MISSOURI COURT OF APPEALS
WESTERN DISTRICT

MATTHEW VALDIVIA,	)	
	)	
Respondent,	)	
	)	
v.	)	**WD88465**
	)	**Consolidated with WD87022**
MISSOURI DEPARTMENT OF CORRECTIONS,	)	**Filed: September 15, 2026**
	)	
Appellant.	)	

APPEAL FROM THE CIRCUIT COURT OF JACKSON COUNTY
THE HONORABLE S. MARGENE BURNETT, JUDGE

BEFORE DIVISION TWO: JANET SUTTON, PRESIDING JUDGE,
LISA WHITE HARDWICK, JUDGE, W. DOUGLAS THOMSON, JUDGE

The Missouri Department of Corrections ("MDOC") appeals the judgment denying its motion to decide unresolved issues in Matthew Valdivia's Missouri Human Rights Act ("MHRA") case against it and awarding Valdivia appellate attorney fees. The MDOC contends the circuit court erred in applying the law of the case doctrine to preclude review of the finality of the June 14, 2023 judgment in Valdivia's MHRA case and calculating the appellate attorney fees award. We find the June 14, 2023 judgment in Valdivia's MHRA case failed to resolve all the issues on his claims and was not a final judgment. Our holdings in *Valdivia v. Missouri Department of Corrections*, WD87022,

717 S.W.3d 575 (Mo. App. 2025) ("*Valdivia I*"), that the June 14, 2023 judgment was final, the MDOC's notice of appeal was untimely filed, and Valdivia was entitled to appellate attorney fees as the prevailing party in that appeal were erroneous and resulted in manifest injustice to the MDOC. Therefore, we recall the mandate in *Valdivia I*, withdraw the opinion, and consolidate *Valdivia I* into this case. The October 28, 2025 judgment in this appeal is reversed, and the cause is remanded to the circuit court to rule on Valdivia's unresolved requests for relief in the MHRA case and enter a final judgment in that case.

FACTUAL AND PROCEDURAL HISTORY

In December 2019, Valdivia filed suit under the MHRA against the MDOC, his former employer. In his first amended petition, Valdivia asserted claims of retaliation, hostile work environment, associational discrimination, and disability discrimination. For each of his claims, Valdivia requested actual, compensatory, and punitive damages; all costs, expenses, expert witness fees, and attorney fees; prejudgment and post-judgment interest at the highest lawful rate; and appropriate equitable relief, including, but not limited to, ordering the MDOC to place him in the same position he would have been absent the illegal discrimination and/or front pay.

A jury trial was held. At trial, Valdivia submitted his retaliation and disability-based hostile work environment claims to the jury. The jury found in favor of Valdivia on both claims and awarded him $2,629 for past economic losses, $162,629 for non-economic losses, and $1,229,629 for punitive damages, for a total of $1,394,887.

On June 14, 2023, the court issued its "Jury Trial Minutes and Judgment," in which it entered judgment on the jury's verdict and ordered the MDOC to pay Valdivia the damages the jury awarded. The court ordered that statutory interest accrue from the date of the judgment, but the court did not specify an interest rate. Lastly, the court stated it was retaining jurisdiction to determine Valdivia's claim for attorney fees. The June 14, 2023 judgment did not address Valdivia's requests for prejudgment interest, reinstatement to his former position and/or front pay, and any other appropriate equitable relief.

Two weeks after the June 14, 2023 judgment, Valdivia filed a motion for attorney fees. On October 27, 2023, the court entered a judgment awarding Valdivia $481,946.26 in attorney fees and expenses. On November 27, 2023, the MDOC filed a combined motion for a JNOV or new trial on Valdivia's MHRA claims and motion for remittitur to reduce Valdivia's damages award to the $500,000 statutory damages cap.[1] Valdivia opposed the after-trial motion as untimely. The court did not rule on the after-trial motion.

On February 29, 2024, the MDOC filed a notice of appeal. The MDOC's points on appeal challenged the court's instructions on Valdivia's claims, the submission of the claims to the jury, and the denial of its motion for remittitur. The MDOC did not allege any error in the attorney fees award.

[1] Section 213.111.4(2)(d), RSMo Cum. Supp. 2025, caps all damages (other than damages for back pay and interest on back pay, which Valdivia was not awarded) for MHRA claims against an employer of MDOC's size at $500,000.

Valdivia filed a motion to dismiss the appeal, arguing we lacked jurisdiction because the MDOC's notice of appeal was untimely filed. *Valdivia I*, 717 S.W.3d at 577. Specifically, Valdivia asserted the June 14, 2023 judgment resolved all issues and claims required to be resolved at that time and, because there were no *timely* after-trial motions, the judgment became final for purposes of appeal on July 14, 2023, requiring the notice of appeal to be filed by July 24, 2023. *Id*. In response, the MDOC contended the June 14, 2023 judgment was not final because it failed to specify a rate for the award of post-judgment interest. *Id*.

We rejected the MDOC's contention for several reasons. First, we explained that, because the failure to include a statutorily required post-judgment interest award does not impact the finality of a judgment, the failure to include an interest rate in a judgment awarding post-judgment interest also does not impact the judgment's finality. *Id*. at 578 (citing *SKMDV Holdings, Inc. v. Green Jacobsen, P.C.*, 494 S.W.3d 537, 561-63 (Mo. App. 2016)).[2] Second, we noted Valdivia's motion for attorney fees was an independent action that "had no bearing on, and did not suspend, the finality of the June 14, 2023 judgment." *Id*. at 578 n.3. Rather, we found the June 14, 2023 judgment was a final judgment because it was "in writing, signed by the judge, and resolved all of the

[2] Because the circuit court included an award of post-judgment interest in the June 14, 2023 judgment, we indicated Valdivia's remedy was to seek a nunc pro tunc order amending the judgment to state the interest rate, citing *McGuire v. Kenoma, LLC,* 447 S.W.3d 659, 662-64 (Mo. banc 2014). *Valdivia I*, 717 S.W.3d at 577-78. On remand after *Valdivia I*, Valdivia moved for a nunc pro tunc order setting the rate of post-judgment interest. The court granted the motion. The MDOC does not appeal the award of post-judgment interest.

underlying claims that the trial court had the authority to determine at that time." *Id*. at 577. Consequently, we held the MDOC's February 29, 2024 notice of appeal was untimely, which deprived us of jurisdiction and required dismissal of the appeal. *Id*. at 579.

In addition to dismissing the appeal, we ruled on Valdivia's pending motion for post-trial and appellate attorney fees. *Id*. Because Section 213.111.2, RSMo Cum. Supp. 2025, allows the court to award "reasonable attorney fees to the prevailing party," and Valdivia was the prevailing party in securing the dismissal of the appeal on jurisdictional grounds, we granted his motion. *Id*. We remanded the case to the circuit court to determine and award Valdivia reasonable post-trial and appellate attorney fees. *Id*. We issued our opinion in *Valdivia I* on June 3, 2025. The MDOC filed a motion for rehearing, which we denied.

Following remand, the MDOC filed a motion on August 8, 2025, asking the circuit court to determine the remaining unresolved issues in the case, including Valdivia's request for prejudgment interest and other appropriate equitable relief, such as placing him in the same position he would have been absent the illegal discrimination and/or front pay. The MDOC argued the court's failure to rule on Valdivia's request for equitable relief prevented the June 14, 2023 judgment from being a final judgment, citing *R.M.A. v. Blue Springs R-IV*, 717 S.W.3d 187, 192 n.6 (Mo. banc 2025) (stating the circuit court's failure to rule on the plaintiff's request for equitable relief prevented the jury trial order and partial judgment entered in accordance with the jury's verdict from being a final judgment). On August 12, 2025, the MDOC supplemented its motion,

directing the circuit court's attention to *Carter v. Missouri Department of Correctio*ns, 718 S.W.3d 423 (Mo. banc 2025), and *Rhodes v. Missouri Highway and Transportation Commission*, 718 S.W.3d 419 (Mo. banc 2025), both of which were issued that day. In *Carter* and *Rhodes*, the Supreme Court dismissed the appeals for lack of jurisdiction because the judgments in those cases failed to rule on the plaintiffs' requests for prejudgment interest and equitable relief and, therefore, were not final. *Carter*, 718 S.W.2d at 425; *Rhodes*, 718 S.W.3d at 422-23. Valdivia opposed the motion, arguing the law of the case doctrine prohibited the circuit court from finding there were any unresolved issues in the June 14, 2023 judgment and contradicting *Valdivia I*'s holding that the judgment was final.

Additionally, Valdivia filed a motion for appellate attorney fees. The MDOC challenged the hours as unreasonable and objected to the application of a multiplier. On October 28, 2025, the circuit court entered its judgment granting Valdivia's request for appellate attorney fees, applying a 1.5 multiplier to the lodestar amount, for a total of $245,287.76. The court also denied the MDOC's request for the circuit court to determine the unresolved issues, finding the law of the case doctrine precluded reversal of *Valdivia I*'s conclusion that the June 14, 2023 judgment was a final judgment that disposed of all issues then before the circuit court. The MDOC appeals. Valdivia has filed a motion for attorney fees incurred in this appeal.

ANALYSIS

In Point I, the MDOC contends the circuit court erred in denying its motion to determine unresolved issues. The MDOC argues the law of the case doctrine did not

prohibit the circuit court from deciding the unresolved issues because the June 14, 2023 judgment was not a final judgment. In response, Valdivia asserts the circuit court had no authority to revisit the finality of the June 14, 2023 judgment, the law of the case doctrine precludes review of the finality of the judgment, and the MDOC waived its argument that the judgment was not final.

We agree with Valdivia that, on remand from *Valdivia I*, the circuit court had no authority to reexamine our holding that the June 14, 2023 judgment was a final judgment. "On remand, all proceedings of the circuit court must be in accordance with the appellate court's mandate." *Smith v. Brown & Williamson Tobacco Corp*., 410 S.W.3d 623, 633 (Mo. banc 2013). Circuit court proceedings "contrary to the mandate are null and void." *Guidry v. Charter Commc'ns, Inc.*, 308 S.W.3d 765, 769 (Mo. App. 2010) (citation omitted). In *Valdivia I*, we remanded the case to the circuit court "to determine and award Valdivia reasonable attorneys' fees for this appeal." 717 S.W.3d at 579. Hence, that is all the circuit court had the authority to do.

Valdivia next asserts the law of the case doctrine precludes reexamination of the finality of the June 14, 2023 judgment. The law of the case doctrine "governs successive appeals involving substantially the same issues and facts." *Frawley v. Frawley*, 637 S.W.3d 140, 147 (Mo. App. 2021) (citation omitted). Under the doctrine, the first appellate decision "becomes the law of the case in subsequent proceedings of the same cause," and "normally precludes re-examination of issues decided in the original appeal." *Id*. (citation omitted). The doctrine also precludes consideration of "matters that arose prior to the first adjudication and might have been raised but were not." *Id*. (citation

omitted). The law of the case doctrine is "more than merely a courtesy: it is the very principle of ordered jurisdiction by which the courts administer justice." *Id*. at 148 (citation omitted).

"The doctrine of law of the case, however, is not absolute." *Krysl v. Treasurer of Mo.*, 615 S.W.3d 843, 850 (Mo. App. 2020) (citation omitted). "An appellate court on a second appeal has discretion to refuse to apply the law-of-the case doctrine where the first opinion arose from mistake or resulted in a manifest injustice." *Id*. (citation omitted). Here, the MDOC argues the law of the case doctrine should not be applied because our conclusion in *Valdivia I* that the June 14, 2023 judgment was final was a mistake, and adherence to that mistaken conclusion resulted in manifest injustice to the MDOC.

In *Valdivia I*, we concluded the June 14, 2023 judgment was final because it "resolved all of the underlying claims that the trial court had the authority to determine at that time." 717 S.W.3d at 577. The June 14, 2023 judgment entered judgment on the jury's verdict on Valdivia's retaliation and disability-based hostile work environment claims, the only two claims Valdivia submitted to the jury, and awarded Valdivia damages in accordance with the jury's verdict. However, the June 14, 2023 judgment did not address Valdivia's additional requests in his petition for prejudgment interest, reinstatement to his former position and/or front pay, and any other appropriate equitable relief. Additionally, the June 14, 2023 judgment did not include a catch-all statement that all other relief requested was denied.

In cases with virtually identical circumstances, the Supreme Court held that, when the circuit court fails to rule on a plaintiff's request for prejudgment interest and equitable relief, either explicitly or with a catch-all statement, the judgment is not final. *See Carter*, 718 S.W.3d at 425, *Rhodes*, 718 S.W.3d at 422-23, and *R.M.A.*, 717 S.W.3d at 192 n.6. "A prerequisite to appellate review is that there be a final judgment." *Rhodes*, 718 S.W.3d at 423 n.3 (quoting *Boley v. Knowles*, 905 S.W.2d 86, 88 (Mo. banc 1995)). If the circuit court's order was not a final judgment, then the appellate court lacks jurisdiction, and the appeal must be dismissed. *Id*.

Instead of dismissing the MDOC's appeal in *Valdivia I* because the notice of appeal was untimely filed, we should have dismissed the MDOC's appeal because the June 14, 2023 judgment was not a final, appealable judgment, and we lacked jurisdiction over the appeal. *Rhodes*, 718 S.W.3d at 423. For this reason, Valdivia's contention that the MDOC waived any challenge to the finality of the June 14, 2023 judgment by not raising it in *Valdivia I* or in a motion for rehearing or transfer after *Valdivia I* is meritless. "[A]ppellate jurisdiction cannot be conferred by waiver, acquiescence, or even express consent" of the parties. *Jefferson City Med. Grp., P.C. v. Brummett*, 665 S.W.3d 380, 384 (Mo. App. 2023) (citation omitted).

The mistaken belief that the June 14, 2023 judgment was final had significant adverse consequences for the MDOC in the circuit court and this court. The circuit court did not rule on the MDOC's after-trial motion, including its request for remittitur to enforce the $500,000 statutory damages cap, presumably because the court believed the motion was untimely filed, as it was outside of Rule 78.04's 30-day time limit. In reality,

the MDOC's after-trial motion was prematurely filed. Likewise, the mistaken belief as to the finality of the judgment resulted in our dismissal of the MDOC's appeal based on its purportedly untimely filing, which denied the MDOC a substantive review on the merits. Lastly, because we found Valdivia to be the prevailing party in the appeal solely on the basis that he secured the dismissal of the MDOC's appeal due to its purportedly untimely filing, we granted Valdivia's motion for appellate attorney fees. On remand, the circuit court ordered the MDOC to pay Valdivia $245,287.76 in appellate attorney fees.

Our determination in *Valdivia I* that the June 14, 2023 judgment was a final judgment was a jurisdictional mistake that resulted in manifest injustice to the MDOC. That the mistake involved an issue of appellate jurisdiction readily distinguishes this case from cases cited by Valdivia in which courts applied the law of the case despite an apparent mistake. *See, e.g., State v. Graham*, 13 S.W.3d 290, 293 (Mo. banc 2000) (holding the law of the case doctrine applied to bar correction of intermediate appellate court's erroneous decision to remand the case for re-sentencing by the circuit court instead of a jury).

Under these exceptional circumstances, we exercise our discretion not to apply the law of the case doctrine. Point I is granted. The June 14, 2023 judgment was not a final judgment because it failed to dispose of all remedies sought as to any one claim for relief. *Rhodes*, 718 S.W.3d at 422-23. Our holdings in *Valdivia I* that the June 14, 2023 judgment was final, the MDOC's notice of appeal from that judgment was untimely filed, and Valdivia was entitled to appellate attorney fees as the prevailing party in that appeal were erroneous.

The MDOC asks that we remand the case to the circuit court to decide the unresolved issues and enter a final judgment. We will treat the MDOC's request as a motion to recall the mandate in *Valdivia I*. *See Greenbriar Hills Country Club v. Dir. of Revenue*, 47 S.W.3d 346, 354 (Mo. banc 2001). A motion to recall the mandate may be used to correct defects in appellate proceedings. *Finley v. State*, 590 S.W.3d 432, 434 (Mo. App. 2019); *City of Excelsior Springs v. Elms Redevelopment Corp.*, 18 S.W.3d 53, 55 (Mo. App. 2000). To correct this jurisdictional defect, we recall the mandate in *Valdivia I*, withdraw the opinion, and consolidate *Valdivia I* into this case.[3] Because the opinion in *Valdivia I* is withdrawn, the circuit court's award, in the October 28, 2025 judgment, of appellate attorney fees to Valdivia as the prevailing party is premature and is reversed, rendering Points II and III of the MDOC's appeal moot.

CONCLUSION

We recall the mandate in *Valdivia v. Missouri Department of Corrections*, WD87022, 717 S.W.3d 575 (Mo. App. 2025), withdraw the opinion, and consolidate that case into this case. The October 28, 2025 judgment is reversed, and the cause is remanded to the circuit court to rule on Valdivia's unresolved requests for relief in the MHRA case and enter a final judgment in that case. We deny Valdivia's motion for attorney fees incurred in this appeal.



LISA WHITE HARDWICK, JUDGE

All Concur.

[3] This action has been approved by the court en banc per the order issued contemporaneously with this opinion on September 15, 2026.