

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
March 24, 2026 Session

FILED

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Clerk of the
Appellate Courts

BARBARA CHESNUT v. RUDY TITLE AND ESCROW, LLC, ET AL.

**Appeal from the Circuit Court for Sumner County
No. 2022-CV-653 Joe Thompson, Judge**

No. M2025-00525-COA-R3-CV

The plaintiff owned a home that was fraudulently sold. The plaintiff sued the title insurance company that participated in the closing for negligence and fraud. The title company filed a motion for summary judgment in which it argued that it did not owe the plaintiff a duty of care. The trial court granted the motion for summary judgment. The plaintiff appeals. We affirm in part and reverse in part.

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

CARMA DENNIS MCGEE, J., delivered the opinion of the court, in which KRISTI M. DAVIS, and VALERIE L. SMITH, JJ., joined.

William Bart Highers and Devon J. Sutherland, Gallatin, Tennessee, for the appellant, Barbara Chesnut.

Griffin S. Dunham, Brentwood, Tennessee, for the appellee, Rudy Title and Escrow, LLC.

OPINION

I. FACTS & PROCEDURAL HISTORY

Barbara Chesnut owned a home located at 156 New Deal Potts Road, Cottontown, Tennessee. Ms. Chesnut obtained the property in 2012 as an heir of her brother, James Upchurch, who died intestate.¹ It appears that Ms. Chesnut lived in the home prior to the entry of the order closing Mr. Upchurch's estate. Shortly before the chancery court entered

¹ Mr. Upchurch had several heirs who shared in his estate. Ms. Chesnut agreed to purchase the home from the estate using her share of the assets and additional funds.

the order closing Mr. Upchurch's estate, Ms. Chesnut moved to the United Arab Emirates ("the UAE"). While it appears that Ms. Chesnut subsequently spent the majority of her time living in the UAE, she maintained her "permanent address" at the property for several years and resided there when she visited the United States. Sometime beginning in either 2013 or 2014, Ms. Chesnut permitted two individuals, one of whom was named Vickie Podczervinski, to reside at the property. These individuals left the property sometime between 2016 and 2017. Subsequently, Ms. Chesnut returned to the property and resided there for several months. At some point, Ms. Chesnut returned to the UAE. She was unable to travel back to the United States for a substantial period of time due to the COVID-19 pandemic. When she returned to the United States in 2021, she discovered that unknown persons were living at the property.

It is undisputed that the property was fraudulently sold while Ms. Chesnut was in the UAE. In January 2020, a person claiming to be "Dorothy Chestnut" entered a contract to sell the property to Ultra Home Solutions, LLC.² The contract listed Rudy Title and Escrow, LLC, ("Rudy Title") as the "buyer's closing attorney." Subsequently, Rudy Title prepared the transaction for closing. The person claiming to be "Dorothy Chestnut" represented that she was Mr. Upchurch's sole heir and inherited the property when he died intestate. She provided two affidavits of heirship that were purportedly notarized and signed by third parties. The affidavits both averred that Mr. Upchurch was unmarried and died intestate. The affidavits also stated that Dorothy Chestnut was Mr. Upchurch's only child and legal heir. Additionally, documents were prepared whereby Dorothy Chestnut granted John Gleaves, an employee of Rudy Title, power of attorney to execute and ratify all closing documents related to the sale of the property. The individual also submitted a copy of an Arizona driver's license bearing the name Dorothy Chestnut. The transaction was completed on January 23, 2020, and a deed conveying the property from Dorothy Chestnut to Ultra Home Solutions was recorded at the Sumner County Register's Office on January 29, 2020. The property was conveyed two more times to additional owners before the end of 2020.

After Ms. Chesnut returned to the United States, she reported the theft of the property to the police. Eventually, Vickie Podczervinski pled guilty to the theft of the property. The parties agree that the affidavits of heirship, Arizona driver's license, and other documents were "fake." The parties also agree that "Dorothy Chestnut" was a fake persona created for the purpose of facilitating the fraudulent conveyance of the property.

On August 1, 2022, Ms. Chesnut filed a petition for declaratory judgment in the Sumner County Circuit Court. The petition named Rudy Title, Ultra Home Solutions, Mr. Gleaves, and the subsequent buyers as respondents. The petition alleged that the various

² Prior to the filing of the petition, Ultra Home Solutions changed its name to Freedom Home Buyers, LLC. For ease of reference and because the pertinent documents use the name Ultra Home Solutions, we refer to the company by that name throughout this opinion.

parties participated in the fraudulent conveyance of the property and sought to quiet title in Ms. Chesnut's favor. The petition also maintained that Rudy Title was negligent "in the preparation of certain closing documents." Specifically, Ms. Chesnut asserted that Rudy Title acted negligently by "fail[ing] in [its] due diligence to look up the name of the last known owner" and neglecting "to contact the Chancery (Probate) Court for Sumner County [to] review the Petition for Probate and Order to Close the Estate[.]" Ms. Chesnut maintained that if Rudy Title had reviewed those documents it "would have been able to see the rightful heirs" of the property. Additionally, she alleged that she was entitled to "damages resulting from . . . intentional and fraudulent acts of Respondents Rudy [Title], Ultra [Home Solutions,] and [Mr.] Gleaves." She sought damages "of no less than \$1,000,000.00."

Subsequently, the petition was non-suited or dismissed on the pleadings as to each respondent except Rudy Title. Rudy Title filed a motion for summary judgment on November 15, 2024. *See* Tenn. R. Civ. P. 56.02. Rudy Title maintained that it could not be held liable on a negligence cause of action because it did not owe Ms. Chesnut a duty of care. Rudy Title submitted a statement of undisputed material facts in support of its motion, and Ms. Chesnut submitted a response. Ms. Chesnut disputed Rudy Title's statement that it "did not know of any fraud, forgery, or fakeness associated with the [p]roperty." In her response to Rudy Title's motion for summary judgment, Ms. Chesnut argued that Rudy Title owed her a duty of care, even though the parties were not in privity of contract, pursuant to the terms of section 552 of the Restatement (Second) of Torts (1977).

The circuit court entered an order granting the motion for summary judgment on March 27, 2025. The court determined that, because Ms. Chesnut did not rely "on any action of Rudy Title in the conduct of her affairs," it did not owe her a duty of care pursuant to section 552 of the Restatement (Second) of Torts. Accordingly, it determined that Ms. Chesnut could not prove a set of facts entitling her to recovery and dismissed the case in its entirety. Ms. Chesnut filed this appeal.

II. ISSUES PRESENTED

The appellant has presented several issues on appeal, which we have reproduced verbatim:

1. The Trial Court erred in granting summary judgment in favor of Defendant and ruling that there were no issues of material fact in dispute and that Defendant was entitled to judgment as a matter of law, especially with regard to the issue of the duty owed to Defendant under general principles of negligence.
2. The Trial Court erred when it misapplied Restatement of Torts § 552 regarding "negligent misrepresentation" to this case, which concerns not negligent advice, but

rather negligent (or grossly negligent and/or overtly fraudulent) acts and omissions on the part of Defendant.

3. The Trial Court erred in ruling that there were no material issues in dispute, when it has never been determined that Defendant's acts and omissions were only negligent or grossly negligent, and not overtly fraudulent as part of the overall criminal scheme.
4. The Trial Court erred in ruling that, with regard to the Defendant's defense that, under their breach of contract theory of the case, that the parties were not in privity of contract, and; therefore, the Defendant owed Plaintiff no duty.

For the following reasons, the judgment of the circuit court is affirmed in part and reversed in part.

III. DISCUSSION

Our state rules of civil procedure provide that summary judgment is appropriate where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, 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 moving party has the burden of proving that its motion satisfies these requirements.” *Staples v. CBL & Assocs., Inc.*, 15 S.W.3d 83, 88 (Tenn. 2000). As our Supreme Court has explained, “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, MPLLC*, 477 S.W.3d 235, 264 (Tenn. 2015).

Regardless of whether the nonmoving party bears the burden of proof at trial on the challenged claim, “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, Inc. v. The Braxton, LLC*, 578 S.W.3d 879, 889 (Tenn. 2019) (quoting *Rye*, 477 S.W.3d at 265). When reviewing a motion for summary judgment, a court places its focus “on the evidence the nonmoving party comes forward with at the summary judgment stage, not on hypothetical evidence that theoretically could be adduced” at a future trial. *Rye*, 477 S.W.3d at 265.

The decision to grant or deny “a motion for summary judgment is a matter of law; therefore, our standard of review is *de novo* with no presumption of correctness.” *Jackson v. Thibault*, No. E2021-00988-COA-R3-CV, 2022 WL 14162828, at *3 (Tenn. Ct. App. Oct. 25, 2022). When assessing a trial court's ruling on a motion for summary judgment, “we make a fresh determination of whether the requirements of Rule 56 of the Tennessee Rules of Civil Procedure have been satisfied.” *Rye*, 477 S.W.3d at 250. Importantly, “we are required to review the evidence in the light most favorable to the nonmoving party and

to draw all reasonable inferences favoring the nonmoving party.” *Martin v. Norfolk S. Ry. Co.*, 271 S.W.3d 76, 84 (Tenn. 2008). Ms. Chesnut has presented several arguments on appeal regarding the circuit court’s decision to grant summary judgment in favor of Rudy Title. We address each in turn.

First, Ms. Chesnut argues that the circuit court erred when it granted the motion for summary judgment on her negligence theory of recovery. The circuit court determined that Rudy Title did not owe Ms. Chesnut a duty of care, and therefore, could not be held liable on a negligence theory of recovery. As we have previously explained:

[w]hen asserting a negligence claim, “a plaintiff must establish (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)). “[D]uty has become an essential element of all negligence claims, as well as a question of law to be determined by courts.” *Id.* (citing *West v. E. Tenn. Pioneer Oil Co.*, 172 S.W.3d 545, 550 (Tenn. 2005); *Bradshaw v. Daniel*, 854 S.W.2d 865, 869 (Tenn. 1993)). Therefore, [a plaintiff’s] claim must fail if [the defendant] did not owe him a duty.

Hopper v. Obion Cnty. Sch. Sys., No. W2021-00805-COA-R9-CV, 2022 WL 2116482, at *3 (Tenn. Ct. App. June 13, 2022).

In her opposition to Rudy Title’s motion for summary judgment, Ms. Chesnut relied on section 552 of the Restatement (Second) of Torts (1977) as the basis for her argument that Rudy Title owed her a duty of care. In *John Martin Co.*, our Tennessee Supreme Court explained that “whether [an] action for economic loss is based upon negligent supervision or negligent misrepresentation, § 552 of the Restatement (2d) of Torts is the applicable standard in this state.” *John Martin Co., Inc. v. Morse/Diesel, Inc.*, 819 S.W.2d 428, 435 (Tenn. 1991). Ms. Chesnut quoted the following excerpt from *John Martin Co.*, in her memorandum opposing the motion for summary judgment:

Whether the negligence alleged is based upon misrepresentation or supervision, the applicable law in Tennessee, absent privity, is found in the Restatement (2d) of Torts § 552 (1977):

(1) One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable

reliance upon the information, if he fails to exercise reasonable care or competence in the obtaining or communicating of the information.

(2) Except as stated in Subsection (3), the liability stated in Subsection (1), is limited to loss suffered

(a) by the person or one of a limited group of persons for whose benefit and guidance he intends to supply the information or knows that the recipient intends to supply it; and

(b) through reliance upon it in a transaction that he intends the information to influence or knows that the recipient so intends or in a substantially similar transaction.

By the use of this standard, liability in tort would result when, despite lack of contractual privity between the plaintiff and the defendant,

(1) the defendant is acting in the course of his business, profession, or employment, or in a transaction in which he has a pecuniary (as opposed to gratuitous) interest; and

(2) the defendant supplies faulty information meant to guide others in their business transaction; and

(3) the defendant fails to exercise reasonable care in obtaining or communicating the information; and

(4) the plaintiff justifiably relies upon the information.

The defendant is liable only to those, whether in contractual privity or not, for whose benefit and guidance the information is supplied. The information may be either direct or indirect. In that regard, the foreseeability of use is critical to liability.

Id. at 431-32 (quoting the Restatement (Second) of Torts § 552 (1977)). Additionally, Ms. Chesnut noted that the Supreme Court had previously determined section 552 of the Restatement (Second) of Torts applied “in connection with the liability of business or professional persons who negligently supply false information for the guidance of others in their business transactions” and “could apply to attorneys as well as to land surveyors, accountants, or title companies.” *See Stinson v. Brand*, 738 S.W.2d 186, 190 (Tenn. 1987) (citing *Tartera v. Palumbo*, 453 S.W.2d 780, 784 (Tenn. 1970)). Accordingly, Ms. Chesnut argued that because the Tennessee Supreme Court had “previously dispensed with privity as a prerequisite for actions in tort based upon negligent misrepresentation against

title examiners . . . the rule must extend to other professions whose business is to supply technical information for the guidance of others.” The circuit court addressed this argument in its order granting Rudy Title’s motion for summary judgment. It determined that Ms. Chesnut had not put forth any facts demonstrating she “relied on any action of Rudy Title in the conduct of her affairs” and accordingly failed to establish “the fourth factor” of section 552 of the Restatement (Second) of Torts (1977). *See John Martin Co.*, 819 S.W.2d at 431-32.

On appeal, Ms. Chesnut addresses this argument in one of her issue statements and claims that the circuit court “erred when it misapplied Restatement of Torts § 552 regarding ‘negligent misrepresentation’ to this case, which concerns not negligent advice, but rather negligent (or grossly negligent and/or overtly fraudulent) acts and omissions on the part of Defendant.” Ms. Chesnut’s argument regarding this issue was confined to the following sentence: “every person reasonably relies on title companies not to actively participate in stealing their property.” The issue statement and sentence intended to support it in the argument section appear to be inconsistent with one another. The issue statement suggests that Ms. Chesnut believed this Restatement section was not applicable to the facts of this case. Conversely, the statement in the argument section of her brief indicates that she believes she “reasonably relie[d]” on a representation of Rudy Title and accordingly, she was entitled to relief pursuant to the Restatement section. It is unclear which of the two arguments Ms. Chesnut intended to pursue. Notably, Ms. Chesnut is the party who relied on *John Martin Co.* and section 552 of the Restatement (Second) of Torts as the basis for her claim at the trial court level. She has simply not explained in her appellate brief what error the circuit court committed by applying it. Similarly, Ms. Chesnut has not cited to anything contained in the appellate record or any legal authority to support her argument that “every person reasonably relies on title companies not to actively participate in stealing their property.” As our Tennessee Supreme Court has previously explained, it is not the role of an appellate court “to research or construct a litigant’s case or arguments for him or her, and where a party fails to develop an argument in support of his or her contention or merely constructs a skeletal argument, the issue is waived.” *Sneed v. Bd. of Pro. Resp. of Supreme Ct.*, 301 S.W.3d 603, 615 (Tenn. 2010). Ms. Chesnut has failed to construct an argument supporting her claim that the circuit court “misapplied Restatement of Torts § 552.” Likewise, she has failed to support her claim that “every person reasonably relies on title companies not to actively participate in stealing their property” with any references to the appellate record or relevant law. Therefore, this issue is waived. *See Tenn. R. App. P. 27(a)(7)*.

However, Ms. Chesnut spends the majority of her appellate brief presenting an alternative explanation as to why Rudy Title owed her a duty of care. She asserts that the circuit court should not have granted the motion for summary judgment because “[e]very person owes every other person the duty of reasonable care so as not to injur[e] them.” She relies on the Tennessee Supreme Court’s case, *Burroughs v. Magee*, to support this contention. *Burroughs v. Magee*, 118 S.W.3d 323, 333 (Tenn. 2003) (holding that a doctor

owed a duty of care to two motorists who were not his patients where those motorists were harmed in an automobile accident caused by the doctor's patient after the doctor failed to warn the patient of the effects two prescription drugs would have on his ability to safely operate a motor vehicle). Ms. Chesnut asserts that Rudy Title owed her a duty of care because the owner of a piece of property is a "reasonably foreseeable victim of a negligently substandard title examination[.]" She also claims that she was owed a duty as a third-party beneficiary of the contract entered between Rudy Title and Ultra Home Solutions. Ms. Chesnut laments the fact that the circuit court "made no ruling" regarding these arguments. However, it is unsurprising that the circuit court did not address these arguments because they were not presented in Ms. Chesnut's response to the motion for summary judgment or any other briefing submitted to the circuit court prior to the entry of the order granting the motion for summary judgment. Ms. Chesnut's counsel seems to acknowledge this and argues that the circuit court "should not have boxed itself into the arguments of counsel and should have realized that general negligence elements apply here." We disagree.

It is well-established that arguments not raised in the trial court will not be addressed on appeal. *Norton v. McCaskill*, 12 S.W.3d 789, 795 (Tenn. 2000). Likewise, we have previously held that parties who did not present arguments to a trial court prior to its decision regarding a motion for summary judgment were unable to raise those arguments on appeal. *See Rainwaters v. Tenn. Wildlife Res. Agency*, No. W2022-00514-COA-R3-CV, 2024 WL 2078231, at *19-20 (Tenn. Ct. App. May 9, 2024) (noting that it was "unsurprising that [a] trial court did not address [an] argument advanced by the [d]efendants on appeal" because the defendants "did not raise the argument before the trial court" including "in their motion for summary judgment" and therefore, the argument was waived); *Linkous v. Lane*, 276 S.W.3d 917, 925 n.3 (Tenn. Ct. App. 2008) (holding that certain evidence regarding the conduct of prison employees intended to prove "a higher degree [of liability] than negligence" could not be considered on appeal of the trial court's decision to grant summary judgment as to the plaintiffs' claims because the argument was not presented to the trial court). Ms. Chesnut did not argue before the circuit court that it was "reasonably foreseeable" she would be harmed as an owner of the property or that she was a third-party beneficiary. Accordingly, those arguments are waived. *See Wallis v. Brainerd Baptist Church*, 509 S.W.3d 886, 898 (Tenn. 2016) (refusing "to accept [the plaintiff's] invitation to reframe the issues" of an interlocutory appeal to include an argument predicated on the terms of the Restatement (Second) of Torts because the plaintiff had "not previously relied upon [that] section . . . to support her direct negligence claim"). Similarly, Ms. Chesnut's fourth issue statement maintains that the circuit court "erred in ruling that, with regard to the Defendant's defense that, under their breach of contract theory of the case, that the parties were not in privity of contract, and; therefore, the Defendant owed Plaintiff no duty." Ms. Chesnut's complaint did not set forth a breach of contract cause of action or claim that she was a party to a contract with Rudy Title. In response to the motion for summary judgment, Ms. Chesnut framed the issue before the court as "whether the Respondent has a duty of care to the Petitioner under these facts

because the parties had no written contract and therefore no privity of contract.” Likewise, the argument portion of her brief does not explain what contractual relationship existed. Frankly, we are unable to discern the components of this argument or the logic supporting it. Therefore, this issue is waived. *See Sneed*, 301 S.W.3d at 615.

Ms. Chesnut also argues that the circuit court erred when it granted summary judgment as to her claims for fraud.³ She maintains that the circuit court did not “rule[] out that [Rudy Title] acted only negligently.” In her petition, Ms. Chesnut asserted that she had “incurred immeasurable damages” as a result of “all [the r]espondents’ fraudulent acts[.]” She specifically sought to recover “damages sustained” from “the intentional and fraudulent acts of [r]espondent[] Rudy [Title.]” Rudy Title did not address that allegation in its motion for summary judgment. Rather, it addressed only Ms. Chesnut’s negligence claim. Likewise, the circuit court’s final order did not explain what element of Ms. Chesnut’s fraud claim had been negated. It only addressed the negligence claim. Nevertheless, the circuit court dismissed the case in its entirety.

We have previously determined that the “dismissal of [an] entire case was not warranted” where the defendants’ motions for summary judgment “did not raise any issue regarding” certain causes of action. *Elliot v. Life of the S. Ins. Co.*, 296 S.W.3d 64, 71 (Tenn. Ct. App. 2008). Because Ms. Chesnut’s fraud claims were not addressed in the motion for summary judgment, the circuit court erred when it granted summary judgment on those claims. *Id.* Accordingly, we reverse the circuit court’s decision to dismiss the portion of Ms. Chesnut’s petition predicated on fraud and remand the matter to the circuit court for proceedings consistent with this opinion.⁴

IV. CONCLUSION

For the foregoing reasons, the ruling of the circuit court is affirmed in part and reversed in part. The case is remanded to the circuit court for proceedings consistent with this opinion. Costs of this appeal are taxed equally to the appellant, Barbara Chesnut, and to the appellee, Rudy Title and Escrow, LLC., for which execution may issue if necessary.

s/ Carma Dennis McGee
CARMA DENNIS MCGEE, JUDGE

³ Notably, “‘intentional misrepresentation,’ ‘fraudulent misrepresentation,’ and ‘fraud’ are different names for the same cause of action.” *Hodge v. Craig*, 382 S.W.3d 325, 342 (Tenn. 2012). In *Hodge*, our State Supreme Court “suggest[ed]” that the term “intentional misrepresentation . . . should be used exclusively henceforth.” *Id.* at 343. However, because Ms. Chesnut used the term “fraudulent acts” in her complaint, we refer to her cause of action as fraud.

⁴ We make no determination that Ms. Chesnut’s fraud claims have any merit or that any disputed issue of material fact existed as to those claims. We merely hold that the claims were improperly dismissed because they were not addressed in the motion for summary judgment.