In the
Missouri Court of Appeals
Western District

PAUL AND ERIN THARP,	)	
	)	
Respondents,	)	**WD88122**
	)	
v.	)	**OPINION FILED:**
	)	**SEPTEMBER 22, 2026**
SOUTHERN STAR CENTRAL GAS PIPELINE, INC.,	)	
	)	
Appellant.	)	

Appeal from the Circuit Court of Cass County, Missouri
The Honorable R. Michael Wagner, Judge

Before Division Four: Edward R. Ardini, Jr., Chief Judge, Presiding, Alok Ahuja, Judge and Cynthia L. Martin, Judge

Southern Star Central Gas Pipeline, Inc. ("Southern Star") appeals from the trial court's entry of summary judgment in favor of Paul and Erin Tharp (collectively, the "Tharps") based on stipulated uncontroverted facts. Southern Star argues that the trial court erroneously construed a recorded right-of-way easement to require Southern Star to

make a tap on its gas pipeline to provide the Tharps with natural gas service for their home. Southern Star also argues that it was error to award the Tharps monetary damages for breach of contract; to order Southern Star to begin providing gas service to the Tharps' house within 60 days; to make six factual findings outside the stipulated summary judgment record; and to conclude that the Tharps were entitled to an award of attorneys' fees. We reverse the judgment's award of monetary damages for breach of contract. In all other respects, the trial court's judgment is affirmed.

Factual and Procedural Background[1]

The Tharps own real property in Cass County, Missouri. The property is subject to a recorded right-of-way easement for a natural gas pipeline ("Easement"). The Easement was granted in 1962 by the prior owners of the property ("Prior Owners") to Cities Service Gas Company ("Cities Gas").

The Easement provides that the "[Prior Owners] do hereby grant, convey, and warrant to [Cities Gas] and its successors and assigns, a Right-of-Way to construct, reconstruct, renew, operate, maintain, inspect, alter, replace, repair and remove a pipe line, and . . . additional pipelines, for the transportation of gas . . . over and through . . ." the Prior Owners' property. Central to this case, the Easement further provides as follows:

> As part of the consideration hereof, [Cities Gas] agrees, upon Grantor's written request therefor, to make a tap upon its gas pipe line constructed

[1]The facts are drawn from the uncontroverted facts in the summary judgment pleadings. We view the record in the light most favorable to the party against whom the judgment was entered. *Kinnaman-Carson v. Westport Ins. Corp.*, 283 S.W.3d 761, 764 (Mo. banc 2009).

> hereunder at a point nearest the principal dwelling house now on said land, and sell, or cause to be sold, to [Prior Owners] at said connection natural gas for domestic purposes in the principal dwelling house now on said land . . . and continue to so sell, or cause to be sold, such gas as long as [Cities Gas] transports gas through said pipe line . . . .

Pursuant to the Easement, Cities Gas made a tap on its gas pipeline at a point nearest the Prior Owners' house. Thereafter, the Prior Owners purchased gas for domestic purposes for many years from Cities Gas, and later from Southern Star, the successor to Cities Gas.

Sometime between 2007 and 2008, a fire destroyed the Prior Owners' house. At some point, the Tharps purchased the Prior Owners' property and built a new house. In 2023, the Tharps sent a written request to Southern Star to make a tap on its gas pipeline to provide gas service to their house. Southern Star refused, and claimed that the Easement only required a tap for the provision of gas service to the Prior Owners' house "now on said land" when the Easement was granted in 1962.

In July 2024, the Tharps filed a petition against Southern Star alleging claims for breach of contract, for trespass in the alternative to breach of contract, and for a declaratory judgment interpreting the Easement to require Southern Star to make a tap on its gas pipeline to provide gas service to the Tharps' house. The Tharps' petition prayed for damages on the breach of contract and trespass claims, and sought an award of attorneys' fees.

In February 2025, the Tharps and Southern Star filed a Joint Stipulation of Facts ("Stipulated Facts") in anticipation of the filing of cross motions for summary judgment. Southern Star then filed a motion for summary judgment based on the Stipulated Facts seeking judgment in its favor on all claims asserted by the Tharps. Southern Star argued

that the Easement does not require Southern Star to make a tap to provide gas service to the Tharps' house. The Tharps filed a cross-motion for summary judgment based on the Stipulated Facts seeking judgment in their favor on all of the claims asserted in their petition including "such other and further relief as this Court deems just and proper."[2] The Tharps argued that the Easement does require Southern Star to make a tap to provide gas service to the Tharps' house.

In April 2025, the trial court conducted a hearing on the cross motions for summary judgment. The parties confirmed on the record that all of the facts essential to the entry of a judgment on the Tharps' asserted claims had been agreed upon, and that the only issue for the court to determine was whether the Easement required Southern Star to make a tap on its gas pipeline for the provision of gas service to the Tharps' house. After the parties presented competing arguments about the legal effect of the Easement, the trial court took the matter under advisement.

Thereafter, the Tharps filed a proposed judgment, which the trial court entered verbatim on May 15, 2025 ("Initial Judgment").[3] The Initial Judgment granted the

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[2]The cross-motions for summary judgment each sought a full and final judgment in favor of the movant on all claims asserted by the Tharps, even though the Stipulated Facts filed with the trial court suggested that the parties' original intent was to file cross-motions for ***partial*** summary judgment on the Tharps' breach of contract claim.

[3]A trial court's adoption of proposed judgments verbatim is a practice that "has been routinely criticized by Missouri courts." *Neal v. Neal*, 281 S.W.3d 330, 337 (Mo. App. E.D. 2009) (citing *Nolte v. Wittmaier*, 977 S.W.2d 52, 57 (Mo. App. E.D. 1998)). The pitfalls of wholesale adoption of proposed judgments with no effort to ensure they align with the procedural posture of a case, the facts, or the law are revealed in this case. We encourage trial courts "to approach a party's proposed order with the sharp eye of a skeptic and the sharp pencil of an editor." *Nolte*, 977 S.W.2d at 58 (quoting *Massman Constr. Co. v. Mo. Highway & Transp. Comm'n*, 914 S.W.2d 801, 804 (Mo. banc 1996)).

Tharps' motion for summary judgment, and denied Southern Star's motion for summary judgment. The Initial Judgment recited the Stipulated Facts, but then included six additional "findings" under a section described as "Further Findings of Fact Made by the Court." The Initial Judgment recited that the parties agreed that no genuine issues of material fact were in dispute, and that the issue to be determined was a question of law regarding the effect of the Easement. The Initial Judgment concluded that the Easement required Southern Star to make a tap on its gas pipeline to provide gas service to the Tharps' house, and entered judgment in favor of the Tharps and against Southern Star on the Tharps' breach of contract and declaratory judgment claims. The Initial Judgment ordered Southern Star to provide gas to the Tharps' house within 60 days, and awarded the Tharps monetary damages in the amount of $2,466.50 on their breach of contract claim. The Initial Judgment then found that "[t]he only remaining issue to be determined" was the amount to be awarded to the Tharps for attorneys' fees, and ordered the Tharps to submit the amount of such fees for the Court's review and approval within 14 days. Finally, the Initial Judgment included a provision stating, "this Order constitutes a final judgment under [Rule] 74.01(b)[4] and an express determination that there is no just reason for delay."

[4]Rule 74.01(b) addresses a trial court's ability to certify an interlocutory judgment as eligible for appeal.

All Rule references are to *Missouri Court Rules, Volume I - State, 2025*, unless otherwise noted.

The Initial Judgment correctly concluded that the only issue framed by the pleadings but left unresolved by its entry was the Tharps' claim for attorneys' fees.[5] However, Rule 74.16 was in effect when the Initial Judgment was entered. That Rule required the Tharps' claim for attorneys' fees to be submitted by motion within 30 days after entry of the Initial Judgment, and for that motion to be treated as an independent action. Rule 74.16(b)(1), (3). As a result, the "unresolved issue" of attorneys' fees did not render the Initial Judgment interlocutory, and the trial court's purported certification of the Initial Judgment for appeal under Rule 74.01(b) was superfluous. *See WI 909 Walnut, LLC v. 909 Walnut Tower, LLC*, 717 S.W.3d 775, 784 (Mo. App. W.D 2025) (under Rule 74.16, "an unresolved claim for attorney's fees no longer arrests the finality of a judgment on the merits, even where the claim is pled in a petition") (quotation omitted).

On Friday, June 13, 2025, the Tharps submitted a proposed amended judgment. The trial court signed the proposed amended judgment, verbatim, on the same day it was submitted ("Amended Judgment"). Although the Amended Judgment was signed by the trial court on June 13, 2025, it was not electronically filed until Monday, June 16, 2025. The Amended Judgment stated, "[t]his Order is effective as of the date and time shown on the electric [sic] file stamp."

[5]The Initial Judgment concluded that because the Tharps' trespass claim was pled in the alternative to the breach of contract claim, the grant of judgment in the Tharps' favor on the breach of contract claim negated any need to address the trespass claim.

The Amended Judgment varied from the Initial Judgment in five material ways. First, the Amended Judgment removed the section setting forth six "Further Findings of Fact" made by the trial court.[6] Second, although the Amended Judgment still ordered Southern Star to make a tap on its gas pipeline to provide gas service to the Tharps, it removed the language requiring Southern Star to do so within 60 days. Third, the Amended Judgment removed the language stating that the only remaining issue to be resolved in the case was the amount to be awarded the Tharps for attorneys' fees. Fourth, the Amended Judgment made express reference to Rule 74.16 and directed the Tharps to submit a motion for attorneys' fees within 30 days "for the Court's review and approval." Fifth, the Amended Judgment stated that it was intended to replace and supersede the Initial Judgment. The Amended Judgment inexplicably retained the language certifying the judgment for interlocutory appeal under Rule 74.01(b). *See WI 909 Walnut, LLC*, 717 S.W.3d at 784 (under Rule 74.16, "an unresolved claim for attorney's fees no longer arrests the finality of a judgment on the merits, even where the claim is pled in a petition") (quotation omitted).

[6]The six "findings" included in the Initial Judgment but removed from the Amended Judgment were characterized as "Findings of Fact," but were arguably legal conclusions, as they declared the validity of the Easement, that the Easement is a real covenant that runs with the land, that Southern Star "substantially interfered" with the Tharps' reasonable use and enjoyment of the Easement, that the Tharps' land was burdened by the Easement, and that the Tharps are fee simple owners of the land. Because the "findings" were removed from the Amended Judgment, we do not further address them. Southern Star does not contend that all or any of these "findings" constituted material facts in dispute that precluded the entry of summary judgment as a matter of law.

On June 23, 2025, Southern Star filed a notice of appeal from the Amended Judgment, or alternatively from the Initial Judgment if the Amended Judgment was entered after the trial court lost jurisdiction over the case.

Standard of Review

We review the grant of summary judgment *de novo*. *Shelter Mut. Ins. Co. v. Hill*, 688 S.W.3d 638, 643 (Mo. App. W.D. 2024). Thus, we do not defer to the trial court's determination and apply the same criteria as the trial court in determining whether summary judgment was proper. *Id.* "Summary judgment is appropriate where 'there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.'" *Montgomery v. Coreslab Structures (Mo.), Inc.*, 697 S.W.3d 766, 770 (Mo. App. W.D. 2024) (quoting *Cox v. Callaway Cnty. Sheriff's Dep't*, 663 S.W.3d 842, 847 (Mo. App. W.D. 2023)). When a case is "submitted on stipulated facts entered into between the parties in the proceedings before the trial court, '[t]he only question before us is whether the trial court made the proper legal conclusion from the stipulated facts.'" *Shelter Mut. Ins.*, 688 S.W.3d at 644 (alteration in original) (quoting *Jones v. Am. Fam. Mut. Ins. Co., S.I.*, 632 S.W.3d 482, 487 (Mo. App. W.D. 2021)).

Analysis

On appeal, Southern Star raises five points, each claiming the trial court erred in granting summary judgment in favor of the Tharps. The first point asserts that the trial court erroneously interpreted the Easement to require Southern Star to make a tap on its gas pipeline to provide natural gas to the Tharps because the only tap required by the Easement was the tap made to provide gas service to the Prior Owners' house. The

second point contends that the award of monetary damages on the Tharps' breach of contract claim was beyond the scope of the summary judgment record because the Stipulated Facts did not address monetary damages. The third point argues that the trial court's order requiring Southern Star to provide gas service to the Tharps within 60 days was beyond the scope of the summary judgment record because the Stipulated Facts did not address the time within which a regulated utility must provide service. The fourth point asserts that it was error for the trial court to make six additional "findings" that were not included in the Stipulated Facts. The fifth point contends that it was error to conclude that the Tharps were entitled to an award of attorneys' fees because the Stipulated Facts did not address a basis for awarding attorneys' fees.

Points three, four, and five are denied as moot because the Amended Judgment is the controlling judgment

Points three, four, and five address findings and conclusions in the Initial Judgment that were either removed from the Amended Judgment, or recast in the Amended Judgment due to the effect of Rule 74.16. These points have been asserted by Southern Star to preserve claims of error should we conclude that the Initial Judgment is the controlling judgment because the Amended Judgment was not timely entered. Thus, we first address whether the Amended Judgment superseded the Initial Judgment.

Under Rule 75.01, the trial court retained control over the Initial Judgment during the 30-day period after its entry, and could during that time vacate, reopen, correct, amend, or modify the Initial Judgment. Because the Initial Judgment was entered on May 15, 2025, the trial court retained control over the judgment through June 14, 2025.

However, June 14, 2025 fell on a Saturday.[7] Rule 44.01(a) provides that "[i]n computing any period of time prescribed or allowed by these rules . . . [t]he last day of the period so computed is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a legal holiday." As such, the trial court retained control over the Initial Judgment, and had the authority to enter the Amended Judgment, through Monday, June 16, 2025. *See Cole v. Kan. City S. R.R. Co.*, 713 S.W.3d 180, 193 n.8 (Mo. banc 2025) (when the thirtieth day after the entry of judgment fell on the weekend, appellate court applied Rule 44.01(a) to extend the trial court's jurisdiction to amend a judgment under Rule 75.01 to the following Monday).

Here, the Amended Judgment was both signed by the trial court and electronically filed within the time during which the trial court retained control over the Initial Judgment pursuant to Rule 75.01. We therefore need not determine whether the Amended Judgment was "entered" by the trial court on the day it was signed (June 13, 2025), or on the day it was electronically filed by the clerk of the court and entered in the case management system (June 16, 2025).[8] Nor do we need to address whether the trial

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[7]"Appellate courts take judicial notice of calendars, legal holidays, and dates on which a particular day of the week fell." *Davis v. Kempker*, 167 S.W.3d 721, 726 n.2 (Mo. App. W.D. 2005) (citing *State ex rel. Mo. Highway & Transp. Comm'n v. Overall*, 73 S.W.2d 779, 782 (Mo. App. E.D 2002)).

[8] Rule 74.01(a) provides that "[a] judgment is entered when a writing signed by the judge and denominated 'judgment' or 'decree' is filed." In *Coffer v. Wasson-Hunt*, 281 S.W.3d 308, 310 (Mo. banc 2009), our Supreme Court concluded that a judgment is "filed" when it is signed by a judge and forwarded to the court clerk, because to hold otherwise would conflict with Rule 43.02(b) (defining filing with the court as filing with the court clerk or directly with the judge) and the basic principle that a "judgment derives

court had the authority to self-direct the effective date of the Amended Judgment by stating it would be effective on "the date and time shown on the electric [sic] file stamp."

Because the Amended Judgment was timely entered, it had the effect of vacating the Initial Judgment in its entirety. Rule 78.07(d).[9] Southern Star's appeal is thus taken from the Amended Judgment.[10]

As a result, the claims of error raised in Southern Star's third, fourth, and fifth points on appeal are rendered moot, and are denied.[11] We turn to the merits of the remaining points on appeal addressing the trial court's interpretation of the Easement

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its force from the court's judicial act and not from the ministerial act of its entry upon the record." (quoting *State v. Collins*, 154 S.W.3d 486, 492 (Mo. App. W.D. 2005)). However, it is not clear that the holding in *Coffer* is captured by Rules 74.01(a), 43.02, 103.06(d) (addressing when a document is deemed submitted for filing), and 103.06(f) (addressing when a document is accepted for filing and electronically entered in the case management system). We need not resolve that issue here.

[9]Rule 78.07(d) provides that a trial court may amend or modify a judgment in accordance with Rule 75.01, and that unless the amended judgment otherwise specifies, it "shall be deemed a new judgment for all purposes." Consistent with this Rule, the Amended Judgment noted the trial court's intent that it would supersede the Initial Judgment.

[10]"A judgment becomes final in a civil matter at the expiration of 30 days after its entry if no timely authorized after-trial motion is filed." Rule 81.05(a)(1). Southern Star filed its notice of appeal on June 23, 2025, fewer than 30 days after entry of the Amended Judgment. However, in a civil matter, a prematurely filed notice of appeal is "considered as filed immediately after the time the judgment becomes final for the purpose of appeal." Rule 81.05(b).

[11]Southern Star admits that these points are moot in its Reply Brief, although it argues point five was rendered moot only because the trial court denied the Tharps' Rule 74.16 motion for attorneys' fees sometime after the Amended Judgment was entered, a topic that is beyond the scope of our record on appeal. We conclude that point five is also moot because the Amended Judgment did not enter a judgment in favor of the Tharps for attorneys' fees, and instead simply directed the Tharps to "submit for the Court's *review and approval*" their claim for attorneys' fees pursuant to Rule 74.16. (Emphasis added.)

(point one) and its award of monetary damages on the Tharps' breach of contract claim (point two).

Point One: The trial court did not commit legal error by interpreting the Easement to require Southern Star to make a tap on its gas pipeline to provide natural gas service to the Tharps

In its first point on appeal, Southern Star argues that the trial court committed legal error by interpreting the Easement to require it to make a tap on its gas pipeline to provide natural gas service to the Tharps. The interpretation of an easement, "like any contract, is a question of law that we review *de novo* and without deference to the trial court's interpretation." *Daume v. Szepanski*, 729 S.W.3d 599, 602 (Mo. App. E.D. 2026) (citing *Erwin v. City of Palmyra*, 119 S.W.3d 582, 584 (Mo. App. E.D. 2003)).

The Easement language at issue is as follows:

> As part of the consideration hereof, [Cities Gas] agrees . . . to make a tap upon its gas pipe line constructed hereunder at a point nearest the principal dwelling house now on said land, and sell, or cause to be sold, to [Prior Owners] at said connection natural gas for domestic purposes in the principal dwelling house now on said land . . . and continue to so sell, or cause to be sold, such gas as long as [Cities Gas] transports gas through said pipe line . . . .

Relying on the phrase "now on said land," Southern Star argues that the Easement only required a tap on the gas pipeline at a point nearest the Prior Owners' house on the land in 1962, and only required the sale of gas for domestic purposes to service that same house until it was destroyed by fire. Southern Star thus argues that the consideration required in exchange for the grant of the Easement has been fully delivered.

The Tharps argue that the phrase "now on said land" in the Easement was merely descriptive of the initial obligation to provide gas. The Tharps note that the Easement

expressly requires Cities Gas and its successors and assigns to "continue to so sell, or cause to be sold, such gas as long as [Cities Gas, its successors or assigns] transport[] gas through said pipe line . . . ." The Tharps argue that this provision would be rendered meaningless if the obligation to provide gas service is construed as limited to the Prior Owners' house that was on the land in 1962.

The trial court concluded that the Easement contemplated mutual, perpetual obligations to permit the presence of the pipeline and to provide gas for sale for the benefit of the burdened land. The trial court concluded that a "straightforward reading" of the Easement "makes it obvious" that the grant of the Easement was conditioned on the pipeline owner's continuing obligation to provide natural gas for sale to a dwelling house on the land burdened by the Easement so long as the pipeline is used to transport gas. The trial court thus concluded that Southern Star's obligation to make a tap and to provide access to natural gas for domestic purposes did not end when the Prior Owners' house was destroyed by fire.

"When interpreting an easement . . . affecting land, courts are to 'ascertain the intention of the grantor from the whole of the instrument . . . .'" *St. Charles Cnty. v. Laclede Gas Co.*, 356 S.W.3d 137, 141 (Mo. banc 2011) (quoting *Blackburn v. Habitat Dev. Co.,* 57 S.W.3d 378, 386 (Mo. App. S.D. 2001)). Though the parties disagree about the legal effect of the Easement, "[a] document is not ambiguous merely because the parties disagree over its meaning." *Blackburn*, 57 S.W.3d at 386 (citing *Lowery v. Air Support Int'l, Inc.*, 982 S.W.2d 326, 329 (Mo. App. S.D. 1998)). Here, the trial court did not find the Easement to be ambiguous, and the parties do not argue that the Easement is

ambiguous. The parties simply disagree about the intention of the Prior Owners when they granted the Easement. Though it is plain that the Prior Owners intended grant of the Easement to be conditioned on the provision of access to domestic natural gas service, we must decide if the Prior Owners intended this benefit to extend only to the house on their land in 1962, or instead as a perpetual benefit to any dwelling house on the land. In resolving this disagreement, we are required to "reject an interpretation [of the Easement] that involves unreasonable results when a probable or reasonable construction can be adopted." *Id*. (citation omitted).

Southern Star focuses exclusively on the phrase "now on said land," which appears twice in the Easement, to urge that the right to perpetually operate a gas pipeline on the burdened land was conditioned only on the provision of an initial tap and gas service to the Prior Owners, and even more restrictively, to the house on the land in 1962. This interpretation fails to read the Easement as a whole, as required. *Laclede Gas*, 356 S.W.3d at 141. Southern Star's focus on the phrase "now on said land" ignores that the Easement requires Cities Gas, its successors and assigns "to continue to so sell, or cause to be sold, such gas as long as [Cities Gas, its successors or assigns] transport[] gas through said pipe line . . . ." The obligation to continue to provide gas service to the land burdened by the Easement is expressed in unconditional terms, but would be rendered illusory and meaningless if limited to the Prior Owners' house on the land in 1962. For example, Southern Star's interpretation of the Easement would relieve it of any obligation to provide access to domestic gas service to the Prior Owners even had they rebuilt their home after it was destroyed by fire.

Southern Star advocates an overly simplistic, categorical reading of the easement: it claims that it was not required to provide gas service to the Tharps because they were seeking service "for a new dwelling that did not exist on the Land at the time the Right of Way was executed." In moving for summary judgment, Southern Star did not claim that the Tharps' new home was any different than the house which had existed on the land in 1962, or that supplying gas to the Tharps' new home was somehow more expensive or more burdensome to Southern Star than providing gas to Prior Owners' home. Southern Star does not contend that the Tharps are seeking materially different gas service, or that they are seeking service for a materially different building, or for materially different purposes.

Southern Star's reading of the easement leads to an unreasonable result. We reject interpretations that involve unreasonable results "when a probable or reasonable construction can be adopted." *Blackburn*, 57 S.W.3d at 386 (citation omitted). The phrase "now on said land" is subject to a probable and reasonable construction that refers only to the *initial* location of a tap and to the initial provision of access to domestic gas service. The phrase "now on said land" cannot be reasonably construed, however, to relieve the gas provider of the continuing obligation, so long as the pipeline is in use, to provide access to gas service for domestic purposes to either the house on the land in 1962, or to a house built to replace the house on the land in 1962.

This straightforward reading of the Easement is further supported by language that permits Cities Gas and its successors and assigns to install additional pipelines provided that "[Cities Gas, its successors and assigns] shall pay the same consideration as above

expressed for each additional pipeline and its appurtenances installed[.]" If the consideration required of Cities Gas and its successors and assigns was limited to making the initial tap to provide gas service to the house on the land in 1962, then the reference to a continuing obligation to pay the same consideration should additional pipelines be constructed would be rendered illusory and meaningless.

The trial court did not commit legal error in construing the plain language of the Easement, read as a whole, to express the grantor's intent to impose mutual, perpetual obligations to permit the pipeline and to provide access to domestic gas service so long as the gas pipeline is being used to transport gas. This result is consistent with the result reached in *Hemsath v. City of O'Fallon*, 261 S.W.3d 1 (Mo. App. E.D. 2008).[12] There, a city contracted with a property owner to annex his property. *Id.* at 2. In consideration of the annexation, the city promised to extend a sewer pipeline onto the property and to provide three taps to the pipeline. *Id.* The Eastern District found that the city's promise to provide sewer access created a "real" covenant, or one that touches and concerns the land, rather than a "personal" covenant made by a grantee to benefit only the original grantor. *Id.* at 4-5. The Court concluded that the grantee's agreement to supply the grantor's property with sewer access in exchange for the right to install a pipeline was thus a real covenant that ran with the land. *Id.* at 5. As a result, the Court found that

[12]The primary issue in *Hemsath* was whether the original property owner had standing to sue because a city that had been given permission to build a sewer line over the property had not yet done so. 261 S.W.3d at 3, 5-7. *Hemsath*'s focus on the original owner's standing to enforce a covenant does not diminish the value of its analogous discussion of the qualities of a covenant that runs with the land and is thereby enforceable by a subsequent owner of the land.

when the original grantor sold the property, the right to enforce the real covenant transferred to the subsequent owner of the land. *Id.*

Though not controlling, we also note the seemingly inconsistent interpretation of the Easement promoted by Southern Star in this case when compared to the facts in *Southern Star Central Gas Pipeline, Inc. v. Murray*, 190 S.W.3d 423 (Mo. App. S.D. 2006). In that case, a virtually identical gas pipeline easement was granted by a prior landowner to Southern Star's predecessor in interest in 1967. *Id*. at 425-26. Though the easement contained identical language about the obligation to make a tap and to provide gas service to the dwelling house "now on said land," the record in that case established that a modular house was placed on the subject land in 1992, and that a tap was made to provide gas service to the modular home at that time. *Id*. at 426, 432. It is not clear whether the modular home was the first "dwelling house" on the land burdened by the easement. But it is clear that the tap made in 1992 benefitted a *subsequent* owner of that land, and provided gas service to a dwelling house that did not exist when the easement was granted, consistent with the easement being one that expressed mutual, perpetual obligations. Given the identical easement language, it is difficult to reconcile *Murray* with Southern Star's argued interpretation of the Easement in the instant case.

The trial court did not err in finding that Southern Star is obligated by the Easement to make a tap to provide gas service to the Tharps, and thus did not err in entering judgment in favor of the Tharps on their claims for breach of contract and declaratory judgment.

Point One is denied.

Point Two: The trial court erred in awarding monetary damages on the Tharps' breach of contract claim because the cross motions for summary judgment sought final judgments resolving all claims asserted by the Tharps but were based on Stipulated Facts that did not address or establish monetary damages

In its second point relied on, Southern Star contends that the trial court erred in awarding monetary damages on the Tharps' breach of contract claim because the award of damages exceeded the summary judgment record. We agree.

We review the grant of summary judgment *de novo*. *Shelter Mut. Ins.*, 688 S.W.3d at 643. Because the parties' cross-motions for summary judgment were submitted in reliance on the Stipulated Facts, "'[t]he only question before us is whether the trial court made the proper legal conclusion from the stipulated facts.'" *Id.* at 644 (alteration in original) (quoting *Jones*, 632 S.W.3d at 487).

Here, the cross motions for summary judgment each sought a full and final judgment resolving all of the Tharps' claims based on the Stipulated Facts. The Stipulated Facts did not address the amount of monetary damages that should be awarded if Southern Star breached the Easement. Yet, the Tharps submitted two proposed judgments, both of which the trial court signed verbatim, and both of which included an award of monetary damages for breach of contract in the amount of $2,466.50. The only factual support for this monetary award was an exhibit the Tharps submitted to the trial court along with the proposed Amended Judgment. This exhibit is plainly outside the stipulated summary judgment record. *See Hynes v. Mo. Dep't of Corr.*, 689 S.W.3d 516, 525 (Mo. App. W.D. 2024) (holding that parties cannot cite or rely on facts outside the

summary judgment record). It was thus error for the trial court to include a monetary damages award in the Amended Judgment that was not supported by the Stipulated Facts.

On appeal, the Tharps do not contend that their motion for summary judgment was only intended to resolve the issue of liability for breach of contract, requiring remand to resolve the issue of damages. A plain reading of the Tharps' motion for summary judgment confirms that the Tharps were seeking a full and final judgment on all claims asserted in their petition. Consistent with this fact, the Tharps defend the trial court's award of monetary damages in the Amended Judgment. They argue our review of the damage award is not *de novo* in accordance with the long-settled standard of review for the grant of summary judgment, and instead requires an inquiry into whether substantial evidence supports the award. And they argue that because monetary damages were requested in their petition, we are required to treat all issues of fact about which the trial court did not make a specific finding as having been found in accordance with the result reached.

The Tharps are operating under an obvious misapprehension of the law. The Amended Judgment was not entered following a trial where standards of review applicable to a fact-finder's resolution of disputed facts apply. Instead, the Amended Judgment was entered pursuant to the procedures set forth in Rule 74.04 authorizing the summary disposition of claims based on uncontroverted facts. "Courts determine and review summary judgment ***based on that Rule 74.04(c) record, <u>not</u> the whole trial court record***." *Montgomery*, 697 S.W.3d at 770 (quoting *Hynes*, 689 S.W.3d at 525).

Here, the Tharps sought a final judgment on all of their pleaded claims in their motion for summary judgment. They relied exclusively on the Stipulated Facts to do so, and they affirmatively advised the trial court that there were no genuine issues of material fact in dispute preventing the entry of a final judgment. Because the Stipulated Facts did not address monetary damages, the Tharps elected to abandon that prayer for relief. *See, e.g.*, *State ex rel. Kan. City v. Campbell*, 505 S.W.3d 299, 300 (Mo. App. W.D. 2016) (holding that, where breach of contract theory was pled but not presented to the fact finder, "[a] claim that was not submitted to the [fact finder] at the conclusion of the evidence is considered abandoned") (citation omitted).

The Amended Judgment improperly included an award of monetary damages on the Tharps' breach of contract claim. That award in the Amended Judgment is reversed.

Point Two is granted.

Conclusion

The Amended Judgment's award of monetary damages in the amount of $2,466.50 on the Tharps' breach of contract claim is reversed. In all other respects, the Amended Judgment is affirmed.

Cynthia L. Martin, Judge

All concur