In the Missouri Court of Appeals
Eastern District

DIVISION TWO

IN THE MATTER OF: RAY BERGFELD, DECEASED	)	ED113884
	)	Filed: November 10, 2026

Appeal from the Circuit Court of St. Charles County
The Honorable Dennis R. Chassaniol, Judge

INTRODUCTION

Mary Alice Bergfeld (Mary Alice) appeals from the trial court's judgment on her claim of fraudulent misrepresentation against the estate (Estate) of her late husband, Ray Bergfeld (Buzz), as well as the court's remedy of creating an equitable trust.[1] The Estate cross appeals from the trial court's judgment in favor of Mary Alice on her claim of negligent misrepresentation against the Estate. The crux of this case centers on the representations Buzz made about his Individual Retirement Account (IRA) to induce

[1] To avoid confusion, we use the first names or nicknames of the people involved in this appeal. No familiarity or disrespect is intended.

Mary Alice to agree to divide the marital assets in their joint trust (Joint Trust), thereby terminating it.

Mary Alice raises three points on appeal. In her first point, Mary Alice alleges the trial court's judgment in favor of the Estate on her count of fraudulent misrepresentation is against the weight of the evidence. She contends the trial court's finding is erroneous because the sole evidence elicited at trial proved Buzz knew his representations were false at the time he made them. Point Two asserts the trial court erroneously applied the law by imposing an equitable trust under the equitable conversion doctrine, rather than her requested remedy of rescission.

In her third and final point, Mary Alice argues in the alternative that if the equitable conversion doctrine applies, the trial court's judgment is against the weight of the evidence. She alleges the trial court's remedy fails to reflect the parties' intent that Mary Alice have access to the IRA funds not only for catastrophic medical care, but also for general support. Additionally, Mary Alice alleges the court-created trust does not adequately compensate her financial loss as the IRA funds should have been accessible to her upon Buzz's death in November 2021, rather than nearly three and half years later when the court entered its judgment in May 2025.

The Estate brings two points on cross-appeal. In its Point One, the Estate asserts the trial court erroneously applied the law in finding Buzz made negligent misrepresentations to Mary Alice because he did not make those representations as part of a particular business transaction, a required element of this cause of action. In Point Two, the Estate contends that the trial court erred in issuing a judgment without findings

of facts on Mary Alice's negligent misrepresentation claim, notwithstanding the Estate's Rule 73.01(c)[2] request, which precludes meaningful appellate review.

Because we defer to the trial court's credibility determinations, and the evidence admitted at trial supports the court's denial of Mary Alice's claim for fraudulent misrepresentation, we deny her Point One. Because the trial court's remedy of an equitable trust is appropriate in the context of a probate matter, we deny Mary Alice's Point Two. We deny Mary Alice's Point Three, as the trial court's limitations on the equitable trust's categories of expenses and effective date properly fulfilled the true intent of the parties' agreement.

Turning now to the Estate's points on appeal, we deny the Estate's Point One. As a matter of first impression, we root our narrow holding in the unique facts of this case. We hold that co-management of a trust satisfies the particular business transaction element of negligent misrepresentation provided that, as here, the speaker holds a pecuniary interest. Next, we deny the Estate's Point Two because we find that the trial court made sufficient findings of fact for us to meaningfully review its judgment. Accordingly, we affirm the trial court's judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Mary Alice and Buzz were married for 47 years until the day of Buzz's death on November 22, 2021. Before their marriage to each other, Mary Alice and Buzz had prior

[2] All Rule references are to Missouri Supreme Court Rules (2024) unless otherwise indicated.

marriages that produced children. Mary Alice's children are Leone (Le), Beverly, and Deann. Buzz's children include Robert (Bob), Ramona (Mona), Robyn, and William.[3] Mary Alice and Buzz had no children together. For decades, Mary Alice and Buzz worked as teachers. Buzz earned more money than Mary Alice because he had additional education and worked for a longer period of time. Mary Alice managed the household's day-to-day expenses like shopping and paying credit card bills while Buzz handled taxes and investments. The couple divided their financial responsibilities in this fashion, as Buzz, a former math teacher, was better at complex math. Both Mary Alice and Buzz retired, earning a pension. On February 3, 2006, Mary Alice and Buzz devised an estate plan and accordingly executed estate planning documents.

Termination of the Joint Trust

Throughout their marriage, the couple maintained separate IRAs and separate revocable living trusts. At the time of Buzz's death, neither Buzz nor Mary Alice named each other as beneficiaries of their individual IRAs. Mary Alice and Buzz kept these assets separate to ensure their estates would go to their respective children. In 2006, Mary Alice and Buzz created the Joint Trust with the following purpose:

> The trust created herein shall be held and distributed for the benefit of both of the Grantors and the survivor upon the following terms and limitations:
>
> During the lifetime of Grantors, and during the lifetime of the survivor, the Trustees shall pay over and distribute, free of trust, to either of the Grantors or to the survivor, in monthly or other convenient installments, all of the net income of the trust estate.

[3] William passed away in 2017.

> Furthermore, in the event of illness or other disability of either of the Grantors or the survivor, the Trustees may, if the Trustees deem such course in the Grantors' or the survivor's best interest, use and apply the net income of the trust estate for the **support, health or maintenance** of either of the Grantors or the survivor instead of paying the same to Grantors or the survivor directly and the Trustees may also from time to time in the Trustees' discretion, use and apply such portion or portions of the principal of the trust estate for the support, health and maintenance of either of the Grantors or the survivor, as the Trustees may, in their discretion, deem appropriate and proper under the circumstances.

(emphasis added). The trust language provided that if the couple were to transfer all of the Joint Trust's principal and income out of it, then the Joint Trust would terminate. Mary Alice and Buzz later amended the Joint Trust twice, but the above items remained unchanged. In the event Buzz predeceased Mary Alice, the Joint Trust provided her with additional financial security. On September 1, 2021, the Joint Trust, funded by marital contributions, had $894,638.75 in assets which were held in a Morgan Stanley account.

In 2016, Buzz, at the age of eighty, inherited his mother's property after her death. Buzz was unhappy with receiving his inheritance so late in life and worried about the same happening to his children. To ease these worries, Buzz proposed splitting the Joint Trust with Mary Alice where he would receive sixty percent of the trust's corpus while Mary Alice would receive forty percent. The split would allow Buzz to provide his children with their inheritance from his portion of the Joint Trust assets at a time of his choosing.

Mary Alice refused this proposal because she thought this division was unfair. Buzz persisted in proposing the division of the assets with changes to the percentages each person would receive, and Mary Alice refused each one. Eventually, in late August

2021, Buzz offered Mary Alice a fifty-fifty split of the Joint Trust. Buzz told Mary Alice, if he predeceased her, his son Bob would use Buzz's IRA to provide for her health and medical expenses, and any remaining funds in the IRA would be inherited by Buzz's children. Mary Alice agreed to this arrangement.

On September 1, 2021, Mary Alice asked her daughter, Le, to meet with her and Buzz at the retirement community where the couple lived to discuss the above agreement and assist her in transferring the Joint Trust funds out of the Morgan Stanley account. At this meeting, Buzz provided Le a handwritten budget of Mary Alice's expenses and assets, but this budget did not include Buzz's IRA. The budget showed that Mary Alice's pension and Buzz's pension would provide sufficient income to cover Mary Alice's living expenses if Buzz were to predecease her. At the meeting, Mary Alice inquired about the IRA, and Buzz explained the IRA would be used to cover any emergency medical expenses not provided by Mary Alice's income. Buzz never memorialized his agreement with Mary Alice. At the time of this meeting, Buzz's IRA held $505,000. On or about September 10, 2021, Mary Alice and Buzz removed all the assets from the Morgan Stanley account, split the assets, and terminated the Joint Trust.

Buzz, His Attorney, and the Aftermath of Buzz's Death

Unbeknownst to Mary Alice, Buzz hired Richard Yawitz (Yawitz), an attorney, and began meeting with him in April 2021 to seek advice on how to split the assets in the Joint Trust. Andrew Oberman (Oberman), Buzz's long-time financial advisor who managed the Morgan Stanley account, referred Buzz to Yawitz. Oberman believed that Buzz was possibly seeking a "financial divorce" from Mary Alice. Mona, Bob, and

Oberman attended some of Buzz's meetings with Yawitz. Buzz requested Yawitz send his invoices to Mona's home, rather than his own, so that Mary Alice would remain unaware that he had retained counsel. Additionally, Buzz took Mary Alice's individual estate planning documents, which were in a safety deposit box in the marital home, without her knowledge or permission and gave them to his attorney for review. Yawitz offered guidance during Buzz's negotiations with Mary Alice to split the Joint Trust, and recommended offering Mary Alice a post-nuptial agreement. Despite Yawitz's suggestion, Buzz instructed his counsel not to prepare a post-nuptial agreement because he believed Mary Alice would not agree to the terms.

Sometime after the September 1, 2021 meeting between Buzz, Mary Alice, and Le, Buzz called Mona and left the following voicemail: "[W]e're all done with that crap! Mary Alice and Beverly and Le signed the – everything, and we're gonna split the, uh, stock this week. So, we don't have to worry about any of that crap anymore. Hallelujah! Boy, does it make me feel good." On November 22, 2021, Buzz was tragically killed in a car accident while driving to Mona's home to discuss a phone call he had received from his attorney.

After the accident, Mona and Bob went to the impound lot where Buzz's wrecked vehicle had been towed and removed a briefcase containing the couple's joint estate documents, as well as revisions to Buzz's estate plan he made after engaging Yawitz's services. Shortly thereafter, Buzz's children also confiscated Buzz's cell phone and a laptop jointly owned and used by Mary Alice and Buzz, which contained pertinent

financial information.[4] At Buzz's funeral, Mary Alice asked Bob about Buzz's IRA. Bob responded that Mary Alice was not a beneficiary of the IRA. When Mary Alice explained to Bob what she understood to be her agreement with Buzz concerning the IRA, Bob stated he did not know anything about that. Mary Alice never received any funds from Buzz's IRA.

As a result, and relevant to this appeal, Mary Alice filed claims for fraudulent misrepresentation and negligent misrepresentation against Buzz's Estate. Prior to trial, the parties entered into a joint stipulation agreeing on several facts. The case proceeded to a three-day bench trial in February 2025 before the probate commissioner.

Evidence at Trial

On direct examination, Mary Alice testified that during one specific conversation, Buzz told her he had already instructed Bob to use the IRA for her benefit if Buzz predeceased her. However, she later contradicted her prior testimony and testified "[Buzz] was **going to** make sure I was taken care of by using his IRA, and that Bob was **going to** manage that account for me." (emphases added). During cross examination, Buzz's Estate asked Mary Alice about an email she sent to one of Buzz's grandchildren after his death. In this email, Mary Alice wrote "since [Buzz's] assets were more than four times mine, he wanted to set his IRA in Bob's name if I had astronomical medical bills beyond my ability to handle them."

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[4] Mary Alice engaged in protracted litigation to recover the documents in Buzz's briefcase, and the other items Buzz's children had confiscated after his death, but those issues were resolved prior to this litigation.

At the time of trial, Mary Alice was ninety-one years old, earning $100,000 annually, a large portion coming from Buzz's pension, and had over $1,500,000 in assets. Mary Alice conceded she had enough income to meet her current needs, even after being hospitalized for numerous issues. She had broken her shoulder, developed pneumonia, and suffered several strokes and blood clots. After her last hospitalization, Mary Alice moved to the assisted living portion of her retirement community, which increased her living expenses.

Le testified that she was never in favor of Mary Alice filing suit against the Estate, and hoped the family could have resolved these matters without litigation. Le explained that at the September 1, 2021 meeting she attended with Mary Alice and Buzz, Buzz told her that he **planned on** speaking to Bob about managing the IRA in case Mary Alice incurred "really extreme medical expenses". In such a case, Buzz's intention was that Bob would distribute funds to Mary Alice from the IRA to cover those expenses, and any money left over in the IRA would go to Buzz's children. Le explained that the budget Buzz showed her at the meeting demonstrated that Mary Alice was taken care of, and the IRA would be there in case something traumatic happened.

Judgment

Prior to trial, Buzz's Estate requested several specific findings of facts under Rule 73.01(c) of which two are relevant to this appeal: (1) "[w]hether [Buzz] supplied the information in the course of business or because of some **pecuniary interest**, and if so, what that course of business or pecuniary interest was" and (2) "[w]hether [Buzz] intentionally provided the information to Mary Alice **in a particular business**

transaction and if so, what the business transaction was[.]" (emphases added). In its May 16, 2025 judgment,[5] the trial court found Mary Alice satisfied every element of fraudulent misrepresentation except for Buzz's knowledge that the representation was false at the time that it was made.

However, the trial court found Buzz committed negligent misrepresentation in that he failed to exercise reasonable care or competence to obtain or communicate accurate information. In its judgment, the trial court opined that "whether Buzz intended to follow through with his promise will never be known because he was tragically killed," but nevertheless concluded that proving Buzz's actual intent was not required to establish negligent misrepresentation.

The trial court found that in making the offer to provide funds from the IRA, to cover major and traumatic medical expenses in exchange for dividing the assets in the Joint Trust and terminating it, Buzz acted recklessly. Buzz did not have a plan for carrying out the promise, a matter in Buzz's complete control. The trial court found, because of Buzz's negligent misrepresentation, Mary Alice was left without the security of the IRA's assets should she need them to cover extraordinary medical expenses.

To remedy the negligent misrepresentation, the trial court stated "[i]n order to compensate Mary Alice without gaining her a windfall and in order to carry out the agreement of the parties the court looks to its powers of equity." Based on its credibility

[5] On May 16, 2025, the probate judge confirmed the probate commissioner's judgment dated May 15, 2025.

determinations, the trial court found "[t]he intention and agreement of the parties was for Buzz's IRA funds to be used for the major and traumatic medical expenses of Mary Alice and upon her death the remaining proceeds were to be distributed to Buzz's children." Accordingly, the trial court created an equitable trust "for the payment and/or reimbursement of expense Mary Alice Bergfeld has incurred since May 16, 2025, and will continue to incur during her lifetime, relating to major and traumatic medical occurrences."[6] The trial court's judgment ordered the trust be funded with $505,000 of the Estate's proceeds. The equitable trust defines major and traumatic medical expenses as:

> costs necessary to diagnose, cure, mitigate, treat, or prevent a sudden, severe, or life-threatening injury or disease. Said costs may include, but are not limited to hospital, clinic and outpatient medical expenses, mental health and therapy expenses, expenses for prescription medications and medically necessary devices, physical, occupational and/or rehabilitative therapies, in-home and long-term care services, hospice services, expenses for rental or purchase of medical equipment (including but not limited to ambulatory equipment), transportation expenses (including but not limited to ambulance and emergency services) and all other costs relating to [Mary Alice's] health and medical needs as determined necessary and directed by the treating physicians and medical care providers.

This appeal and cross-appeal follow.

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[6] On August 27, 2025, the probate commissioner issued a judgment creating the Irrevocable Trust Agreement, and the probate judge ratified the judgment and trust on August 28, 2025.

STANDARD OF REVIEW

"On appeal from a bench-tried case, we affirm the judgment of the trial court unless it misapplied or erroneously declared the law, or the judgment is not supported by substantial evidence, or the judgment is against the weight of the evidence." *Grabb v. Grabb*, 689 S.W.3d 207, 212 (Mo. App. W.D. 2024) (internal quotation and quotation marks omitted); *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976). "We will accept as true the evidence and inferences from the evidence that are favorable to the trial court's judgment and disregard all contrary evidence." *Brownfield v. Heman*, 711 S.W.3d 386, 401 (Mo. App. W.D. 2025) (internal quotation, quotation marks, and alteration omitted). As the fact-finder, the trial court may "believe all, some, or none of the evidence offered to prove a contested fact[.]" *Brackney v. Walker*, 629 S.W.3d 834, 840 (Mo. App. S.D. 2021) (internal citation omitted).

Against-the-Weight-of-the-Evidence—Mary Alice's Points One and Three

An against-the-weight-of-the-evidence challenge follows a four-step analytical framework:

> (1) identify a challenged factual proposition, the existence of which is necessary to sustain the judgment;
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> (2) identify all of the favorable evidence in the record supporting the existence of that proposition;
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> (3) identify the evidence in the record contrary to the belief of that proposition, resolving all conflicts in testimony in accordance with the trial court's credibility determinations, whether explicit or implicit; and,
>
> (4) demonstrate why the favorable evidence, along with the reasonable inferences drawn from that evidence, is so lacking in probative value, when

> considered in the context of the totality of the evidence, that it fails to induce belief in that proposition.

In re Est. of McDow, 707 S.W.3d 621, 626–27 (Mo. App. W.D. 2024) (internal quotation omitted). This Court will only set aside a judgment as against-the-weight-of-the-evidence if we firmly believe the judgment is wrong. *Riead, Co-Tr. of John T. Riead, Jr. Revocable Tr. v. Riead, Co-Tr. of John T. Riead, Jr. Revocable Tr.*, 685 S.W.3d 532, 545 (Mo. App. W.D. 2023) (internal quotation omitted). "The against-the-weight-of-the-evidence standard serves only as a check on a [trial] court's potential abuse of power in weighing the evidence …." *In re Est. of McDow*, 707 S.W.3d at 626 (internal quotation omitted). "When the evidence presents two reasonable but different conclusions, an appellate court must defer to the trial court's assessment of the evidence." *Cavin v. Hair*, 677 S.W.3d 613, 618 (Mo. App. E.D. 2023) (citing *Ivie v. Smith*, 439 S.W.3d 189, 206 (Mo. banc 2014)).

Erroneously Applying the Law—Mary Alice's Point Two and the Estate's Point One

We review questions of law in court-tried cases *de novo*. *Broy v. Broy*, 698 S.W.3d 801, 806 (Mo. App. E.D. 2024) (citing *Pearson v. Koster*, 367 S.W.3d 36, 43 (Mo. banc 2012)). *De novo* means we give "no deference to the [trial] court's rulings on questions of law." *Est. of Shippert*, 718 S.W.3d 103, 107 (Mo. App. W.D. 2025) (internal quotation omitted).

ANALYSIS

Mary Alice's Point One: The trial court did not err in denying Mary Alice's claim for fraudulent misrepresentation because sufficient credible evidence supports its finding that Buzz made a promise to act in the future, and he did not know, at the time his representations were made, that they were false

Mary Alice argues the trial court erred in finding Buzz did not commit fraudulent misrepresentation because the evidence demonstrates Buzz told Mary Alice he had already instructed Bob to use the IRA for her benefit, even though Buzz knew the representation was false when he made it because he had not given Bob any such instructions. Buzz's Estate claims we should deny this point because Mary Alice did not provide the four-step analytical framework for an against-the-weight-of-the-evidence challenge, and did not comply with it as she presented no evidence favorable to the trial court's judgment. We decline to do so, and proceed on the merits.[7]

> To prevail on a fraudulent misrepresentation claim, [Mary Alice] must prove nine elements:
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> (1) a representation; (2) its falsity; (3) its materiality; (4) **the speaker's knowledge of its falsity or ignorance of its truth**; (5) the speaker's intent that it should be acted on by the person in the manner reasonably contemplated; (6) the hearer's ignorance of the falsity of the representation;

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[7] An appellant must adhere to the four-step analytical framework by providing the steps and following them, otherwise the appellant dooms their challenge. *Bell-Kaplan v. Schwarze*, 712 S.W.3d 836, 846 (Mo. App. S.D. 2025) (internal quotation omitted). In her initial brief, Mary Alice failed to supply the framework and follow steps two and four as she pointed to no evidence that supported the trial court's judgment. Despite Mary Alice's failure to comply with the framework in her initial brief, we exercise our discretion to review her argument on the merits as we prefer "to dispose of a case following a meaningful consideration of the arguments rather than dismiss the matter due to other deficiencies." *Carpenter v. Carpenter*, 689 S.W.3d 765, 773 (Mo. App. W.D. 2024) (internal quotations omitted). In her reply brief, Mary Alice provides the four-step framework, but again fails to point to the evidence and inferences that support the trial court's judgment as required in an against-the-weight-of-the-evidence challenge.

> (7) the hearer's reliance on the representation being true; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximately caused injury.

Top Priority Transit, LLC v. Cape Auto Pool, Inc., 680 S.W.3d 536, 544 (Mo. App. E.D. 2023) (internal quotation omitted) (emphasis added).[8] A plaintiff must prove every element to succeed on a claim of fraudulent misrepresentation. *Id.* (quoting *Emerick v. Mut. Ben. Life. Ins. Co.,* 756 S.W.2d 513, 519 (Mo. banc 1988)). We narrow our focus to the fourth element as the trial court's judgment found that all other elements were met, and that Mary Alice's failure to establish the fourth element was dispositive as to her claim.[9]

When a fraudulent misrepresentation claim rests on a future act, the plaintiff must show "at the time the statement was made the speaker did not intend to perform the act represented." *Sanders v. Gould*, 685 S.W.3d 589, 596–97 (Mo. App. E.D. 2024) (quoting *Stevens v. Markirk Constr., Inc.*, 454 S.W.3d 875, 881 (Mo. banc 2015); citing *Renaissance Leasing, LLC v. Vermeer Mfg. Co.*, 322 S.W.3d 112, 133 (Mo. banc 2010)). "The fact that the defendant did not perform as promised is not enough, and, without more, the plaintiff cannot show the defendant did not intend to perform when the promise

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[8] The trial court's judgment omitted "or ignorance of its truth" from element four of fraudulent misrepresentation.

[9] Mary Alice, in her reply brief, argues the fourth element was satisfied because the trial court found Buzz was reckless in his representations about his IRA. However, Mary Alice only mentions this finding in her initial brief, and makes no argument about it until her reply brief. "[W]e do not consider arguments raised for the first time in a reply brief." *Lambley v. Diehl*, 603 S.W.3d 346, 365 n.17 (Mo. App. W.D. 2020) (internal citation omitted).

was made." *DiSalvo Props., LLC v. Hall*, 616 S.W.3d 502, 508 (Mo. App. E.D. 2020) (internal quotation omitted). We cannot presume fraud, and the plaintiff may prove her case by circumstantial evidence given fraud is rarely susceptible to positive proof. *Id.* (internal quotation omitted). This court determines a defendant's intent regarding their representations "in light of the meaning that the plaintiff would reasonably give it under the circumstances." *Sanders*, 685 S.W.3d at 597 (citing *Renaissance*, 322 S.W.3d at 133).

Here, the evidence adduced at trial supports the court's finding Buzz did not commit fraudulent misrepresentation because Buzz made a promise to do something in the future. Moreover, the trial court ultimately did not credit Mary Alice's evidence that Buzz never intended to perform. Mary Alice asserts Buzz told her he had already spoken to Bob about the IRA and, because Bob claimed to know nothing about the arrangement at Buzz's funeral, Buzz's representations must have been false. However, on direct and cross examination, Mary Alice contradicted her previous testimony and stated Buzz told her he was **going to** talk to Bob about the IRA. The court credited Le's consistent testimony that Buzz told her he planned at some point to speak with Bob about the management of the IRA, not that he had already done so. In its judgment, the trial court opined that "whether Buzz intended to follow through with his promise will never be known because he was tragically killed."

In support of her against-the-weight-of-the-evidence argument, Mary Alice points to the fact Buzz never had the conversation with Bob, but non-performance alone does not equate to fraud when considering a promise to act in the future. *DiSalvo*, 616 S.W.3d

at 508. Additionally, Mary Alice reiterates circumstantial evidence indicative of Buzz's intent not to perform, such as Buzz secretly hiring an attorney, his theft of her estate planning documents, and his decision not to propose the recommended post-nuptial agreement to Mary Alice. Nevertheless, under our standard of review, we must ignore this contrary evidence and any inferences from it. *Brownfield*, 711 S.W.3d at 401. The above evidence which facially would seem to contradict the trial court's findings, could reasonably be interpreted as demonstrating that Buzz sought to divide the corpus of the Joint Trust first before speaking with Bob about using the IRA funds for Mary Alice's benefit. Even Buzz's voicemail to Mona, presenting the termination of the Joint Trust as a fait accompli, does not negate the possibility that Buzz intended to speak with Bob about managing the IRA once the funds transfer was completed, an intent ultimately thwarted by Buzz's unexpected and tragic death. We deny Mary Alice's Point One.

Mary Alice's Point Two: The trial court appropriately applied the equitable conversion doctrine to create an equitable trust for Mary Alice's benefit

Mary Alice contends the doctrine of equitable conversion is inapplicable under these facts, and the trial court's use of it to create an equitable trust is insufficient to cover her pecuniary loss. Instead, Mary Alice argues that rescission is the appropriate remedy because there was no meeting of the minds. She asserts because the parties never reached an agreement, reconstituting the terminated Joint Trust and refunding the original principal, with half the principal amount coming from Buzz's Estate and the other half from Mary Alice's own assets, would put the parties in the same position they were in

before Buzz made the negligent misrepresentation on which Mary Alice relied. We disagree, and decline Mary Alice's request.

"The probate court has both equitable and legal powers to adjust matters between the parties without rigid adherence to any determined form and may shape the remedy to meet the demands of justice." *Brown v. Brown-Thill*, 543 S.W.3d 620, 637 (Mo. App. W.D. 2018) (quoting *Estate of Cantonia v. Sindel*, 684 S.W.2d 592, 595 (Mo. App. E.D. 1985); citing Section 472.030) (internal quotation marks omitted). Traditionally, the doctrine of equitable conversion applies when the executor of an estate orders the sale of real property and gives the proceeds to beneficiaries without any grant of discretion to the executor. *Matter of Robinson*, 791 S.W.2d 844, 849 (Mo. App. E.D. 1990). The beneficiaries receive the proceeds as the doctrine follows the maxim "that equity regards that as done which ought to be done … so as to give effect to directions in a will or contract." *Id.* (internal citations omitted).

But "[t]he doctrine of equitable conversion has [also] been applied to situations not involving real property." *Cantonia*, 684 S.W.2d at 595. In *Cantonia*, this Court found the trial court's application of the equitable conversion doctrine proper when a legally incompetent co-owner of bonds, co-owned with her paramour and her sister, redeemed her bonds while under the undue influence of her paramour's son. *Id.* at 594–96. The son also unduly influenced the legally incompetent co-owner to open a new bank account, purchase a certificate of deposit with the bond sale proceeds, and register the certificate in the name of the incompetent co-owner and the son. *Id.* at 594–95. By invoking the doctrine of equitable conversion, the court considered the bonds as

remaining in registered condition, and to carry out the intent of the co-owner, prior to her incompetence, awarded proportions of the certificate of deposit and bank account funds to the co-owner's sister, and her then deceased paramour's estate in percentages identical to their original percentages of ownership in the surrendered bonds. *Id.* at 595–96.

In *Moran v. Sutter*, the Supreme Court of Missouri applied the doctrine of equitable conversion under a will provision leaving stock to be held in trust for the testator's minor daughter. *Moran v. Sutter*, 228 S.W.2d 682, 687–88 (Mo. banc 1950). The testator's estate sold the stock to pay down the estate's debts, and the Supreme Court held this conversion from stock to money did not affect the daughter's entitlement to the remaining funds from the stock sale. *Id*. Importantly, "[the doctrine] is not a fixed rule of law but proceeds on equitable principles that take into account the result desired." *Cantonia*, 684 S.W.2d at 596 (citing 27 Am. Jur. 2d Equitable Conversion Section 1, p. 483).

A party should be made whole through their recovery, but she is not entitled to a windfall. *Sanders*, 685 S.W.3d at 598–99 (internal quotations and quotation marks omitted). "Although equity does not demand absolute and literal return to prior positions, the first and prime essential [function] of rescission is that [s]he who seeks equity must do equity, which means in part that neither party will be materially enriched or materially impoverished by the relief." *Goldiluxe, LLC v. Abbott*, 306 S.W.3d 613, 616 n.4 (Mo. App. S.D. 2010) (internal quotation and quotation marks omitted).

Here, the trial court properly applied the doctrine of equitable conversion because the doctrine can address pecuniary or financial losses, and the trial court was not required

to make the findings Mary Alice claims were necessary. *Cantonia* and *Moran* both involved the rights of parties to money. *See Cantonia*, 684 S.W.2d. at 595–96; *see also Moran*, 228 S.W.2d at 687–88. Mary Alice asserts, without citing any authority, that a valid contract is a prerequisite to apply the doctrine of equitable conversion. But the doctrine is not a fixed rule of law. *See Cantonia*, 684 S.W.2d at 596 (making no mention of the elements of contract formation, including the meeting of the minds).

Even if this were a requirement, the evidence demonstrated Mary Alice and Buzz reached an agreement and both intended Buzz's IRA to cover any extraordinary medical expenses that Mary Alice's own assets could not cover. As part of this agreement, the parties terminated their Joint Trust by dividing the trust corpus. Therefore, the trial court appropriately declined Mary Alice's request for rescission as a remedy because such a relief would result in a windfall for her. Rescission would have provided Mary Alice with the entirety of the Joint Trust's corpus for her maintenance, health, and support, beyond the major and traumatic medical expenses the parties agreed the IRA was meant to cover. We deny Mary Alice's Point Two.

Mary Alice's Point Three: The evidence supports the scope of the equitable trust as well as its effective date of May 16, 2025

Mary Alice asserts the trial court improperly limited the scope of its equitable trust to provide assets only to cover major and traumatic medical expenses she could not meet with her own assets. She argues the evidence shows the parties' intention was for Buzz's IRA to provide Mary Alice with funds for her general support, health, and medical expenses. Additionally, Mary Alice asks this Court to make the effective date of the

equitable trust November 22, 2021, the date of Buzz's death, instead of the date of the trial court's May 16, 2025 judgment.

Buzz's Estate requests we dismiss this point as Mary Alice failed to supply and follow the four-step analytical framework for an against-the-weight-of-the-evidence challenge. We again decline to do so, and instead examine the substance of Mary Alice's argument.[10] This Court finds the evidence supports the purpose of the trial court's equitable trust and its effective date.

Equitable conversion seeks to "effectuate the intention of the contracting parties." *Id.* at 595–96. Missouri courts look at the words and acts of the parties to determine their intent. *May v. Williams*, 531 S.W.3d 576, 583 (Mo. App. W.D. 2017) (internal quotation and quotation marks omitted). As a factual issue, we must defer to the trial court's findings on the parties' intent. *Apperson v. Davis*, 737 S.W.3d 218, 223 (Mo. App. E.D. 2026) (internal quotation omitted); *Brownfield*, 711 S.W.3d at 401 (internal quotation, quotation marks, and alteration omitted).

Here, the trial court appropriately limited the scope of the equitable trust only to major and traumatic medical expenses because Mary Alice and Le testified Buzz's IRA would be used for this purpose. Mary Alice's email to Buzz's grandchild bolstered this finding. In the email, Mary Alice stated, "[Buzz] wanted to set his IRA in Bob's name if I had **astronomical medical bills beyond my ability to handle them**." Le understood

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[10] In accordance with our preference to resolve appeals on the merits, we review Mary Alice's point despite her briefing deficiencies. *See supra* note 7.

Buzz wanted Bob to use the IRA for "really severe medical expenses." This evidence supports the trial court's finding "[t]he intention and agreement of the parties was for Buzz's IRA funds to be used for the major and traumatic medical expenses of Mary Alice."

Regarding Mary Alice's request to back date the effective date of the trust to Buzz's death in November 2021 instead of the trial court's May 2025 judgment, we find the evidence also supports the trial court shaping its remedy to meet the demands of justice. The evidence demonstrated Mary Alice had sufficient assets to cover her current expenses, even after her numerous hospitalizations and her move to the more expensive assisted living portion of the retirement community. This evidence supports the trial court setting the date of the equitable trust to May 16, 2025, the date of its initial judgment. We deny Mary Alice's Point Three.

The Estate's Point Two: The trial court made sufficient findings on the pecuniary interest and business transaction elements of negligent misrepresentation to allow meaningful appellate review

We now turn to the points of error alleged by Buzz's Estate, and we start our analysis in reverse order with the threshold issue of whether the trial court's judgment is suitable for appellate review. The Estate argues the trial court failed to make specific findings on whether Buzz supplied Mary Alice information in the course of business or because of some pecuniary interest and, if so, during what particular business transaction the representation was made. We disagree.

Rule 73.01(c) states "[t]he court may, or if requested by a party shall, include in the opinion findings on the controverted material fact issues specified by the party."

Additionally, Rule 73.01(c) provides "[a]ll fact issues upon which no specific findings are made shall be considered as having been found in accordance with the result reached." A trial court must comply with this rule where a party properly requests findings of specific fact issues. *Ganev v. Ganev*, 734 S.W.3d 363, 369 (Mo. App. E.D. 2026) (internal quotation omitted). "However, a court's failure to make such findings mandates reversal only when the trial court's failure to issue requested findings materially interferes with appellate review." *Id.* (internal quotation and quotation marks omitted). We will affirm the trial court's judgment if the record supports it or the court makes findings that substantially comply with a party's requests. *Id.* (internal citation omitted).

Here, the trial court made sufficient findings, and there is no material interference with our appellate review. The trial court identified the elements necessary for negligent misrepresentation, and set forth the factual basis for Buzz's pecuniary interest, the acquisition of his share of the Joint Trust corpus, and the particular business transaction in which the representation was made, the parties' agreement to divide and terminate the Joint Trust in exchange for the security provided from the funds in Buzz's IRA. Consequently, we deny the Estate's Point Two.

The Estate's Point One: The trial court did not err by finding in favor of Mary Alice on her claim of negligent misrepresentation because the management of a Joint Trust by co-trustees constitutes a business transaction when a pecuniary interest is at issue

Buzz's Estate claims the trial court erred as the third element of negligent misrepresentation requires a particular business transaction, which does not include a

private conversation between spouses about their finances. As a matter of first impression, on these narrow facts, we hold that the particular business transaction element of negligent misrepresentation is satisfied by the management of a joint trust by co-trustees wherein a pecuniary interest is involved.

Missouri adopted negligent misrepresentation as a cause of action articulated by the Restatement (Second) of Torts in 1979. *Ligon Specialized Hauler, Inc. v. Inland Container Corp.*, 581 S.W.2d 906, 909 (Mo. App. E.D. 1979) (quoting RESTATEMENT (SECOND) OF TORTS Section 552 (AM. L. INST. 1977)). The Restatement provides the following elements for negligent misrepresentation:

> [o]ne who, in the course of his business, profession or employment, or in any **other transaction in which he has a pecuniary interest**, supplies false information for the guidance of **others in their business transactions**, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.

RESTATEMENT (SECOND) OF TORTS Section 552 (AM. L. INST. 1977) (emphases added). The Restatement explains this cause of action "applies only when the defendant has a pecuniary interest in the transaction in which the information is given," and does not apply when the defendant provides the information gratuitously. *Id.* at Comment c. Stated another way,

> the elements of negligent misrepresentation are: (1) the speaker supplied information in the course of his business or **because of some other pecuniary interest**; (2) due to the speaker's failure to exercise reasonable care or competence in obtaining or communicating this information, the information was false; (3) the speaker intentionally provided the information for the guidance of a limited group of persons in **a particular business transaction**; (4) the hearer justifiably relied on the information;

> and (5) that as a result of the hearer's reliance on the statement, he suffered a pecuniary loss.

Massie v. Colvin, 373 S.W.3d 469, 472 n.4 (Mo. App. S.D. 2012) (internal citation omitted) (emphasis added).[11]

Missouri courts have primarily dealt, if not entirely, with negligent misrepresentation in the context of commercial exchanges, thus, this record presents a matter of first impression. *See Renaissance*, 322 S.W.3d at 134–36 (finding negligent misrepresentation for promises to repair a piece of heavy mining equipment); *Duncan v. Savannah, LLC*, 637 S.W.3d 633, 638–42 (Mo. App. E.D. 2021) (finding genuine issues of material facts about a negligent misrepresentation claim from home buyers against the sellers for ongoing water drainage problems that were purportedly not disclosed); *Blevins v. Am. Fam. Mut. Ins. Co.*, 423 S.W.3d 837, 839–40, 842 (Mo. App. E.D. 2014) (finding no negligent misrepresentation when an insured sued their insurer over leased tools, equipment, and other personal property that were destroyed in a fire).

"To receive guidance on matters of first impression, we may look to cases from our sister states on a comparable issue if based on sound principles and good reason."

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[11] Several cases shorten the first element to "the course of business" and omit "some other pecuniary interest." *See Renaissance*, 322 S.W.3d at 134 (internal citation omitted); *see Duncan v. Savannah, LLC*, 637 S.W.3d 633, 638 (Mo. App. E.D. 2021) (internal citation omitted); *see Dancin Dev., L.L.C. v. NRT Missouri, Inc.*, 291 S.W.3d 739, 744 (Mo. App. E.D. 2009) (internal citation omitted); *see Midwest Bankcentre v. Old Republic Title Co. of St. Louis*, 247 S.W.3d 116, 129 (Mo. App. E.D. 2008). However, the Supreme Court of Missouri has not abrogated cases that include "some other pecuniary interest," and "this Court presumes, absent a contrary showing, that an opinion of this Court has not been overruled *sub silentio*." *State ex rel. Beisly v. Perigo*, 469 S.W.3d 434, 453 (Mo. banc 2015) (internal citation omitted).

Littlefield v. Norman Rigdon Post 5896, Veterans of Foreign Wars of the United States, Inc., 723 S.W.3d 874, 883 (Mo. App. E.D. 2025) (internal citation omitted).

Our sister states have found negligent misrepresentation in less traditional contexts primarily involving the speaker's representation made in the course of the speaker's business. *See Singer v. Beach Trading*, 876 A.2d 885, 890–94 (N.J. Super. Ct. App. Div. 2005) (finding that a former employer's misstatement of an employee's job title to her current employer supported a claim of negligent misrepresentation against the former employer after employee was fired because her current employer, relying on the misrepresentations, believed employee had lied about her professional experience); *see also Sain v. Cedar Rapids Cmty. Sch. Dist.*, 626 N.W.2d 115, 122–29 (Iowa 2001) (finding negligent misrepresentation where a high school guidance counselor provided inaccurate advice to a student on the courses necessary to compete in intercollegiate sports for the National Collegiate Athletic Association resulting in the loss of a scholarship); *see also Gibbs v. Ernst*, 647 A.2d 882, 884–87, 891 (Pa. 1994) (holding negligent misrepresentation applicable to an adoption where an adoption agency misrepresented an adoptive child's history of abuse, resulting in the adoptive parents incurring medical expenses due to the child's psychiatric hospitalization after several incidents of violent behavior); *see also D'Ulisse-Cupo v. Bd. of Directors of Notre Dame High Sch.*, 520 A.2d 217, 223–25 (Conn. 1987) (holding a teacher sufficiently alleged negligent misrepresentation after her school made representations that she would be rehired for the following school year, despite lower student enrollment, but subsequently hired an outside applicant for a position the teacher was qualified for). The *D'Ulisse-*

Cupo court found the school made representations about its plan to rehire the teacher when it knew or should have known that hiring plans would be dependent on student enrollment for the following school year. *Id.*

The case at bar presents an exceptional and fact-dependent instance whereby the elements of negligent misrepresentation can be satisfied despite facially not appearing like a traditional business transaction. This record makes clear that Buzz's pecuniary interest was the acquisition of his share of the Joint Trust corpus. The record is also replete with examples of Buzz's machinations to achieve the termination of the Joint Trust, including secretly hiring counsel, having counsel's invoices sent to his daughter's home, clandestinely meeting with Oberman, Yawitz, and two of his children on several occasions to discuss the termination of the Joint Trust, seizing Mary Alice's personal estate planning documents for review by his attorney, and refusing to follow his counsel's advice to memorialize any agreement between the parties through a post-nuptial agreement.

For her part, Mary Alice, although unaware of Buzz's subterfuges to achieve the division of the Joint Trust corpus, also engaged in her own negotiations with Buzz and refused to permit the divestment of the Joint Trust funds until Buzz agreed to offer what she considered an equitable split. Furthermore, she conditioned her agreement to terminate the Joint Trust on acquiring the added security of access to Buzz's IRA should she ever face catastrophic medical expenses she could not cover. To ensure the benefit of her bargain, she enlisted the assistance of her daughter Le to secure the transfer of the

trust corpus from the Morgan Stanley account to the parties' respective personal accounts.

The distinctive facts of this record bear all the hallmarks of a particular business transaction, specifically, the use of professionals whose business it is to provide advice, and the inclusion of third parties in the decision-making regarding the management of the Joint Trust. The record before us belies the Estate's claim that this was simply an ordinary spousal discussion about finances. Our holding today is strictly limited to the unique circumstances of this case and should not be construed as a broad rule applicable to standard, routine estate planning conversations between spouses. Consequently, we deny the Estate's Point One.

CONCLUSION

The trial court's judgment is affirmed.



Rebeca Navarro-McKelvey, Judge

Lisa P. Page, Presiding Judge., and
Kathleen S. Hamilton, Judge., concur.