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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2025-CA-0997-MR

AARON MCCANN — APPELLANT

v.

APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE DANIEL J. ZALLA, JUDGE
ACTION NO. 16-CI-00943

DAVID COOPER — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: THOMPSON, CHIEF JUDGE; EASTON AND ECKERLE, JUDGES.

THOMPSON, CHIEF JUDGE: Aaron McCann, *pro se*,[1] appeals from an order of the Campbell Circuit Court which awarded David Cooper $25,947.32 in damages. Appellant argues that summary judgment was granted in error and that the trial court erred in its calculation of damages. We find no error and affirm.

[1] Appellant has acted *pro se* throughout this entire case.

FACTS AND PROCEDURAL HISTORY

In October of 2015, Appellant and Appellee entered into a construction contract wherein Appellant would remodel a home owned by Appellee. The estimated cost of the remodel was $37,000.00. The construction began shortly after the contract was executed. In February of 2016, after a dispute over money, Appellant did not return to the site to complete the construction. Up to that point, Appellant had been paid $31,945.11. Appellee then hired other contractors to complete the work and he alleged that this cost an additional $40,655.00. The house renovation was completed in late April of 2016.

In October of 2016, Appellee filed a complaint against Appellant alleging breach of contract and sought to recover damages equal to the additional money he spent to complete the project. Appellee was unable to serve Appellant process and requested the court appoint a warning order attorney. A warning order attorney was then appointed. In April of 2017, the warning order attorney reported that he had served Appellant at his last known address, but that Appellant had not contacted him. In May of 2016, Appellee filed a motion for default judgment, and this motion was granted a month later. The default judgment awarded Appellee $37,500.00. After some additional proceedings, the default judgment was vacated in December of 2019.

Appellee then successfully served Appellant with the civil summons and complaint in February of 2021, and Appellant responded arguing that Appellee was the first to breach the contract for refusing to pay for additional work that went beyond the initial quote. On March 8, 2022, Appellee filed a motion for summary judgment arguing that Appellant failed to respond to discovery requests, including requests for admissions. Appellee argued that, by failing to answer the request for admissions, the admissions were deemed admitted. This would include an admission that Appellant breached the contract by failing to finish the work. Appellant failed to respond to the motion for summary judgment.

A hearing on the motion for summary judgment was held on March 11, 2022, and Appellant did not appear. The trial court later entered an order granting summary judgment in part, finding Appellant liable for breach of contract. Another evidentiary hearing was scheduled to determine damages. Appellant also did not attend that hearing. The court entered an order on June 2, 2022, awarding Appellee $40,655.00 in damages.

Appellant then appealed to this Court. In *McCann v. Cooper*, No. 2022-CA-0753-MR, 2024 WL 3542553 (Ky. App. Jul. 26, 2024), Appellant argued that Appellee violated Kentucky Rules of Civil Procedure (CR) 56.03 by failing to serve him with notice of the motion for summary judgment at least ten

days in advance of the hearing. This Court agreed with Appellant that Appellee violated CR 56.03, but still affirmed the summary judgment. The Court held that

> [i]n this case, McCann clearly did not receive the ten-day notice of the hearing as mandated by CR 56.03; however, we believe no prejudice resulted therefrom. The record reflects that Cooper served discovery requests, including requests for admissions on October 29, 2021. McCann failed to respond to the discovery requests. Under CR 36.01(2), those requests for admissions are deemed admitted unless within 30 days of being served with the requests, the party answers or objects to the request. McCann's failure to respond to the discovery requests sparked Cooper's motion for summary judgment filed on March 8, 2022. In the motion for summary judgment, Cooper argued that the requested admissions were deemed admitted by McCann due to his failure to respond. Based thereon, McCann had admitted that a written contract existed between the parties, the contract required the work to be performed within ninety-one days, and McCann materially breached the contract by failing to complete the work. McCann has offered no argument on appeal concerning these admissions that ultimately formed the basis of the partial summary judgment for liability entered on March 11, 2022. Under these circumstances, we conclude that McCann was not prejudiced by violation of the 10-day notice requirement set forth in CR 56.03 as he has advanced no cogent legal argument addressing the admissions that formed the basis for granting the partial summary judgment.

McCann, 2024 WL 3542553, at *3.

As to the amount of damages, the Court reversed and remanded. The Court held that the trial court failed to make any findings of fact or conclusions of law, and failed to state how the amount of damages was calculated. *Id.* at *4. The

Court also held that the trial court did not consider issues of mitigation of damages or substantial performance. *Id.* at *4-5. The Court ultimately directed the trial court to hold a new evidentiary hearing regarding damages only. *Id.* at *6.

On remand, the trial court held the required evidentiary hearing on May 16, 2025. Appellant and Appellee were both present and both testified. Appellee testified that he paid Par Due Handyman Service, LLC, an additional $25,500.00 to complete the home remodel project. He also testified that he paid additional third-party contractors smaller amounts for finishing touches, which amounted to $15,555.00 in total. Appellee submitted into evidence an estimate from Par Due, receipts from his bank showing some payments made to Par Due, and credit card statements showing payments for materials bought for the other third-party contractors. Appellant focused his questioning of Appellee and his own testimony on the events that led to his refusing to continue the project and his argument that Appellee was the first to breach the contract. In other words, Appellant focused on liability issues.

On July 15, 2025, the trial court entered a findings of fact, conclusions of law, and judgment. The court found that Appellee had paid Par Due $25,500.00 to complete the project and had spent $5,502.21 on other contractors. The court ultimately held the following:

> The amount reasonably necessary to make the building conform to the requirements of the contract,

> which plaintiff was able to prove, is $25,947.32. This includes the difference between the amount spent to complete the project in conformity with the contract, namely, $31,945.11 paid to Aaron McCann; $25,500 paid to Par Due Handyman Service, LLC; and $5,502.21 in additional expenses, and the $37,000 price agreed in the contract between David Cooper and Aaron McCann.

The court awarded Appellee $25,947.32, plus interest and court costs. This appeal followed.

ANALYSIS

Appellant's first two arguments on appeal concern liability and who was responsible for breaching the contract. These are issues that were decided by this Court in the previous appeal and are considered the law of the case.

> The law-of-the-case doctrine is an iron rule, universally recognized, that an opinion or decision of an appellate court in the same cause is the law of the case for a subsequent trial or appeal however erroneous the opinion or decision may have been. [I]f, on a retrial after remand, there was no change in the issues or evidence, on a new appeal the questions are limited to whether the trial court properly construed and applied the mandate. The law-of-the-case doctrine is a mechanism by which matters once litigated and finally determined remain final.

Kincaid v. Johnson, True & Guarnieri, LLP, 538 S.W.3d 901, 916-17 (Ky. App. 2017) (internal quotation marks and citations omitted). This Court previously held that, because Appellant did not respond to the requests for admissions, he was deemed liable for breach of contract. Appellant did not appeal this holding further;

therefore, it is the law of the case and cannot be challenged. Appellant may not agree that he is legally liable for breaching the contract, but the previous panel of this Court and the law of the case doctrine hold that he is.

Appellant's next argument on appeal is that the trial court's findings regarding damages were not supported by appropriate evidence.

> The Court of Appeals . . . [is] entitled to set aside the trial court's findings only if those findings are clearly erroneous. And, the dispositive question that we must answer, therefore, is whether the trial court's findings of fact are clearly erroneous, i.e., whether or not those findings are supported by substantial evidence. "[S]ubstantial evidence" is "[e]vidence that a reasonable mind would accept as adequate to support a conclusion" and evidence that, when "taken alone or in the light of all the evidence, . . . has sufficient probative value to induce conviction in the minds of reasonable men." Regardless of conflicting evidence, the weight of the evidence, or the fact that the reviewing court would have reached a contrary finding, "due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses" because judging the credibility of witnesses and weighing evidence are tasks within the exclusive province of the trial court. Thus, "[m]ere doubt as to the correctness of [a] finding [will] not justify [its] reversal," and appellate courts should not disturb trial court findings that are supported by substantial evidence.

Moore v. Asente, 110 S.W.3d 336, 353-54 (Ky. 2003) (footnotes and citations omitted).

At the evidentiary hearing, Appellee testified that he paid Par Due $25,500.00 to complete the project. He provided a copy of a written estimate from

Par Due totaling around $28,000.00, and receipts from his bank showing around $12,000.00 worth of payments to Par Due. Appellant is correct when he argues that the estimate and the $12,000.00 in receipts do not equal the $25,500.00 amount; however, Appellee testified that $25,500.00 was the amount he paid to Par Due. It is clear that the trial court relied on Appellee's testimony, along with the other evidence, and found Appellee to be credible. Appellee's testimony, the estimate, and the receipts for partial payment are substantial evidence supporting the $25,500.00 amount. As to the remaining amount paid to other contractors, that amount was supported by Appellee's testimony and credit card statements showing those payments. The court awarded Appellee far less than requested in this category. It is apparent to this Court that the trial court was meticulous in the analysis of the credit card statements to come up with an amount that could clearly be proven. Like the amount paid to Par Due, we conclude that the court's conclusion regarding the amount paid to the other contractors was also supported by substantial evidence.

Appellant's final argument on appeal is that the trial court failed to adhere to the remand instructions from the previous panel of this Court. Specifically, he argues the trial court did not sufficiently analyze the damages, mitigation of damages, or substantial performance issues. We disagree. The trial court listed how it came to the damages amount and what evidence it relied on.

The court also found that Appellee used reasonable efforts to mitigate his damages by contacting multiple contractors[2] for estimates to complete the project, and ultimately selected Par Due, which provided the lowest estimate. Finally, the court held that the work Appellant did complete was not considered substantial performance. The court believed as such because parts of the home were left unfinished and could not be utilized in the state they were in at the time Appellant left the renovation project.

CONCLUSION

Based on the foregoing, we affirm the judgment of the trial court. The court followed the instructions of the previous panel of this Court, held a new evidentiary hearing, and set forth its findings of fact and conclusions of law. Said findings were supported by substantial evidence and were not clearly erroneous.

ALL CONCUR.

BRIEF FOR APPELLANT:

Aaron McCann, *pro se*
Union, Kentucky

NO BRIEF FOR APPELLEE.

[2] Appellee contacted three contractors, including Par Due.