

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
March 25, 2026 Session

FILED

10/28/2026

Clerk of the
Appellate Courts

GREGORY “SHANE” OWENS ET AL. v. MATT MACHADO ET AL.

Appeal from the Chancery Court for Wilson County
No. 2020-CV-280 Michael Wayne Collins, Judge

No. M2025-01147-COA-R3-CV

This appeal arises from the trial court’s judgment finding the defendant did not fraudulently misrepresent that he was a licensed contractor. Discerning no error, we affirm.

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

VALERIE L. SMITH, J., delivered the opinion of the court, in which CARMA DENNIS MCGEE and STEVEN W. MARONEY, JJ., joined.

Jeffrey Spark, Nashville, Tennessee, for the appellants, Gregory Owens and Angela Owens.

Donnavon Vasek and Brandon P. Dragan, Lebanon, Tennessee, for the appellee, Matt Machado.

OPINION

I. Background and Procedural History

This protracted litigation eventually resulted in a judgment in favor of Appellee Matt Machado based on the trial court’s assessment of witness credibility. In October 2016, Appellants Gregory Owens and Angela Owens (together, “the Owens”) entered into a contract with Ecoview Windows and Doors (“Ecoview”) for the installation of vinyl siding and gutters on their home. The contract was signed by Ecoview owner Matt Machado and recited a total price of \$15,000.00.¹ The Owens made a payment of

¹ We note that Mr. Machado signed the contract in the capacity of a “sales consultant,” and his

\$7,500.00 in October 2016, and the work was completed in December 2016. Mr. Machado addressed concerns subsequently identified by the Owens, and in February 2017, the Owens and Mr. Machado performed a walkthrough inspection. The Owens found the work to be satisfactory and tendered final payment of \$7,000.00.²

In November 2020, the Owens filed a complaint against Mr. Machado a/k/a Ecoview Windows and Doors, James Dobyne d/b/a Ecoview America, and Ecoview America, LLC (“Ecoview America”) in the Chancery Court for Wilson County (“the trial court”). In their complaint, the Owens asserted claims for: 1) breach of contract; 2) violation of the Tennessee Consumer Protection Act (“TCPA”); 3) fraud; 4) breach of implied warranty; and 5) unjust enrichment. The Owens alleged that Mr. Machado’s performance was defective and fell below the standard of care for contractors and home improvement contractors and that Mr. Machado had failed to remedy construction defects. They asserted that “[t]he only way to remedy the construction defects is to remove all construction materials installed by Machado and start the project anew.” The Owens further alleged that Mr. Machado purposely and knowingly misrepresented himself as a licensed contractor and that they detrimentally relied on his misrepresentation. The Owens sought \$15,000.00 in compensatory damages; punitive damages or, in the alternative, treble damages pursuant to the TCPA; and a civil penalty in the amount of \$25,000.00 for each alleged violation pursuant to Tennessee Code Annotated §§ 62-6-518 and 62-6-510(3).³

business card names him as the owner of Ecoview.

² The total paid to complete the work was \$14,500 rather than the agreed-upon \$15,000.

³ Title 62 is applicable to contractors and contractors. Section 62-6-518 provides:

(a) After notice and an opportunity for a hearing, the board is authorized to impose a civil penalty in an amount not to exceed twenty-five thousand dollars (\$25,000) per violation for a violation of § 62-6-510(3), (4) or (14). The penalty shall be in addition to any other penalty authorized pursuant to this part.

(b) In addition to the civil penalty authorized pursuant to subsection (a), a violation of § 62-6-510(3), (4) or (14) shall be construed to constitute an unfair or deceptive act or practice affecting the conduct of trade or commerce under the Tennessee Consumer Protection Act, compiled in title 47, chapter 18; and, as such, the private right of action remedy under that act shall be available to any person who suffers an ascertainable loss of money or property, real, personal, or mixed, or any other article, commodity or thing of value wherever situated as a result of a violation.

Section 62-6-510 provides, in relevant part:

The following acts are prohibited:

...

(3) Any fraud in the execution of, or in the material alteration of, any contract, mortgage, promissory note or other document incident to a home improvement

They also prayed for attorney's fees pursuant to the TCPA and costs. On June 16, 2023, the Owens entered into a settlement agreement in the amount of \$20,000.00 with Mr. Dobyne and Ecoview America and dismissed their claims against them.⁴

In February 2021, Mr. Machado answered and acknowledged that he was not a licensed home improvement contractor. He denied that being licensed was a condition precedent to providing the services rendered and denied the Owens' allegations. Mr. Machado asserted the affirmative defenses of the statute of repose under Tennessee Code Annotated § 28-3-202; the statute of limitations provided by the TCPA; laches, acts of God, and failure to mitigate damages; and the statute of limitations for claims of fraud, breach of implied warranty, and unjust enrichment.

On March 24, 2023, Mr. Machado filed a motion for summary judgment on the basis that the Owens' claims were barred by the applicable statutes of limitations and repose. He prayed for dismissal of all claims whether "direct, indirect, legal, equitable, or otherwise." In his statement of undisputed facts, Mr. Machado asserted that all work was completed on or before February 25, 2017. He further asserted that the Owens' responses to interrogatories demonstrated that their November 2020 complaint was filed after the expiry of the statute of limitations applicable to each of their claims. In June 2023, Mr. Machado made an offer of judgment for \$1,000.00.

In November 2023, the Owens responded to Mr. Machado's motion for summary judgment and filed their statement of undisputed facts. They asked the trial court to deny Mr. Machado's motion and asserted that Mr. Machado had testified by deposition that he completed the work in May 2017. The Owens further asserted that they contacted Mr. Machado in late December 2018 to complain about other issues. They also asserted that Mr. Machado testified in his deposition that medical issues delayed his response. The Owens contended that they again texted Mr. Machado in April 2019 and Mr. Machado failed to respond. The Owens asserted that Mr. Machado acknowledged that Ecoview gave a lifetime warranty on labor and materials and further stated that Mr. Machado "admitted that certain work he performed was defective and subject to the warranty." The Owens argued that the Discovery Rule tolled the statutory limitations period until December 2021, at the earliest. They also asserted that they did not discover that the work was not performed in a workmanlike manner until May 2020, within the statute of repose. The Owens further asserted that they relied on Mr. Machado's representation that he was a licensed contractor and did not discover the fraudulent misrepresentation until they retained counsel in September 2020.

transaction[.]

⁴ Because the Owens' claims against Mr. Dobyne and Ecoview America were resolved by settlement, it is unnecessary to address the pleadings insofar as they related to them.

Following a hearing on November 12, 2023, by order entered December 6, 2023, the trial court denied Mr. Machado's motion for summary judgment. Meanwhile, on November 28, Mr. Machado's legal counsel filed a motion to withdraw from the matter. The trial court granted the motion by order entered December 18, 2023, and granted Mr. Machado 30 days to obtain new counsel.

On April 4, 2024, the Owens filed a motion for summary judgment and statement of undisputed facts. They attached Mr. Machado's deposition, Ms. Owens' deposition, an affidavit of Mr. Owens, and the affidavit of licensed contractor Charles Ybarra to their motion. Mr. Machado did not file a response, and the motion was heard by the trial court on May 21, 2024. By order entered May 31, the trial court noted that Mr. Machado appeared *pro se* at the hearing and "explained that he was unaware of what was required in responding to the Motion for Summary Judgment[.]" Over the Owens' objection, the trial court granted Mr. Machado's request for additional time to obtain counsel and file a response and ordered him to respond by June 21, 2024.

Counsel for Mr. Machado filed a notice of appearance on June 5.⁵ The next day, Mr. Machado filed a motion to extend the deadline to respond to the Owens' motion. Mr. Machado additionally requested an order requiring the Owens to provide available dates for deposition or, in the alternative, for an order continuing the hearing scheduled for July 24-26, 2024.

Following a hearing on June 18, 2024, by order entered the same day, the trial judge recused himself upon determining that a potential conflict of interest existed. By order entered June 26, the trial court removed the matter from its docket, set the Owens' motion for summary judgment to be heard July 24 – 26, and ordered Mr. Machado to file a response by July 12. The court also ordered the Owens to submit to a deposition beginning July 5 and "continuing until completed." An order of designation re-assigning the matter was entered on July 5.

On July 17, 2024, Mr. Machado filed his response to the Owens' motion for summary judgment.⁶ On July 18, the parties entered an agreed order setting the motion to be heard on November 12. However, on July 22, the Owens filed a motion for relief from the court's May 31 order denying their motion for summary judgment and reasserted their motion for summary judgment. Mr. Machado filed his response on August 23. Following a hearing on September 3, the trial court denied the Owens' motion for relief and set the matter for a bench trial on January 23-24, 2025.

⁵ We observe that Donnavon Vasek "re-appeared" as counsel for Mr. Machado.

⁶ Mr. Machado filed an amended response on October 2, 2024.

In October 2024, Mr. Machado filed a motion to compel the Owens' depositions and sought attorney's fees for the costs of the motion. On November 12, the trial court heard the Owens' July motion to reconsider the court's denial of its motion for summary judgment and Mr. Machado's motion to compel the deposition of Ms. Owens. During the hearing, the trial court stated that it found genuine issues of material fact existed to preclude summary judgment and continued the hearing of Mr. Machado's motion to compel.

On December 3, 2024, the Owens filed two motions in limine requesting the court to 1) place on the record its legal grounds for denying their motions for summary judgment⁷ and 2) to preclude Mr. Machado from testifying or, in the alternative, to nullify his testimony regarding the terms of his warranty and consider only the Owens' testimony on "the existence and terms of [Mr.] Machado's warranty[.]" On the same day, the Owens moved for a protective order with respect to the parties' depositions on the grounds that, over their objection, Mr. Machado's counsel asked questions that required speculative responses. They also sought attorney's fees for prosecuting the motion. Following a hearing on December 11, by order entered on January 7, 2025, the trial court granted Mr. Machado's motion to compel and awarded him fees and expenses in the amount of \$1,7700. The court denied the Owens' motions in limine and motion for protective order.

The Owens filed their pre-trial statement on January 17, 2025, and identified Charles M. Ybarra as a trial witness. On January 21, Mr. Machado filed a motion in limine to exclude Mr. Ybarra as not properly disclosed in response to his interrogatories. In his January 21 trial brief, Mr. Machado reasserted his defenses and further asserted that he was not liable for any damages in his individual capacity because the work was performed by Elite Windows and Doors, LLC, which the Owens had failed to join as a party. Following a hearing on January 22, the trial court denied Mr. Machado's motion in limine to exclude Mr. Ybarra's testimony and ordered the parties to conduct an evidentiary deposition of Mr. Ybarra on January 24. On March 24, the Owens moved to amend their complaint to assert that their action against Mr. Machado was predicated on Mr. Machado's "negligent misrepresentation that he was a "contractor." They asserted that, under the TCPA, Mr. Machado was liable to them for treble damages.

On March 25, 2025, Mr. Machado filed a motion to dismiss the Owens' claims as moot on the basis that any judgment would be discharged by the United States Bankruptcy Court's September 2019 order of discharge. In their April 7 response, the Owens asserted that, as Mr. Machado acknowledged in his motion, fraud would be an exception to the discharge in bankruptcy. The Owens requested sanctions pursuant to Rule 11 of the Tennessee Rules of Civil Procedure on the basis that Mr. Owens waited more than four years to notify the court of the bankruptcy discharge and, further, that the motion was

⁷ The Owens acknowledge that their first motion for summary judgment was heard before the matter was re-assigned.

frivolous and intended to cause delay.

The trial court heard the Owens' motion to amend and Mr. Machado's motion to dismiss on April 14. The trial court determined that any judgment against Mr. Machado arising from most of the Owens' claims were discharged by operation of law. By order entered May 15, 2025, the trial court granted Mr. Machado's motion and dismissed with prejudice all of the Owens' claims except their claim for fraud. The trial court denied the Owens' motion to amend their complaint.

The trial court heard the matter on June 4, 2025. Mr. Owens, Ms. Owens, and Mr. Machado testified at trial, and the trial court considered Mr. Ybarra's deposition testimony.⁸ By order entered July 1, 2025, the trial court found all the witnesses to be credible, forthcoming, and not deceptive. However, the court found discrepancies in the Owens' recollections as to whether Mr. Machado stated that he was licensed or bonded. The trial court noted that Tennessee Code Annotated §§ 62-6-102 and 62-6-500 et seq. distinguish between licensed contractors and home improvement contractors and "found no evidence that Mr. Machado held himself out as a licensed contractor." The court determined that the Owens failed to carry their burden of proof to demonstrate that "[Mr.] Machado made a fraudulent or intentionally false representation concerning his licensure status or the quality of workmanship." The trial court also concluded that the Owens "failed to show that any misrepresentation, if made, caused damages." The court also reviewed photos that were made part of Mr. Ybarra's testimony and observed that they were taken "four or five years after [the Owens'] suit was filed." Additionally, the court noted testimony that a March 2020 tornado "was an alternative source of damage to the home." Accordingly, the trial court found that the Owens failed to demonstrate that any damages to the home "were attributable to Mr. Machado's work." The court dismissed the Owens' action for fraud with prejudice and reiterated that the Owens' other claims were dismissed as discharged by bankruptcy. The trial court also held Mr. Machado was entitled to seek discretionary costs under "Rule 68" of the Tennessee Rules of Civil Procedure and reserved ruling on such costs.⁹

Mr. Machado filed a motion for discretionary costs and his counsel's affidavit for costs in the amount of \$3,272.50. The Owens responded to the motion and argued that the costs were not subject to Rule 68 and that some of the costs were incurred prior to Mr. Machado's offer of judgment. The Owens also asserted the defenses of laches, arguing that the scope of litigation would have been limited to the issue of fraud had Mr. Machado not delayed in asserting bankruptcy as a defense to the majority of their claims. Following a hearing on July 14, 2025, the trial court awarded Mr. Machado discretionary costs in the amount of \$2,610.00. Final judgment was entered on August 11, 2025, and the Owens

⁸ The Owens filed Mr. Ybarra's evidentiary deposition on January 24, 2025.

⁹ As discussed below, Tennessee Rule of Civil Procedure 54.04 governs the award of costs.

filed a timely notice of appeal.¹⁰

II. Issues Presented

The Owens present the following issues for review, as stated in their brief:

- I. Did the trial court err in denying Plaintiffs' motion for summary judgment heard on May 21, 2024?
- II. Did the trial court err in denying Appellant's motion for relief/revision from orders which was heard on August 12, 2024?
- III. Did the trial court err in failing to grant Appellants' motion for summary judgment?
- IV. Did the trial court err in denying Appellants' motion in limine filed pursuant to Tenn. R. Civ. P. 56.05?
- V. Did the trial court err in awarding Appellee sanctions based upon Appellee's motion to compel and in denying Appellants' motion for a protective order?
- VI. Did the trial court err in finding there was no fraud in Appellee's conduct in procuring the contract with Appellants as it relates to his fraudulent representations that he was a licensed contractor?
- VII. Did the trial court err in finding Appellants suffered no damages as a result of Appellee's fraud?
- VIII. Did the trial court err in awarding Appellee discretionary costs pursuant to Tenn. R. Civ. P. 68?

Mr. Machado raises the additional issue of whether this Court has subject matter jurisdiction to review the trial court's order denying the Owen's motion for summary judgment.

III. Standard of Review

¹⁰ On August 11, 2025, the Owens filed a designation of the transcript and, pursuant to Rule 24(b) of the Tennessee Rules of Appellate Procedure, stated that they did not intend to file a transcript of the trial proceedings. However, the transcript of the November 2024 summary judgment hearing was filed, and the trial court attached a portion the transcript of the June 4 hearing to its July 1 order.

This is a non-jury case. Accordingly, we review the trial court’s findings of fact *de novo* upon the record with a presumption of correctness unless the evidence preponderates otherwise. Tenn. R. App. P. 13(d); *Allstate Ins. Co. v. Tarrant*, 363 S.W.3d 508, 512 (Tenn. 2012). The evidence preponderates against the trial court’s factual findings when it supports another finding “with greater convincing effect.” *Hardeman Cnty. v. McIntyre*, 420 S.W.3d 742, 749 (Tenn. Ct. App. 2013) (citation omitted). Therefore, the trial court’s findings must contain sufficient underlying facts that clearly disclose the basis of the court’s determinations. *Lovelace v. Coley*, 418 S.W.3d 1, 34 (Tenn. 2013) (citations omitted). Appellate review of a trial court’s conclusions of law is *de novo* with no presumption of correctness. *Kelly v. Kelly*, 445 S.W.3d 685, 692 (Tenn. 2014).

IV. Discussion

A. Summary Judgment

We first address Mr. Machado’s assertion that this Court lacks jurisdiction to review the trial court’s orders denying the Owen’s motion for summary judgment. Mr. Machado relies on *Williamson County Broadcasting Co. v. Williamson County Bd. of Ed.*, 549 S.W.2d 371, 373 (Tenn. 1977), for the proposition that, after the trial court has entered a judgment on the merits, we have no jurisdiction over its interlocutory order(s) denying a motion for summary judgment. He cites *Hobson v. First State Bank*, 777 S.W.2d 24, 32 (Tenn. Ct. App. 1989), in support of his argument that “[t]he denial of a motion for summary judgment predicated on the existence of genuine issues as to material facts becomes unreviewable after a full trial is held and judgment is rendered on the merits.” However, neither *Hobson* nor *Williamson* stands for the proposition that, after the trial court denies a motion for summary judgment and tries the case on the merits, this Court is deprived of subject matter jurisdiction.

“[S]ubject matter jurisdiction refers to a court’s lawful authority to adjudicate a controversy” and it is “conferred and defined by the Tennessee Constitution and statutes.” *In re Conservatorship of Malone*, 691 S.W.3d 365, 370 (Tenn. 2024) (quoting *Cox v. Lucas*, 576 S.W.3d 356, 359 (Tenn. 2019)) (additional citations omitted). Subject matter jurisdiction cannot be waived, may be raised at any time, and a court may consider it *sua sponte*. *Berkeley Rsch. Grp., LLC v. S. Advanced Materials, LLC*, 740 S.W.3d 877, 881 (Tenn. 2026) (citations omitted). As Mr. Machado emphasizes in his appellate brief, “[u]nless an appeal from an interlocutory order is provided by the rules or by statute, appellate courts have jurisdiction over final judgments only.” *Bayberry Assocs. v. Jones*, 783 S.W.2d 553, 559 (Tenn. 1990). In this case, there is no dispute that the trial court entered a final judgment, the Owens filed a timely notice of appeal, and this Court has jurisdiction over the appeal pursuant to Rule 3 of the Tennessee Rules of Appellate Procedure. Accordingly, we have subject matter jurisdiction to review the trial court’s interlocutory orders. *See Conservatorship of Malone*, 691 S.W.3d at 370-71; *see also Alex*

Lyon & Son Sales Managers And Auctioneers, Inc. v. Boles, No. M2010-00388-COA-R3-CV, 2010 WL 3895520 (Tenn. Ct. App. Oct. 5, 2010)

However, it is well-settled that if a trial court determines a genuine factual dispute exists, the court's judgment denying a motion for summary judgment will not be disturbed when the matter has been tried on the merits. *In re Est. of Blackburn*, 253 S.W.3d 603, 611 (Tenn. Ct. App. 2007) (citations omitted). In *Alex Lyon & Son Sales Managers And Auctioneers, Inc. v. Boles*, No. M2010-00388-COA-R3-CV, 2010 WL 3895520 (Tenn. Ct. App. Oct. 5, 2010), this Court explained:

A denial of summary judgment is an interlocutory order and does not satisfy the finality requirement of Tenn. R. App. P. 3(a). See *Williamson County Broad. Co. v. Williamson County Bd. of Educ.*, 549 S.W.2d 371, 373 (Tenn.1977). When summary judgment is denied due to the existence of a genuine issue as to a material fact, the parties proceed to try the issue and "the question of the validity of the denial of summary judgment in effect becomes moot." *E.E.O.C. v. Sears, Roebuck & Co.*, 839 F.2d 302, 353 n. 55 (7th Cir.1988). The denial of summary judgment due to the existence of a genuine issue regarding a material fact merely decides that a trial is necessary.

Lyon, 2010 WL 3895520, at *1 (emphasis added). The *Lyon* court observed that it was not necessary to review the denial of summary judgment because:

The primary question on summary judgment is whether there exists a genuine issue of material fact as to the elements of a party's claim. Once the summary judgment motion is denied and the case proceeds to trial, however, the question of whether a party has met its burden must be answered with reference to the evidence and the record as a whole rather than by looking to the pretrial submissions alone.

Id. at *2 (quoting *Johnson Int'l. Co. v. Jackson Nat'l Life Ins. Co.*, 19 F.3d 431, 434 (8th Cir. 1994)). As this Court observed:

Furthermore, and more fundamentally, to allow such review would not provide proper respect for the judicial process. Unlike a summary judgment, a matter that is decided at trial has been through the true test of the adversarial process where witnesses are presented, cross-examined, and subjected to the credibility assessment of the court or jury. Each party has had the most complete hearing it can have. No good reason exists to disregard that process and substitute our judgment based on facts presented via affidavits, pleadings, and discovery documents at an earlier point in the litigation.

Id.

As this Court noted in *Lyon*, “the question . . . becomes whether the trial court denied the summary judgment *because* genuine issues of material fact existed[.]” *Id.* (emphasis added).

In *Lyon*, the *pro se* defendant replied to plaintiff/appellant’s motion for summary judgment with an “inartful” statement of facts but failed to send the statement to Lyon’s attorney. *Id.* at *2. Lyon argued that the motion for summary judgment was, therefore, not answered. *Id.* In its order denying Lyon’s motion, the trial court stated: “In light of the *pro se* status of the Defendant, however, the Court determined that it would be more appropriate to dispose of this case at trial[.]” *Id.* Following a trial on the merits, the court ruled in favor of the defendant. *Id.* at *1. On appeal, Lyon argued that the trial court denied its motion for summary judgment because the defendant was acting *pro se*, and not because it determined that a genuine issue of material fact existed. *Id.* at *1. Upon review, we determined that “the trial court essentially found a genuine issue of material fact” existed and that the court’s order denying summary judgment, therefore, was not reviewable.

Like the appellant in *Lyon*, the Owens argue that, under Rule 56.06 of the Tennessee Rules of Civil Procedure, the trial court erred by continuing the matter after the May 21 hearing and by denying their motion for relief/revision from the court’s May 31 order. However, the dispositive question in this case is whether the trial court ultimately denied the Owens’ motion because it determined that a genuine issue of material fact existed.

In its December 2023 order, the trial court found that the Owens’ motion was “not well taken.” The trial court made this determination after Mr. Machado filed his response and statement of facts, after a hearing on the matter, and upon “review of the record as a whole, and [with] due consideration thereof[.]” Further, during the November 12 hearing, the court stated that it would deny the Owens’ motion for summary judgment on the basis that “there [were] genuine issues of material fact that exist[.]” A lengthy discussion ensued regarding the Owens’ claim of fraud and causation of damages. Upon review of the record, we are satisfied that the trial court denied the Owens’ motion for summary judgment upon determining that a genuine issue of material fact existed. Accordingly, we will not further review that ruling here.

B. Motion in Limine

We turn next to the Owens’ argument that the trial court erred in denying their motion in limine for factual findings based exclusively on their motions for summary judgment and the parties’ associated statements of undisputed facts. This Court has noted that “a motion in limine should not be used as a vehicle to preclude a claim or defense *or as a substitute for a motion for summary judgment.*” *Jackson v. Joyner*, 309 S.W.3d 910, 915 (Tenn. Ct. App. 2009) (emphasis added) (citation omitted). “Rather, a motion in limine

provides a means by which a party may seek guidance from the trial court regarding an evidentiary question in order to formulate their trial strategy.” *Id.* (citation omitted). “It essentially substitutes for an evidentiary objection which may be made at trial.” *Id.* (citation omitted).

We review a trial court’s ruling on a motion in limine under the deferential abuse of discretion standard of review. *Singh v. Larry Fowler Trucking, Inc.*, 390 S.W.3d 280, 284 (Tenn. Ct. App. 2012) (citations omitted). Under this standard of review, “[w]e are required to uphold the trial court’s ruling ‘as long as reasonable minds could disagree about its correctness,’ and ‘we are not permitted to substitute our judgment for that of the trial court.’” *Id.* (quoting *Caldwell v. Hill*, 250 S.W.3d 865, 869 (Tenn. Ct. App. 2007)).

The Owens’ first motion in limine essentially asked the court to revisit their motion for summary judgment and to limit its factual findings to those asserted in the parties’ statements of fact. Essentially, the Owens sought to use the motion as a substitute for their motion for summary judgment. The Owens’ second motion in limine pertained to Mr. Machado’s testimony regarding the warranty. However, the matter ultimately went to trial on the sole issue of fraud after the trial court dismissed the remaining claims by operation of law under the bankruptcy order of discharge. Thus, the determinative issue before the trial court was one of witness credibility regarding whether Mr. Machado held himself out to be a licensed contractor. We have long noted that trial courts retain the “singular ability to ascertain the credibility of the witnesses.” *Richardson v. Spanos*, 189 S.W.3d 720, 726 (Tenn. Ct. App. 2005). Accordingly, the trial court acted within its discretion by denying the Owens’ motions in limine.

C. Sanctions and Protective Order

We turn next to the Owens’ contention that the trial court erred in awarding Mr. Machado fees associated with his successful October 2024 motion to compel. The Owens argue that the court erred in its award “because included in those fees was time spent by counsel for a second appearance because counsel failed to include the entire deposition transcripts as argued in Appellants’ response to Appellee’s Motion.” The Owens’ argument, as we understand it, is that a second hearing would not have been necessary but for Mr. Machado’s failure to serve transcripts of their depositions on their legal counsel as required by the Wilson County Local Rules. The Owens also assert that the trial court erred in awarding sanctions because the court admonished Mr. Machado and instructed him not to ask speculative questions.

“Trial courts have wide discretion to determine the appropriate sanction to impose for discovery abuses.” *Griffith Servs. Drilling, LLC v. Arrow Gas & Oil, Inc.*, 448 S.W.3d 376, 379 (Tenn. Ct. App. 2014). Like appellate review of a trial court’s decision regarding a motion in limine, we review a trial court’s determination of discovery sanctions under the deferential abuse of discretion standard. *Alexander v. Jackson Radiology Assocs., P.A.*,

156 S.W.3d 11, 14 (Tenn. Ct. App. 2004) (citation omitted).

From our review of the record, we observe that the trial court continued the hearing of Mr. Machado's motion to compel because the Owens' counsel (Mr. Sparks) argued that Mr. Machado's counsel (Mr. Vasek) failed to serve him with the complete transcripts of the Owens' deposition testimony as required by the local rules. We also note that, in their November 7 response to Mr. Machado's motion, the Owens asserted that, despite several requests, Mr. Sparks had not been served with a copy of the deposition transcripts as required by Local Rule § 9.02. In a footnote, they acknowledge that Mr. Sparks had a copy of Ms. Owens' June 2023 deposition, which they filed with their motion for summary judgment.

In his October 2 motion to compel, Mr. Machado stated that Ms. Owens' July 2024 was "filed simultaneously herewith" and "dr[e]w the Court's attention to the deposition transcript in its entirety." He also included relevant portions of the deposition in his motion. On the same day, Mr. Machado gave notice of filing Ms. Owens June 2023 and July 2024 deposition transcripts and attached copies of the transcripts to his notice. On October 23, he gave notice of filing the transcripts of Mr. Owens' deposition. The respective certificates of service indicate that the motion to compel and filing notices were served on Mr. Sparks.

From our review of the hearing November 12 hearing transcript, we observe that Ms. Owens' deposition testimony was the testimony at issue. With respect to the requirements of the local rule, we note the following exchange at the November 12 hearing:

MR. SPARKS: . . first, let me address the Motion to Compel. I'd like Your Honor to deny that simply because I was not served with the transcripts from the depositions.

THE COURT: But the entire -- again, I read the local rules . . . I think the local rule says it doesn't say the entire transcript, it says the pertinent part.

MR. VASEK: Judge, I did file it actually. So I filed a notice of it and I submitted it to him.

THE COURT: It was a late-filed, right?

MR. VASEK: No, it was filed back in October 23rd was the most recent one. So Mr. Sparks could have either (A) gone to the court reporter and paid them himself for it, which is what I did, or (B) just called the clerk and got a copy of it, because I gave him notice that I filed the transcript in the entirety with the court clerk.

THE COURT: But you cited the pertinent parts, and that's what I'm getting to. You cited the pertinent parts in the Motion that said, so you're going to object to the questioning and you said, well, if it's for this and you said -- and then Mr. Vasek kept just saying well, if you're going to object to it, object to it. And then you did and then you took Mr. Owens' deposition and it was essentially the same thing.

MR. VASEK: I did. There's a copy/paste from the transcript to where I provided it.

THE COURT: Yeah. So I'm still going to deny that. I'm going to find that the pertinent parts were included in the Motion.

MR. SPARKS: And I filed -- or part of my response is, that's fine to file it that way, although I think he just said he filed the entire thing, both of the entire depositions, am I correct?

MR. VASEK: I did.

MR. SPARKS: Okay. So that's fine, but the local rule says you've still got to serve it on me and he's got to serve it on me a day before the hearing. Now, given the Tennessee Rules of civil Procedure 5, in this context, since it's less than a week, that would have been served those on me no later than I think it would have been Friday since the day before -- that's the day before the hearing because you've got an intervening weekend and a holiday.

THE COURT: So you're saying he's got to serve the entire deposition transcripts to you?

MR. SPARKS: Yes. And he can do that digitally. He doesn't have to reprint it, because

There's nothing in the Rule that requires me to bring my happy self down to the court clerk's office and have them make a copy of that for me. That's excessively expensive for any deposition. . . .

THE COURT: Explain to me why, what's the necessity of that?

MR. SPARKS: Because the Rules provide specifically that if I request it, he has to file the entire deposition so that Your Honor can get the entire picture, and I believe I mentioned that.

THE COURT: But it's for the purpose of me getting the entire picture?

MR. SPARKS: Yes, sir. And it's the purpose of me to be able to properly respond so that I can have that entire picture to refer to when I'm filing a response. That's the purpose of it.

THE COURT: Well, I'll continue it if that's what you want so he can --

MR. VASEK: Judge, I have though. I filed the transcript.

THE COURT: Yeah, but you've not digitally served him.

MR. VASEK: He has the same access to it that I do.

THE COURT: I'm going to continue this and let you digitally send it to him and then --

MR. VASEK: I will do so. I do want to make everybody aware, so part of my Motion is I'm asking for fees against Mr. Sparks directly. So if we're continuing it, it's only going to exacerbate what fees I'm asking for him, because I think he was totally outside the rules whenever he instructed his client not to answer those questions. So if wants to continue it, that's at his own peril.

The relevant portion of Section 9.02 of the Local Rules for the Fifteenth Judicial District states:

(b) All affidavits or other documents intended to be used to support or oppose motions shall be served on the opposing party prior to the day of the motion hearing.¹¹

In light of the above exchange, we agree with the trial court that Mr. Vasek included the portions of the depositions that he *intended to be used* when he filed his motion to compel and that the motion was served on Mr. Sparks. Further, the trial court continued the hearing so that the depositions could be served digitally, which is not required by the rule, and Mr. Sparks did not object to the court's resolution of the question.

We turn next to the Owens' contention that the trial court erred in awarding discovery sanctions in light of its "admonishment" of Mr. Vasek. We observe discussion between Mr. Sparks, Mr. Vasek, and the trial court concerning the wording of questions asked during Ms. Owens' deposition regarding when the Owens became aware or should

¹¹ Available at:
https://wilsoncountycourts.com/site/wpcontent/uploads/2026/04/WCCourts_LocalRules_Criminal.pdf

have become aware that Mr. Machado was not a licensed contractor. As counsel agreed, their interpretations of “speculation” differed. The trial court advised Mr. Vasek:

So I’m telling you, Mr. Vasek, don’t ask her to declare. If she wants to offer that, she’s welcome to, but ask her whatever question you want to ask her and him, ask them whatever you want to ask them but, you know, to get the Matlock moment of the saying exactly what you want to say, I’m not requiring that. Just ask them the questions and then I’ll decide all of that.

Mr. Vasek replied that Ms. Owens “already ha[d] in some instances[,]” and the trial court noted that many of Mr. Sparks’ objections were moot.

As noted above, the Owens asserted that the Discovery Rule tolled the statutes of limitations in this case. Thus, when the Owens became aware of the alleged damages and that Mr. Machado was not a licensed contractor was relevant to their asserted defense. Additionally, the trial court made no finding that Mr. Vasek’s questions were improper and granted his motion to compel. To the extent that the Owens assert that the trial court erred in granting Mr. Machado’s motion to compel, that argument is waived where it was not raised as an issue in their Statement of the Issues. *See Champion v. CLC of Dyersburg, LLC*, 359 S.W.3d 161, 163 (Tenn. Ct. App. 2011).

From the record, we observe that approximately \$510.00 of the \$1,770.00 fee award was incurred after the November 12 hearing. We additionally observe that \$210.00 of those fees would have been incurred regardless of whether the digital transcripts were sent to the Owens’ counsel before or after the December 11 hearing, and the remainder were incurred reviewing email from the Owens’ counsel regarding the transcripts and drafting responses to that email. We cannot say the trial court abused its discretion in granting Mr. Machado’s motion for attorney’s fees in the amount of \$1,770.00.

We turn next to the Owens’ argument that the trial court erred by denying their December 2024 motion for a protective order. In their motion, the Owens asserted that Mr. Machado’s counsel “insisted on asking questions that required speculation on the part of Plaintiffs, specifically, counsel posed questions which asked what Plaintiffs “could” or “should” have done or “would” have seen. They requested:

Wherefore, Plaintiffs respectfully request that, at any subsequent depositions of Plaintiffs allowed by the Court, counsel for Machado be prohibited from asking Plaintiffs any question which requires Plaintiffs to speculate on when they could, should or would have noticed any of Machado’s defective work.

However, in their appellate brief, the Owens assert:

Second, the trial court at the initial motion hearing already held that the

objections to questions posed which required Appellants to speculate were improper. The trial court admonished counsel for Appellee with respect to those questions and went so far as to instruct counsel for Appellee the format for proper questions.

Thus, it appears from their argument that the Owens were granted the relief they sought. This issue is without merit.

D. Fraud

In their brief, the Owens assert that the trial court erred by permitting Mr. Machado to testify beyond what was established in his response to their motion for summary judgment. In short, the Owens reiterate their arguments that the trial court erred in denying their motion in limine and their claims should have been resolved on the basis of their motion for summary judgment. We review a trial court's evidentiary rulings for an abuse of discretion:

In Tennessee admissibility of evidence is within the sound discretion of the trial judge. When arriving at a determination to admit or exclude even that evidence which is considered relevant trial courts are generally accorded a wide degree of latitude and will only be overturned on appeal where there is a showing of abuse of discretion.

Tompkins v. Annie's Nannies, Inc., 59 S.W.3d 669, 674–75 (Tenn. Ct. App. 2000) (quoting *Otis v. Cambridge Mut. Fire Ins. Co.*, 850 S.W.2d 439, 442 (Tenn.1992) (citations omitted)). As noted above, the trial court denied the Owens' motion because it determined that the parties' statements did not resolve all the genuine issues of material fact. As also discussed above, the trial court's ruling on the motion for summary judgment is not reviewable here. Additionally, the trial court's judgment on the issue of fraud required the trial court to make credibility determinations regarding what Mr. Machado did or did not represent to the Owens. Thus, the trial court did not abuse its discretion in allowing Mr. Machado to testify.

With respect to the trial court's judgment on the issue of fraud, in its July 2025 order, the trial court found that Mr. Owens, Ms. Owens, and Mr. Machado were all "credible and forthcoming in their testimony and not deceptive in their answers." However, the court noted "discrepancies" in the Owens' recollection as to whether Mr. Machado had stated that he was "licensed or bonded[.]" The court referenced Tennessee Code Annotated §§ 62-6-102 and 62-6-500 et seq., noted that the statutes distinguish between licensed contractors and home improvement contractors, and "[u]ltimately . . . found no evidence that Mr. Machado held himself out as a licensed contractor." The court concluded that the Owens had failed to carry their burden of proof to demonstrate that Mr. Machado "made a fraudulent or intentionally false representation concerning his licensure

status or the quality of workmanship.” In sum, the trial court found Mr. Machado to be more credible on the issue of what he represented regarding his licensure status.

As noted above, questions of witness credibility are within the province of the trial court. “The trial court’s determinations regarding witness credibility are entitled to great weight on appeal and shall not be disturbed absent clear and convincing evidence to the contrary.” *Thomas v. Smith*, 682 S.W.3d 213, 222 (Tenn. Ct. App. 2023) (citations omitted).

Although the Owens did not file the trial transcript on appeal, the trial court attached a portion of the transcript to its written order. The attachment reflects that, at the conclusion of the hearing, the trial court noted:

The only thing at odds is they said they remembered that he said licensed contractor. He said he did not. None of the documentation said licensed contractor and, at least with Ms. Angela Owens, she couldn’t remember fully what was said. I think he -- her language was, “I think he told me licensed or bonded, I’m not sure which,” but Mr. Shane did say he remembered that it was licensed, Christian, and bonded.

The court concluded: “So I can’t find that there has been a misrepresentation.”¹²

Because the Owens elected not to file the trial transcript on appeal, we are unable to further review the parties’ testimony. As the appellants, the Owens had the “‘duty to prepare a record for our review that includes everything contained in the trial court record that is necessary for our examination of the issues presented on appeal.’” *Blount v. Blount*, 720 S.W.3d 295, 356 (Tenn. Ct. App. 2024), *appeal denied* (Mar. 13, 2025) (quoting *Deloach v. Sahara Daycare Ctr., Inc.*, No. W2022-01695-COA-R3-CV, 2023 WL 8433798, at *5 (Tenn. Ct. App. Dec. 5, 2023) (quoting *McAllister v. Rash*, No. E2014-01283-COA-R3-CV, 2015 WL 3533679, at *8 (Tenn. Ct. App. June 5, 2015))). “To the extent that the absence of a full record precludes this Court from reviewing the appellant’s issues, the trial court’s ruling is presumed to be correct.” *Id.* (quoting *id.*) We find no clear and convincing evidence to contradict the trial court’s credibility assessments. Additionally, the evidence contained in the record transmitted on appeal does not preponderate against the trial court’s finding that Mr. Machado did not fraudulently misrepresent his licensure status.

E. Damages

We next turn to whether the trial court erred by determining that the Owens had

¹² The partial transcript was not explicitly incorporated by reference into the trial court’s July 2025 order. However, the court’s written order reiterates the court’s oral credibility determinations.

failed to carry their burden to prove damages. A plaintiff carries the burden to prove damages by a preponderance of the evidence. *Walker v. Sidney Gilreath & Assocs.*, 40 S.W.3d 66, 71 (Tenn. Ct. App. 2000). In a bench trial, “[a] trial court’s award of damages is a question of fact and will be affirmed unless the trial court adopted the wrong measure of damages or the evidence preponderates against the amount of damages awarded.” *Metro. Gov’t of Nashville v. Teleport Commc’ns Am., LLC*, 552 S.W.3d 203, 215 (Tenn. Ct. App. 2017).

In its final order, the court noted that the Owens “acknowledged” that Mr. Machado corrected issues brought to his attention in February 2017. The court found that “[a]fter that correction, there was no documented dissatisfaction for approximately 18 months” and “no photographs were taken contemporaneously with the alleged issues.” The court stated that it had reviewed Mr. Ybarra’s deposition and found that “the work that [Mr.] Ybarra observed from the pictures was from four or five years prior.” The trial court found that the Owens “failed to show that any misrepresentation, if made, caused damages.” Thus, the court alternatively determined that, even if Mr. Machado held himself out to be a licensed contractor, no damages were caused by such misrepresentation.

In view of our disposition of the issue of fraud, it is unnecessary for us to review the trial court’s alternative conclusion.

F. Costs

We finally turn to the trial court’s assessment of costs. In their brief, the Owens assert that the trial court erred in its assignment of discretionary costs because Mr. Machado incorrectly cited Tennessee Rule of Civil Procedure 68 to support his motion for costs. The Owens assert that costs are recoverable under Tennessee Rule of Civil Procedure 54.04(2), and the trial court accordingly erred by awarding them under Rule 68. Mr. Machado acknowledges that Rule 54.04 governs the assessment of costs and asserts that the trial court did not err by considering the substance rather than the form of his motion.

Our supreme court has held that “requiring courts to consider the substance of a post-trial motion, rather than its form, is consistent with the rules of civil procedure.” *Tennessee Farmers Mut. Ins. Co. v. Farmer*, 970 S.W.2d 453, 455 (Tenn. 1998) (citing Rule 8.05, Tenn. R. Civ. P.). Further, “trial courts are vested with wide discretion in awarding discretionary costs, and this court will not interfere with such an award except upon an affirmative showing that the trial court abused its discretion.” *Sanders v. Gray*, 989 S.W.2d 343, 345 (Tenn. Ct. App. 1998) (citations omitted). The trial courts will generally “award such costs to whichever party ultimately prevails in the lawsuit, provided the prevailing party has filed a timely, properly supported motion.” *Id.* (citations omitted). The “trial courts are free to apportion costs between the litigants as the equities of each case demand[.]” . . . and “if any equitable basis appears in the record which will support the trial court’s apportionment of costs, this court must affirm.” *Id.*

Here, although Mr. Machado did not cite the correct rule, it is undisputed that his motion for discretionary costs otherwise complied with Rule 54.04. Additionally, we note that Mr. Machado requested costs in the amount of \$3,272.50, and the trial court awarded him partial costs in the amount of \$2,610.00. The trial court did not abuse its discretion in its award of costs to Mr. Machado.

V. Conclusion

In view of the foregoing, the judgment of the trial court is affirmed. This matter is remanded to the trial court for entry of a judgment consistent with this Opinion. Any remaining issues are pretermitted as unnecessary to our disposition of this appeal. The costs on appeal are assessed against the Appellants, Gregory Owens and Angela Owens.

s/ Valerie L. Smith
VALERIE L. SMITH, JUDGE