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IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs June 1, 2023

JON VAZEEN v. MARTIN SIR

Appeal from the Circuit Court for Davidson County
No. 16C2388 Don R. Ash, Senior Judge

No. M2022-00273-COA-R3-CV

Former client sued his former attorney for legal malpractice and fraud. The trial court initially dismissed all claims, but was reversed on appeal as to the fraud claims. The trial court then held a bench trial and found in favor of the defendant attorney. In a second appeal, this Court affirmed the dismissal of all fraud claims except a fraud claim related to the hourly rate charged under the parties' written contract. That claim was remanded to the trial court for purposes of consideration of the factors outlined in in ***Alexander v. Inman***, 974 S.W.2d 689 (Tenn. 1998). On remand, the trial judge denied the plaintiff's efforts to disqualify him from the case and to enlarge the scope of the trial. A bench trial was eventually held, despite the plaintiff's multiple efforts to postpone. After a late motion to continue was denied, the plaintiff did not attend trial. Following the bench trial, the trial court once again ruled in favor of the defendant attorney, resulting in the dismissal of all claims against him. Discerning no reversible error, we affirm.

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

J. STEVEN STAFFORD, P.J., W.S., delivered the opinion of the court, in which D. MICHAEL SWINEY, C.J., and JEFFREY USMAN, J., joined.

Jon Vazeen, Knoxville, Tennessee, Pro se.

Hayley Vos, Nashville, Tennessee, for the appellee, Martin Sir.

OPINION

I. FACTUAL AND PROCEDURAL HISTORY

This is the third appeal in this case. *See* ***Vazeen v. Sir*** (***Vazeen I***), No. M2018-

00333-COA-R3-CV, 2018 WL 6419134 (Tenn. Ct. App. Dec. 5, 2018); ***Vazeen v. Sir*** (***Vazeen II***), No. M2019-01395-COA-R3-CV, 2021 WL 832043 (Tenn. Ct. App. Mar. 4, 2021). As a result of the prior appeals, the issues in this appeal have been significantly narrowed. As such, we confine our recitation of the facts to only those necessary to adjudicate this appeal.[1]

In 2016, Plaintiff/Appellant Jon Vazeen filed a complaint in the Davidson County Circuit Court ("the trial court") against his former attorney Defendant/Appellee Martin Sir, alleging legal malpractice and fraud related to billing. ***Vazeen I***, 2018 WL 6419134, at *2. In particular, Mr. Vazeen maintained that due to some admitted errors in billing, he should be relieved of all payment obligations. ***Id.*** at *1. Mr. Vazeen also alleged that he was charged more per hour of work than he had agreed to pay.

Eventually, the trial court dismissed Mr. Vazeen's legal malpractice claims as barred by the applicable statute of limitations. ***Id.*** at *2. The trial court also found that Mr. Vazeen's fraud claim was barred by res judicata due to the dismissal of Mr. Vazeen's ethics complaint against Attorney Sir. ***Id.*** at *3. In ***Vazeen I***, we affirmed the dismissal of Mr. Vazeen's legal malpractice claim, but reversed the dismissal of his fraud claim on the basis of res judicata. ***Id.*** at *3, *5–6. So the fraud claim was remanded to the trial court for further proceedings. ***Id.*** at *6.

Upon remand, the trial court held a bench trial on the fraud claim. ***Vazeen II***, 2021 WL 832043, at *2. Mr. Vazeen testified to various "fake" charges he alleged Attorney Sir had included in Mr. Vazeen's itemized bill. Attorney Sir admitted that there were errors in billing, but denied that they were intentional. Moreover, he testified that once those errors were uncovered, the invoice was corrected and Mr. Vazeen was refunded the amounts he had overpaid under the incorrect invoices. ***Id.*** at *3.

Additionally, Mr. Vazeen claimed that a contract submitted by Attorney Sir in which Mr. Vazeen apparently agreed to pay $375.00 per hour for Attorney Sir's work and $350.00 per hour for associate work was a forgery or altered. ***Id.*** Instead, Mr. Vazeen testified that he agreed to pay $250.00 per hour for all work done on his case. ***Id.*** at *2. In support, he submitted his own handwritten notes indicating that that was the figure quoted to him by Attorney Sir's law firm, as well as billing invoices showing that he was initially charged only $250.00 per hour for associate work and $350.00 per hour for Attorney Sir's work; the associate attorney rate increased a few months after the representation began to the allegedly contracted amount, but the rate for Attorney Sir's work remained billed at $350.00 per hour. ***Id.*** at *2–3.

Ultimately, the trial court found that Mr. Vazeen presented no proof that the contract submitted by Attorney Sir was a forgery. ***Id.*** at *3. The trial court further found that Mr.

[1] For a more thorough recitation of the facts, please see this Court's prior Opinions in this matter.

Vazeen failed to prove that Attorney Sir intentionally misrepresented the amounts owed and that to the extent there were errors in the bills, Mr. Vazeen did not suffer any damages.

On appeal, we affirmed the trial court's finding that Mr. Vazeen failed to prove fraud with regard to any of the billing entries, duplicate or otherwise. ***Id.*** at *5–7. But we vacated the trial court's finding that no fraud occurred due to an allegedly inflated hourly rate because Mr. Vazeen was charged no more than what the written contract provided. Rather than frame the issue as one of forgery, which the trial court rejected, we held that the claim of fraud must be considered in light of the fiduciary attorney-client relationship. ***Id.*** at *7. And the question of whether an attorney-client fee agreement is enforceable is determined by consideration of a number of factors set forth in ***Alexander v. Inman***, 974 S.W.2d 689 (Tenn. 1998), none of which the parties or the trial court had considered. ***Vazeen II***, 2021 WL 832043, at *8–9. As such, we vacated the dismissal of this fraud claim and remanded the "limited issue regarding the hourly rate" for the purpose of "consideration of the ***Alexander*** criteria." ***Id.*** at *10.

The mandate from ***Vazeen II*** was issued on May 19, 2021. Immediately thereafter, on May 26, 2021, Mr. Vazeen filed a motion to recuse the trial judge, citing, inter alia, (1) the fact that the trial court's rulings had been overturned in the two prior appeals; (2) a suspicion that the trial judge shared Attorney Sir's religious affiliation, which had been testified to in a prior trial; (3) that the trial court had made allegedly erroneous factual findings; and (4) that the trial judge found that he believed Attorney Sir during the prior trial. Mr. Vazeen's motion was not accompanied by an affidavit or a statement under penalty of perjury. Attorney Sir filed a response to Mr. Vazeen's motion, pointing out this deficiency and arguing that Mr. Vazeen's allegations did not mandate disqualification of the trial judge. Mr. Vazeen then filed a corrected motion which included a verification under oath that "the statements and evidences in the foregoing [motion] [were] true and correct to the best of his information, knowledge and, belief."

On July 14, 2021, the trial court denied Mr. Vazeen's motion to recuse. Therein, the trial court explained as follows:

> The majority of Mr. Vazeen's Recusal Motion alleges this Court has pre-formed opinions about the parties and the Court, through its rulings, has demonstrated bias towards [Attorney Sir]. This Court respectfully disagrees. While this Court recognizes it is not perfect, there is nothing to devise from the deliverance of the Court of Appeals opinion other than that which is contained in the opinion, which in this case is the instruction to determine certain issues using an analysis of the factors listed in ***Alexander v. Inman***, 974 S.W.2d 689, 692 (Tenn. 1998). Further, this Court has no relationship with either party outside of this litigation and holds no pre-formed opinions about either.

On December 2, 2021, Mr. Vazeen filed a motion regarding the scope of trial. Therein, Mr. Vazeen argued that the first two appeals were based on erroneous factual findings that could not be corrected without a new trial. Indeed, Mr. Vazeen alleged that both the trial court and this Court missed crucial evidence of the "very obvious" fraud in this case. Mr. Vazeen therefore argued that the trial court was required to re-examine the facts as to the entirety of his fraud claim and the scope of the upcoming trial should not be limited to the ***Alexander v. Inman*** issue. Mr. Vazeen also requested that the case be tried by a jury. Attorney Sir filed a response in opposition to Mr. Vazeen's motion, arguing that the scope of trial was limited by the Court of Appeals' remand and that Mr. Vazeen's request for a jury trial should be denied as waived and not appropriate at this juncture of the proceedings. Mr. Vazeen filed a reply to Attorney Sir's response, arguing that the response cited cases that were not relevant to the issue.

On December 21, 2021, the trial court entered an order denying Mr. Vazeen's December 2 motion. Therein, the trial court ruled that it was "simply . . . not authorized to consider anything beyond the remand of the Court of Appeals." As such, the trial court ruled that "[t]he only issue remaining to be determined at trial in this case, per the remand, is the hourly rate as considered with the ***Alexander*** factors." The trial court further found that Mr. Vazeen's request for a jury trial was untimely.

On January 13, 2022, Mr. Vazeen filed a motion to stay the trial court proceedings so that he could seek guidance from this Court as to the trial court's December 21 ruling. Attorney Sir filed a response in opposition the next day, arguing that Mr. Vazeen's letter asking the Court of Appeals to resolve a legal issue was not authorized by any applicable procedural rules.[2] The trial court denied Mr. Vazeen's motion for a stay by order of January 18, 2021, noting that Mr. Vazeen had not filed an interlocutory appeal of its December 21 ruling and that Mr. Vazeen's "informal letter" was improper.

On January 24, 2022, four days before trial was set to commence, Mr. Vazeen filed a motion to continue the trial due to illness. The trial court eventually granted this motion and set the trial for February 23, 2022. On January 28, 2022, however, Mr. Vazeen filed another motion to recuse and to enlarge the scope of trial. Therein, he raised the same allegations as his prior motion—particularly that the trial court had found Attorney Sir to be believable—depriving Mr. Vazeen of a fair trial going forward. Mr. Vazeen further argued that the combination of the finding that no proof was presented that the fee contract was fake coupled with the limited scope of trial "leaves no room for [Mr. Vazeen] to present supportive evidences . . . and receive a measure of justice in this case." Finally, Mr.

[2] The letter was not initially included in the record on appeal. The record was later supplemented to include the letter. Therein, Mr. Vazeen asked this Court to amend the Opinion to "include a hint at the possibility that [Attorney Sir] may have violated . . . his fiduciary obligations" in order to enlarge the scope of the trial on remand.

Vazeen provided a list of evidence in support of fraud that he alleged the trial court failed to consider. By "ignor[ing]" this evidence, Mr. Vazeen essentially alleged that the trial court created an appearance of partiality. Once again, this motion was not accompanied by an affidavit or statement under penalty of perjury.

A few days later, on January 30, 2022, Mr. Vazeen filed a motion to postpone the trial "until the outstanding legal issues are resolved through an opinion by the court of appeals." Therein, Mr. Vazeen stated that he was "planning to file an appeal" regarding the trial court's decision to limit the scope of the trial on remand. Mr. Vazeen alleged in his motion that he had received communication from this Court regarding his issues, but did not attach the correspondence to his motion or indicate what the correspondence actually stated.

Attorney Sir filed responses to both of Mr. Vazeen's motions on January 31, 2022, arguing that Mr. Vazeen was attempting to relitigate issues that had previously been decided. Moreover, Attorney Sir asserted that the communication from the Court of Appeals merely informed Mr. Vazeen that this Court no longer had jurisdiction over this matter, and that no appeal was actually pending. Mr. Vazeen, on February 4, 2022, then filed a "notice" that he was disadvantaged by not receiving documents on time due to mail delays caused by "COVID19, weather and, politics[.]"

On February 9, 2022, Mr. Vazeen filed yet another recusal motion. The motion also asked that the trial court not limit the scope of the trial on remand. Therein, Mr. Vazeen asserted that because the appeal in ***Vazeen II*** was closed, the question of whether the trial court properly limited the scope of the trial on remand "never made it to the desk of appellate judges." Mr. Vazeen further noted that he could appeal the denial of a recusal motion under Rule 10B of the Tennessee Supreme Court Rules. The motion thereafter recounted essentially the same allegations as had previously been made in his prior motions to recuse and/or to enlarge the scope of the trial on remand. This motion included a verification under oath.

On February 21, 2022, Attorney Sir filed his pre-trial brief pursuant to the applicable local rules. On February 22, 2022, Mr. Vazeen filed a notice seeking to document the events leading up to trial. Therein, Mr. Vazeen asserted that the trial had been cancelled and then rescheduled for the same date, to the prejudice of Mr. Vazeen. This motion included copies of emails between the parties and the trial court's clerk, but did not include an affidavit.

On February 22, 2022, the trial court entered an order denying Mr. Vazeen's requests regarding recusal, the scope of trial, and delaying the trial pending an appeal. In denying the motion to recuse, the trial court specifically found that the motion was "frivolous, untimely, and filed merely to delay the proceedings." The trial court further found that Mr. Vazeen's other two requests merely restated prior arguments that had been

denied by the court.

On February 23, 2022, Mr. Vazeen filed an "urgent notice" that he could not attend trial due to weather and health issues. Mr. Vazeen also asserted that he was planning to pursue an appeal of the last denial of recusal, but that he had yet to receive a written order. Additionally, Mr. Vazeen stated that he could not prepare in time because the trial had previously been cancelled only to be rescheduled. This notice was not accompanied by an affidavit.

Trial occurred as scheduled on February 23, 2022. Mr. Vazeen was not present. At the beginning of the trial, the trial court orally denied Mr. Vazeen's motion to postpone the trial. Attorney Sir then presented his proof regarding the ***Alexander v. Inman*** factors through three witnesses: (1) an outside attorney to opine as the reasonableness of Attorney Sir's fees; (2) a paralegal who was employed by Attorney Sir when Mr. Vazeen allegedly entered into the fee contract; and (3) Attorney Sir himself. The trial court took the matter under advisement at the conclusion of trial.

On March 1, 2022, Mr. Vazeen filed a notice of appeal to this Court.[3] In the space listed for the "date(s) the final judgment(s) was filed in the trial court" Mr. Vazeen listed "2/17/2022 (?)."[4] On March 4, 2022, the trial court entered an order regarding Mr. Vazeen's "urgent notice." Therein, the trial court noted as follows regarding the alleged cancellation of the trial date:

> [Mr. Vazeen's] belief trial was cancelled stems from communication with the Court's staff the Friday before trial where the parties informed the Court a settlement had been reached. The settlement negotiations fell through over the weekend and the Court's staff was notified on Sunday a settlement was not going to happen. As the Court previously instructed in the Order Granting Plaintiff's Motion to Continue Trial Date there would be no further continuances and, with a settlement not reached, there was no reason for just delay. The parties' options were settlement or trial on February 23, 2022. The Court did not spontaneously decide to put the trial back on the docket. The parties failed to settle after notifying the Court perhaps too early. Settlement discussions over the weekend in informal emails do not constitute striking the trial date, and it is unreasonable either party should not have been prepared given the amount of time afforded in this case. [Mr. Vazeen's] argument in the "Notice" is simply another attempt to delay these proceedings, which the Court had already sternly ordered would not be tolerated.

[3] The notice was mailed by certified mail on February 22, 2022, the day before the scheduled trial.

[4] The technical record does not reflect that any order was entered on this date.

(Internal citation omitted). The trial court also found that Mr. Vazeen's characterization of this case as "on appeal" was "simply not true." So the trial court formally denied Mr. Vazeen's final attempt to delay trial, consistent with its earlier oral ruling at the start of trial.

On March 18, 2022, the trial court entered a detailed, written order in favor of Attorney Sir regarding the ***Alexander v. Inman*** issue remanded from this Court. Following extensive factual findings and legal conclusions, the trial court ruled that "the hourly rate of [Attorney Sir] was $375 as evidenced by the attorney/client agreement, the attorney/client fee agreement is just and reasonable, and [Mr. Vazeen's] claims as to fraud are DISMISSED with prejudice." Mr. Vazeen's March 1, 2022 notice of appeal was treated as prematurely filed, and this appeal proceeded.[5]

II. ISSUES PRESENTED

Mr. Vazeen raises the following issues for our review, which are taken from his appellate brief:

1. Did trial court err in denying [Mr. Vazeen's] Recusal *Motion*?
2. Did trial court err in limiting *the scope of trial*?
3. Did trial court err in denying [Mr. Vazeen's] *continuation Motion*?
4. Did trial court *breach the agreed contract* between trial court, [Attorney Sir] and, [Mr. Vazeen]?
5. Did trial court *violate [Mr. Vazeen's] rights* to a fair and impartial trial?

III. STANDARD OF REVIEW

In an appeal from a bench trial, we review the trial court's factual findings de novo, with a presumption of correctness unless the evidence preponderates otherwise. ***Law v. Law***, No. E2021-00206-COA-R3-CV, 2022 WL 1221084 (Tenn. Ct. App. Apr. 26, 2022) (citing ***Boote v. Shivers***, 198 S.W.3d 732, 740 (Tenn. Ct. App. 2005); Tenn. R. App. P.

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[5] Even after the final judgment was entered, the parties continued their disputes in the trial court, including over the issues that Mr. Vazeen could present in this appeal. *But see* ***State v. Delinquent Taxpayers of Benton Cnty. Tennessee***, No. W2021-01050-COA-R3-CV, 2022 WL 17491300 at *4–5 & n.1–2 (Tenn. Ct. App. Dec. 7, 2022) (looking to the Advisory Committee Comments to Rule 3 and 13 of the Tennessee Rules of Appellate Procedure in rejecting the argument that a notice of appeal limits the scope of appellate review). In part, Attorney Sir objected to some of Mr. Vazeen's issues because the issues raised had already been adjudicated by the trial court and therefore were "not proper to be included on appeal." This argument is somewhat puzzling because this Court's purpose is to review the trial court's rulings; as such, we have no authority unless and until an issue has been adjudicated in the trial court. *See* ***Reid v. Reid***, 388 S.W.3d 292, 294 (Tenn. Ct. App. 2012) ("The jurisdiction of this Court is appellate only; we cannot hear proof and decide the merits of the parties' allegations in the first instance."). In any event, these disputes are not relevant to this appeal. We will consider every issue raised by Mr. Vazeen over which we have subject matter jurisdiction and that was properly raised and argued in his brief.

13(d)). The presumption of correctness does not apply to the trial court's legal conclusions, which are reviewed de novo. ***Boote***, 198 S.W.3d at 741.

IV. ANALYSIS

A.

As an initial matter, we note that Mr. Vazeen is self-represented in this appeal, as he was in the trial court. "While entitled to fair and equal treatment before the courts, a pro se litigant is still required to comply with substantive and procedural law as do parties represented by counsel." ***Gilliam v. Gilliam***, No. M2007-02507-COA-R3-CV, 2008 WL 4922512, at *3 (Tenn. Ct. App. Nov. 13, 2008) (citing ***Hessmer v. Hessmer***, 138 S.W.3d 901, 903 (Tenn. Ct. App. 2003)). As explained by this Court, "[t]he courts should take into account that many pro se litigants have no legal training and little familiarity with the judicial system. However, the courts must also be mindful of the boundary between fairness to a pro se litigant and unfairness to the pro se litigant's adversary." ***Jackson v. Lanphere***, No. M2010-01401-COA-R3-CV, 2011 WL 3566978, at *3 (Tenn. Ct. App. Aug. 12, 2011) (quoting ***Hessmer***, 138 S.W.3d at 903 (internal citations omitted)). We keep these principles in mind in adjudicating this appeal.

B.

We will first consider the trial court's ruling concerning the scope of the issues remanded to it, as this issue informs our consideration of other issues in this case. In his appellate brief, Mr. Vazeen contends that the trial court erred in limiting the trial to only consideration of the hourly fee charged under the ***Alexander v. Inman*** factors. Rather, he asserts that neither the trial court nor this Court addressed the principle issue of whether Attorney Sir violated his fiduciary duties to Mr. Vazeen, a new facet to the case that was raised for the first time by this Court in ***Vazeen II***. Finally, Mr. Vazeen further asserts that Attorney Sir never argued that he did not breach his fiduciary duty.

With regard to this issue, the trial court ruled that it was limited on remand to only the issue of whether the fee contract between Mr. Vazeen and Attorney Sir, and in particular the hourly rate contained therein, withstood the scrutiny of the ***Alexander v. Inman*** factors. The trial court was entirely correct in its ruling.

The Tennessee Supreme Court has made clear that "inferior courts must abide the orders, decrees and precedents of higher courts." ***Weston v. State***, 60 S.W.3d 57, 59 (Tenn. 2001) (internal quotation marks and citations omitted). As such, lower courts are not permitted "to expand the directive or purpose of [a higher court] imposed upon remand." ***Id.*** (citing ***Cook v. McCullough***, 735 S.W.2d 464, 470 (Tenn. Ct. App. 1987)). And when a case has been remanded by a high court, the "law of the case" doctrine is applicable:

> The phrase "law of the case" refers to a legal doctrine which generally prohibits reconsideration of issues that have already been decided in a prior appeal of the same case. 5 Am. Jur. 2d *Appellate Review* § 605 (1995). In other words, under the law of the case doctrine, an appellate court's decision on an issue of law is binding in later trials and appeals of the same case if the facts on the second trial or appeal are substantially the same as the facts in the first trial or appeal. ***Life & Casualty Ins. Co. v. Jett***, 175 Tenn. 295, 299, 133 S.W.2d 997, 998–99 (1939); ***Ladd v. Honda Motor Co., Ltd.***, 939 S.W.2d 83, 90 (Tenn. App. 1996). The doctrine applies to issues that were actually before the appellate court in the first appeal and to issues that were necessarily decided by implication. ***Ladd***, 939 S.W.2d at 90 (citing other authority).

Memphis Pub. Co. v. Tenn. Petroleum Underground Storage Tank Bd., 975 S.W.2d 303, 306 (Tenn. 1998). As this Court has explained,

> After a case has been appealed, a trial court does not reacquire jurisdiction over the case until it receives a mandate from the appellate court. Once the mandate reinvests the trial court's jurisdiction over a case, the case stands in the same posture it did before the appeal except insofar as the trial court's judgment has been changed or modified by the appellate court. ***Raht v. Southern Ry.***, 215 Tenn. 485, 497, 387 S.W.2d 781, 786 (1965). The appellate court's opinion becomes the law of the case, ***Gill v. Godwin***, 59 Tenn. App. 582, 786, 442 S.W.2d 661, 662–63 (1967), foreclosing and excluding any complaint, constitutional or otherwise, as to the issues addressed and decided in the appellate court's opinion. ***Cook v. McCullough***, 735 S.W.2d 464, 469 (Tenn. Ct. App. 1987). Thus, the trial court does not have the authority to modify or revise the appellate court's opinion, ***McDade v. McDade***, 487 S.W.2d 659, 663 (Tenn. Ct. App. 1972), or to expand the proceedings beyond the remand order. ***Cook v. McCullough***, 735 S.W.2d at 470. The trial court's sole responsibility is to carefully comply with directions in the appellate court's opinion. ***Raht v. Southern Ry.***, 215 Tenn. at 497-98, 387 S.W.2d at 786–87.

Duke v. Duke, 563 S.W.3d 885, 895–96 (Tenn. Ct. App. 2018) (quoting ***Earls v. Earls***, No. M1999-00035-COA-R3-CV, 2001 WL 504905, at *3 (Tenn. Ct. App. May 14, 2001)).

Here, a review of the remand in ***Vazeen II***, as well as the Opinions in both ***Vazeen I*** and ***Vazeen II***, as a whole, demonstrate that the trial court properly limited the issues in dispute at the trial on remand. *See* ***In re Estate of McCants***, No. E2019-01159-COA-R3-CV, 2020 WL 1652572, at *4 (Tenn. Ct. App. Apr. 3, 2020) ("The appellate court's mandate is not to be read and applied in a vacuum; the appellate court's opinion is part of the mandate and must be used in interpreting the mandate . . . ." (quoting 5 Am. Jur. 2d

Appellate Review § 685)). In ***Vazeen I*** and ***II***, this Court's Opinions make clear that Mr. Vazeen had alleged four types of claims against Attorney Sir: (1) a legal malpractice claim; (2) a fraud claim related to duplicate charges; (3) a fraud claim related to the remaining billing entries; and (4) a fraud claim related to the hourly rate charged by Attorney Sir. The legal malpractice claims were resolved in Attorney Sir's favor in ***Vazeen I*** due to waiver and the statute of limitations. ***Vazeen I***, 2018 WL 6419134, at *3. The fraud claims related to duplicate charges and other billing entries were resolved in Attorney Sir's favor in ***Vazeen II*** due to Mr. Vazeen's failure to prove fraud. ***Vazeen II***, 2021 WL 832043, at *5–7. These rulings were not appealed to the Tennessee Supreme Court and became law of the case once a mandate issued in those cases.

The only remaining claim at the conclusion of ***Vazeen II***, then, was Mr. Vazeen's claim that he was defrauded when Attorney Sir charged more per hour than he had agreed to pay. Following the first bench trial, the trial court found that Mr. Vazeen failed to prove that the fee contract was a forgery. But we held that the fiduciary relationship between attorney and client required that the trial court go further to consider the fee agreement in light of the factors set forth in ***Alexander v. Inman***. We therefore vacated the dismissal of only Mr. Vazeen's fraud claim regarding the hourly rate charged and remanded for a very narrow purpose: the "limited issue regarding the hourly rate" for the purpose of "consideration of the ***Alexander*** criteria." ***Id.*** at *10. The scope of the remand is clear in ***Vazeen II*** and requires no strained interpretation by this Court: the trial court was permitted only to consider whether the ***Alexander v. Inman*** factors invalidated the attorney fee contract for purposes of Mr. Vazeen's sole remaining fraud claim. This directive did not open the field for Mr. Vazeen to raise previously unpleaded allegations regarding a breach of fiduciary duty by Attorney Sir.[6] The trial court simply did not err in hewing to this mandate and refusing to consider other issues.

C.

Mr. Vazeen also argues that the trial judge erred in failing to recuse in this matter due to an appearance of partiality. As an initial matter, we must discuss the procedure applicable to motions for recusal.[7] Under Rule 10B of the Rules of the Tennessee Supreme

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[6] Even to the extent that Mr. Vazeen could have done so given the law of the case, Mr. Vazeen filed no motion to amend his complaint following the remand in ***Vazeen II*** to raise previously unpleaded claims. *Cf.* ***Konvalinka v. Chattanooga-Hamilton Cnty. Hosp. Auth.***, 358 S.W.3d 213, 224 (Tenn. Ct. App. 2010) ("If a party could avoid *res judicata* or application of law of the case by simply thinking up new claims or defenses and then procuring evidence in support of those claims or defenses, we are not sure either doctrine would ever be applicable.").

[7] Attorney Sir does not address the recusal issue in his appellate brief, deeming it "not properly before this [C]ourt[.]" Mr. Vazeen's argument on appeal concerns his requests for recusal following the remand in ***Vazeen II***. Although Mr. Vazeen could have filed immediate appeals of those rulings under Rule 10B of the Rules of the Tennessee Supreme Court, nothing in the record suggests that he did. As such, he is entitled to appeal those rulings in this Rule 3 appeal of the final judgment. *See* Tenn. R. App. P. 10B, § 2.01 ("If the trial court judge enters an order denying a motion for the judge's disqualification or recusal, .

Court, a party seeking disqualification of a trial judge must "do so by a written motion filed promptly after a party learns or reasonably should have learned of the facts establishing the basis for recusal." Tenn. R. Sup. Ct. 10B, § 1.01. "The motion shall be supported by an affidavit under oath or a declaration under penalty of perjury on personal knowledge and by other appropriate materials." ***Id.*** In addition to stating with specificity the factual and legal basis for the motion, the motion "shall affirmatively state that it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." ***Id.*** These requirements are mandatory, and "[w]hen a petitioner fails to support a motion with this mandatory affidavit or declaration under penalty of perjury, we have repeatedly held that the request for recusal was waived." ***Moncier v. Wheeler***, No. E2020-00943-COA-T10B-CV, 2020 WL 4343336, at *3 (Tenn. Ct. App. July 28, 2020) (collecting cases). Although many cases of waiver involve either the omission of both the affidavit and the affirmative statement, ***id.*** at *5; ***Hobbs Purnell Oil Co. v. Butler***, No. M2016-00289-COA-R3-CV, 2017 WL 121537, at *14–15 (Tenn. Ct. App. Jan. 12, 2017), or the omission of the affidavit alone, ***Childress v. United Postal Serv., Inc.***, No. W2016-00688-COA-T10B-CV, 2016 WL 3226316, at *2–3 (Tenn. Ct. App. June 3, 2016); ***Johnston v. Johnston***, No. E2015-00213-COA-T10B-CV, 2015 WL 739606, at *2 (Tenn. Ct. App. Feb. 20, 2015), at least one case has also held that the failure to include the affirmative statement alone may lead to waiver. *See* ***Hastings v. Hastings***, No. W2020-00989-COA-T10B-CV, 2020 WL 4556831, at *2 (Tenn. Ct. App. Aug. 6, 2020) (citing ***Moncier***, 2020 WL 4343336, at *3).

Here, following the 2021 remand, Mr. Vazeen filed no less than four separate motions seeking disqualification of the trial judge. In May 2021, Mr. Vazeen filed his first post-remand motion to recuse. An amended motion, including a verification under oath after that deficiency was pointed out by Attorney Sir, was then filed in June 2021. After that set of motions was denied by the trial court, Mr. Vazeen filed another set of recusal motions in January 2022: the first of which did not have an affidavit or declaration, while the second included a verification under oath. None of these four motions, however, ever included an affirmative statement that they were not being pursued for an improper purpose, such as delay. In fact, in denying the second set of recusal motions, the trial court specifically found that Mr. Vazeen's purpose in filing the motions was to cause delay.

This practice clearly does not strictly comply with Rule 10B. First, even if we consider the late additions of Mr. Vazeen's verifications under oath, they do not indicate that Mr. Vazeen's allegations were based on personal knowledge, but only on knowledge, information, and belief. This Court has previously held that similar language did not comply with Rule 10B. *See* ***Berg v. Berg***, No. M2018-01163-COA-T10B-CV, 2018 WL

. . the trial court's ruling either can be appealed in an accelerated interlocutory appeal as of right, as provided in this section 2, or the ruling can be raised as an issue in an appeal as of right, *see* Tenn. R. App. P. 3, following the entry of the trial court's judgment."). Even the trial court recognized in a post-trial motion concerning Mr. Vazeen's appellate issues that Mr. Vazeen's recourse from the denial of his recusal motions was a Rule 3 appeal.

3612845 (Tenn. Ct. App. July 27, 2018) ("Averring that something is true to the best of one's knowledge, information, and belief does not signify that it is based on personal knowledge."). Since ***Berg***, however, this Court has reached the opposite conclusion when the language used was not identical to ***Berg*** or when the recusal motion itself revealed that it was based on personal knowledge. *See* ***Beaman v. Beaman***, No. M2018-01651-COA-T10B-CV, 2018 WL 5099778 (Tenn. Ct. App. Oct. 19, 2018) (involving a declaration in a recusal motion using less equivocal language); ***Ueber v. Ueber***, No. M2018-02053-COA-T10B-CV, 2019 WL 410703, at *3 (Tenn. Ct. App. Jan. 31, 2019) (involving an affidavit "the same" as that filed in ***Berg***, but where "it [was] apparent from the substance of the disputed affidavits [ ] that they [were] based on the personal knowledge of the affiants."); *see also* ***Stark v. Stark***, No. W2019-00901-COA-T10B-CV, 2019 WL 2515925, at *6 (Tenn. Ct. App. June 18, 2019) (following ***Ueber***). Mr. Vazeen's motions sufficiently indicate that his allegations were based on his own personal knowledge.

Still, even if we conclude that Mr. Vazeen substantially complied with the affidavit requirement of Rule 10B, none of Mr. Vazeen's motions included the mandatory statement that the motions were not being presented for an improper purpose.[8] And indeed, the trial court specifically found that Mr. Vazeen's 2022 motions were frivolous and only being presented for purposes of delay. So this alone may be sufficient to invoke waiver. *See* ***Hastings***, 2020 WL 4556831, at *2. We note, however, that even though the trial court found that the second set of recusal motions was filed to delay the proceedings, it did not make a similar finding as to the earlier set of recusal motions. Moreover, the trial court addressed each set of recusal motions on their merits. In addition, this case comes to us as a Rule 3 appeal, rather than an accelerated interlocutory appeal under Rule 10B. *See* ***Johnston***, 2015 WL 739606, at *2 (holding that the "accelerated nature" of an interlocutory appeal under Rule 10B requires that all procedural mandates be strictly complied with in order to meet our obligation to decide 10B appeals on an expedited basis). As such, we will go on to briefly address the arguments raised by Mr. Vazeen with regard to recusal on appeal. *See* ***Stark***, 2019 WL 2515925, at *6 ("[D]espite the trial court's finding that Wife's motion was defective, it did expressly and thoroughly consider the merits of Wife's motion . . . . As such, we conclude that the best practice in this case is to proceed to consider the remaining issues in this case notwithstanding Wife's failure to strictly comply with Rule 10B. We caution litigants, however, that we may not be so forgiving in the future.").

As the Tennessee Supreme Court recently explained regarding recusal:

> "Tennessee litigants are entitled to have cases resolved by fair and impartial judges." ***Cook v. State***, 606 S.W.3d 247, 253 (Tenn. 2020) (citing ***Davis*** [***v. Liberty Mut. Ins.***], 38 S.W.3d [560,] 564 [(Tenn. 2001)]); *see also* ***State v.***

[8] While Attorney Sir pointed out that Mr. Vazeen's initial motions to recuse were missing affidavits, allowing Mr. Vazeen to correct those deficiencies, the issue of the missing affirmative statements was never raised or addressed in the trial court.

> ***Griffin***, 610 S.W.3d 752, 757–58 (Tenn. 2020). To preserve public confidence in judicial neutrality, judges must be fair and impartial, both in fact and in perception. ***Cook***, 606 S.W.3d at 253; ***Kinard v. Kinard***, 986 S.W.2d 220, 228 (Tenn. Ct. App. 1998). To these ends, the Tennessee Rules of Judicial Conduct ("RJC") declare that judges must "act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." Tenn. Sup. Ct. R. 10, RJC 1.2. Another provision declares that judges "shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially." ***Id.***, RJC 2.2.
>
> To act "impartially" is to act in "absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge." ***Id.***, Terminology. "A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned." ***Id.***, RJC 2.11(A).
>
> Rule of Judicial Conduct 2.11 "incorporates the objective standard Tennessee judges have long used to evaluate recusal motions." ***Cook***, 606 S.W.3d at 255. "Under this objective test, recusal is required if 'a person of ordinary prudence in the judge's position, knowing all of the facts known to the judge, would find a reasonable basis for questioning the judge's impartiality.'" ***Id.*** (quoting ***Davis***, 38 S.W.3d at 564–65).
>
> The intermediate appellate courts have explained that the proponent of a recusal motion bears the burden of establishing that recusal is appropriate and that any alleged acts of bias or prejudice arise from extrajudicial sources rather than from events or observations during the litigation of the case. ***Tarver v. Tarver***, No. W2022-00343-COA-T10B-CV, 2022 WL 1115016, at *2 (Tenn. Ct. App. Apr. 14, 2022). A trial judge has a duty to serve unless the proponent establishes a factual basis warranting recusal. ***Raccoon Mtn. Caverns and Campground, LLC v. Nelson***, No. E2022-00989-COA-T10B-CV, 2022 WL 3100606, at *3 (Tenn. Ct. App. Aug. 4, 2022) (quoting ***Rose v. Cookeville Reg'l Med. Ctr.***, No. M2007-02368-COA-R3-CV, 2008 WL 2078056, at *2 (Tenn. Ct. App. May 14, 2008)).

Adams v. Dunavant, - - S.W.3d - -, 2023 WL 4676073, at *4–5 (Tenn. 2023) (per curiam). Thus, Mr. Vazeen maintains the burden to show that recusal is warranted,[9] and we review the trial judge's denial of Mr. Vazeen's recusal motions de novo with no presumption of

[9] Because the burden falls on Mr. Vazeen to establish facts warranting recusal and that the trial court erred in denying his recusal motion, Attorney Sir's decision not to address this issue does not result in waiver. *Cf.* ***Forbess v. Forbess***, 370 S.W.3d 347, 356 (Tenn. Ct. App. 2011) (holding that an appellee may waive an issue that is not properly briefed when the appellee is seeking affirmative relief from the trial court's ruling).

correctness. Tenn. Sup. Ct. R. 10B, § 2.01.

As we perceive it, Mr. Vazeen's allegations of bias can be divided into three broad categories: (1) allegations regarding the trial judge's prior rulings; (2) allegations of prejudgment by the trial judge; and (3) allegations about the trial judge's payment. Elsewhere in his brief, Mr. Vazeen asserts that these issues demonstrate that the trial judge held a "hidden animosity" toward him that violated Mr. Vazeen's constitutional right to a fair trial. We will consider each broad category of allegations in turn.

First, Mr. Vazeen points to the prior decisions from the trial judge that have been reversed by this Court as grounds for recusal. In particular, Mr. Vazeen points to the trial judge's admission that his prior rulings were "imperfect." We note, however, that "[r]ulings of a trial judge, even if erroneous, numerous and continuous, do not, without more, justify disqualification." ***Alley v. State***, 882 S.W.2d 810, 821 (Tenn. Crim. App. 1994). Mr. Vazeen acknowledges the above rule, but asserts that the trial judge's rulings were not only erroneous, but unjust. He does not, however, explain how the trial judge's rulings were unjust such that recusal was required. Instead, he merely reiterates his position that the trial judge improperly limited the scope of trial on remand. As we have held, however, this ruling was not erroneous. It therefore did not cause an injustice to Mr. Vazeen and is not a basis for disqualification.

In the same vein, Mr. Vazeen also argues that the trial judge has pre-formed opinions in this case because he has previously ruled that Attorney Sir was credible. Again, the law does not support Mr. Vazeen's argument. "[T]he mere fact that a judge has ruled adversely to a party or witness in a prior judicial proceeding is not grounds for recusal." ***Davis***, 38 S.W.3d at 565 (citing ***State v. Hines***, 919 S.W.2d 573, 578 (Tenn. 1995)). This includes credibility findings: "[t]he 'adversarial nature of litigation' makes it necessary for trial judges to 'assess the credibility of those who testify before them, whether in person or by some other means,' and 'the mere fact that a witness takes offense at the court's assessment of the witness cannot serve as a valid basis for a motion to recuse.'" ***Adams***, 2023 WL 4676073, at *5 (quoting ***Davis***, 38 S.W.3d at 565). "If the rule were otherwise, recusal would be required as a matter of course since trial courts necessarily rule against parties and witnesses in every case, and litigants could manipulate the impartial[it]y issue for strategic advantage, which the courts frown upon." ***Davis***, 38 S.W.3d at 565. Furthermore, as this Court has elucidated regarding bias and prejudice:

> [A]lthough "bias" and "prejudice" generally "refer to a state of mind or attitude that works to predispose a judge for or against a party . . . [n]ot every bias, partiality or prejudice merits recusal." ***Alley v. State***, 882 S.W.2d 810, 821 (Tenn. Crim. App. 1994). Rather, "[t]o disqualify, prejudice must be of a personal character, directed at the litigant, [and] 'must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from . . . participation in the case.'" ***Id.*** (quoting

> ***State ex rel. Wesolich v. Goeke***, 794 S.W.2d 692, 697 (Mo. App. 1990)). "Personal bias involves an antagonism toward the moving party, but does not refer to any views that a judge may have regarding the subject matter at issue." ***Id.*** (citing ***United States v. Baker***, 441 F. Supp. 612, 616 (M. D. Tenn. 1977); 46 Am. Jur. 2d "Judges" § 167 (1969)). Moreover, "[i]mpersonal prejudice resulting from the judge's background experience does not warrant disqualification." ***Id.*** (citation omitted). Where "the bias is based upon [the judge's] actual observance of witnesses and evidence given during the trial, the judge's prejudice does not disqualify the judge." ***Id.***

Purswani v. Purswani, 585 S.W.3d 907, 918–19 (Tenn. Ct. App. 2019) (alteration in original) (quoting ***Durham v. Tenn. Dep't of Labor & Workforce Dev.***, No. M2014-00428-COA-R3-CV, 2015 WL 899024, at *10 (Tenn. Ct. App. Feb. 27, 2015)). Thus, where "bias is alleged to stem from events occurring in the course of the litigation of the case, the party seeking recusal has a greater burden to show bias that would require recusal, *i.e.*, that the bias is so pervasive that it is sufficient to deny the litigant a fair trial." ***Stark***, 2019 WL 2515925, at *7 (quoting ***McKenzie v. McKenzie***, No. M2014-00010-COA-T10B-CV, 2014 WL 575908, at *3 (Tenn. Ct. App. Feb. 11, 2014)).

Here, in the course of this case, including two bench trials, the trial judge has formed opinions regarding Mr. Vazeen's allegations and Attorney Sir's credibility in defense to those allegations. Nothing in the record or in Mr. Vazeen's brief suggests that these opinions, to the extent that they exist, were formed based on extrajudicial knowledge. And Mr. Vazeen simply has not come forward with evidence to even suggest that he was denied a fair trial in this case due to a pervasive bias. Instead, his central allegation of unfairness relates to the trial judge's decision to limit the issues on remand. But, again, the trial judge was simply complying with this Court's mandate, as detailed, *supra*. In sum, Mr. Vazeen's arguments amount to nothing more than that the trial judge has ruled against him and made some erroneous rulings that were corrected by this Court. Despite Mr. Vazeen's argument otherwise, there is nothing "more" to Mr. Vazeen's allegations in this regard. As such, neither of the first two broad categories of allegations are sufficient to warrant recusal.

Finally, Mr. Vazeen argues that the fact that the trial judge allegedly receives extra pay from Davidson County for his services suggests some improper motive on the judge's part. This argument suffers from two fatal infirmities. First, it appears that this argument has been raised for the first time in this appeal. It is therefore waived. *See* ***Moses v. Dirghangi***, 430 S.W.3d 371, 381 (Tenn. Ct. App. 2013) ("It is well settled that issues not raised at the trial level are considered waived on appeal." (citing ***Waters v. Farr***, 291 S.W.3d 873, 918 (Tenn. 2009); Tenn. R. App. P. 36(a))). Second, this argument is conclusory, unsupported by evidence, and nothing more than speculation and innuendo. Allegations of this type do not support recusal. *See* ***Runyon v. Runyon***, No. W2013-02651-COA-T10B-CV, 2014 WL 1285729, at *9 (Tenn. Ct. App. Mar. 31, 2014) ("A claim of bias or prejudice must be based on facts, not speculation or innuendo[.]"). Thus, the trial

judge's refusal to recuse from this case is not a basis for reversal.

D.

Mr. Vazeen next asserts that the trial court erred in denying his various motions to continue trial. The trial court's denial of a motion to continue is reviewed under the abuse of discretion standard. ***In re A'Mari B.***, 358 S.W.3d 204, 213 (Tenn. Ct. App. 2011). As this Court has explained specifically with regard to motions to continue:

> Decisions regarding continuances are fact-specific and motions for a continuance should be viewed in the context of all the circumstances existing when the motion is filed. This Court has held that the party seeking a continuance carries the burden to prove the circumstances that justify the continuance. In order to meet this burden, the moving party must supply some strong excuse for postponing the trial date. Factors relevant to the trial court's decision include: (1) the length of time the proceeding has been pending, (2) the reason for the continuance, (3) the diligence of the party seeking the continuance, and (4) the prejudice to the requesting party if the continuance is not granted.

Howell v. Ryerkerk, 372 S.W.3d 576, 580–81 (Tenn. Ct. App. 2012) (internal quotation marks and citations omitted).

Although Mr. Vazeen raised several grounds for his various requests for continuances throughout the post-remand proceedings, he raises only a single ground in his appellate brief as to this issue: "the real potential" that this Court "would have changed the scope of trial."[10] Respectfully, we disagree. While Mr. Vazeen apparently communicated with this Court following the trial court's ruling regarding the scope of trial, nothing in the record on appeal or in this Court's record indicates that he ever attempted to formally appeal the trial court's interlocutory ruling regarding the scope of appeal under the procedural rules that would have allowed him to do so. *See* Tenn. R. App. P. 9 (concerning interlocutory appeals by permission of the trial court and appellate court); Tenn. R. App. P. 10 (concerning extraordinary appeals by permission of the appellate court). Because Mr. Vazeen chose not to seek appeals under those rules, this Court did not have subject matter jurisdiction to consider the trial court's ruling regarding the scope of trial until a final order was entered, i.e., after the bench trial on the ***Alexander v. Inman*** issue. *See* Tenn. R. App. P. 3(a) (providing an appeal from final judgments). Moreover, even when a Rule 9 or 10 appeal is granted, the proceedings in the trial court are not automatically stayed. *See* Tenn. R. App. P. 9(f) (stating that a Rule 9 appeal does not automatically stay the trial court proceedings); *see generally* Tenn. R. App. P. 10 (not

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[10] As discussed *infra*, Mr. Vazeen does discuss the other reasons he asserts the trial should have been postponed in a different section of his brief.

stating that the underlying case is stayed). So then there was no potential for this Court to make any ruling about the scope of trial prior to the scheduled bench trial in this matter. The trial court therefore did not err in refusing to delay the trial for a ruling from this Court that had no possibility of being issued at that time.

Instead, the time for appealing the trial court's ruling as to the limited scope of trial is this appeal under Rule 3 of the Tennessee Rules of Appellate Procedure. But, as we have previously discussed, we have determined that the trial court simply did not err in limiting the scope of trial based on the mandate from ***Vazeen II***. As such, even if we were to assume arguendo that this Court was going to rule on the interlocutory matter concerning the scope of trial, delaying the bench trial for a ruling from this Court would not have changed the outcome. So then, there is no harmful error that warrants reversal in this regard. *See* Tenn. R. App. P. 36(b) (stating that final judgments will not be set aside "unless, considering the whole record, error involving a substantial right more probably than not affected the judgment or would result in prejudice to the judicial process").

E.

As his fourth issue, Mr. Vazeen asserts that there was a breach of contract between himself, Attorney Sir, and the trial court with regard to the decision to remove the February 23, 2022 trial from the docket due to the "tentative settlement" between the parties. When the settlement negotiations ended without an agreement, Mr. Vazeen asserts that the trial court and Attorney Sir "formed a gang" to breach the contract. With regard to his fifth issue, Mr. Vazeen asserts that in failing to postpone the trial after this breach of contract, he suffered "tremendous damages . . . as a result of that breach." Again, these arguments are without merit.

As an initial matter, Mr. Vazeen's argument that a breach of contract occurred was not raised in the trial court. Here, on the morning of trial, Mr. Vazeen filed an "urgent notice" that he would not be able to attend trial. Therein, he cited the confusion engendered by the breakdown of the settlement negotiations. But he did not raise the legal theory that this series of events resulted in a binding contract that was breached by Attorney Sir or the trial court. Instead, it appears that this breach of contract theory was raised for the first time on appeal. Because this theory could have been raised in Mr. Vazeen's February 23, 2023 motion, it cannot be raised for the first time on appeal. *See* ***Tops Bar-B-Q, Inc. v. Stringer***, 582 S.W.2d 756, 758 (Tenn. Ct. App. 1977) (holding that a theory was waived where it raised for the first time on appeal because "[i]ssues not raised or complained of in the trial court will not be considered on appeal").

Second, this argument is no more than skeletal. It is true that Mr. Vazeen cites some general law on contracts and the claim of inducement to breach a contract. But he cites no law in support of his assertion that a contract was somehow created between himself, Attorney Sir, and the trial court in this particular situation. Instead, he essentially argues

that it was unfair to require Mr. Vazeen to try his case only a few days following the breakdown of settlement negotiations. But it is Mr. Vazeen's burden to prove not only that a contract was breached, but that a valid, legally enforceable contract existed. *See* ***Fed. Ins. Co. v. Winters***, 354 S.W.3d 287, 291 (Tenn. 2011). Because Mr. Vazeen's argument concerning the existence of such a contract and breach thereof is no more than skeletal, it is waived. *See* ***Sneed v. Bd. of Pro. Resp. of Sup. Ct.***, 301 S.W.3d 603, 615 (Tenn. 2010).

Moreover, to the extent that Mr. Vazeen is arguing that these and other considerations supported postponement of the trial, we respectfully disagree that he met his burden. *See* ***Howell***, 372 S.W.3d at 580–81. For example, later in his discussion of the damages he asserts resulted from the alleged violation of his right to a fair trial, Mr. Vazeen cites other reasons why the trial should have been delayed, including the fact that it was impossible for him to file subpoenas, his ill health, the weather on the day of trial, and his purported appeal of the trial court's February 22, 2023 scope of trial ruling. This Court has held, however, that "[w]here adequate time for trial preparation and notice of trial date are furnished, the proper procedure is to file an affidavit showing lack of preparation and a 'strong excuse' for changing the trial date." ***Barber & McMurry, Inc. v. Top-Flite Dev. Corp.***, 720 S.W.2d 469, 471 (Tenn. Ct. App. 1986) (footnote omitted) (quoting ***Levitt & Co. v. Kriger***, 6 Tenn. App. 323 (Tenn. Ct. App. 1927)) (also noting that "Special affidavits should support *every* motion for a continuance, unless the facts are admitted in writing, or the continuance consented to by the adverse party." (emphasis added) (quoting *Gibson's Suits in Chancery*, (6th ed. Inman) § 618, p. 665)).

Here, trial was initially scheduled for January 28, 2022, nearly eight months after the mandate issued in ***Vazeen II***. On January 25, 2022, the trial court granted Mr. Vazeen a continuance due to his ill health and set the trial approximately one month later on February 23, 2022.[11] Mr. Vazeen does not assert that he was not given adequate notice of this trial date or that this date did not give him adequate time to prepare at that point. If Mr. Vazeen's situation changed in late February 2022 due to ill health, weather, or the breakdown of settlement negotiations impacting his ability to present evidence, then Mr. Vazeen was required to prove his entitlement to the continuance by filing an affidavit detailing those facts that required postponement that were neither appearing in the record or agreed to by the adverse party. *See Gibson's Suits in Chancery* § 618. Mr. Vazeen's February 22, 2022 notice, however, was not accompanied by an affidavit.[12] As a result, Mr. Vazeen's claims regarding lack of preparation, illness, or weather fail due to the lack of affidavit in support of those allegations.

Mr. Vazeen's claim about a pending appeal as to the scope of trial is also untrue. As

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[11] The written order reflecting the trial court's grant of the continuance was entered a few days later.

[12] Mr. Vazeen's February 22, 2022 notice regarding the events leading up to trial was also unaccompanied by an affidavit.

previously discussed, no Rule 9 or 10 interlocutory appeal had been filed, and no Rule 3 appeal could lie until a final judgment was entered. Mr. Vazeen's insinuation that the trial court somehow blocked him from obtaining relief from this Court is therefore patently untrue.[13] So then, Mr. Vazeen's notice of appeal was prematurely filed and had no effect on the trial court's ability to proceed with trial.[14]

F.

Mr. Vazeen concludes his brief with a stream of consciousness recounting of a variety of ways he was wronged in the trial court proceedings post-remand. Most of these arguments deal with the trial court's refusal to postpone the final trial and its decision to limit the scope of review at trial in accordance with ***Vazeen II***. As previously discussed, Mr. Vazeen has not shown that he is entitled to appellate relief on these issues. Mr. Vazeen also raises arguments concerning the preparation of the record and the trial transcripts. To the extent that Mr. Vazeen is seeking appellate relief via these arguments, they are waived because they were not designated as issues on appeal. ***Childress v. Union Realty Co.***, 97 S.W.3d 573, 578 (Tenn. Ct. App. 2002) ("We consider an issue waived where it is argued in the brief but not designated as an issue.") (citation omitted).

Finally, in his reply brief, Mr. Vazeen attempts for the first time to address the testimony presented at the bench trial concerning the ***Alexander v. Inman*** factors and his only remaining claim of fraud. But this argument was neither designated as an issue nor argued in Mr. Vazeen's initial brief. ***Id.*** And arguments cannot be raised for the first time in reply briefs. ***Owens v. Owens***, 241 S.W.3d 478, 499 (Tenn. Ct. App. 2007) ("A reply brief is a response to the arguments of the appellee. It is not a vehicle for raising new issues."). And even in discussing this testimony, Mr. Vazeen relies on factual assertions without indicating where in the appellate record evidence to support each assertion may be found.[15] Nor does he cite any other law as to this issue, other than a single block quote regarding how intent may be inferred from circumstantial evidence. These deficiencies also

[13] Specifically, Mr. Vazeen states in his brief that "instead of blocking [Mr. Vazeen's] legal efforts over finding the right scope for the trial, trial court should have encouraged such efforts."

[14] Mr. Vazeen also asserts that he only had notice that trial would be limited to the ***Alexander v. Inman*** factors when the trial court issued its order the day before trial. Later he states that "the scope of trial was unknown." This is not correct. The trial court had previously entered an order limiting the scope of trial on December 21, 2021. The trial court's later ruling did not alter the trial court's decision regarding the scope of trial. As such, Mr. Vazeen had notice of the scope of trial well in advance of the February 2022 bench trial.

[15] Rule 27(a)(7) of the Tennessee Rules of Appellate Procedure requires that appellant's arguments include "appropriate references to the appellate record . . . relied on[.]" Mr. Vazeen's reply brief contains no references to the record on appeal except when quoting Attorney Sir's brief. Our review has revealed that some assertions in Mr. Vazeen's reply brief are wholly unsupported by the evidence presented at the February 2022 bench trial. Unsupported assertions in briefs are not evidence and cannot be considered by this Court. *See **In re Est. of Dorsey***, No. E2007-02410-COA-R3-CV, 2008 WL 3982969, at *1 (Tenn. Ct. App. Aug. 28, 2008).

support waiver. *See* ***Bean v. Bean***, 40 S.W.3d 52, 55 (Tenn. Ct. App. 2000) ("Courts have routinely held that the failure to make appropriate references to the record and to cite relevant authority in the argument section of the brief as required by Rule 27(a)(7) constitutes a waiver of the issue."); *see also* ***Lovlace v. Copley***, 418 S.W.3d 1, 33 (Tenn. 2013) (applying Rule 27(a)(7) to a reply brief). Suffice it to say, we have reviewed Mr. Vazeen's briefs fully and do not discern any properly raised and supported basis for reversing the trial court's judgment.

V. CONCLUSION

The judgment of the Davidson County Circuit Court is affirmed, and this cause is remanded for further proceedings as may be necessary and consistent with this Opinion. Costs of this appeal are taxed to Appellant, Jon Vazeen, for which execution may issue if necessary.

S/ J. Steven Stafford
J. STEVEN STAFFORD, JUDGE