In the Missouri Court of Appeals
Eastern District

DIVISION ONE

PITZER SNODGRASS, P.C., Respondent, v. FREDERICH CONSTRUCTION, INC., Appellant, v. LOUIS J. BASSO, P.C., Respondent.	)	ED113973 Filed: July 21, 2026

Appeal from the Circuit Court of St. Louis County
The Honorable Virginia W. Lay, Judge

Frederich Construction, Inc. ("FCI") appeals the trial court's judgment granting a Rule 55.03[1] motion for sanctions filed by Louis J. Basso, P.C. and Pitzer Snodgrass, P.C. (collectively, "the Law Firms"). Among other sanctions, the trial court dismissed FCI's counterclaims against the Law Firms with prejudice. FCI's sole point on appeal is based

[1] All rule references are to the Missouri Supreme Court Rules (2023), unless otherwise noted.

on the false premise that the trial court granted a Rule 55.27 motion to dismiss; it contends the trial court "ran afoul" of that rule because it considered matters outside the pleadings without converting the motion to one for summary judgment. This claim of error is wholly without merit, and we affirm the judgment. We also agree with the Law Firms that this appeal is frivolous and award damages against FCI's counsel pursuant to Rule 84.19.

Background

The substantive and procedural details of the parties' lengthy dispute over legal fees that preceded this appeal are largely immaterial to our disposition. For our purposes, it suffices to say that Pitzer initiated this lawsuit against FCI in 2017 to recover unpaid fees.[2] FCI filed counterclaims against Pitzer and then added claims against Basso; it then amended the counterclaims several times over the next six years.

FCI's third amended counterclaims alleged that the Law Firms had breached the parties' fee agreement and engaged in civil conspiracy. The Law Firms filed a "Third Motion for Sanctions and Dismissal Against [FCI] Pursuant to Rule 55.03(c),"[3] asserting that FCI's counterclaims were "frivolous" and "meritless" and were brought "for the improper purpose to harass and in petty vindictiveness in violation of Rule 55.03." The Law Firms alleged that FCI had assigned the rights pursued in the counterclaims to its

[2] Pitzer's claim against FCI was eventually resolved by a consent judgment that is not at issue on appeal.

[3] Since the Law Firms filed this motion in 2023, Rule 55.03 has been reorganized. *See* Rule 55.03 (2026).

bonding company, relying on various documents attached to the motion. As a result of the assignment, the Law Firms argued, FCI had "no basis to legally move forward with any counterclaim," "no meritorious claim[s]" against the Law Firms, and "no good faith basis to believe otherwise." Among other relief sought for violating Rule 55.03, the Law Firms requested that the trial court strike FCI's third amended counterclaims with prejudice, order "monetary sanctions" in the amount of the attorney fees they expended defending the meritless counterclaims, and impose any "other sanctions" the trial court deemed proper.

Earlier motions for sanctions filed by Basso sought similar relief under Rule 55.03 with respect to the previous versions of FCI's counterclaims; those motions were rendered moot by the subsequent amended pleadings. In response to each of those motions—which also relied in part on extrinsic documents showing that FCI had assigned its rights to a third party—FCI acknowledged that the motions were brought pursuant to Rule 55.03 and raised no objection to the motions' reliance on matters outside the pleadings. Likewise, FCI's response to the third motion for sanctions was titled "Response to [the Law Firms'] Third Motion for Sanctions and Dismissal Pursuant to Rule 55.03(c)," and FCI did not raise any objection to the trial court considering the documents attached to the motion. In fact, FCI itself also relied on those documents to argue that FCI had not assigned all of its rights to a third party.

After a hearing, the trial court granted the Law Firms' motion for sanctions. In its judgment, after reciting the standard for issuing sanctions under Rule 55.03, the trial court found that, according to the documents attached to the motion, "FCI [had] assigned

all rights to any alleged sums" and "had no good faith basis to pursue its counterclaims[.]" As sanctions, the trial court ordered FCI to reimburse the Law Firms for the attorney fees they expended defending the counterclaims and dismissed FCI's counterclaims with prejudice.[4]

FCI filed a motion for reconsideration, arguing that the Law Firms' motion was "filed pursuant to 55.27" and that the trial court violated that rule when it considered matters outside the pleadings without converting the motion to one for summary judgment. The trial court never ruled on the motion to reconsider. FCI now appeals, asserting the same claim of error in this Court.

Discussion

FCI's sole point on appeal is that the trial court erred in granting what FCI blatantly mischaracterizes as the Law Firms' "motion to dismiss." Without mentioning the actual title of that motion or citing to anything in the record for support, FCI asserts that, "[a]lthough not nominated in the motion, it was filed pursuant to Rule 55.27 which governs motions to dismiss." According to FCI, because the trial court considered matters outside the pleadings when it ruled on this motion, Rule 55.27(a) mandated that the trial court treat the motion as one for summary judgment. But the premise of FCI's claim of

[4] The trial court awarded Basso's attorney fees in the judgment from which FCI appeals. The trial court subsequently entered a separate judgment awarding attorney fees to Pitzer as a sanction based on the same reasoning. FCI does not appeal the separate judgment and does not complain in this appeal about the trial court's imposition of the monetary sanctions.

error is patently false: the Law Firms did *not* file a motion to dismiss under Rule 55.27; they filed a motion for sanctions under Rule 55.03 that sought dismissal *as a sanction*.

Rule 55.27(a) provides a list of defenses to a claim that can be raised by motion.[5] The conversion provision of Rule 55.27(a) states: "If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment[.]" A motion under Rule 55.03, however, is not for the purpose of stating a defense to a claim that might require dismissal, but to impose sanctions. Under Rule 55.03, sanctions are warranted when, among other things, (1) a claim is "presented or maintained for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation"; (2) a claim or legal contention is not "warranted by existing law"; or (3) the allegations and other factual contentions in a pleading have no "evidentiary support" or are unlikely to have evidentiary support after further investigation. Rule 55.03(c).

It is plain on the face of the Law Firms' motion that they did not seek to dismiss FCI's counterclaims on any of the grounds set out in Rule 55.27(a), much less for "failure

[5] The complete list of Rule 55.27(a) defenses:

> (1) Lack of jurisdiction over the subject matter, (2) Lack of jurisdiction over the person, (3) That plaintiff does not have legal capacity to sue, (4) Insufficiency of process, (5) Insufficiency of service of process, (6) Failure to state a claim upon which relief can be granted, (7) Failure to join a party under Rule 52.04, (8) That plaintiff should furnish security for costs, (9) That there is another action pending between the same parties for the same cause in this state, (10) That several claims have been improperly united, (11) That the counterclaim or cross-claim is one which cannot be properly interposed in this action.

to state a claim upon which relief can be granted" under Rule 55.27(a)(6), the only ground to which the conversion provision of that rule applies. Rather, the Law Firms filed the motion explicitly "pursuant to Rule 55.03" and set out the conduct they claimed violated that rule. Specifically, they alleged that FCI filed its counterclaims for the improper purpose of harassing the Law Firms, knowing that it had no legal or factual basis for doing so because FCI had assigned its rights underlying the counterclaims to a third party. To be sure, the motion sought to have those counterclaims dismissed—but only as a sanction for those alleged violations.[6] *See* Rule 55.03(d)(2) (providing that sanctions "may consist of or include directives of a nonmonetary nature"); *see also Mahoney v. Doerhoff Surgical Servs., Inc.*, 807 S.W.2d 503, 508 (Mo. banc 1991) (recognizing that sanctions under Rule 55.03 "do not exclude dismissal of the action with prejudice").

When the trial court granted the Law Firms' motion, it too expressly invoked Rule 55.03, set out the parameters of that rule, identified the conduct it found warranted sanctions under that rule, and imposed relief authorized by that rule. The dismissal ordered by the trial court was clearly not based on the counterclaims' "failure to state [claims] upon which relief could be granted" under Rule 55.27(a)(6). Rather, it was expressly based on the trial court's conclusion that, according to the documents attached

[6] The Law Firms' request to strike FCI's counterclaims is the equivalent of asking for dismissal. *See Cade v. Bendix Corp.*, 564 S.W.2d 608, 610 (Mo. App. 1978) (citing *First Presbyterian Church of Monett v. Feist*, 397 S.W.2d 728, 731 (Mo. App. 1965), as "authority for equating dismissal of appellant's claim with striking her claim or pleading").

to the Law Firms' motion, FCI had assigned its rights to a third party and had no good faith legal or factual basis to bring the counterclaims against the Law Firms. While it is evident that the trial court relied on matters outside the pleadings to reach that conclusion, it did so in the context of determining whether conduct was sanctionable under Rule 55.03, not on a motion to dismiss under Rule 55.27(a)(6).

FCI's *only* argument for reversal is predicated on the falsehood that the motion at issue was brought and decided under Rule 55.27. Because it was obviously a Rule 55.03 motion, the trial court could not have "run afoul" of Rule 55.27 in any way. Therefore, FCI's claim of error is entirely without merit. *See, e.g.*, *Jackson v. Hazelrigg Auto. Serv. Ctr., Inc.*, 417 S.W.3d 886, 893-94 (Mo. App. S.D. 2014) (finding argument had no merit because it was "based on a faulty premise" about the trial court's ruling); *Missouri Land Dev. Specialties, LLC v. Concord Excavating Co.*, 269 S.W.3d 489, 508 (Mo. App. E.D. 2008) (finding claim without merit because it was "entirely premised on [a] faulty assumption" about the trial court's judgment).

FCI's attempt to expand its arguments for reversal in its reply brief is for naught. After ignoring the implications of Rule 55.03 in its opening brief, FCI asserts in its reply brief that the Law Firms' motion for sanctions did not satisfy the pleading requirements of Rule 55.03 because it was combined with a motion to dismiss and did not contain allegations of sanctionable conduct. *See* Rule 55.03(d)(1)(A) (stating that motion "shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate Rule 55.03(c)"). We do not review arguments raised for the first time in a reply brief. *See Wilkinson v. Farmers Holding Cos.*, 732 S.W.3d 93, 98 (Mo. banc

2026). And, in any event, like the contentions in FCI's opening brief, these arguments are based on patent misrepresentations about the nature and contents of the Law Firms' motion.

Nor will we review FCI's assertion at oral argument that it did not engage in any sanctionable conduct because FCI raised no such substantive challenge to the judgment in its opening brief. *See State ex rel. Janssen Pharms., Inc. v. Noble*, 613 S.W.3d 58, 61 n.4 (Mo. banc 2020). For the same reason, we do not address FCI's oral argument that a motion brought under Rule 55.03 is subject to the conversion provision in Rule 55.27, a proposition for which FCI readily admits there is no authority.

FCI's point on appeal is denied.

Damages for Frivolous Appeal

The Law Firms contend this appeal is frivolous because it challenges a wholly "fictitious event"—the granting of a motion to dismiss under Rule 55.27. We agree.

Rule 84.19 provides: "If an appellate court shall determine that an appeal is frivolous it may award damages to the respondent as the court shall deem just and proper." An appeal is frivolous under this rule if it "presents no justiciable question and is so readily recognizable as devoid of merit on the face of the record that there is little prospect for success." *Means v. Sears, Roebuck & Co.*, 550 S.W.2d 780, 789 (Mo. banc 1977). "To put it another way, the issues presented on appeal must be at least fairly debatable in order to avoid assessment of damages for frivolous appeals." *Cap. One Bank v. Hardin*, 178 S.W.3d 565, 577 (Mo. App. W.D. 2005) (internal quotation marks, brackets, and citation omitted).

FCI's claim for reversal is easily recognizable as being devoid of merit because it is founded on misleading representations that are flatly refuted by the face of the record. The only issue FCI timely raises—whether the trial court erred in failing to comply with the conversion provision of Rule 55.27—is not fairly debatable. The record leaves no doubt that the Law Firms' motion was explicitly brought and granted under Rule 55.03. Rather than acknowledge that fact directly in its opening brief to this Court, FCI simply omits any mention of Rule 55.03 and provides no explanation for why the rule on which the motion and judgment were based need not be discussed. When FCI finally does address Rule 55.03 in its reply brief, it raises only untenable procedural deficiencies about the motion that are squarely contradicted by the face of the record. And its untimely assertion at oral argument about the interplay of Rule 55.03 and Rule 55.27 is utterly baseless.

We find FCI's depiction of the Law Firms' motion for sanctions in this Court to be disingenuous given that it openly acknowledged in its response in the trial court that the Law Firms had brought the motion pursuant to Rule 55.03, just as it had each time there was a motion for sanctions pending with respect to its earlier counterclaims. Not once did FCI contend those motions actually sought to dismiss the counterclaims under Rule 55.27, nor did it ever object to the trial court's consideration of the documents attached to those motions. To the contrary, FCI itself relied on the very documents it now claims were improperly considered by the trial court in its response to the Law Firms' third motion for sanctions. It was not until the trial court ruled against FCI that it began recasting the motion as one to dismiss subject to Rule 55.27's conversion provision.

FCI's bald insistence that the motion for sanctions on which the trial court ruled was, in fact, a motion to dismiss under Rule 55.27 strains credulity and demonstrates the frivolousness of the appeal. *See Nolfo v. Dubin*, 861 S.W.2d 136, 140-41 (Mo. App. E.D. 1993) (finding appeal frivolous where appellant's counsel made affirmative material misrepresentations about the record in support of argument on appeal).

In addition to repeatedly distorting the record, FCI's brief violates Rule 84.04 in various ways, some borne of these distortions:

- The statement of facts is not "a fair and concise statement of the facts relevant to the questions presented" because it omits any reference to the true nature of the trial court proceedings, and not all of the statements of fact "have specific page references to the relevant portion of the record on appeal." Rule 84.04(c).
- The point relied on—"The trial court erred in granting Basso and Pitzer's motion to dismiss as the Order expressly required the trial court to look beyond the pleading. As such the motion should have been treated as a motion for Summary Judgment."—is not "substantially" in the form set out in Rule 84.04(d).
- The argument goes beyond the error alleged in the point relied on (by including complaints about the trial court's verbatim adoption of a proposed order), omits the required preservation statement, fails to provide an *applicable* standard for reviewing the grant of a motion for sanctions, and does not contain the necessary references to the record for all of the factual assertions therein. *See* Rule 84.04(e).

- The appendix includes emails with counsel and a proposed order that are not part of the record on appeal, which is not authorized by Rule 84.04(h). *See State ex rel. Greitens v. Am. Tobacco Co.*, 509 S.W.3d 726, 745 n.21 (Mo. banc 2017); *see also* Eastern District Local Rule 365 (stating that documents can be included in appendix only if they "are properly filed and made a part of the record on appeal").

These briefing deficiencies have not impeded our ability to discern FCI's claim of error or determine—without advocating on anyone's behalf—that it lacks any merit. *See Bracely-Mosley v. Hunter Eng'g Co.*, 662 S.W.3d 806, 811 (Mo. App. E.D. 2023) (discussing circumstances under which court may review noncompliant briefs). Nor do these violations alone render this appeal frivolous. *See Vanschoiack v. Adkins*, 854 S.W.2d 432, 435 (Mo. App. W.D. 1993). But in conjunction with the record, they "demonstrate[] a lack of a good faith and professional effort to fairly present a meritorious position on appeal." *Id.* at 437. FCI's "failure . . . to present a justiciable question and to exhibit a professional effort to comply with the Rules of Civil Procedure bespeak[s] of bad faith and cause[s] us to find this appeal frivolous." *Id.* If there was a non-frivolous good faith reason for presenting the appeal in this way, FCI has not advanced it.[7]

[7] FCI has not responded to the Law Firms' accusation that the appeal is frivolous and is based on a "fictitious event." *See Cap. One Bank*, 178 S.W.3d at 578 (stating that lack of appellant's response is relevant to determination of Rule 84.19 motion seeking damages for frivolous appeal).

The imposition of damages for frivolous appeals is a drastic remedy, and we exercise our discretion to impose them with great caution. *Ne. Pub. Sewer Dist. of Jefferson Cnty. v. Feucht*, 535 S.W.3d 808, 811 (Mo. App. E.D. 2017). The purposes of awarding such damages under Rule 84.19 are to "prevent congestion of appellate court dockets with cases devoid of merit, which wastes judicial resources" and "to compensate respondents for incurring expenses defending judgments against meritless issues." *Id*. We may assess damages against the appellant, counsel, or both, depending on the circumstances. *Id.* at 811-12 (ordering counsel to pay damages where frivolity of appeal was due to his "lack of professional effort," which did not appear attributable to appellant); *see also Ampleman v. Scheweppe*, 972 S.W.2d 329, 333 (Mo. App. E.D. 1998) ("Sanctions are most often imposed on the attorney because the attorney, rather than the client, normally decides what legal arguments to present on appeal.").

In this case, counsel's failure to properly present tenable arguments for reversal based on a truthful representation of the record has wasted appellate judicial resources, delayed our consideration of meritorious cases, and compelled the Law Firms to incur unnecessary expenses defending the judgment. There is no indication that counsel's lack of candor in this Court is attributable to his client, FCI. Therefore, damages are assessed against FCI's appellate counsel and awarded to both Law Firms.[8]

[8] Pitzer's motion seeking damages for frivolous appeal under Rule 84.19 is granted. Basso's motion for attorney fees on appeal pursuant to Eastern District Rule 400 is denied as moot. In any event, having found the appeal frivolous, we exercise our discretion to award damages to Basso even though it did not request them under Rule 84.19. *See Ne. Pub. Sewer Dist.*, 535 S.W.3d at 811 n.1 (stating that appellate court has authority to award damages for frivolous appeal *sua sponte*).

Conclusion

The judgment is affirmed. Pursuant to Rule 84.19, damages are assessed against counsel for FCI in the amount of $5,000 to be paid to each of the Law Firms. The damages shall be a judgment against Christopher S. Swiecicki and in favor of Louis J. Basso, P.C. for $5,000 and in favor of Pitzer Snodgrass, P.C. for $5,000, for which execution may issue.



MICHAEL E. GARDNER, Judge

Robert M. Clayton III, Presiding Judge, concurs.
Lisa P. Page, Judge, concurs.