Missouri Court of Appeals
Southern District

In Division

GREGG HARDING and ANDREA DAWN HARDING,

Plaintiffs-Appellants,

v.

DENNIS J. YOUNG, individually and in his capacity as the Trustee of the Dennis J. Young Revocable Trust,

Defendant-Respondent.

Case Number SD39291

Filed: October 6, 2026

APPEAL FROM THE CIRCUIT COURT OF BUTLER COUNTY

Honorable Kacey L. Proctor, Judge

REVERSED AND REMANDED

Gregg Harding and Andrea Dawn Harding ("Appellants") appeal from the judgment of the Circuit Court of Butler County, Missouri ("trial court"), granting summary judgment to Dennis J. Young, individually and in his capacity as the Trustee of the Dennis J. Young Revocable Trust ("Respondent"), on their petition against Respondent for breach of contract and specific performance ("Petition"). In three points on appeal, Appellants argue that the trial court erred in entering summary judgment for

Respondent without ruling on their Motion for Leave to File First Amended Petition ("Motion") (point 1), and that the trial court erred in entering summary judgment on this record (points 2 and 3). We agree with point 1, and we reverse the trial court's grant of summary judgment because Appellants' Motion remained pending at the time the trial court granted the motion for summary judgment, and the proposed First Amended Petition pled an alternate theory of recovery which precluded summary judgment.

Factual Background and Procedural History

In 2024, Appellants filed a petition against Respondent for breach of contract and specific performance surrounding a joint construction project. According to the parties, the successful completion of the construction project required Respondent to deed certain properties to Appellants, free and clear of liens, and required Appellants to return certain farm equipment to Respondent.

Specifically, Appellants' lawsuit sought to compel Respondent to transfer ownership of a property located at 2308 Orr Road, Poplar Bluff, Missouri, which Appellants claimed Respondent had failed to deed to them despite their compliance with the contract terms. Respondent denied the allegations in Appellants' Petition and set forth affirmative defenses claiming that Appellants had not performed all actions required of them under the contract. Respondent also filed a counterclaim against Appellants. Appellants denied the allegations and set forth certain other affirmative defenses, to which Respondent filed affirmative avoidances. Respondent filed a motion for summary judgment on the basis that Appellants had violated the terms of the agreement first by failing to return certain farm equipment in the agreed-upon time, and/or returning it

damaged. Respondent argued that because Appellants had violated the terms of the agreement first, they were precluded from recovering under their Petition.

Appellants answered Respondent's motion for summary judgment[1] and also subsequently filed their Motion. In their Motion, filed August 5, 2025, prior to any ruling on Respondent's motion for summary judgment, Appellants sought leave to amend their petition to add an additional claim of promissory estoppel. Appellants noticed their Motion for hearing on August 18, 2025. The record does not reveal that Respondent ever filed a motion opposing Appellants' Motion. According to the court's docket sheet, the trial court reviewed Appellants' Motion on August 6, 2025. The parties then appeared for hearing on August 18, 2025.[2] Without ever entering a ruling on Appellants' Motion, the trial court entered its order granting summary judgment in Respondent's favor on October 20, 2025. Appellants appeal.

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[1] Specifically, Appellants filed a memorandum in opposition to the motion for summary judgment which detailed the reasons why summary judgment should not be granted, a response to Respondent's statement of uncontroverted material facts and their own separate statement of undisputed material facts in opposition to summary judgment, along with supporting exhibits. In addition to the documents they filed opposing summary judgment, Appellants also filed a motion for a temporary injunction which asked the court to enjoin Respondent from evicting Appellant Gregg Harding's eighty-six-year-old mother, Deanna Harding, from the 2308 Orr Road property during the pendency of the case, as she had been served with an eviction notice by Respondent in connection with the events at issue in this case. Appellants further filed a motion to correct a clerical error and to supplement the record with Appellants' separate statement of undisputed material facts and an amended motion for an order permitting Appellants to serve the same.

[2] The docket entry from August 18, 2025, reads as follows: "Case called. Attorneys appear in person. Motion for summary Judgment taken under advisement. Parties reach agreement regarding [Respondent's] Motion for Temporary Injunction filed 6/10/2025 and requests Court to prepare judgment. Case is reset to 10/20/2025 at 9:00 a.m. for Trial Setting. KLP/cb."

Discussion

Appellants raise three points on appeal. The first point challenges the trial court's failure to grant their Motion, and the second two points challenge the trial court's grant of summary judgment in favor of Respondent. We agree with Appellants that the trial court should have ruled on their Motion, and we reverse on that basis, which also necessitates reversal of the trial court's grant of summary judgment.

In their first point on appeal, Appellants claim that the trial court erred in failing to grant them leave to amend their petition prior to granting Respondent's motion for summary judgment.

> "As a general rule, amendments to pleadings should be liberally allowed." *Asmus v. Capital Region Family Practice*, 115 S.W.3d 427, 432 (Mo. App. W.D. 2003); *see also* Rule 55.33(a).[] The trial court has broad discretion to allow or disallow amendments to the pleadings, and we review a trial court's denial of a motion to amend a pleading for an abuse of that discretion. *Soybean Merchandising Council v. AgBorn Genetics, LLC*, 534 S.W.3d 822, 833 (Mo. App. W.D. 2017). An abuse of discretion occurs when the trial court's ruling is clearly against the logic of the circumstances and is so arbitrary and unreasonable that it shocks the sense of justice and indicates a lack of careful consideration. *Asmus*, 115 S.W.3d at 437. In reviewing the trial court's denial of a motion to amend the pleadings, this Court considers "whether justice is furthered or subverted by the trial court's decision." *Moore v. Armed Forces Bank, N.A.*, 534 S.W.3d 323, 328 (Mo. App. W.D. 2017) (citation omitted).
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> In determining whether to permit an amendment to a pleading, courts should consider such factors as hardship to the moving party if the amendment is denied, undue prejudice to the opposing party if the amendment is granted, the reasons the new matter was not included in earlier pleadings, the timeliness of the motion, bad faith by the moving party, and whether the amendment would cure any deficiency in the pleading. *Asmus*, 115 S.W.3d at 433 (citing *Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962)). Failing to consider these elements indicates an abuse of discretion, in that it demonstrates a lack of careful consideration. *See ACLU of Missouri v. Maries County Sherriff's Office*, 688 S.W.3d 816, 819 (Mo. App. S.D. 2024) (finding abuse of

> discretion in trial court's denial of motion to amend when record indicated trial court did not consider any listed factors before denying ACLU's request to amend its petition); *Asmus*, 115 S.W.3d at 437 (citing *Foman*, 371 U.S. at 182, 83 S.Ct. 227)).

Smith v. Zion Travelers Missionary Baptist Church, 703 S.W.3d 266, 270 (Mo. App. E.D. 2024) (footnote omitted). Said another way, "[O]utright refusal to grant the leave *without any justifying reason appearing* for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the [Rule]." ***ACLU of Missouri***, 688 S.W.3d at 819 (quoting ***Asmus***, 115 S.W.3d at 437).

In this case, Appellants filed their Motion on August 5, 2025, after the motion for summary judgment was filed but before the trial court had ruled on it.[3] In their Motion, Appellants stated that the Motion sought to clarify certain legal and factual claims, and to add a claim for promissory estoppel. Appellants attached the proposed First Amended Petition to the Motion which added a new count for promissory estoppel. In the proposed First Amended Petition, Appellants alleged as follows:

- On or about June 7, 2024, Respondent presented to Appellants for the first time an addendum to the original contract which stipulated that certain equipment be

[3] According to the docket entries for this case, on May 1, 2025, Respondent filed his motion for summary judgment, memorandum of law in support of motion for summary judgment, statement of uncontroverted material facts, and his Exhibit A. On May 5, 2025, the docket entry states that all of Respondent's summary judgment documents were "reviewed by [the] Court. KLP/mgs[.]" The docket entries state that on June 30, 2025, Respondent's "motion for summary judgment is taken up and at the conclusion of the hearing the Court takes the matter under advisement." Also according to the docket entries, the parties convened for another hearing on August 18, 2025, at which time the "[m]otion for summary Judgment [is] taken under advisement."

returned to Respondent by June 10, 2024, for Respondent to release the additional deeds.

- Appellants responded to Respondent that such a timeline was not physically possible, as some of the equipment included in that request was not in Appellants' possession. Respondent and Appellants then exchanged text messages and emails, wherein they mutually agreed that any equipment in a drivable condition would be delivered by June 10, 2024. Any other equipment that was either disabled or had to be hauled, would not be delivered by that date.
- In reliance on the representations that Respondent made to Appellants in the aforementioned text messages and emails that only the drivable equipment needed to be delivered by June 10, 2024, at which time Respondent would release the remaining deeds, Appellants delivered the equipment as agreed.
- Despite Respondent's promise, Appellants' reliance thereon, and Appellants' performance of the terms described, Respondent had failed to deliver the deed to 2308 Orr Road, Poplar Bluff, Missouri, as promised.

Appellants attached a separate Notice of Hearing to their Motion stating that they intended to call their Motion up for hearing on August 18, 2025, at 9:00 a.m. Respondent did not file any opposition to Appellants' Motion. A docket entry dated August 6, 2025, states: "Plaintiffs' Motion for Leave to File First Amended Petition reviewed on today's date." The docket entry is signed with the trial judge's initials. All parties appeared for the hearing on August 18, 2025, but the docket entry from that date only mentions the temporary injunction and the motion for summary judgment. *See supra* footnote 2. The

next substantive docket entry is not until October 20, 2025, stating that the motion for summary judgment had been granted.

Our review of the relevant case law and the circumstances of this case lead us to conclude that the trial court's failure to rule on Appellants' Motion constituted an abuse of discretion under these circumstances. We find ***Smith*** instructive. In ***Smith***, a church attendee brought a premises-liability action against a church, alleging that a defective threshold leading into the church caused her to fall and sustain facial injuries. 703 S.W.3d at 268. The church filed a motion for summary judgment which alleged that the plaintiff could not prove her claim that she fell because of a defective threshold at the church. ***Id.*** at 269. Rather, the church alleged that the plaintiff's own deposition established that she had fallen because the door closed unexpectedly and knocked her to the ground. ***Id.*** The church scheduled its motion for summary judgment for hearing on March 19. ***Id.*** On March 17, the plaintiff filed a motion to amend her petition, seeking to add facts that she had learned through the discovery process, specifically including "allegations regarding the defective nature of the subject door." ***Id.*** The trial court heard arguments on both motions and subsequently denied the plaintiff's motion to amend her pleadings and granted the church's motion for summary judgment. ***Id.***

On appeal, the Eastern District of this Court held that the trial court had erred when it denied the plaintiff's motion to amend her pleadings. ***Id.*** at 270. Central to the court's finding that the trial court had abused its discretion in so doing was that the trial court "gave no reason for denying [the plaintiff's] motion to amend her pleadings. A flat denial with no justifying reason 'is not an exercise of discretion; it is merely abuse of that

discretion.'" ***Id.*** (quoting ***Asmus***, 115 S.W.3d at 437). Here, the trial court did not err by ruling the Motion incorrectly, it simply failed to exercise its discretion at all to either grant or deny Appellants' Motion. The trial court knew of the existence and substance of Appellants' Motion, as the August 6, 2025 docket entry states that the trial court reviewed the Motion that day. Appellants noticed the Motion for hearing and all parties appeared before the trial court on the noticed day and at the noticed time. ***Smith*** dictates, however, that the trial court's failure to consider the Rule 55.33 factors governing leave to amend petitions is itself evidence of an abuse of discretion. ***Id.***

Smith further compels us to find an abuse of discretion under such circumstances because here, as in ***Smith***, Appellants' proposed First Amended Petition requested to add an "alternate theory of recovery" that would defeat the motion for summary judgment. ***Id.*** at 272. In ***Smith***, the plaintiff initially alleged that the dangerous condition at issue was the doorway's threshold, but her amended petition requested to add allegations regarding the defective nature of the door at issue. ***Id.*** The Eastern District analyzed the impact of the plaintiff's proposed amendment this way:

> If the trial court had properly allowed [the plaintiff] to amend her petition to include the alternate theory of recovery that the door was a dangerous condition, the trial court would have to deny the Church's motion for summary judgment, which was based solely on the issue of whether the threshold was a dangerous condition. *See Altidor* [*v. Broadfield*], 576 S.W.3d [272,] 278 [(Mo. App. E.D. 2019)] (to be entitled to summary judgment, party moving for summary judgment must show it is entitled to judgment as [a] matter of law on every viable theory pled).

Id.

Similarly here, Appellants sought to add an alternate theory of recovery – promissory estoppel. Respondent's motion for summary judgment could not have been successful without addressing this alternative theory, as the summary judgment movant must establish a right to summary judgment on all viable theories. ***Id.*** The trial court, having reviewed the contents of the Motion and the First Amended Petition, attached thereto, would have known that Appellants sought leave to add an alternative theory of recovery which would have defeated the summary judgment motion.

Manzer v. Sanchez, 985 S.W.2d 936 (Mo. App. E.D. 1999), is also applicable to the situation before us, as it concerns a trial court's failure to rule on a motion to amend the pleadings. In ***Manzer***, the plaintiffs/appellants had filed a motion for leave to file an amended petition and a proposed first amended petition while the defendants' motions to dismiss were still pending. ***Id.*** at 938. Even though the motion to amend remained pending, the trial court nonetheless dismissed the plaintiffs' claims with prejudice. ***Id.*** at 939. The appellate court held that it was "an abuse of discretion and prejudicial" for the trial court to fail to grant plaintiffs' leave to amend the petition under these circumstances. ***Id.*** at 939. Specifically, the appellate court found that the plaintiffs suffered severe hardship in having their claims dismissed with prejudice, and that the plaintiffs'/appellants' "proposed amendment would have cured the procedural defects of the original petition." ***Id.***; *see also* ***Sloan-Odum v. Wilkerson***, 176 S.W.3d 723, 725-26 (Mo. App. E.D. 2005) (holding that trial court abused its discretion when it denied plaintiff leave to amend her answer for purpose of asserting compulsory counterclaim one week before trial).

Respondent's cited cases do not support his effort to characterize Appellants' conduct as abandonment of their Motion and they do not persuade this Court to find abandonment under these circumstances. Respondent's leading case, ***Koman v. Soffer***, concerns a plaintiff who never responded to the pending summary judgment motion. 948 S.W.2d 706, 708 (Mo. App. E.D. 1997). Instead of responding to the motion for summary judgment pending against him, the plaintiff – three days before his response was due – asked for an extension of time in which to file his response. ***Id.*** Then, on the new date his response was due, the plaintiff still did not file his response to the motion for summary judgment, but rather filed a motion for leave to amend his petition, plus another request for an extension of time in which to respond to the motion for summary judgment. ***Id.*** The plaintiff never called up for hearing either motion, nor did he ever file a response to the motion for summary judgment. ***Id.*** Based upon that record, the Eastern District of this Court found that the plaintiff had abandoned his motion for leave to file an amended pleading. ***Id.*** Those facts are much different from the facts presented in this case, already discussed above.

Respondent's other cases are similarly unavailing. ***Vermillion v. Burlington Northern R. Co.***, 813 S.W.2d 947, 950 (Mo. App. E.D. 1991), for example, is simply not on point. In that personal injury case, the railroad employee testified at trial regarding rehabilitation services and his search for other employment in a way that was inconsistent with his interrogatory answers and suggested that the plaintiff had failed to update the same. ***Id.*** at 949. After the plaintiff testified, the defense attorney moved for a mistrial or to exclude the testimony. ***Id.*** The court stated that it would not grant a mistrial but stated

that it might entertain a motion to strike the testimony; however, the court wanted an opportunity to review the interrogatory answers first. ***Id.*** The defense attorney then went on to cross-examine both the plaintiff and his expert witness regarding the plaintiff's inconsistencies. ***Id.*** Defense counsel did not mention his motion to strike or ask the court again to strike the testimony until the next morning before the case went to the jury, at which point the judge indicated that defense counsel had waived his motion to strike. ***Id.*** The basis for the court's holding as such was that "a party cannot object to the admission of certain evidence and then use the same evidence to its advantage." ***Id.*** at 950. The issue in ***Vermillion*** is so dissimilar that it is not instructive on the issue before this Court.

Sydnor v. Director of Revenue does not address abandonment, *per se*, but rather whether exhibits which are part of a pleading that was never called up for hearing can be considered as evidence at trial. 876 S.W.2d 627, 628-29 (Mo. App. W.D. 1994). Similarly unconvincing is ***Century State Bank v. Sapp***, 871 S.W.2d 40, 40-41 (Mo. App. W.D. 1993), which held that where a couple appeared for trial and made no objection to proceeding to trial in that venue, they had abandoned a motion for a change of venue which had actually been filed by a different party who had since been dismissed from the case.[4] As such, the cases cited by Respondent do not persuade us to conclude Appellants abandoned their Motion here on the facts we are able to discern from the record before us.

[4] The court noted that it "entertain[ed] considerable doubt that [the appellants] could treat a motion for change of venue filed by [different, since dismissed, parties] as if the motion had been filed by themselves," but found it unnecessary to reach that question. ***Century State Bank***, 871 S.W.2d at 41, n.1.

In summary, Appellants' proposed First Amended Petition added an alternative theory of recovery which would have precluded the trial court from entering summary judgment on the then-pending motion for summary judgment. The Motion was filed within one year of the original petition being filed, and prior to any ruling on the motion for summary judgment. Based upon the record before this Court, Appellants noticed the Motion up for hearing on August 18, 2025, a date that they appeared in the trial court for a hearing, and the trial court, at the very least, had reviewed and knew of the existence of the Motion, yet failed to rule on the seemingly unopposed Motion, and offered no explanation as to why it did not. These facts lead this Court to conclude that this case is more akin to those cases where trial courts have refused to grant a plaintiff leave to amend a petition without any justifying reasons, therefore necessitating reversal. *See, e.g.*, ***ACLU of Missouri***, 688 S.W.3d at 821; ***Smith***, 703 S.W.3d at 270. The subsequent entry of summary judgment extinguished the entirety of Appellants' claims, causing extreme hardship to Appellants. Under these circumstances, we conclude the trial court abused its discretion in failing to rule on Appellants' Motion. *See* ***Smith***, 703 S.W.3d at 270.

As such, we remand the case with instructions to the trial court to rule on Appellants' Motion. For the reasons discussed herein, our decision on this issue also necessitates reversal on the trial court's grant of summary judgment in favor of Respondent.

JENNIFER R. GROWCOCK, J. – OPINION AUTHOR

JACK A. L. GOODMAN, J. – CONCURS

BECKY J. WEST, C.J. – CONCURS