

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**HHS TECHNOLOGY GROUP HOLDINGS, LLC., et al., Respondents,
v.
STATE OF MISSOURI, Appellant.**

DOCKET NUMBER WD86036 (Consolidated with WD86055)

DATE: January 14, 2025

Appeal From:

The Circuit Court of Cole County, Missouri
The Honorable Jon E. Beetem, Judge

Appellate Judges:

Division Four: Anthony Rex Gabbert, Chief Judge, Presiding, Karen King Mitchell,
Judge, and Alisha D. O'Hara, Special Judge

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MISSOURI APPELLATE COURT OPINION SUMMARY

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v.

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Before Division Four Judges: Anthony Rex Gabbert, Chief Judge, Presiding, Karen King Mitchell, Judge, and Alisha D. O'Hara, Special Judge

The State of Missouri appeals from a judgment in favor of EngagePoint, Inc., and HHS Technology Group Holdings, LLC, collectively EngagePoint, arising from a contract dispute involving the Missouri Medicaid Eligibility Determination and Enrollment System. The State raises four points on appeal. First, the State argues the trial court erred in awarding, following a jury trial, \$18,945,341 to EngagePoint for extra work/constructive change because such payment violated the Missouri Constitution. Second, the State asserts the court erred in awarding prejudgment interest to EngagePoint because both the contract and § 408.020, RSMo, barred prejudgment interest. Third, the State contends the trial court erred in entering judgment for EngagePoint on the State's breach of contract claim because the jury instructions for that claim violated the parties' force majeure clause. Fourth, the State argues the trial court erred in entering a directed verdict for EngagePoint on its claim for holdbacks because that decision violated the terms of the parties' contract. Finding no error, we affirm.

AFFIRMED.

Division Four holds:

1. A multifarious point relied on preserves nothing for appellate review. However, we have discretion to review non-compliant briefs *ex gratia* when the argument is readily understandable. We prefer to do that where, as here, we can decipher the argument without becoming an advocate for the appellant.

2. Under the extra work doctrine, a contractor may claim extra compensation when the contractor is subject to increased expense (i) by the negligence of the State, (ii) for extra work not called for by the parties' contract, and/or (iii) due entirely to the conduct of the State.

3. Constructive change occurs when the State provides defective specifications, and, as a result, the contractor is required to perform additional work.

4. Except in circumstances not applicable here, allegations of error in a jury-tried case must be included in a motion for new trial in order to be preserved for appellate review. Here, the State failed to preserve its constitutional challenge to the extra work doctrine because the argument made by the State on appeal differs from the argument raised in the State's motion for new trial.

5. Only a contemporaneous objection preserves a challenge to the form of the verdict. Here, Verdict Form A permitted the jury to award damages under either the extra work doctrine or the constructive change doctrine. The State did not object to Verdict Form A during the instruction conference, at case submission, or before the jury was discharged. By failing to raise a timely objection to Verdict Form A, the State waived any objection it might have had to submitting the two theories under a single verdict form.

6. Thus, to prevail on its extra work/constructive change argument, the State would have to demonstrate that *both* the extra work and the constructive change claims/instructions were invalid, as *either* could have formed the basis of the verdict. But the State cannot demonstrate the extra work doctrine was invalid because the State did not preserve its challenge to that doctrine. Thus, the State's challenge to the extra work/constructive change judgment fails.

7. Prejudgment interest can be based only on either statute [here § 408.020] or contract.

8. Under § 408.020, prejudgment interest may be ordered only where the claim is either liquidated, meaning fixed and determined, or readily ascertainable by computation or recognized standards. Awards of prejudgment interest are not discretionary; if § 408.020 applies, the court must award the interest.

9. Complaints about interest, not raised in the motion for new trial, are not preserved for appellate review. Here, the State failed to preserve its argument under § 408.020 that damages were unliquidated because the State did not raise that argument in its post-trial motion.

10. We review questions regarding prejudgment interest *de novo* because prejudgment interest is primarily a question of statutory interpretation and application to undisputed facts.

11. When interpreting a contract, we must determine the intent of the parties. To do so, we read the terms of contract as a whole and give them their natural and ordinary meaning.

12. Read in the context of the parties' contract, the reference to "interest" does not preclude prejudgment interest when such interest is otherwise authorized by § 408.020. Instead, the reference was to interest EngagePoint might have been charged by third parties performing work for EngagePoint under the contract.

13. Under Rule 70.03, a party may not assign as error the giving or failure to give an instruction unless that party specifically objects to the instruction before the jury retires to consider its verdict.

14. The State failed to properly preserve its point regarding the parties' force majeure clause because the State's objection did not give the trial court a clear, distinct idea of the basis for the objection or the alternate language requested. Moreover, the objection at trial was based on sufficiency of the evidence to support the instruction and not on any contradiction between the instructions and the requirements of the force majeure provision, which is what the State argues on appeal.

15. In reviewing the grant of a motion for directed verdict, we must determine whether the plaintiff made a submissible case, which is a question of law subject to *de novo* review.

16. The trial court did not err in entering a directed verdict for EngagePoint on its claim for holdbacks because the plain language of the contract stated that, when the State terminates the contract for convenience, EngagePoint is entitled to payment for work delivered to and accepted by the State.

Opinion by: Karen King Mitchell, Judge

January 14, 2025

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