



In the Missouri Court of Appeals
Eastern District
DIVISION ONE

DENNIS N. SMITH, JR., ET AL.,	)	No. ED109494
	)	
Respondent,	)	Appeal from the Circuit Court
	)	of St. Louis County
vs.	)	
	)	
LEIF JOHNSON FORD, INC.,	)	Honorable Brian H. May
	)	
Appellant,	)	
	)	
vs.	)	
	)	
DIRECT MARKETING ADVANTAGE, LLC,	)	
	)	
Third-Party Defendant.	)	FILED: August 17, 2021

Introduction

Leif Johnson Ford, Inc. (“Ford”) appeals from the circuit court’s order certifying a class action filed by Dennis N. Smith, Jr. (“Smith”) individually and on behalf of all other similarly situated plaintiffs alleging a violation of the Telephone Consumer Protection Act (“TCPA”). Ford claims the circuit court erred in certifying the class because Smith fails the typicality requirement for class actions and because common questions of law or fact do not predominate. The circuit court did not abuse its discretion in certifying the class because Ford has not shown Smith’s claim was atypical in any material way from the class whose members’ cellphone numbers received prerecorded voicemail messages (“ringless voicemails”) without consent in

violation of the TCPA under Rule 52.08(a)¹ or that the circuit court erred in finding that common questions of law and fact predominate pursuant to Rule 52.08(b)(3). Accordingly, we affirm the circuit court's order certifying the class.

Factual and Procedural History

Smith, a Missouri resident, filed a putative class action against Ford, a Texas car dealership doing business nationwide and in Missouri. Smith alleged Ford violated the TCPA by sending ringless voicemails promoting Ford's automotive sales and service business without prior express written consent to the cellphones of Smith and the class members in May 2019.

Ford's general manager, Anthony Hewitt ("Hewitt"), entered into a contract with Direct Marketing Advantage ("DMA") to market its business to customers and potential customers in Texas in May 2019. Ford maintained Hewitt only authorized a direct mail marketing campaign within the State of Texas and did not discuss or request other marketing tools with DMA, including ringless voicemails. Smith produced evidence in the record showing that Hewitt authorized DMA to provide marketing services to Ford through ringless voicemails, e-mails, and mailings, including a contract showing DMA would make 8,408 ringless voicemails. DMA engaged another company, "My Lead Guys," to place the ringless voicemails.

Smith and other class members received the ringless voicemail messages. Smith produced a call-log spreadsheet listing the phone numbers that received the ringless voicemails (the "Manifest"). Fred Trudeau, employed as President of Ford, stated by affidavit that the Manifest was a business record of Ford's. The circuit court determined Trudeau confirmed that ringless voicemails were delivered to the phone numbers on the Manifest in May 2019. Ford denied creating the Manifest and denied knowing who created the Manifest. The Manifest

¹ All Rule references are to Mo. R. Civ. P. (2020).

contains 3,769 entries of individuals with associated phone numbers and addresses. The entries list Texas addresses and reflect various area codes. Two phone numbers in the Manifest have area code (314) phone numbers, one of which belonged to Smith.

Ford moved for summary judgment, arguing it was not liable because it never authorized, requested, agreed to, or ratified DMA to engage in a ringless voicemail campaign on its behalf. Based on the evidence in the summary-judgment record, the circuit court denied Ford's motion for summary judgment.

Smith then moved for class certification. Following briefing and oral argument in which the circuit court considered the pleadings and evidence from affidavits and deposition testimony as well as the summary-judgment record, the circuit court entered its order granting class certification in February 2021. The circuit court addressed the criteria in Rule 52.08(a) and made detailed findings that the class satisfied the requirements for numerosity, commonality, typicality, and adequacy. Relevant to this appeal, the circuit court found the class satisfied the typicality requirement because Smith alleged the owners of the 3,769 cellphone numbers listed on the Manifest received ringless voicemails without prior express written consent in violation of the TCPA. Regarding the issue of predominance, the circuit court likewise found the proposed class met the requirements of Rule 52.08(b)(3) in that the class had a TCPA claim stemming from Ford's alleged actions in causing ringless voicemails to be delivered to the 3,769 phone numbers on the Manifest without prior express written consent. In finding that a class action would be the superior method for fairly and efficiently adjudicating the controversy under Rule 52.08(b)(3), the circuit court noted that Ford raised no objection to adjudicating the matter in the circuit court of St. Louis County. The circuit court granted Smith's motion to certify the following class: "Those individuals who owned at the relevant time the cell[]phone numbers

listed on the Manifest of those numbers to which prerecorded [ringless voicemails] were placed in May, 2019, promoting [Ford's] automotive sales and service business.”

Ford sought leave to appeal the interlocutory order of class certification. We granted leave, and this appeal follows.

Points on Appeal

Ford raises two points on appeal. Point One argues the circuit court erred in certifying the class because Smith's claims are different from and atypical of the class, and Smith is not a member of the class. Point Two asserts the circuit court erred in certifying the class because individual issues predominate over common issues.

Standard of Review

We review an order certifying a class under the abuse-of-discretion standard. Frank v. Enviro-Tech Services, 577 S.W.3d 163, 166 (Mo. App. E.D. 2019) (citing Meyer ex rel. Coplin v. Fluor Corp., 220 S.W.3d 712, 715 (Mo. banc 2007)). “The circuit court abuses its discretion ‘if its order is clearly against the logic of the circumstance, is arbitrary and unreasonable, and indicates a lack of careful consideration.’” State ex rel. Gen. Credit Acceptance Co., LLC v. Vincent, 570 S.W.3d 42, 46 (Mo. banc 2019) (quoting State ex rel. Coca-Cola v. Nixon, 249 S.W.3d 855, 860 (Mo. banc 2008)). Where the record can support class certification under Rule 52.08, the circuit court has not abused its discretion. Dale v. DaimlerChrysler Corp., 204 S.W.3d 151, 164–65 (Mo. App. W.D. 2006) (internal citation omitted). “It cannot be said that the [circuit] court abused its discretion where reasonable persons could differ with the propriety of its ruling.” Id. at 164 (internal quotation omitted). Because class certification is subject to later modification and because Rule 52.08 provides a mechanism for de-certifying a class before a decision on the merits, “a court should err in favor of, and not against, allowing maintenance of

the class action[.]” Frank, 577 S.W.3d at 167 (internal quotation omitted); Dale, 204 S.W.3d at 164 (internal quotation omitted).

Discussion

I. Rule 84.04 Briefing Deficiencies

Preliminarily, we note sua sponte that Ford’s briefing suffers from several Rule 84.04 deficiencies. Compliance with the briefing requirements of Rule 84.04 is mandatory, and failure to substantially comply preserves nothing for our review and is grounds for dismissal of the appeal. King v. King, 548 S.W.3d 440, 442 (Mo. App. E.D. 2018) (internal citations omitted).

We first address Ford’s Points Relied On. Rule 84.04(d) requires Ford to identify the circuit court’s ruling or action challenged, state the legal reasons for the claim of reversible error, and *explain why the legal reasons in the context of the particular case support the claim of reversible error*. Id. at 442–43 (emphasis added). Rule 84.04(d)(1) provides appellants with the following template:

The point shall be in substantially the following form: “The trial court erred in [*identify the challenged ruling or action*], because [*state the legal reasons for the claim of reversible error*], in that [*explain why the legal reasons, in the context of the case, support the claim of reversible error*].”

(Emphasis in original).

Ford’s first point states as follows: “The Trial Court erred in certifying a class action for claims which Smith, the sole class representative, does not possess because Smith’s claim are markedly different from and not typical of the class and he is not a member of the class.”

Although this point presents a general statement of alleged trial court error, the point fails to identify the specific legal reason or reasons for the claim of reversible error. While citing generally to Rule 52.08, this point does not specify the Rule 52.08(a) typicality requirement for class certification. But more importantly, the point lacks any explanation of the legal reasons, in

the context of this case, why Smith’s claims are not typical of the claims of the class. Ford does not summarize or note any relevant facts that purportedly make Smith’s claims “markedly different” and make Smith “not a member of the class” so as to explain why the class fails Rule 52.08(a)’s typicality requirement. See King, 548 S.W.3d at 442–43 (citing Rule 84.04(d)). Point Two similarly is not compliant with Rule 84.04(d) for the same reasons in that it merely contains the general assertion the circuit court erred in certifying the class “where individual issues, and the need for individual inquiries and mini-trials, predominate over common ones.” Again, this point does not reference or identify any “individual issue” upon which Ford challenges the trial court’s class certification of Smith’s claims.

We often are called upon to remind counsel that Rule 84.04(d)(1) “is not a judicial word game or a matter of hypertechnicality; it serves to put opposing litigants and the court on notice of the specific matters at issue.” Scott v. King, 510 S.W.3d 887, 892 (Mo. App. E.D. 2017) (citing Kieffer v. Gianino, 301 S.W.3d 119, 120–21 (Mo. App. E.D. 2010)). To preserve a claim for review that an appellant seeks to develop in the argument portion of the brief, the appellant must include that claim in the point relied on. See Landwehr v. Hager, 612 S.W.3d 220, 224 (Mo. App. E.D. 2020) (internal citation omitted) (“An insufficient point relied on that cannot be understood without turning to the record or argument portion of the brief preserves nothing for appellate review.”). Despite the generality of Ford’s point on appeal, Smith notes in his responsive brief that Ford appears to specifically challenge the typicality and predominance requirements under Rule 52.08, and frames his response accordingly.

“We have the discretion to review non[un]compliant briefs ex gratia where the argument is readily understandable.” Scott, 510 S.W.3d at 892 (internal citation omitted). We exercise this discretion cautiously “because each time we review a noncompliant brief ex gratia, we send

an implicit message that substandard briefing is acceptable. It is not.” Id. Here, Ford’s arguments, while deficient, were sufficiently ascertainable to provide Smith the opportunity to fully respond. For that reason, we choose to exercise our preference to discuss the merits. See id.

We next consider Ford’s Statement of Facts. Rule 84.04(c) requires an appellant provide this Court with “a fair and concise statement of the facts relevant to the questions presented for determination without argument.” “The primary purpose of the statement of facts is to afford an immediate, accurate, complete and unbiased understanding of the facts of the case.” Green v. Shiverdecker, 514 S.W.3d 41, 43 (Mo. App. W.D. 2017) (internal quotation omitted).

“Compliance with the rule also provides the reviewing court with a more complete understanding of the relevant issues and allows the opposing party to develop counter argument.” Id. at 45 (internal citation omitted). “It is not [our] duty to supplement a deficient brief with [our] own research, to comb the record in search of facts to support an appellant’s claim of error, or demonstrate it is properly preserved for appellate review.” Porter v. Santander Consumer USA, Inc., 590 S.W.3d 356, 358 (Mo. App. E.D. 2019) (internal citation omitted).

The Statement of Facts presented by Ford lacks compliance with Rule 84.04(c) because it contains argumentative statements that do not accurately reflect the record in the case through the summary-judgment stage. See King, 548 S.W.3d at 442. The record supporting the circuit court’s denial of Ford’s motion for summary judgment was incorporated into its certification ruling. In violation of Rule 84.04(c), Ford ignores the facts that the circuit court deemed dispositive concerning Ford’s role in the case. Rather than presenting the record on appeal in a straightforward, non-argumentative manner, Ford argues the merits-based question as to whether it caused the ringless voicemails to be placed. See Green, 514 S.W.3d at 44 (noting a statement

of facts fails to comply with Rule 84.04(c) where the record is presented argumentatively, as an advocate, in dereliction of the briefing obligations to the Court). Ford’s Statement of Facts does not clearly identify what facts are uncontested in the record and blurs the distinction between facts we may take as proven versus allegations. This failure impairs our ability to review the case, particularly because this appeal addresses only the propriety of class certification. See id. Nevertheless, because the record on appeal makes sufficiently clear the facts and procedural history, and because Smith’s responsive brief assists in clarifying the record under Rule 84.04(f), we exercise our discretion to review the appeal on the merits. See id. at 45; Scott, 510 S.W.3d at 892.

II. Class Action Certification

Certifying a class action rests with the sound discretion of the circuit court. Vincent, 570 S.W.3d at 46 (citing Nixon, 249 S.W.3d at 860). “[T]he underlying question in any class action certification is whether the class action device provides the most efficient and just method to resolve the controversy at hand, all things considered.” Id. (quoting Nixon, 249 S.W.3d at 860–61). A circuit court may consider certifying a class based on the pleadings and other evidence in the record. Dale, 204 S.W.3d at 167 (internal citation omitted). “In determining whether to certify a proposed class, ‘a [circuit] court should err in favor of, and not against, allowing maintenance of the class action’ because certification is subject to later modification.” Frank, 577 S.W.3d at 167 (internal quotation omitted); Dale, 204 S.W.3d at 164 (internal quotation omitted).

Rule 52.08 governs class action certification. Rule 52.08(a) requires a class meet the criteria of numerosity, commonality, typicality, and adequacy. See Vincent, 570 S.W.3d at 47. Then, “[i]f the Rule 52.08(a) prerequisites are met, a class action may be maintained only if the plaintiff shows the class satisfies one of the three additional standards set forth in Rule 52.08(b).”

Id. Also relevant to this appeal, Rule 52.08(b)(3) provides that an action may be maintained as a class action if the circuit court “finds that questions of law or fact common to members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.”

A. Point One—The Class Satisfies Typicality under Rule 52.08(a)

Point One contends the circuit court erred in certifying the class because Smith is not typical of the class and is not a member of the class.

Typicality “is fairly easily met so long as other class members have claims similar to the named plaintiff.” Dale, 204 S.W.3d at 169 (internal quotation omitted). “To satisfy the typicality requirement, the class representative ‘must be a part of the class and possess the same interest and suffer the same injury as the class members.’” Vincent, 570 S.W.3d at 51 (quoting Gen. Tel. Co. of Southwest v. Falcon, 457 U.S. 147, 156 (1982)). For example, Vincent found that the plaintiff’s claims that automobile repossession violated statutory notice requirements were not typical of the class because her injury was different in that she voluntarily surrendered her vehicle and did not have a deficiency judgment against her, whereas the class consisted of individuals who had their collateral taken involuntarily and who had deficiency judgments against them. See id. Thus, Vincent concluded the circuit court abused its discretion in certifying a class with that plaintiff as the sole class representative because her claims were not typical of the class and she was not a member of the relevant subclass. See id.

Here, the circuit court found that the class satisfied Rule 52.08(a)’s requirement for typicality because the class consisted of the owners of the 3,769 cellphone numbers listed on the Manifest, all of whom were alleged to have received ringless voicemails by Ford without prior express written consent in violation of the TCPA. See 47 U.S.C. Section 227(b)(3); C.F.R.

Section 64.1200(a)(2). The pleadings and the record support the circuit court's finding that Smith is a typical member of the class. Smith alleges that his cellphone number is listed on the Manifest and that he received ringless voicemails marketing Ford's business on that phone number without prior express written consent during May 2019. The record offers evidentiary support for Smith's claim. Thus, Smith's injury is the same as that suffered by other class members, who also are owners of the phone numbers listed on the Manifest in May 2019 and received ringless voicemails without prior consent in violation of the TCPA. See Vincent, 570 S.W.3d at 51 (quoting Gen. Tel. Co. of Southwest, 457 U.S. at 156).

Ford suggests Smith is not a typical class member because he resides in Missouri, only two phone numbers on the Manifest have (314) area code numbers, and the name associated with Smith's phone number is not Smith's. We agree with the circuit court's analysis that these differences are not relevant to Rule 52.08(a)'s typicality requirement, which is met because the class is comprised of those individuals whose phone numbers are listed on the Manifest, and the record indicates those phone numbers received unconsented ringless voicemails in May 2019. See id. Reviewing the circuit court's decision for an abuse of discretion, we fail to see how Smith's Missouri residency or (314) area code impact his interest and injury relevant to the putative class. See id.; Dale, 204 S.W.3d at 168–69 (internal quotation omitted) (noting the plaintiff “must be part of the class and possess the same interest and suffer the same injury as the class members”). While Smith's Missouri residency and (314) area code might be relevant to issues of jurisdiction and venue, Ford did not challenge hearing the dispute in the circuit court of St. Louis County. Further, Ford's contention that it is unlikely any other individual associated with a phone number on the Manifest at the relevant time is a Missouri resident is merely speculative and not persuasive on the issue of typicality. See Dale, 204 S.W.3d at 170. Missouri

law does not provide that *any* variance in the underlying facts of the plaintiff's claim from those of the putative class members' claims defeats the typicality requirement of Rule 52.08(a). *Id.* Rather, "[t]he burden of satisfying the typicality requirement is fairly easily met so long as other class members have claims similar to the named plaintiff." *Id.* (internal quotation omitted). "Factual variations in the individual claims will not normally preclude class certification if *the claim arises from the same event or course of conduct as the class claims*, and gives rise to the same legal or remedial theory." *Id.* (emphasis in original) (internal quotation omitted).

Moreover, the material issue in proving a TCPA violation is whether the individuals associated with the phone numbers on the Manifest gave prior express consent to receive the ringless voicemails.² See *Vincent*, 570 S.W.3d at 47 (quoting *Green v. Fred Weber, Inc.*, 254 S.W.3d 874, 880 (Mo. banc 2008) ("Although the class certification decision is independent of the ultimate merits of the lawsuit, the applicable substantive law is relevant to a meaningful determination of the certification issues.")). Ford suggests that its potential defenses against a claim brought by Smith are substantively different from its defenses against claims brought by Texas plaintiffs, thereby undermining the "typicality" of Smith's claim. We reject Ford's argument without considering the merits of Ford's alleged defenses against Smith as we are guided by the well-established principle that "a unique-defense contention has nothing to do with the typicality standard[.]" *Dale*, 204 S.W.3d at 171–72.

Examining the record regarding substantive questions to be answered at trial, the circuit court noted that Ford produced no evidence that any owners of the phone numbers listed on the Manifest provided prior express written consent to receive the ringless voicemails so as to distinguish them from Smith. See *Vincent*, 570 S.W.3d at 47. We note that when presented with

² In a TCPA case, the burden to show prior express written consent is on the defendant as an affirmative defense. See *Van Patten v. Vertical Fitness Grp., LLC*, 847 F.3d 1037, 1044 (9th Cir. 2017) (internal citation omitted).

a similar certification issue involving a class of individuals with phone numbers registered on the National Do Not Call Registry who alleged receiving text messages in violation of the TCPA, the United States District Court for the Western District of Missouri determined that typicality was satisfied, *despite* some factual variances between the named plaintiff and other class members because: “[t]he claims here arise out of the same conduct—the sending of text messages to individuals registered on the national do-not-call registry. These facts give rise to the same legal and remedial theory under the TCPA.” Hand v. Beach Enter. KC, LLC, 456 F. Supp. 3d 1099, 1142 (W.D. Mo. 2020); *see also* Backer Law Firm v. Costco Wholesale Corp., 321 F.R.D. 343, 349 (W.D. Mo. 2017) (holding typicality was satisfied where the same course of conduct in the defendant’s transmitting unsolicited fax advertisements implicated the same legal theories and factual assessments under the TCPA at issue for all members of the proposed class, despite defendants unsupported claim that many of the fax recipients consented to receiving the faxes). Here, Smith alleges that neither he nor the class members consented to the ringless voicemails, making him a typical class member for purposes of the alleged TCPA violation. *See Vincent*, 570 S.W.3d at 47. Given the admonition that a court should err in favor of certification of a class, we are not persuaded that the circuit court abused its discretion by acting in an illogical, arbitrary, or unreasonable manner when deciding the class satisfied the typicality requirement. *See Frank*, 577 S.W.3d at 166–67 (internal citation omitted). Point One is denied.

B. Point Two—Common Questions Predominate under Rule 52.08(b)(3)

Point Two challenges the circuit court’s order certifying the class with a claim that the individual issues relevant to Smith and other class members predominate over common issues shared by them.

Rule 52.08(b)(3) provides that an action may be maintained as a class action if “the court finds that questions of law or fact common to members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.” “The common-question-predominance requirement of Rule 52.08(b)(3) is far more demanding than the commonality prerequisite of Rule 52.08(a)(2).” Dale, 204 S.W.3d at 175 (citing Craft v. Philip Morris Co., Inc., 190 S.W.3d 368, 381 (Mo. App. E.D. 2005)). “The common-question-predominance requirement ‘tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.’” Id. (quoting Craft, 190 S.W.3d at 382). “[T]he fundamental question is whether the group aspiring to class status is seeking to remedy a common legal grievance[,]” and the answer “is based on the nature of the evidence that will suffice to resolve the legal question.” Id. (internal quotations omitted).

Here, the circuit court logically and properly found that the proposed class met the common-question-predominance requirement of Rule 52.08(b)(3) *because every member of the class, consisting of the owners of the 3,769 phone numbers on the Manifest, has the same TCPA claim*. Specifically, every class member alleges that Ford undertook to cause ringless voicemails to be delivered to their phone numbers during the relevant timeframe without their prior express written consent. We struggle to understand how these identical claims could fail to meet the common-question-predominance requirement of Rule 52.08(b)(3). Ford maintains on appeal that other individuals on the Manifest may have been mistakenly identified like Smith, thereby requiring minitrials on each individual associated with the phone numbers on the Manifest such that a class action is neither efficient, economical, nor appropriate. We are not persuaded.

We agree with the circuit court that the evidence of cellphone ownership, lack of consent, and receipt of the ringless voicemails during the relevant timeframe presents an overriding and compelling common question of recovery under the TCPA, which predominates over individual issues, such as where the cellphone owner resides or under what name the phone number is listed on the Manifest. See id. at 177 (“[T]he fact that some issues may require individualized fact-finding does not prevent the satisfaction of the common-question-predominance question.”); see also Karen S. Little, L.L.C. v. Drury Inns, Inc., 306 S.W.3d 577, 582 (Mo. App. E.D. 2010) (per curiam) (rejecting the argument in a TCPA case involving unsolicited fax advertisements that predominance was not satisfied because individualized inquiries would need to be made to determine whether each of the 8,000 class members had an established business relationship with the defendant where the predominating issue was whether the defendant’s conduct violated the TCPA). Although Ford suggests that it may have varying defenses to the claims of different plaintiffs depending on the individuals associated with the phone numbers on the Manifest at the relevant timeframe, the general rule is that “the fact that a defense may arise and may affect different class members differently does not compel a finding that individual issues predominate over common ones.” See Vincent, 570 S.W.3d at 48 n.2 (quoting Bridging Cmty. Inc. v. Top Flite Fin. Inc., 843 F.3d 1119, 1125 (6th Cir. 2016)).

Further, Ford’s reliance on a case out of the United States District Court for the Southern District of Illinois involving a casino’s prerecorded calls to its customer loyalty program members is misplaced and provides no guidance in this matter. In that case, the predominant issue was not the defendant’s common course of conduct in making the telephone calls in violation of the TCPA, but whether the specific calls were made to statutorily-protected individuals. See Vigus v. Southern Illinois Riverboat/Casino Cruises, Inc. 274 F.R.D. 229, 237–

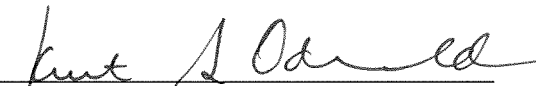
38 (S.D. Ill. 2011). Vigus involved individualized consideration of the critical element of consent, which was called into question by the proposed class members' membership in a customer loyalty program that arguably provided consent for the prerecorded calls. See id. Focusing on that and other unique facts pertaining to the plaintiff's deficient pleadings, Vigus distinguished the matter before it from cases in which a defendant contracted with a marketing vendor to cold-call residential numbers, as "[i]n such a case, there is a likelihood that a great majority of the telephone call recipients would, like [the plaintiff], have causes of action under the TCPA because there would be little basis to believe they had given their express consent to be called on their residential telephone lines." Id. at 234–35. The record before us makes clear that the purpose of the Manifest, a list of 3,769 proposed plaintiffs, was connected to a contract with DMG to make ringless voicemails to cellphones for marketing purposes, *with no evidence in the record suggesting prior consent to contact by any person whose phone number appeared on the Manifest*. The predominant common question in this litigation is whether Ford's conduct led to the placement of ringless voicemails to those phone numbers listed on the Manifest in violation of the TCPA. The issues identified by Ford that may later prove some variance between the individuals associated with the phone numbers on the Manifest during May 2019 may be relevant to the ability of some individuals to recover, but does not so undermine the predominant common question of this litigation so as to preclude class certification. See Dale, 204 S.W.3d at 177 (citing Craft, 190 S.W.3d at 377) ("In determining whether a class action is appropriate, the question is not whether the plaintiff can make a submissible case or prevail at trial, but whether the requirements for class certification have been satisfied.").

Ford's speculation as to potential variations on some individual facts and party defenses does not meet its burden of proving circuit court error, because the predominant common issue

presented in this litigation is the central legal question of whether the owners of the phone numbers on the Manifest during the relevant timeframe consented to receive the ringless voicemails. See Vincent, 570 S.W.3d at 47. Accordingly, we are not persuaded the circuit court's certification of the class lacked careful consideration, went against the logic of the circumstances, or was so arbitrary and unreasonable as to constitute an abuse of its discretion. See id. at 46. Point Two is denied.

Conclusion

The judgment of the circuit court is affirmed.


KURT S. ODENWALD, Judge

Sherri B. Sullivan, C.J., concurs.
Kelly C. Broniec, J., concurs.