

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

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| FORREST EDWARDS d/b/a |) | No. ED99581 |
| STRIKE TEAM MEDIA, Appellant, |) | |
| |) | Appeal from the Circuit Court of |
| vs. |) | St. Louis County |
| |) | |
| BLACK TWIG MARKETING AND |) | Honorable Thea Sherry |
| COMMUNICATIONS LLC d/b/a BLACK |) | |
| TWIG COMMUNICATIONS, Respondent. |) | Filed: November 5, 2013 |

Forrest Edwards d/b/a Strike Team Media (Plaintiff) appeals the judgment of the Circuit Court of St. Louis County in favor of Black Twig Marketing and Communications LLC d/b/a Black Twig Communications (Defendant) on Plaintiff's petition to pierce the corporate veil and establish successor liability. Plaintiff argues that the trial court erred in granting Defendant's "motion to set aside default judgment" because the trial court: (1) lacked jurisdiction to rule on the motion; (2) "exceeded its authority in that it acted as a one-judge court of appeals"; (3) improperly applied Rule 74.05 when the judgment was not a default judgment; and (4) improperly applied Rule 74.06(b) because there was no mistake, inadvertence, surprise, or excusable neglect. Plaintiff also asserts that the trial court erred in rendering judgment for Defendant after trial because the evidence showed that Defendant purchased the most valuable assets of Kupper Parker Communications, Inc. (KPC) and was liable to Plaintiff as KPC's corporate successor.

AFFIRMED.

Division Three Holds:

- 1) The trial court had the authority to grant Defendant's motion to set aside judgment even though the judgment was more than thirty days old.
- 2) We need not consider Plaintiff's second point on appeal given our analysis of points one, three, and four and Plaintiff's failure to develop the argument.
- 3) Rule 74.06, not Rule 74.05, governed Defendant's motion to set aside judgment.
- 4) The judgment was irregular due to lack of notice, and Defendant was entitled to have it set aside under Rule 74.06(b)(3).
- 5) A transfer of all or substantially all of the assets of one corporation to another is a prerequisite to corporate successor liability under any of the four exceptions to the general rule of nonliability. Substantial evidence supported the trial court's finding after trial that Defendant did not acquire all or substantially all of KPC's assets.

Opinion by: Angela T. Quigless, J.

Mary K. Hoff, P.J., Kurt S. Odenwald, J., Concur.

Attorney for Appellant: Howard A. Shalowitz

Attorney for Respondent: Thomas E. Schwartz

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.