

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs July 1, 2026

FILED

10/28/2026

Clerk of the
Appellate Courts

YOUNG CONTRACTING/SE, INC. v. PITT EXCAVATING, LLC

Appeal from the Chancery Court for Davidson County
No. 21-0622-IV Russell T. Perkins, Chancellor

No. M2025-01651-COA-R3-CV

A general contractor sued a subcontractor, alleging breach of contract. After a bench trial, the trial court found in favor of the general contractor and awarded damages and attorney's fees. The subcontractor appealed. Discerning no reversible error, we affirm and remand for a determination of the general contractor's appellate attorney's fees.

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

ANDY D. BENNETT, J., delivered the opinion of the Court, in which STEVEN W. MARONEY and WILLIAM E. PHILLIPS II, JJ., joined.

Dennis W. Powers and Taylor D. Payne, Gallatin, Tennessee, for the appellant, Pitt Excavating, LLC.

C. Damon Gunnels, Atlanta, Georgia, and Benjamin E. Goldammer and Danica G. Suedekum, Nashville, Tennessee, for the appellee, Young Contracting/SE, Inc.

OPINION

FACTUAL AND PROCEDURAL BACKGROUND

This case concerns a contract dispute between Young Contracting/SE, Inc. ("Young") and Pitt Excavating, LLC ("Pitt"). On November 7, 2018, Young, the general contractor, entered into a subcontract¹ with Pitt to perform excavation, grading and storm

¹ Eight "exhibits" were attached to and incorporated in the subcontract: Exhibit "A" – Contract Documents; Exhibit "B" – Special Inclusions in Work; Exhibit "C" – Application for Payment Form/Lien Waivers Affidavits; Exhibit "D" – Subcontractor Warranty Form; Exhibit "E" – Insurance Requirements; Exhibit "F" – Request for Taxpayer Identification Number and Certification; Exhibit "G" – Sample Site Specific Safety Program; and Exhibit "H" – Construction Schedule.

sewer work on a construction project in Nashville (“the project”). The subcontract stated that the expected completion date was May 17, 2019.

In July 2021, Young filed a complaint in Davidson County Chancery Court, alleging that Pitt had “agreed to perform all supervision and services and provide all materials, labor equipment and everything necessary to complete [sic] perform the work described in the Subcontract in a timely fashion.” The complaint further alleged that Pitt had failed to promptly complete the work. Young claimed that it provided Pitt with several notices of its failed performance and that Young eventually removed Pitt from the project and had been required to hire other subcontractors to finish the work. As relief, Young sought damages in excess of \$500,000 and attorney’s fees and costs.

Pitt filed its answer in July 2021, denying that it had breached the contract and denying that Young was entitled to an award of its fees and costs. Pitt also asserted a counterclaim against Young, alleging that Pitt had completed additional work not contemplated by the subcontract, for which Young continued to owe Pitt money. The counterclaim alleged that Young wrongfully ordered Pitt off the project and that it was owed \$163,738.06 plus interest and attorney’s fees.

The matter proceeded to a bench trial held on March 11–12, 2024. Four witnesses testified, and 32 exhibits were admitted into evidence. The testifying witnesses were Rhon Redwine, Vice President for Young and project manager; Charles Eberhardt, the project superintendent for Young; John Pitt, the owner of Pitt; and Damon Warren, the project superintendent for Pitt.

Mr. Redwine’s testimony included the following information and assertions: The project was a 20,000-square-foot medical office building. Young hired Pitt to perform erosion control, rock blasting, grading, and storm sewer work. Based on the project’s schedule, this work, even with various time extensions, should have been finished by October 30, 2019. However, by October 2020, Pitt’s work remained incomplete. Mr. Redwine opined that one reason the project took longer was Pitt’s decision to use a “hoe ram,” which he described as a large jackhammer attached to a backhoe, instead of blasting, as the subcontract required. It was Mr. Redwine’s understanding that Pitt had tried to hire a blasting subcontractor but was unable to do so, leading Pitt to use the hoe ram. Per Mr. Redwine, “[that the subcontract called for blasting] was written and sent to [Mr. Pitt] on November 7th, and we didn’t start the project until [March 5, 2019]. He had ample time to object to blasting if that wasn’t going to be his method.”

Mr. Redwine addressed the impact Pitt’s work had on the overall project, including delays to other work and increased overhead costs. The delays increased trailer rental fees, temporary power costs, and, as Mr. Redwine stated, “all sorts of field overhead items that I’ve budgeted, so if a subcontractor delays the project, my field overhead clock is just spinning like crazy with those costs.” Therefore, Mr. Redwine stated, “It’s important that .

. . all the subs, complete their work per the construction schedule so we all get done on time so I'm not standing out there on the project with a big field overhead clock spinning." Mr. Redwine understood that if he saw defective work going unremedied, or if he believed there was not sufficient money left on the subcontract, the subcontract allowed him to withhold payment for those costs. Additionally, if Young found that Pitt was failing to comply with the subcontract, Young was to give 48 hours' notice of this finding, and if Pitt did not "get all these items back in order and back on track," Young had the right to supplement the work.

Mr. Redwine also detailed his communications with Mr. Pitt regarding the claimed defective and delayed work. Mr. Redwine testified that Young had given Pitt four notices of noncompliance with the subcontract, all in the form of emails from Mr. Redwine to Mr. Pitt. All of the emails were admitted into evidence. Mr. Redwine sent the first notice on June 29, 2020, stating that Pitt had "been on site way too long and [Pitt's] work should have been done" and identified two areas "holding up other trades": the "bio ponds" and work on the parking lot and a retaining wall. Mr. Redwine also stated in this email that he would be asking other companies to price supplemental work. The second notice was sent on July 7, 2020, and again included Mr. Redwine detailing how much work remained. In the second notice, Mr. Redwine also informed Pitt that Young would begin charging all field overhead costs from that point forward to Pitt. The third notice was sent on August 6, 2020, and included Mr. Redwine stating what needed to be completed. Mr. Redwine included in this email that it was "unbelievable that [Young had] a completed building and grading and storm work [was] still on going and preventing paving, sidewalks, and landscaping." Mr. Redwine urged Mr. Pitt to return to the job site immediately and finish the remaining work.

Mr. Redwine sent the final notice on Thursday, October 15, 2020. In this email, Mr. Redwine listed the remaining unfinished work. He then stated that Pitt had been on the site for almost a year and was still performing grading, and that it was "obvious to the owner and architect [that] your performance is a problem." Because of this, Mr. Redwine stated that "at this point it would just be best for us to get this project complete with someone else and for you to move your equipment off." Mr. Redwine recounted the three prior emails noting Pitt's delays and stated that Young had previously put Pitt on notice that unresolved issues could result in Young bringing in other subcontractors. On October 16, 2020, Mr. Redwine followed up on this email, clarifying that the prior email was intended to be the 48 hours' notice required by the subcontract and that, if the defective work was not remedied, Young had a new subcontractor ready to begin work on the following Monday. Mr. Pitt responded to this email by saying that Pitt was preparing a notice of nonpayment against Young and that Pitt would be filing liens against the property. Mr. Redwine responded that Young had not received any payment requests from Pitt and directed Mr. Pitt to cease work on the project.

Young contracted with several other subcontractors to finish the work. CKF, another on-site grading contractor, was hired first on a “time and material” basis, rather than a lump sum. To show the work done and amount billed, Young offered into evidence daily reports and invoices created by CKF. Pitt objected to the evidence as hearsay and argued that the records did not fall under the business records exception. The trial court overruled the objection, finding that once Young accepted the reports and invoices from CKF, they became a part of Young’s file and were therefore Young’s business records. The checks Young issued to CKF were also admitted as an exhibit. Young submitted a cover sheet prepared by Mr. Redwine documenting CKF’s invoices and the amount Young had paid. Mr. Redwine testified that the cover sheet’s purpose was “[t]o total the amounts paid to CKF correctly to make sure that I’ve paid their invoices and that the checks that went out with the work, you know, I totaled all those up.” Mr. Redwine stated that he also used the cover sheet to document what supplemental work went towards what Pitt had left unfinished. Over Pitt’s objection, the trial court admitted the checks as exhibits and marked the cover sheet for identification only, finding that the court could independently total the amounts. The cover sheet reflected that Young paid CKF \$245,275.93.

Because of its time constraints, CKF could not complete the outstanding scope of work. Therefore, in January 2021, Young hired Thorne Excavating (“Thorne”) to continue completing the outstanding work. Thorne also worked on a time-and-materials basis billed to Young monthly, and Thorne was paid \$141,437.73. Young also had to pay Sessions Paving to complete work Pitt left unfinished. Specifically, Pitt was responsible for excavating rock underneath the area where curbs would be placed but failed to do so. Therefore, Sessions Paving had to complete this work before installing the curbs. Young paid Sessions Paving \$69,502 for work attributable to Pitt.

During Mr. Redwine’s testimony, Young submitted a second cover sheet showing how Mr. Redwine calculated its total claimed damages. This cover sheet reflected that Young had paid \$245,275.93 to CKF; \$141,437.73 to Thorne; and \$69,502 to Sessions Paving. Additionally, \$32,397.51 was paid to Scott Materials for “bio material/with stone” that Pitt was originally required to provide. Lastly, the damages cover sheet included \$163,794.87 in overhead costs as calculated by Mr. Redwine. The overhead cost was based on \$768.99 per day over 213 days. Mr. Redwine based the start date on the July 7, 2020 email to Pitt stating that Pitt would be responsible for increased overhead costs from that point forward, and the end date on Thorne finishing Pitt’s remaining work on February 5, 2021. The daily overhead cost was based on \$350 per day in “supervision” costs, attributed to Mr. Eberhardt’s daily pay; \$164.50 in labor burden costs, which was calculated as 47% of the supervision cost; \$22.83 in field office costs; \$2.83 in temporary power costs; \$5.50 in temporary toilet costs; \$155 in lodging costs for Mr. Eberhardt; \$23.33 for Mr. Eberhardt’s vehicle; \$20 in fuel for Mr. Eberhardt; and \$25 for Mr. Eberhardt’s per diem. This cover sheet was admitted over objection for identification purposes only, with the supporting documents admitted as evidence.

Much of Mr. Redwine's testimony on cross-examination pertained to changes made to the project's drawings during Pitt's involvement. On July 17, 2019, Mr. Redwine sent an email to Mr. Pitt saying, "Please review the attached drawing. The owner is want[ing] to add a connecting driveway to the property to the west. Please provide a price for the grading and storm." A revised drawing was attached to this email and also submitted as an exhibit.

The revised drawing included a cloud-shaped outline, which Mr. Redwine testified was how the site civil engineer highlighted changes to the drawing. Mr. Redwine testified that, although the cloud-shaped outline highlighted changes, the revised drawing also included changes outside the cloud. Mr. Redwine testified that Pitt was responsible for reviewing the revised drawing, determining what work was required to implement the changes, and submitting a change order to Young. Mr. Redwine considered Mr. Pitt to be the "expert" in grading work and stated that he expected Mr. Pitt to know how to implement the changes. An email exchange between Mr. Redwine and Mr. Pitt exemplified Mr. Redwine's understanding. On July 29, 2020, Mr. Pitt received an email from his surveyor showing that the revised drawing included a 32% increase in surface area of the west bio pond. That same day, Mr. Pitt forwarded this email to Mr. Eberhardt. On September 9, 2020, Mr. Pitt forwarded these emails to Mr. Redwine, saying that "[t]o get finish[ed] with this job me and you need to meet on site to talk about the big difference in price [o]n this pond and Benzene drive see attach[ed] from Byrd Engineer." Later that day, Mr. Redwine responded, saying, "Look at your contract drawings compared to the current drawings. If there is a change, get me the pricing asap. . . . If there is a legitimate change, I will be glad to try to get it approved this late."

Mr. Eberhardt, Young's site superintendent on the project, testified about his observations of Pitt's work. Mr. Eberhardt stated that he did not believe Pitt had sufficient workers for the project. Daily logs created by Mr. Eberhardt were entered into evidence, which showed numerous days when he recorded "no production" or "no Pitt show" as to Pitt's performance for the day. Mr. Eberhardt testified that this was a common occurrence on the project. Mr. Eberhardt also oversaw the work performed by CKF, Thorne, and Sessions Paving. Regarding whether Pitt was provided with the revised drawing, Mr. Eberhardt testified that he kept a copy of the revised drawing in his construction office and that he saw the revised drawing posted in Pitt's construction equipment. The testimony of Mr. Redwine and Mr. Eberhardt concluded Young's proof.

Mr. Pitt testified the next day. He described differences between the revised drawing and his original scope of work, specifically in the two bio ponds, stating that, in September 2020, Mr. Redwine had contacted him to put together a price for "what [Mr. Pitt] assumed had to be done" to fix the bio ponds. After this, Mr. Pitt contacted Byrd Surveying to determine what needed to be done, including the amount of material that needed to be removed to create the bio ponds. Mr. Pitt emailed the surveying report to Mr. Eberhardt in

July 2020 and then followed up with Mr. Redwine in the September 9, 2020 email discussed earlier in Mr. Redwine's testimony.

Regarding the cloud highlighted area in the revised drawing, Mr. Pitt testified that it was his understanding that a clouded area meant there had been a change from the original drawing and that the architect or civil engineer would "cloud the print or put a triangle on the print and note that . . . so you know that there is a change that needs to be addressed and a change order should be required." However, he said that when looking at drawings with a clouded area, it was not his practice to review the remainder of the drawing because he "presume[d] the entire print is the same as it was originally." Therefore, it was his understanding that no other work was required on the revised drawing outside the clouded area.

Mr. Pitt testified that he initially received only the clouded portion of the revised drawing from Mr. Eberhardt and that, upon receiving it, he prepared a quote based only on the differences contained in the clouded area. He stated that the revised drawing did not reflect what Pitt based the remaining work on and that he told Mr. Warren, Pitt's site superintendent on the project, that the only change was to extend the access drive in the clouded area. In response to Young's counsel, Mr. Pitt gave the following testimony regarding when and how he received the revised drawing:

Counsel: All right. And you received the revised drawing in July of 2019; is that right?

Mr. Pitt: When I went and picked it up at Dale & Associates, yes sir. What day, I cannot tell you.

Counsel: Well, no you got the revised drawing earlier than that, because that's what you used to price the connector drive?

Mr. Pitt: Do what now?

Counsel: You priced the connector—that drive, that access road—

Mr. Pitt: The clouded access road, yes.

Counsel: —using the revised drawings that you received from Young, correct?

Mr. Pitt: Yes. I got that from Rhon Redwine—or Charles Eberhardt.

Counsel: Okay. And that was in July of 2019?

Mr. Pitt: Whatever it says.

When questioned by Young's counsel regarding whether he recalled receiving the various emails from Mr. Redwine, Mr. Pitt testified that:

Counsel: Okay. But it's [sic] starts—part of Exhibit 17 [an email chain between Mr. Redwine and Mr. Pitt] at the bottom is Mr. Redwine saying, "This e-mail follows my e-mail of yesterday." Do you see that?

Mr. Pitt: Yes, sir.
Counsel: Okay. That's the same as Exhibit 16 [the October 16, 2020 email], but you said you didn't remember e-mail—you didn't remember that e-mail, did you?
Mr. Pitt: No, sir.
Counsel: Okay. But you would agree with me that it exists, right? Because you're responding to it.
Mr. Pitt: Yes.
Counsel: Okay. So is it entirely possible that you got other e-mails from Mr. Redwine that you don't remember?
Mr. Pitt: I got a bunch of them I didn't even open them up. Because my—the problem was, I don't have Wi-Fi where I live.
Counsel: Okay. So it's entirely possible that you got the e-mail from Mr. Redwine that had the revised drawings on it, and you just didn't look at it, or you don't remember? Is that possible?
Mr. Pitt: Didn't get no revised drawing from anybody. No e-mail shows that I got a revised drawing.

Mr. Pitt also contested whether Young had given an adequate opportunity to cure, stating that, after Mr. Redwine had stated that the Thursday, October 15, 2020 email was Young's 48 hours' notice to cure, Pitt was not given a list of issues to be cured. Moreover, he asserted the parties' agreement did not anticipate that Pitt would work through the weekend. Pitt admitted into evidence pictures of the project site taken on the following Monday showing the state of the site when Pitt vacated the project. Mr. Pitt also testified that he did not receive the July 7, 2020, or August 6, 2020 emails and admitted he did not respond to either. Mr. Pitt testified that he knew that Young was complaining about Pitt's progress on the project. As to why Pitt did not supply additional workers, Mr. Pitt testified that he "didn't need to put anymore manpower on the job. We were still waiting on change orders to finish up what—the bio ponds and stuff like that, to finish up our work." Mr. Pitt testified that he believed Pitt had enough workers on site to "do what we needed to do." However, Mr. Pitt admitted that the work was not complete when Pitt ceased work in October 2020. Damon Warren, Pitt's superintendent on the project, also testified that he had a picture of the revised drawing on his phone and that he had seen the revised drawing in Mr. Eberhardt's construction office. This concluded the proof in the trial. The trial court requested post-trial briefs from the parties and took the matter under advisement.

The trial court entered a nonfinal order² on December 13, 2024, finding in favor of Young. In this order, the trial court made findings of fact and conclusions of law, which we summarize thusly: The parties entered into a subcontract agreement in November 2018,

² The trial court first entered what it referred to as a "nonfinal" order resolving the underlying claims and later entered a final order in which the court incorporated its prior order and awarded attorney's fees to Young.

wherein Young agreed to pay Pitt \$474,000 for its work on the project. The subcontract provided:

2. A. Subcontractor agrees to perform all supervision and services described in Exhibit “B” in a good, workman-like manner, and to furnish and pay for all materials, labor, scaffolding equipment, tools, appliances, and everything necessary for the complete performance of such services in accordance with this Subcontract, applicable building codes, the contract and all conditions of contract between the Owner and the Contractor including drawings and specifications, as amended from time to time, (collectively, including documents listed on Exhibit “A”, the “Contract Documents”) all of which are incorporated into this Subcontract (all such services and materials being hereinafter collectively referred to as the “Work”). Subcontractor is to perform the Work, including all items necessary, inferable or required to accomplish the Work irrespective of specification division to make the Work complete and functional. The Work includes all duties set forth in this Subcontract and its Exhibits, as well as all cutting[,] patching and remedial work required to bring the Work into compliance with the Contract Documents.

Pitt had other responsibilities under the subcontract, including “for shop drawings, clean-up and related matters.” The subcontract also required Pitt to “provide skilled and trained labor, foreman, and supervisors for the Project.” The subcontract also provided that “the Subcontractor represents it can and shall finally complete all of its Work by the completion time set forth, or depicted, on” the project schedule. The contract allowed Young to “withhold payment on account of defective work or other related difficulties.” The subcontract’s expected completion date was May 17, 2019. Both parties admitted at trial that they were bound to perform in accordance with the construction drawings, as amended.

The court then recounted Mr. Redwine’s testimony about the emails he sent to Mr. Pitt, including the July 17, 2019 email that included the revised drawing. The court specifically found that:

Mr. Redwine testified that he asked Pitt to price the changes related to the Revised Drawing and that a skilled, professional site subcontractor should have reviewed the entire drawing to determine the extent of the changes to the drawing. While Mr. Pitt testified that he did not recall receiving the email with the Revised Drawing, he admitted on cross examination that the Subcontract specifically included email communications as valid notice and that there were numerous emails from Mr. Redwine that he never opened. Although it would have made sense for Young to do more than simply email the drawings, Pitt had a responsibility to review all communication from Young, particularly revised drawings.

The proof at trial established by a preponderance of the evidence that Mr. Pitt was not regularly reading his email and that he did not timely review the revised drawings or take other action to incorporate or clarify the revised scope of work. At times, Pitt did not sufficiently staff the Project and it fell behind. Mr. Pitt was late in adjusting to changes in the scope of work and was lax about making sure he had adequate personnel on the Project at all times.

The proof presented at trial established that Pitt received a copy of the Revised Drawing in July 2019. First, as stated above, T.E. 7 is an email to Mr. Pitt from Mr. Redwine dated July 17, 2019, attaching the Revised Drawing. Next, both of Pitt's witnesses testified that they performed some work pursuant to the Revised Drawing. Mr. Eberhardt, Young's on-site superintendent on the Project, testified that he posted the Revised Drawing in his job trailer and that a copy of the Revised Drawing was affixed to Pitt's excavator type machinery that Pitt stored on the job site. Mr. Warren testified on cross examination that he had a copy of the Revised Drawing on his phone and that he had taken a picture of the Revised Drawing in Mr. Eberhardt's job trailer.

Additionally, testimony and documentary evidence showed that Pitt provided pricing for changes to the driveway, which were tied directly to the Revised Drawing and which were ultimately incorporated into Change Order Number 1, in December 2019. See T.E. 8. Mr. Redwine also testified that Pitt priced and installed additional storm piping that was not on the original drawing but was included on subsequent drawings. Thus, notwithstanding Pitt's assertion that it did not receive the revised drawings until sometime in 2020, Pitt provided pricing for changes related to the Revised Drawing prior to December 2019 and performed at least a portion of that work.

The court found that both Mr. Redwine and Mr. Eberhardt testified that Pitt failed to provide sufficient labor for the project and failed to make progress at a sufficient pace. The court credited daily reports created by Mr. Eberhardt "that indicate that, throughout 2019 and 2020, Pitt was absent from the job on multiple occasions, despite requests by Young that it speed up its work." The court found that, in the July 7, 2020 email, Mr. Redwine "provided notice to Pitt that, due to Pitt's failure to provide additional manpower and its failure to advance the work on the Project, Young would backcharge Pitt for Young's supervisory costs going forward." Ultimately, the court found that this led to the October 15, 2020 email, wherein Mr. Redwine provided 48-hours' notice to Pitt to cure the defects and that, "[i]nstead of any meaningful response addressing the contentions in Mr. Redwine's letter or attempting to cure Pitt's numerous failings, Mr. Pitt sent an email, dated October 16, 2020, stating that he would be preparing notices of nonpayment and filing liens on the Project." However, the court credited Mr. Redwine's testimony that Pitt did not

submit a payment application after December 2019 and found that “Mr. Pitt acknowledged that Pitt did not submit a payment application after December 2019 because Pitt had not completed its work. Pitt did not fully and timely complete its contractual obligations.” Considering the foregoing, the court found that:

The proof at trial established that [Pitt] committed the first material breach when it failed to timely review and incorporate the changes in the scope of work reflected in the Revised Drawings. Pitt’s assertions about “clouding” on the Revised Drawings did not excuse it from following up and taking steps to fully and timely respond to the changes in its scope of work. Additionally, the proof established that Pitt did not consistently have enough workers on site to complete its scope of work in a timely fashion, but it does not necessarily follow that all of [Young’s] expenses incurred should be assessed as damages against Pitt. After Pitt’s breach of the contract, Young did not act expeditiously to mitigate damages, resulting in the need to pay premium prices for replacement work. Additionally, the Court is not convinced that [Young] met its burden of proving that all the additional supervisory costs claimed should be Pitt’s responsibility. Based on the foregoing, Pitt did not prove that it was entitled to recover on its Counterclaim.^[3]

Regarding damages, the court found that “there was some delay on both sides”; however, the court stated that it “was convinced that Young should recover damages and that Pitt should not recover on its Counterclaim.” The court found that Young paid the following for remedial work completed by the three additional contractors: \$245,275.93 to CKF; \$141,437.73 to Thorne; and \$69,502 to Sessions Paving and that Young had purchased biomaterial that Pitt was meant to provide, incurring \$32,397.51 in costs. However, the court also found that “[a]lthough Young incurred these expenses, the Court is not convinced that every dollar spent was properly linked [causally] to Pitt’s conduct in getting behind in its work on the Project.” Therefore, the court determined that it should reduce these damages by 15%.

As to the \$163,794.97 in supervisory overhead costs, the court found that although the subcontract “allow[ed] for increased supervisory costs, the Court [was] not convinced that [Young] proved that these increased costs were all caused by, or were directly related to, the problems Young was experiencing with Pitt’s performance. Consequently, the Court believe[d] that only 50% of these additional supervisory costs [were] recoverable.” The following damages calculation was found by the court:

Sessions (\$69,502.00 x .85)	\$59,076.70
CKF (\$242,275.93 x .85)	\$205,934.54
Thorne (\$141,437.73 x .85)	\$120,222.07

³ We have changed the parties’ names in the order based on context and the order’s intended meaning.

Extra Supervisory cost (\$163,794.87 x .50)	\$ 81,897.44
Bio material	<u>\$ 32,397.51</u>
	\$499,528.26

The court also dismissed Pitt's counterclaim with prejudice. Lastly, the trial court directed Young to file a motion for attorney's fees and costs, in accordance with the subcontract agreement, within 30 days of entry of the order.

On October 1, 2025, the trial court entered a final order awarding Young \$95,517.20 in attorney's fees and \$6,134.72 in costs in addition to the \$499,528.26 previously awarded as compensatory damages. In awarding fees pursuant to the subcontract, the court found as follows:

Defendant contests Plaintiff's ability to recover fees and costs under the language of the Subcontract Agreement and on equitable grounds. Under the Subcontract, Defendant agreed to perform all supervision and services described in Defendant's scope of work in a good, workman-like manner and to furnish and pay for all materials, labor, scaffolding, equipment, tools, appliances, and everything necessary for the complete performance of such services in accordance with the Subcontract. Additionally and significantly, Defendant agreed that, if its actions or inactions caused Plaintiff "to employ an attorney to assert any right of [Plaintiff] or enforce any obligation of [Defendant under the Subcontract Agreement, Plaintiff] shall be entitled to recover all costs and expenses incurred, including, without limitation, reasonable attorney's fees." The Court concludes that Plaintiff is entitled to recover reasonable attorneys' fees and costs under the Subcontract Agreement.

Pitt timely appealed and presents the following issues for our review:

1. The evidence was insufficient to find that Pitt Excavating, LLC, breached its contract with Young Contracting/SE, Inc. in that there is insufficient evidence to establish a material breach by Pitt and there is insufficient [proof] to establish damages caused by any alleged breach by Pitt.
2. Pitt Excavating, LLC, was not given an opportunity to cure any alleged breach in its contract with Young Contracting/SE, Inc.
3. Young Contracting breached its contract with Pitt Excavating, and Pitt is entitled to a judgment on its counterclaim in the amount of \$163,738.06 plus fees and costs
4. Young Contracting is not entitled to attorney fees.

Young presents the additional issue of whether it should be awarded its appellate attorney's fees pursuant to the subcontract.

STANDARD OF REVIEW

In cases such as this one that were decided after a bench trial, we review the trial court's findings of fact de novo upon the record accompanied by a presumption of correctness, unless the preponderance of the evidence is otherwise. TENN. R. APP. P. 13(d); *Lovlace v. Copley*, 418 S.W.3d 1, 16 (Tenn. 2013). Appellate courts afford “considerable deference,” *Easley v. City of Memphis*, 699 S.W.3d 268, 270 (Tenn. 2024) (quoting *Mansell v. Bridgestone Firestone N. Am. LLC*, 417 S.W.3d 393, 399 (Tenn. 2013)), to factual findings by a trial court based on witness credibility and will not reverse a trial court's “credibility-based factual findings” unless there is “clear evidence to the contrary.” *Id.* (quoting *In re Markus E.*, 671 S.W.3d 437, 457 (Tenn. 2023)).

Contract interpretation presents a question of law, which appellate courts review de novo with no presumption of correctness. *Guiliano v. Cleo, Inc.*, 995 S.W.2d 88, 95 (Tenn. 1999). When interpreting the subcontract's terms, we are guided by the following well-settled principles and general rules of construction:

“A cardinal rule of contractual interpretation is to ascertain and give effect to the intent of the parties.” *Allmand [v. Pavletic]*, 292 S.W.3d [618, 630 (Tenn. 2009)] (citing *Allstate Ins. Co. v. Watson*, 195 S.W.3d 609, 611 (Tenn. 2006)). We initially determine the parties' intent by examining the plain and ordinary meaning of the written words that are “contained within the four corners of the contract.” *84 Lumber Co. v. Smith*, 356 S.W.3d 380, 383 (Tenn. 2011) (citing *Kiser v. Wolfe*, 353 S.W.3d 741, 747 (Tenn. 2011)).

Dick Broad. Co. of Tenn. v. Oak Ridge FM, Inc., 395 S.W.3d 653, 659 (Tenn. 2013).

ANALYSIS

I. Breach of Contract

A. First material breach

Pitt's first two issues relate to the trial court's determination that Pitt breached the subcontract with Young. The section of Pitt's argument dedicated to this issue is almost entirely recitations of facts, with only one paragraph dedicated to argument. Although not a model of clarity, Pitt's argument on this issue appears to be that Pitt did not materially breach the subcontract and that Young's alleged failure to provide adequate notice and an opportunity to cure was the first material breach. We must respectfully disagree.

Pitt asserts that it did not commit a material breach of the subcontract. “The essential elements of any breach of contract claim include (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)). “Whether a party has fulfilled its obligations under a contract or is in breach of the contract is a question of fact.” *Id.* (quoting *Forrest Constr. Co., LLC v. Laughlin*, 337 S.W.3d 211, 225 (Tenn. Ct. App. 2009)). For a contractual breach to be sufficient to relieve the other party of its contractual duties, it must be material. *M & M Elec. Contractor, Inc. v. Cumberland Elec. Membership Corp.*, 529 S.W.3d 413, 423 (Tenn. Ct. App. 2016) (quoting *DePasquale v. Chamberlain*, 282 S.W.3d 47, 53 (Tenn. Ct. App. 2008)). “Slight or minor” breaches are insufficient to relieve the non-breaching party of its duty of performance. *Id.* (quoting *Anil Constr. Inc. v. McCollum*, No. W2014-01979-COA-R3-CV, 2015 WL 4274109, at *12 (Tenn. Ct. App. July 15, 2015)). Courts use the following five-factor test to determine whether a breach was material:

- “(a) the extent to which the injured party will be deprived of the benefit which he reasonably expected;
- (b) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived;
- (c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture;
- (d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances;
- (e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing.”

Forrest Constr., 337 S.W.3d at 225-26 (quoting RESTATEMENT (SECOND) OF CONTRACTS § 241).

Pitt’s argument on this issue is as follows: “There was substantial testimony from all parties that various issues arose as to how the original contract would be completed.” Pitt further asserts that, “[s]ome of these issues were due to Young not providing plans to Pitt; some of these issues were due to Young not providing correct plans to Pitt; some of these issues were due to other subcontractors creating problems at the worksite.” Pitt then asserts that Young failed to give it the required 48 hours’ notice to cure and that this precludes Young from recovering under the subcontract.⁴

The evidence admitted supports the trial court’s finding that Pitt committed the first material breach when it failed to incorporate the revised drawing into its plans. The

⁴ We note that these assertions are without citation to the record or to legal authority. The lack of direct citations invariably hampers our review of Pitt’s arguments. The mere fact that Pitt included a lengthy recitation of fact and law prior to making these assertions offers no help to the Court as the argument fails to identify what errors in the record provide a basis for relief.

subcontract clearly contemplated that the plans could be amended from time to time and that communicating these changes by email was sufficient. As the trial court found, Pitt first received the revised drawing in July 2019 via an email from Mr. Redwine. Mr. Eberhardt's testimony that he had a copy of the revised drawing in his construction office and saw the revised drawing affixed to Pitt's equipment also supported the trial court's finding that Pitt knew of the revised drawing. Mr. Warren, Pitt's onsite superintendent, also testified that he knew of the drawing and had seen it. The only countervailing evidence was Mr. Pitt's own testimony that he did not receive the revised drawing until sometime in 2020; however, the trial court did not credit this testimony.

The evidence supports the trial court's finding that Pitt failed to incorporate the revised drawing into its plans and did not provide sufficient workers to complete the work on schedule. These failures were material breaches of the contract. Under the terms of the subcontract, Young clearly expected Pitt to incorporate the revised drawings into its scope of work and provide adequate workers to timely complete the project. Upon Pitt's breach, Young was entitled to rescind the contract and supplement the work. *See M & M Elec. Contractor, Inc.*, 529 S.W.3d at 424 (citation modified) ("The existence of an uncured material breach by one party gives the non-breaching party the ability to rescind or 'terminate' the contract."). Therefore, we find no error in the trial court's decision.⁵

B. Damages

Pitt's next set of arguments relates to the court's damages award. Pitt's primary argument regarding damages is that the trial court erred by admitting certain evidence as business records and that, if these records were properly excluded, Young could not prove its damages. Young argues that the challenged evidence was cumulative evidence of damages, and that, even if the court's decision were in error, the error would be harmless.

Damages caused by the breach are an essential element in a breach of contract claim. *See Leedy*, 663 S.W.3d at 548 (Tenn. Ct. App. 2022) (quoting *ARC LifeMed, Inc.*, 183 S.W.3d at 26). As we have recently explained:

⁵ Pitt asserts that Young failed to give adequate notice and opportunity to cure any deficiencies in its work. However, because the trial court found that Pitt committed the first material breach by failing to incorporate the revised drawings into its planned scope of work and because we have left this ruling in place after review, we determine that this issue is pretermitted. As Pitt committed the first material breach of the contract, Pitt cannot recover for any alleged later breach by Young. *See Madden Phillips Const., Inc. v. GGAT Dev. Corp.*, 315 S.W.3d 800, 812 (Tenn. Ct. App. 2009) (stating that "a party who commits the first uncured material breach of contract may not recover damages for the other party's material breach"). Further, as found by the trial court, Young gave numerous notices that Pitt's work was deficient prior to supplementing Pitt's work. Pitt also argues that, based on Young's alleged failure to give proper notice and opportunity to cure, Pitt should be awarded damages based on its counterclaim against Young. For the same reasons previously outlined in this footnote, we find this argument unavailing.

In Tennessee, parties may recover “all damages that are the normal and foreseeable result of a breach of contract.” *Moore Constr. Co., Inc. v. Clarksville Dep’t of Elec.*, 707 S.W.2d 1, 14 (Tenn. Ct. App. 1985). When reviewing whether a party has sufficiently proven their claimed damages, “[w]e review the proof keeping in mind that uncertain, contingent, or speculative damages should not be awarded.” *Id.* at 15. Speculative damages are only prohibited “when the existence of the damages is uncertain.” *Id.* However, if only the amount of damages is speculative or impossible to prove with exactness, recovery will be allowed. *Id.* All that is required is that the party “lays a sufficient foundation to allow the trier of fact to make a fair and reasonable assessment of damages.” *Tennison Bros., Inc. v. Thomas*, 556 S.W.3d 697, 724 (Tenn. Ct. App. 2017). Indeed, “the amount of future damages is necessarily “speculative and imprecise” to some degree.” *Id.* (quoting *Rye v. Women’s Care Ctr. Of Memphis, MPLLC*, 477 S.W.3d 235, 286 (Tenn. 2015)). “The amount of damages awarded is a question of fact and is, therefore, subject to review under the preponderance of the evidence standard.” *Kirby v. Memphis Light Gas & Water*, No. W2017-02390-COA-R3-CV, 2019 WL 1895862, at *2 (Tenn. Ct. App. Apr. 29, 2019).

Lublin v. Vastland Northcrest Dev., LLC, No. M2024-01152-COA-R3-CV, 2026 WL 880372, at *12 (Tenn. Ct. App. Mar. 31, 2026).

Pitt challenges the admission of the following exhibits as inadmissible hearsay: exhibit 5, the final adjusted product schedule; exhibit 18, the CKF daily reports; exhibit 19, the CKF invoices; exhibit 20, the CKF cover sheet; exhibit 21, the Thorne daily reports; and exhibit 24A, Young’s damages composite. The trial court admitted these exhibits pursuant to the business records exception to the hearsay rule. Decisions regarding the admissibility of evidence rest in the trial court’s discretion. *Duran v. Hyundai Motor Am., Inc.*, 271 S.W.3d 178, 199 (Tenn. Ct. App. 2008). Accordingly, we review the trial court’s decisions regarding the admissibility of evidence under the abuse of discretion standard. *Id.* at 199-200. Under this standard, we “implicitly recognize[] the existence of a range of permissible alternatives” in the trial court’s decisions and our review is intended to be constrained, thereby “implying [a] less intense appellate review and, therefore, less likelihood of reversal.” *Id.* at 200. Appellate courts should review the decision “to determine: (1) whether the factual basis for the decision is supported by the evidence, (2) whether the trial court identified and applied the applicable legal principles, and (3) whether the trial court’s decision is within the range of acceptable alternatives.” *Jernigan v. Paasche*, 637 S.W.3d 746, 756 (Tenn. Ct. App. 2021) (quoting *White v. Vanderbilt Univ.*, 21 S.W.3d 215, 223 (Tenn. Ct. App. 1999)).

A trial court’s erroneous admission of evidence is not necessarily reversible error. “The improper admission of evidence that is merely cumulative on matters shown by other admissible evidence may be harmless error.” *Newcomb v. Kohler Co.*, 222 S.W.3d 368,

388 (Tenn. Ct. App. 2006) (footnote omitted) (quoting *McClure v. Mexia Indep. Sch. Dist.*, 750 F.2d 396, 402 (5th Cir.1985)). As we have previously explained:

The Tennessee Rules of Appellate Procedure provide that “[a] final judgment from which relief is available and otherwise appropriate shall not be set aside unless, considering the whole record, error involving a substantial right more probably than not affected the judgment or would result in prejudice to the judicial process.” TENN. R. APP. P. 36(b). The burden is on the complaining party to show that the error was prejudicial. *Bishop v. R.E.B. Equipment Serv. Inc.*, 735 S.W.2d 449, 452 (Tenn. Ct. App. 1987). In *Bishop*, we also stated that

[o]rdinarily, an error in admitting evidence is harmless if the fact shown by the offending evidence is also shown by other evidence in the record which is competent. If it appears to the reviewing court from an examination of the whole record that the verdict is unlikely to be different in the event of a retrial, the error must be considered to be harmless.

Id. (quoting *Love v. Smith*, 566 S.W.2d 876, 879 (Tenn.1978) (citations omitted)).

Brown v. Daly, 83 S.W.3d 153, 158 (Tenn. Ct. App. 2001). Young asserts that, even if the trial court’s evidentiary decisions were erroneous, the error would be harmless because other evidence in the record supports the trial court’s damages calculation. We agree. From our review, the challenged evidence was unnecessary to establish the existence of the damages Pitt is challenging.⁶ The damages award to Young was based on payments to CKF, Sessions Grading, Thorne, Scott Materials, and Young’s increased overhead costs. Pitt’s argument is only addressed to the damages attributed to CKF and Thorne.⁷ A review

⁶ Although Pitt’s briefing is somewhat unclear, it appears Pitt is challenging whether Young sufficiently proved the existence of damages, not the amount awarded.

⁷ Pitt’s argument does not address the portion of the award based on increased overhead costs or the payments to Scott Materials. As to the damages attributable to Sessions Paving, Pitt only references these damages by asserting, “It is submitted that the custodian for Thorne and CKF (and Sessions) would have been required” for these exhibits to be admitted. Other than this parenthetical, Pitt makes no mention of Sessions Paving in its argument and instead addresses only Thorne and CKF and the exhibits related to the damages from those businesses. This scant mention of Sessions Paving is insufficient to properly sustain an argument as to the damages attributable to that subcontractor. As a result, we consider any argument as to the damages awarded based on overhead costs, Scott Materials, and Sessions Paving to be waived. *See Hodge v. Craig*, 382 S.W.3d 325, 335 (Tenn. 2012) (“An issue may be deemed waived, even when it has been specifically raised as an issue, when the brief fails to include an argument satisfying the requirements of Tenn. R. App. P. 27(a)(7).”). Because Pitt has failed to assert that there was not a sufficient basis for the damages award based specifically on those payments, we do not address those damages.

of the record reveals that these damages are supported by other evidence not challenged by Pitt.

Beginning with the payments made to CKF, Pitt does not challenge the entry of exhibit 20A, which contained checks issued by Young to CKF for its remedial work on the project. As to the payments to Thorne, Pitt does not challenge the admission of exhibits 22 or 23, which contained a detailed spreadsheet of the work performed by Thorne and the check Young issued to Thorne for its remedial work on the project. The checks issued to CKF and Thorne, combined with Mr. Redwine's testimony⁸ that these payments went towards remedial work within the scope of Pitt's responsibilities, were sufficient to prove the existence of Young's damages. *See Tennison Bros., Inc.*, 556 S.W.3d at 724 (stating that parties must only provide sufficient evidence "to allow the trier of fact to make a fair and reasonable assessment of damages").

Therefore, even if admission of CKF and Thorne's daily reports was error, those exhibits constituted mere cumulative evidence, and any error was harmless. Based on the foregoing, we conclude that Pitt has failed to show that the trial court's damages finding was error and affirm the trial court's decision.⁹

II. Attorney's Fees

The parties' final issues all relate to attorney's fees. Pitt challenges the trial court's decision to award Young reasonable attorney's fees pursuant to the subcontract. Young seeks an award of its appellate attorney's fees. For the following reasons, we conclude that the subcontract contains a valid fee-shifting provision, that the trial court's award was not error, and that Young is entitled to an award of its appellate attorney's fees.

Tennessee follows the American Rule for awards of attorney's fees. *Cracker Barrel Old Country Store, Inc. v. Epperson*, 284 S.W.3d 303, 308 (Tenn. 2009). "Under the American rule, a party in a civil action may recover attorney fees only if: (1) a contractual or statutory provision creates a right to recover attorney fees; or (2) some other recognized exception to the American rule applies, allowing for recovery of such fees in a particular case." *Id.* (citing *Taylor v. Fezell*, 158 S.W.3d 352, 359 (Tenn. 2005)). For a contractual provision to create a right to recover attorney's fees, it must

⁸ Although not stated explicitly, the trial court implicitly found Mr. Redwine to be a credible witness in its ruling by making findings that aligned with his testimony and by crediting his damage's calculation. *Cf. Easley*, 699 S.W.3d at 270 (stating that appellate courts must extend deference to credibility-based factual findings whether they are "express credibility determinations" or "implied in its holdings"). Pitt does not assert that Mr. Redwine lacked credibility regarding the damages attributed to CKF and Thorne.

⁹ Pitt also makes an argument that the exhibits were not the best evidence. Because we have found that evidence not challenged by Pitt supports the court's damages finding, we find this argument pretermitted.

“*specifically or expressly* provide[] for the recovery of attorney fees.” *Id.* at 309. Once a party shows that it is contractually entitled to an award of attorney’s fees, a court has no discretion as to whether to award fees and must enforce the contract as written. *Eberbach v. Eberbach*, 535 S.W.3d 467, 478 (Tenn. 2017).

In the present case, the subcontract contains the following provision: “If Subcontractor’s actions or inaction causes Contractor to employ an attorney to assert any right of Contractor or enforce any obligation of Subcontractor hereunder, Contractor shall be entitled to recover all costs and expenses incurred, including, without limitation, reasonable attorney’s fees.”

On appeal, Pitt asserts that “the provision in the subcontract is not a fee-shifting provision at all” and “based on the fact that this trial court was in fact a court of equity . . . the enforcement of the unilateral attorney fee provision would not be appropriate under the circumstances.” However, the clear language of the subcontract does not support this argument. Pitt’s actions caused Young to employ an attorney to assert its right to damages based on Pitt’s breach of the subcontract. Young has prevailed in asserting that right in both the trial court and on appeal. Therefore, Young “shall be entitled” to an award of its attorney’s fees, costs, and expenses incurred. The fact that the chancery court was a court of equity is of no consequence because courts lack discretion over whether to enforce a valid fee-shifting provision. *See id.*

Based on the foregoing, we affirm the trial court’s award of attorney’s fees to Young pursuant to the subcontract. Young also seeks an award of its appellate attorney’s fees. Based on the text of the subcontract, we must enforce the fee-shifting provision of the subcontract. The case is therefore remanded to the trial court for further proceedings to determine Young’s reasonable appellate attorney’s fees.

CONCLUSION

The judgment of the trial court is affirmed and remanded. Costs of this appeal are assessed against the appellant, Pitt Excavating, LLC, for which execution may issue if necessary.

/s/ Andy D. Bennett
ANDY D. BENNETT, JUDGE