

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs January 5, 2026

**JAMES KENNETH BENSON ET AL. v. WILDCAT CONSTRUCTION,
LLC****Appeal from the Chancery Court for Grainger County****No. 2021-ch-38 James H. Ripley, Chancellor**

No. E2025-00172-COA-R3-CV

After the closing on the sale of a custom house, disputes continued between a builder and the purchasers. The disputes centered on the quality and amount of work performed by the builder and outstanding payments due from the purchasers. The trial court referred the matter to a special master, who heard detailed testimony from an expert witness for the purchasers. The special master prepared a thorough report. The builder objected to parts of the special master's report, arguing that the special master should have excluded certain testimony by the expert witness, but the trial court overruled those objections. We affirm.

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

JEFFREY USMAN, J., delivered the opinion of the court, in which THOMAS R. FRIERSON, II, and VALERIE L. SMITH, JJ., joined.

Dale J. Montpelier, Knoxville, Tennessee, for the appellant, Wildcat Construction, LLC.

Jeffrey A. Cobble, Greeneville, Tennessee, for the appellees, James Kenneth Benson and Sherry Ann Benson.

OPINION**I.**

James Benson and Sherry Benson entered into a Real Estate Purchase and Residence Construction Agreement with Wildcat Construction, LLC. Under the agreement, the Bensons agreed to pay \$425,000 to purchase a tract of land and to have a house constructed on that land according to specified plans. As construction neared completion, disputes

arose about the quality of the work that had been performed, the amount of work remaining to be completed, and payments for extra work not contemplated by the contract.

When the parties closed on the sale, several things the Bensons expected to have been completed remained unfinished. The Bensons continued to communicate with Jake Bryant, an agent of Wildcat Construction, about these items for approximately one month before Mr. Bryant informed them that they had “signed off on” most of the disputed items at closing. The Bensons then filed suit against Wildcat Construction, seeking \$65,000 in damages “for their costs in demolition, reconstruction and repair of the inadequate, defective, and unsafe work performed by Defendant.” Wildcat Construction filed a counter-complaint, seeking \$27,116 in allegedly outstanding costs owed by the Bensons.

The parties agreed to have the case heard by a special master. The special master listened to testimony from multiple witnesses over two days. The special master’s report indicates that the witnesses included Mr. Benson and Mr. Bryant. The record on appeal, however, contains only a partial transcript consisting of the testimony of Mark Jackson, an expert witness for the Bensons, on one of the two hearing dates.

Mr. Jackson indicated that he was a construction consultant with 42 years of experience. Recently retired, he had worked on “[n]umerous residential, institutional, commercial, and industrial projects” over the years, including in his recent role as vice president of a construction company. He testified that he had taken and passed numerous general contractor tests and related tests in several states, including Tennessee. He described his responsibilities in the case as to “review the contract documents and construction that was put in place to ensure its conformity with the plans,” to “provide a list of deficiencies,” and to provide “an estimate of the cost to replace, remediate or correct any deficiency found (if any).”

Mr. Jackson produced a report based on his review of documents related to the house construction and sale, multiple visits to the house, and photographs he took of the house. Therein he explained several issues he found with the structure, including, as relevant to this appeal, issues with the driveway and with the tiles in two showers and the laundry room. He also reached out to subcontractors for price estimates to fix each of the problems he identified. He testified that this practice was customary for people in his profession and that, in preparing his report, he had only reached out to subcontractors with whom he had done business previously.

Mr. Jackson reported, among other things, that the house’s driveway was “placed without proper reinforcement or jointing/saw-cutting” and, as a result, the “driveway need[ed] to be removed and re-poured.” According to him, the lack of these elements in the driveway “ha[d] allowed stress cracks to form randomly, which [would] lead to premature failure of this slab.” He testified that “[e]veryone knows concrete cracks. What you do to minimize those cracks is cut joints.” Here, because “[t]here were no joints cut

into the concrete, [t]hat allowed a bunch of extra cracking.” In an accounting summary prepared as a part of his report, Mr. Jackson estimated that the cost to remove the current driveway would be \$4,800 and the reinstallation cost would be another \$11,500.

Mr. Jackson’s report stated that the total costs for removal and replacement of the driveway included the costs “[t]o saw cut or use a breaker to break up existing concrete into pieces large enough for a skid steer to load out and haul off,” “[t]o remove all broken up concrete from site,” “[t]o form and grade 1750 square feet of driveway, add gravel as needed to provide a good base,” “[t]o then install 6 x 6 welded wire 6 gage mesh,” “[t]o then pour 23 yards of 3,000 psi, air entrained concrete, 4 [inches] thick,” “Float & Trowel,” “[p]rovide a light broom finish,” and “[s]aw cut joints within 24 hours . . . into pieces not larger than 150 square feet.” Mr. Jackson testified that he had personally measured the driveway in cross sections in the preparation of the report and determined that it was approximately 1750 square feet.

Counsel for Wildcat Construction objected to the price estimates for removal and replacement of the driveway on the basis that “[w]e don’t know where these numbers come from.” The special master, however, permitted Mr. Jackson to lay a foundation for the numbers. Mr. Jackson testified that “[o]ne of them is from the Dirt Diggers”; Mr. Jackson had “asked for a price to remove” the driveway from that company. He then “contacted a concrete contractor that would put [the driveway] back” properly. When asked on cross-examination about the concrete contractor, Mr. Jackson said it was “one of the contractors [he] ha[d] used before out of Knoxville,” though he was “trying to remember the name of this company” at the time of his testimony.

Mr. Jackson had also determined that the ceramic tile in two bathrooms and the laundry room was “a major issue.” According to Mr. Jackson, “There d[id] not appear to be waterproofing behind the tile” in the showers, and there was no “‘preformed or mud-set’ shower base to ensure the water runs to the drain.” Installation of these items was “standard procedure” to ensure proper drainage and to prevent “mold and stain.” Mr. Jackson had already observed “sitting water and water staining of the existing tile” in the showers. He was concerned that the lack of waterproofing would “eventually rot” the wood next to the showers. He also determined that “[t]he installer failed to fully grout all the joints, which will lead to premature failure of the joints.” He determined that the tile in the laundry room “appear[ed] to have been laid after the setting material was starting to dry[,] so a good bond was never achieved.” Consequently, the tile “did not stick properly, and the tiles [were] popping up” in that area. Mr. Jackson estimated that the total cost to remove and replace the ceramic tiles would be \$26,000. This was based on an estimate provided to him by Phil’s Carpets & Flooring, Inc., which Mr. Jackson testified “do[es] excellent work.” He provided the court with that estimate, which included a detailed, five-page list of all steps involved in tearing out and replacing the tile with waterproofing, along with associated price estimates for each line item.

The special master drafted a report in which he made numerous findings of fact and recommended conclusions of law. Among these, the special master found that “the driveway was not properly constructed and that it will cost \$16,300.00 to repair” based on Mr. Jackson’s testimony. According to the special master’s report, Wildcat Construction “offered no evidence as to how the driveway was constructed nor the cost to replace it.” Regarding the ceramic tiles, the special master found that “the problems with the showers and the tile in the laundry room [were] a result of defective installation” and “the total cost to repair will be \$22,605.34.” The special master reduced Mr. Jackson’s \$26,000 estimate for the repairs by removing the estimated costs for “repairs on the bathroom floors and walls,” for which the special master found that the Bensons had not offered sufficient evidence of the alleged defects. The special master also found that Wildcat Construction had provided testimony “that the problem with the pooling of water in the shower could be fixed for \$2,500.00 and the other tile problems could be fixed for \$620.00, but [had] offered no evidence of what these repairs would be.” The special master additionally found that each party had prevailed on certain other claims not relevant to this appeal, such that Wildcat Construction owed a total of \$53,305.34 to the Bensons, and the Bensons owed \$7,166.00 to Wildcat Construction.

Nearly four months after entry of the special master’s report, Wildcat Construction filed an objection in which it argued that the special master had erroneously found that it owed the Bensons \$16,300 for the driveway replacement and \$22,605.34 for the tile replacement. Wildcat Construction argued that the special master should not have accepted Mr. Jackson’s testimony or report as to the price estimates provided by subcontractors. In response, the Bensons argued that the objection was untimely filed and that the rules of evidence permitted Mr. Jackson, as an expert witness, to rely on the opinions of others in forming his own opinion.

The trial court held a hearing on the objections to the special master’s report and on another motion filed by the Bensons. Although the transcript of this hearing is not in the record, Wildcat Construction submitted a statement of evidence, and the statement was approved by the trial court. *See* Tenn. R. App. P. 24(c) (permitting submission of a statement of evidence where “no stenographic report, substantially verbatim recital or transcript of the evidence or proceedings is available”), (f) (requiring the trial court’s approval of the statement of evidence). According to the statement of evidence, counsel for Wildcat Construction argued against the Bensons’ timeliness objection on the basis that he had not received the special master’s report. Counsel provided evidence that, although he had filed with the court a notice that his address had changed several months prior to the issuance of the report, the special master’s certificate of service indicated that the report had been mailed to his former address. The trial court therefore overruled the Bensons’ procedural objection and considered the merits of Wildcat Construction’s objection to the special master’s report.

The trial court subsequently entered an order in which it overruled the objection to the special master's report and adopted the report in full. Specifically, it found "that nothing appears facially unreliable about the testimony of the Plaintiffs' expert witness," that "pursuant to Tennessee Rules of Evidence Rule 703, experts are permitted to rely upon other experts' opinions," that Mr. Jackson "relied upon his experience with subcontractors known to him," and that "this method of pricing jobs is customary and acceptable in the construction trade."

Wildcat Construction appealed, raising one issue for review: whether the trial court erred "by over-ruling [Wildcat Construction's] exceptions to a special master's report and [its] prayer for a remittitur of the recommended damages, based on a lack of sufficient material evidence to support certain specified categories of damages?"

II.

In their appellate brief, the Bensons argue that the trial court "was correct when it overruled the Appellant's exceptions" to the special master's report on the basis that Wildcat Construction failed to timely object to the report. Wildcat Construction responded that the Bensons are effectively attempting to contest the trial court's ruling against them on the issue of timeliness and that they did not designate this as an issue on appeal.

We note that, when the Bensons argued in their appellate brief that the objection to the report was untimely, there was nothing in the record showing that the court had found Wildcat Construction was never served with the report. The record on appeal reflected only a late objection, and the Bensons did not inform this court that the trial court's decision was based on the service issue. Wildcat Construction was forced to file a supplemental statement of the evidence in order to demonstrate what had happened in the trial court. To the extent that this issue is properly before us, we address the Bensons' argument as follows.

"Rule 53.01 of the Tennessee Rules of Civil Procedure authorizes trial courts to refer matters to special masters." *Tennison Bros., Inc. v. Thomas*, 556 S.W.3d 697, 722 (Tenn. Ct. App. 2017). When appointed, the special master must prepare a report on the matters submitted to him or her by the trial court, setting forth findings of fact and conclusions of law where required. Tenn. R. Civ. P. 53.04(1). Rule 53.04(2) provides a mechanism for a party to dispute a special master's report. Specifically,

[i]n an action to be tried without a jury the court shall act upon the report of the master. Within ten (10) days after being served with notice of the filing of the report, any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Rule 6.04. The court after hearing may adopt the report or may modify it or may

reject it in whole or in part or may receive further evidence or may recommit it with instructions.

Tenn. R. Civ. P. 53.04(2). Accordingly, a party typically has a 10-day period within which to file objections to the special master's report. See *Mumford v. Mumford*, No. E2002-01338-COA-R3-CV, 2004 WL 483213, at *5 (Tenn. Ct. App. Mar. 12, 2004) (holding that a trial court is not required to hear late-filed objections to a special master's report); *Clear Channel Outdoor, Inc. v. A Quality, Inc.*, No. W2007-00213-COA-R3-CV, 2008 WL 2901345, at *8 (Tenn. Ct. App. July 29, 2008) (affirming a trial court's rejection of objections to a special master's report as untimely).

Significantly, the 10-day period within which to file objections begins only when that party is served with notice of the report's filing. Tenn. R. Civ. P. 53.04(2); *Peacher-Ryan v. Heirs at Law of Ruth James Gaylor*, No. W2013-02801-COA-R3-CV, 2015 WL 1598072, at *6 (Tenn. Ct. App. Apr. 9, 2015) ("It is clear that the clerk's service of notice of the filing of the special master's report is the triggering event for the running of the ten-day period within which to file an objection."). Here, although Wildcat Construction objected to the special master's report nearly four months after the report was filed, it presented evidence to the trial court that it had never been properly served with the report, as the report had been mailed to the company's attorney's former address. The trial court accepted this evidence and proceeded to consider Wildcat Construction's objection on the merits as required by Rule 53.04. See *Tennison Bros.*, 556 S.W.3d at 722 ("... Rule 53.04 requires the trial court to 'act upon the report of the master.'" (quoting Tenn. R. Civ. P. 53.04(2))); *Peacher-Ryan*, 2015 WL 1598072, at *5 ("This rule requires the judgment of the trial court.").

Based on the record before us, we find no error in the trial court declining to find that Wildcat Construction's objections were untimely, given its finding that the report was not served upon the company. Accordingly, we proceed to consider the appeal on the merits.

III.

On appeal, Wildcat Construction contends that "[t]here is insufficient material evidence to support (a) the award of \$16,300.00 to rip up and replace the driveway, and/or (b) the award of \$22,605.34 to rip out and reinstall tile in the laundry room and a pair of showers, it all being based on hearsay." The company characterizes this issue as one of the trial judge's denial of remittitur, which it contends we should review de novo.

We are, however, constrained to a stricter standard of review of the damages ruling based on the procedure of this case. The issue before us is whether the trial court acted properly in overruling Wildcat Construction's objections to the special master's report and in adopting the report, not one of remittitur. Cf. Tenn. Code Ann. § 20-10-102(a)

(permitting a trial court to order remittitur of an excessive damages award “[i]n all *jury trials* had in civil actions” (emphasis added)).

Under Tennessee Code Annotated § 27-1-113, “[c]oncurrent findings of fact made by the chancellor and special master and supported by material evidence are binding upon the appellate court.” *Fayne v. Vincent*, 301 S.W.3d 162, 170 (Tenn. 2009) (citing Tenn. Code Ann. § 27-1-113). Accordingly, “[w]e must affirm such a concurrent finding if there is any material evidence to support it.” *In re Est. of Burnette*, No. E2016-02452-COA-R3-CV, 2018 WL 1413122, at *2 (Tenn. Ct. App. Mar. 21, 2018) (quoting *In re Conservatorship of Duke*, No. M2015-00023-COA-R3-CV, 2015 WL 5306125, at *6 (Tenn. Ct. App. Sept. 3, 2015)); *In re Est. of Ladd*, 247 S.W.3d 628, 636-37 (Tenn. Ct. App. 2007). The only exceptions to this rule occur “where the finding is on an issue not properly referred, where it is based on an error of law or a mixed question of fact and law, or where it is not supported by any material evidence.” *Tennison Bros.*, 556 S.W.3d at 723. Even where a finding of a special master on a mixed question of fact and law has been adopted by the trial court, our standard of review “is de novo with a presumption of correctness extended . . . to the trial court’s findings of fact.” *Knop v. Knop*, No. E2019-01035-COA-R3-CV, 2020 WL 2781737, at *3 (Tenn. Ct. App. May 29, 2020) (quoting *Pierce v. Pierce*, No. E2007-01403-COA-R3-CV, 2008 WL 2557363, at *6 (Tenn. Ct. App. June 26, 2008)).

Wildcat Construction contends that the special master should not have considered the portions of Mr. Jackson’s testimony and report relating to price estimates to fix issues with the driveway and the ceramic tiles because that evidence consisted of “unsupported hearsay and speculation,” because “the underlying facts or data indicate [a] lack of trustworthiness,” and because Mr. Jackson “acted as a ‘mouthpiece’ for a non-testifying expert” who was not present at the hearing.

The Tennessee Rules of Evidence set different standards for the opinion testimony of lay witnesses and expert witnesses. A lay witness’s opinion testimony is limited to opinions “rationally based on the perception of the witness.” Tenn. R. Evid. 701(a)(1). By contrast, an expert witness such as Mr. Jackson may base opinions on facts or data that would otherwise be inadmissible evidence, so long as those facts or data are “of a type reasonably relied upon by experts in the particular field” of the expert and are “trustworth[y].” Tenn. R. Evid. 703; *New Jersey Zinc Co. v. Cole*, 532 S.W.2d 246, 250 (Tenn. 1975) (holding that an expert opinion based on hearsay reports of other experts in the relevant field could be admissible evidence).

We have, on prior occasions, held that a general contractor testifying as an expert witness may rely, under Rule 703, on a subcontractor’s knowledge as to the cost to correct specific defects. *See, e.g., Kline v. Benefiel*, No. W1999-00918-COA-R3-CV, 2001 WL 25750, at *6 (Tenn. Ct. App. Jan. 9, 2001) (holding that a contractor’s testimony was not inadmissible hearsay where he relied on a drywall subcontractor’s knowledge as to the cost

to correct drywall defects). We have even permitted a general contractor's testimony relying on a subcontractor's price estimate where that same subcontractor was explicitly excluded as a witness at trial. *Centimark Corp. v. Maszera Co., LLC*, No. E2013-02689-COA-R3-CV, 2014 WL 6468944, at *18 (Tenn. Ct. App. Nov. 18, 2014). This is because a general contractor "routinely relies on the estimates and bids of subcontractors in determining the total estimate for a particular job." *Id.*; see *Kline*, 2001 WL 25750, at *6. An expert's explanation of his reliance on other experts in forming his opinion is not the same, as Wildcat Construction suggests, as an expert witness impermissibly acting as a "mouthpiece" for a non-testifying expert. See *Holder v. Westgate Resorts Ltd.*, 356 S.W.3d 373, 379-80 (Tenn. 2011) (holding that a trial court properly excluded a portion of an expert witness's testimony regarding a phone call with officials where that data was not offered "to assist the jury in understanding [the basis for the expert's] opinion").

Here, Mr. Jackson prepared a report and testified as to his opinions regarding deficiencies in the house and the estimated cost to fix those deficiencies based on his independent review of relevant documents, observations of the house, and photographs he took of the house. In accordance with his customary practice, he asked subcontractors with whom he had previously done business to prepare price estimates to fix the deficiencies he identified. Mr. Jackson created, in his report, an accounting summary for fixing those deficiencies, and he attached several detailed line-item breakdowns of price estimates for the necessary work submitted by the subcontractors whose opinions he considered. The data and testimony regarding the price estimates were clearly offered to assist the trial court in understanding the basis for Mr. Jackson's opinion as to the necessary costs to fix the deficiencies he identified in the house. This is permitted by Rule 703.

Having addressed the evidentiary matter, we turn to the calculation of damages, which presents a question of fact. See, e.g., *Tennison Bros.*, 556 S.W.3d at 722 (holding that "the amount of unliquidated damages 'remains an open question to be determined by proof'" (quoting *Husk v. Thompson*, No. M2016-01481-COA-R3-CV, 2017 WL 3432686, at *4 (Tenn. Ct. App. Aug. 10, 2017))); cf. *Vraney v. Med. Specialty Clinic, P.C.*, No. W2012-02144-COA-R3-CV, 2013 WL 4806902, at *34 (Tenn. Ct. App. Sept. 9, 2013) ("The practice of referring damages issues to a special master is common in Tennessee."). Accordingly, concurrent findings by the special master and the trial court are conclusive on appeal so long as there is any material evidence in the record to support them.

The special master and the trial court concurrently found that repairs to the driveway would cost \$16,300 and that repairs to the tile would cost \$22,605.34. Material evidence in the form of Mr. Jackson's report and Mr. Jackson's testimony, which, as discussed above, were properly considered by the special master and trial court, supports these findings.

Furthermore, the special master and trial court concurrently found that Wildcat Construction "offered no evidence as to how the driveway was constructed nor the cost to

replace it” and that Wildcat Construction simply offered price estimates to fix the ceramic tiles without any “evidence of what these repairs would be.” Because the appellate record contains only a partial transcript of the hearing before the special master, consisting solely of Mr. Jackson’s testimony, we must “conclusively presume that [these] findings of fact made by the trial court are supported by the evidence and are correct.” *Burris v. Burris*, 512 S.W.3d 239, 247 (Tenn. Ct. App. 2016) (explaining that, “[i]n the absence of a transcript or statement of the evidence, [an appellate court must] conclusively presume that the findings of fact made by the trial court are supported by the evidence and are correct”); *see* Tenn. R. App. P. 24(b)-(c) (providing that the appellant bears the burden of providing a transcript or statement of the evidence demonstrating a complete account of what transpired with respect to the issues on appeal).

IV.

For the aforementioned reasons, we affirm the judgment of the Chancery Court for Grainger County. Costs of this appeal are taxed to the appellant, Wildcat Construction, for which execution may issue if necessary. The case is remanded for such further proceedings as may be necessary and consistent with this opinion.

s/ Jeffrey Usman
JEFFREY USMAN, JUDGE