

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
February 10, 2026 Session

FILED

10/13/2026

Clerk of the
Appellate Courts

ROSANNE S. FELTUS v. DOUGLAS B. WRIGHT

Appeal from the Chancery Court for Shelby County
No. CH-20-1401 James R. Newsom, Chancellor

No. W2025-00029-COA-R3-CV

During a divorce proceeding, a husband and wife signed a marital dissolution agreement that provided two trusts they had previously formed would be terminated, and the assets distributed to the wife. However, neither the trustee nor the two trust beneficiaries were made parties to the divorce proceeding, and the trusts remained in existence for several years. The wife filed a lawsuit in circuit court and named the trustee and other beneficiaries as defendants. Default judgments were entered against each defendant. The trustee filed a motion to set aside the judgment that was granted. The wife non-suited the circuit court action as to the trustee and filed a lawsuit against him in chancery court. The trustee filed an answer and countercomplaint in which he sought an award of trustee's fees and attorneys' fees. Both parties filed motions for summary judgment. The chancery court entered an order granting the trustee's motion for summary judgment and later awarded him trustee's fees and attorneys' fees. The wife appeals. We affirm and remand.

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

CARMA DENNIS MCGEE, J., delivered the opinion of the court, in which J. STEVEN STAFFORD, P.J., W.S., and W. NEAL MCBRAYER, J., joined.

Edward T. Autry, Memphis, Tennessee, for the appellant, Rosanne S. Feltus.

Cannon F. Allen, Sr. and John D. Woods, III, Memphis, Tennessee, for the appellee, Douglas B. Wright.

OPINION

I. FACTS & PROCEDURAL HISTORY

This appeal arises from litigation concerning two trusts. The first trust was formed by Michael Feltus and was comprised of a life insurance policy. Mr. Feltus appointed Douglas Wright the trustee and named his wife, Rosanne Feltus, and two children, Kevin Feltus and Brian Feltus, the beneficiaries. The second trust was formed by Ms. Feltus and consisted of a life insurance policy. She appointed Mr. Wright the trustee and named Kevin Feltus and Brian Feltus the beneficiaries.

On September 27, 2016, Ms. Feltus filed a complaint for divorce against Mr. Feltus. Shortly thereafter, Ms. Feltus and Mr. Feltus signed a marital dissolution agreement. As part of this agreement, the parties agreed that they and their sons would execute nonjudicial settlement agreements to dissolve the trusts. After the trusts were dissolved, the life insurance policies were to be distributed to Ms. Feltus.¹ The final decree of divorce was entered on June 7, 2017. Shortly thereafter, settlement agreements to terminate both trusts were drafted. Mr. Wright, Ms. Feltus, and one son, Kevin Feltus, promptly signed both agreements. However, neither Mr. Feltus nor the other son, Brian Feltus, signed the agreements.

Ms. Feltus filed a complaint for legal malpractice in the Shelby County Circuit Court against the attorney who represented her in the divorce proceedings on April 24, 2018. She asserted claims based on breach of contract and negligence stemming from “the attempted transfer of two . . . life insurance policies[.]” The complaint noted that Mr. Wright, Kevin Feltus, and Brian Feltus, had not been made parties to the divorce proceedings and therefore, were not bound by the terms of the marital dissolution agreement. On June 17, 2019, Ms. Feltus amended her complaint to include Mr. Wright, Kevin Feltus, and Brian Feltus as defendants, in an attempt to force compliance with the settlement agreements. Subsequently, Brian Feltus signed the settlement agreements. Shortly thereafter, Ms. Feltus filed motions for default judgments against Mr. Wright, Kevin Feltus, and Brian Feltus. The circuit court entered default judgments against each defendant.

However, Mr. Wright filed a motion to set aside the default judgment entered against him on October 17, 2019. He claimed that his failure to respond to the complaint had not been “willful” as he had been informed by Ms. Feltus’s counsel that the lawsuit was a “technicality.” He claimed that he would have obtained legal counsel to represent him as the trustee had he known Ms. Feltus intended “to dissolve the trusts and exercise exclusive control over the assets to the exclusion” of the other beneficiaries. The circuit court entered an order setting aside the judgment against Mr. Wright on December 2, 2019.

On October 28, 2020, Michael Feltus signed the remaining settlement agreement.²

¹ Kevin and Brian Feltus were both adults at the time the marital dissolution agreement was executed.

² As Michael Feltus was not a beneficiary of Ms. Feltus’s trust, he was only required to sign the

Shortly thereafter, Ms. Feltus filed a verified complaint to enforce the settlement agreements against Mr. Wright in the Shelby County Chancery Court. She also filed a notice of voluntary dismissal as to Mr. Wright only in the circuit court proceeding. The circuit court entered an order of voluntary dismissal as to Mr. Wright on November 13, 2020. Subsequently, Mr. Wright submitted a statement of services rendered as the trustee and sought payment for those services pursuant to the settlement agreements. Ms. Feltus refused to pay him. Mr. Wright also filed an answer in the chancery court proceeding. Included in his answer was a countercomplaint in which he alleged that Ms. Feltus had breached the settlement agreements by refusing to pay his trustee's fees and the attorneys' fees he incurred defending the lawsuits filed in circuit court and chancery court. He maintained that he was entitled to an award of trustee's fees and attorneys' fees because: (1) Ms. Feltus breached the terms of the settlement agreements by suing him, (2) Ms. Feltus breached indemnification and hold harmless provisions contained in the provisions of both trusts, and (3) the Tennessee Uniform Trust Code ("the TUTC") provided a statutory basis for the payment of trustee's fees and attorneys' fees incurred in litigation concerning the administration of a trust.

Ms. Feltus filed an answer in response to the countercomplaint and submitted a set of interrogatories and a request for the production of documents. The interrogatories requested that Mr. Wright identify all correspondence he exchanged with the Feltus family since the formation of the trusts. Ms. Feltus also sought material pertaining to Mr. Wright's compensation as trustee and a litany of other material. In response, Mr. Wright filed a motion "for a protective order that discovery not be had – including, but not limited to, protecting [him] from having to respond to" Ms. Feltus's interrogatories and request for document production. *See* Tenn. R. Civ. P. 26.03. However, he also filed his own request for the production of documents, and a motion to compel Ms. Feltus to respond to that request.

Despite receiving no response to her discovery requests, Ms. Feltus filed a motion for partial summary judgment on July 7, 2021. She maintained that "there [was] no genuine issue of material fact" regarding the validity of the settlement agreements or whether the agreements required Mr. Wright to dissolve the trusts. She filed an accompanying statement of undisputed facts in support of her motion. Subsequently, Ms. Feltus filed a motion for sanctions in which she requested the court "[t]o impose sanctions pursuant to Rule 11 of the Tennessee Rules of Civil Procedure against [Mr. Wright's counsel] in an amount equal to the attorney fees [she paid] to prepare and file th[e] Motion for Sanctions and respond to [Mr. Wright's] Motion to Compel." She argued that sanctions were appropriate because Mr. Wright's counsel knew or should have known "that there [was] no rational basis" upon which to submit discovery requests or the motion to compel.

Shortly thereafter, Mr. Wright filed his own motion for summary judgment. He

agreement regarding the trust of which he was the grantor.

maintained that there was no genuine issue of material fact and that he was entitled to a judgment as a matter of law and an award of trustee's fees and attorneys' fees. He also submitted a declaration signed by his counsel regarding the fees and expenses incurred throughout the proceedings. Likewise, he included a statement of undisputed material facts in support of his motion.

On October 8, 2021, Ms. Feltus filed another motion to compel Mr. Wright to respond to her first set of interrogatories and request for the production of documents. A hearing was held on the matter, and the chancery court took the motion to compel "under consideration." Several months later, the motion still had not been adjudicated, and Ms. Feltus filed an "expedited motion to continue hearing and request for discovery sanctions." Soon thereafter, Mr. Wright filed another motion for a protective order in which he again requested that discovery "not be had" pursuant to Tennessee Rule of Civil Procedure 26.03.

Ms. Feltus filed another motion for discovery sanctions on January 23, 2024. She requested that the chancery court sanction Mr. Wright by entering a default judgment against him or, in the alternative, by compelling him to respond to her discovery requests and "to be immediately available for his deposition." Attached to the motion was an affidavit signed by Ms. Feltus's counsel stating that Mr. Wright and his counsel had continuously refused to respond to discovery or schedule a deposition. Counsel also averred that discovery was necessary "to obtain facts in order to adequately and properly respond to [Mr. Wright's] [m]otion for [s]ummary [j]udgment."

On August 14, 2024, the chancery court entered an order granting Mr. Wright's motions for protective orders. The court also granted Ms. Feltus leave to submit an affidavit pursuant to Tennessee Rule of Civil Procedure 56.07 that specified the information needed to oppose Mr. Wright's motion for summary judgment. Ms. Feltus submitted such an affidavit the following day. The affidavit stated that responses to her discovery requests and a deposition of Mr. Wright were required to determine his prior practices related to the management of the trusts, his purported reliance on the statements Ms. Feltus's counsel made during the circuit court litigation, and his objection to the default judgment entered against him in the circuit court proceeding. It also stated that discovery was required in relation to the attorneys' fees Mr. Wright accrued and the skills he employed as the trustee of both trusts throughout the court proceedings. Nonetheless, the chancery court denied the motion for discovery. The court determined that the affidavit submitted by Ms. Feltus's counsel did not justify a delay in the proceedings as it sought "broad and unbounded discovery into most, if not all, aspects of the case." However, the court noted that the amount of fees was "not at issue in" the motions for summary judgment. It noted that discovery on the amount of those fees and expenses would be ruled on at "a later time."

The parties appeared for a hearing regarding the competing motions for summary judgment on September 30, 2024. Mr. Wright's counsel maintained that he was entitled to

summary judgment because there was no dispute he incurred fees defending the lawsuits. Counsel argued that the interpretation of the settlement agreements was an issue of law upon which the chancery court should rule in his favor. Counsel also argued that Mr. Wright was entitled to fees for defending the trust action pursuant to Tennessee Code Annotated section 35-15-709, because the action involved the administration of the trust. Ms. Feltus's counsel maintained that Mr. Wright was not entitled to recover fees because he should not have filed the motion to set aside the judgment in the circuit court proceeding. Counsel maintained that the circuit court order "insulated Mr. Wright from any liability exposure whatsoever" as each of the potential interest holders and their heirs were to be bound by it. Counsel also noted that Mr. Wright never received a fee for acting as the trustee of the trusts prior to the litigation and maintained the hold harmless provisions of the settlement agreements did not prohibit her from suing him to enforce the agreements.

The chancellor asked Ms. Feltus's counsel whether "[t]he facts [were] essentially agreed?" Counsel responded, "[y]es, Your Honor, so I [] think all the questions that need resolution lie with the sound discretion of this Court regarding legal issues." Counsel specifically referenced Mr. Wright's claims that he was entitled to trustee fees and attorneys' fees pursuant to the settlement agreements, the trust documents, and the TUTC and stated "I think that's a legal argument, because we all agree the documents say what they say, both the [settlement agreements], the trust documents, and [] Tennessee law[.]" The chancellor also asked counsel for Mr. Wright whether there were any factual issues in dispute. Mr. Wright's counsel agreed that no factual issues existed.

The chancery court entered an order granting Mr. Wright's motion for summary judgment and denying Ms. Feltus's motion for partial summary judgment on October 10, 2024. The court noted that the parties agreed the settlement agreements constituted enforceable contracts. It determined that Ms. Feltus breached those contracts by filing two lawsuits against Mr. Wright and by failing to pay his fees and expenses. The chancery court also determined that the hold harmless provisions contained in the trusts "applie[d] to any claims or causes of action brought by any beneficiary" and required "[Ms.] Feltus and the other beneficiaries to hold [Mr.] Wright harmless with respect to any claim or cause of action brought by a beneficiary." Likewise, the chancery court held that Mr. Wright was entitled to recover his fees and expenses pursuant to the terms of the TUTC because they "were properly incurred in the administration of the Trusts." The chancery court also held that, if the "expenses were not properly incurred in the administration of the Trusts, reimbursement would still be necessary to prevent unjust enrichment of the Trusts." The chancery court stated that it would conduct a "hearing of the Writ of Inquiry to determine the amount of [Mr.] Wright's damages, including Trustee fees and expenses, and attorney[s'] fees and expenses." The court also stated that, upon entry of a final order, the trusts would be dissolved, Mr. Wright released as trustee, and any remaining assets conveyed to Ms. Feltus.

The hearing on the writ of inquiry took place on November 21, 2024. During that

hearing, the chancery court considered a litany of declarations and statements regarding fees submitted by Mr. Wright and his counsel. Ms. Feltus did not submit any evidence during the hearing but did argue as to the reasonableness of Mr. Wright's fee request. Notably, during the hearing, the chancery court directed Ms. Feltus to advise the court the following week as to whether she would withdraw or pursue her previously filed motion for sanctions. Ms. Feltus did not respond. Accordingly, Mr. Wright filed a motion to strike the motion for sanctions on December 5, 2024.

The chancery court entered its order on writ of inquiry on December 9, 2024. The chancery court considered the reasonableness of the attorneys' fees requested by Mr. Wright in accordance with Tennessee Rule of Professional Conduct 1.5. *See Garner v. State*, No. M2023-00812-COA-R3-CV, 2024 WL 3934664, at *8 (Tenn Ct. App. Aug. 26, 2024). The court noted that Mr. Wright's counsel submitted several declarations in which he stated he was familiar with the rates charged in the Memphis market for legal services and explained the billing practices and statements. The declaration also detailed the amounts of time spent working on the case and engaging in mediation, which was ultimately unsuccessful. The court evaluated each of the ten factors set forth in Tennessee Rule of Professional Conduct 1.5. The court determined that eight of the factors weighed in favor of Mr. Wright's fee request being reasonable and the remaining two were not relevant or did not render the fee request unreasonable. Ultimately the court determined that Mr. Wright was entitled to an award of \$8,508 in trustee's fees and \$161,584.74 in attorneys' fees. The court also stated that it would "consider a supplemental application by Mr. Wright regarding an additional award of attorney[s'] fees if necessary." Notably, the order did not address Ms. Feltus's motion for sanctions.

Ms. Feltus filed a notice of appeal on January 6, 2025. The following day, Mr. Wright's counsel filed another supplemental declaration regarding fees and expenses incurred both before and after the order on writ of inquiry was entered. Mr. Wright then filed a motion seeking additional findings of fact and to amend the chancery court's judgment. The motion noted that, at the hearing on the writ of inquiry, Mr. Wright's counsel had informed the chancery court that Ms. Feltus's motion for sanctions filed pursuant to Tennessee Rule of Civil Procedure 11 remained outstanding. Mr. Wright also noted that he filed a motion to strike the motion for sanctions which had not been addressed. The motion to amend maintained that the order on writ of inquiry was not a final judgment because the following items remained outstanding: (1) Mr. Wright's second motion for fees, (2) Ms. Feltus's motion for sanctions, (3) the motion to strike those sanctions, and (4) the release of Mr. Wright's obligations as trustee.

On January 17, 2025, the chancery court entered two additional orders. The court noted in its first order that a hearing had been held via Zoom on January 10, 2025, at which counsel for Ms. Feltus did not appear. The court granted Mr. Wright's motion for additional fees and awarded him \$20,995.06 in attorneys' fees. The chancery court also granted Mr. Wright's motion to strike as Ms. Feltus had not pursued her motion for

sanctions. In its second order, the chancery court stated that Ms. Feltus's notice of appeal had been filed prematurely. It noted that the order on writ of inquiry "did not, and was not intended to adjudicate 'all the claims' between the parties to this cause." The chancery court also held that Mr. Wright was entitled to liquidate the life insurance policies to satisfy the judgment if payment was not received within 30 days of the entry of the order. After payment of the judgment, the remaining cash value of any liquidated policy or any unliquidated policy was to be distributed to Ms. Feltus. At the time the funds or policies were remitted to Ms. Feltus, the trusts were to be dissolved and Mr. Wright released from further obligations as the trustee of the trusts. Mr. Wright then withdrew his motion to amend. The parties consented to the entry of an order granting a stay of the judgment and requiring Ms. Feltus to post a bond during the pendency of the appellate proceedings. This appeal followed.

II. ISSUES PRESENTED

The appellant has presented the following issues on appeal, which we have slightly reframed:

1. Whether the chancery court erred by not allowing the parties to engage in discovery.
2. Whether the chancery court erred by granting Mr. Wright's motion for summary judgment.
3. Whether the chancery court erred by denying Ms. Feltus's motion for summary judgment.

In addition to answering Ms. Feltus's issues, Mr. Wright presents the following issue on appeal:

1. Whether Mr. Wright is entitled to attorneys' fees and expenses incurred on appeal.

For the following reasons, the judgment of the chancery court is affirmed.

III. DISCUSSION

A. Subject Matter Jurisdiction

Although it is not designated as a separate issue on appeal, Ms. Feltus first argues that the chancery court's orders entered after she filed her notice of appeal on January 6, 2025, were void for lack of subject matter jurisdiction. "Subject matter jurisdiction involves the court's lawful authority to adjudicate a controversy brought before it." *Johnson v. Hopkins*, 432 S.W.3d 840, 843 (Tenn. 2013) (citing *Chapman v. DaVita, Inc.*, 380 S.W.3d 710, 712 (Tenn. 2012); *Meighan v. U.S. Sprint Commc'ns Co.*, 924 S.W.2d 632, 639 (Tenn. 1996)). Orders and judgments entered by courts without subject matter jurisdiction over a dispute "are void[.]" *In re Est. of Trigg*, 368 S.W.3d 483, 489 (Tenn.

2012). “Whether a court has subject matter jurisdiction over a case is a question of law that [courts] review *de novo* with no presumption of correctness.” *Morgan Keegan & Co., Inc. v. Smythe*, 401 S.W.3d 595, 602 (Tenn. 2013) (citing *Word v. Metro Air Servs., Inc.*, 377 S.W.3d 671, 674 (Tenn. 2012)).

Ms. Feltus argues that the chancery court’s order on writ of inquiry was a final order as it “decided and disposed of the whole merits of the case between the parties[,] leaving nothing further for the judgment of the court.” Accordingly, she claims that any orders the chancery court entered after she filed her notice of appeal were void. She relies on this Court’s opinion, *Earls v. Earls*, which states, “[a]fter a case has been appealed, a trial court does not reacquire jurisdiction over the case until it receives a mandate from the appellate court.” No. M1999-00035-COA-R3-CV, 2001 WL 504905, at *3 (Tenn. Ct. App. May 14, 2001). She also points to our opinion in *Born Again Church & Christian Outreach Ministries, Inc. v. Myler Church Bldg. Sys. of the Midsouth, Inc.*, in which we explained that a trial court lost jurisdiction to rule on a motion for post judgment relief upon the filing of a notice of appeal. 266 S.W.3d 421, 425 (Tenn. Ct. App. 2007).

However, neither case involved the circumstances present in this case. In *Earls*, a trial court refused to enter an order in accordance with directions from this Court after an appeal of the underlying judgment because the trial court determined this Court’s ruling was “clearly erroneous.” *Earls*, 2001 WL 504905, at *2. Our opinion explained that the trial court lacked authority to act outside the limited mandate it received from this Court on remand. *Id.* at *3. Therefore, its order contradicting the opinion of this Court was void. *Id.* In *Born Again Church*, an appellant filed a motion to set aside the trial court’s judgment pursuant to Tennessee Rule of Civil Procedure 60.02 contemporaneously with a notice of appeal. 266 S.W.3d at 425. We determined that the filing of a notice of appeal after the trial court had entered a final order deprived it of subject matter jurisdiction to enter an order regarding the motion for relief. *Id.* at 426.

Here, the notice of appeal was not filed after the trial court received a mandate from this Court or after a final order had been entered. Rather, the notice of appeal was filed before the chancery court entered an order adjudicating “all the rights and liabilities of all the parties[.]” *Meeks v. Successor Trs. of Marital Tr.*, No. W2009-02016-COA-R3-CV, 2010 WL 3420546, at *7 (Tenn. Ct. App. Sept. 1, 2010). Importantly, neither the order granting Mr. Wright summary judgment nor the order on writ of inquiry addressed Ms. Feltus’s outstanding motion for sanctions. Likewise, as evidenced by the chancery court’s subsequent orders, issues remained regarding additional attorneys’ fees. The chancery court deemed Ms. Feltus’s notice of appeal to have been filed prematurely. We agree.

“A ‘premature’ notice of appeal, by simple definition, is ‘one filed before the entry of a final judgment.’” *Id.* (quoting *Savage v. Hildenbrandt*, No. M1999-00630-COA-R3-CV, 2001 WL 1013056, at *9 (Tenn. Ct. App. Sept. 6, 2001)). “A notice of appeal is premature when it is filed before all the rights and liabilities of all the parties are

adjudicated.” *Id.* Tennessee Rule of Appellate Procedure 4 addresses prematurely filed notices of appeal. It provides, “[a] prematurely filed notice of appeal shall be treated as filed after the entry of the judgment from which the appeal is taken and on the day thereof.” Tenn. R. App. P. 4(d).

Because the chancery court had issues upon which to rule after entering the order on writ of inquiry, including an outstanding motion for sanctions, it was not a final judgment. Because it was not a final judgment, Ms. Feltus’s appeal was prematurely filed and did not deprive the chancery court of subject matter jurisdiction to enter subsequent orders disposing of the remaining issues. Therefore, in accordance with Tennessee Rule of Appellate Procedure 4, we will treat Ms. Feltus’s notice of appeal as having been filed on January 17, 2025, after the entry of the chancery court’s final order on fees and the disposition of the trusts.

B. Discovery

Next, Ms. Feltus claims that the chancery court erred when it “prevent[ed] [her] from engaging in ANY discovery[.]” She maintains that her interrogatories and request for production of documents “were specifically tailored to respond to [Mr. Wright’s] counter-complaint” and were “particularly salient to the defenses asserted by [her] to [Mr. Wright’s] claims for breach of contract and damages.” Likewise, she claims that, because the chancery court denied her discovery requests, there “was not sufficient evidence to support [its] judgment.”

Although this case involved the adjudication of motions for summary judgment, this issue arises from a determination pertaining to pretrial discovery. “Because decisions regarding pretrial discovery are inherently discretionary, they are reviewed using the ‘abuse of discretion’ standard of review.” *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 524 (Tenn. 2010). “This deferential standard ‘reflects an awareness that the decision being reviewed involved a choice among several acceptable alternatives,’ and thus ‘envision[s] a less rigorous review of the lower court’s decision and a decreased likelihood that the decision will be reversed on appeal.’” *Henderson v. SAIA, Inc.*, 318 S.W.3d 328, 335 (Tenn. 2010) (quoting *Lee Med., Inc.*, 312 S.W.3d at 524). “A trial court abuses its discretion only when it ‘applie[s] an incorrect legal standard, or reache[s] a decision which is against logic or reasoning that cause[s] an injustice to the party complaining.’” *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001) (quoting *State v. Shirley*, 6 S.W.3d 243, 247 (Tenn. 1999)) (alterations present in original). To determine whether an abuse of discretion has occurred, courts must assess “(1) whether the factual basis for the decision is properly supported by evidence in the record, (2) whether the lower court properly identified and applied the most appropriate legal principles applicable to the decision, and (3) whether the lower court’s decision was within the range of acceptable alternative dispositions.” *Lee Med., Inc.*, 312 S.W.3d at 524.

Ms. Feltus cites *In re Conservatorship of Starnes* to support her contention that the chancery court should have required Mr. Wright to respond to her interrogatories and request for documents. No. W2013-02614-COA-R3-CV, 2014 WL 6977831, at *8 (Tenn. Ct. App. Dec. 10, 2014). In *Starnes*, we determined that the appellant had not been afforded a “reasonable opportunity to conduct discovery” or “to present her opposition to the motion for summary judgment” and the trial court had therefore acted prematurely by granting summary judgment in a *sua sponte* fashion. *Id.* Notably, the trial court in *Starnes* heard a motion to dismiss based on the failure to state a claim but treated it as a motion for summary judgment by considering matters outside of the pleadings. *Id.* at *3. Accordingly, neither party was permitted to present briefing or statements of undisputed material facts to support its argument or otherwise explain why additional discovery was necessary. *Id.* at *3-4. Here, both parties were permitted to submit extensive memoranda throughout the proceedings and to submit statements of undisputed material facts in support of their competing motions for summary judgment. Likewise, the chancery court addressed Ms. Feltus’s motion to compel discovery and found that she had not “set forth the reasons why [she] need[ed] discovery to establish facts essential to justify her opposition” to Mr. Wright’s countercomplaint. Ms. Feltus has not explained what portion of the chancery court’s decision was illogical or contradicted accepted legal standards or principles.

Notably, at the hearing held on the competing motions for summary judgment, counsel for both parties were asked whether any factual issues were in dispute. Specifically, counsel for Ms. Feltus was asked whether “[t]he facts [were] essentially agreed” and responded, “[y]es, Your Honor, so I [] think all the questions that need resolution lie with the sound discretion of this Court regarding legal issues.” Counsel specifically referenced Mr. Wright’s claims that he was entitled to trustee fees and attorneys’ fees “under the trust documents and the [settlement agreements,] and Tennessee law” and stated, “I think that’s a legal argument, because we all agree the documents say what they say[.]” Additionally, the parties were permitted an opportunity to present evidence regarding the amount of fees to which Mr. Wright was entitled at the hearing on the writ of inquiry. Ms. Feltus “did not submit any declarations, put on any proof[,] or question any witnesses” but instead only argued “as to the unreasonableness of the” fees Mr. Wright requested. Accordingly, Ms. Feltus was given an adequate opportunity to present her arguments regarding Mr. Wright’s claim for trustee and attorneys’ fees and to seek evidence to support her claims. Therefore, we discern no abuse of discretion committed by the chancery court in its assessment of Ms. Feltus’s motion to compel discovery.

Similarly, Ms. Feltus’s claim regarding the sufficiency of the evidence is without merit. She argues that there was not sufficient evidence contained in the record to support the chancery court’s judgment. However, she has not identified what element of the chancery court’s ruling was undermined by insufficient evidence. As noted above, the parties agreed during the hearing held on the competing motions for summary judgment

that there were no outstanding factual issues. Therefore, we find that Ms. Feltus's arguments regarding the chancery court's ruling on discovery are without merit.

C. Summary Judgment

Next, we consider Ms. Feltus's arguments regarding the chancery court's decision to grant summary judgment in favor of Mr. Wright. Our state rules of civil procedure provide that summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Tenn. R. Civ. P. 56.04. "The moving party has the burden of proving that its motion satisfies these requirements." *Staples v. CBL & Assocs., Inc.*, 15 S.W.3d 83, 88 (Tenn. 2000). As our Tennessee Supreme Court has explained, a moving party that does not bear the burden of proof at trial "may satisfy its burden of production either (1) by affirmatively negating an essential element of the nonmoving party's claim or (2) by demonstrating that the nonmoving party's evidence at the summary judgment stage is insufficient to establish the nonmoving party's claim or defense." *Rye v. Women's Care Ctr. of Memphis, MPLLC*, 477 S.W.3d 235, 264 (Tenn. 2015). "However, 'if the moving party bears the burden of proof on the challenged claim at trial, that party must produce at the summary judgment stage evidence that, if uncontroverted at trial, would entitle it to a directed verdict.'" *Est. of Smith v. Highland Cove Apartments, LLC*, 670 S.W.3d 305, 312 (Tenn. Ct. App. 2023) (quoting *TWB Architects, Inc. v. The Braxton, LLC*, 578 S.W.3d 879, 888 (Tenn. 2019)). Regardless of whether the nonmoving party bears the burden of proof at trial on the challenged claim, "at the summary judgment stage, '[t]he nonmoving party must demonstrate the existence of specific facts in the record which could lead a rational trier of fact to find in favor of the nonmoving party.'" *TWB Architects, Inc.*, 578 S.W.3d at 889 (quoting *Rye*, 477 S.W.3d at 265).

When reviewing a motion for summary judgment, a court places its focus "on the evidence the nonmoving party comes forward with at the summary judgment stage, not on hypothetical evidence that theoretically could be adduced" at a future trial. *Rye*, 477 S.W.3d at 265. The decision to grant or deny "a motion for summary judgment is a matter of law; therefore, our standard of review is *de novo* with no presumption of correctness." *Jackson v. Thibault*, No. E2021-00988-COA-R3-CV, 2022 WL 14162828, at *3 (Tenn. Ct. App. Oct. 25, 2022). In conducting this review, "we make a fresh determination of whether the requirements of Rule 56 of the Tennessee Rules of Civil Procedure have been satisfied." *Rye*, 477 S.W.3d at 250. Importantly, "the evidence must be viewed in a light most favorable to the claims of the non-moving party, with all reasonable inferences drawn in favor of those claims." *Rye*, 477 S.W.3d at 286. See *Cotten v. Wilson*, 576 S.W.3d 626, 637 (Tenn. 2019).

Notably, Ms. Feltus presented two issues regarding summary judgment in her statement of the issues. She claimed that the chancery court erred by granting Mr. Wright's

motion for summary judgment and by denying her motion for summary judgment. However, she has not presented an argument section that outlines how the chancery court erred when it denied her motion for summary judgment. Accordingly, that issue is waived. *See Sneed v. Bd. of Pro. Resp. of Sup. Ct.*, 301 S.W.3d 603, 615 (Tenn. 2010).

Ms. Feltus has presented an argument regarding the chancery court's decision to grant Mr. Wright's motion for summary judgment. Notably, Mr. Wright's motion was predicated on three distinct theories of recovery: (1) breach of contract committed by Ms. Feltus when she filed two lawsuits against him, (2) breach of the hold harmless provisions contained in the trust documents, and (3) the provisions of the TUTC. Each theory set forth an independent claim for an award of trustee's fees and attorneys' fees. The chancery court found that Mr. Wright was entitled to summary judgment and an award of fees pursuant to each claim. Therefore, for Ms. Feltus to prevail, she must demonstrate that either a genuine issue of material fact or a misapplication of law infected each ground for summary judgment.

Although it is addressed last in Ms. Feltus's brief, we begin by considering her assertion that the chancery court erred when it granted summary judgment in favor of Mr. Wright based on the terms of the TUTC. The chancery court determined that Mr. Wright was entitled to his trustee's fees and attorneys' pursuant to two provisions of the TUTC: Tennessee Code Annotated section 35-15-709(a) and Tennessee Code Annotated section 35-15-1004(a). Tennessee Code Annotated section 35-15-709(a) provides:

(a) A trustee, trust advisor or trust protector is entitled to be reimbursed out of the trust property, with interest as appropriate, for:

(1) Expenses that were properly incurred in the administration of the trust; and

(2) To the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

Tenn. Code Ann. § 35-15-709(a). Similarly, Tennessee Code Annotated section 35-15-1004 provides:

(a) In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

Tenn. Code Ann. § 35-15-1004(a).³

³ Despite the chancery court's reliance on the provisions of the TUTC, Ms. Feltus first argues that

Ms. Feltus argues that the chancery court erred by awarding fees pursuant to the provisions of the TUTC because Mr. Wright's fees were not "expenses properly incurred in the administration of the trust." She contends that the expenses were incurred in the pursuit of Mr. Wright's "self-interests . . . rather than in the interests of the [trusts'] beneficiaries." Additionally, Ms. Feltus argues that the chancery court erred when it determined Mr. Wright was entitled to his fees and expenses in order to ensure the trust would not be unjustly enriched. She again claims that his actions were "clearly motivated by self-interest and the recovery of trustee fees and attorney fees from [her]."⁴ Alternatively, Ms. Feltus argues that the attorneys' fees awarded to Mr. Wright should be reduced because he failed to mitigate his damages.

Notably, Ms. Feltus does not argue in her appellant's brief that the litigation did not involve the administration of the trusts. Rather, her arguments revolve around whether the fees were "properly incurred" as she claims that Mr. Wright only proceeded with the litigation in order to recover trustee's fees and attorneys' fees.⁵ Essentially, she argues that Mr. Wright's actions were not reasonable and therefore, the fees he incurred were not reasonable. This stance is consistent with the arguments Ms. Feltus presented to the chancery court at the hearing on the writ of inquiry. While the merits of this case were adjudicated by the chancery court's grant of summary judgment, the amount of trustee's fees and attorneys' fees and the reasonableness of those fees were adjudicated at the subsequent writ of inquiry. Both parties were permitted the opportunity to submit evidence pertaining to the fees. The chancery court noted in the order on writ of inquiry that Ms. Feltus did not put forth any evidence at this hearing but "argue[d] at length as to the

the court erred when it granted Mr. Wright's motion for summary judgment because he "was not entitled to an award of attorney's fees accrued during and attributable to" the proceedings in circuit court pursuant to Tennessee Code Annotated section 20-12-101. She contends that, while this statute provides the successful party in a civil action "is entitled to full costs," those costs do not include attorneys' fees. See *Jasinskis v. Cameron*, No. M2019-01417-COA-R3-CV, 2020 WL 2765845, at *6 (Tenn. Ct. App. May 27, 2020). However, the chancery court did not award Mr. Wright attorneys' fees for the circuit court proceedings pursuant to the terms of this statute. The statute is not cited in any of the chancery court's various orders. Rather, as stated above, the chancery court awarded Mr. Wright his attorneys' fees based on application of the provisions of the TUTC. Accordingly, because the chancery court did not award Mr. Wright attorneys' fees pursuant to Tennessee Code Annotated section 20-12-101, we cannot say that it erred by doing so. This argument is without merit.

⁴ Notably, Ms. Feltus supports this portion of her argument by pointing to the chancery court's decision to deny her motion to compel discovery. Because we determined above that the chancery court did not abuse its discretion when it made this determination, we do not address that portion of Ms. Feltus's argument in this section of our opinion.

⁵ Ms. Feltus did argue in her reply brief that the fees were "not in the 'administration' of either trust." Mr. Wright filed a "response" with this Court after the submission of the reply brief in which he averred that as the argument was not presented in Ms. Feltus's appellant's brief, it could not be presented in her reply brief. We agree. See *Owens v. Owens*, 241 S.W.3d 478, 499 (Tenn. Ct. App. 2007) (explaining that a reply brief "is not a vehicle for raising new issues"). Accordingly, we decline to consider Ms. Feltus's argument regarding whether the litigation involved the administration of the trust as raised in her reply brief.

unreasonableness of the trustee and attorney fee and expense request submitted on behalf of Mr. Wright.” Accordingly, we consider only whether the fees were “properly incurred” rather than whether they were incurred in the administration of the trusts.

Ms. Feltus’s arguments also require us to assess whether the fees awarded were reasonable. Trial courts have considerable discretion in determining the reasonableness of attorneys’ fees, and “[w]e will uphold the court’s decision absent an abuse of discretion.” *Buckley v. Carlock*, 652 S.W.3d 432, 445 (Tenn. Ct. App. 2022). “A trial court abuses its discretion only when it ‘applie[s] an incorrect legal standard, or reache[s] a decision which is against logic or reasoning that cause[s] an injustice to the party complaining.’” *Eldridge*, 42 S.W.3d at 85 (quoting *Shirley*, 6 S.W.3d at 247) (alterations present in original). As stated above, Ms. Feltus argues that the chancery court erred when it calculated its fee award because the fees accrued were incurred in the pursuit of Mr. Wright’s own interests. Despite her claim that Mr. Wright sought to engage in protracted litigation for his own benefit, Ms. Feltus has not identified an abuse of discretion committed by the chancery court.

While the chancery court addressed the propriety of a fee award pursuant to the TUTC in its order granting Mr. Wright summary judgment, it detailed the reasonableness of the fee award more fully in its order on writ of inquiry. In that order, the chancery court assessed the ten factors Tennessee courts have been directed to consider in the Tennessee Rules of Professional Conduct. *See* Tenn. Sup. Ct. R. 8, RPC 1.5. The chancery court considered a litany of itemized billing statements filed alongside written declarations signed by Mr. Wright’s counsel. Those declarations attested to the reasonableness of the fees and to Mr. Wright’s efforts to resolve the litigation at its early stages. Further, in its assessment of the factors, the chancery court determined that the legal issues involved “were somewhat novel and difficult.” The court also noted that Mr. Wright’s “professional reputation was at stake” and determined he “conduct[ed] himself in such a fashion through his litigation strategy as was demanded by the circumstances of this matter.” Likewise, while the chancery court recognized that the litigation “could have been resolved at a much earlier juncture” it determined Mr. Wright “was entitled to receive assurance that all parties with an interest in the trust agreements agreed to a resolution of the matters at issue.” Therefore, it found that he could “not be faulted for failing to simply stand down under the circumstances.”

Ms. Feltus does not cite any disputed or undisputed facts to support her claim that Mr. Wright acted with improper motives when incurring the expenses at issue. She merely makes a declaratory statement that the expenses “were clearly in the self-interests of” Mr. Wright without identifying any facts supporting her assertion. Ms. Feltus has not identified an inappropriate legal standard applied or lapse of logic committed by the chancery court. Likewise, the chancery court clearly applied an appropriate legal standard when determining whether the trustee’s fees and attorneys’ fees were reasonable, as it considered each of the ten factors as directed by the Tennessee Rules of Professional Conduct.

Accordingly, this argument is without merit, and we find that the chancery court did not err when it granted Mr. Wright summary judgment on this ground.

Next, we consider Ms. Feltus's second argument presented in this section of her brief. She contends that the chancery court erred by awarding Mr. Wright the full amount of his attorneys' fees because he did not mitigate his damages.⁶ She contends that any fees or expenses he incurred were accrued after Mr. Wright filed the motion to set aside the default judgment in the circuit court. Accordingly, she maintains that the fees were accrued in his pursuit of "unnecessary and vitriolic litigation," and he "failed to exercise reasonable care and diligence to avoid loss or to minimize the resulting damage." She continues to maintain that the litigation "was completely unnecessary." She asserts that the chancery court erred when it determined Mr. Wright "could not rest on the fact that default judgments had been entered against other defendants to [the circuit court] litigation[.]"

As we have previously explained, "a party injured by the wrongful act of another is under a legal duty to use reasonable efforts to minimize the loss and, to the extent that the injured party fails to do so, he or she cannot recover." *Memphis Light, Gas & Water Div. v. Starkey*, 244 S.W.3d 344, 353 (Tenn. Ct. App. 2007). However, "[t]he injured party is not [] required to mitigate damages where the duty would impose an undue burden or be impossible under the circumstances." *Id.* Essentially, Ms. Feltus argues that Mr. Wright failed to mitigate his damages because he continued to engage in litigation despite having the opportunity to conclude the litigation at an earlier juncture.

We have previously considered a failure to mitigate damages argument in the context of a claim for attorney's fees pursuant to Tennessee Rule of Civil Procedure 11.03. There, we noted that "an important component of [Rule 11] is the duty to mitigate one's damages." *Biggers v. Houchin*, No. M2008-01356-COA-R3-CV, 2009 WL 2176567, at *9 (Tenn. Ct. App. July 21, 2009). Accordingly, we stated that, "[i]f a baseless claim could have been readily disposed of, 'there is little justification for a claim of attorney's fees and expenses engendered in elaborate proceedings in opposition' to the baseless claim." *Id.* (quoting *Andrews v. Bible*, 812 S.W.2d 284, 292 (Tenn. 1991)). We determined that the defendant was not entitled to recover attorney's fees under Rule 11 because the "damages were self-inflicted due to the fact he filed [a] motion for summary judgment prior to serving [a] Rule 11 notification on [the plaintiff] and the case was dismissed prior to the expiration of [Rule 11's] twenty-one-day grace period." *Id.*

Ms. Feltus essentially makes the same argument. She claims that Mr. Wright incurred attorneys' fees unnecessarily because he refused to take proper action to quickly litigate a "baseless claim [that] could have been readily disposed of" and therefore, the award of attorneys' fees was not appropriate. *See id.* However, even if we were to

⁶ Notably, it does not appear that Ms. Feltus claims the award of trustee's fees should be reduced due to the failure to mitigate damages as she only addresses attorneys' fees in this portion of her brief.

determine that Mr. Wright held a duty to mitigate his damages similar to the duty owed by the party in *Biggers*, Ms. Feltus has not met her burden of establishing that Mr. Wright acted in such a manner.

First, we find important that the chancery court determined Mr. Wright acted reasonably when he filed the motion to set aside the default judgment entered in the circuit court proceedings. Ms. Feltus did not identify any fact that the chancery court did not consider when it came to this conclusion. Rather, the only statement in her brief regarding the issue is that the chancery court should have determined that the fees were unreasonable because of the “results obtained” factor of the Rules of Professional Conduct as the “[m]onetary damages for injury to [Mr. Wright’s] professional reputation were neither pled nor requested[.]” However, the chancery court did not consider damage to Mr. Wright’s professional reputation in its calculation of damages. Rather, it considered his reputation during its assessment of the Rules of Professional Conduct and whether he acted reasonably. Likewise, while the chancery court recognized that the litigation “could have been resolved at a much earlier juncture” it determined that Mr. Wright “was entitled to receive assurance that all parties with an interest in the trust agreements agreed to a resolution of the matters at issue.” While we appreciate that Ms. Feltus disagrees with this determination, she has not pointed to any evidence contradicting it.

For these reasons, we find that Ms. Feltus has not proven the chancery court erred when it awarded Mr. Wright the full amount of his attorneys’ fees. Therefore, we affirm the chancery court’s decision to grant Mr. Wright’s motion for summary judgment and its determination that Mr. Wright acted reasonably when he responded to the litigation. Having determined that the chancery court did not err when in granted summary judgment pursuant to the terms of the TUTC, Ms. Feltus’s arguments pertaining to the breach of contract and terms of the trust documents are pretermitted, as their outcomes would not affect the outcome of this appeal.

D. Order on Writ of Inquiry

In addition to those claims presented above, Ms. Feltus argues that, regardless of our decision on the chancery court’s grant of summary judgment, we should nevertheless vacate the order on writ of inquiry.⁷ She claims that the court did not properly weigh the factors set forth in the Tennessee Rules of Professional Conduct regarding the reasonableness of the attorneys’ fees. Specifically, she claims that the chancery court did not properly consider factor four, “the amount involved and results obtained.” Tenn. Sup. Ct. R. 8, RPC 1.5(4). She claims that the chancery court “purposely refused to address the

⁷ Although Ms. Feltus does not present an issue statement related to the chancery court’s writ of inquiry, the issue was clearly addressed in the body of the brief and was set off by a subheading. Accordingly, while the issue was not crafted “as precisely as [it] could have been” we understood Ms. Feltus’s claim for relief and deem it “fall[s] within the scope” of the stated issue presented. *Trezevant v. Trezevant*, 696 S.W.3d 527, 531 (Tenn. 2024). Therefore, we will accordingly briefly address this issue.

amount involved[.]” Ms. Feltus again argues that Mr. Wright should not have responded to the default judgment entered against him in the circuit court proceedings. She also claims that “the results obtained [in this litigation] were the exact same results [that would have been] obtained had [he] not engaged in concerted efforts to thwart [her] discovery efforts[.]” Likewise, Ms. Feltus claims that the chancery court erred by considering potential damage to Mr. Wright’s professional reputation because “damages for injury to [his] professional reputation were neither pled nor requested[.]”

As noted above, a trial court’s determination as to the reasonableness of fees is reviewed pursuant to the abuse of discretion standard. *Buckley*, 652 S.W.3d at 445. While we understand that Ms. Feltus believes that the litigation should have ended after the circuit court entered the default judgment, she has not identified any evidence contained in the record demonstrating that Mr. Wright acted unreasonably when he filed the motion to set aside. Likewise, she has failed to identify a lapse in logic committed by the chancery court that constituted an abuse of discretion. Similarly, her argument regarding Mr. Wright’s professional reputation is without merit. She notes that damage to his reputation was not raised in the pleading documents. However, the potential damage was not cited as a basis for recovery and was not considered in the calculation of damages. Rather, it was merely a factor that the chancery court considered when determining whether Mr. Wright acted reasonably when incurring attorneys’ fees. We detect no abuse of discretion committed by the chancery court in its assessment of the reasonableness of the trustee’s fees and attorneys’ fees.

Notably, even if the chancery court had misapplied factor four, Ms. Feltus has raised no argument regarding the remaining nine factors, seven of which the chancery court determined weighed in favor of granting Mr. Wright’s fee request. This includes factor one, which the court identified as “arguably the pivotal factor in the inquiry.”⁸ For these reasons, we affirm the chancery court’s order on writ of inquiry.

E. Attorneys’ Fees on Appeal

Having determined that the chancery court did not err when it granted Mr. Wright’s motion for summary judgment or when it awarded him trustee’s fees and attorneys’ fees,

⁸ This factor provides that:

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

we now consider his request for an award of attorneys' fees incurred litigating this appeal. Mr. Wright maintains that he is entitled to an award of fees pursuant to Tennessee Code Annotated section 35-15-1004(a). As stated above, this section provides that: "[i]n a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy." Tenn. Code Ann. § 35-15-1004(a). We have previously determined that this section authorizes this Court to use its discretion to direct an award of attorneys' fees and costs incurred on appeal for proceeding involving the administration of a trust. *See Williams v. Hardison*, 704 S.W.3d 807, 825 (Tenn. Ct. App. 2024). Because Mr. Wright has prevailed on each issue raised in this appeal, we find that an award of reasonable attorneys' fees and expenses incurred on appeal is appropriate in this case. Accordingly, we remand this issue to the chancery court to calculate the reasonable and necessary attorneys' fees and expenses incurred in this appeal and to enter an order making the appropriate findings and award against Ms. Feltus and the trusts, jointly and severally. *See id.*

IV. CONCLUSION

For the foregoing reasons, the ruling of the chancery court is affirmed and the matter remanded to the chancery court for a calculation of the reasonable attorneys' fees and expenses incurred litigating this appeal. Costs of this appeal are taxed to the appellant, Rosanne Feltus, for which execution may issue if necessary.

s/ Carma Dennis McGee
CARMA DENNIS MCGEE, JUDGE