

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
August 12, 2026 Session

FILED

10/22/2026

Clerk of the
Appellate Courts

U-HAUL CO. OF TENNESSEE v. WARREN ALMQUIST

Appeal from the Circuit Court for Knox County
No. C-23-029123 William T. Ailor, Judge

No. E2025-01563-COA-R3-CV

The appellee-plaintiff sued the appellant-defendant alleging breach of contract and professional negligence with regard to a contract for architectural services. The plaintiff ultimately moved for summary judgment on these claims, to which the defendant failed to respond. The trial court granted the plaintiff's motion, finding that the undisputed facts entitled the plaintiff to judgment on both claims, and awarded the plaintiff its damages. The defendant appeals the final judgment. Finding no error in the trial court's decision, we affirm and remand for further proceedings consistent with this opinion. We further find this appeal frivolous and grant the plaintiff its costs and expenses, including reasonable attorney's fees.

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

KRISTI M. DAVIS, J., delivered the opinion of the Court, in which JOHN W. MCCLARTY, P.J., E.S., and THOMAS R. FRIERSON, II, J., joined.

Warren Almquist, Alexandria, Virginia, pro se appellant.

Andrew D. Tharp, James A. Beakes III, and Y. Larry Cheng, Nashville, Tennessee, for the appellee, U-Haul Co. of Tennessee.

OPINION

BACKGROUND

On November 5, 2020, Warren Almquist, d/b/a Almquist Architect and Planning presented a Professional Services Proposal (the "Proposal") to U-Haul Co. of Tennessee d/b/a U-Haul Co. of Knoxville ("U-Haul"), whereby Mr. Almquist offered to "[p]rovide

Architectural, Structural[,] Mechanical[,] Electrical[,] and Plumbing (“MEP”) services sufficient to obtain a Building Permit to construct a 93,465 square foot five story storage facility” in Knoxville, Tennessee in accordance with a site plan provided by U-Haul. U-Haul accepted the Proposal on November 10, 2020, and the parties executed a U-Haul Construction Contract (the “U-Haul Contract”), which required Mr. Almquist to “provide all plans for a new 5 story building including Architectural, Structural, Mechanical, Plumbing[,] and Electrical” with such plans to “be completed as per [the Proposal].” The contract required this work to be substantially completed by March 31, 2021, but was later amended to require the work to be substantially completed by June 3, 2021.

Although Mr. Almquist represented to U-Haul in July 2021 that the “Construction Documents [were] 100% complete” and issued an invoice for his work, he did not submit plans to the City of Knoxville (“the City”) for approval for a building permit until August 2021. The City rejected Mr. Almquist’s first submission because he incorrectly labeled the plans.

Throughout the following months, Mr. Almquist continued submitting plans to the City, and the City continued rejecting them. In May 2022, the City rejected the plans because Mr. Almquist submitted them with an incorrect review number. The City rejected the plans again on July 6, 2022, this time because they did not meet the City’s submission criteria for naming the documents. On July 29, 2022, the City notified U-Haul that the plans were deficient and needed to be corrected. On September 6, 2022, the City once again notified U-Haul that the plan submissions had “file naming errors” and discontinued the review process. Regardless, Mr. Almquist continued submitting plans to the City. In total, Mr. Almquist submitted six different sets of plans to the City, all of which were rejected. Ultimately, U-Haul was forced to retain another architect who substantially completed the project on June 19, 2023—746 days after the date Mr. Almquist was required to substantially complete the project.

U-Haul sued Mr. Almquist in the Knox County Circuit Court (the “trial court”) on April 13, 2023, for breach of contract and professional negligence. On April 14, 2025, U-Haul filed a motion for summary judgment. U-Haul asserted the following undisputed material facts: that the parties entered into an agreement whereby Mr. Almquist agreed to provide plans sufficient to obtain a building permit for the construction of the five-story building; Mr. Almquist incorrectly submitted the plans and failed to obtain the permit; and U-Haul faced damages due to Mr. Almquist’s breach of contract and professional negligence. The trial court conducted a status conference on April 15, 2025, and entered a resulting order on April 21, 2025, requiring Mr. Almquist to respond to the summary judgment motion by May 20, 2025.¹ Mr. Almquist ultimately did not respond, and on

¹ The record contains statements by U-Haul’s attorney and the trial court judge suggesting that during the April 15 status conference, the trial court also verbally reminded Mr. Almquist of the need to

September 9, 2025, the trial court entered summary judgment in U-Haul’s favor and awarded it \$887,214.65 in damages, \$89,003.92 in attorney’s fees and costs, and pre-judgment and post-judgment interest. Mr. Almquist timely appeals to this Court.

ISSUES

Mr. Almquist raises three issues on appeal; however, we discern one dispositive issue: whether the trial court erred in granting U-Haul’s motion for summary judgment. U-Haul raises a separate issue of whether this appeal is frivolous.

STANDARD OF REVIEW

A trial court may grant summary judgment only if the “pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Tenn. R. Civ. P. 56.04. The propriety of a trial court’s summary judgment decision presents a question of law, which we review de novo with no presumption of correctness. *Kershaw v. Levy*, 583 S.W.3d 544, 547 (Tenn. 2019). “The moving party has the ultimate burden of persuading the court that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law.” *Martin v. Norfolk S. Ry. Co.*, 271 S.W.3d 76, 83 (Tenn. 2008). As our Supreme Court has instructed,

when the moving party does not bear the burden of proof at trial, the moving party may satisfy its burden of production either (1) by affirmatively negating an essential element of the nonmoving party’s claim or (2) by demonstrating that the nonmoving party’s evidence *at the summary judgment stage* is insufficient to establish the nonmoving party’s claim or defense.

Rye v. Women’s Care Ctr. of Memphis, 477 S.W.3d 235, 264 (Tenn. 2015). “[I]f the moving party bears the burden of proof on the challenged claim at trial, that party must produce at the summary judgment stage evidence that, if uncontroverted at trial, would entitle it to a directed verdict.” *TWB Architects, Inc. v. Braxton, LLC*, 578 S.W.3d 879, 888 (Tenn. 2019) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 331 (1986)).

When a party files and properly supports a motion for summary judgment as provided in Rule 56, “to survive summary judgment, the nonmoving party may not rest upon the mere allegations or denials of its pleading, but must respond, and by affidavits or one of the other means provided in [] Rule 56, set forth specific facts . . . showing that there

respond to the summary judgment motion; however, the record does not contain a transcript of this status conference.

is a genuine issue for trial.” *Rye*, 477 S.W.3d at 265 (internal quotation marks and brackets in original omitted). “Whether the nonmoving party is a plaintiff or a defendant—and whether or not the nonmoving party bears the burden of proof at trial on the challenged claim or defense—at the summary judgment stage, ‘[t]he nonmoving party must demonstrate the existence of specific facts in the record which could lead a rational trier of fact to find in favor of the nonmoving party.’” *TWB Architects*, 578 S.W.3d at 889 (quoting *Rye*, 477 S.W.3d at 265). When reviewing a grant of summary judgment, we “consider the evidence in the light most favorable to the non-moving party and draw all reasonable inferences in that party’s favor.” *McCullough v. Vaughn*, 538 S.W.3d 501, 505 (Tenn. Ct. App. 2017).

DISCUSSION

a.

As a threshold issue, U-Haul argues that by failing to respond to its summary judgment motion at the trial court level, Mr. Almquist waived all of his arguments on appeal. We agree. “Under Tennessee law, issues raised for the first time on appeal are waived.” *Black v. Blount*, 938 S.W.2d 394, 403 (Tenn. 1996). Moreover, a moving party’s statement of material facts “may be deemed admitted in the absence of a statement controverting them by the opposing party.” *Am. Exp. Bank, FSB v. Fitzgibbons*, 362 S.W.3d 93, 98 (Tenn. Ct. App. 2011) (quoting *Holland v. Memphis*, 125 S.W.3d 425, 428 (Tenn. Ct. App. 2003)). “Accordingly, failure to file a response in opposition to a motion for summary judgment generally will prove fatal in the trial court and upon appeal.” *Id.*

By not responding to the motion at the trial court level, Mr. Almquist has waived his arguments on appeal. Nonetheless, “on appeal ‘we must freshly determine whether the requirements of [Rule 56] have been met.’” *Id.* at 96 (quoting *Hunter v. Brown*, 955 S.W.2d 49, 50–51 (Tenn. 1997)).

To establish a breach of contract in Tennessee, a plaintiff must show “(1) the existence of an enforceable contract, (2) nonperformance amounting to a breach of the contract, and (3) damages caused by the breach of the contract.” *Leedy v. Hickory Ridge, LLC*, 663 S.W.3d 537, 548 (Tenn. Ct. App. 2022) (quoting *ARC LifeMed, Inc. v. AMC-Tennessee, Inc.*, 183 S.W.3d 1, 26 (Tenn. Ct. App. 2005)). The record supports U-Haul’s undisputed assertions that the U-Haul Contract was enforceable, that Mr. Almquist failed to perform the work required of him by the contract, and that U-Haul suffered damages due to his breach of the contract.

Mr. Almquist had yet to obtain a building permit by October 2022, which was more than a year after the substantial completion date contained in the U-Haul Contract. This breach caused U-Haul to incur losses in the amount of \$887,214.65 as it was forced to

significantly delay construction of the new building and had to quickly retain a new architect to complete the project. As stated in the affidavit of Jeff Porter, U-Haul's Area District Vice President, these losses include \$243,881.00 for a new architect, \$283,333.65 in delay costs charged by U-Haul's general contractor, and lost profits of \$360,000.00.

Further, the record shows that Mr. Almquist committed professional negligence by repeatedly committing basic errors when submitting his plans to the City. The elements of negligence include “(1) a duty of care owed by the defendant to the plaintiff; (2) conduct by the defendant falling below the standard of care amounting to a breach of that duty; (3) an injury or loss; (4) causation in fact; and (5) proximate or legal cause.” *Satterfield v. Breeding Insulation Co.*, 266 S.W.3d 347, 355 (Tenn. 2008) (citing *Naifeh v. Valley Forge Life Ins. Co.*, 204 S.W.3d 758, 771 (Tenn. 2006); *Draper v. Westerfield*, 181 S.W.3d 283, 290 (Tenn. 2005)). Here, Mr. Almquist owed a duty of care to his client, U-Haul. He breached this duty through the multitude of errors he made in his submissions to the City. This caused U-Haul to incur extensive monetary losses.

While a claim of professional negligence typically requires expert testimony to establish the relevant professional standard of care, this is not required where “the professional's lack of skill or care is so apparent as to be in the comprehension of a lay person and requires only common knowledge and experience to understand it.” *Martin v. Sizemore*, 78 S.W.3d 249, 272 (Tenn. Ct. App. 2001). Here, Mr. Almquist's plans were repeatedly rejected due to naming and labeling errors. Despite the City providing detailed information about these deficiencies and instructions on how to correct them on multiple occasions, Mr. Almquist repeatedly failed to rectify these errors. This ultimately resulted in the City denying the permit. Because these errors were elementary and required no special technical expertise in architecture to comprehend, no expert testimony was needed to establish a claim for negligence.

Because the undisputed facts met the elements of a breach of contract and professional negligence, the trial court did not err in awarding summary judgment to U-Haul and awarding it the damages attested to by Mr. Porter.

b.

U-Haul argues that Mr. Almquist's appeal is frivolous and requests that this Court order him to pay its costs and expenses incurred on appeal.

When it appears to any reviewing court that the appeal from any court of record was frivolous or taken solely for delay, the court may, either upon motion of a party or of its own motion, award just damages against the appellant, which may include, but need not be limited to, costs, interest on the judgment, and expenses incurred by the appellee as a result of the appeal.

Tenn. Code Ann. § 27-1-122. “A frivolous appeal is one that is devoid of merit, *Combustion Eng’g, Inc. v. Kennedy*, 562 S.W.2d 202, 205 (Tenn. 1978), or one that has no reasonable chance of succeeding.” *Young v. Barrow*, 130 S.W.3d 59, 67 (Tenn. Ct. App. 2003) (citing *Davis v. Gulf Ins. Grp.*, 546 S.W.2d 583, 586 (Tenn. 1977)). On one hand, section 27-1-122 “must be interpreted and applied strictly so as not to discourage legitimate appeals[.]” *Davis*, 546 S.W.2d at 586. On the other hand, “[s]uccessful litigants should not have to bear the expense and vexation of groundless appeals.” *Id.* Given the competing considerations, whether to award damages under section 27-1-122 rests soundly within the reviewing court’s discretion. *Chiozza v. Chiozza*, 315 S.W.3d 482, 493 (Tenn. Ct. App. 2009) (citing *Whalum v. Marshall*, 224 S.W.3d 169, 180–81 (Tenn. Ct. App. 2006)).

As noted above, Tennessee law is exceedingly clear on the consequences of failing to respond to a motion for summary judgment. Thus, Mr. Almquist’s appeal has no legal basis and had no reasonable chance of success. Accordingly, the appeal is frivolous, and we exercise our discretion to grant U-Haul’s request for costs and expenses to include reasonable attorney’s fees in an amount to be determined upon remand.

CONCLUSION

The judgment of the Circuit Court for Knox County is affirmed, and costs on appeal are assessed to the appellant, Warren Almquist, for which execution may issue if necessary. This case is remanded for proceedings consistent with this opinion.

KRISTI M. DAVIS, JUDGE