SC97689

IN THE MISSOURI SUPREME COURT

MEADOWFRESH SOLUTIONS USA, LLC

Plaintiff-Respondent

vs.

MAPLE GROVE FARMS, LLC, LEON RINEHART, TED DAHLSTROM, CAROL DAHLSTROM, CURTIS HALL, LISA HALL, and KYLE BOUNOUS

Defendants-Appellants

Appeal from the Circuit Court of Greene County, Missouri
Honorable Jason R. Brown
Case NO. 1731-CC01311

RESPONDENT'S SUBSTITUTE BRIEF

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Respondent's Jurisdictional Statement

Respondent does not challenge the basis for this Court's jurisdiction as set forth in Appellants' Jurisdictional Statement contained in their Substitute Brief. *See* Appellants' Substitute Brief, pp. 8-9. Specifically, Respondent agrees that this appeal was transferred to this Court via the dissenting opinion from the Southern District Court of Appeals pursuant to Rule 83.03. *See* MO. S. CT. R. 83.03 (2018). However, Respondent continues to maintain, consistent with the Southern District Court of Appeals' dismissal of the appeal and as set forth more fully in Point I, *infra*, that Appellants' appeal, as a whole, is improper and should be dismissed because there is no appellate jurisdiction in this case.

Supplemental Statement of Facts

Rule 84.04(c) provides "[t]he statement of facts shall be a fair and concise statement of the facts relevant to the questions presented for determination without argument." MO. S. CT. R. 84.04(c) (2018). A brief does not substantially comply with Rule 84.04(c) if it is argumentative and highlights facts that favor the appellant and omits facts supporting a judgment. *See* Watson v. Moore, 8 S.W.3d 909, 911 n.4 (Mo. Ct. App. S.D. 2000). Because Appellants' Statement of Facts omits facts necessarily relied upon by the trial court in the underlying case in making the ruling at issue in this appeal, Respondent provides the following full accounting of the facts favorable to the trial court's order below.

Plaintiff/Respondent Meadowfresh Solutions USA, LLC ("Meadowfresh") filed this action on September 28, 2017 in the Circuit Court of Greene County, Missouri, the Honorable Judge Jason Brown presiding. (L.F. 1.6; Supp. L.F. 61.1.)[1] This action follows from a prior lawsuit (also filed in the Circuit Court of Greene County, Case No. 1531-

[1] Throughout this Brief, Respondent designates citations to Appellants' Legal File as, for example, "L.F. 1.2"—where "1" is the document number as set forth in Appellants' Index, and "2" is the page within that document. For documents that are not paginated, Respondent's citations still reference the page within the document where possible. Respondent's Supplemental Legal File is herein cited to as "Supp. L.F. __." Citations to transcripts of various proceedings are referred to by date, *e.g.*, Transcript of Nov. 6 Hearing, pp. 40:1-25.

CC01018, the Honorable Judge Michael Cordonnier presiding) (hereinafter referred to as "the Prior Lawsuit"), in which jury verdicts were entered in favor of Respondent (and an individual member of Meadowfresh, John Fulton) and against Appellants on various tort and contract causes of action arising out of Appellants' conduct with respect to a dairy farm previously owned and operated by Appellant Maple Grove Farms, LLC. (*See generally* Supp. L. F. 90; Supp. L.F. 94.)[2]

By way of background, Defendant/Appellant Maple Grove Farms, LLC ("Maple Grove") was formed in or about October 2011 for the purpose of owning and operating a dairy farm located in southwest Missouri. (Supp. L.F. 89.3.) Respondent Meadowfresh was formed at or about the same time for the purpose of, *inter alia*, owning a majority membership interest in Maple Grove. (Supp. L.F. 89.3.) The majority members (with a joint interest) of Meadowfresh are John and Susan Fulton. (Supp. L.F. 89.3.) The remaining Defendants/Appellants in this action are the other individual minority members of Meadowfresh and/or Maple Grove. (Supp. L.F. 89.3.)

The Fultons and Meadowfresh filed the Prior Lawsuit against Appellants and various related entities for claims arising out of Appellants' unlawful attempts to remove Meadowfresh as majority member (and John Fulton as Manager) of Maple Grove in July 2015. (Supp. L.F. 60.6; Supp. L.F. 89.1.) Meadowfresh and the Fultons filed a nineteen (19) count petition against Appellants for various tort and contract claims, including breach

[2] The jury verdict in the Prior Lawsuit is also being appealed by Appellants in a separate appeal pending before the Southern District Court of Appeals, Case No. SD35231.

of contract, breach of fiduciary duties, conspiracy, and malicious prosecution (related to Appellants' false and incomplete reports to the Barry County Sheriff's Department that John Fulton was "stealing" his salary, resulting in filed felony charges and an arrest warrant being issued for John Fulton), and others. (Supp. L.F. 89.)

After a two-week jury trial, the jury found in favor of Fulton and Meadowfresh on every count submitted, as well as on every counterclaim submitted by Appellants, and awarded Fulton and Meadowfresh $7,305,000 in compensatory and punitive damages against Appellants. (*See generally* Supp. L.F. 90.) The jury also found that Appellants created and misused a shell company to commit wrongs against Fulton and Meadowfresh, and therefore pierced the corporate veil as to that company. (Supp. L.F. 90.10-11.)

In the Prior Lawsuit, before trial, Meadowfresh and the Fultons made two motions to the trial court to appoint a receiver for Maple Grove pursuant to MO. REV. STAT. § 515.500 *et seq*. and Missouri Rule of Civil Procedure 68.02. (Supp. L.F. 60.34; Supp. L.F. 60.52; Supp. L.F. 64.1; Supp. L.F. 75.1.) The trial court heard Meadowfresh and the Fultons' First Motion for Appointment of Receiver on December 6, 2016. (Supp. L.F. 60.35.) On the basis of representations by Appellants at the hearing that they would refinance certain Maple Grove debt, the trial court denied Meadowfresh and the Fultons' Motion. (Supp. L.F. 60.35; Transcript of Dec. 6 Hearing, pp. 40:8-15; 46:14-47:2.)

Despite Appellants' representations to the trial court during the hearing related to the First Motion for Appointment of Receiver, they did not refinance the subject Maple Grove debt (nor even apply to refinance the debt). (Supp. L.F. 79.1-2; Transcript of Dec. 6 Hearing, pp. 40:8-15 and 46:14-47:2.) Shortly before trial, Meadowfresh and the Fultons

therefore filed (in the Prior Lawsuit) their Second Motion for Appointment of Receiver, which motion the trial court granted on June 16, 2017. (Supp. L.F. 60.52-53.) In granting the Motion, the trial court ordered that the:

> Parties are requested to discuss the identity of a qualified person to be appointed as a Receiver, and the appropriate and necessary parameters of such appointment and thereafter submit to the Court an agreed upon Order of Appointment. If no such agreement can be reached on these issues, the parties must contact the division clerk and schedule a further hearing on the matter.

(Supp. L.F. 60.53.) Given the fast-approaching trial date of August 14, 2017, Meadowfresh and the Fultons determined to leave the issue of the formal appointing of a receiver for Maple Grove until after the jury trial (to be addressed by the trial court along with other post-jury trial issues to be determined by the court, as opposed to a jury, such as the request for the judicial dissolution of Maple Grove). (Supp. L.F. 60.52; Supp. L.F. 60.78.)[3]

On August 28, 2017, after a two-week jury trial, the jury rendered its verdict in favor of Meadowfresh and John Fulton on all claims and counterclaims submitted. (*See generally* Supp. L.F. 90.) Thereafter, on September 20, 2017, Meadowfresh and the

[3] No proposed order was filed with the Second Motion for Appointment of Receiver or filed thereafter by Meadowfresh and the Fultons. (*See generally* Supp. L.F. 75 and attached exhibits.) The decision to reserve the claims for the court post-trial is confirmed in the Amended Judgment. L.F. 94.6.

Fultons filed their Motion to Sever their claim for dissolution of Maple Grove (including the trial court's prior grant of their Second Motion for Appointment of Receiver). (Supp. L.F. 91.1-2; 94.6)

The trial court in the Prior Lawsuit granted Meadowfresh and the Fultons' Motion, and severed the claims for dissolution and accounting which were then re-filed as, and are the subject of, the underlying action. (L.F. 1.6; Supp. L.F. 60.87.) The Amended Judgment entered on September 28, 2017 in the Prior Lawsuit states:

> The remaining Counts of Plaintiffs' Fifth Amended Petition [i.e., those not withdrawn or submitted to the jury] were reserved for determination by the Court after the jury trial and were severed into a separate action pending in this Court, including Counts II (for judicial dissolution of Maple Grove Farms, LLC) and XIV (action for accounting), as well as Plaintiffs' motion for appointment of a receiver which the Court sustained on or about June 16, 2017.

(Supp. L.F. 94.6.) The judgment in the Prior Lawsuit was thus designated final and appealable by the trial court. (Supp. L.F. 94.6.)[4]

Based on the order severing the dissolution and accounting actions, Respondent Meadowfresh filed the underlying action (Greene County Circuit Court Case No. 1731-

[4] Although Appellants are in the process of appealing the Amended Judgment from the Prior Lawsuit, they posted no bond to prevent Respondent from executing upon that judgment. (Supp. L.F. 60.91-92.)

CC01311) ("the Underlying Action") on the same day, September 28, 2017. (L.F. 1.6; Supp. L.F. 61.1.) As an initial response, Appellants filed a Motion to Dismiss in which they raised the same arguments contained in their Brief alleging improper splitting of a cause of action. (Supp. L.F. 63.2-6.) The trial court denied that motion. (L.F. 1.10.)

On October 30, 2017, Respondent filed its Motion for Entry of Order Based on Prior Grant of Plaintiff's Motion for Appointment of Receiver. (L.F. 2.1.) At the hearing on Respondent's Motion on November 6, 2017, by request of Appellants' counsel, the trial court agreed to take judicial notice of all orders and rulings in the Prior Lawsuit. (Transcript of Nov. 6 Hearing, pp. 70:20-71:1; *see also* L.F. 15.8.) The evidence before the trial court regarding Respondent's Motion therefore included the following undisputed facts:

1) The trial court in the Prior Lawsuit found a basis for appointing a receiver of Maple Grove. (Transcript of Nov. 6 Hearing, pp. 70:11-19.)
2) In addition to the bases alleged in Respondent's Second Motion granted by Judge Cordonnier in the Prior Lawsuit, Respondent also became a judgment creditor of Appellants by virtue of the Amended Judgment. (Supp. L.F. 94.1; Transcript of Nov. 6 Hearing, pp. 68:3-7.)
3) Regarding the potential waste of Maple Grove assets, counsel for Appellants admitted that Appellant Curtis Hall, who had been managing the day-to-day operations of Maple Grove, would refuse to serve under the management of John Fulton. (Transcript of Nov. 6 Hearing, pp. 67:17-68:15.) Specifically, counsel for Appellants admitted exhibits at the hearing regarding Respondent's Motion

for Appointment of Receiver demonstrating Appellant Hall's intent to walk off the job and cease the daily cattle milkings. (L.F. 12.1 and 13.1.) Appellants further admitted a decrease in the number of Maple Grove cattle since they took over management of Maple Grove, a high degree of acrimony between the parties, and that Respondent has an interest in the assets of Maple Grove. (Transcript of Nov. 6 Hearing, pp. 67: 25-68:9; 74:17-21; 82:8-10; 83:23-84:2.)

The trial court in the Underlying Action ultimately granted Respondent's motion for appointment of a receiver for Maple Grove, and found that "[Respondent] has made adequate showing that exceptional conditions exist…" to support the appointment of a receiver. (L.F. 1.10.) Further, in the Order, the trial court specifically found that "[t]he facts stated in [Respondent's] Motion are credible and said facts and subsequent proceedings (including the evidence at trial, and related verdicts and judgment) demonstrate that [Respondent] has a right to the immediate appointment of a **receiver to prevent waste of, and to protect, keep, and preserve, the assets of Maple Grove Farms** pursuant to Missouri Supreme Court Rule 68.02(a) and MO. REV. STAT. § 515.500 *et seq*." (L.F. 14.1.) (emphasis added).

On November 9, 2017, Appellants filed their Motion for Order Revoking, or in the Alternative, Modifying and Changing Interlocutory Order Appointing a Receiver. (L.F. 15.1.) Said motion was heard by the trial court on November 22, 2017, and denied on November 29, 2017. (L.F. 1.12; L.F. 20.1.) Appellants then appealed to the Southern District, which dismissed the appeal on the grounds that the order from which Appellants

take their appeal is not an appealable order under Rule 74.01(a). A dissenting opinion was filed by Justice Rahmeyer, and the case was certified to this Court pursuant to Rule 83.03.

ARGUMENT

I.

As to Appellants' Point I, the Southern District Court of Appeals did not err in dismissing Appellants' appeal because the order from which Appellants' appeal stems is not an appealable interlocutory order in that it is not designated a "judgment" as required by Rule 74.01(a).

Standard of Review

The Southern District Court of Appeals dismissed Appellants' appeal in this case, for lack of jurisdiction, without reaching the merits of the case. However, the appeal was transferred directly to this Court by virtue of the dissenting opinion pursuant to Rule 83.03. The question of appellate jurisdiction is now raised in Appellants' Substitute Brief as Point I. *See* Appellants' Substitute Brief, pp. 17. Whether this Court has appellate jurisdiction over a case is a matter of law, which the Court reviews *de novo*. *See* Nicholson v. Surrey Vacation Resorts, Inc., 463 S.W.3d 358, 364 (Mo. Ct. App. S.D. 2015) (*citing* Dunkle v. Dunkle, 158 S.W.3d 823, 827 (Mo. Ct. App. 2005)).

A. Under this Court's holding in Spiece v. Garland, appeals pursuant to MO. REV. STAT. § 512.020 must comply with Rule 74.01(a) and be denominated a "judgment".

Before a court may address the merits of an appeal, it must determine whether it has the jurisdiction to review it. *See* Johnston v. Saladino Mechanical and Cincinnati Insurance Co., 504 S.W.3d 138 (Mo. Ct. App. W.D. 2016) (citing references omitted). "The right to appeal is purely statutory and where a statute does not give a right to appeal, no right

exists." *See* State ex rel. Koster v. ConocoPhillips Co., 493 S.W.3d 397, 399 (Mo. banc 2016). Even where a substantive statutory right to appeal exists, however, this Court established procedural requirements which must be satisfied before the right to appeal is perfected. *See generally* MO. S. CT. R. 74.01 (2018). Specifically, Rule 74.01 establishes that appeals may only be taken from "judgments". *See generally* MO. S. CT. R. 74.01. The Rule states, in relevant part:

> "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment is rendered when entered. A judgment is entered when a writing signed by the judge and denominated "judgment" or "decree" is filed.

See MO. R. CIV. P. 74.01(a).

As it relates to this case, MO. REV. STAT. § 512.020 generally (and substantively) permits appeal from an order refusing to revoke, modify, or change an interlocutory order appointing a receiver. *See* MO. REV. STAT. § 512.020.2. However, this Court made it very clear that the requirements of Rule 74.01(a) still apply to such special orders. *See* Spiece v. Garland, 197 S.W.3d 594, 595-96 (Mo. banc 2006); *see also* Johnston, 504 S.W.3d 138, 141 (Mo. Ct. App. W.D. 2016).

Specifically, this Court held in Spiece that MO. REV. STAT. 512.020 "must be read in conjunction with Rule 74.01(a)", which requires an order from which an appeal is taken be denominated as a "judgment" or "decree". *See* Spiece, 197 S.W.3d at 595; *see also* MO. R. CIV. P. 74.01(a). The Court thus stated, in pertinent part, that:

> [t]here can be no order from which an appeal lies unless the decree or order is entered and denominated a "judgment." In other words, the order must be perfected in this way under Rule 74.01(a) before it can constitute an order from which an appeal lies under Section 512.020. **There is no conflict between the statute and the rule.**

See Id. at 595-96 (emphasis added). In so holding, the Court noted that "Section 512.020 merely lists the kinds of orders that, in addition to final judgments, are appealable; it does not purport to address the *procedural requirements* for the appeal." *See* Id (emphasis added). Based on this analysis, this Court held that the appellant was entitled under Section 512.020 to appeal the trial court's order granting her a new trial, but not until the court perfected the order by denominating it as a judgment under Rule 74.01(a). *See* Id.

There is no dispute in this case that the trial court's order at issue is not denominated as a "judgment" or "decree" as required by Rule 74.01(a). As such, under the clear precedent of this Court, an appeal cannot be taken in this case and the Southern District properly dismissed Appellants' appeal.

B. The Sanford case (cited by Appellants and previously decided by this Court) does not provide grounds for creating an exception to Rule 74.01(a) for cases appealed pursuant to MO. REV. STAT. § 512.020.2, nor for overruling the precedent espoused in Spiece.

Appellants argue that their appeal in this case is proper (despite the trial court's order at issue not being denominated a "judgment") in light of the reasoning articulated in

this Court's decision in Sanford v. CenturyTel of Missouri, LLC, 490 S.W.3d 717 (Mo. banc 2016). *See* Appellants' Substitute Brief, pp. 25-26.

In Sanford, this Court addressed the timeliness of an appeal of a trial court's interlocutory order denying arbitration. *See* Sanford, 490 S.W.3d at 719. In that case, the issue involved an appeal taken pursuant to MO. REV STAT. § 435.440.1(1), which provides a statutory right to appeal such an order. *See* Id. In examining the ability to appeal such an order, this Court ultimately held that the special order at issue was immediately appealable despite not meeting the denomination requirement of Rule 74.01. *See* Id. at 719-20. The reasoning behind the Court's holding, as Appellants argue, was that the Missouri legislature intended for certain interlocutory orders, such as those authorized under MO. REV. STAT. § 435.440.1, to be appealable. *See* Appellants' Substitute Brief, pp. 25. Therefore, by the same token, Appellants argue that the order in this case should also be appealable without complying with Rule 74.01(a) by virtue of MO. REV. STAT. § 512.020. *See* Id. Appellants therefore ask the Court to overrule the clear precedent established in Spiece v. Garland. *See* Appellants' Substitute Brief, pp. 25-26.

Since the Spiece decision, the Southern District Court of Appeals had an opportunity to revisit the issue of the ability to appeal an order denying a motion to compel arbitration. *See generally* Nicholson v. Surrey Vacation Resorts, Inc., 463 S.W.3d 358, 364 (Mo. Ct. App. S.D. 2015). In analyzing that issue, the Southern District noted a difference between orders appealable pursuant to MO. REV. STAT. § 435.440 and those appealable by virtue of MO. REV. STAT. § 512.020. *See* Nicholson, 463 S.W.3d at n.6 (Mo. Ct. App. S.D. 2015). Specifically, the Southern District noted that "the purpose of Rule 74.01 is fulfilled when

applied to section 512.020 because section 512.020 applies to orders constituting a final judgment and section 435.440 does not." *See* Id. In so noting, the Southern District made it clear that the rule established in Sanford applies specifically and only to interlocutory orders under the statutory framework pertaining to arbitration *and* expressly distinguished such orders from those appealable under section 512.020. *See* Nicholson, 463S.W.3d at n.6.

The issue in this case, whether the trial court's order must (should) be denominated a "judgment" before it becomes appealable, is not, as Appellants claim[5], an issue of mere formality or form over substance. Specifically, it is well-settled that the purpose of Rule 74.01 is to create a bright-line test (to eliminate the confusion as to when a writing is a "judgment" for purposes of appeal) to assist litigants and appellate courts in distinguishing between orders and rulings of a trial court that are intended to be final and appealable and situations in which a trial court seeks to retain jurisdiction over the issue. *See* Hamby v. City of Liberty, 970 S.W.2d 382, 383 (Mo. Ct. App. 1998); *see also* City of St. Louis v. Hughes, 950 S.W.2d 850, 853 (Mo. banc 1997).

In light of the purpose of Rule 74.01, and considering the reasoning expressed in Spiece, Sanford, and Nicholson, this Court should find that the procedural requirements of Rule 74.01 apply to appeals taken pursuant to § 512.020 (specifically § 512.020.2) and dismiss Appellants' appeal for lack of appellate jurisdiction because the trial court's order at issue is not (and should not be) denominated a "judgment". Such a result is the correct

[5] *See* Appellants' Substitute Brief, pp. 23.

and just result (as it relates to orders denying revocation of a receivership) in this case, and with respect to issues involving receiverships in general, in part because of the nature of receiverships. Specifically, the determination of whether a receiver should be appointed (or maintained) presents issues that are vastly and significantly different than the determination of whether a trial court lacks jurisdiction over a case because the dispute is subject to mandatory arbitration.

In cases in which the issue of arbitration is raised, the parties have either entered into a binding agreement to arbitrate or they have not. A trial court's decision on that issue is a jurisdictional issue. The actions which give rise to the issue (i.e., the consent to arbitrate) have already occurred, and the determination of arbitration cannot be altered by the parties' conduct going forward (absent a new agreement). No discretion (or weighing of evidence) is involved in such a determination, appellate courts will review the issue as a matter of law on a *de novo* basis, and an appellate court's decision in that regard is final and binding upon a trial court (either the case was properly retained by the trial court or it must be dismissed in favor of arbitration). *See* Lawrence v. Beverly Manor, 273 S.W.3d 525, 527 (Mo. banc 2009).

By contrast, in cases involving a receivership, the issues will not be "resolved" or final until the case is closed. Because claims for receivership typically involve an ongoing business concern, the actions of the parties can (and do) affect the status of the business assets as the case proceeds. Grounds for appointing a receiver are also flexible and can change as a case progresses. Even if the appointment of a receiver is revoked at one

particular point in the case, for example, grounds may arise at a different point justifying appointment of a receiver.

Under Appellants' proposed rule, a case could, in theory, be appealed under MO. REV. STAT. 512.020.2 an unlimited number of times as long as a trial court continues to find that justifiable grounds for appointing a receiver exist. The protections of Rule 74.01(a) are intended, *inter alia*, to prevent this type of judicial waste of resources by requiring a trial court denominate its orders as a "judgment" or "decree" and thereby signal its final release of jurisdiction over the issue. Even setting aside the fact that Spiece clearly controls in this case, applying the rule in Sanford (as urged by Appellants) to all orders that could potentially be made under Section 512.020 would eliminate the protections of Rule 74.01(a) for a much wider variety of cases, create the potential of widespread confusion as to the types of orders that must be appealed immediately after entry, and waste considerable judicial time and resources.

For the reasons set forth above, Appellants' appeal does not meet the criteria required by the Missouri Supreme Court and Rule 74.01(a). Thus, respectfully, the Court lacks jurisdiction to hear Appellants' cause and should dismiss this appeal.

II.

As to Appellants' Point II, the trial court did not err in denying Appellants' Motion for Order Revoking, or in the Alternative, Modifying and Changing Interlocutory Order Appointing a Receiver because: 1) there were new and independent undisputed bases for appointing a receiver that arose after the trial and Amended Judgment in the Prior Lawsuit; 2) Respondent's claims for accounting and dissolution in the Prior Lawsuit were properly reserved for determination after jury trial and then severed; and 3) there was no final adjudication/result in the Prior Lawsuit regarding Respondent's claims for accounting and dissolution of Maple Grove and the severance of those claims into the Underlying Action was not an improper splitting of a cause of action.

For the reasons set forth above in Point I, this Court is without jurisdiction to hear the merits of Appellants' appeal. Even if this Court had jurisdiction over Appellants' appeal as a whole, Appellants' Point II does not identify/specify how Appellants believe the trial court erred. Specifically, in their Substitute Brief, Appellants assignment of error is unspecified—they merely claim that the trial court in doing *anything* other than *dismissing* Respondent's claims. *See* Appellants' Substitute Brief, pp. 29. To the extent Appellants are challenging any other actions of the trial court *other than* the denial of Appellants' motion to revoke the receivership for Maple Grove, such challenge is impermissible. For example, Appellants may not make an appeal from an interlocutory

order denying Appellants' Motion to Dismiss in the trial court. *See* Clayco Const. Co. v. THF Carondelet Dev., L.L.C., 105 S.W.3d 518, 522 (Mo. Ct. App. 2003). Further, Rule 83.08(b) prohibits a substitute brief filed in the Supreme Court from altering the basis of any claim raised in the court of appeals brief. *See* MO. SUP. CT. R. 83.08(b).

Standard of Review

MO. S. CT. R. 84.13(d) provides that in appellate review of cases tried without a jury the court "shall review the case upon both the law and the evidence as in suits of an equitable nature." MO. S. CT. R. 84.13(d)(1). In court-tried cases in equity, the appellate standard of review is established by Murphy v. Carron, 536 S.W.2d 30, 32 (Mo. banc 1976) and "accordingly, we will affirm the trial court's judgment unless there is no substantial evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law." State ex rel. Cravens v. Nixon, 234 S.W.3d 442, 445 (Mo. Ct. App. W.D. 2007) (internal citations omitted). Further, "[t]he power to appoint a receiver is within the sound discretion of the trial court." *See* Sangamon Assoc. v. Carpenter 1985 Family, 165 S.W.3d 141, 146 (Mo. banc 2005).

A. The trial court did not err in denying Appellants' Motion for Order Revoking, or in the Alternative, Modifying and Changing Interlocutory Order Appointing a Receiver because there are additional sufficient grounds for appointing a receiver for Maple Grove that arose after the trial and Amended Judgment in the Prior Lawsuit beyond any bases that existed in the Prior Lawsuit.

Even if the arguments in Appellants' Point II had merit (they do not), in that Respondent's claims for accounting and dissolution from the Prior Lawsuit were somehow "abandoned" or impermissibly split (they were not), the trial court did not err in denying Appellants' Motion and upholding the appointment of a receiver for Maple Grove because there were new and independent bases for doing so beyond the bases that supported the grant of Respondent's motion for appointment of a receiver during the Prior Lawsuit. For example, as is explained more fully below, it is undisputed that Respondent filed the Underlying Action to dissolve Maple Grove.

In Missouri, MO. REV. STAT. § 515.510 permits a court to appoint a receiver, "**whenever such appointment shall be deemed necessary**, whose duty it shall be to keep and preserve any money or other thing deposited in court, or that may be subject of a tender, and to keep and preserve all property and protect any business or business interest entrusted to the receiver pending any legal or equitable action concerning the same…." MO. REV. STAT. § 515.510.1 (emphasis added). The statute provides various grounds upon which the trial court can find the appointment of a receiver is "deemed necessary", including:

> (1) **In an action brought to dissolve an entity**…;
>
> (2) In an action in which the person seeking appointment of a receiver has a lien on or interest in property or its revenue-producing potential, and either:
>
> > (a) The appointment of a receiver with respect to the property or its revenue-producing potential is necessary to keep and preserve the property or its revenue-producing potential or to protect any business

or business interest concerning the property or its revenue-producing potential; or

(b) The appointment of a receiver with respect to the property or its revenue-producing potential is provided for by a valid and enforceable contract or contract provision; or

(c) The appointment of a receiver is necessary to effectuate or enforce an assignment of rents or other revenues from the property;

(3) After judgment, in order to give effect to the judgment, provided that the party seeking the appointment demonstrates it has no other adequate remedy to enforce the judgment;

…

(5) To the extent that property is not exempt from execution, at the instance of a judgment creditor either before or after the issuance of any execution, to preserve or protect it, or prevent its transfer;

(6) If and to the extent that property is subject to execution to satisfy a judgment, to preserve the property during the pendency of an appeal, or when an execution has been returned unsatisfied, or when an order requiring a judgment debtor to appear for proceedings supplemental to judgment has been issued and the judgment debtor fails to submit to examination as ordered;

…

(14) To prevent irreparable injury to the person or persons requesting the appointment of a receiver with respect to the debtor's property.

MO. REV. STAT. § 515.510.1 (emphasis added).

As is discussed more fully below, Appellants' arguments that Respondent's efforts to have a receiver appointed for Maple Grove and to have Maple Grove dissolved were somehow abandoned in the Prior Lawsuit or impermissibly split into the Underlying Action are without merit. Regardless, however, this Court should affirm the trial court's denial of Appellants' Motion to Revoke the appointment of a receiver for Maple Grove because there were new and independent bases for doing so, separate and apart from, and even after, the trial court's grant of Respondent's Motion for Appointment of Receiver in the Prior Lawsuit.

Among the bases for appointing a receiver for Maple Grove before the trial court in the Underlying Action was the undisputed fact that Respondent obtained a judgment against Appellants in the Prior Lawsuit—a judgment which remains outstanding. (Supp. L.F. 94.1; Transcript of Nov. 6 Hearing, pp. 68:3-7.)[6] Upon request by Appellants, the trial court in the Underlying Action agreed to take judicial notice of all the docket entries in the Prior Lawsuit, including the Amended Judgment and Judge Cordonnier's finding (in the Prior Lawsuit) that there was a basis for a receiver to be appointed. (L.F. 15.8; Transcript

[6] Although Appellants are in the process of appealing the Amended Judgment from the Prior Lawsuit, they posted no bond to prevent Respondent from executing upon that judgment. (Supp. L.F. 60.91-92.)

of Nov. 6 Hearing, pp. 70:20-71:1.)[7] It is also undisputed that Meadowfresh is a majority shareholder of Maple Grove and has an interest in its assets. (Transcript of Nov. 6 Hearing, pp. 82:8-10.) *See* MO. REV. STAT. § 515.510.1(2). In addition, Respondent has, in conjunction with its action for accounting in the underlying case, brought a claim for dissolution of Maple Grove. (Supp. L.F. 61. 5-6.) *See* MO. REV. STAT. § 515.510.1(1).

Given the undisputed facts, it is abundantly clear that, even aside from the rulings and evidence from the Prior Lawsuit (which serve as a basis for the trial court's appointment of a receiver for Maple Grove in the Underlying Action), Respondent had additional statutory bases for petitioning the trial court in the Underlying Action for the appointment of a receiver. The trial court's decision to appoint a receiver for Maple Grove is therefore supported by independent bases regardless of any argument by Appellants regarding alleged abandonment or improper splitting of claims from the Prior Lawsuit.[8]

Beyond the Amended Judgment from the Prior Lawsuit, the trial court in the Underlying Action also had additional new bases upon which to appoint a receiver for Maple Grove stemming from Appellants' conduct *since* the entry of the Amended Judgment. The Amended Judgment in the Prior Lawsuit was entered on September 28,

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[7] The trial court is entitled to take judicial notice of its own records, and those of other proceedings. *See* Mince v. Mince, 481 S.W.2d 610, 614 (Mo. App. 1972).

[8] Appellants do not challenge the evidence (or sufficiency thereof) of the trial court's entry of an order appointing the receiver in their Point II. For discussion on the sufficiency of the evidence supporting the trial court's order, see Point IV, *infra.*

2017. (Supp. L.F. 94.1.) At the hearing on November 6, 2017, counsel for Appellants admitted that Appellant Curtis Hall, who had been managing the day-to-day operations of Maple Grove, refused to serve under the management of John Fulton. (Transcript of Nov. 6 Hearing, pp. 67:17-68:15.) Counsel for Appellants even admitted exhibits at that hearing demonstrating Appellant Hall's recently stated intent to walk off the job and cease the daily cattle milkings—a decision that, at the very least, had the potential to cause devastating waste of Maple Grove's dairy farm assets as well as the inability to market Maple Grove to potential purchasers as a going concern. (L.F. 12.1 and 13.1.) Appellants also admitted there was a decrease in the number of cattle of Maple Grove under their watch, a high degree of acrimony between the parties, and that Respondent has an interest in the assets of Maple Grove. (Transcript of Nov. 6 Hearing, pp. 67: 25-68:9; 74:17-21; 82:8-10; 83:23-84:2.) Each of these grounds provides a new and independent basis for appointing a receiver for Maple Grove under § 515.510 and denying Appellants' Motion, and the trial court did not err in so doing.

B. The trial court did not err in denying Appellants' Motion for Order Revoking, or in the Alternative, Modifying and Changing Interlocutory Order Appointing a Receiver because Respondent's claims for accounting and dissolution in the Prior Lawsuit were reserved for determination after jury trial and then severed into the Underlying Action.

The Amended Judgment from the Prior Lawsuit specifically addresses and disposes of Appellants' contention that Respondent did not properly sever its claims for dissolution and accounting, to wit[9]:

> The remaining Counts of Plaintiffs' [Respondent's] Fifth Amended Petition were reserved for determination by the Court after the jury trial, and were severed into a separate action pending in this Court, including Counts II (for judicial dissolution of Maple Grove Farms, LLC) and XIV (action for accounting), as well as Plaintiff's motion

[9] Appellants' argument that the Amended Judgment is "incorrect and improper" is not properly dealt with in the instant case and should be reserved for determination in the pending appeal of the Prior Lawsuit. *See* Appellants' Substitute Brief, pp. 31. "Where a judgment is attacked in other ways than by proceedings in the original action to have it vacated or reversed or modified or by a proceeding in equity to prevent its enforcement, the attack is a 'collateral attack'. *See* Barry, Inc. v. Falk, 217 S.W.3d 317, 320 (Mo. Ct. App. W.D. 2007). Judgments rendered by a court having jurisdiction of the parties and subject matter are not open to collateral attack in respect of their validity or conclusiveness of the matters adjudicated. *See* Barry, Inc., 217 S.W.3d at 320; *see also* Brown v. Brown-Thill, 437 S.W.3d 344, 349 (Mo. Ct. App. W.D. 2014)("under Missouri law, a judgment on the merits at the trial-court level is considered a final judgment for purposes of res judicata and collateral estoppel, even if the appeal of that judgment is still pending.") (citations omitted).

> for appointment of a receiver which the Court sustained on or about June 16, 2017.
>
> By this Judgment, and the Court's order severing Plaintiffs' claims for judicial dissolution and accounting (which shall include this Court's prior Order of June 16, 2017 granting Plaintiff's Second Motion for Appointment of Receiver), the Court finds and declares that all issues in this case have been determined, that this Judgment heretofore in favor of Plaintiffs and against Defendants is a final and appealable judgment, and in accordance with Rule 74.01(b) further finds and declares that there is no just reason for delay of entry of this Judgment.

(Supp. L.F. 94.6.)

Despite the clear language of the Amended Judgment, Appellants erroneously argue that because there was no formal motion to sever the claims for dissolution and accounting filed before trial in the Prior Lawsuit Respondent somehow "abandoned" those claims "includ[ing] any remedies sought by motion, such as a motion for appointment of Receiver." Appellants' Substitute Brief, p. 31.

The first fatal flaw in Appellants' argument is that it is an improper attempt to challenge the trial court's denial of Appellants' Motion to Dismiss—a decision from which Appellants have no right of appeal. *See* Appellants' Motion to Dismiss, L.F. 63.2-6; *see also* Clayco Const. Co. v. THF Carondelet Dev., LLC, 105 S.W.3d 518, 522 (Mo. Ct. App. E.D. 2003) ("The right to appeal is statutory, and an appeal may only be taken from a final

judgment…The trial court's denial of a motion to dismiss is not a final judgment and is not reviewable.") (internal citations omitted).

In addition, and contrary to Appellants' assertions, Respondent has consistently and continuously maintained its claims for dissolution and accounting of Maple Grove, including its entitlement to a receivership, throughout the Prior Lawsuit and the Underlying Action. (L.F. 2.1; *see also* Supp. L.F. 61, 64, 75, 89, and 91.) The language from the Amended Judgment is clear that Respondent's claims, including the court's order in the Prior Lawsuit granting Respondent's motion appointing a receiver over Maple Grove, were preserved before trial and severed after trial. (Supp. L.F. 94.6.)

Indeed, Respondent's severance of those claims was made possible by the fact that they *were not* submitted to the jury and remained to be decided by the trial court after the jury trial in the Prior Lawsuit. Specifically, "[w]here cases involve mixed issues of law and equity, the legal claims should be tried to a jury and the equitable claims and defenses should be tried to the court." *See* Obermiller Const. Servs., Inc. v. Pub. Water Supply Dis. No. 5 of Cass Cty., 319 S.W.3d 545, 547 (Mo. Ct. App. W.D. 2010). "The trial court has discretion to try such cases in the most practical and efficient manner possible, consistent with Missouri's historical preference for a litigant's ability to have a jury trial on claims of law." *See* Obermiller, 319 S.W.3d at 547 (Mo. Ct. App. W.D. 2010) (internal citations omitted).

In this case, the intent of the parties regarding the various claims in the Prior Lawsuit is evidenced by the treatment of those claims in terms of what was, and was not, submitted to the jury. The Amended Judgment sets forth a list of claims from the Fifth Amended

Petition that Respondent (and the Fultons) elected not to submit to the jury (such as counts for third-party beneficiary breach of contract, conversion, breach of fiduciary duties, defamation, abuse of process, *inter alia*). (Supp. L.F. 94.5.) The Amended Judgment explicitly provides that these claims "were withdrawn by Plaintiffs [Respondent] and are no longer pending." (Supp. L.F. 94.5.) The only claims referred to as "abandoned" in the entire Amended Judgment are counterclaims by Defendants Ted Dahlstrom and Kyle Bounous for an accounting and dissolution of Respondent. (Supp. L.F. 94.5.) Clearly, the trial court and the parties knew exactly which claims had been abandoned and which were preserved and severed.

Appellants' contention that Respondent "abandoned" its claims for accounting and judicial dissolution is also flawed in that the very nature of these claims allows them to be raised anytime there are bases therefore. Unlike tort or contract actions, for example, Respondent is entitled to bring these equitable causes of action against Appellants any time Respondent is able to meet the requisite elements under Missouri law and a prior judgment on the merits has not been entered. *See* MO. REV. STAT. § 515.510.1; *see also* MO. REV. STAT. § 347.143.2. Even if there were some colorable argument that Respondent somehow "abandoned" its dissolution and accounting claims in the Prior Lawsuit, for instance (there is not), Appellant's continued waste and abuse of Maple Grove's assets after the trial in the Prior Lawsuit, as well as Maple Grove's continued inability to conduct business because of the acrimony between its members, provided new and sufficient bases for these claims. As such, the trial court did not err in appointing a receiver for Maple Grove and denying Appellants' Motion.

C. The trial court did not err in denying Appellants' Motion for Order Revoking, or in the Alternative, Modifying and Changing Interlocutory Order Appointing a Receiver because there was no final result in the Prior Lawsuit regarding Respondent's claims for accounting and dissolution of Maple Grove and the severance of those claims into the Underlying Action was not an improper splitting of a cause of action.

Appellants also argue that the severance of Respondent's claims for accounting and dissolution into the Underlying Action somehow constitutes an improper splitting of a cause of action from the claims in the Prior Lawsuit. However, as has already been established, the trial court in the Underlying Action had new and additional bases upon which to appoint a receiver for Maple Grove even beyond the bases that supported the grant of Respondent's Motion in the Prior Lawsuit. In addition, however, Appellants' argument regarding alleged improper splitting of a cause of action is not well-taken for the following reasons.

In support of their argument that Respondent somehow impermissibly split a cause of action with respect to its claims for dissolution and accounting of Maple Grove, Appellants rely on King Gen. Contractors, Inc. v. Reorganized Church of Jesus Christ of Latter Day Saints, 821 S.W.2d 495, 501 (Mo. 1991). Appellants' Substitute Brief, pp. 32-33. In King, the plaintiff brought a second lawsuit against defendants for tort and third-party beneficiary breach of contract claims arising out of a construction contract. King,

821 S.W.2d at 496-497. In a prior case, the plaintiffs failed to bring (or voluntarily dismissed) those claims and instead proceeded to trial on quantum meruit and breach of contract claims arising out of the same contract that was the subject of the second suit—a fact which was essential to the Court's holding. Id. at 502. Based on those facts, this Court ultimately held that the claims of the second suit were barred by res judicata. Id.

In the instant case, Respondent's claims for judicial dissolution and accounting are not alternative legal theories from the claims tried to the jury in the Prior Lawsuit (as was the case in the multiple lawsuits at issue in King). *See* L.F. 94; *see also* King, 821 S.W.2d at 502. Instead, Respondent's claims for dissolution and accounting of Maple Grove are separate causes of action from the claims tried in the Prior Lawsuit, with different elements, different remedies, and different theories of recovery.[10]

[10] Respondent's claims for accounting and dissolution in this case are equitable, court-tried claims and constitute a separate judicial unit from the claims submitted to the jury in the Prior Lawsuit. The Eastern District Court of Appeals stated that claims for relief will be considered separate "if they require proof of different facts and the application of distinguishable law…." *See* Capital Finance Loans, LLC v. Read, 476 S.W.3d 925, 928 (Mo. Ct. App. W.D. 2015). "The effect of Rule 74.01(b) is to permit severance of any unrelated substantive claim for relief of the parties and to allow appeal of a final judgment on those severed claims." *See* Buemi v. Kerckhoff, 359 S.W.3d 16, 21 (Mo. banc 2011).

Specifically, the claims submitted to the jury in the Prior Lawsuit addressed, *inter alia*, Appellants' conduct pertaining to the improper and illegal removal of John Fulton as Manager, and Meadowfresh as majority member, of Maple Grove; Appellants' conduct in having charges filed and an arrest warrant issued for John Fulton; and Appellants' conduct in setting up a sham corporate entity and using the company to defraud Meadowfresh and Mr. Fulton. (Supp. L.F. 89; Supp. L.F. 90.) The common thread underlying each of these legal claims is that they all relate to past conduct of Appellants toward Respondent. In contrast, Respondent's claims for accounting and dissolution constitute a separate "judicial unit" of claims: the unit of equitable claims that deal with how to administer Maple Grove's assets after the Amended Judgment.

In sum, Appellants' argument regarding an alleged improper splitting of a cause of action is premised on the idea that Respondent should not be permitted "two bites at the apple" when achieving relief on a single claim. However, as is clearly set forth in the Amended Judgment in the Prior Lawsuit, and expressly admitted by Appellants in their Substitute Brief[11], Respondent's claims for dissolution and accounting of Maple Grove were never disposed of or ruled upon in the Prior Lawsuit. Respondent has not yet had its "first bite at the apple" on these claims, and did not improperly split any cause of action between the Prior Lawsuit and the Underlying Action. For these reasons, Appellants' Point II should be denied.

[11] *See* Substitute Brief, pp. 12.

III.

As to Appellants' Point III, the trial court did not err in denying Appellants' Motion for Order Revoking, or in the Alternative, Modifying and Changing Interlocutory Order Appointing a Receiver because the trial court was entitled to rely on the order entered in the Prior Lawsuit granting Respondent's Motion for appointment of a receiver for Maple Grove and there were additional new grounds, beyond those that existed in the Prior Lawsuit, for appointing a receiver for Maple Grove in the Underlying Action.

Standard of Review

MO. S. CT. R. 84.13(d) provides that, appellate review in cases tried without a jury, the court "shall review the case upon both the law and the evidence as in suits of an equitable nature." MO. S. CT. R. 84.13(d)(1)(2018). In court-tried cases in equity, the appellate standard of review is established by Murphy v. Carron, 536 S.W.2d 30, 32 (Mo. banc 1976) and, "accordingly, we will affirm the trial court's judgment unless there is no substantial evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law." State ex rel. Cravens v. Nixon, 234 S.W.3d 442, 445 (Mo. Ct. App. W.D. 2007) (internal citations omitted). Further, "[t]he power to appoint a receiver is within the sound discretion of the trial court. *See* Sangamon Assoc. v. Carpenter 1985 Family, 165 S.W.3d 141, 146 (Mo. banc 2005).

A. Appellants' claim that the trial court's ruling appointing a receiver for Maple Grove was based on the "law of the case" doctrine is unfounded.

In Appellants' third point on appeal, they erroneously argue that the trial court in the Underlying Action improperly relied on the appellate "law of the case" doctrine in appointing a receiver for Maple Grove. *See* Appellants' Substitute Brief, pp. 36-38. Specifically, Appellants point to a statement made by the trial court in the Underlying Action at the hearing on November 6, 2017 that: "I'm now going to respectfully find that Judge Cordonnier's ruling and announcement in the 9-28-17 amended judgment in his case is the law of the case." *See* Transcript of Nov. 6 Hearing, pp. 40:13-16. Appellants' argument that the order appointing a receiver for Maple Grove was based on the appellate "law of the case" doctrine, however, is misplaced.

The statement made by Judge Brown in the Underlying Action referred to the trial court's findings in the Prior Lawsuit as "law of the case" as they applied to Appellants' Motion to Dismiss, not Respondent's Motion for Entry of an Order Appointing Receiver for Maple Grove. *See* Transcript of Nov. 6 Hearing, pp. 40:11-41:21.[12] There is no

[12] Specifically, the trial court in the Underlying Action stated that "Judge Cordonnier's ruling and announcement in the 9-28-17 amended judgment in his case is the law of the case." Transcript of Nov. 6 Hearing, pp. 40:13-16. This reference to Judge Cordonnier's "ruling and announcement" in the Prior Lawsuit refers to the specific statements in the Amended Judgment regarding the preservation and severance of Respondent's claims for accounting and dissolution of Maple Grove. Transcript of Nov. 6 Hearing, pp. 40:11-41:5.

evidence that the trial court based its denial of Appellants' Motion for Order Revoking, or in the Alternative, Modifying and Changing Interlocutory Order Appointing a Receiver on the appellate "law of the case" doctrine. Appellants' argument in this regard is therefore not well-taken, and this Court should deny Appellants' third point of alleged error on this basis alone. Regardless, however, the trial court was entitled to rely upon the findings of Judge Cordonnier in the Prior Lawsuit as they related to the grant of Respondent's Second Motion for Appointment of Receiver, as is set forth in more detail below.

B. The trial court did not err in denying Appellants' Motion for Order Revoking, or in the Alternative, Modifying and Changing Interlocutory Order Appointing a Receiver because the trial court in the Underlying Action was entitled to rely upon the findings of the Greene County Circuit Court in granting Respondent's motion for appointment of receiver in the Prior Lawsuit when appointing a receiver for Maple Grove.

To the extent that the trial court relied on ruling(s) in the Prior Lawsuit in granting Respondent and the Fultons' Motion for Appointment of Receiver over Maple Grove, the court was clearly entitled to do so because the Underlying Action is the result of the

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This statement by the trial court was made after argument on Appellants' Motion to Dismiss, and specifically in response to Appellants' argument that the claims for accounting and dissolution were abandoned. Transcript of Nov. 6 Hearing, pp. 17:19-21:4. Appellants' Motion to Dismiss was ultimately denied. (Supp. L.F. 1.10.)

continuation/severance of Respondent's dissolution and accounting claims from the Prior Lawsuit. The trial court recognized the same, stating: "I sit as the Circuit Court of Greene County. The Circuit Court of Greene County, through Judge Cordonnier, has already ruled that the current claims in this case were reserved by the Court and were severed. He has so ruled, and it is not for me to determine that is a wrongful ruling or to second guess it, and the Court will be governed by that ruling…." (Transcript of Nov. 6 Hearing, pp. 40:18-41:1.) Further, the Amended Judgment of the Prior Lawsuit specifically included Judge Cordonnier's prior grant of Respondent's motion to appoint a receiver over Maple Grove. (Supp. L.F. 94.6.) ("The remaining Counts of Plaintiffs' Fifth Amended Petition were reserved for determination by the Court after the jury trial, and were severed into a separate action pending in this Court, including Counts II (for judicial dissolution of Maple Grove Farms, LLC) and XIV (action for accounting), as well as Plaintiffs' motion for appointment of a receiver which the Court sustained on or about June 16, 2017.") The court in the Underlying Case was thus entitled to rely upon that ruling and did not err in denying Appellants' Motion.

C. The trial court did not err in appointing a receiver for Maple Grove, even if it were somehow improper for Judge Brown to rely on Judge Cordonnier's granting of Respondent's Motion in the Prior Lawsuit, because there were new additional grounds to appoint a receiver for Maple Grove in the Underlying Action that did not exist in the Prior Lawsuit.

As set forth in Respondent's Supplemental Statement of Facts and Point II, *infra*., the trial court in the Underlying Action had multiple bases (aside from the motion for appointment of receiver granted in the Prior Lawsuit) upon which to grant Respondent's Motion for Entry of an Order Appointing a Receiver. Therefore, the trial court did not err in denying Appellants' Motion, and Point III should be denied.

IV.

As to Appellants' Point IV, the trial court did not err in denying Appellants' Motion for Order Revoking, or in the Alternative, Modifying and Changing Interlocutory Order Appointing a Receiver because there were multiple bases upon which the trial court could properly find the necessity of the appointment of a receiver for Maple Grove.

Standard of Review

In an appeal from an order refusing to revoke, modify, or change an order appointing a receiver, the trial court's decision will be sustained unless "there is no substantial evidence to support it, unless it is against the weight of the evidence, unless it erroneously declares the law, or unless it erroneously applies the law. *See e.g.*, Murphy v. Carron, 536 S.W.2d 30, 32 (Mo. banc 1976). Where the ground for error asserted is the lack of substantial evidence supporting the trial court's order, "[a]ppellate courts should exercise the power to set aside a decree or judgment on the ground that is 'against the weight of the evidence' with caution and with a firm belief that the decree or judgment is wrong." Murphy, 536 S.W.2d at 32 (internal citations omitted).

In the Houston v. Crider case, cited by Appellants, this Court held that "the trial court's judgment is presumed valid and the burden is on the appellant to demonstrate its incorrectness." Houston, 317 S.W.3d 178, 183 (Mo. Ct. App. S.D. 2010). "We view the evidence and the reasonable inferences drawn from the evidence in the light most favorable to the judgment, disregard all evidence and inferences contrary to the judgment, and defer

to the trial court's superior position to make credibility determinations." Houston, 317 S.W.3d at 183 (internal citations omitted).

Specifically, the three-part test set forth in the Houston opinion for a not-supported-by-substantial-evidence challenge requires Appellants to:

> 1) identify a challenged factual proposition, the existence of which is necessary to sustain the judgment; 2) identify all of the favorable evidence in the record supporting the existence of that proposition; and 3) demonstrate why that favorable evidence, when considered along with the reasonable inferences drawn from that evidence, does not have probative force upon the proposition such that the trier of fact could not reasonably decide the existence of the proposition.

See Houston, 317 S.W.3d at 187. As set forth in more detail below, Appellants' Substitute Brief fails to engage in this framework analysis and their Point IV should be denied.

The weight of the evidence supports the trial court's order appointing a receiver for Maple Grove and denying Appellants' Motion for Order Revoking, or in the Alternative, Modifying and Changing Interlocutory Order Appointing a Receiver.

Appellants' argument in Point IV boils down to one main point: the trial court allegedly erred by not holding a formal evidentiary hearing on Respondent's Motion for Entry of an Order Appointing a Receiver. Notably absent from Appellants' Substitute Brief, however, is any authority for their claim that such a hearing is required before a receiver is appointed. Specifically, the Missouri Commercial Receivership Act clearly sets

forth the circumstances under which a receivership may be appointed, of which the following directly or potentially apply to this case:

- In an action brought to dissolve an entity… MO. REV. STAT. § 515.510.1.1;
- In an action in which the person seeking appointment of a receiver has a lien on or interest in property or its revenue-producing potential and …the appointment of a receiver…is necessary to keep and preserve the property or its revenue-producing potential or to protect any business or business interest concerning the property or its revenue-producing potential… MO. REV. STAT. § 515.510.1.2(a);
- After judgment, in order to give effect to the judgment… MO. REV. STAT. § 515.510.1.3;
- At the instance of a judgment creditor either before or after the issuance of any execution, to preserve or protect it, or prevent its transfer… MO. REV. STAT. § 515.510.1.5;
- If and to the extent that property is subject to execution to satisfy a judgment, to preserve the property during the pendency of an appeal… MO. REV. STAT. § 515.510.1.6; and
- To prevent irreparable injury to the person or persons requesting the appointment of a receiver with respect to the debtor's property… MO. REV. STAT. § 515.510.1.14.

There is no requirement in the Act that the party seeking the appointment of a receiver hold a formal evidentiary hearing. In fact, MO. REV. STAT. § 515.505 defines "notice and a hearing" as follows: "such notice as is appropriate and an opportunity for

hearing if one is requested. Absent request for hearing by an appropriate person or party in interest, the term notice and a hearing does not indicate a requirement for an actual hearing unless the court so orders." MO. REV. STAT. § 515.505.

Regardless, the trial court in fact held a hearing before appointing a receiver for Maple Grove. At that hearing on November 6, 2017, the trial court heard arguments from counsel for both parties, took judicial notice of the rulings/orders and Amended Judgment from the Prior Lawsuit (at Appellants' request), reviewed the motions and exhibits submitted in support thereof, and received evidence. *See generally* Transcript of November 6, 2017. Appellants expressly admit that they entered evidence into the record at the hearing on November 6, 2017. *See* Appellants' Substitute Brief, pp. 41. Further, the trial court took judicial notice of the rulings/orders and Amended Judgment from the Prior Lawsuit at the request of Appellants' counsel. Transcript of Nov. 6 Hearing, pp. 70:20-71:1. Appellants' contention that the lack of witness testimony at that hearing means that the trial court did not have substantial evidence from which to grant Respondent's Motion is therefore not well-taken and is without authority. On this basis alone, the Court should therefore deny Appellants' Point IV.

Further, Appellants' allegation of error in their Point IV also lacks sufficient basis for this Court to disturb the trial court's decision regarding Appellants' Motion. Respondent shall set forth in summary below the evidence which the trial court relied upon in appointing a receiver for Maple Grove and denying Appellants' Motion, to wit:

1. The prior grant of Respondent's Second Motion for Appointment of Receiver by Judge Cordonnier in the Prior Lawsuit, including the bases upon which Judge Cordonnier relied (Supp. L.F. 60.53; Supp. L.F. 75; Supp. L.F. 94.6);
2. The undisputed decrease in Maple Grove assets; (Transcript of Nov. 6 Hearing, pp. 74:17-21.);
3. Establishment and use of a shell company to purposefully undercapitalize Maple Grove in an attempt to deprive Meadowfresh and Mr. Fulton of creditor's rights with respect to Maple Grove (Supp. L.F. 90.10-11.);
4. Appellants' illegal, blatant, and intentional conduct to deprive Meadowfresh of its membership rights in Maple Grove, including post-judgment waste and transfer of Maple Grove assets without Meadowfresh's consent (Supp. L.F. 90.3-5; Transcript of Nov. 6 Hearing, 74:17-21; 82:8-10.);
5. Appellants' failure to refinance the Arvest debt as represented to the court in the prior Lawsuit (Transcript of Dec. 6 Hearing, pp. 40:8-15; 46:14-47:2; Supp. L.F. 79.1-2.);
6. Repeated threats by Appellant Curtis Hall that he will cease management of daily operations of Maple Grove (which would be catastrophic to the dairy cattle and dairy farm operation as a going concern)[13] (L.F. 12.1; L.F. 13.1; Transcript of Nov. 6 Hearing, 67:17-68:15); and

[13] Appellant's claims regarding Mr. Fulton's status as Manager of Maple Grove Farms, LLC are neither relevant to Appellant's legal analysis nor accurate, and instead appear to

7. Respondent's status as a judgment creditor of Appellants by virtue of the Amended Judgment entered in the Prior Lawsuit in favor of Respondent (Supp. L.F. 94.1; Transcript of Nov. 6 Hearing, 68:3-7.).

Appellants' Brief does not address a single one of these facts. Instead, Appellants merely conclude that there is no evidence supporting the trial court's order appointing a receiver for Maple Grove. Appellants' Brief, pp. 27. To the extent Appellants argue that the trial court improperly considered the events in the Prior Lawsuit, 1) the trial court agreed, at Appellants' explicit request at the November 6 hearing, to do so; and 2) much of the conduct alleged in Respondent's Motion centered around Appellants' conduct *since the verdict* in the Prior Lawsuit. As such, it is abundantly clear that Appellants have not met their burden to establish that the trial court's order was not supported by substantial evidence. Instead, it is clear that the trial court was satisfied that the appointment of a receiver for Maple Grove was necessary to keep, protect, and preserve Maple Grove's property and prevent Appellants from further mishandling, wasting, or otherwise fraudulently transferring Maple Grove's assets. As such, Point IV should be denied.

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be mere factual complaints regarding Mr. Fulton, who is not a party to this case or appeal.

Conclusion

Wherefore, for the reasons set forth herein, Respondent Meadowfresh Solutions USA, LLC moves that this Court dismiss Appellants' appeal or, in the alternative, deny Points I-IV of Appellants' Substitute Brief, and for whatever further relief this Court deems fair and just.

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Appendix – electronically filed separately

Certificate of Service and Compliance

S. Jacob Sappington, states that on March 19, 2019 a copy of Respondent's Substitute Brief and Appendix was served via the CM/ECF filing system upon Kate Millington at kmillington@springfieldlaw.net, Thomas W. Millington at tmillington@springfieldlaw.net, and Jeffry O. Young at jyoung@springfieldlaw.net., as counsel for Appellants. I also certify that the attached brief complies with the Supreme Rule 84.06(b) and contains 11,197 words, excluding the cover, the certification and the appendix as determined by Microsoft Word software. Undersigned counsel certifies that this original document was signed by the preparing attorney and will be maintained by the filer for a period not less than the maximum allowable time to complete the appellate process.

/s/ S. Jacob Sappington
S. JACOB SAPPINGTON, Attorney