MISSOURI COURT OF APPEALS
WESTERN DISTRICT

CODY JOSEPH ENDERLE, GUARDIAN OF THE PERSON OF CHARLES FREDRICK ENDERLE, II, AN INCAPACITATED PERSON, AND CONSERVATOR OF THE ESTATE OF CHARLES FREDRICK ENDERLE, II, A DISABLED PERSON,	)	
Appellant,	)	
v.	)	**WD87646**
GERCKEN KELSEY, LLC AND RICHARD H. GERCKEN,	)	**Filed: December 16, 2025**
Respondents.	)	

Appeal from the Circuit Court of Clay County
The Honorable Timothy J. Flook, Judge

Before Division One: Gary D. Witt, P.J., and
Alok Ahuja and Karen King Mitchell, JJ.

Cody Enderle filed suit in the Circuit Court of Clay County in his capacity as guardian and conservator for his father, Charles Enderle. The suit named Richard Gercken and Gercken Kelsey L.L.C. as defendants. Except where the

context requires otherwise, we refer to the Enderles collectively as "Enderle," and to Gercken and the L.L.C. collectively as "Gercken."

Enderle's lawsuit sought to set aside a transaction in which Charles Enderle sold a piece of real property in Kansas City to Gercken. Enderle asserted that the transaction was void because Charles Enderle lacked the mental capacity to enter into it; because Richard Gercken exerted undue influence over Charles Enderle; and because the terms of the transaction were unconscionable. Gercken asserted numerous counterclaims against Enderle, seeking to quiet title to the property in the L.L.C.'s name, and to recover monies allegedly owed by Enderle in connection with the real-estate transaction.

The circuit court held a jury trial on Enderle's lack of capacity and undue influence claims. At the close of the evidence, the circuit court directed a verdict for Gercken on the undue influence claim. The jury then returned a verdict for Gercken on Enderle's claim that he lacked mental capacity to enter into the real-estate transaction. The circuit court's final judgment also rejected Enderle's unconscionability claim, and awarded Gercken relief on his counterclaims (including substantial attorney's fees).

Enderle appeals. We affirm.

Factual Background

Charles Enderle and Richard Gercken knew each other in junior high school and high school, but lost touch after graduation and did not speak for decades. In March 2018, Enderle and Gercken reconnected at a mutual friend's retirement party.

Enderle learned that Gercken was a real-estate developer. Enderle discussed selling his home to Gercken; the home was located on a five-acre parcel of property on North Troost Avenue in Kansas City (the "Property"). Enderle suggested that Gercken could buy the Property and sub-divide it into multiple residential lots. At the time Gercken was not interested.

Enderle later contacted Gercken via text message, and reaffirmed his interest in selling the Property to Gercken. Enderle and Gercken discussed a possible purchase of the Property over a couple of months in mid-2018.

Enderle and Gercken met with Gercken's Attorney to discuss Gercken's potential purchase of the Property.[1] Attorney did not recall any concerns about Enderle's ability to understand the discussion. Sometime after the meeting Attorney drafted a purchase and sale agreement, which Gercken forwarded to Enderle on June 8, 2018.

On July 2, 2018, Enderle and Gercken executed their original purchase and sale agreement. The 2018 Agreement provided that Enderle would sell the Property to a limited liability company created by Gercken. Gercken paid Enderle a $20,000 earnest money deposit when the 2018 Agreement was executed. The Agreement provided that Gercken had one year to secure financing for a contemplated development project; if he failed to do so, Enderle would refund the earnest money.

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[1] Pursuant to § 509.520.1(5), RSMo and Supreme Court Operating Rule 2.02(c), we do not provide the names of any non-party witnesses in this opinion.

The 2018 Agreement expired in July of 2019. Although Enderle was required to refund the $20,000 earnest-money deposit, he was unable to do so. Enderle and Gercken continued to discuss a potential sale of the Property.

In July 2019 Enderle asked Gercken for a personal loan. Gercken loaned Enderle $7,000 on July 31, 2019. Enderle promised to repay Gercken the $7,000 principal, plus $3,000 in interest, by October 1, 2019. The note required Enderle to pay Gercken $500 for each month that the loan remained unpaid after it came due. The July 2019 Note was also secured by a deed of trust encumbering the Property. Enderle did not repay the July 2019 loan.

In mid-to-late 2019 Enderle entered into consecutive on-line relationships with two women. The women each claimed that they needed Enderle's help to secure large sums of money to which they were entitled (including suitcases filled with cash, and large quantities of diamonds). Although Enderle had never met either woman, and despite the extravagance of their claims, Enderle sent money to both of them, and to persons purportedly acting on the women's behalf. There was conflicting testimony as to whether Gercken was aware of Enderle's on-line relationships prior to the November 2019 transaction at the center of this litigation.

Enderle continued to communicate with Gercken about a possible sale of the Property in the latter half of 2019. A new agreement was reached and Attorney drafted a new sale agreement, deed, and promissory notes. Gercken and Enderle communicated regularly about their new agreement over the course of September, October, and November 2019.

Enderle and Gercken discussed executing documents memorializing their new real-estate agreement on November 12, 2019. Enderle had surgery scheduled to remove part of a lung at 2:15 p.m. on the same day. Although Enderle is diabetic, he was required to fast on November 12 until the surgery had been performed.

Enderle's surgeon contacted him sometime in the late morning of November 12. The surgeon urged Enderle to move up the time of his surgery and to come as quickly as possible. That same morning, Enderle was also contacted multiple times by Gercken. According to Enderle, Gercken urged him to execute the documents reflecting the new real-estate-purchase agreement before having his surgery. At trial, Enderle testified that Gercken "said that everything was, like, scheduled, . . . the hospital's in Liberty, and so's the title company, and he said, well, you just come through, sign the papers, and then go to your surgery that morning, on my way [e]n route."

Sometime before noon on November 12, 2019, Enderle and Gercken met at a title company in Liberty to execute documents associated with their new agreement for sale of the Property. Gercken, Enderle, Attorney, and a notary were present. Enderle stated that, at the title company,

> nothing was really discussed. There was, like, you know, stacks of paper, and you know, everything was kind of a hurry up deal, and things were just shoved in front of me, sign, sign, sign, sign, and that's pretty much –
>
> Q. And did you do that?
>
> A. Yes. I had to get out of there.

Although Enderle testified that *Gercken* pushed him to sign the papers before his surgery, Gercken testified that the meeting occurred when it did because *Enderle* wanted the documents executed before his surgery:

> Q. Did Mr. Enderle indicate to you in any way that this isn't a transaction that he wanted done before he went on to his medical appointment?
>
> A. He actually indicated to me that he was relieved to have it done, and the whole reason we met and signed the documents the day we did because he was going for medical treatment, and he wanted it done before that.

Attorney likewise testified at trial that "[Enderle] indicated he was grateful to get the transaction documents signed because he was going in for some medical treatment."

Enderle and Gercken executed five principal documents on the morning of November 12, 2019: (1) a purchase and sale agreement; (2) a promissory note whereby Gercken Properties, L.L.C. promised to pay Enderle $200,000 after four years to finance the purchase; (3) a special warranty deed signed by Enderle conveying the Property to Gercken Properties, L.L.C.; (4) a residential lease agreement, whereby Gercken Properties, L.L.C. leased Enderle's home back to Enderle for four years; and (5) a four-year promissory note under which Gercken loaned $50,000 to Enderle.

The lease allowed Enderle to remain on the Property for the four-year term of the financing arrangements. The lease specified a rental rate of $1.00 per month "plus expenses." The lease provided that the L.L.C. would maintain the structural elements of the residence located on the Property, but that Enderle would otherwise maintain the Property, and pay taxes and insurance.

The $50,000 note executed by Enderle was intended in part to address the $20,000 earnest-money deposit from the unconsummated 2018 Agreement for sale of the Property, which Enderle had failed to refund; the new note also paid off the $10,000 Enderle owed Gercken in connection with the July 2019 note. The November 2019 note also permitted Enderle to borrow an additional $20,000 from Gercken.

The $200,000 promissory note executed by Gercken Kelsey L.L.C. provided that the L.L.C. could convey the Property back to Enderle at any time, and terminate its obligations under the note:

> [A]ll sums due hereunder may be offset by [the L.L.C.] by re-conveying to [Enderle] that certain real property conveyed to [the L.L.C.] by [Enderle] on or about the date hereof and commonly known as 7815 North Troost Avenue Kansas City, Missouri, 64118, and, upon such reconveyance, this Note shall be considered paid in full. If [the L.L.C.] chooses to offset the sums due hereunder by reconveyance of the named property, [Enderle] will still be liable to repay Richard Gercken all sums due under the $50,000 note.

Attorney testified that he had no concerns about Enderle's ability to understand the November 2019 transaction. The notary stated that she would not have notarized the special warranty deed Enderle executed as part of the November 2019 transaction if she had concerns about Enderle's ability to understand it.

In approximately September 2020, Enderle told Gercken that he needed additional money to help a woman in California, with whom Enderle was in an on-line relationship. Enderle sent a picture of the woman to Gercken. Gercken replied that Enderle was "either extremely lucky or more likely being duped," and

cautioned Enderle not to send money to the woman. Gercken testified that he was unaware of Enderle's relationship to this woman prior to September of 2020.

On December 28, 2020, Enderle executed a further promissory note and obtained a loan for $1,000 from Gercken; the note required Enderle to repay the sum of $1,045 by December 31, 2021.

On December 28, 2021, Cody Enderle was appointed as Charles Enderle's guardian and conservator. On January 25, 2022, Cody Enderle filed suit on his father's behalf, seeking to set aside and void the documents executed as part of the November 2019 transaction. Enderle filed an amended petition on March 2, 2023. The amended petition named both Richard Gercken and Gercken Kelsey L.L.C. as defendants. The amended petition sought relief on the basis that Charles Enderle lacked mental capacity to enter the November 2019 transaction; that Richard Gercken exerted undue influence over Charles Enderle; and that the terms of the November 2019 transaction were unconscionable.

Gercken answered, and asserted counterclaims seeking to enforce the 2019 Agreement, and the other agreements by which Gercken had extended credit to Enderle. Gercken asserted counterclaims for quiet title; breach of warranty deed; slander of title; breach of lease; breach of contract; civil conspiracy; fraudulent misrepresentation; negligent misrepresentation; and unjust enrichment.

The circuit court held a jury trial on Enderle's claims beginning on June 3, 2024. Prior to trial, the circuit court ruled that Enderle's claim that the November 2019 transaction was unconscionable was a legal matter for the court to resolve, "consistent with the fact questions that are to be submitted to the jury." At the close of evidence, the court entered a directed verdict in favor of

Gercken on Enderle's undue influence claim. Therefore, the court submitted to the jury only Enderle's claim that he lacked the mental capacity to enter into the November 2019 transaction. The jury returned a verdict in favor of Gercken, finding that Enderle had capacity to contract at the time he entered into the November 2019 transaction.

The circuit court entered a judgment on August 13, 2024, and an amended judgment on November 14, 2024. The amended judgment memorialized the jury's verdict for Gercken on the contractual capacity issue, and the directed verdict the court had granted on Enderle's undue influence claim. The circuit court also rejected Enderle's claim that the November 2019 transaction was unconscionable. The judgment found that "the timing of events and negotiations did not deprive Enderle from meaningful choice nor did they constitute pressure tactics." The court also found that the L.L.C.'s ability to terminate the purchase transaction by reconveying the property to Enderle "did not permit [the L.L.C.] to obtain 'something for nothing' and is thus not illusory or unconscionable in these circumstances."

The amended judgment also found in Gercken's favor on his counterclaims. The court quieted title to the Property in the L.L.C.; ordered Enderle to make the rental and property-tax payments specified in the lease, as well as additional rent for holding over beyond the term of the lease; ordered Enderle to pay the principal and interest associated with the November 2019 and December 2020 notes; and awarded Gercken his attorney's fees in connection with the litigation in the amount of $247,501.38.

Enderle appeals.

Discussion

Enderle raises six Points on appeal. He asserts that the circuit court committed reversible error by granting a directed verdict to Gercken on Enderle's undue influence claim. Enderle also contends that the circuit court erroneously instructed the jury on the burden of proof on the contractual capacity issue, and erroneously ruled that the unconscionability issue was a matter for the court rather than the jury. Enderle also challenges the circuit court's rejection of his unconscionability claim on the merits, and the court's refusal to permit the jury to hear testimony that Cody Gercken had been appointed as his father's guardian and conservator. Finally, Enderle claims that the circuit court gave the jury an erroneous "hammer" instruction when the jury advised the court that it was deadlocked after several hours of deliberation. We reject each of Enderle's arguments.

I.

Enderle's first Point argues that the circuit court clearly erred in granting Gercken's motion for directed verdict on Enderle's undue influence claim. Enderle contends that there was sufficient evidence to support a jury finding that Gercken exercised undue influence over Charles Enderle, given Enderle's preexisting relationship with Gercken; Enderle's mental and physical condition; the circumstances under which the contract was signed; and the consideration provided for in the contract.

"Review of the trial court's decision to sustain or overrule a motion for directed verdict depends on whether the plaintiff made a submissible case and whether the plaintiff made a submissible case is a question of law this Court reviews de novo." *Johnson v. Auto Handling Corp.*, 523 S.W.3d 452, 459 (Mo.

2017) (cleaned up). "A case is submissible when each element essential to liability is supported by legal and substantial evidence. This Court views the evidence in a light most favorable to the plaintiff, including all reasonable inferences while disregarding all contrary evidence and inferences." *Id.* at 459-60 (cleaned up). "The plaintiff may prove essential facts by circumstantial evidence as long as the facts proved and the conclusions to be drawn are of such a nature and are so related to each other that the conclusions may be fairly inferred." *Moore v. Ford Motor Co.*, 332 S.W.3d 749, 756 (Mo. 2011) (citation omitted). "A motion for directed verdict . . . should be granted if the defendant shows that at least one element of the plaintiff's case is not supported by the evidence." *Ellison v. Fry*, 437 S.W.3d 762, 768 (Mo. 2014).

"Undue influence . . . is usually defined as such overpersuasion, coercion, force, or deception as breaks the will power of the testator or grantor and puts in its stead the will of another." *Broughton v. Est. of Tyner*, 600 S.W.3d 6, 11 (Mo. App. E.D. 2020) (citation omitted). "Mere suspicion or the opportunity to exercise undue influence is insufficient." *Robertson v. Robertson*, 15 S.W.3d 407, 415 (Mo. App. S.D. 2000). There "must be evidence of the actual exercise of undue influence which destroyed the free agency of the grantor." *Id.*

"A presumption of undue influence arises when the following elements are present: (1) the existence of a confidential or fiduciary relationship between the settlor and the beneficiary, (2) the beneficiary is given a substantial benefit, and (3) the beneficiary was active in procuring execution of the document conferring the benefit." *Broughton*, 600 S.W.3d at 11 (cleaned up). In the absence of a presumption of undue influence, undue influence can still be demonstrated by

examining the totality of the circumstances surrounding the transaction. *Hodges v. Hodges*, 692 S.W.2d 361, 378 (Mo. App. S.D. 1985). Relevant factors include:

> The mental and physical condition of the grantor; whether independent advice was available to the grantor; whether the grantee concealed the existence of the conveyance; the consideration given for the conveyance; whether the dispository scheme of the grantor was disrupted; whether the grantee was a natural object of grantor's bounty; and any other facts that would tend to show actual coercion or fear.

McIntosh v. Dowdy, 625 S.W.2d 162, 164 (Mo. App. E.D. 1981) (citations omitted). Further, "[p]ersons exerting undue influence will do so in as subtle, furtive, indirect and elusive a manner as possible and such influence may therefore be shown indirectly by the reasonable and natural inferences drawn from the facts and circumstances proved." *Smith v. Smith*, 623 S.W.3d 662, 672 (Mo. App. W.D. 2021) (citation omitted).

A.

Enderle contends that he presented evidence which would give rise to a presumption of undue influence. We disagree.

A presumption of undue influence will only arise where a confidential or fiduciary relationship exists between the parties to a transaction. *Broughton*, 600 S.W.3d at 11. "'Confidential' and 'fiduciary' are virtually synonymous terms." *In re Est. of Goldschmidt*, 215 S.W.3d 215, 221 (Mo. App. E.D. 2006)[2] (citing *Est. of Gross v. Gross*, 840 S.W.2d 253, 257 (Mo. App. E.D. 1992)). "A confidential relationship exists between two persons, whether their relations be such as are technically fiduciary or merely informal, whenever one trusts in and relies on the

[2] Overruled on other grounds by *Ivie v. Smith*, 439 S.W.3d 189, 204 (Mo. 2014).

other. The question is whether or not trust is reposed." *Walton v. Van Camp*, 283 S.W.2d 493, 501 (Mo. 1955).

To establish a confidential or fiduciary relationship, it is generally necessary to show that one person entrusted the handling of their affairs to a second person, or habitually deferred to the second person's judgment and advice in the handling of the first person's affairs. As this Court explained in *Flynn v. Union National Bank of Springfield*, 378 S.W.2d 1 (Mo. App. 1964):

> A confidential relationship cannot be exactly defined. It is easy to say that it exists in the case of attorney and client, physician and patient, principal and agent, and priest and penitent; but, when we get into the realm of friendship and neighborliness, it begins to shade from black to gray to white. The best we can say is that the confidential relationship must be one where there exists a *special* trust and reliance which involves some fiduciary obligation on the part of the person so trusted, although it need not be a strictly technical fiduciary relationship. Usually the trust arises in a reliance upon another in regard to the handling of property and business affairs.
>
> . . . .
>
> It is fairly well settled that a trust, strong affection, or a good feeling which one ordinarily reposes in a close, personal friend or relative, or in gratitude for the kind acts of a good neighbor, is not ordinarily the confidential relationship with which we are dealing. . . . . In almost every neighborhood there is a good neighbor who lends his or her assistance to those who are beset and in trouble. If we are to say that these simple acts of neighborly kindness and friendship are to be damned with the suspicion created by a presumption of undue influence, then we are indeed living in a harsh society.

Id. at 10-11 (footnotes omitted); *see also*, *e.g.*, *Lucas v. Enkvetchakul*, 812 S.W.2d 256, 260 (Mo. App. S.D. 1991) ("A confidential relationship is usually found when the person in whom confidence is reposed had either control or influence over at

least a portion of the transferor's property, finances or business affairs." (cleaned up)).

In *Ison v. Ison*, 410 S.W.2d 65 (Mo. 1967), the Missouri Supreme Court held that there was insufficient evidence to establish a confidential or fiduciary relationship based on the fact that the recipient of a gift regularly took the donor (who was blind) to doctor's appointments and to run errands; visited the donor when he was sick; and there was evidence that the donor "asked [the donee] to 'see about things' for him, and . . . asked [the donee's] 'judgment' on things." *Id.* at 68. Although the evidence established that the donee "helped [the donor] and his mother with their physical needs," the Court held that this was insufficient to establish a confidential or fiduciary relationship where "[t]here is no evidence that [the donee] or his wife handled [the donor]'s business for him, or that [the donor] reposed confidence or trust in them as to his business affairs." *Id.* at 68-69.

Similarly, in *Martin v. Norton*, 497 S.W.2d 164 (Mo. 1973), the Supreme Court held that there was insufficient evidence of a confidential or fiduciary relationship where the donor of a testamentary bequest "had a strong personal affection" for the devisees. *Id.* at 168. The Supreme Court noted that the devisees "were close neighbors who helped [the donor], who looked after her needs, and gave her the companionship she obviously missed and needed after the death of her husband." *Id.* In finding the evidence insufficient to establish a confidential or fiduciary relationship, the Court emphasized that

> there is nothing to indicate that in 1964, or prior thereto, that either [devisee] handled any of [the donor's] financial affairs, or that she relied on them to make decisions for her, and certainly, neither

> [devisee] had any dealings involving trust or confidence concerning the property transferred by the deed.

Id. at 169. *See also*, *e.g.*, *Est. of Ferling*, 670 S.W.2d 109, 112 (Mo. App. E.D. 1984) (donor "had expressed a desire to marry [the donee]," and during his final illness the donor "stayed at [donee's] home and she attended to his health care requirements"; finding insufficient evidence of confidential relationship where "[t]here was no evidence that [donee] handled any business affairs or was otherwise a fiduciary of the [donor]").

In this case, Enderle argues that a confidential relationship was established due to the fact that Charles Enderle and Richard Gercken had been "good friends" in junior high and high school, decades before the transaction at issue. The decades-long gap in their relationship substantially limits the significance of Enderle and Gercken's earlier friendship. Moreover, as the caselaw above explains, friendship alone cannot establish a confidential relationship, without evidence that Gercken managed some portion of Enderle's affairs, or at a minimum that Enderle regularly deferred to Gercken's directions or advice. Given the absence of such evidence, Enderle failed to make a submissible case that Charles Enderle and Richard Gercken were in a confidential relationship. No presumption of undue influence arose.

B.

Independent of any presumption, Enderle failed to make a submissible case of undue influence. We review the evidence relevant to the factors enumerated in *McIntosh v. Dowdy*, 625 S.W.2d 162, 164 (Mo. App. E.D. 1981).

Enderle contends that Charles Enderle's mental condition made him more susceptible to undue influence. Although the evidence at trial indicated that

Charles Enderle may have been gullible, and made some ill-advised financial decisions by sending money to women whom he had never met, the evidence does not indicate that he was unable to exercise his own will, and make his own decisions as to how he wished to spend his money. In addition, the jury found that Charles Enderle had the capacity to contract, meaning that he had "'sufficient mental capacity to understand the nature and effect of the particular transaction.'" *Barron v. Parker*, 722 S.W.3d 1, 8 (Mo. App. W.D. 2025) (quoting *McElroy v. Mathews*, 263 S.W.2d 1, 10 (Mo. 1953)).

Although Enderle contends that Charles Enderle was in a compromised physical condition because he was diabetic and had been fasting, he was able to drive himself to the title company, execute the necessary documents, and then convey himself to the hospital. The evidence does not reflect the sort of substantially impaired physical or mental condition which would support a finding of undue influence.

Enderle claims that Gercken exploited Charles Enderle by urging him to complete the transaction in a hurry before his surgery. Enderle has not claimed, however, that Gercken threatened to withdraw from the transaction, or to take enforcement action against Charles Enderle on his existing, delinquent loans, if the new transaction was not completed on November 12, 2019. While Gercken may have successfully persuaded Charles Enderle to act quickly, nothing in the evidence suggests that Enderle lacked the ability to decline, and either withdraw from the transaction entirely, or ask that it be delayed.

Enderle claims that Charles Enderle was unaware that the effect of the November 2019 transaction was to ***sell*** the Property to Gercken; he claims that he

believed he was merely *pledging* the Property to Gercken as collateral for a loan. Enderle's claim of ignorance is suspect given that the parties had engaged in discussions for more than a year concerning a property sale, largely at Enderle's instigation, and had even entered an earlier (unconsummated) sales transaction. In any event, "Missouri law presumes that a party had knowledge of the contract he or she signed; and those who sign a contract have a duty to read it and may not avoid the consequences of the agreement on the basis that they did not know what they were signing." *CoMo Premium Constr. LLC v. Pulster*, No. WD87585, 2025 WL 2848215 at *5 (Mo. App. W.D. Oct. 7, 2025) (citations omitted); *see also*, *e.g.*, *Chochorowski v. Home Depot U.S.A.*, 404 S.W.3d 220, 228 (Mo. 2013) ("A signer's failure to read or understand a contract is not, without fraud or the signer's lack of capacity to contract, a defense to the contract." (citation omitted)).

There is no evidence Enderle was unable to obtain independent advice concerning the November 2019 transaction. Enderle was living independently, and had his own means of transportation and communication. The sale of the Property to Gercken had been under discussion for more than a year. No evidence was presented at trial that Gercken sought to conceal the existence or nature of the transaction from Enderle, or from anyone else.

The sale of the Property was also supported by consideration. Under the purchase and sale agreement, the L.L.C. agreed to pay $200,000 to acquire the Property, and Enderle presented no evidence that this was not a fair price. Enderle complains that the L.L.C.'s promissory note, which was used to finance the purchase, was unsecured, and that the L.L.C. had no significant assets (other

than the Property itself). Enderle cites no authority holding that an unsecured loan cannot serve as adequate consideration for the purchase of real estate. Moreover, the real-estate sale was part of a larger transaction, in which Gercken agreed to loan Enderle $50,000, which had the effect of restructuring two prior loans on which Enderle was delinquent, as well as providing Enderle with an additional $20,000. The parties also executed a lease agreement which permitted Enderle to continue to occupy the home on the Property for four years, for a rental of only $1.00 per month. The consideration provided to Enderle in the other, contemporaneously executed documents may be considered in determining whether adequate consideration supports the sale of the Property. *See*, *e.g.*, *Brown v. Smith*, 601 S.W.3d 554, 561-64 (Mo. App. W.D. 2020) (examining consideration exchanged between the parties across multiple contemporaneously executed documents to determine that sufficient consideration supported option agreement).

In his fourth Point, Enderle argues that the L.L.C.'s promise to pay him $200,000 for the Property was illusory. Because this contention challenges the existence of consideration supporting the November 2019 transaction, we address it here. Enderle's illusoriness argument focuses on the provision of the promissory note which permitted the L.L.C. to extinguish its financial obligations by reconveying the Property to Enderle at any time before the note came due after four years. Enderle relies on cases holding that a contract is illusory if one contracting party has the right to escape its obligations under the contract unilaterally, retroactively, and completely. *See*, *e.g.*, *Baker v. Bristol Care, Inc.*, 450 S.W.3d 770, 777 (Mo. 2014); *Frye v. Speedway Chevrolet Cadillac*, 321

S.W.3d 429, 442-43 (Mo. App. W.D. 2010); *Fenberg v. Goggin*, 800 S.W.2d 132, 135-36 (Mo. App. E.D. 1990). Those cases recognize that, in an enforceable contract containing bilateral promises, "neither party is bound unless both are bound." *Frye*, 321 S.W.3d at 442 (emphasis deleted; citation omitted). Mutuality of obligation is lacking where one party has the unilateral ability to "escape performance of anything detrimental to himself or beneficial to the promisee." *Id.* at 443 (cleaned up).

Courts hesitate to find a contract illusory and therefore unenforceable. "The tendency of the law . . . is to uphold the contract by finding the promise was not illusory when it appears that the parties intended a contract." *Magruder Quarry & Co. v. Briscoe*, 83 S.W.3d 647, 650 (Mo. App. E.D. 2002).

The promises Gercken made in the November 2019 transaction were not illusory. The promissory note did not give Gercken the ability to completely avoid his contractual obligations, and deny Enderle any benefit of the November 2019 transaction. First, although the note's offset provision permitted the L.L.C. to discharge its financial obligations by reconveying the Property to Enderle, such a reconveyance would <u>*also*</u> have the effect of discharging Enderle's obligations under the lease, since acquisition of leased property by a tenant generally extinguishes the lease. *See*, *e.g.*, *Higgins v. Turner*, 61 Mo. 249, 251–52 (1875); *Ferguson v. Gulf Oil Corp.*, 382 S.W.2d 34, 37 (Mo. App. 1964); *Zeysing v. Welbourn*, 42 Mo. App. 352, 354 (1890). Second, even if the L.L.C. were to be relieved of its obligation to purchase the Property, the parties' mutual obligations under the separate $50,000 note would survive. Finally, the L.L.C.'s reconveyance of the Property to Enderle would not have retroactively relieved the

L.L.C. of its obligation to "maintain, repair and replace, if necessary, the structural portions of the roof and exterior walls of the Property" while the purchase and sale agreement remained in force. For all of these reasons, the promissory note's offset provision did not render the entire November 2019 transaction illusory, or support the conclusion that the transaction was unsupported by sufficient consideration.

Enderle failed to present evidence which would permit a jury to find that the November 2019 transaction was characterized by such "overpersuasion, coercion, force, or deception as breaks the will power of the testator or grantor and puts in its stead the will of another." *Broughton v. Est. of Tyner*, 600 S.W.3d 6, 11 (Mo. App. E.D. 2020) (citation omitted). Because Enderle failed to present sufficient evidence to permit a jury to determine that Charles Enderle had been the victim of undue influence, the circuit court did not err in granting Gercken a directed verdict on Enderle's undue influence claim.

Point I is denied. We also reject without further discussion Enderle's fourth Point, which contended that the November 2019 transaction was unconscionable, based on the illusoriness argument we have rejected above.

II.

In his second Point, Enderle contends that the circuit court's burden-of-proof instruction (Instruction No. 5) was erroneous, because it failed to tell the jury that it was *Gercken's* burden to prove that Enderle had the capacity to contract.

"An instruction must be a correct statement of [the] law." *Rhoden v. Mo. Delta Med. Ctr.*, 621 S.W.3d 469, 480 (Mo. 2021) (citation omitted). "The

question whether a jury was properly instructed is subject to *de novo* review." *Williams v. Mercy Clinic Springfield Cmtys.*, 568 S.W.3d 396, 413 (Mo. 2019) (citation omitted). "An instructional error is only grounds for reversal when the instruction misdirected, misled, or confused the jury and resulted in prejudice." *Id.* (citation omitted). "This Court will reverse only if the error resulted in prejudice that materially affected the merits of the case." *Id.* (citation omitted).

At trial, the circuit court instructed the jury on the burden of proof in Instruction No. 5, which was patterned after M.A.I. 3.01, the general burden-of-proof instruction. Instruction No. 5 stated:

> Your verdict will depend on the facts you believe after considering all the evidence. The party who relies upon any disputed fact has the burden to cause you to believe by clear and convincing evidence that such fact is true. In determining whether or not you believe any fact, you must consider only the evidence and the reasonable conclusions you draw from the evidence.

Enderle argues that the court's burden-of-proof instruction should have included an additional paragraph contained in his proffered Instruction No. F, which would have specifically advised the jury that

> [t]he burden is upon [Gercken] to prove by clear and convincing evidence that Chuck Enderle had the legal capacity to contract at the time the November 12, 2019 real estate documents were executed.

Enderle contends that Instruction No. 5 incorrectly told the jury that the burden was *on Enderle* to prove his lack of contractual capacity.

In determining whether Instruction No. 5 misdirected the jury, "all the instructions are to be read together as a whole." *Crisp v. Mo. School for Deaf*, 681 S.W.3d 650, 665 (Mo. App. W.D. 2023) (quoting *Yoos v. Jewish Hosp. of St. Louis*, 645 S.W.2d 177, 189 (Mo. App. E.D. 1982)). Looking at the instructions as

a whole, it is not at all clear that the circuit court told the jury that Enderle bore the burden to prove a lack of capacity. The only claim submitted to the jury was Enderle's claim for rescission of the November 2019 transaction documents, on the basis that Enderle lacked contractual capacity. Despite the fact that only one claim was submitted, the court effectively gave the jury two opposing verdict-directing instructions. Instruction No. 8 told the jury that "[y]our verdict must be for Chuck Enderle if you believe that at the time of the execution of the real estate documents on November 12, 2019, he did not have capacity to contract." On the other hand, Instruction No. 9 told the jury that "[y]our verdict must be for [Gercken] on Plaintiff Chuck Enderle's claim if you believe Plaintiff had capacity to contract on November 12, 2019 when he signed the real estate documents."

Although the circuit court referred to Instruction No. 9 as a "converse" instruction, it is not. Instruction No. 9 is not a "true converse instruction," because such an instruction would begin "'[y]our verdict must be for defendant unless you believe' followed by one or more propositions submitted by the verdict directing instruction and in substantially the same language used in the verdict directing instruction." M.A.I. 33.01, Comment (E).

Nor is Instruction No. 9 an "affirmative converse instruction." Like Instruction No. 9, an affirmative converse instruction begins by stating that "'[y]our verdict must be for defendant if you believe' followed by a hypothesized ultimate issue which, if true, would defeat plaintiff's claim." M.A.I. 33.01, Comment (I). However, an affirmative converse instruction cannot be used to state the opposite of the facts hypothesized in the verdict director: "The affirmative converse instruction should not be used to submit in the affirmative

the same issue in substantially the same language as has already been submitted in the verdict directing instruction. Use a true converse instruction to converse an element submitted by the verdict director." *Id.*; *see also Hiers v. Lemley*, 834 S.W.2d 729, 735 (Mo. 1992) ("The affirmative converse instruction is not to be used merely as a means of conversing, in different language, the very same issue submitted in the verdict director instruction. The approved method of conversing an issue in the verdict director is to use a true converse." (citations omitted)); *Williams v. St. Charles Auto Mart, Inc.*, 690 S.W.3d 495, 502 n.8 (Mo. App. E.D. 2024) (instruction did not function as an affirmative converse where "it merely repeats, in converse, the language of the verdict director").

By telling jurors that they must return a verdict for Enderle if they affirmatively believed that he *lacked* capacity to enter into the November 2019 transaction, and that they must return a verdict for Gercken if they affirmatively believed that Enderle <u>*had*</u> capacity, the circuit court's instructions, read as a whole, arguably placed the burden *on each party* on the capacity issue, before the jury could return a verdict in that party's favor. By returning a verdict for Gercken, the jury apparently found that he had satisfied <u>*his*</u> burden of proving that Enderle in fact had contractual capacity on November 12, 2019. Seen in this light, Enderle's second Point is misdirected.

But even if the circuit court's instructions had unequivocally placed the burden of proof on Enderle to prove his lack of capacity, those instructions correctly stated the law. This Court recognized more than one hundred years ago that there is a "general rule that a party to a contract will be presumed, in the absence of an averment and proof to the contrary, to have possessed legal

capacity to enter into such contract . . . ." *Chapman v. Brown*, 179 S.W. 774, 776 (Mo. App. 1915); *accord Christian Health Care of Springfield W. Park, Inc. v. Little*, 145 S.W.3d 44, 52 (Mo. App. S.D. 2004) ("There is a presumption of sanity preceding adjudication [of incompetency], and the burden of proving otherwise is upon the party who seeks to show want of mental capacity to contract." (citing *Masoner v. Bates Cnty. Nat'l Bank*, 781 S.W.2d 235, 239 (Mo. App. W.D. 1989))).

Consistent with this presumption of contractual capacity, the Missouri Supreme Court has expressly held that the burden of proving lack of capacity is on a plaintiff who – like Enderle – is seeking rescission of a contract. "The burden of proof was upon plaintiff to prove by convincing evidence that on October 13 [the plaintiff's decedent] lacked mental capacity to contract. The question is whether on that day she had sufficient mental capacity to understand the nature and effect of the particular transaction." *McElroy v. Mathews*, 263 S.W.2d 1, 10 (Mo. 1953); *accord Masoner*, 781 S.W.2d at 239. The Southern District stated more generally that, in a breach of contract case, the burden of pleading and proving lack of capacity rests on the party disputing a contract's enforceability:

> It is well-settled law that the burden of proving lack of mental capacity to contract rests upon the party making that allegation. *See, e.g.*, *McElroy v. Mathews*, 263 S.W.2d 1, 10 (Mo. 1953). . . . Therefore, [the defendant] should have raised . . . lack of mental capacity to contract as an affirmative defense if she wanted to contest this issue.

Christian Health Care, 145 S.W.3d at 52.

Enderle relies on *Netherton v. Netherton*, 593 S.W.3d 654 (Mo. App. W.D. 2019), in which this Court held that "[t]he burden of proving mental capacity

remains with the proponents [of trust documents] throughout the trial." *Id.* at 665 (citation omitted). *Netherton* cannot supersede the Supreme Court's explicit holding in *McElroy* that the burden of proving lack of contractual capacity rests on a plaintiff seeking rescission of a contract. Moreover, *Netherton* arose in the particular context of probate litigation concerning the validity of documents creating and amending a trust. Our decision specifically noted that, "in cases challenging changes to estate planning documents, both parties bear burdens of proving different propositions." *Id.* at 664 (citations omitted).

In *Barron v. Parker*, 722 S.W.3d 1 (Mo. App. W.D. 2025), this Court recently cited *Netherton* outside the probate context, in an action seeking specific enforcement of a contract for the sale of real estate. *Id.* at 8. While *Barron* cited *Netherton*'s statement that the burden of proving capacity is on the proponent of an instrument, *Barron* also recognized that the contractual capacity issue had been raised in that case by the defendant, as an affirmative defense. *Id.* at 14. The Court held that, as an affirmative defense, the defendant's claim of lack of capacity did not "dissolve [the] trial court's equitable jurisdiction" over the specific performance action, and require that the case be tried to a jury. *Id.* Like *Netherton*, we do not read *Barron* to alter the rule that, in an action seeking to rescind a contract, the burden of proving lack of contractual capacity rests on the party seeking rescission.

To the extent the circuit court placed the burden on Enderle to prove a lack of contractual capacity, that was not error. The only claim submitted to the jury was Enderle's claim that the November 2019 transaction should be set aside because Enderle lacked the mental capacity to enter it. Given that Enderle was

the one seeking affirmative relief, and given the general presumption that an adult entering into a contract has mental capacity to do so, Enderle had the burden of proving his lack of capacity.

Point II is denied.

III.

In his third Point, Enderle argues that he was entitled to have the jury decide the factual questions underlying his claim that the November 2019 transaction was unconscionable. Enderle contends that the circuit court erroneously rejected instructions he proffered, which would have asked the jury to decide the following questions:

> Do you find that the real estate documents signed on November 12, 2019 ostensibly contain mutual promises but one party retains the unilateral right to modify or alter the contract and thereby divest itself of its obligation to uphold its side of the bargain?
>
> . . .
>
> Do you find that the terms of the real estate documents signed on November 12, 2019 either:
>
> > are so one-sided as to oppress or unfairly surprise an innocent party, or
> >
> > reflect an overall imbalance in the rights and obligations imposed by the documents at issue?

The Missouri Supreme Court described the general contours of the unconscionability doctrine in *State ex rel. Vincent v. Schneider*, 194 S.W.3d 853 (Mo. 2006):

> Unconscionability has two aspects: procedural unconscionability and substantive unconscionability. Procedural unconscionability deals with the formalities of making the contract, while substantive unconscionability deals with the terms of the contract itself.

> Procedural unconscionability focuses on such things as high pressure sales tactics, unreadable fine print, or misrepresentation among other unfair issues in the contract formation process. Substantive unconscionability means an undue harshness in the contract terms.

Id. at 858 (citations omitted).

Although a determination of unconscionability may require a "'fact-specific inquiry,'"[3] these are issues for a court, not a jury, to decide. The Supreme Court's *Vincent* decision involved a real-estate transaction, like this case. The Court held that a provision of Article 2 of Missouri's Uniform Commercial Code, § 400.2-302, RSMo, "is instructive when guiding an analysis of unconscionability" (even though the statute does not literally apply to real-estate sales). *Vincent*, 194 S.W.3d at 858. Section 400.2-302 provides:

> (1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.
>
> (2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

Section 400.2-302(1) expressly provides that the question of unconscionability shall be decided by "the court as a matter of law." Moreover, even though § 400.2-302(2) contemplates that the parties may be entitled to

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[3] *Bridgecrest Acceptance Corp. v. Donaldson*, 648 S.W.3d 745, 755 (Mo. 2022) (quoting *Brewer v. Mo. Title Loans*, 364 S.W.3d 486, 489 n.1 (Mo. 2012)).

present evidence concerning the "commercial setting, purpose and effect" of a challenged contract, the Official Comment makes clear that the question of unconscionability, including any subsidiary factual determinations, is for the court and not a jury:

> The present section is addressed to the court, and the decision is to be made by it. The commercial evidence referred to in subsection (2) is for the court's consideration, not the jury's. Only the agreement which results from the court's action on these matters is to be submitted to the general triers of the facts.

§ 400.2-302, RSMo, Comment 3. While we have not conducted an exhaustive survey, we note that courts in numerous other jurisdictions recognize that claims of contractual unconscionability present questions of law subject to *de novo* review on appeal.[4]

The circuit court's decision not to submit unconscionability issues to the jury was especially justified here, given the nature of the questions Enderle asked the court to submit. In some cases, unconscionability issues may implicate disputed questions of historical fact (such as the personal or financial situation of the parties at the time a contract was executed, or the circumstances surrounding the contract's negotiation or execution). In this case, however, Enderle did not want the jury to resolve issues of historical fact. On the contrary, his proffered instructions asked the jury to interpret the meaning and effect of the contract

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[4] *See*, *e.g.*, *Patrick v. Running Warehouse, LLC*, 93 F.4th 468, 479 (9th Cir. 2024) (California law); *Tarpon Bay Partners LLC v. Zerez Holdings Corp.*, 79 F.4th 206, 223 (2d Cir. 2023) (Connecticut law); *Hanover Ins. Co. v. N. Bldg. Co.*, 751 F.3d 788, 794 (7th Cir. 2014); *Cooper Tire & Rubber Co. v. Farese*, 423 F.3d 446, 458 (5th Cir. 2005); *Ruppelt v. Laurel Healthcare Providers, LLC*, 293 P.3d 902, 905 ¶ 6 (N.M. App. 2012); *Crews v. Crews*, 989 A.2d 1060, 1066 (Conn. 2010); *Kinkel v. Cingular Wireless LLC*, 857 N.E.2d 250, 264 (Ill. 2006).

documents themselves: whether Gercken's promises were illusory even though the contract documents "ostensibly contain mutual promises"; and whether "the terms of the real estate documents" were one-sided, or reflected "an overall imbalance in the rights and obligations" of the parties.

It is well-established, however, that "[j]udges, not juries, interpret contracts," and "decide contract interpretation disputes." *Webbe v. Keel*, 369 S.W.3d 755, 756 (Mo. App. S.D. 2012) (citation omitted). "Contract interpretation is a question of law" subject to *de novo* review on appeal. *Am. Fed'n of State, Cnty. & Mun. Emps., Council 61 v. State*, 653 S.W.3d 111, 127 (Mo. 2022) (citation omitted). Because Enderle's proffered instructions would have tasked the jury with determining the meaning and legal effect of the contract documents, the court properly refused them.

Point III is denied.

IV.

Enderle's fifth Point argues that the circuit court erred in prohibiting the jury from hearing that Cody Enderle had been appointed as Charles Enderle's guardian and conservator. Enderle contends that the jury needed to know that Cody Enderle was serving as Charles Enderle's guardian and conservator, so that it would be aware that Cody Enderle was pursuing the litigation *on his father's behalf*, and not from motives of personal self-interest or greed.

"A trial court's decision to admit or exclude evidence is reviewed only for an abuse of discretion . . . ." *Gordon v. Monsanto Co.*, 702 S.W.3d 506, 510 (Mo. App. E.D. 2024) (citations omitted). "A trial court will be found to have abused its discretion when a ruling is clearly against the logic of the circumstances then

before the court and is so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful consideration." *Williams v. Mercy Clinic Springfield Cmtys.*, 568 S.W.3d 396, 408 (Mo. 2019) (citations omitted). "Furthermore, proving reversible error requires a party to demonstrate both an abuse of discretion and prejudice, and this Court will reverse only when the error was so prejudicial as to deprive the party of a fair trial." *Gordon*, 702 S.W.3d at 510 (citations omitted).

Enderle has failed to provide this Court with an adequate record to address this claim. The trial transcript filed with this Court does not include voir dire, opening statements, or closing arguments, and therefore we cannot determine how the relationship between Cody and Charles Enderle, and their respective roles in this litigation, were explained to the jury. It was *Enderle*'s obligation to provide a sufficient transcript for this Court to determine the issues he raises on appeal, and in the absence of such a record, we would be entitled to summarily reject his argument, or to presume that the omitted portions of the transcript are unfavorable to his claim. *See, e.g.*, *Alagha v. Cottle Auto. Repair, Inc.*, 715 S.W.3d 580, 587 (Mo. App. W.D. 2025); *In re K.K.S.S.*, 689 S.W.3d 252, 256-57 (Mo App. W.D. 2024).

In addition, the *available* record reflects two circumstances which are inconsistent with Enderle's claims in Point V. First, during his testimony at trial, Cody Enderle agreed with his attorney's statement that he was "bringing this lawsuit on behalf of [his] father" – thus revealing his representative capacity to the jury. Moreover, the verdict directing instructions identify *Charles Enderle* as the plaintiff. To the extent the jury was told that Charles Enderle was prosecuting

the action on his own behalf, there was no need for the admission of evidence to explain Cody Enderle's service as Charles Enderle's guardian and conservator.

We also note that the legal file contains two different versions of the Early Case Summary given by the court to the jury: one identifies Charles Enderle as the plaintiff; while the other states that the plaintiff is "Cody Enderle on behalf of his Father Charles Enderle." It is unclear which version of the Early Case Summary was actually read to the jury. But whichever version was used, no further explanation of Cody Enderle's representative capacity would have been necessary.

The circuit court did not abuse its discretion in excluding evidence of Cody Enderle's appointment as his father's guardian and conservator, particularly when Cody Enderle was permitted to testify that he was prosecuting this lawsuit on his father's behalf. Cody Enderle was appointed as his father's guardian and conservator in December 2021, more than two years after the transaction at issue in this case. Cody Enderle's appointment, and the related finding of Charles Enderle's incompetence, "operates prospectively only and is inadmissible to show prior mental disability." *Christian Health Care of Springfield W. Park, Inc. v. Little*, 145 S.W.3d 44, 52 (Mo. App. S.D. 2004) (citing *Masoner v. Bates Cnty. Nat'l Bank*, 781 S.W.2d 235, 239 (Mo. App. W.D. 1989)); *see also Est. of Davis*, 954 S.W.2d 374, 380 (Mo. App. S.D. 1997).

Although Cody Enderle's December 2021 appointment was irrelevant to determining Charles Enderle's competence two years earlier, the circuit court could fairly conclude that there was a risk that the jury would give inappropriate

weight to the December 2021 incompetency determination, because that determination was made by a court.

> Courts are generally hesitant to admit other judicial opinions or statements into evidence, even when relevant, because "judicial findings of fact present a rare case where, by virtue of their having been made by a judge, they would likely be given undue weight by the jury, thus creating a serious danger of unfair prejudice."

Gamble v. Browning, 379 S.W.3d 194, 203 (Mo. App. W.D. 2012) (citations omitted).

The finding of Charles Enderle's incompetence in December 2021 was irrelevant to establishing whether he had the capacity to contract in November 2019. The circuit court did not abuse its discretion when it permitted Cody Enderle to testify only that he was acting in a representative capacity, but excluded evidence concerning *the reasons* for his representation of his father. Point V is denied.

V.

Enderle's sixth and final Point argues that the circuit court improperly coerced the jury's verdict, when the court erroneously directed the jury to continue deliberating until it reached a verdict after jurors indicated that they were deadlocked. Because Enderle's counsel affirmatively stated that he had no objection to the instruction given by the circuit court, we decline to review the propriety of the circuit court's direction to the jury to continue deliberating.

The jury began its deliberations at 9:46 a.m. on June 5, 2025. At 2:55 p.m., after more than five hours of deliberation, the jury sent a note to the court indicating that it was deadlocked. The following proceedings then occurred:

> THE COURT: . . . The question/request is what happens if we are stuck at eight to four in deliberation. I'm inclined to simply respond the jury just continue deliberations until they reach a verdict.
>
> [Enderle's counsel]: Yes.
>
> [Gercken's counsel]: Yes, that works for me.
>
> THE COURT: Okay.
>
> . . . .
>
> THE COURT: Okay. At 3:00 p.m. the Court will respond as follows: The jury must continue to deliberate until it reaches a verdict. Any objections?
>
> [Enderle's counsel]: No.
>
> [Gercken's counsel]: No.
>
> THE COURT: Okay, that will be the response.

The jury reached its verdict twenty minutes later, finding ten-to-two in Gercken's favor.

In general, "[o]ral instructions that encourage a civil jury to reach a verdict are proper so long as they do not coerce the verdict." *Klotz v. St. Anthony's Med. Ctr.*, 311 S.W.3d 752, 767 (Mo. 2010) (citing *Nash v. Plaza Elec., Inc.*, 363 S.W.2d 637, 641 (Mo. 1962)). Enderle contends that the circuit court's instruction in this case was improperly coercive, because the court indicated that it would require the jury to continue deliberating until a verdict was reached.

Enderle did not object to the court's instruction, and he would therefore be entitled – at most – to plain-error review under Rule 84.13. "[P]lain error review is rarely applied in civil cases, [however,] and may not be invoked to cure the mere failure to make proper and timely objections." *Atkinson v. Corson*, 289 S.W.3d 269, 276 (Mo. App. W.D. 2009) (citation omitted).

Enderle waived even plain-error review, however, because his counsel affirmatively stated that he had no objection to the court's response to the jury's note. While the rule may be somewhat different in criminal cases, in civil cases, "'[w]here a party affirmatively indicates in the trial court that it has no objection to an instruction or other trial court ruling, it may be found to have "intentionally abandoned" the issue, waiving even plain-error review.'" *Roark v. KC Pet Project*, 707 S.W.3d 699, 712 (Mo. App. W.D. 2024) (quoting *Gray v. Mo. Dep't of Corr.*, 635 S.W.3d 99, 103 (Mo. App. W.D. 2021)); *accord Rinehart v. Mo. Dep't of Corr.*, 669 S.W.3d 679, 685 (Mo. App. W.D. 2023).

By expressly agreeing with the instruction the circuit court gave to the jury in response to its note, Enderle waived the opportunity to challenge the correctness of the court's instruction on appeal, even under plain-error review. Point VI is denied.

Conclusion

The judgment of the circuit court is affirmed.



Alok Ahuja, Judge

All concur.