IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
November 29, 2022 Session

**CLIFTON W. WRIGHT, JR., in his capacity as Executor of the Estate of MICHAEL H. DAVIS, Deceased, v. JOSEPH K. REID, II, ET AL.**

**Appeal from the Chancery Court for Washington County**
**No. 42964 John C. Rambo, Chancellor**

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**No. E2021-01258-COA-R3-CV**

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This case arises from the demise of a short-lived business venture. For three years, two of the parties owned and operated a wellness center from the same location as an existing medical clinic. When disputes arose, the plaintiff (co-owner of the wellness center) sued the defendants, asserting twelve counts in his complaint and seeking judicial dissolution of the company. The plaintiff died during the course of the proceeding, and the executor of his estate was substituted as the plaintiff. A special master held a three-day hearing regarding fifteen issues, and the trial court adopted the majority of his findings. The trial court then held a seven-day bench trial. Ultimately, the trial court ruled in favor of the defendants on all counts and judicially dissolved the company upon agreement of the parties. The plaintiff appeals, raising very limited issues regarding his claims for unjust enrichment, breach of fiduciary duty, and judicial dissolution. We affirm and remand for further proceedings.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed and Remanded**

CARMA DENNIS MCGEE, J., delivered the opinion of the court, in which D. MICHAEL SWINEY, C.J., and THOMAS R. FRIERSON, II, J., joined.

Mark S. Dessauer, Kingsport, Tennessee, for the appellant, Clifton W. Wright, Jr.

Rick J. Bearfield and Karissa H. Range, Johnson City, Tennessee, for the appellees, Joseph K. Reid, II, Trisha M. Reid, and Genesis Family Healthcare, PLLC.

**OPINION**

## I. FACTS & PROCEDURAL HISTORY

Joseph K. Reid, II is a "physician assistant certified." In August 2008, he and his wife, Trisha, jointly purchased a residence in Johnson City, Tennessee, and converted it to a medical building. Mr. Reid formed Genesis Family Healthcare, PLLC, ("Family Healthcare") and began operating as a family practice clinic in January 2009. He also purchased gym equipment for a workout area at the facility. In connection with this endeavor, Mr. Reid formed a separate limited liability company, Genesis Wellness Center, LLC, in February 2010.

In March 2010, Mr. Reid met plaintiff Michael Davis when Mr. Davis sought treatment at Family Healthcare for low testosterone. Mr. Davis was so pleased with the results of his treatment that he approached Mr. Reid about opening a business that would offer hormone replacement therapy. Mr. Davis proposed, "I'll put up the money, you give me the customers, and let's build a business[.]" After several meetings, Mr. Reid and Mr. Davis decided to operate a wellness center from the same building as Family Healthcare and offer various services, including hormone replacement therapy, weight loss services, personal training, an aesthetician, and massage therapy.

Although the parties consulted with different attorneys, they never signed a written contract memorializing all of the terms of their agreement. As Mr. Davis described it, this was "mostly a handshake agreement." Before the trial court, however, the parties agreed that they had formed an enforceable oral agreement with several key terms. First, Mr. Davis had agreed to pay for the construction of an addition to the existing clinic and all expenses for operating the wellness center. In return, Mr. Reid agreed to recommend that his patients at Family Healthcare who were eligible for hormone replacement therapy and weight loss treatment go to the new wellness center part of the building for treatment there. The revenue generated from the wellness center would first be used to pay its operating expenses, and any profits would go to repay Mr. Davis's capital advances. Mr. Reid would also convey to Mr. Davis a fifty percent interest in the limited liability company that would operate the wellness business.

Mr. Davis had no experience in the wellness business, but he believed that this was "a crackerjack business" and "a gold mine," such that the parties would soon be able to franchise the business and have locations across the nation. As Mr. Davis put it, "I knew we were going to make a profit." He would later describe various stages of their planning by stating "[w]e were just kind of winging it" and "I admit it was blind faith."

Construction on the addition began in January 2011. In August 2011, Mr. Reid and Mr. Davis executed an "Assignment of Membership Interest," in which Mr. Reid conveyed a fifty percent interest in his limited liability company, Genesis Center for Wellness, LLC, to Mr. Davis, such that each owned one half of the wellness business ("Genesis Wellness")

thereafter.[1] Mr. Reid also amended the operating agreement for the company to reflect that he and Mr. Davis were equal owners.

Genesis Wellness began operating in September 2011. The two sides of the building were separated by a door. Family Healthcare and Genesis Wellness had separate employees, so it was "basically just like two totally separate companies" in regard to the office functions. Mr. Reid served as medical director for Genesis Wellness. He provided advice to Mr. Davis and the staff of Genesis Wellness, mostly regarding medical issues, but Mr. Reid generally treated patients on the Family Healthcare side of the practice. Another physician assistant who worked at the building saw patients for both sides of the practice. Mr. Davis was primarily responsible for the operations of Genesis Wellness and was, at least initially, at the business on a daily basis. He reportedly held himself out as the boss of Genesis Wellness, and its employees reported to him.

Initially, Genesis Wellness accepted only cash and did not accept insurance. However, Genesis Wellness did not have many cash-paying customers coming in for treatment. By all accounts, patients were unwilling to pay out of pocket for a service that their insurance companies would cover. After a few months, the parties agreed to start billing insurance for the services provided at Genesis Wellness that were covered by insurance, such as hormone replacement therapy. Specifically, they agreed that the billing company for Family Healthcare would begin billing third party payors on behalf of Genesis Wellness for the services rendered there. However, all of the services would be billed by Family Healthcare under its name and tax identification number. When the third-party payors sent payments to Family Healthcare for all of the claims submitted, the billing company would calculate how much of that amount Family Healthcare owed to Genesis Wellness. Mrs. Reid, who did the bookkeeping for Family Healthcare, would then write a check to Genesis Wellness for the amount calculated by the billing company.

There were ongoing issues regarding how the billing was to be divided and the accuracy of the calculations of the monthly insurance reimbursement payments, requiring annual audits and adjustments at the end of the year. Still, the monthly reimbursement payments were calculated consistently and paid on a monthly basis in 2012 and 2013. The year-end audits for 2012 and 2013 revealed that Family Healthcare had overpaid Genesis Wellness. For each year, the overpayment that was calculated was then offset as a credit and subtracted from the next monthly amount due to Genesis Wellness.

By the fall of 2013, two years after Genesis Wellness began operating, Mr. Davis had stopped going to the building on a daily basis. Around this time, Mr. Davis became frustrated with the amount of patients receiving hormone replacement therapy on the family practice side of the business, as he believed that all of these patients should have been treated on the wellness side of the practice. However, he did not, at that time,

[1] At some point, the name of the LLC was altered slightly.

approach Mr. Reid about the issue.

In March 2014, Mr. Davis and Mr. Reid abruptly decided to terminate the contract of the billing company that was providing billing services to Family Healthcare and Genesis Wellness, effective immediately. This move ultimately proved to be a disaster, as the parties were admittedly unprepared for the aftermath of this decision. According to the testimony at trial, implementing a new medical practice management system generally takes sixty to ninety days, as "it takes a long time to get a company set up within a database and get their claims going out the door and money coming back in." In addition, the witness explained, it generally took Family Healthcare forty-five days to "turn a claim" and get it paid, so if it went a month with no claims "going out," it would soon experience a corresponding period of no revenue coming in from third party payors. Even so, the decision was made to terminate the billing company abruptly without any real plan in place for the transition. Mr. Reid and Mr. Davis hired another billing company on a month-to-month contract, but it had a very difficult time "getting claims out the door." In addition, the new billing company never contacted the former billing company for assistance with the transition. In April 2014, Mrs. Reid sent an email to Mr. Davis indicating that she was "in an awful transition . . . with the old billing company" and "at the point where I am concerned." She explained that Family Healthcare could not pay or split any utility bills with Genesis Wellness for the time being because her "hands [were] tied until everything catches up."

Despite all of the turmoil after the first change in billing companies, Mr. Reid and Mr. Davis were dissatisfied with the second billing company and terminated it after approximately six months. They hired another billing company, run by Karen Loyd, in September 2014. As a result, the businesses experienced a second period of transition and resulting "log jam" with its billing and deposits. These changes in billing companies not only led to lost revenue, but they also directly impacted the monthly reimbursement checks going from Family Healthcare to Genesis Wellness. There were periods when no insurance money was being deposited, and there were also delays in the new billing companies calculating the reimbursements. The original billing company was terminated abruptly and never explained to the second (or third) billing company how the insurance reimbursement payments were calculated. The last monthly reimbursement payment that was calculated by the original billing company before its termination was for March 2014, and the checks became irregular thereafter. To illustrate, the following list depicts the dates that reimbursement checks were written from Family Healthcare to Genesis Wellness during 2014, keeping in mind that each monthly reimbursement check was based on services that were provided weeks earlier due to the turnaround in processing claims:

2/15/2014[2] $15,569.89

[2] There was no reimbursement check in January 2014. When the year-end audit for 2013 was completed in January 2014, Family Healthcare had not yet paid the amount due for December 2013, and it

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|---|---|---|
| 2/23/2014 | $13,790.13 | |
| 3/17/2014 | $16,559.13 | memo: "Reimbursed February 2014" |
| 5/18/2014 | $12,374.30 | |
| 8/11/2014 | $61,752.31 | |
| 9/22/2014 | $23,018.55 | memo: "July reimbursement" |
| 11/12/2014 | $20,850.85 | |
| 12/9/2014 | $18,559.94 | |
| 12/23/2014 | $12,502.47 | |
| 12/31/2014 | $8,686.15 | |

As this list reflects, Genesis Wellness did not receive a check every month during 2014.[3]

On January 19, 2015, Ms. Loyd, from the third billing company, sent an email to Mrs. Reid with a calculation showing that Family Healthcare owed Genesis Wellness $20,711.18 for the December 2014 reimbursement payment, which was the final amount due for 2014. Around this time, however, Ms. Loyd discovered that Genesis Wellness maintained a separate bank account, of which she was not previously aware, and that Genesis Wellness deposited in this account the money it received "at the window" from patients through cash, checks, and credit cards. Ms. Loyd had believed that this money was being deposited in the Family Healthcare account. Thus, Ms. Loyd informed Mrs. Reid that the insurance reimbursement checks she had been calculating were based on an incorrect method of calculation and that Family Healthcare had been overpaying Genesis Wellness. Ms. Loyd only had information for one month available to her at the time, but she calculated that the overpayment for that one month was around $8,000. Based on her calculation for one month, Ms. Loyd estimated or extrapolated that the total overpayment thus far could be as much as $75,000. Mrs. Reid decided not to pay the December calculation of $20,711.18 to Genesis Wellness until the amount owed was calculated properly, given that Family Healthcare was already "short on cash" and the audit would likely reveal an overpayment by Family Healthcare, as in previous years.

On January 26, a medical assistant at Family Healthcare requested that Mr. Davis and the bookkeeper for Genesis Wellness provide certain documents to Ms. Loyd to enable her to conduct a full audit, but this information was never provided.[4] Mr. Davis instructed the bookkeeper for Genesis Wellness to refrain from providing the requested information

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offset its overpayment for 2013 against the December 2013 calculation.

[3] We note that there are some slight discrepancies in the voluminous record regarding these and other numbers. However, we will not identify all of them because the precise figures are not important to the issues on appeal.

[4] Mr. Davis had a separate bookkeeper for Genesis Wellness, but Mr. Reid never asked the bookkeeper for financial information regarding Genesis Wellness.

until he could meet with the Reids.

A series of meetings in February 2015 led to the end of Genesis Wellness. Prior to the meetings, however, Mr. Davis was already privately discussing recommendations for attorneys who specialized in contract disputes that might lead to litigation. He had also suggested that either Mr. Reid or the other physician assistant who worked at the practice should "buy him out," stating that he "was not happy" and "wanted out." On or about February 23, Mr. Davis met with Mrs. Reid, Ms. Loyd, and the medical assistant for Family Healthcare. According to Mrs. Reid, they had calculators and stacks of papers and invited Mr. Davis to sit at the table so that they could explain the overpayment situation, but he refused. Mr. Davis was reportedly "irate" and never let them "finish a sentence." Mr. Davis did not bring the records that he was asked to bring to the meeting. According to the medical assistant who attended the meeting, Mr. Davis was frustrated and in "denial" about the overpayment and did not seem to understand what had occurred. Shortly after the meeting began, Mr. Davis asked Ms. Loyd and the medical assistant to leave the room.

There was another meeting on February 25, although the details about the meeting are not entirely clear from the record. After some discussion of various financial issues, Mr. Davis admittedly brought up the subject of leaving the business and proposed that someone buy him out. The parties agreed to meet again on February 28, which was a Saturday.

The February 28 meeting was attended by Mr. Davis, Mr. and Mrs. Reid, and the other physician assistant, who took notes. The meeting lasted about ten minutes. According to the notes from the meeting, Mr. Reid informed Mr. Davis that he could not pay the sum of $400,000 demanded by Mr. Davis in light of the value of the business. Also, according to the physician assistant, Mr. Davis raised his voice, became emotional, flailed his arms, "then essentially [he] said 'I'm out,' [and] walked out the door[.]" Mr. Davis reportedly walked down the hall then returned to say "he was out" and wanted to collect his things the following day when no one else was at the office. Similarly, according to Mrs. Reid, Mr. Davis "just said he wanted out. That's the big thing I remember." She recalls Mr. Davis saying "Wellness is done" and "there was no doubt about the finality of it." Mr. Reid likewise recalls Mr. Davis announcing that he was "done" and that he could not continue in a failing business.

Mr. Davis had a slightly different recollection of the final meeting. According to Mr. Davis, Mr. Reid initially informed him that he had discussed the matter with some other businessmen and been advised that Mr. Davis "just made a bad investment, and [Mr. Davis was] just going to have to suck it up and eat it." According to Mr. Davis, he said that he could not "walk away from a million dollars" and mentioned retaining an attorney. He acknowledged that the conversation "got testy" at that point and that he said "we would have to close the business down." Mr. Davis planned to terminate the employees, but Mr. Reid said he would prefer that Mr. Davis "not do that" and that he would talk to the

employees himself. Mr. Davis admits that he left this meeting with no intention of returning to do any more business.

Mr. Davis emptied his desk on Sunday, March 1, admittedly intending to "shut the business down" and terminate the employees. Mr. Davis left his key to the building. The bookkeeper for Genesis Wellness provided its employees with their last paychecks and asked them to sign a document acknowledging that the business was closing. After Genesis Wellness ceased operations, Family Healthcare occupied the space formerly used by Genesis Wellness and treated all of the patients who came to the building, including those that had previously been treated at Genesis Wellness. Family Healthcare hired approximately three employees who had previously been employed by Genesis Wellness. However, at least one employee of Genesis Wellness was not hired by Family Healthcare.

On March 31, 2015, Mr. Davis filed this lawsuit against Mr. and Mrs. Reid, Genesis Family Healthcare, PLLC, Genesis Center for Wellness, LLC, and other defendants who are not pertinent to this appeal. In his complaint (as amended), Mr. Davis claimed that he was the rightful owner of the improvements to the property, even though the real property was titled to Mr. and Mrs. Reid. He ultimately asserted twelve causes of action against some or all of the defendants, including unlawful detainer, ejectment, partition by sale, unjust enrichment, imposition of an equitable lien against land, constructive trust, breach of contract, fraud, "fraudulent concealment or constructive fraud," civil conspiracy, breach of fiduciary duty, and judicial dissolution of the LLC. The claim for unjust enrichment is primarily at issue in this appeal. Regarding this claim, Mr. Davis alleged that the Reids and Family Healthcare were unjustly enriched at his expense because they benefitted from improvements to the property in the amount of approximately $900,000, "together with such other benefits arising from their use and enjoyment of the Building, the improvements to the Property, the contents of the Building and the enhancement in the value of the business of Family Healthcare" without paying the value thereof. Mr. Davis alleged that he had expected to be reimbursed for the value of these benefits, that the defendants appreciated these benefits, and that it would be unfair for them to retain them without paying for the same. Aside from his claims regarding the property, Mr. Davis sought compensatory damages of $900,000 in addition to punitive damages of $1,000,000 against each defendant. He also asked the court to judicially dissolve Genesis Wellness and liquidate its assets for the benefit of its members.

Genesis Wellness never made an appearance in this lawsuit. However, the Reids and Family Healthcare filed an answer and counterclaim against Mr. Davis. They alleged breach of fiduciary duty by Mr. Davis and asserted that Family Healthcare was entitled to recover the overpayment of $75,000 or more in reimbursement checks paid to Genesis Wellness and benefitting Mr. Davis. They also sought dissolution of Genesis Wellness.

Several of the parties' claims were dismissed at the summary judgment stage. The trial court then appointed a special master due to the "complex accounting issues and

voluminous exhibits" in this case. The trial court directed the special master to investigate and report on fifteen issues. Shortly thereafter, on April 12, 2018, Mr. Davis died. Although the defendants argued that Mr. Davis's remaining claims were based on fraud and were extinguished at his death, the trial court entered an order granting a motion for substitution of parties and allowed the executor of Mr. Davis's estate to pursue such claims.

The special master issued a final report in June 2020, and the trial court adopted the special master's findings on most of the issues. A bench trial was held over the course of seven days beginning in July 2020 and concluding in November 2020. The videotaped deposition of Mr. Davis was played at trial. The trial court also heard testimony from Mr. and Mrs. Reid, a representative of the original billing company, Ms. Loyd from the third billing company, a real estate appraiser, an accountant, the other physician assistant who worked at the practice, the medical assistant, the bookkeeper from Genesis Wellness, and another individual. The parties introduced nearly 3000 pages of exhibits, which span sixteen volumes of the technical record.[5]

[5] The exhibits in this case can only be described as a mess. Rather than consecutively numbering the exhibits as they were introduced, it appears that the parties used pre-numbered exhibits in binders. As a result, the order and numbering of the exhibits in the record have no correlation to the order in which they were admitted at trial. The record contains exhibits with numerals ranging from 1 to 215, but with inexplicable gaps in between. For instance, there is no exhibit with numbers 13 to 18, or 38 to 44. At the same time, however, sometimes the same exhibit number was assigned to different documents. For example, the record contains both a "Plaintiff's Exhibit 28" and a "Defendants' Exhibit 28," and a "Trial Exhibit 85" along with a "Plaintiff's Exhibit 85." This has resulted in nearly 3000 pages and sixteen volumes of exhibits that are out of order, with no table of contents reflecting a volume number or page number for each exhibit. The exhibit index only contains the unhelpful predesignated exhibit numbers assigned by the parties.

It is clear that no one was really sure about what had been admitted, as the trial judge stated, "Counselors, when we are done with this trial, I have concentrated on taking my notes, not in adding and removing things from the Judge's notebooks based on what you all introduced, or not introduced, or was, or what was not allowed. I'm going to let you all go through my notebooks and get my Exhibits together, if you don't mind." The confusion was undoubtedly exacerbated by the fact that counsel for the Estate would generally wait until the end of his examination of a witness to enter all of the documents he referenced into evidence. After examining Mr. Reid, for example, counsel stated that "at this time, I would ask to move into evidence the Plaintiff's 113, Plaintiff's 114 . . . Plaintiff's 121, 122, 118, 32, 33, 120, 34, 37, 161, 178, 36, 11, 128, 129, 189, 189 is already in, 131, 65, 61, 69, 45, and 60, to the extent those aren't already in evidence." On the fifth day of trial, he moved to admit exhibits he referenced during the testimony of a witness days earlier, including "164, 158, 142, 6, 9, 10, 21, 22, 23, 24, 176, 12, 61, 87, 45, 69, 48, and 52." Not surprisingly, some exhibits appear to be missing from the record on appeal, and it is not clear from the descriptions in the exhibit index whether all or part of certain exhibits was actually admitted.

This Court encountered a similar flummoxing situation, with a much smaller record, in *Ellis v. Duggan*, 644 S.W.3d 85, 97 n.9 (Tenn. Ct. App. 2021), in which the parties used a binder of "premarked" exhibits leading to various problems with the record on appeal. We stated that "[i]n an effort to provide the parties with finality after years of conflict, we have carefully reviewed the nine volumes of exhibits on appeal in a process that could aptly be compared to an archaeological dig" and "attempted to make sense of the parties' inexpiable practice in the trial court." *Id.* "However," we added, "we caution the parties that we may not be so forgiving and accommodating in future appeals." *Id.* We do the same here.

At trial, Mr. Davis's Estate maintained that Mr. and Mrs. Reid and Family Healthcare had engaged in a "scheme to deprive [Genesis Wellness] of its revenue" and conspired to divert patients and withhold the reimbursement payments for December and subsequent months. The Estate took the position that the defendants used "a concocted audit to attempt to push [Mr. Davis and Genesis Wellness] out of business." Thus, the Estate claimed that Mr. Davis was forced out of business by the defendants. On the other hand, the defendants took the position that they had performed their obligations under the relevant agreements and that Mr. Davis was the one who chose to close Genesis Wellness when he abruptly left the business with the intention of terminating the employees.

The trial court entered a 32-page order containing its findings and conclusions from trial.[6] Relevant to this appeal, the trial court found that Mr. Reid and Mr. Davis were equal owners of Genesis Wellness and that "they settled on a plan for Mr. Davis to provide money to build a building to house the new business and to equip it while Mr. Reid would bring his patient base as potential clients." The court noted Mr. Davis's acknowledgement during his deposition testimony that Mr. Reid "made a substantial investment in the business by agreeing to divert his hormone replacement patients" from his existing clinic to the wellness center, as "this would cost money to Mr. Reid." The court found that "Mr. Reid would not be financially responsible for anything, only to provide customers." It found that "Mr. Davis was unconcerned about recovering his investment in the real property," as he was convinced that he had stumbled upon a "cracker jack" business and "was confident that profits from Genesis Wellness would repay him for his investment."

The trial court found that Mr. Davis "wrongly believed" that patients were being diverted from Genesis Wellness to Family Healthcare, and his "claims and concerns concerning the mismanagement and corruption of Genesis [Family] Healthcare and Genesis Wellness operations were unpersuasive." It found that "the overwhelming majority of HRT patients were actually seen at Genesis Wellness," and although Mr. Reid complied with Medicare rules and kept a small percentage of patients on the Family Healthcare side, "[t]his was not an effort by Mr. Reid to divert any business from Genesis Wellness." It found that "Mr. Reid fulfilled his obligations in sending his HRT patients, all that were possible, to Genesis Wellness in fulfillment of his promise to Mr. Davis."

Next, the trial court found that Family Healthcare and Genesis Wellness had a separate agreement regarding the billing and reimbursement checks. The court found that when Ms. Loyd learned about the separate bank account maintained by Genesis Wellness in January 2015, she became "concerned that her insurance reimbursement calculations were off" and that "she had been directing overpayments" to Genesis Wellness. It found that Ms. Loyd conducted a "sample audit of one month" and found an overpayment of $8,000. Thus, according to the order, "[t]he Court was persuaded that Ms. Reid was

[6] Some claims were dismissed at the close of the plaintiff's proof.

concerned about the December 2014 reimbursement and needed clarification" on the amount to be paid. The court concluded that a more extensive audit "was commercially reasonable" and that it was necessary to obtain information controlled by Mr. Davis and his bookkeeper in order to determine what error was made in the overpayment. It found that Mr. Davis and his bookkeeper were uncooperative in providing the information, and "[i]n fact, Mr. Davis instructed [the bookkeeper] not to produce the records or cooperate with Ms. Loyd's attempted audit." "As a result of this unreasonable lack of cooperation," the court found, "Ms. Loyd extrapolated a one-month audit to calculate a total overpayment." However, the court found that Ms. Loyd never determined the precise amounts "[a]s a result of lacking necessary documentation and a closure of Genesis Wellness."

The trial court found that the delayed reimbursement payment "was not the alleged precipitating cause of Genesis Wellness closing" and "was not the reason Mr. Davis stopped conducting business as Genesis Wellness." It found that checks were customarily delayed at the turn of the year and that Mr. Davis "was unpersuasive that 2014 was different than prior years." It found that Mr. Davis had stopped going to the business on a daily basis and "had lost interest in the business" because it was not going to "explode in growth to make a fortune as he expected." As the trial court put it,

> Mr. Davis decided to end Genesis Wellness. It was Mr. Davis that told Mr. Reid that they would have to close the business down, and he simply emptied his desk on Sunday, March 1, 2015 and walked away. Although Mr. Davis intended to terminate the employment of Genesis Wellness employees, it was Mr. Reid who did not want the employees terminated as Mr. Davis had planned.

It found that "Mr. Davis had no intention of returning and doing any further business for Genesis Wellness" and that he made the decision "to abandon the business." It found that "Mr. and Mrs. Reid did nothing to cause Genesis Wellness business to fail." Thus, it deemed Mr. Davis's claim that he was forced to close "unpersuasive," as "his desire was to leave the business regardless of what happened with the December 2014 reimbursement." Simply put, it found "Mr. Davis was ready to walk away from Genesis Wellness and that is what he did."

With specific regard to the claim for unjust enrichment, the trial court made the following findings:

> Plaintiff seeks recovery from Defendants on [] multiple theories including a claim of unjust enrichment. "Unjust enrichment is a quasi-contractual theory or it is a contract implied-in-law in which a court may impose a contractual obligation where one does not exist." *B and L Court v. Thomas and Thorngrem, Inc*., 162 S.W.3d 189, 217 (Tenn. Ct. of App. 2004).

"A contractual obligation under an unjust enrichment theory will be imposed when: (1) no contract exists between the parties or, if one exists, it has become unenforceable or invalid; and (2) the defendant will be unjustly enriched absent a quasi-contractual obligation." *Id*.

Plaintiff's claim for unjust enrichment is derived from the assertion that Defendants received the benefit of Mr. Davis' capital contributions. These benefits were the building improvements and the equipment installed in the Genesis Wellness addition. As the Reids are the owners of the real property, it is asserted that it would be unjust for them to retain the increased value of the property attributable to the addition since Mr. Davis did not fully receive the recoupment of his investment.

There were two contracts entered into by the parties. Mr. Reid and Mr. Davis entered into an agreement for him to build and equip the addition, and Mr. Davis would recuperate his investment—this was the investment contract. There was also a contract between Genesis Family and Genesis Wellness concerning insurance reimbursement payments. The insurance reimbursement contract does not settle the issue, because this contract was made after the investment contract and the addition was built.

Genesis Wellness was open for business prior to the execution of the insurance reimbursement contract. Mr. Reid fulfilled the obligations of the contract regarding the investments between the parties and Mr. Davis received consideration. For his monetary investment to build the addition Mr. Davis received half ownership of a new business that was profitable. Given the benefit of tax law, $99,000 of his investment in the business was recoupled [sic] by him as a result [of] favorable tax treatment. The business also paid distributions to Mr. Davis, and he was able to keep all profits and distributions from Genesis Wellness until his initial investment was repaid.

Mr. and Mrs. Reid did not circumvent the agreement and all patients the law allowed to be served by Genesis Wellness were sent to Genesis Wellness for HRT and other services. Mr. Reid provided real consideration in the form of sending Genesis Wellness an extensive preexisting business for HRT treatment from Genesis Family. The Court is unable to find unjust enrichment when Mr. Reid fulfilled all agreed upon obligations to Genesis Wellness and Mr. Davis. The lack of reimbursement on an insurance payment was a pretense for Mr. Davis to pull the plug on a business that he dwindled from his interest—as evidenced by his lack of day to day activity at the business prior to its demise and his interest in other healthcare schemes.

There was no breach of contract for Mr. and Mrs. Reid requesting an audit regarding any overpayments, and there was no breach from a delay in payment of December 2014 insurance reimbursement. Mr. Davis simply lost interest in the business, he wanted to walk away from the business, and simply demanded that Mr. and Mrs. Reid insure his losses.

The parties never contemplated Mr. and Mrs. Reid guaranteeing Mr.

> Davis a full reimbursement on his investment in the business. To the contrary, their consideration was Mr. Reid providing patients and a revenue stream to the new business and the new business would reimburse the capital contribution to Mr. Davis. Mr. and Mrs. Reid never deviated from this. Mistakenly, Mr. Davis thought he could quit the business, recoup his remaining los[s]es from Mr. and Mrs. Reid, and explore other economic opportunities without incurring any financial loss.
>
> The Court concludes that the Plaintiff should not recover any damages under a theory of unjust enrichment. The parties had written contractual obligations regarding the business, and Mr. Reid performed in accordance with that agreement. He organized the Genesis Wellness documents and transferred one-half interest in it and he was the reason that Genesis Wellness derived revenue approaching $800,000 of the years 2011, 2012, 2013 and 2014. He did as he promised by referring all HRT patients, all that were possible, to Genesis Wellness in fulfillment to his promises to Mr. Davis. He provided consideration for the agreement.
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> As to the real property, Mr. Davis never viewed the business arrangement with Mr. Reid as a real estate investment opportunity. He was not a lender for Mr. and Mrs. Reid to expand their offices' footprint. He was focused on an HRT business that he believed could be further monetarized by franchising and establishing additional locations. He was of the belief that the location already owned and developed by Mr. and Mrs. Reid was insufficient to fulfill the business opportunities of HRT treatment. He enticed Mr. and Mrs. Reid to the agreement by investing heavily in the property they already owned in exchange for Mr. Reid sending his HRT patients to the new business they created. There was no failure of consideration.

Later in the order, with regard to the alleged benefit to Family Healthcare, the trial court made the following additional findings:

> Defendant [sic] asserts that Genesis Family has derivatively gained from the demise of Genesis Wellness. The essence of this theory is that Genesis Wellness developed a business clientele and goodwill when in operation and that Genesis Family inherited this business and has thrived more than it would have otherwise by the closure of Genesis Family [sic]. The Court was unpersuaded that the dissolution of Genesis Wellness enhanced the profitability of Genesis Family. It is speculation to attribute the long-term growth of Genesis Family to the demise of Genesis Wellness. When Genesis Wellness closed, Mr. Davis was of the opinion it was not particularly profitable, and he led Mr. and Mrs. Reid to believe the business had no value. It is more likely the thriving business at Genesis Family is attributable to the goodwill of Mr. Reid and his staff and the ongoing operational decisions of

Mr. and Mrs. Reid.

The trial court found in favor of the defendants on the unjust enrichment claim and all remaining claims asserted by Mr. Davis.

Finally, the court addressed the dissolution of the LLC and its assets and liabilities. The trial court directed that certain personal property remaining at the facility be returned. It also considered whether any amount was owed between the two businesses. The Estate took the position that Family Healthcare owed money to Genesis Wellness because it collected insurance proceeds for services provided by Genesis Wellness from December 2014 through February 2015 and never remitted that money to Genesis Wellness. The court found that Genesis Wellness had received copays twice – once from patients and once from Family Healthcare because they were included in the calculation of the reimbursement payments. Thus, it found that Ms. Loyd had calculated monthly reimbursement payments "that were too much." However, it noted that when she requested the necessary information to calculate the overpayment, Mr. Davis instructed his bookkeeper not to produce the records, preventing Ms. Loyd from conducting the full audit. The court found that the one-month audit showed an overpayment of approximately $8,000 and that Ms. Loyd was of the opinion that the overpayment could be as high as $75,000. Ultimately, the trial court concluded that Mr. Davis's Estate "failed to prove the insurance receivables owed by Genesis Family [Healthcare] to Genesis Wellness." The court found that it was "unable to determine how much Genesis Family owes Genesis Wellness, if any." The court reiterated that the information regarding how much of the copays was collected by Genesis Wellness was "unknown" and that this information was under the control of Mr. Davis. "As a result," the court concluded, "[Mr. Davis's Estate] failed to persuade the court of an amount that Genesis Family [Healthcare] owes Genesis Wellness." The court was simply "unpersuaded as to what insurance proceeds were owed from Genesis Family [Healthcare] to Genesis Wellness or what was owed by Genesis Wellness to Genesis Family."

Mr. Davis's Estate timely filed a notice of appeal to this Court.

## II. ISSUES PRESENTED

Mr. Davis's Estate presents the following issues, which we quote from its brief on appeal:

1. Did the trial court err in failing to apply the elements of unjust enrichment recognized by the Tennessee Supreme Court in *Freeman Industries, LLC v. Eastman Chemical Company*, 172 S.W.3d 512, 525 (Tenn. 2005) to Davis' unjust enrichment claim against [Mr.] J. Reid?
2. Did the trial court err in failing to even address much less apply the elements of Davis' unjust enrichment claim against [Mrs.] T. Reid and

Family Healthcare?

3. Did the trial court err in failing to address, as required by Tenn. R. Civ. P. 52.01, Davis' claims for breach of fiduciary duty against [Mr.] J. Reid?
4. Did the trial court err in failing to apply the Special Master's findings in which the trial court concurred prior to trial in concluding that Family Healthcare was not indebted to Genesis Wellness in the amount of $84,169.81 for purposes of distributing the assets of Genesis Wellness as part of the judicial dissolution of the company?

In their posture as appellees, the defendants present the following additional issue for review:

1. Whether the death of Michael H. Davis extinguished the causes of action grounded in fraud and/or bad faith.

For the following reasons, we affirm the decision of the chancery court and remand for further proceedings.

## III. DISCUSSION

### *A. Unjust Enrichment*

We begin with the claim for unjust enrichment. Mr. Davis's Estate raises two issues on appeal with respect to this claim. First, he argues that the trial court "err[ed] in failing to apply the elements of unjust enrichment recognized by the Tennessee Supreme Court in *Freeman Industries, LLC v. Eastman Chemical Company*, 172 S.W.3d 512, 525 (Tenn. 2005) to Davis' unjust enrichment claim against [Mr.] J. Reid." Second, he argues that the trial court erred by "failing to even address much less apply" the elements of unjust enrichment against Mrs. Reid and Family Healthcare.

#### 1. Failure to Apply the *Freeman* Elements

Mr. Davis's Estate argues that the trial court erred in relying on a 2004 decision from this Court, in setting forth the elements for an unjust enrichment claim, rather than applying the Tennessee Supreme Court's decision in *Freeman Industries*. As previously noted, the trial court's order contained the following citation to caselaw regarding an unjust enrichment claim:

> "Unjust enrichment is a quasi-contractual theory or it is a contract implied-in-law in which a court may impose a contractual obligation where one does not exist." *B and L Court v. Thomas and Thorngrem, Inc*., 162 S.W.3d 189, 217 (Tenn. Ct. of App. 2004). "A contractual obligation under an unjust

> enrichment theory will be imposed when: (1) no contract exists between the parties or, if one exists, it has become unenforceable or invalid; and (2) the defendant will be unjustly enriched absent a quasi-contractual obligation." *Id*.

After quoting this portion of the order in its brief on appeal, Mr. Davis's Estate argues that *Thomas & Thorngrem* "was a 2004 decision from this Court," and "[i]n Freeman, the Tennessee Supreme Court held that '[t]he elements of an unjust enrichment claim are: (1) [a] benefit conferred upon the defendant by the plaintiff; (2) appreciation by the defendant of such benefit; and (3) acceptance of such benefit under such circumstances that it would be inequitable for him to retain the benefit without payment of the value thereof." Mr. Davis's Estate argues that "since Freeman is a Tennessee Supreme Court decision that was decided subsequent to Thomas and Thorngren and Freeman has not been overruled and remains good law, it should have been applied by the trial court in this case rather than Thomas and Thorngren." It contends that "the trial court erred in failing to apply the Freeman test to Davis' unjust enrichment claim."

We discern no reversible error in the trial court's citation to a reported decision from this Court from 2004 rather than *Freeman*. Although the *Freeman* Court set forth the elements of an unjust enrichment claim, *Freeman*, 172 S.W.3d at 525, it did not state that in doing so it was overruling any prior decisions or setting forth a new "test." In fact, it quoted the elements from a 1966 decision. *See id.* We also note that this Court has made the following observation regarding Tennessee caselaw setting forth the elements of an unjust enrichment claim:

> Our courts have utilized different tests in determining whether it should impose a contractual relationship between the parties based upon the theory of unjust enrichment. One such test is as follows:
>
> > (1) There is no existing, enforceable contract between the parties covering the same subject matter;
> > (2) The party seeking recovery proves that it provided valuable goods or services;
> > (3) The party to be charged received the goods or services;
> > (4) The circumstances indicate that the parties to the transaction should have reasonably understood that the person providing the goods or services expected to be compensated; and
> > (5) The circumstances demonstrate that it would be unjust for a party to retain the goods or services without payment.
>
> *Doe v. HCA Health Services of Tennessee, Inc.*, 46 S.W.3d 191, 197-98 (Tenn. 2001). A second test presents nearly the same factors in the following

condensed form:

> (1) a benefit conferred upon the defendant by the plaintiff;
> (2) appreciation by the defendant of such benefit; and
> (3) acceptance of such benefit under circumstances that it would be inequitable for the plaintiff to retain the benefit without payment of the value thereof.
>
> *Estate of Lambert v. Fitzgerald*, 497 S.W.3d 425, 458 (Tenn. Ct. App. 2016) (internal quotations and citations omitted) [originally citing *Freeman*]. Neither test has been identified as the bright-line rule; however, our courts have determined that the most significant requirement in establishing an unjust enrichment claim is whether retaining the benefit would be unjust. *Id.*

*Jenkins v. Schmank*, No. E2017-00371-COA-R3-CV, 2018 WL 3409677, at *3 (Tenn. Ct. App. July 12, 2018). We further note that this Court cited the same sentences the trial court quoted from *Thomas & Thorngren* when analyzing an unjust enrichment claim in *Laundries, Inc. v. Coinmach Corp.*, No. M2011-01336-COA-R3-CV, 2012 WL 982968, at *6 (Tenn. Ct. App. Mar. 20, 2012). As such, we cannot say that the trial court committed reversible error by citing to one case rather than the other.[7]

### 2. Failure to Address Mrs. Reid and Family Healthcare

The second issue raised by Mr. Davis's Estate is whether the trial court erred by "failing to even address" the unjust enrichment claim against Mrs. Reid and Family Healthcare. The Estate's argument with respect to this issue is somewhat difficult to discern because its brief does not contain a separate section devoted to this issue. Within the argument sections addressing other issues, however, the Estate contends that "the Reids paid nothing" for the improvements to the property. Citing only to the final order in its entirety, the Estate argues that "[t]he trial court never examined the benefit of the improvements to [Mrs.] T. Reid, a co-owner of the Real Property," and "never examined

[7] It is not entirely clear from the Estate's brief why it believes the result would have been different under what it describes as "the Freeman test." To the extent that *Freeman*'s formulation of the elements did not reference the absence of a contract, like the *Thomas & Thorngren* language, we note that the sentence immediately preceding the *Freeman* Court's summary of these elements stated, "Courts may impose a contract implied in law *where no contract exists* under various quasi contractual theories, including unjust enrichment." 172 S.W.3d at 524-25 (citing *Whitehaven Cmty. Baptist Church v. Holloway*, 973 S.W.2d 592, 596 (Tenn. 1998)) (emphasis added). Curiously, the Estate argues on appeal that "[t]he evidence below preponderates against the trial court's findings regarding an enforceable contract addressing improvements to the Real Property paid for by Davis." However, before the trial court, Mr. Davis and/or his Estate consistently maintained that there was an enforceable oral contract regarding the improvements, beginning with the allegations in the amended complaint, continuing in counsel's opening statements at trial, and finally in the Estate's proposed findings of fact and conclusions of law. The Estate cannot take a contrary position on appeal.

the benefit conferred upon Family Healthcare."

Returning to the allegations in the complaint, we reiterate that Mr. Davis set forth his unjust enrichment claim against all three defendants together. He alleged that "the Reids and Family Healthcare" were unjustly enriched at his expense because they received the benefit of improvements to the property in the sum of $900,000, together with other benefits arising from their use of the building and its contents, "without paying value or benefit therefor." Mr. Davis further alleged that he had expected to be reimbursed for the value of these benefits, that the defendants appreciated these benefits, and that it would be unfair for them to retain them without paying for the same.

The Estate contends that the trial court "did not even examine or address" the claim against Mrs. Reid or Family Healthcare. However, the trial court's order specifically recognized that Mr. Davis's unjust enrichment claim was against all three defendants. The order states:

> Plaintiff seeks recovery from *Defendants* on the multiple theories including a claim of unjust enrichment. . . .
>
> Plaintiff's claim for unjust enrichment is derived from the assertion that *Defendants* received the benefit of Mr. Davis' capital contributions. These benefits were the building improvements and the equipment installed in the Genesis Wellness addition. As *the Reids* are the owners of the real property, it is asserted that it would be unjust for *them* to retain the increased value of the property attributable to the addition since Mr. Davis did not fully receive the recoupment of his investment.
>
> . . .
>
> *Mr. and Mrs. Reid* did not circumvent the agreement and all patients the law allowed to be served by Genesis Wellness were sent to Genesis Wellness for HRT and other services. Mr. Reid provided real consideration in the form of sending Genesis Wellness an extensive preexisting business for HRT treatment from Genesis Family. The Court is unable to find unjust enrichment when Mr. Reid fulfilled all agreed upon obligations to Genesis Wellness and Mr. Davis. . . .
>
> . . .
>
> The parties never contemplated *Mr. and Mrs. Reid* guaranteeing Mr. Davis a full reimbursement on his investment in the business. To the contrary, *their consideration* was Mr. Reid providing patients and a revenue stream to the new business and the new business would reimburse the capital contribution to Mr. Davis. *Mr. and Mrs. Reid* never deviated from this. Mistakenly, Mr. Davis thought he could quit the business, recoup his remaining loses from *Mr. and Mrs. Reid*, and explore other economic opportunities without incurring any financial loss.
>
> The Court concludes that the Plaintiff should not recover any damages

under a theory of unjust enrichment. . . .

. . .

As to the real property, Mr. Davis never viewed the business arrangement with Mr. Reid as a real estate investment opportunity. He was not a lender for *Mr. and Mrs. Reid* to expand their offices' footprint. He was focused on an HRT business that he believed could be further monetarized by franchising and establishing additional locations. He was of the belief that the location already owned and developed by *Mr. and Mrs. Reid* was insufficient to fulfill the business opportunities of HRT treatment. He enticed *Mr. and Mrs. Reid* to the agreement by investing heavily in the property they already owned in exchange for Mr. Reid sending his HRT patients to the new business they created. There was no failure of consideration.

(emphasis added). It also stated,

> The evidence and testimony were persuasive that Mr. Davis disavowed any interest in pursuing a lease, deed of trust, or securing his investment in any manner. He was uninterested in an agreement regarding real property rights, because he was fully confident in the business arrangement itself. He looked exclusively to the business to repay his investment and that was all he needed or sought. All of this was Mr. Davis' conclusions that were not influenced by *Mr. or Mrs. Reid*. If anything was clear, Mr. Davis was enticing *Mr. and Mrs. Reid* to go along with his vision of an HRT business plan.

(emphasis added). Elsewhere in the order, the trial court stated that "[t]he new business was an initiative of Mr. Davis—he persuaded Mr. and Mrs. Reid." It also found, "It was Mr. Davis who was done with the business and walked away. Mr. and Mrs. Reid acted appropriately thereafter."

Because Mr. Davis grouped together his allegations of unjust enrichment against the three defendants, it is not surprising that the trial court jointly discussed Mr. and Mrs. Reid in its analysis. We disagree with the Estate's assertion that the trial court "failed to even address" Mrs. Reid.

We likewise conclude that the trial court adequately addressed Family Healthcare. In its brief on appeal, the Estate argues that the trial court "never examined the benefit conferred upon Family Healthcare" even though it "subsumed" the business and "paid nothing for these assets or for the business goodwill of Genesis Wellness that it acquired without any consideration." However, the trial court's order states:

> Defendant asserts that Genesis Family has derivatively gained from the demise of Genesis Wellness. The essence of this theory is that Genesis

> Wellness developed a business clientele and goodwill when in operation and that Genesis Family inherited this business and has thrived more than it would have otherwise by the closure of Genesis Family [sic]. The Court was unpersuaded that the dissolution of Genesis Wellness enhanced the profitability of Genesis Family. It is speculation to attribute the long-term growth of Genesis Family to the demise of Genesis Wellness. When Genesis Wellness closed, Mr. Davis was of the opinion it was not particularly profitable, and he led Mr. and Mrs. Reid to believe the business had no value. It is more likely the thriving business at Genesis Family is attributable to the goodwill of Mr. Reid and his staff and the ongoing operational decisions of Mr. and Mrs. Reid.

Again, the limited issue presented to this Court is whether the trial court failed to address the unjust enrichment claim against Family Healthcare. We conclude that it did not.[8]

#### 3. Other Issues

To the extent that the Estate attempts to raise other issues within the argument section of its brief on appeal regarding unjust enrichment, we deem those issues waived. *See Hodge v. Craig*, 382 S.W.3d 325, 335 (Tenn. 2012) ("[A]n issue may be deemed waived when it is argued in the brief but is not designated as an issue in accordance with Tenn. R. App. P. 27(a)(4)").

### *B. Breach of Fiduciary Duty*

The next issue raised by the Estate is whether the trial court erred by "failing to address" Mr. Davis's claim for breach of fiduciary duty arising from Mr. Reid's status as a member of the LLC. According to the Estate's brief on appeal, its claim for breach of fiduciary duty was based on its allegations that: "(a) [Mr.] J. Reid continued to provide HRT services to patients of Family Healthcare including the diverting of revenue from Genesis Wellness to Family Healthcare for HRT services, and (b) when [Mr.] J. Reid caused Family Healthcare not to pay Genesis Wellness the insurance payments that were

[8] Again, the Estate's precise arguments on appeal are perplexing. For instance, it argued in its brief that "the value of the business of Family Healthcare was substantially enhanced after it took over the business and operation of Genesis Wellness," but it conceded in its proposed findings of fact and conclusions of law that the court should "not award damages to Plaintiff based on the enhanced value to the business of Family Healthcare due to the lack of specific evidence on this issue." We also note that the Estate suggests on appeal that Family Healthcare benefitted from retaining assets of Genesis Wellness, and it specifically references the special master's finding that Family Healthcare had possession of assets listed on Exhibit 14 Tab 5. The Estate alludes to the value of the assets that Family Healthcare "now controls but for which it has paid nothing." However, the trial court noted the special master's finding that Genesis Wellness owned the personal property on Exhibit 14 Tab 5 and ordered the personal property found by the special master to be returned. In any event, we conclude that the trial court did not fail to address the claim against Family Healthcare.

due." As previously discussed in this opinion, the trial court's final order addressed these two factual allegations at length.

Regarding the first matter about competing for patients, the trial court found that Mr. Reid "agreed he would recommend all of his eligible patients who could benefit from HRT to receive the services from the Genesis Wellness Center," but "the rules for Centers for Medicare/Medicaid systems and TennCare precluded Genesis Wellness from treating patients receiving services from Medicare and TennCare." It further stated:

> The parties contested whether Mr. Reid uph[e]ld his promises to Mr. Davis to send his HRT patients to Genesis Wellness instead of receiving these treatments at Genesis Family [Healthcare]. The evidence was persuasive that the overwhelming majority of HRT patients were actually seen at Genesis Wellness instead of Genesis Family [Healthcare]. Mr. Reid's testimony was persuasive that there were Medicare, Medicaid and TennCare requirements and rules that precluded some of the HRT billing and treatments from being rendered on the Genesis Wellness business side.
>
> The evidence was persuasive that in 2011, 2012, 2013, 2014, Mr. Reid fulfilled his obligations in sending his HRT patients, all that were possible, to Genesis Wellness in fulfillment of his promise to Mr. Davis.

Thus, the trial court found that Mr. Davis "wrongly believed" that patients were being diverted from Genesis Wellness to Family Healthcare, and his "claims and concerns concerning the mismanagement and corruption of Genesis [Family] Healthcare and Genesis Wellness operations were unpersuasive." It specifically found that "Mr. Reid was delivering the service consistent with Medicare regulations and rules" and "[t]his was not an effort by Mr. Reid to divert any business from Genesis Wellness." Clearly, the trial court found no factual basis for the Estate's contention that Mr. Reid violated his fiduciary duty by "continu[ing] to provide HRT services to patients of Family Healthcare including the diverting of revenue from Genesis Wellness to Family Healthcare for HRT services."

On the second issue, regarding whether Mr. Reid "concocted" the audit, the trial court likewise rejected the factual basis for the Estate's claim of breach of fiduciary duty. It found that Mr. Reid "reasonably relied" on Ms. Loyd's determination of an overpayment and was "simply reacting to the information provided [] by the billing company in a business-like manner." It found that Mr. Reid "never refused to pay" but simply intended to pay "as soon as clarification was made on the amount that was actually owed." The court found that Genesis Wellness had in fact received double payments on the copays and that Ms. Loyd's calculations "were too much." It found that Mr. Davis was "completely uncooperative" in resolving the issue and that Genesis Wellness, "under the control of Mr. Davis," was the party who breached its implied duty of good faith and fair dealing. Again, the trial court clearly rejected the Estate's factual assertion that Mr. Reid wrongly "caused Family Healthcare not to pay Genesis Wellness the insurance payments that were due."

Before the trial court, Mr. Davis often combined his discussion of the breach of fiduciary claim with other causes of action. For instance, his proposed findings of fact and conclusions of law combined his discussion of breach of contract and breach of fiduciary duty, stating that "the nature of such and the facts supporting them substantially overlap." Within a paragraph of the order discussing the Estate's claim for a constructive trust, the trial court found that

> the evidence was not persuasive that there was a violation of any duty, or there was any fraud engaged in by Defendants. Defendants exercised no influence over Mr. Davis that caused him to make his capital investment in the real property where the center for Genesis Wellness was located. The overwhelming majority of HRT patients, except for a small percentage legally required to remain at Genesis Family, were actually seen on the Genesis Wellness side of the two businesses.

Because the trial court clearly rejected the two underlying factual allegations for the Estate's claim, we conclude that the trial court made sufficient findings to enable this Court to discern the basis for its decision.

### *C. Special Master*

The final issue raised by the Estate on appeal is whether the trial court erred "in failing to apply the Special Master's findings in which the trial court concurred prior to trial in concluding that Family Healthcare was not indebted to Genesis Wellness in the amount of $84,169.81 for purposes of distributing the assets of Genesis Wellness as part of the judicial dissolution of the company[.]" Essentially, the Estate argues that the trial court, after the seven-day bench trial, made a factual finding that was inconsistent with a finding that had previously been made by the special master, which the trial court had adopted.

The Estate argues that "[t]hese findings by the Special Master, upon their adoption by the trial court, became conclusive on the trial court and are conclusive for purposes of this appeal." As support for this assertion, the Estate cites several cases recognizing that "[g]enerally, concurrent findings of fact by a special master and a trial court are conclusive and cannot be overturned on appeal." *Dalton v. Dalton*, No. W2006-00118-COA-R3-CV, 2006 WL 3804415, at *3 (Tenn. Ct. App. Dec. 28, 2006); *see also In re Conservatorship of King*, No. M2014-01207-COA-R3-CV, 2015 WL 4746810, at *7 (Tenn. Ct. App. Aug. 6, 2015) ("[A]ll of the Master's findings of fact were adopted by the chancellor; therefore, the trial court's concurrent findings are conclusive as to those facts."). The Estate also quotes the following portion of a decision from the Tennessee Supreme Court, which elaborates on the "concurrent finding" rule:

> The master found that the value of the land at the stated time of closing was the same as its value at the time of the contract, therefore, no damages were to be awarded. The chancellor affirmed this finding of the master and entered an Order denying the plaintiff any damages.
>
> As noted, the court of appeals reversed that holding and remanded to the chancery court, with instructions, to ascertain damages. This situation is governed by Tennessee Code Annotated, Section 27-1-113, wherein it is stated:
>
> > Where there has been a concurrent finding of the master and the chancellor, which under the principles now obtaining is binding on the appellate courts, the Court of Appeals shall not have the right to disturb such finding.
>
> As set out in *Hopkins v. First Tennessee Bank*, (Tenn. App. 1977) 560 S.W.2d 916, if an issue is submitted to the master and the master's findings are concurred in by the chancellor, the appellate courts have no right to disturb those findings unless the issue was a matter which should not have been submitted to the master, or there is no evidence to sustain the master's findings.

*Sec. Land Co. v. Touliatos*, 716 S.W.2d 918, 921-22 (Tenn.), *opinion modified on reh'g,* 721 S.W.2d 250 (Tenn. 1986). As this caselaw reflects, however, the concurrent finding rule states the circumstances under which a concurrent finding of the special master and the trial judge will be "binding on the appellate courts." *See id.* The Estate's argument is different. It contends that, pursuant to the concurrent finding rule, once the trial court adopted a finding of the special master, that finding "became conclusive on the trial court" and the trial court had "no legal basis to disregard [it]" thereafter.

A litigant made the same argument on appeal in *McCormack v. McCormack*, No. 01A01-9707-CH-00341, 1998 WL 774334 (Tenn. Ct. App. Nov. 6, 1998). That case involved the dissolution of a partnership, and the appellant argued that "the trial court, which previously had adopted a special master's report, erred when it ruled that [his] interest in the partnership would be resolved in a manner which was not one of three options set forth in the special master's report." *Id.* at *1. We explained:

> On appeal, Lanny McCormack contends that the trial court's method of dissolving the partnership violated the "concurrent finding rule." Under this rule,
>
> > concurrent findings by the master and trial court [are] conclusive on appeal unless (1) the issue should not have been referred to the master; (2) the findings are based on an error of

> law; (3) the findings involve a question of law or a mixed question of law and fact; or (4) the findings are not supported by substantial and material evidence.
>
> *Shepherd v. Griffin*, 929 S.W.2d 336, 344 (Tenn. App. 1995); *see also* T.C.A. § 27-1-113 (1980) (providing that, "[w]here there has been a concurrent finding of the master and chancellor, which under the principles now obtaining is binding on the appellate courts, the Court of Appeals shall not have the right to disturb such finding"). Relying on this rule, Lanny McCormack contends that once the trial court approved the special master's report setting forth the procedure for dissolving the partnership, the trial court thereafter was bound by the concurrent finding rule to employ this procedure.
>
> We recognize that the concurrent finding rule may operate to preclude this court from revisiting certain factual issues which were concurrently determined by the special master and the trial court. We are not convinced, however, that the concurrent finding rule operates to preclude the trial court from revising its previous order adopting the special master's report. While the concurrent finding rule clearly applies to cases on appeal, we have found no authority for applying the rule while a case is still at the trial court level.

*Id.* at *2.[9]

We similarly conclude that the concurrent finding rule did not operate to preclude the trial court from revising its previous decision. "Trial courts have broad authority to modify, alter, amend, or revoke an order prior to the entry of a final judgment." *State ex rel. Roberts v. Crafton*, 638 S.W.3d 651, 658 (Tenn. Ct. App. 2021); *see* Tenn. R. Civ. P. 54.02 (stating that a nonfinal order or decision "is subject to revision at any time before the entry of the judgment"). "Rule 54.02 confers upon the trial court 'the privilege of reversing itself up to and including the date of entry of a final judgment.'" *Harris v. Chern*, 33 S.W.3d 741, 744 (Tenn. 2000) (quoting *Louis Dreyfus Corp. v. Austin Co.*, 868 S.W.2d 649, 653 (Tenn. Ct. App. 1993)). Thus, we reject the Estate's contention that the concurrent finding rule barred the trial court from altering its initial decision.

## IV. CONCLUSION

For the aforementioned reasons, the decision of the chancery court is affirmed and remanded. The alternative issue raised on appeal by the appellees is pretermitted. Costs of this appeal are taxed to the appellant, Clifton W. Wright, Jr., in his capacity as Executor

[9] We went on to say that "even if the rule is applicable in the trial court setting" it would not apply anyway because "the question of which method to employ to dissolve the partnership was a question of law to be determined by the trial court after a consideration of all the facts and circumstances of this case." *Id.* at *2. In addition, we ultimately "fail[ed] to see how the trial court's method of dissolving the partnership deviated from the special master's report." *Id.* at *3.

of the Estate of Michael H. Davis, Deceased, for which execution may issue if necessary.

_____

CARMA DENNIS MCGEE, JUDGE