off in a hand written document after every mediated settlement was made so that we could have written proof that we were all in agreement” De Anda also “understood that by signing the Mediated Settlement Agreement, [she] would be releasing [her] interest in Cornell and releasing [her] claims in the underlying case in exchange for a portion of the settlement proceeds.” De Anda agreed to the mediated settlement and “signed various settlement documents, including a Mediated Settlement Memorandum, the Final Settlement Statement, the Attorney Fee Statement and the Compromise Settlement Agreement wherein [she] released all of [her] claims against Cornell and Gomez and [her] interest in the Company.” De Anda signed the “Release of All Claims” on October 28, 2014. Webster dismissed his clients’ claims against Cornell and Gomez soon thereafter.

By early 2015, De Anda had not received her portion of the Cornell settlement

funds. When she learned that Webster had distributed the settlement funds to his other clients, she discussed the situation with the attorney handling her divorce. The divorce attorney told De Anda that Webster was required to release the settlement funds immediately because there was no judgment in the divorce action holding otherwise. De Anda contacted Webster about the money, and he told De Anda to have her divorce attorney send him a letter requesting that he send the money and he would wire the money right away. According to De Anda, her divorce attorney sent the letter, but instead of wiring the money, Webster informed Garza that De Anda was asking for her portion of the settlement proceeds. At that point, Garza filed a request in the family court handling the divorce for a temporary restraining order prohibiting Webster from distributing any settlement proceeds to De Anda. The divorce court granted the request and ordered Webster to deposit the settlement proceeds into the registry of the court. Webster complied with the divorce court's order.

After the Cornell settlement proceeds had been deposited into the registry of the court, Garza moved for a partial summary judgment asking the divorce court to characterize the proceeds as his separate property. Garza argued that the money was his separate property because the interest in Cornell had been purchased by his father, who then gifted the interest to him. The divorce court granted Garza's motion. According to De Anda, "without the settlement proceeds and economic means to fight the issue in [the] divorce, [she] was forced to enter into an Agreed Final Divorce Decree." The agreed decree confirmed that any and all interest in Cornell was Garza's separate property and that De Anda possessed no interest in it.

De Anda subsequently sued Webster in October 2016. De Anda alleged that during Webster's representation of her in the Cornell litigation, he committed legal malpractice, fraud, and breaches of the fiduciary duties he owed to her as her attorney. De Anda alleged that Webster was negligent when, among other things, he failed to

expressly outline in the Cornell litigation settlement agreement that the settlement funds would be split evenly between De Anda and Garza. She further alleged that Webster breached his fiduciary duties in numerous ways, including placing his interest and Garza's ahead of her own by intentionally retaining De Anda's portion of the Cornell litigation settlement funds, refusing to disburse her share of those proceeds timely, and notifying Garza that De Anda was asking him to release her share of the settlement funds. Finally, De Anda alleged that Webster committed fraud by, among other things, falsely representing to her that if she agreed to settle her claims against Cornell and Gomez, the settlement proceeds would be split evenly between her and Garza.

De Anda asserted in her petition that discovery in the case should be controlled by a Level 2 Discovery Control Plan. *See* Tex. R. Civ. P. 190.3(b)(1)(B) (stating that discovery period begins when suit is filed and concludes either thirty days before trial, or nine months after "the earlier of the date of the first oral deposition or the due date of the first response to written discovery"). De Anda included in her petition Requests for Disclosure pursuant to Rule 194 of the Texas Rules of Civil Procedure. De Anda also served her first interrogatories and requests for production on Webster on November 9, 2016, two days after he appeared in the suit.

Webster filed a plea to the jurisdiction and his original answer subject to the plea on November 7. At the time Webster filed his plea, the trial court had not yet issued a docket control order, nor had it set a trial date. Webster argued in his plea that De Anda did not have standing to pursue her claims because the divorce court had previously determined she had no ownership interest in the Cornell lawsuit proceeds, and therefore she had no damages. Webster also argued De Anda could not assert a claim for fee forfeiture because she had paid no fees.

The trial judge instructed Webster to re-notice his plea as a traditional motion

for summary judgment and to set it for submission twenty-one days later. Webster did so, notifying De Anda that the plea would be submitted to the trial court as a traditional motion for summary judgment on December 30, 2016. The re-noticed motion argued Webster had established as a matter of law that De Anda had no damages arising out of Webster's representation because the divorce court had ruled that Garza owned the Cornell interest and the settlement proceeds as his separate property.

De Anda filed combined motions to compel discovery and to continue the hearing on Webster's motion for summary judgment on December 14, 2016. In her motions, De Anda asked the trial court to continue the summary judgment hearing because no discovery had been completed in the case. De Anda pointed out in her motions that she had served written discovery on Webster, but he had lodged the same objections to every interrogatory and request for production. De Anda further informed the trial court that Webster had not provided a single substantive answer, nor produced any documents. De Anda also pointed out that Webster had refused to respond to her requests for disclosure and to her requests for dates to depose Webster. De Anda went on to explain the materiality of the discovery she sought. De Anda's counsel submitted an affidavit in support of the motions.

De Anda also filed a response to Webster's motion for summary judgment, which included an affidavit by a legal expert, Kevin H. George. Webster then filed a reply in support of his motion, objecting that certain portions of George's affidavit were conclusory and speculative and that he had not laid a proper foundation for his opinions.

The trial court subsequently denied De Anda's motions for continuance and to compel discovery. The court also sustained Webster's objections to De Anda's expert's affidavit. Finally, the court granted Webster's motion for summary judgment on January 4, 2017. This appeal followed.

ANALYSIS

I. The trial court abused its discretion by denying De Anda any opportunity to conduct discovery before ruling on Webster’s motion for summary judgment.

A. Standard of review and applicable law

De Anda argues in her third issue that the trial court abused its discretion when it denied her motion for continuance and her motion to compel because no discovery had been completed at that time. Summary judgments deprive litigants of the right to a jury trial and are not to be granted without the procedural protections necessary to provide the nonmovant with due process. *See Tanksley v. CitiCapital Commercial Corp.*, 145 S.W.3d 760, 763 (Tex. App.—Dallas 2004, pet. denied). The rule on summary judgments “contemplates that the trial court will allow the parties a reasonable opportunity to conduct discovery before granting a summary judgment” so they can “obtain the fullest knowledge of facts and issues before the disposition of their case.” *Levinthal v. Kelsey-Seybold Clinic, P.A.*, 902 S.W.2d 508, 512 (Tex. App.—Houston [1st Dist.] 1994, no writ). The reason is simple: discovery ensures that disputes are decided by what the facts reveal, not by what facts are concealed. *See Brewer & Pritchard, P.C. v. Johnson*, 167 S.W.3d 460, 467 (Tex. App.—Houston [14th Dist.] 2005, pet. denied).

Rule 166a(g) of the Texas Rules of Civil Procedure permits a party opposing a traditional motion for summary judgment to request a continuance of the hearing on the motion so that discovery may be completed. This court reviews a trial court’s ruling on a motion for continuance of a summary judgment hearing for an abuse of discretion. *Doe v. Roman Catholic Archdiocese of Galveston-Houston*, 362 S.W.3d 803, 809 (Tex. App.—Houston [14th Dist.] 2012, no pet.). A trial court abuses its discretion when it reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial

error of law. *Id.* The party seeking a continuance must file either an affidavit or a verified motion for continuance explaining the need for further discovery. *Tenneco, Inc. v. Enterprise Prods. Co.*, 925 S.W.2d 640, 647 (Tex. 1996); *Doe*, 362 S.W.3d at 809. The affidavit or motion must explain why the continuance is needed. *Doe*, 362 S.W.3d at 809. We may consider the following nonexclusive factors in determining whether the trial court abused its discretion: (1) the length of time the case has been on file, (2) the materiality and purpose of the discovery sought, and (3) whether the party seeking the continuance has exercised due diligence to obtain the discovery sought. *Id.*

Similarly, we review a trial court's denial of a motion to compel discovery for an abuse of discretion. *See Carbonara v. Tex. Stadium Corp.*, 244 S.W.3d 651, 658–59 (Tex. App.—Dallas 2008, no pet.).

B. The trial court abused its discretion when it denied De Anda's motion for continuance.

We begin by reviewing the trial court's denial of De Anda's motion for continuance. The first factor we consider is the length of time the case had been on file at the time of the summary judgment hearing. It is undisputed that the case had been filed approximately three months before the trial court granted Webster's motion for summary judgment. It is also undisputed that no docket control order had been signed by the trial court nor had a trial date been set. We conclude this factor weighs in favor of De Anda. *See Adi v. Houston Chronicle Pub. Co.*, No. 14-01-00213-CV, 2003 WL 61121, at *3 (Tex. App.—Houston [14th Dist.] Jan. 9, 2003, no pet.) (mem. op.) (observing that “Texas courts have found that denial of a continuance for cases on file for less than eleven months may constitute abuse of discretion”); *see also Howard v. East Tex. Baptist Univ.*, 122 S.W.3d 407, 413 (Tex. App.—Texarkana 2003, no pet.) (“Howard essentially argues that the discovery period was unreasonably abbreviated by the trial court's denial of her motion for continuance. We would agree with this

position if Howard had only been allowed a total of two months for discovery”); *Levinthal*, 902 S.W.2d at 512 (concluding trial court abused discretion when it denied nonmovant’s motion for continuance because case had only been on file for three months and no discovery had been conducted); *Verkin v. Southwest Ctr. One, Ltd.*, 784 S.W.2d 92, 96 (Tex. App.—Houston [1st Dist.] 1990, writ denied) (holding trial court abused discretion when it denied nonmovant’s motion for continuance in case that had been on file less than three months).

We next consider the materiality and purpose of the discovery sought by the nonmovant. Webster’s motion for summary judgment argued he had not caused De Anda any damages because the divorce court had determined that Garza owned the Cornell interest as his separate property and was therefore entitled to all proceeds of the Cornell lawsuit. Webster also argued that De Anda had no claim for fee forfeiture because she had paid him no fees arising out of the Cornell litigation.

At the time the trial court denied De Anda’s motion for continuance, no discovery had been completed because Webster had objected to De Anda’s interrogatories and requests for production, refused to respond to her requests for disclosure, and refused to appear for a deposition. As De Anda pointed out in her combined motions, Webster had attached to his motion for summary judgment his own affidavit as well as several documents, including his agreement with De Anda and the final divorce decree ending De Anda and Garza’s marriage. Webster had also notified the trial court that it “should consider [De Anda’s] live pleading and ‘evidence submitted to negate the existence of jurisdiction.’” Webster asserted that when a plea to the jurisdiction challenges the existence of jurisdictional facts, the trial court must “consider relevant evidence submitted by the parties when necessary to resolve the jurisdictional issue raised.”

Despite these statements demonstrating his knowledge that discovery was

relevant to both a plea to the jurisdiction and a motion for summary judgment challenging the existence of a plaintiff's damages, Webster refused to respond to De Anda's discovery requests. Webster's justification for doing so was contained in the objection he lodged to every discovery request:

Defendants object to this request [or interrogatory] because a plea to the jurisdiction is pending. Pursuant to *Tex. Dept. of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 223 (Tex. 2004), the trial court should resolve the jurisdictional issues before proceeding with the case. In addition, Defendants object because the request [or interrogatory] seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object because the request [or interrogatory] is overly broad and lacking specificity such that Defendants are unable to determine the substance of the information sought. Defendants further object because the information requested is duplicative or easily obtainable by Plaintiff from other sources. Defendants also assert the attorney/client and attorney work product privileges.

Even if *Miranda* limited discovery in the manner suggested by Webster, a question we need not reach, that limitation disappeared when the trial court instructed Webster to re-notice his plea as a traditional motion for summary judgment. *See Levinthal*, 902 S.W.2d at 512 (summary judgment rule "clearly contemplates that the trial court will allow the parties a reasonable opportunity to conduct discovery before granting summary judgment").

As required when seeking to continue a summary judgment setting, De Anda described in her combined motions the purpose behind her discovery requests. De Anda explained that her discovery requests (including her attempts to depose Webster and obtain a factual basis for expert testimony on causation) were relevant to her allegations that Webster: made false representations and failed to disclose material facts to De Anda during the mediation in order to convince her to settle her claim

against Cornell and allow Webster to collect his fee;¹ intentionally or negligently failed to include in the settlement documents the parties' oral agreement that the settlement would be split equally between De Anda and Garza (which likely would have led to a different ruling by the divorce court²); and breached his fiduciary duty when he placed his own interests and Garza's above De Anda's by disclosing confidential information to Garza while failing to disclose to De Anda that he would not disburse her portion of the settlement without Garza's consent. For example, De Anda sought discovery from Webster concerning: what advice and representations he gave and did not give in connection with the settlement; his fee contracts and billing; and records of settlement disbursements to Webster and by Webster to other clients. We conclude De Anda adequately demonstrated that the discovery she sought was material to her claims seeking damages and fee forfeiture. *See Brewer & Pritchard, P.C.*, 167 S.W.3d at 469 (concluding party requesting Rule 166a(g) continuance demonstrated discovery requests were material to claims); *Laughlin v. Bergman*, 962 S.W.2d 64, 66 (Tex. App.—Houston [1st Dist.] 1997, pet. denied) (“This Court has held that a trial court abuses its discretion where the denial of the continuance prevents a party from engaging in meaningful discovery and forecloses the plaintiff’s case.”); *Levinthal*, 902 S.W.2d at 511 (concluding party established discovery was material to claims).

Finally, we consider whether De Anda exercised due diligence in her discovery efforts. Here, the record shows that in the short time the case had been on file, De Anda had served Webster with Rule 194 requests for disclosure, interrogatories, and requests for production. She had also sought to depose Webster. When Webster refused to respond substantively to her discovery requests, and refused to appear for a deposition,

¹ *See First United Pentecostal Church of Beaumont v. Parker*, 514 S.W.3d 214, 221–22 (Tex. 2016).

² *See Stanfield v. Neubaum*, 494 S.W.3d 90, 100 (Tex. 2016).

De Anda served the combined motion for continuance and to compel discovery. We conclude De Anda was diligent in her discovery efforts. *Adi*, 2003 WL 61121, at *3 (“Nothing in the record indicates that Adi did not diligently pursue discovery; he served the *Chronicle* with interrogatories, properly made a motion for disclosure, and requested a continuance when the *Chronicle* provided no response to his requests.”). Because all three factors weigh in favor of De Anda, we hold the trial court abused its discretion when it denied her motion for continuance.

C. The trial court abused its discretion when it denied De Anda’s motion to compel discovery.

De Anda also challenges the trial court’s denial of her motion to compel discovery. As pointed out above, Webster refused to respond to any of De Anda’s discovery requests, including her Rule 194 requests for disclosure, to which a party may not object. *See* Tex. R. Civ. P. 194.5 (“No objection or assertion of work product is permitted to a request under this rule.”). With respect to De Anda’s interrogatories and requests for production, Webster lodged the same global, prophylactic string of objections quoted above to every interrogatory and request for production. We have already addressed, and rejected, Webster’s objection that *Miranda* excuses him from responding to discovery. In addition, the rules prohibit objections based on privilege. *See* Tex. R. Civ. P. 193.2(f). Having reviewed De Anda’s interrogatories and requests for production, we conclude they sought relevant information and documents. *See* Tex. R. Evid. 401 (stating that evidence is relevant if it has any tendency to make a fact of consequence to the determination of the action more or less probable than it would be without the evidence); Tex. R. Civ. P. 192.3 (describing scope of discovery).

In sum, many of Webster’s objections were unfounded. We therefore conclude that Webster waived his objections to De Anda’s discovery requests. *See* Tex. R. Civ. P. 193.2(e) (“An objection . . . that is obscured by numerous unfounded objections, is

waived unless the court excuses the waiver for good cause shown.”). The trial court therefore abused its discretion when it denied her motion to compel discovery. *See Rodas v. La Madeleine of Tex., Inc.*, No. 05-14-00054-CV, 2015 WL 1611780, at *7 (Tex. App.—Dallas April 10, 2015, pet. denied) (mem. op.) (holding trial court abused discretion when it denied post-arbitration discovery into evident partiality claim).

Because the trial court abused its discretion when it denied her motions for continuance of the summary judgment hearing and to compel discovery responses, we sustain De Anda’s third issue and reverse the trial court’s summary judgment.

II. The trial court abused its discretion when it sustained Webster’s objections to certain portions of De Anda’s legal expert’s affidavit.

De Anda argues in her second issue that the trial court abused its discretion when it sustained Webster’s objections that two paragraphs contained in her legal expert’s affidavit were conclusory, speculative, and lacking in foundation. Because this issue will likely recur on remand, we address it in the interest of judicial economy and to provide guidance to the trial court. *See Clay Exploration, Inc. v. Santa Rosa Operating, LLC*, 442 S.W.3d 795, 802–03 (Tex. App.—Houston [14th Dist.] 2014, no pet.).

The two paragraphs provide:

Webster’s breach of his duty of care was the proximate cause of De Anda’s damages. De Anda testifies that, had the settlement documents been properly drafted, De Anda would have immediately received these settlement funds amounting to approximately \$580,569.75. However, because of Webster’s negligence (or, as discussed below, desire to place the interests of Garza ahead of De Anda), this language was omitted from the settlement documents. As a result, Garza was subsequently able to argue in the divorce case that De Anda was not entitled to any of the settlement proceeds because they were his separate property. This would not have occurred but for Webster’s negligence. Accordingly, it is my opinion that as a direct and proximate cause of Webster’s failure to comply with the standards of care as outlined above, De Anda was damages [sic] in the amount of her portion of the settlement, or

\$580,569.75.

.....

Thus, Webster's breaches of fiduciary duty as described herein proximately caused damages to De Anda and benefited Webster and his other client, Garza. Specifically, Webster represented to De Anda that the settlement proceeds would be evenly split between her and Garza and had the appropriate language in the settlement agreement been included to reflect that understanding, De Anda would have received her portion of the settlement proceeds in the sum of approximately \$580,569.75. Alternatively, De Anda testifies that if she had known that Webster was not going to look out for her best interest or that she was not going to receive the settlement proceeds as represented by Webster, she would never have released her claims against the underlying defendants, and therefore, the global settlement would have never have been reached under terms that failed to protect De Anda's individual interest. In that scenario, Webster would have never obtained a fee on De Anda's portion of the settlement. Therefore, at minimum, Webster obtained \$291,637.50 in improper benefits by virtue of having breached his fiduciary duties to De Anda.

An expert witness may testify regarding scientific, technical, or other specialized matters if the expert is qualified, his opinions are relevant, the opinion is reliable, and the opinion is based on a reliable foundation. *Whirlpool Corp. v. Camacho*, 298 S.W.3d 631, 637 (Tex. 2009). In cases alleging attorney negligence or breach of fiduciary duty, proof that an attorney's conduct caused injury to the client often requires expert testimony concerning what the attorney should have done under the circumstances. *See Alexander v. Turtur & Assocs., Inc.*, 146 S.W.3d 113, 120 (Tex. 2004).

A conclusory statement is one that expresses a factual inference without providing underlying facts to support that conclusion. *Padilla v. Metro. Transit Auth. of Harris Cnty.*, 497 S.W.3d 78, 85 (Tex. App.—Houston [14th Dist.] 2016, no pet.). Affidavits that state conclusions without providing underlying facts to support those

conclusions are not proper summary judgment evidence. *See id.* at 86. To avoid being excluded as conclusory, an affidavit must contain specific factual bases, admissible in evidence, from which any conclusions are drawn. *See id.* Similarly, to avoid exclusion as speculative, an expert’s statements in an affidavit must be supported with facts. *See Moseley v. Mundine*, 249 S.W.3d 775, 781 (Tex. App.—Dallas 2008, no pet.) (concluding medical expert’s report addressing causation “is not mere conjecture and speculation because he supported his statement with facts.”).

We turn first to Webster’s foundation objection. Reviewing his entire affidavit, George provided a thorough summary of his credentials and legal experience. George also provided a list of the case materials that he reviewed in the preparation of his opinion. Finally, George included a multi-page summation of the facts underlying his opinion. We conclude that George provided a reliable foundation for his causation opinion and that the trial court abused its discretion when it sustained Webster’s lack of foundation objection. *See Warner Bros. Entertainment, Inc. v. Jones*, 538 S.W.3d 781, 817 (Tex. App.—Austin 2017, pet. filed) (concluding expert laid reliable foundation for opinion).

We next consider whether the two challenged paragraphs are conclusory or speculative. Because George included the factual basis for his conclusions regarding causation in both paragraphs, we conclude the challenged paragraphs are neither conclusory nor speculative. *See Padilla*, 497 S.W.3d at 86; *Moseley*, 249 S.W.3d at 781. We hold the trial court abused its discretion when it sustained Webster’s objections. We therefore sustain De Anda’s second issue.

CONCLUSION

Having sustained De Anda’s second and third issues, we reverse the judgment of the trial court and remand the case to the trial court for further proceedings in

accordance with this opinion.³

/s/ J. Brett Busby
Justice

Panel consists of Justices Busby, Donovan, and Jewell.

³ Webster includes a cross-point in his appellee’s brief in which he argues De Anda’s claims constitute “a collateral attack on the divorce court’s final judgment.” Webster did not raise this argument as a basis for summary judgment in his motion or in his reply. Because a summary judgment cannot be affirmed on a ground not expressly included in the motion and presented to the trial court, we do not address Webster’s cross-point in resolving De Anda’s appeal. *See State Farm Lloyds v. Page*, 315 S.W.3d 525, 532 (Tex. 2010); *Stiles v. Resolution Trust Corp.*, 867 S.W.2d 24, 26 (Tex. 1993).