IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

CONNIE HAWORTH,	)	
	)	
Respondent,	)	
	)	
v.	)	WD87623
	)	
GUEST SERVICES, INC., ET AL.,	)	Opinion filed: November 25, 2025
	)	
Appellants.	)	

APPEAL FROM THE CIRCUIT COURT OF
JACKSON COUNTY, MISSOURI
THE HONORABLE JAMES F. KANATZAR, JUDGE

Before Division One: Janet Sutton, Presiding Judge,
Gary D. Witt , Judge and W. Douglas Thomson, Judge

Guest Services, Inc., St. Anthony's, LLC, and Mark Ledom (collectively the "Appellants") appeal from the trial court's order denying each of their Motions to Dismiss or Stay the Proceedings and Compel Arbitration ("Motions to Compel") on a former employee, Connie Haworth's, proceedings against them. Appellants claim the trial court erred in denying their Motions to Compel because the parties entered into a legally binding arbitration agreement. Primarily, the parties dispute whether the contractual element of mutual assent was satisfied. We affirm.

Factual and Procedural History

St. Anthony's Senior Living is a senior living community owned by St. Anthony's, LLC and managed by Guest Services. Haworth was employed as the Executive Director of St. Anthony's Senior Living from June 1, 2020 to January 11, 2022. Mark Ledom is a managing member of St. Anthony's, LLC.[1]

On June 8, 2020, one week after Haworth began her employment, the employee experience manager ("the Manager") for Guest Services began Haworth's employee onboarding process by launching Haworth's online portal. The Manager's sworn declaration stated, "[e]mployees are given a unique username and password to access the . . . portal, and only the employee may use that username and password to access the portal." Employees use this portal to complete various onboarding tasks, including electronically executing documents. As part of the onboarding process, Guest Services alleges that all employees are presented with an Alternative Dispute Resolution Agreement (the "Agreement") which requires that all employment related disputes between the parties be submitted to arbitration. The Agreement at issue in this case contains an electronic

[1] The instant lawsuit stems from Haworth's allegations that Ledom sexually assaulted her on various occasions throughout her employment. As a result, Haworth filed a Charge of Discrimination with the Missouri Commission on Human Rights ("MCHR"). The MCHR issued her a right-to-sue letter. Accordingly, Haworth filed a petition on December 28, 2023 in the Circuit Court of Jackson County against the Appellants alleging counts of (I) discrimination for exercise of workers compensation rights, (II) sex discrimination, (III) age discrimination, (IV) retaliation, (V) assault, (VI) battery, and (VII) defamation. Counts I-IV are against Guest Services and St. Anthony's, LLC, Counts V-VI are against Ledom, and Count VII is against all three Appellants. The facts of the underlying lawsuit are not at issue in this appeal.

signature of the name Connie Haworth, timestamped at 10:38 a.m., June 8, 2020. Guest Services[2] did not execute the Agreement and no signature line was provided for them to do so. Instead the Agreement states, "This Agreement is agreed to by Guest Services, Inc."

The Manager later submitted a sworn affidavit stating that, after logging into the portal, employees have the option to view the Agreement in full before selecting the "sign" button. Once selecting "sign" employees are again prompted to input their credentials. The portal warns employees that after they input their credentials, the form will be electronically signed as it appears. Employees must then select the "submit" button. After selecting "submit," employees can view the executed agreement with their timestamped electronic signature. The affidavit does not provide information as to whether such employee is the only person who may generally access the portal. Later, a user record modification log was submitted evidencing that others accessed Haworth's portal. Additional facts regarding the online portal and contents of the Agreement will be provided as relevant in the analysis.

Each of the Appellants filed a motion to compel arbitration and thoroughly briefed the issue in the trial court. On November 1, 2024 the trial court held a hearing and entertained oral argument from all parties. The trial court

[2] The only parties mentioned in the Agreement are Guest Services and Haworth. Guest Services is defined in the Agreement to mean, "Guest Services, Inc. and all its affiliates and subsidiaries." One of the issues presented to the trial court was whether the Agreement applies to St. Anthony's, LLC and Ledom. The trial court did not decide this issue and it is not relevant to this appeal. Thus, we express no opinion on the matter.

subsequently issued a two-page order denying the Motions to Compel. This appeal follows.[3] In their sole point on appeal, Appellants argue the denial was in err because the parties entered into a "legally binding [Agreement] in that the [Agreement] was supported by offer, acceptance, and consideration."[4]

Standard of Review

"When determining whether it is appropriate to compel arbitration, the trial court 'must determine whether a valid arbitration agreement exists and, if so, whether the specific dispute falls within the scope of the arbitration agreement.'" *Nelson Trucking, LLC v. K&M Translogic, LLC*, 696 S.W.3d 407, 416 (Mo. App. W.D. 2024) (quoting *Ellis v. JF Enters., LLC*, 482 S.W.3d 417, 419 (Mo. banc. 2016)). "The standard governing a motion to compel arbitration depends on whether there is a factual dispute regarding the existence of an arbitration agreement purporting to bind the nonmoving party with respect to the claims being asserted." *Karlin v. UATP Springfield, LLC*, 706 S.W.3d 810, 814 (Mo. banc. 2025) (citing *Nitro Distrib., Inc. v. Dunn*, 194 S.W.3d 339, 352 (Mo. banc 2006); and section 435.355.1, RSMo 2016).[5] "The denial of a motion to compel

[3] "If the circuit court overrules a motion to compel, the moving party has a right to immediate appeal under section 435.440.1, RSMo 2016." *Karlin v. UATP Springfield, LLC*, 706 S.W.3d 810, 814 (Mo. banc. 2025).

[4] Initially we note that Appellants' point relied on is merely an abstract statement of law. As our court noted when faced with a substantially similar point relied on, "A point relied on which does not state why the legal reasons support the claim of reversible error, but instead sets out an abstract statement of law, is deficient [under Rule 84.04(d)(4)] and preserves nothing for appeal." *Abdiana Props., Inc. v. Bengtson*, 575 S.W.3d 754, 760 n.4 (Mo. App. W.D. 2019) (citation omitted). However, "[b]ecause we can determine the actual claim of error and the basis for it in the argument, we review *ex gratia*." *Id.*

[5] All statutory references are to RSMo 2016, as supplemented, unless otherwise noted.

arbitration, absent any factual disputes between the parties, is reviewed *de novo*." *Harris v. Volt Mgmt. Corp.*, 625 S.W.3d 468, 473 (Mo. App. E.D. 2021) (citing *Theroff v. Dollar Tree Stores, Inc.*, 591 S.W.3d 432, 436 (Mo. banc. 2020)).

"However, issues relating to the existence of an arbitration agreement are factual and require our deference to the trial court's findings." *Trunnel v. Mo. Higher Educ. Loan Auth.*, 635 S.W.3d 193, 197 (Mo. App. W.D. 2021) (quoting *Miller v. Securitas Sec. Servs. USA Inc.*, 581 S.W.3d 723, 728 (Mo. App. W.D. 2019)). "Thus, our review of the trial court's 'determination as to the existence of an agreement itself is analogous to that in a court-tried case.'" *Id.* (quoting *Theroff*, 591 S.W.3d at 436).

> As such, in an appeal from a [trial] court's order overruling a motion to compel arbitration when there is a dispute as to whether the arbitration agreement exists, the [trial] court's judgment will be affirmed 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.

Theroff, 591 S.W.3d at 436 (citing *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976)).[6]

[6] At oral argument, counsel for Guest Services referred us to the recently handed down opinion of the Missouri Supreme Court, *Maune v. Raichle*, No. SC100942, 2025 WL 3088181, at *2 n.6 (Mo. banc Nov. 4, 2025) (as of the date of our opinion here, final mandate has not been entered). There, the Court simply reaffirmed that "[a] more deferential standard of review applies when the party opposing arbitration denies the factual existence of the arbitration agreement." *Id.* It noted the deferential standard "extends no further than the facts in *Theroff*. *Id.* The Court then distinguished the case before it from *Theroff* because in the case at hand there was no dispute about whether the arbitration agreement was signed, the only issue before the Court was "whom those signatures bind and whether the Estate's claims fall within the scope of the arbitration agreement." *Id.* Here, as discussed below, Haworth does dispute signing the Agreement and thus *Theroff* is controlling.

As an initial matter, the parties dispute which of these two standards applies. The Appellants assert that this case is governed solely by *de novo* review. They argue that they have "presented only legal issues for this Court to review—not factual ones[,]" and that Haworth has not challenged the existence of a valid and enforceable arbitration agreement. On the other hand, Haworth maintains that this case presents "factual disputes regarding the existence of an arbitration agreement," thus the *Murphy* standard governs. As explained below, each issue presented in this appeal turns on the threshold question of whether an arbitration agreement actually exists between the parties. These issues are factual and warrant a *Murphy* standard of review. Thus, the "outcome of this case turns on the [trial] court's factfinding role . . . . When the parties challenge facts relevant to a particular issue, as they did here, this Court will defer to the [trial] court's assessment of the evidence." *Theroff*, 591 S.W.3d at 437 (citing *White v. Dir. of Revenue*, 321 S.W.3d 298, 308 (Mo. banc 2010)). "[E]ven where the trial court's decision was based solely on the records, we defer to the trial court as the finder of fact in determining whether there is substantial evidence to support the judgment and whether the judgment is against the weight of the evidence." *Greene v. All. Auto., Inc.*, 435 S.W.3d 646, 649 (Mo. App. W.D. 2014) (quoting *Mapes v. Dir. of Revenue*, 361 S.W.3d 29, 36 (Mo. App. W.D. 2011)). "[T]he trier of fact has the right to disbelieve evidence, even when it is not contradicted." *Trunnel*, 635 S.W.3d at 199 (quoting *Baier v. Darden Rests.*, 420 S.W.3d 733, 737 (Mo. App. W.D. 2014)).

Analysis

"Because arbitration is a matter of contract, parties will be compelled to arbitrate their claims only if an alleged arbitration agreement satisfies the essential elements of a valid contract." *EM Med., LLC v. Stimwave LLC*, 626 S.W.3d 899, 907 (Mo. App. E.D. 2021) (citation omitted). "Although the Federal Arbitration Act [(FAA)] is to be applied when enforcing a contract that invokes its provisions, Missouri contract law applies to determine whether the parties have entered a valid agreement to arbitrate." *Id.* (internal quotation marks and citation omitted); *see Frye v. Speedway Chevrolet Cadillac*, 321 S.W.3d 429, 436 n.12 (Mo. App. W.D. 2010) ("Both the FAA and the [Missouri Uniform Arbitration Act (MUAA)] presume, in the first instance, the presence of a legally enforceable contract to arbitrate.").

"The essential elements of any contract, including one for arbitration, are 'offer, acceptance, and bargained for consideration.'" *Baker v. Bristol Care, Inc.*, 450 S.W.3d 770, 774 (Mo. banc. 2014) (quoting *Johnson v. McDonnell Douglas Corp.*, 745 S.W.2d 661, 662 (Mo. banc 1988)). "The elements of offer and acceptance require there to be a mutual agreement, i.e., a meeting of the minds, between the contracting parties, which means the parties meet upon and assent to the same thing, in the same sense, and at the same time." *EM Med.,* 626 S.W.3d at 907 (citing *Miller*, 581 S.W.3d at 729; and *Kunzie v. Jack-In-The-Box, Inc.*, 330 S.W.3d 476, 483-84 (Mo. App. E.D. 2010)). "A meeting of the minds occurs when there is a definite offer and unequivocal acceptance." *Trunnel*, 635 S.W.3d at 198-

199 (quoting *Miller*, 581 S.W.3d at 729). "Whether there exists mutual assent sufficient to form a valid contract is dependent upon the objective intentions of the contracting parties, which are determined by reviewing the parties' words and conduct." *EM Med.,* 626 S.W.3d at 907. Thus, "[w]hether there was a meeting of the minds is a question of fact for the trial court to decide." *Trunnel*, 635 S.W.3d at 199 (quoting *Miller*, 581 S.W.3d at 729).

Here, the parties do not dispute that Guest Services presented Haworth with a definite offer to arbitrate employment-related disputes. Instead, this case hinges on the concept of mutual assent. In the trial court, Haworth asserted that neither party assented to the terms of the Agreement. The trial court found that the Agreement proposed a bilateral contract. However, it was "not convinced" either party electronically signed the Agreement and thus denied the Motions to Compel. It noted that, by a preponderance of evidence, Guest Services failed to establish that "the parties intended to enter into the [Agreement]" and expressly found "the parties did not mutually assent to the [Agreement]." On appeal, the Appellants likewise focus on two main issues, arguing that (1) Haworth "accepted the Alternative Dispute Resolution Agreement through electronic means" and (2) that "Guest Services agreed to be bound by the [Agreement] to the same extent as [Haworth]."[7] Because the issue of Haworth's acceptance is dispositive of this

[7] Haworth argues the Appellants have failed to preserve their claim for review because it violates Rule 84.04(d) in that it is multifarious. She asserts that their singular point relied on challenges two distinct legal issues: whether Haworth signed the Agreement and whether Guest Services assented to the Agreement. However, Haworth fully addressed each claim raised. Likewise, we had no difficulty discerning Appellants'

appeal, and thus mutual assent was not proven, we do not address whether Guest Services assented to the Agreement.

Haworth's Acceptance of the Agreement

"The party seeking to compel arbitration has the burden of proving that existence by competent evidence." *Karlin*, 706 S.W.3d at 814 (citation omitted). "When courts discuss the burden of proof, there are two components: the burden of producing (or going forward with) evidence and the burden of persuasion." *Nicholson v. Surrey Vacation Resorts, Inc.*, 463 S.W.3d 358, 369 (Mo. App. S.D. 2015) (quoting *Kinzenbaw v. Dir. of Revenue*, 62 S.W.3d 49, 53 (Mo. banc 2001)). "The burden of [production] is a party's duty to introduce enough evidence on an issue to have the issue decided by the fact-finder[.]" *Annayeva v. SAB of TSD of St. Louis*, 597 S.W.3d 196, 200 n.8 (Mo. banc. 2020) (alteration in original) (quoting *Kinzenbaw*, 62 S.W.3d at 53 n.6). The burden of persuasion requires the movant "to convince the fact-finder to view the facts in a way that favors [them]." *Id.* (quoting *Krispy Kreme Doughnut Corp. v. Dir. of Revenue*, 488 S.W.3d 62, 67

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arguments. *See R.M. v. King*, 671 S.W.3d 394, 400 (Mo. App. W.D. 2023) (noting we prefer to decide appeals on the merits if they can be readily understood); *Acton v. Rahn*, 611 S.W.3d 897, 901-02 (Mo. App. W.D. 2020) ("The purpose of the briefing requirements regarding points relied on is to give notice to the party opponent of the precise matter which must be contended with and answered and to inform the court of the issues presented for resolution." (citation omitted)).

Haworth also alleges that the Appellants failed to challenge each independent legal basis for the trial court's order, thus the order must be affirmed. *See KDW Staffing, LLC v. Grove Constr., LLC*, 584 S.W.3d 833, 838 (Mo. App. W.D. 2019) ("Failure to challenge on appeal all articulated grounds for the court's ruling is fatal to the success of the appeal." (citation omitted)). Our reading of the trial court's order reveals that it focused solely on the issue of mutual assent. While Haworth argued at least four alternative bases existed under which the trial court could deny the Motions to Compel, nothing indicates the trial court considered them. Thus, we do not affirm on this basis.

(Mo. banc 2016)). "If the trier of fact does not believe the evidence of the party bearing the burden, it properly can find for the other party." *Baier*, 420 S.W.3d at 737 (internal quotation marks omitted) (quoting *Sneil, LLC v. Tybe Learning Ctr., Inc.*, 370 S.W.3d 562, 567 (Mo. banc 2012)). "Generally, the party not having the burden of proof on an issue need not offer *any* evidence concerning it." *Sneil, LLC*, 370 S.W.3d at 567 (quoting *White*, 321 S.W.3d at 305).

In the trial court, Guest Services presented three pieces of evidence in support of its motion to compel: (1) the Agreement itself, (2) the affidavit of the Manager for Guest Services ("First Affidavit"), and (3) the user record modification log for Haworth's onboarding portal. The Agreement contains an electronic signature bearing Haworth's name, timestamped at 10:38 a.m., June 8, 2020. The First Affidavit provides that, "As a condition of employment with Guest Services, employees are asked to sign a binding [Agreement], which requires that all employment related claims between the employee and Guest Services be submitted to binding arbitration." The Agreement was allegedly provided to Haworth through Guest Services' onboarding portal. The First Affidavit further states that, "Employees are given a unique username and password to access the [onboarding] portal, and only the employee may use that username and password to access the portal. A modification log records a time stamp each time a user (whether an administrator, manager, or employee) accesses the portal." Haworth's name first appeared on the modification log on June 8, 2020 at 10:45 a.m. The Appellants argue this evidence establishes Haworth assented to the Agreement by

electronically signing it through her onboarding portal which only she could access.[8]

Haworth countered this evidence in various ways. First, she pointed out that the evidence provided by Appellants shows she allegedly signed the Agreement *before* she ever accessed the portal through which the Agreement was provided to her. While the modification log shows that Haworth first accessed the portal on June 8, 2020 at 10:45 a.m., Haworth's signature on the Agreement is timestamped at 10:38 a.m. Guest Services replied that the First Affidavit contained a "scrivener's error" regarding the modification log and supplied the trial court with the affidavit of an executive of the onboarding portal software company ("Second Affidavit"). The Second Affidavit stated the "modification history log does not create a record of when an employee accesses, executes, or otherwise interacts with an onboarding document." Instead,

> Each time a user (administrator, manager, or employee) makes a modification to the User Record, the modification history log records a time stamp with the user's name, date and time the modification was made. Modifications to User Record include general information about users, such as a user's name and time zone, contact information, where the user falls in the organizational structure of his or her company, and the user's employment status information.

The significance of producing the modification log as it bears on the purported signing of the Agreement is, then, left in question. We also note that

[8] Whether the signature was electronically or manually created is not the issue. The efficacy of a signature is not affected solely because it is electronic. Section 432.230; *Mead v. Moloney Sec. Co.*, 274 S.W.3d 537, 543 (Mo. App. E.D. 2008) (failing to find support for the claim "that an electronic signature is invalid for purposes of forming a binding and enforceable arbitration agreement").

while Guest Services maintains that only the employee may access the portal, the modification log for Haworth's onboarding portal provided to the trial court contains entries bearing the names of several other individuals, both before and after Haworth purportedly signed the Agreement. And, the Second Affidavit itself states that persons other than the specific employee may access the user record. No evidence reconciled these apparently incongruent facts.[9] In short, the modification log does little to help Appellants meet their burden of proof and instead adds confusion to the factual issues. Indeed, Guest Services stated Haworth's "modification to her user record is unrelated to her execution of the Agreement."

Haworth also questioned the fact that the Agreement stated "your application for employment with Guest Services will not be considered until this agreement is signed by you[,]" yet the Agreement was allegedly signed one week after Haworth began her employment. The First Affidavit likewise describes the Agreement as a "condition of employment," with no explanation as to how or why it was signed late. Haworth's sworn affidavit further provides that she has "no recollection nor do I believe that I signed an arbitration agreement." For these reasons she argues the Appellants failed to establish her assent to the Agreement. We also note there was no evidence as to whether Haworth was made aware that an arbitration agreement was required as part of her hiring process.

[9] The evidence is inconsistent regarding the details of how the onboarding portal operates and who has access to what documents on the portal at any given time. This would affect the burden of persuasion required of the Appellants.

It was for the trial court to sort out these factual discrepancies, and "[trial] courts are free to believe any, all, or none of the evidence presented[.]" *ROH Farms, LLC v. Cook*, 572 S.W.3d 121, 125 (Mo. App. W.D. 2019) (quoting *Ivie v. Smith*, 439 S.W.3d 189, 200 (Mo. banc 2014)). With regard to the trial court's role in this regard, we find instructive the recent Missouri Supreme Court case, *Theroff v. Dollar Tree Stores, Inc.*, 591 S.W.3d 432 (Mo. banc. 2020). In *Theroff*, a legally blind employee challenged the existence of an arbitration agreement contained within her hiring paperwork and allegedly bearing her electronic signature. *Id.* at 435. The store's assistant manager verbally guided the employee through the electronic onboarding material but never mentioned the presence of an arbitration agreement. *Id.* The employee argued that she did not sign the agreement because she could not view or read it and did not authorize the assistant manager to accept the arbitration agreement. *Id.* at 436-37. The court found that, "[u]nlike the standard scenario in which there is no dispute about whether a party signed an arbitration agreement, when a party disputes signing, the court must first decide the existence of an agreement to arbitrate." *Id.* at 437. "[The employee's] argument that assent, or meeting of the minds, did not occur is a challenge to the agreement's existence, and existence of the agreement to arbitrate is a prerequisite to compelling arbitration." *Id.* at 438-49. The *Theroff* court noted that the trial court could have believed the employee, thus it deferred to the trial court's credibility assessments and affirmed the denial of the motion to compel. *Id.* at 439.

These principles are applicable here. The trial court was faced with the factual question of whether the electronic signature was inputted by Haworth. In turn, the trial court made the express factual finding that it was not convinced the parties signed the Agreement. After noting the intent of the parties is a question of fact, it found that Guest Services failed to establish the parties intended to enter the Agreement and that "the parties did not mutually assent to the [Agreement]." Thus, the trial court necessarily did not believe a contract existed between the parties. *See Theroff*, 591 S.W.3d at 438 ("The existence of a contract necessarily implies there has been a 'meeting of the minds' between the parties." (quoting *Arrowhead Contracting, Inc. v. M.H. Washington, LLC*, 243 S.W.3d 532, 535 (Mo. App. W.D. 2008))). These are factual findings related to the existence of an arbitration agreement to which we must defer. *See Trunnel*, 635 S.W.3d at 197. The trial court simply disbelieved Appellants' evidence, finding it did not meet its burden of persuasion.[10] While they have asked us to reweigh the evidence, this we will not do. *See Greene*, 435 S.W.3d at 649 ("While the record might have supported a contrary result, it is not our role to reweigh the evidence."). Considering the foregoing, the trial court reasonably concluded Haworth did not mutually assent to the Agreement.[11] Nothing suggests this finding "was not

[10] *Duncan v. TitleMax of Missouri, Inc.*, is also instructive. 607 S.W.3d 243 (Mo. App. W.D. 2020). There the court held the trial court was entitled to disbelieve the appellant's evidence that the plaintiff electronically signed the document containing an arbitration agreement based on conflicting affidavits. *Id.* at 249-50.

[11] Because we agree the trial court reasonably found mutual assent was lacking, we do not address Haworth's proffered alternative grounds for denying the Motions to

supported by substantial evidence, was against the weight of the evidence, or was the result of an erroneous application of the law." *Theroff*, 591 S.W.3d at 439.

The Need for an Evidentiary Hearing

Appellants argue in the alternative that if this Court finds factual issues are present and the record does not warrant reversal of the trial court's order, the case should be remanded for an evidentiary hearing regarding the parties' intent to be bound to the Agreement. In so arguing, Appellants rely on *Kunzie v. Jack-In-The-Box, Inc.*, 330 S.W.3d 476 (Mo. App. E.D. 2010).

Under the MUAA,[12]

> On application of a party showing an agreement described in section 435.350, and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall *proceed summarily* to the determination of the issue so raised and shall order arbitration if found for the moving party; otherwise, the application shall be denied.

Section 435.355(1) (emphasis added). "Proceed summarily" generally means "[w]ithout the usual formalities [and] without a jury." *Nitro Distrib., Inc*, 194 S.W.3d at 351 (alteration in original) (citations omitted). "Even so, where there are 'disputed factual issues [as to the agreement's existence], it is necessary to

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Compel. We also express no opinion regarding the separate contractual element of consideration.

[12] "While the FAA's substantive law applies in state courts, the procedural provisions of the FAA do not bind state courts unless the state procedures in some way defeat the rights granted by Congress." *Nitro Distrib., Inc. v. Dunn*, 194 S.W.3d 339, 351 (Mo. banc. 2006) (citation omitted). "Thus, this Court will look to the procedures set out in the MUAA rather than the FAA." *Id.*

conduct an evidentiary hearing.'" *Kunzie*, 330 S.W.3d at 481 (alteration in original) (quoting *Nitro Distrib.*, 194 S.W.3d at 351).

> Even in the absence of live testimony, the requirements of an evidentiary hearing are met if, (1) the trial court is provided with adequate materials and evidence with which to resolve any factual disputes; and (2) there is no allegation the parties were limited in [their] submission of the evidence by the trial court or that the trial court failed to consider any evidence presented by the parties.

EM Med., 626 S.W.3d at 906 (citing *Katz v. Anheuser-Busch, Inc.*, 347 S.W.3d 533, 546 (Mo. App. E.D. 2011); and *Kunzie*, 330 S.W.3d at 481 n.7).

Katz v. Anheuser-Busch, Inc., provides a succinct summary of *Kunzie*:

> In *Kunzie*, the trial court's judgment stemmed from its conclusion that an employee's acceptance of the terms of an arbitration agreement could be based solely on the employee's continued employment as a matter of law. Relying upon its understanding of the law at that time, the trial court intentionally did not consider any other evidence regarding the employee's acceptance of the policy, and relied solely upon its legal conclusion that the mere continuation of employment was sufficient to find acceptance under Missouri law. Given the trial court's limited review in *Kunzie*, we held that without the ascertainment of additional facts, the trial court was unable to determine the intent of the parties regarding the arbitration agreement.

347 S.W.3d at 546 (citations omitted). *Katz* ultimately concluded that "[w]hile the trial court here may not have conducted a testimonial evidentiary hearing, the record clearly demonstrates that the parties extensively briefed the issues, submitted evidence in the form of sworn affidavits, and participated in oral argument." *Id.* Both parties were permitted to introduce evidence and argue the facts it found important, thus the requirement of an evidentiary hearing was satisfied. *Id.*

Similarly, here, the parties extensively briefed the issue of mutual assent. Haworth first raised the issue of no assent in her response in opposition to defendants' motion to compel arbitration. Guest Services responded to these arguments in its reply thereto. St. Anthony's and Ledom incorporated these arguments in their briefing to the trial court as well. Both Haworth and Guest Services submitted affidavits and supportive exhibits on the issue. As relevant here, the trial court held a hearing on the limited issues of: "(1) whether [Haworth] assented to the arbitration agreement; (2) whether [Haworth] signed the arbitration agreement; [and] (3) whether Missouri or Maryland state law recognizes electronic signatures as evidence of assent and/or execution of a contract by a party." Haworth and Appellants were each allocated 30 minutes for oral argument. The trial court was thus "provided with adequate materials and evidence with which to resolve any factual disputes." *EM Med.*, 626 S.W.3d at 906 (citation omitted).

Further, there has been no allegation that the parties were limited in their submission of evidence or that the trial court did not consider all of the evidence before it. Appellants argue they had a witness available to testify on the issue of mutual assent. During the hearing, Guest Services told the trial court that "in the event your Honor wants to hear evidence," it had a witness available by Webex. The trial court responded, "I didn't anticipate any evidence," after which Guest Services made no objection, requested no offer of proof, or in any other manner asserted it desired to offer live witness testimony. Notably, the person available by

Webex was the Manager for Guest Services who had previously submitted the First Affidavit. Guest Services did not suggest that such potential witness would submit any new or different information than had already been provided. Accordingly, this is different from the situation in *Kunzie*, where the employer maintained it had a "plethora of evidence" available that the trial court didn't consider. While Appellants now argue the trial court was presented with an "incomplete record" regarding the issue of acceptance, they did nothing to inform the trial court or this Court how the record is incomplete or what additional information might be available.[13] The trial court's consideration of thorough briefing, sworn affidavits, exhibits, and oral argument satisfied the requirement of an evidentiary hearing. *See Katz*, 347 S.W.3d at 546.

Conclusion

Appellants' Point I is denied. The trial court's order denying the Motions to Compel is affirmed.



W. DOUGLAS THOMSON, JUDGE

All concur.

[13] Appellants also argue that while the trial court noted, "whether unsigned contracts are binding becomes a question of fact as to the intent of the parties[,]" it did not make any "findings of fact regarding the parties' intent." However, Appellants did not request that the trial court issue findings of fact. "A trial court is not obligated to make findings of fact unless a proper request for same is timely made by a party pursuant to Rule 73.01(c)." *Schutter v. Seibold*, 632 S.W.3d 820, 827 (Mo. App. W.D. 2021) (citation omitted).