IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
October 4, 2022 Session

JOEY SAMPSON V. AIRCRAFT MAINTENANCE, INC. ET AL

Appeal from the Chancery Court for Montgomery County
No. MC-CH-CV-CD-08-50 Laurence M. McMillan, Jr., Chancellor

No. M2021-01277-COA-R3-CV

This appeals centers upon a challenge to a chancery court's findings of fact that proved determinative as to multiple legal issues arising in litigation related to unpaid repair costs for rendering a private plane airworthy. The chancery court made the factual determination that the plane owner did not agree to pay for the repairs performed by a mechanic. In reaching this conclusion, the chancery court resolved the case based upon documentary evidence in the form of deposition transcripts and exhibits rather than live witness testimony. Given the documentary nature of the trial court proceedings, we conducted a de novo review of the evidence presented without affording deference to the trial court's factual findings. We find the trial court erred in its factual finding that the owner did not agree to pay for the repairs. Accordingly, we reverse the chancery court's legal conclusions for which the trial court's contrary factual determinations had been determinative. We conclude that the plane owner breached his contract with the mechanic and is responsible for storage costs for the plane pursuant to the possessory lien thereupon. We remand for further proceedings including a determination of the applicability of prejudgment interest to the repair costs.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Reversed; Case Remanded

JEFFREY USMAN, J., delivered the opinion of the Court, in which ANDY D. BENNETT and JOHN W. MCCLARTY, JJ., joined.

Daniel N. Thomas, Hopkinsville, Kentucky, for the appellant, Aircraft Maintenance, Inc.

Roger A. Maness, Clarksville, Tennessee, for the appellee, Marc Demott, Executor of the Estate of Joey Sampson.

OPINION

I.

This case has journeyed through over a decade of litigation contesting what, at its epicenter, is a dispute over approximately $19,000 of repair costs. During this time period, an asset worth six figures may have wasted away into being valueless. In 2007, Joey Sampson put the asset, his 1975 Cessna P337 airplane, up for sale with an asking price of $119,000. The aircraft, however, was not considered airworthy under the Federal Aviation Administration (FAA) regulations because, among other reasons, Mr. Sampson had not had the FAA's mandatory annual inspection on his plane completed since 1996. As of 2007, Mr. Sampson was keeping his plane at a small-town airport in Thomasville, Georgia, outside on an asphalt surface near a wooded area. The plane had been sitting in that location having not been flown for approximately a year and a half according to the fixed base operator. The engines and propellers on this then 32-year-old plane, however, had been replaced and had relatively low usage thereupon. Mr. Sampson provided limited information about the plane's condition in advertising it.

The advertisement looked promising when Kent Thomas of Cameron Development, Inc. came across it. This particular Cessna model had been manufactured from approximately 1973 to 1980 in relatively modest numbers, and Mr. Thomas was interested in this model of aircraft for Cameron Development. Given the relative dearth of information in the listing about the condition of this particular plane, Mr. Thomas contacted Robert Wyatt to further investigate this potential purchase. Mr. Wyatt owns and manages Outlaw Aircraft (Outlaw), which buys, sells, and brokers new and used airplanes, and defendant Aircraft Maintenance, Inc. (AMI), which inspects and repairs airplanes. Thomas had a longstanding business relationship with Wyatt. Thomas previously had involved Wyatt in his company's prior purchases of other planes and had Wyatt maintain these planes. On Thomas's behalf, Wyatt contacted Sampson about his Cessna and traveled to Thomasville, Georgia, to assess the airplane in person.

In an email to Thomas dated September 27, 2007, Wyatt painted an ugly portrait of what he discovered about the plane and its seller:

> The aircraft has been s[i]tting for a long time. Mr. Sampson said two or three months but the FBO said about a year and [a] half. The paint and interior are original and the aircraft does not look like it has any corrosion. Avionics are junk. You might save the wing boots. The tail boots [are] gone. Part of the front hot prop is missing. The hot windshield is missing. I could not run the engines. No battery power. The nose gear up damage has not been repaired only some lower right and left lower cow[]l sides partial[l]y screwed on. Tires are flat. I met with Mr. Sampson and looked at the logs. There [are] no engine logs for the engines that are on the aircraft now. No sign off. No

> prop records. The last annual inspection in the books is 1996. The exhaust system on both engines is in bad shape. The heater is disconnected. With the records he has at this time and the many other problems I can only say we need to look for another aircraft. This was the most mispresented aircraft that I have ever inspected in my 40 years of selling aircraft. Mr. Sampson comes on like a good old guy but he is one of the biggest liars I [have] ever run into or . . . he has mental problems.

Upon receiving this information, Thomas decided not to purchase the plane. He was especially concerned about acquiring a plane without engine logbooks. Logbooks for such planes are "a chronological record of the maintenance that's done, the amount of time that each component, whether it be propeller, engine, fuel pump, or whatever it has on it[,] in hours to meet the federal regulations." Without the engine logbooks, the purportedly relatively new engines would have to be considered "run out" and overhauled again, which largely negated the value of the plane.

Mr. Sampson was made aware of Mr. Thomas's concern about the absence of logbooks for the engines. He subsequently managed to locate the logbooks and made them available to Mr. Wyatt. The appearance of the logbooks rekindled Mr. Thomas's potential interest in purchasing the aircraft, but he wanted a more complete understanding of the plane's condition before deciding. Wyatt advised Thomas that he would need to bring the plane from Thomasville, Georgia, to the AMI facility in Clarksville, Tennessee, to be able to complete a proper inspection. Thomas, accordingly, instructed Wyatt to tell Sampson that Thomas would like a pre-purchase inspection before deciding whether to buy. As an inducement for Sampson to allow the plane to be moved to Clarksville and to be further inspected there by AMI, Thomas "told [Wyatt] to tell the owner that [Thomas] would be willing to do a pre-purchase inspection as an annual inspection, and if [Thomas] did not take the aircraft, [Thomas] would pay for the annual inspection and the cost of ferrying it back and forth."

Mr. Sampson agreed that Mr. Wyatt spoke to him and said, "I'm going to take it up there, you're going to get a free annual, the worst that's going to be done, it ain't going to cost you a dime." Mr. Sampson was reassured of Mr. Wyatt's trustworthiness by a positive reference from Mr. Sampson's broker who was engaged in trying to help find a buyer for the plane. Mr. Sampson agreed to let Mr. Wyatt ferry the airplane for an annual inspection, which would double as a pre-purchase inspection, at the expense of the potential purchaser, Mr. Thomas.

In October of 2007, Mr. Wyatt working through AMI obtained a ferry permit from the FAA to move the plane from Thomasville, Georgia, to Clarksville, Tennessee. The ferry permit would allow for flying a non-airworthy plane, which Mr. Sampson's plane was, due to, among other reasons, the failure to obtain an annual inspection. To fly under such a permit, a variety of limitations were imposed such as restricting the flight to

traveling over unpopulated areas, during good weather and daytime, and flying with the landing gear down. In connection with the delivery of another plane that same day, as part of ferrying Sampson's plane, Pierre Michael Borrero, a pilot and mechanic employed by another company, joined Wyatt to fly Sampson's plane. For ferrying Sampson's plane, Wyatt and Borrero would fly the plane from Thomasville, Georgia, to Columbus, Georgia, where they would meet with Sampson and then Wyatt and Borrero would fly to Clarksville, Tennessee, where the inspection would be performed. Mr. Sampson, who met with Messrs. Wyatt and Borrero during their stop in Columbus, Georgia, advised Mr. Wyatt to avoid landing in Alabama because Mr. Sampson said he had a judgment against him for repair work on the plane in Alabama and that it might be impounded if he landed there. Mr. Borrero also indicated that there was a discussion between Mr. Sampson and Mr. Wyatt while in Columbus regarding the parties' agreement. Mr. Borrero recalled hearing that the inspection to be performed would be the same as an annual inspection and that Mr. Sampson would get this annual inspection for free at the potential buyer's cost. Mr. Borrero indicated that there was no conversation or discussion suggesting that the buyer or Mr. Wyatt would pay the costs of repairing any deficiencies discovered during the inspection so as to render the plane airworthy. Because of the condition of the plane, there were various problems encountered in flying from Thomasville to Columbus and then to Clarksville; nevertheless, Wyatt and Borrero safely arrived in Tennessee.

After its arrival in Clarksville, the inspection of Mr. Sampson's plane was delayed because of other work which AMI's mechanics were completing involving hundreds of hours of work for another corporate client. The delay was also attributable to family circumstances that arose for its chief inspector and mechanic, Roger Miller, including the illness and death of his mother and birth of his grandchild, with both occurring out-of-state in different parts of Kansas. In January of 2008, Miller, who was certified under FAA standards, and his assistant Jose Ortiz, who worked under Miller's supervision, finally gave a thorough inspection of Sampson's plane. In doing so, they prepared a "squawk sheet." As described, this was essentially a list of everything noted by the inspector that warranted repair on the plane. The squawk sheet included 70 listings. More colorfully, having inspected the plane, Miller described Sampson's plane as "piece of crap" that had been "sitting out in the weeds." According to Wyatt, the squawk sheet that had been prepared by AMI's mechanic Mr. Miller with assistance from Mr. Ortiz was shared with both the potential purchaser, Mr. Thomas, and the potential seller, Mr. Sampson.

In two separate bills, AMI then billed Thomas for the annual inspection and the costs of the fuel in ferrying the plane to Clarksville. Thomas paid for both. The annual inspection cost was $3,261.90 and the costs for the ferrying came to $280.65. In other words, the total cost to Thomas for taking a closer look at the plan was over $3500 and the value to Sampson of allowing his plane to be ferried to Clarksville for inspection, at no cost to him, was more than $3,000 through completion of the first annual inspection on his plane since 1996.

Thomas offered to purchase the plane from Sampson for $112,950, which was approximately six thousand less than its list price. Uncertainty existed for over a month over whether this sale would occur. Sampson ultimately refused to sell for less than $116,000 and Thomas refused to pay more than his initial offer. Accordingly, the potential sale to Thomas fell through, though the parties were only about $3,000 apart.

When the sale did not go through with Thomas, according to Wyatt, Sampson contacted him to ask about the cost of completing the repair of the plane's nose gear area. Prior to the plane coming into Wyatt's possession, Sampson had the nose gear area of the plane partially repaired, but he ended up in another plane repair cost dispute which contributed to the failure to complete the repair. In his conversation with Sampson, according to Wyatt, there was no sense conveyed to or by Mr. Sampson that either AMI or Thomas would be responsible for the cost of the repairs. To the contrary, it was clear according to Wyatt that Mr. Sampson would be paying for any repairs done on the nose gear area. After consultation with his chief mechanic, Wyatt on behalf of AMI quoted Sampson a fixed price around $3,000 plus parts and tax to repair the nose gear. AMI put into evidence the maintenance log for the nose gear repair that reflects work thereupon beginning on January 24, 2008, which is consistent with Wyatt's description of when this conversation purportedly occurred. Another document admitted into evidence included a notation attached to the maintenance log that stated "agreed fixed price" and specifically referenced the nose repair. The ultimate bill for the nose gear area repair came out at $3,368.68. Sampson paid this bill in August of 2008.

After AMI's mechanics had started work on repairing the nose gear area of Sampson's plane, according to Wyatt, Sampson contacted him again in February of 2008. Sampson was interested in knowing what items from the squawk sheet would need to be repaired to make the plane airworthy and how much it would cost. Wyatt emailed Sampson with a list of repairs. AMI introduced into evidence a screenshot reflecting a February 20, 2008 email with an attachment being sent to Sampson. AMI also introduced into evidence a document that was purportedly attached to this email with a list of proposed repairs. Sampson provided the aforementioned document in response to a discovery request noting in an interrogatory response that the document had been received from Wyatt with the exact date unknown but around March 2008. In his interrogatory response discussing this document, Sampson characterized the document as reflecting that his plane had been already repaired as part of the annual inspection. Sampson characterized the document in this manner despite the second sentence in the three-page document, which largely consists of a listing of items on the plane, stating "ITEMS FOUND ON INSPECTION THAT NEED REPAIR, REPLACEMENT OR PLACARD AS INOP IF NOT REQUIRED FOR AIRWORTHYS." This sentence appears immediately after a statement that the "ANNUAL INSPECTION IS COMPLETED" and the inspection is to be paid for Kent Thomas. Additionally, the document has multiple present-tense references to problems and identifies actions that need to be taken. As illustrations, the list includes, among others: "FRONT PRESS URATION HOSE TURBO TO FUSELAGE IS ROTTEN", "BATTERY

BOX NEED CLEANING AND PAINTING," and "ELT. NEEDS BATTERYS." The listed repairs, a condensed list from the squawk list, were essential to the plane being deemed airworthy. The document did list some potential repairs where something could be placarded with a display noting that a particular mechanism was inoperable if not repaired while still garnering an airworthy rating. For example, the plane's non-working heater could be rendered not dangerous but not repaired so as to function, and instead simply placarded as inoperable, resulting in a significantly lower repair cost than if the heater was fully repaired leaving the plane cold but able to be certified as airworthy. After consulting with AMI's chief mechanic Miller, Wyatt informed Sampson when the two spoke by phone that AMI would be able to keep the costs under $10,000 in labor, but that the parts would add to the cost and likely place it around $20,000.

At his deposition, Sampson expressed no recollection of the aforementioned document. According to Wyatt, Sampson understood from their communication over the phone and email that he was responsible for the costs of the repairs and parts and Sampson gave Wyatt the go ahead to begin the repairs on February 21, 2008. AMI introduced into evidence the maintenance log connected with these repairs and various documents showing part acquisition and other indications of repair work in the days and months that followed. Sampson stated in his deposition that he told Wyatt that he would not spend $20,000 but conceded to authorizing approximately $3,000 in repairs to the plane's nose gear area. Sampson, however, also testified the same repairs he insists he told Wyatt he would not pay for had to be made by AMI as part of the agreement to perform the annual inspection of the plane.

Asked whether he understood the agreement with Sampson as including an agreement to pay for all repairs on the plane, which had not been previously inspected in more than a decade, to make it airworthy, Thomas, the potential purchaser, strongly objected:

> "Certainly not. In West Tennessee, we have an expression for that: that would be buying a pig in a poke. When you get into aircraft maintenance, you never know what . . . the squawks will be when you do an annual inspection. . . . All we agreed to do was pay for the inspection, not for the correction of any deficiencies that might be discovered when the inspection is done."

Wyatt also indicated that he did not say anything to Sampson to suggest that the repairs would be covered by anyone else and that, to the contrary, it was clear from their conversations that Sampson would be financially responsible for the repairs to render the plane airworthy.

Mr. Sampson was not new to flying or to airplane ownership when he and Mr. Wyatt crossed paths. Sampson's father had owned planes while he was a child and Sampson

himself started flying at age 13. He purchased his first airplane in the 1960s approximately four decades before the failed sale transactions connected with the present case. Sampson was no longer legally able to pilot his plane, not being medically cleared to do so, at the time Wyatt began discussing the possibility of his plane being purchased by Cameron Development, Inc. Describing in his deposition his understanding of the term annual inspection, Sampson defined an annual inspection as consisting of having "all the things ready to fly." The annual inspection in Sampson's view included the repairs being completed.

Regarding annual inspections, AMI expert witness Steven Wilson explained that the FAA requires planes to be inspected every year. As noted above, Mr. Sampson's plane does not appear to have had an annual inspection in over a decade at the point it was examined by AMI's mechanics. Wilson indicated that the FAA sets forth a regulatory checklist of what is to be examined and sets qualifications for inspectors. To conduct an FAA compliant examination of the aircraft, Wilson noted "basically, you are taking the plane apart, inspecting everything on it." As part of the inspection, a plane is then rated as either airworthy or not airworthy. In his testimony, Wilson indicated that an annual inspection is not the repair phase; inspection and repair are distinct.

Another AMI expert witness Robert Yoreck, Jr., explained the intersection between a pre-purchase inspection and an annual inspection in connection with the sale of used planes. Explaining how this works within the field, Yoreck testified as follows:

> "[Someone] decides he wants to make a purchase of an aircraft. He agrees with the owner that he would pay for the annual inspection . . . to make sure he's not buying into something that's unairworthy. So he actually lays out – the Cessna has a set number of hours, per se, to use to provide and perform just the annual inspection, disassembling the airplane, looking at it thoroughly and closing it back up, X amount of hours. . . . Then you just have to apply the shop rate to that inspection. And that's all the new owner is signing up for."

Yoreck, like Wilson, was clear in his testimony that repairs would be considered separate from an annual inspection itself within the aviation community. Both testified as to the reasonableness of the repairs identified and the costs charged for the repair work done by AMI on Sampson's plane.

In May of 2008, a potential sale opportunity arose with a business known as Airscan. Sampson, having communicated with Wyatt in connection with this potential sale, emailed Airscan to inform them that his airplane was currently in the possession of Wyatt with whom Sampson noted Airscan had previously done business on multiple planes. In emailing with Airscan, Sampson noted that Wyatt was "doing a[n] annual and repairing what needs fixing" and that the plane would be ready in a few days. The sale appears to

have fallen through as a result of some combination of disagreement on price, the pressurized versus non-pressurized nature of the airplane, with Airscan actually preferring non-pressurized over the pressurized cabin of Sampson's plane for its intended usage and planned modifications, and the condition in which Mr. Sampson had stored the plane in Thomasville. On the point of price, according to emails, Mr. Sampson wanted more than the $118,000 offered by Airscan, which was $2,000 more than the price he was prepared to sell the plane to Mr. Thomas for prior to the repairs made by AMI. Upon learning that Mr. Sampson wanted a higher price, Airscan withdrew its original offer.

Having completed the nose gear area repair and the other airworthiness-related repairs to which Wyatt indicated Sampson had agreed, AMI then took the plane on a test flight with Wyatt and Miller on board in May of 2008. On this test flight, Wyatt and Miller discovered that the plane's fuel gauge did not function properly, which was apparently a problem with the plane that could not be identified until other repairs had been completed. Miller indicated that he could not certify the plane as airworthy until the fuel gauge was repaired. AMI contacted Mr. Sampson about the issue. According to Wyatt, Sampson declined to have the fuel gauge repaired, noting the fuel gauge had not been working in a decade. Having completed what Mr. Wyatt asserts were the agreed-upon repairs, AMI sent two invoices to Mr. Sampson. One was for the nose gear repair, totaling $3,368.68, which Mr. Sampson did not immediately, but eventually did pay. The other was for the airworthiness repairs, totaling $18,926.55, which Mr. Sampson refused to pay. Due to Mr. Sampson's refusal to pay $18,926.55 in repair costs for parts, labor, and taxes, AMI filed both Tennessee and FAA mechanic's liens and maintained possession of the plane. AMI continued to keep the plane in a hangar.

In September 2008, Mr. Sampson filed an action for detinue and replevin against AMI, Mr. Wyatt, and Mr. Thomas's company, Cameron Development, Inc. AMI filed counterclaims for breach of contract and quantum meruit seeking the costs of repair and the storage fees for the plane. The action was delayed for several years as the case inched forward through a slow-moving discovery process. From September 2008 to February 2015, AMI continued to store the plane in one of its hangars. AMI sought to recover $17,100 from Mr. Sampson, which represented a charge for storing the plane at a rate of $225 per month. AMI presented evidence regarding rental fees in the area, demonstrating its costs were not excessive. In 2015, an agreed order was entered to transfer the plane to a different hangar, to be stored at Mr. Sampson's expense for the duration of the party's litigation.

A trial was finally scheduled for September 2016. Mr. Sampson, however, was in poor health. Before the trial, the defendants filed a motion in limine to exclude Mr. Sampson's 2009 discovery deposition transcript if he was deemed unavailable for trial by the court. Mr. Sampson filed an affidavit stating he could not attend the trial for health reasons and he sought to use his deposition in place of live testimony. The day before the trial, Mr. Wyatt suffered a stroke. Neither Mr. Wyatt nor Mr. Sampson was able to attend

the trial, so it was continued in part. By agreement, three witnesses, however, who were already present, testified before the court: Mr. Thomas and two AMI experts, Mr. Wilson and Mr. Yoreck.

The remainder of the trial was postponed several times. In 2019, the defendants renewed their motion in limine to exclude Mr. Sampson's 2009 deposition testimony, arguing that he was available and that his deposition was not a valid substitute for his live testimony. In 2020, Mr. Sampson responded by filing a motion asking the court to allow the submission of the transcript of his deposition because he was unavailable due to his health, age, and the Covid-19 pandemic. The court granted his motion. Accordingly, the testimony before the trial court from Mr. Sampson comes from his 2009 discovery deposition. Shortly thereafter, in an October 2020 agreed order, the court ordered the remainder of the trial to be conducted by way of deposition. These trial depositions included those of above-referenced Mr. Wyatt, Mr. Borrero, and Mr. Miller along with John Patterson, who had been involved in the transfer and continuing storage of Mr. Sampson's plane. All evidence and transcripts were submitted by December 2020. In January 2021, the parties filed proposed findings of fact and conclusions of law.

On June 10, 2021, the court issued a memorandum opinion and order. In the order, the court found that Mr. Sampson never agreed to pay for any repairs beyond the nose landing gear and awarded him immediate possession. Because it found that Mr. Sampson never authorized the repairs, the court concluded that AMI could not recover for breach of contract. The court also declined to award AMI the cost of repairs or storage under its quantum meruit theory. It reasoned that Mr. Sampson was induced to give up possession of the plane under the promise of a free annual inspection, that he had lost out on the use of the plane for 12 years, that he had lost out on at least one sale, and that the plane had deteriorated while in storage. It also found that AMI's mechanic's liens were invalid since Mr. Sampson never authorized the repairs.

A few days after the court entered its June order, AMI learned that Mr. Sampson had died in January. AMI filed a suggestion of death with the court. In September, Mr. Sampson's executor filed a motion to substitute, which the court granted in October. The defendants filed motions to alter or amend the June order, which the court denied. This appeal followed.

II.

AMI argues that the trial court lost jurisdiction when Mr. Sampson died in January 2021, rendering its final order void ab initio. Whether jurisdiction exists is a question of law that is reviewed de novo. *Minyard v. Lucas*, 576 S.W.3d 351, 355 (Tenn. 2019); *Northland Ins. Co. v. State*, 33 S.W.3d 727, 729 (Tenn. 2000).

In October 2020, the trial court held that it would conclude the bench trial on depositions instead of live testimony. By December, the parties had completed the remaining depositions and filed transcripts with the court. On December 15, 2020, the trial court entered an agreed order stating that the parties had complied with this requirement. It further ordered the parties to file suggested findings of fact and conclusions of law, which they each did on January 27, 2021. Unbeknownst to counsel for Mr. Sampson, the defendants, or the court, Mr. Sampson died on January 24, 2021. The court issued its memorandum opinion and order on June 10, 2021, still unaware that Mr. Sampson had died.

Two weeks later, on June 24, 2021, AMI filed a suggestion of death and a motion to alter, amend, or vacate the June 10 order. This motion was based on AMI's contention that the trial court's order was invalid since Mr. Sampson's estate had not been substituted as a party. Seventy-seven days later, on September 9, 2021, Marc Demott, executor of Mr. Sampson's estate, filed a motion to substitute. On October 6, 2021, the trial court granted the motion to substitute and denied AMI's motion to alter or amend. On appeal, AMI argues that the trial court erred in denying its motion and that the court lacked jurisdiction to enter the final order on June 10, 2021. We disagree.

Tennessee Rule of Civil Procedure 25 allows for a motion to substitute to be filed within ninety days after a notice of suggestion of death is filed. Here, Mr. Demott filed a motion to substitute 77 days after AMI filed the notice of suggestion of death with the court, complying with Rule 25.

AMI urges us to follow the common law general rule that a judgment is void when rendered after the death of a party. *In re Estate of Lucas*, 844 S.W.2d 627, 629 (Tenn. Ct. App. 1992). However, this general rule does not apply when the case has already been argued and all that remains is for judgment to be entered. *See id. at 629-30* (explaining that because the parties had already briefed and argued a summary judgment motion when one party died, the subsequent order was valid).

In *Wagner v. Frazier*, one of the parties died while a decision on damages was pending. 712 S.W.2d 109, 112 (Tenn. Ct. App. 1986). The decision focused on whether Rule 25's ninety-day period to substitute could be extended due to excusable neglect, but the timing of the death played a role in the decision to allow for an extension:

> In this case *where the suit had been fully tried and the parties were awaiting a decision* from the court and the motion was made eight days after the ninety-day period had run, we think the mere oversight of the plaintiff is excusable.

Id. (emphasis added).

AMI argues that both *Lucas* and *Wagner* are distinguishable because they involved a party who died after the submission of the case. In their view, Mr. Sampson died before the case was submitted. The record indicates otherwise. Mr. Sampson died on January 24, 2021. Although the parties submitted their proposed findings of fact and conclusions of law a few days later on January 27, all proof had been submitted to the judge well before that date. This is evidenced by an agreed order entered on December 15, 2020, where the court stated that the parties had complied with its prior requirement to complete all remaining deposition testimony in October.

As in *Wagner* and *Frazier*, the proof had been submitted to the court, so Mr. Sampson's death did not affect the court's ability to rule. Mr. Demott then complied with Rule 25 by filing a motion to substitute within ninety days of the filing of the suggestion of death. The trial court continued to have jurisdiction to rule on the merits of the case throughout. We affirm the trial court's denial of AMI's motion to alter or amend on this ground.

III.

At the epicenter of the merits of this appeal, central to the resolution of multiple legal issues, are factual questions surrounding the nature of any agreement reached by Mr. Sampson with regard to repairs of his plane and Mr. Wyatt on behalf of AMI. The Montgomery County Chancery Court, noting Mr. Sampson's testimony that the annual inspection included the costs of repairing the plane to make it airworthy, concluded that Mr. Wyatt had talked with Mr. Sampson about having approximately $20,000 in repairs completed on the plane but that Mr. Sampson had only agreed to the $3,000 nose gear repair. Accordingly, the Chancellor rejected AMI's contract, *quantum meruit*, and lien-based claims, awarding free and clear possession to Sampson. Due to a deficiency in the evidence presented in support thereof, the Chancellor, however, rejected Mr. Sampson's claims connected with loss of use, decline in value, conspiracy, misrepresentation, and for punitive damages.

Ordinarily, a review of a trial court's conclusions as to such factual findings would be approached with a presumption of correctness. *Fisher v. Hargett*, 604 S.W.3d 381, 395 (Tenn. 2020) (citing Tenn. R. App. P. 13(d) (2020); *Hughes v. Tenn. Bd. of Prob. and Parole*, 514 S.W.3d 707, 712 (Tenn. 2017)). Here, however, the case was tried primarily through the trial court's review of cold deposition transcripts and exhibits rather than live testimony before the trial court. The testimony referenced by the trial court in its determination of the central factual issues of the dispute rests entirely on such documentary evidence.

In reviewing factual findings in such cases, the Tennessee Supreme Court has directed that appellate courts afford "no deference and no presumption of correctness to the trial court's findings of fact." *Fisher v. Hargett*, 604 S.W.3d at 395. The Tennessee

Supreme Court has explained that "[w]hen findings are based on documentary evidence, an appellate court's ability to assess credibility and to weigh the evidence is the same as the trial court's." *Kelly v. Kelly*, 445 S.W.3d 685, 693 (Tenn. 2014). "[W]hen factual findings are based on documentary evidence, an appellate court may draw its own conclusions with regard to the weight and credibility to be afforded that documentary evidence." *Id.* (citing *Excel Polymers, LLC v. Broyles*, 302 S.W.3d 268, 271 (Tenn. 2009)). Applying this standard of review, without presumption of correctness as to the trial court's findings, we have conducted our own de novo review in considering the deposition testimony and exhibits presented to the trial court.

In its memorandum opinion and order, the Chancellor appeared to give significant weight to Mr. Sampson's deposition testimony that he understood Mr. Wyatt's offer to provide a free annual inspection to mean Mr. Wyatt would pay for all repairs necessary to bring the airplane up to the point of being airworthy. We find that the evidence preponderates against Mr. Sampson's testimony on this point. The term annual inspection most naturally seems to encompass the FAA's annual mandatory inspection of an airplane and does not extend to the repair costs for rendering the plane airworthy, assuming the inspection finds it unairworthy. Offered an opportunity in his deposition to identify a single person connected with the aviation community who would agree with his assessment of the meaning of the term annual inspection as including repair costs, Mr. Sampson could not identify anyone. Despite more than forty years as a plane owner, Mr. Sampson could not identify one single human being with knowledge, experience, or expertise in the area who would concur with his assessment that the term annual inspection is generally understood in the aviation community as including the repair costs. Alternatively, AMI offered expert testimony from two expert witnesses, Steven Wilson and Robert Yoreck, Jr., that an annual inspection is not understood within the aviation community as encompassing repair costs. These experts testified that an annual inspection is precisely that, an inspection of the plane, and any repairs are not part of the inspection itself. AMI also presented testimony from Messrs. Wyatt and Thomas that their agreement to pay for annual inspection did not include an offer to pay for repair costs. Furthermore, Mr. Borrero, who was present for the conversation between Mr. Wyatt and Mr. Sampson regarding the parties' agreement before the plane was flown to Clarksville from Columbus, similarly indicated that the discussion encompassed the inspection itself and included no references suggesting that the costs of repairs would also be covered. Also, Mr. Sampson himself, in his email to potential buyer Airscan, distinguished between an annual inspection and repairs. Addressing the status of his plane to a potential buyer within the aviation community, Mr. Sampson, instead of treating an annual inspection as encompassing repairs, noted that Mr. Wyatt was "doing a[n] annual ***and*** repairing what needs fixing." (emphasis added).

Mr. Sampson's paying the costs of the $3,000 nose gear repair to the plane is also problematic for his position that the agreement to cover his annual inspection included repairs to his plane. While eventually paying for the nose-gear-related repairs and

conceding that he agreed to do so, Mr. Sampson offered no explanation for why he regarded this repair as outside of his understanding that the repairs were the responsibility of AMI as part of its agreement to cover the annual inspection.

Sampson's version of the parties' agreement ultimately makes little sense as we review the evidence in this case. AMI is certainly in the business of repairing planes, but it is not in the business of doing so for free, covering both parts and labor. Wyatt, AMI's owner and manager, had expressed skepticism about the condition of this particular plane and discouraged Thomas from purchasing it after first viewing the plane in Thomasville. Mr. Thomas, nevertheless, remained potentially interested in the plane once the logbooks were located. At the time Wyatt ferried the plane with Borrero to Clarksville to complete Thomas's requested more detailed inspection, there was no agreement in place for Thomas to purchase the plane. Furthermore, when AMI actually performed the disputed repairs, the potential sale to Thomas had already fallen through. Under Sampson's rendering of circumstances, AMI assumed the costs of repairing a plane that Wyatt, its owner and manager, had already expressed hesitancy about when no sale had been agreed to and where Wyatt had advised Thomas against the transaction. Furthermore, Thomas, the potential purchaser, would have to be understood as agreeing to cover all repair costs to a plane whose condition was doubtful before even deciding if he was willing to buy it and at what price. Additionally, under Sampson's version of events, AMI then proceeded to repair a plane after the sale to Thomas did not materialize despite its chief mechanic viewing the plane as "a piece of crap" and finding the plane's lingering presence at AMI as a source of irritation. Sampson did concede that he spoke with Wyatt about the $20,000 in repairs in connection with rendering the plane airworthy. In his deposition, Sampson asserted that he indicated to Wyatt that he would not pay for these repairs but simultaneously insisted that the repairs were part of the annual inspection that AMI had agreed to complete. Under Sampson's rendering of circumstances, we are asked to accept the difficult-to-believe notion that AMI undertook approximately $20,000 in repairs on the plane after Sampson told AMI that he would not pay for these repairs. Sampson failed to provide evidentiary support for any real explanation of why AMI would engage in such a course of conduct.

The above-discussed, three-page document with the list of airworthiness repairs that were made by AMI but which Mr. Sampson refused to pay for is also problematic for Mr. Sampson's rendering of events. Mr. Wyatt contends that he emailed this list to Mr. Sampson on February 20, 2008, and offers a screenshot of an email that includes an attachment sent to Mr. Sampson on that day. It is undisputed that AMI provided this list to Sampson in 2008 in some form after the potential sale to Thomas had fallen through. The document itself was disclosed by Sampson in the discovery process. Mr. Sampson's interpretation of the list in this document as a list of completed repairs on the plane as part of the annual inspection runs contrary to the language of the document itself, which identifies repairs needing to be made rather than those that have been completed. Also, adding to difficulties in accepting Sampson's purported view of an annual inspection as

including repair costs, the document indicates that the annual inspection has already been completed while listing these airworthiness repairs as still needing to be completed. Furthermore, Wyatt offers a coherent explanation of what the purpose of this list was and how it related to the repairs made on Sampson's plane. Alternatively, unlike in his above-discussed response to an interrogatory, Sampson denied any recollection of the document in his 2009 deposition despite an extremely clear memory related to a wide variety of other details. This is but one of a number of examples in Sampson's deposition of what appear to be prevarications.

Nor is this three-page document listing repairs the only exhibit in evidence that bolsters AMI's description of events while undermining Sampson's rendition. While not a perfect fit, the exhibits presented to the trial court judge overwhelming favor AMI's understanding of and timeline of events over Mr. Sampson's. The squawk sheet, AMI's maintenance logs, the dates on the acquisition of parts used in the repair of the plane including in February and March of 2008, the bank records showing payments by Thomas for the inspection and fuel for ferrying, and records of email communications, insofar as they exist, are overwhelmingly supportive of the rendition of events offered by AMI. Simply stated, AMI's version of events is supported by multiple witnesses with personal knowledge or expert insight and multiple exhibits containing documents largely consistent with AMI's rendition of events. Alternatively, Mr. Sampson's rendition stands upon his claim that everyone within the aviation community knows that an annual inspection of a plane counterintuitively includes the repair costs to render it airworthy and his assertion that AMI made repairs to his plane to make it airworthy after Sampson told Wyatt that he would not pay for these repairs. Sampson's last point is even further undermined by AMI declining to repair the fuel gauge and sending him his bills for the nose gear repair and the airworthiness repairs after he indicated that he would not pay for the fuel gauge. Sampson offers no real explanation supported by evidence for why AMI would suddenly stop its repairs when reaching the point of the fuel gauge repair. For the above-discussed reasons, applying a non-deferential standard of review given the case was tried upon deposition transcripts and exhibits, we conclude that the weight of evidence favors the conclusion that the Chancellor erred in finding that Sampson did not authorize the repairs on his plane.

III.

The Chancellor, having determined that Sampson did not authorize the airworthiness repairs to his plane, found that AMI's breach of contract claim seeking $18,926.55 in agreed-upon repair costs failed. Our determination that the Chancellor erred in his factual finding regarding the nature of the parties' agreement leads us to conclude that the Chancellor, accordingly, also erred in his determination that Sampson did not breach his contract with AMI. To prove a claim for breach of contract, a claimant must show (1) the existence of a valid contract, (2) nonperformance of the contract amounting to a breach, and (3) damages caused by the breach. *Fed. Ins. Co. v. Winters*, 354 S.W.3d 287, 291 (Tenn. 2011). A contract can be express, implied, written, or oral. *Power Equip.*

Co. v. England, 307 S.W.3d 756, 759 (Tenn. Ct. App. 2009). To be enforceable, a contract must result from a meeting of the minds in mutual assent to terms, be based upon sufficient consideration, be free from fraud or undue influence, not be against public policy, and be sufficiently definite to be enforced. *Staubach Retail Servs.-Se., LLC v. H.G. Hill Realty Co.*, 160 S.W.3d 521, 524 (Tenn. 2005). Consideration exists when the promisee does something that the promisee has no legal obligation to do or refrains from doing something which he or she has a legal right to do. *Est. of Brown*, 402 S.W.3d 193, 200 (Tenn. 2013).

Sampson's argument against AMI's breach of contract claim rises and falls upon his assertion that he did not authorize the $18,926.55 in airworthiness repairs to his plane. In reviewing the evidence, we have concluded the evidence in the record favors a finding that Mr. Sampson entered into an oral contract with AMI to pay for airworthiness-related repairs. The terms of the contract provided that AMI would repair the listed airworthiness-related items and Mr. Sampson would pay the repair costs not to exceed $20,000. AMI performed its end of the bargain by completing the repairs. Mr. Sampson then refused to pay for the repairs, thus breaching the contract. The damages for this breach are the repair costs Mr. Sampson agreed to pay, totaling $18,926.55. Therefore, we reverse the trial court's judgment and hold that Mr. Sampson breached his oral agreement with AMI to pay for the $18,926.55 worth of repairs to his aircraft.[1]

IV.

Having concluded there was a contract in place between the parties, we turn to Mr. Sampson's claims for replevin and detinue. In Mr. Sampson's amended petition, he alleged that AMI's refusal to return the airplane constituted the conversion of his personal property. A replevin action is one brought seeking "to establish title to or right to possession of property." *Lawrence v. Mullins*, 449 S.W.2d 224, 227 (Tenn. 1969). An action in replevin will lie "in all cases where the plaintiff has a present right to the possession of any personal property in the possession of the defendant." *Shaddon v. Knott*, 32 Tenn. 358, 363 (1852). Similarly, a detinue action is used to recover the possession of specific personal property. Tenn. Code Ann. § 29-30-201. "[W]here the wrong consists of unlawfully withholding the possession of personal property, the action of replevin or detinue may be brought by the injured party." *Jack Strader Tire Co. v. Manufacturers Acceptance Corp.*, 429 S.W.2d 428, 429–30 (Tenn. 1968) (citing Caruthers *History of a Lawsuit*, § 134 (8th Ed. 1963)). Conversion occurs when "the tortfeasor appropriates the plaintiff's property to his or her own use or benefit by exercising dominion over it in violation of the true owner's right." *Pero's Steak & Spaghetti House v. Lee*, 90 S.W.3d 614, 623 (Tenn. 2002) (citing *Barger v. Webb*, 391 S.W.2d 664, 665 (1965); *Gen. Elec. Credit Corp. of Tennessee v. Kelly & Dearing Aviation*, 765 S.W.2d 750, 753 (Tenn. Ct. App. 1988)).

[1] AMI argues in the alternative for the recovery of the repair costs under a quantum meruit theory. Because we find that the parties had a contract that Mr. Sampson breached, we need not address this alternative argument.

After reviewing the evidence, the trial court ordered the return of the airplane, stating that Mr. Sampson's "claims for Replevin and Detinue are sustained." The trial court did not make detailed findings of fact and conclusions of law on this issue, nor did it mention conversion. The trial court found that Mr. Sampson did not authorize the repairs to his aircraft. As stated in section III, we disagree and find that Mr. Sampson orally agreed to pay for the repairs to the aircraft and then breached that contract by refusing to pay for the repair costs. After he refused, AMI filed mechanic's and garage keeper's liens against Mr. Sampson under Tennessee Code Annotated section 66-19-101 and with the Federal Aviation Administration (FAA). AMI argues that it cannot be liable for conversion because it had the legal right to retain possession under the mechanic's and garage keeper's lien provisions. We agree.

A mechanic's lien is available under Tennessee Code Annotated section 66-19-101 for "any repairs or improvements made or parts or fixtures furnished at the request of the owner." Similarly, Tennessee Code Annotated section 66-19-103 provides for a garage keeper's lien "upon all vehicles that lawfully come into their possession" and specifically authorizes the lienholder to maintain possession until the charges due are paid. Both statutes are extended to the repair of aircraft by Tennessee Code Annotated section 66-19-302(b).

The trial court found that the liens were invalid because the repairs were not done at the request of Mr. Sampson, but, as we have discussed, we find that Mr. Sampson did authorize the repairs. Mr. Sampson's only argument against the validity of these liens is that he never authorized the repair, undercutting AMI's alleged right to maintain possession.

Because we find that Mr. Sampson did authorize the repairs and refused to pay, AMI had the legal authority to file both the mechanic's and garage keeper's liens and maintain possession of the aircraft under Tennessee Code Annotated sections 66-19-101 and -103. AMI then perfected that lien by filing it with the register of deeds and providing notice to Mr. Sampson, as required by statute. Therefore, AMI had the right to maintain possession of the aircraft until Mr. Sampson paid for the repairs. *See, e.g.*, *In re Hamby*, 360 B.R. 657, 662, (Bankr. E.D. Tenn. 2007) (finding that the creditor had the statutory authority under Tennessee Code Annotated sections 66-19-101 and -103 to retain possession until the repair bill was paid).

It follows that AMI did not commit the tort of conversion because it had a legal right to maintain possession of the aircraft until Mr. Sampson paid the $18,926.55 due. We reverse the trial court's judgment sustaining Mr. Sampson's claims for detinue and replevin and find that AMI did not commit the tort of conversion, as it had a legal right to possess the aircraft under its mechanic's and garage keeper's liens. AMI's possession was not

inconsistent with Mr. Sampson's right to possess the aircraft. *See Hanna*, 275 S.W.3d at 427.

V.

Relatedly, AMI argues that its statutory garage keeper's lien under Tennessee Code Annotated section 66-19-103 allows it to recover $17,100 in storage costs from June 2008 to April 2015. This represents the 76 months between the time AMI filed its statutory lien and a February 2015 agreed order allowing Mr. Sampson to transfer the aircraft to a "refugee" hangar at his expense. The court's order stated that, although the aircraft would no longer be in AMI's possession, it remained "subject to the garage keeper's lien asserted by defendant . . .." During these 76 months, AMI stored the aircraft in a T-hangar, a common type of enclosure used for storage of similar private planes. The record includes testimony from Mr. Wyatt that the market cost of storage in a T-Hangar was $225 per month throughout this time. In an affidavit, Mr. John Patterson, Airport Director for the Clarksville-Montgomery County Regional Airport Authority, stated that other airports charged $225 per month for equivalent hangars.

As stated more fully above, we have found that AMI filed valid mechanic's and garage keeper's liens. Under Tennessee Code Annotated section 66-19-103, the lienholder "shall be entitled to a lien upon all vehicles that lawfully come into their possession and are retained in their possession until all reasonable charges due are paid."

Mr. Sampson's only argument in response is, again, that he never authorized the repairs, so the garage keeper's lien itself was invalid. Beyond this, he makes no argument regarding the validity of the $17,100 or the $225 monthly storage cost used to calculate that amount. Given our rejection of Mr. Sampson's argument that he did not authorize the repairs to his plane, he is left without further grounds for objection to paying compensation for the storage costs. Accordingly, we conclude that AMI is owed $17,100 in storage costs.

VI.

Finally, AMI argued below and reiterates on appeal that it is entitled to prejudgment interest in addition to the repair costs. At a rate of 5.25%, AMI argues that this comes to $12,337.20 for the 149 months between August 2009 and December 2021. Tennessee Code Annotated section 47-14-123 provides regarding prejudgment interest as follows:

> Prejudgment interest, i.e., interest as an element of, or in the nature of, damages, as permitted by the statutory and common laws of the state as of April 1, 1979, may be awarded by courts or juries in accordance with the principles of equity at any rate not in excess of a maximum effective rate of ten percent (10%) per annum; provided, that with respect to contracts subject to § 47-14-103, the maximum effective rates of prejudgment interest so

> awarded shall be the same as set by that section for the particular category of transaction involved. In addition, contracts may expressly provide for the imposition of the same or a different rate of interest to be paid after breach or default within the limits set by § 47-14-103.

Tennessee law affords discretion to trial courts as to prejudgment interest and provides principles to guide trial courts in exercising their discretion. *Myint v. Allstate Ins. Co.*, 970 S.W.2d 920, 927 (Tenn. 1998). The Tennessee Supreme Court has observed "[f]oremost are the principles of equity. Simply stated, the court must decide whether the award of prejudgment interest is fair, given the particular circumstances of the case." *Id*. This court has noted that some equitable factors for the court's consideration include: "(1) promptness in the commencement of a claim, (2) unreasonable delay of the proceedings by either party, (3) abusive litigation practices by either party, (4) the certainty of the existence of an underlying obligation, (4) the certainty of the amount in dispute, and (5) prior compensation for the lost time value of the plaintiff's money." *Poole v. Union Planters Bank, N.A.*, 337 S.W.3d 771, 791 (Tenn. Ct. App. 2010).

AMI's position is that the amount owed for the repairs was always certain, totaling $18,926.55. They argue that Mr. Sampson could not dispute the obligation on any reasonable grounds, so they must be owed prejudgment interest.

Here, because of its conclusion on the underlying merits of the case, the trial court made no findings related to prejudgment interest, including the equitable considerations. Therefore, we remand this issue back to the trial court for a determination on the issue of whether AMI is owed prejudgment interest on the repair costs.

CONCLUSION

The judgment of the Montgomery County Chancery Court is reversed and remanded for further proceedings consistent with this opinion. Costs of this appeal are assessed against the appellee, the Estate of Joey Sampson, for which execution may issue if necessary.

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JEFFREY USMAN, JUDGE