In the
Missouri Court of Appeals
Western District

TYCON COMPANY, LLC AND CIERRA R. WILLIAMS,	)	
Appellants-Respondents,	)	**WD86810 consolidated with WD86829**
V.	)	**OPINION FILED: DECEMBER 2,2025**
FOREST E. TYSON, JR., ET AL,	)	
Respondents-Appellants.	)	

Appeal from the Circuit Court of Jackson County, Missouri
The Honorable Cory L. Atkins, Judge

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

Tycon Company, LLC ("Company")[1], and Cierra R. Williams (collectively "Appellants") and Forest E. Tyson, Jr. ("Junior") and Forest E. Tyson, Sr. ("Senior")[2] (collectively, "Respondents") cross-appeal the judgment of the Circuit Court of Jackson County, Missouri ("trial court"). On appeal, Appellants allege that the trial court erred in:

[1] Due to the similarity between the name of the Company "Tycon" and the name of the party "Tyson", to avoid confusion, we refer to the Appellant-Respondent as "Company".

[2] Senior has passed away since the trial in this case, and Junior, as personal representative of Senior's estate, is proceeding on Senior's behalf. Tonya Howell and the remaining entities who were also named as defendants in the underlying case did not file briefs or otherwise participate in this appeal and will not be discussed further, except as necessary to address the issues presented.

(1) issuing its judgment because the amount of damages the jury awarded to Senior in verdict form E was not supported by the evidence; (2) refusing to hold Junior and Senior in contempt of court for violating a preliminary injunction; (3) failing to compel a witness ("Witness")[3] to testify at trial; and (4) admitting the testimony of Junior's and Senior's expert witness ("Expert") at trial. Respondents allege that the trial court erred in refusing to amend the amended judgment in order to enter a single judgment on all competing claims between Company and the Respondents "for the balance due to the party with the larger judgment and to include an award of costs to [Respondents] as prevailing parties." We affirm the judgment of the trial court.

Factual and Procedural Background

The facts of this case are largely irrelevant for purposes of the legal issues raised in this appeal other than procedurally, but they will be briefly summarized here. In 2018, Respondents, father and son, owned Company, which was in the construction business performing primarily concrete work. Williams, who had known the Tyson family for years and had gone to school with Junior, began consulting for Company pursuant to a Personal Consulting and Services Agreement. In the late summer of 2018, Senior, who owned sixty percent of Company and wanted to retire, agreed to transfer his interest in the business to Williams. Junior was to retain his forty-percent ownership interest in Company and continue to help run the construction operation; Williams was to focus on financing and obtaining construction contracts for Company. In exchange for his interest

[3] Pursuant to Missouri Supreme Court Operating Rule 2.02(c)(3), we do not list the names of witnesses other than parties.

in Company, Senior was to receive a total payment of two million dollars--one million to be paid from Company, and the second million to be paid upon the sale of a development property owned by Tyson Summit/Faith Developers, an affiliate of Company. At some point, a document was executed making Williams a one-hundred-percent owner of Company; Junior denied having signed this document, but he submitted it to banks in an attempt to obtain financing for Company's operations.

Due to Junior's bad credit, Williams found it difficult to obtain the necessary financing for Company operations, and Senior went largely unpaid on the contractual obligations. Junior, however, continued to use Company equipment to work Company contracts, especially with the City of Kansas City ("City"), although he largely failed to deposit the funds received from City into Company's accounts. The working relationship between Williams and Junior deteriorated until June of 2019, when Williams sent Junior a cease-and-desist letter, terminating him as an employee of Company. Junior sent his own cease-and-desist letter to Williams. Williams and Company filed suit against Junior and Senior, and they filed counterclaims.

On November 14, 2019, the trial court purported to grant Appellants a preliminary injunction prohibiting Respondents from conducting business as Company or using Company property, but the order did not require a bond as prescribed by Rule 92.02 (d). Junior continued to use Company equipment to conduct business with Company customers, and Appellants filed a motion to hold Respondents in contempt for violating the injunction. The trial court overruled the motion for contempt and entered a new preliminary injunction, this time including a bond requirement.

In April of 2022, Appellants filed another motion for contempt. The trial court did not take up Appellants' motion but ordered that the motion would be heard during the trial of the equitable portions of the case, which was to occur after the jury trial on the monetary claims was concluded.

At the August 2022 jury trial, Appellants presented their evidence. Appellants sought to have Witness, a City employee, testify regarding City contracts with women- and minority-owned businesses, but Witness stated that she would not testify, despite having been subpoenaed. Appellants filed a motion for writ of body attachment, and the trial court granted the motion, but the court wanted to wait to give Witness an opportunity to present herself at trial. Witness did not appear, and Appellants rested, then told the trial court, "I may have prematurely rested. [Witness] had an opportunity to be here at nine o'clock, if I need to correct that on the record. I would like to check to see if she's here or if she's not." When it was evident that Witness was not present, the trial court asked Appellants' counsel, "[A]ny motions?" and counsel responded, "No, none, Your Honor." Appellants then moved for directed verdict, which was denied.

When Respondents presented their evidence, they called a witness to testify as an expert in digital evidence analysis. Appellants' counsel objected that Expert was not "qualified in this particular case to give any form of expert testimony as it pertains to computer forensics based on his qualifications, knowledge, skill, and experience." Respondents noted that Appellants had an opportunity to depose Expert and they did not do so. The trial court said:

> Here's the deal, I'm going to let him testify, and here's my rationale. I don't have a deposition transcript in front of me. A full on Daubert hearing I don't have the benefit of that, that was never requested. So I'm just shooting from the hip. Calling balls and strikes. I'm doing the best with the information that I have at this point in time. I'm going to let him testify. We'll thoughtfully consider any objections you have made during the course of that testimony.

Expert testified as to his knowledge and experience, and testified that he had given presentations on electronic evidence preservation and production analysis. After Expert testified as to his qualifications, Appellants' counsel again objected, stating, "Judge, I'm doing the same objections to the qualification of this witness based upon the questions that were asked. I still don't think that being a tech nerd, setting up an AV for your middle school. Not having a degree in any sort of computer science, isn't applicable to give an expert opinion in this case." The trial court overruled the objection, noting that the statute requires the expert, by knowledge, skill, experience, training, or education is qualified as an expert. The trial court noted that while this witness only had slight education in this field, he had "a ton of experience, a ton of skill". "To me he's established he knows more than an average juror about these issues." Expert was allowed to testify as part of Respondents' case.

The jury returned verdicts for both Appellants and Respondents and some for or against a single party. After the jury trial, the trial court held a series of hearings regarding the parties' equitable claims including whether the appointment of a receiver was necessary.

On April 25, 2023, the trial court entered a partial judgment denying the parties' various claims for equitable relief. On May 23, 2023, Appellants filed a motion for

judgment notwithstanding the verdict and, assuming that the motion for contempt had been denied, a motion for reconsideration of the motion for contempt and a motion for new trial. The motion asserted, relevant to this appeal, that the jury verdict was not supported by the evidence submitted at trial, but no specifics with regard to how they allege the verdict was not supported by the evidence were provided. Respondents' suggestions in opposition to Appellants' motion pointed out the lack of specifics and argued that the motion was insufficient.

On May 24, 2023, the trial court filed an Amended Partial Judgment as to Equitable relief, which included a more detailed explanation of its denial of the parties' equitable claims, including that the jury's verdicts afforded adequate legal remedies and put the parties in position to either liquidate Company or carry on its business.

On June 8, 2023, the trial court issued a complete judgment, condensing the jury's verdicts and the court's disposition of the equitable claims.

On July 10, 2023,[4] Respondents filed a motion to amend the June 8 judgment, requesting corrections to certain language and to set forth the interest rates to be applied for the various claims. The trial court held a hearing on both the Appellants' and Respondents' post-trial motions on August 28, 2023, and on September 7, 2023, the court issued another amended judgment. The September 7 judgment was based upon a joint submission by the parties, and, with several relatively minor changes, was otherwise consistent with the previous judgments.

[4] July 8, 2023, fell on a Saturday, so the July 10 post-trial motion was timely.

Despite having participated in both the hearing and the drafting of the September 7 judgment, both Appellants and Respondents filed subsequent motions to amend the judgment and/or for a new trial. Relevant to this appeal, Appellants' renewed motion for new trial alleged that the jury's verdict was not supported by the evidence in that the evidence established that Williams was 100-percent owner of Company, and not a sixty-percent owner as the jury found. The motion also alleged that the trial court erred in denying Appellants' motion for contempt. Respondents' motion sought to change the jury's damage awards, essentially to reflect a "net"[5] amount owed to Senior. The post-trial motions were denied, and this appeal follows.

Standard of Review

This court views evidence in the light most favorable to the jury's verdict and will not overturn the verdict unless there is a complete absence of probative fact. *Miller v. Levering Reg'l Health Care Ctr.*, 202 S.W.3d 614, 617 (Mo. App. E.D. 2006). We review a trial court's denial of a motion for contempt for abuse of discretion. *Kerr v. Jennings*, 886 S.W.2d 117, 126-27 (Mo. App. W.D. 1994). We review a court's decision regarding the admission of the testimony of witnesses for abuse of discretion. *J.A.A. v. A.D.A.*, 581 S.W.2d 889, 895 (Mo. App. E.D. 1979) (holding that the decision of when to issue a writ compelling a witness is within the sound discretion of the trial court); *Whitnell v. State*, 129 S.W.3d 409, 413 (Mo. App. E.D. 2004) (holding admission of expert opinion testimony is a matter within the discretion of the trial court). Questions of

[5] The term "net" was not used by Respondents in their motion or in this appeal. The term is this Court's to describe the essence of Respondents' requested relief.

law are reviewed *de novo*, and the form of the judgment is an issue of law. *Singleton v. Singleton*, 659 S.W.3d 336, 341 (Mo. banc 2023). However, any allegations of error in a civil case that were not presented to or expressly decided by the trial court shall not be considered on appeal. Rule 84.13(a).

Measure of Damages

Appellants' first point on appeal is that the trial court erred in refusing to grant a new trial in that the jury's award of $2,015,000 to Senior was not supported by the evidence. This argument was not preserved. Although Appellants included in their motion for new trial that the jury's verdict was not supported by the evidence, the argument was that the evidence established Williams as the 100-percent owner of Company instead of the sixty-percent share of ownership found by the jury. The trial court was never presented with Appellants' assertion that the *amount* of the damages was not supported by the evidence. As this issue was not presented to the trial court in the motion for new trial, we do not consider it on appeal. Rule 84.13(a). We also decline to review the issue for plain error. "Plain error review . . . rarely is granted in civil cases." *Mayes v. Saint Luke's Hosp. of Kansas City*, 430 S.W.3d 260, 269 (Mo. banc 2014). Although Appellants are correct that the condition precedent to Senior's receiving the second one million dollars (the development of the Tyson Summit property) had not yet occurred, there was evidence presented at the trial that Company owned Faith Developers, which was the owner of the Tyson Summit property. "In an action for breach of contract, damages may be measured by the loss of the benefit of the bargain." *U.S. Neurosurgical, Inc. v. Midwest Div.-RMC, LLC*, 303 S.W.3d 660, 667 (Mo. App.

W.D. 2010). A party who is the first to violate a contract may not claim the benefit of the contract by insistence of compliance with a condition precedent within the agreement. *ArtCraft Cabinet, Inc. v. Watajo, Inc.*, 540 S.W.2d 918, 926 (Mo. App. 1976). This agreement provided for Senior to transfer his ownership interest in Company in exchange for the payment of $2,000,000. Senior complied with his contractual obligations and transferred his ownership interest, but Appellants failed to pay the amounts owed under the contract. The jury awarded Senior appropriate damages for Appellants' breach. Accordingly, we find no manifest injustice or miscarriage of justice warranting plain error review. Rule 84.13(c).

Point I is denied.

Motion for Contempt

Appellants' second point on appeal is that the trial court erred in denying their motion for contempt. A court's denial of a motion for contempt is reviewed for abuse of discretion. *Kerr*, 886 S.W.2d at 126-27. In this case, we find no abuse of the trial court's discretion. The first preliminary injunction was arguably ineffective as no bond was imposed as prescribed by Rule 92.02(d), and the injunction was based upon the trial court's finding that Williams was likely to establish that she was the one-hundred-percent owner of Company. As the evidence was presented, that finding was called into doubt, and indeed, the jury found that Williams held only a sixty-percent ownership interest in Company, with Junior holding the other forty percent. The trial court had the jury's verdicts when it was asked to reconsider the motion for contempt, and it was not an abuse of the court's discretion to deny the motion. Finally, the September 7 judgment was

based on the proposed amended judgment submitted collectively by the parties. That judgment did not re-examine the motion for contempt, so Appellants presumably waived this issue.[6]

Point II is denied.

Failure to Compel Witness's Appearance

Appellants' third point on appeal is that the trial court erred in failing to compel the appearance of Witness. Appellants stipulated at argument on appeal that this issue was not preserved and is reviewable, if at all only for plain error. As stated above, Appellants sought to have Witness testify, and they served her with a subpoena. Witness, however, stated that she would not testify. The trial court granted Appellants' motion for writ of body attachment pursuant to section 491.150.[7] The trial court wanted to give Witness an opportunity to come to court and testify as ordered. Witness did not appear, and Appellants rested, then told the trial court, "I may have prematurely rested. [Witness] had an opportunity to be here at nine o'clock, if I need to correct that on the record. I would like to check to see if she's here or if she's not." When it was evident

[6] A transcript of the hearing in which post-trial motions were litigated and where the court requested the parties submit a proposed judgment is not part of the record on appeal, so while there is a possibility that the proposed judgment was subject to Appellants' argument on the contempt issue, Appellants do not make this argument. Further, we presume that when a party fails to include necessary transcripts or evidence to us on appeal the missing material does not support that party's argument. When exhibits necessary to the determination of a point on appeal are omitted from the record, "such evidentiary omissions will be taken as favorable to the trial court's ruling and unfavorable to the appeal." *City of Kansas City v. Cosic*, 540 S.W.3d 461, 464 (Mo. App. W.D. 2018).

[7] All statutory references are to the Revised Statutes of Missouri (2016) as updated by supplement.

that Witness was not present, the trial court asked Appellants' counsel, "[A]ny motions?" and counsel responded, "No, none, Your Honor."

Appellants did not ask the court to execute the writ of body attachment or stay the proceedings to allow the writ to be served, but rested their case without Witness's testimony. The trial court even went further to ask if they had "[A]ny motions?" and Appellants affirmatively represented that they were not asking for further relief. Accordingly, Appellants waived any claim of error as to this issue. *Rinehart v. Mo. Dep't of Corr.*, 669 S.W.3d 679, 685 (Mo. App. W.D. 2023) (When a party affirmatively indicates that it does not object to a trial court's action, it may be found to have "intentionally abandoned" the issue, waiving even plain-error review.). Moreover, Appellants did not include the absence of Witness's testimony in their motion for new trial, so the issue is not preserved and could, therefore, only be reviewed for plain error. *See State v. Putfark*, 651 S.W.3d 869, 880 (Mo. App. W.D. 2022) ("Including a claim of error in a motion for new trial is a requirement of preserving an issue for review" or the issue may only be reviewed for plain error.).

Point III is denied.

Respondents' Expert Testimony

Appellants' final point on appeal is that the trial court abused its discretion in allowing the testimony of Respondents' Expert. Appellants' also stipulated at argument on appeal that this issue was not preserved and is reviewable, if at all, only for plain error. *See id.* We decline to review this issue for plain error. The gist of Expert's testimony was that the signature page on the agreement making Williams one-hundred-percent

owner of Company was not authentic. There were some copies of the document with a notarization by notary Tonya Howell and some without a notarization. Tonya Howell, who was also a defendant in the underlying case, testified that she did not notarize the document. Therefore, Expert's testimony was consistent with other evidence. We thus find there was no manifest injustice or miscarriage of justice. *See* Rule 84.13(c).

Point IV is denied.

Respondents' Cross-Appeal

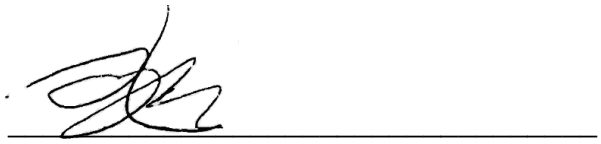
Respondents also raise one point on cross-appeal. They allege the trial court erred in denying their motion to amend the amended judgment to enter a "single judgment on the competing claims between Company and Defendants Tyson for the balance due to the party with the larger judgment." This claim suffers from the same fatal flaw as Appellants' claim regarding the proper measure of damages. Namely, the amended judgment of September 7, 2023, was based on a proposed judgment jointly submitted by the parties. Thus, any error was invited and not subject to review on appeal. *See G.H. v. Eli Lilly & Co.*, 412 S.W.3d 326, 332-33 (Mo. App. W.D. 2013) ("Under the invited error rule, a party is estopped from complaining of an error of his own creation and committed at his request."). In any event, we do not find the trial court's denial of the motion to be erroneous, as the jury's awards were not all for or against Appellants or Respondents collectively; some claims applied to only one party or solely to Company, which is owned by Appellant Williams (sixty percent) and Respondent Junior (forty percent), making a single net award inappropriate. It was also not error for the trial court not to

award costs to Respondents as "prevailing parties" as both Appellants and Respondents prevailed on certain claims.

Respondents' Point I is denied.

Conclusion

For all of the above-stated reasons, we affirm the judgment of the trial court.



Gary D. Witt, Judge

All concur