IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2020-CA-00582-COA

ANDREA WILLIAMS **APPELLANT**

v.

MELISSA CARRIERE **APPELLEE**

DATE OF JUDGMENT:	05/26/2020
TRIAL JUDGE:	HON. LAWRENCE PAUL BOURGEOIS JR.
COURT FROM WHICH APPEALED:	HARRISON COUNTY CIRCUIT COURT, FIRST JUDICIAL DISTRICT
ATTORNEY FOR APPELLANT:	WILLIAM MICHAEL KULICK
ATTORNEY FOR APPELLEE:	WILLIAM ALEX BRADY II
NATURE OF THE CASE:	CIVIL - CONTRACT
DISPOSITION:	AFFIRMED - 06/29/2021
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE BARNES, C.J., McDONALD, McCARTY AND EMFINGER, JJ.

McDONALD, J., FOR THE COURT:

¶1. Melissa Carriere sued Andrea Williams[1] in the County Court of Harrison County, Mississippi, for breach of an oral agreement that the two had made to purchase, renovate, and resell a home. The county court found for Carriere and awarded her damages in the amount of $40,432.83. The county court also ordered Williams to deed the property to Carriere. Williams appealed the county court's judgment to the Circuit Court of Harrison County, which affirmed the county court's ruling. Williams appeals, arguing that the courts below

[1] At the time of the trial, Carriere's name was "Melissa Carriere-Dedeaux," and Williams's name was "Andrea Williams-Deyoe." For purposes of this appeal, they will be referred to as "Carriere" and "Williams."

erred in finding that an oral agreement had been breached when, in fact, Williams had merely given Carriere notice of her withdrawal from their joint venture. Williams also claims that the county and circuit courts were manifestly wrong in the assessment of damages and in ordering the transfer of the property. Having considered the record, arguments of counsel, and relevant precedent, we affirm the judgment of the circuit court, which affirmed the county court's ruling.

Facts

¶2. After Hurricane Katrina, close personal friends Williams and Carriere decided to purchase a damaged home, renovate it, and resell it. At the time, Williams was a mortgage underwriter who had previously rehabbed and resold a house.[2] Williams asked Carriere if she would be interested in "going in" on a house together. Williams would arrange the financing and oversee the contractor. Carriere, who worked at a local hospital, would contribute by providing her credit for the financing and pay half of the expenses. They agreed to divide the expenses (mortgage, taxes, insurance, and repairs) and profits equally. The agreement was not reduced to writing.

¶3. David Daugherty of Gulf Coast Realty helped them find a suitable property, and on September 21, 2006, they purchased a home located at 20 40th Street in Gulfport, Mississippi. The property was deeded to both Carriere and Williams as joint tenants with rights of survivorship. Both signed a deed of trust on the property in exchange for a $216,000 loan.

[2] Williams was also going to school to become a teacher.

¶4. The women hired a contractor to make repairs. Although the contractor promised completion in three months, it took the engagement of a second contractor and nearly thirteen months to complete the work.[3] Williams and Carriere marketed the house for sale, but when no offers were made, they rented the property beginning in November 2007 to mitigate their expenses. The rent covered the mortgage but not the cost of insurance and taxes, which Williams and Carriere remained obligated to pay.

¶5. When Carriere's husband was diagnosed with cancer and had to move to Houston, Texas, for treatment, Carriere fell behind in paying her share of the expenses on the renovated home. In January 2008, on the same day she sent Williams a check to catch up, Carriere received a letter from Williams threatening suit if Carriere did not pay.

¶6. In July 2008, Williams, who was involved in the real estate industry, experienced a reduction in her income due to the overall downward spiral of the economy. She had to take out additional student loans to live and could no longer afford to pay her part of the expenses. Williams met with Carriere to discuss the status of the renovated house. The renters would be moving out in November, and Williams told Carriere that she no longer wanted to keep the house. Williams explained that although they thought they could "flip" the house within three months of its purchase, it had now been a year and ten months, and the house had still not sold. Williams offered to sign the property over to Carriere, and Carriere could refinance it, sell it, continue to rent it, or give it back to the bank. Williams wanted nothing in return. But, Williams said, she would no longer make any payments.

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[3] The first contractor did not get approved to do the work.

¶7. Carriere said she spoke to the bank about refinancing, but she was told that refinancing would hurt her credit score. Carriere talked to a realtor about selling the house, but he told her that the market was down and that she would lose $20,000 to $40,000. Carriere paid the expenses after July 2008, and after the renters moved out in November 2008, she paid both the expenses and the mortgage. Carriere paid everything on the house until she rented it out again over a year later. She had renters from December 2009 through August 2011. Then the home remained vacant until 2012. At the time of the trial on this matter in 2013, Carriere did have a renter and a real estate management company managing the property for a fee.

¶8. On March 15, 2010, Carriere sued Williams in the Harrison County County Court for breach of contract and breach of the duty of good faith and fair dealing. She pleaded that Williams had failed to pay her share of the expenses for the house since July 2008. She sought over $17,053.61 in damages, attorney's fees and expenses, and "such other and further relief as the Court deems just and equitable." Williams answered the complaint pro se, denying the allegations and raising Carriere's failure to mitigate her damages as her only substantive defense.

¶9. The suit remained dormant until February 2012, when the clerk of court filed a motion to dismiss for lack of prosecution. The case was not dismissed, and on June 4, 2013, the county court held a bench trial. Williams represented herself pro se. During her testimony, Carriere presented several documents, including a chart on mortgage payments not paid by renters. The court calculated the total amount of mortgage payments that Carriere had paid

from December 2008 through June 2013 to be $39,997.66. Carriere claimed that Williams owed her half of that, $19,998.33. Williams acknowledged to the court that she trusted the court's calculation. Carriere testified that she paid $12,998.99 for taxes and that Williams owed her half of that or $6,494.50. Since 2008, Carriere paid $13,611 for a windstorm insurance policy, $5,179.50 for fire insurance, and $1,142 for flood insurance, totaling $19,932.50, for which Williams would owe $9,966.25. Carriere also had to pay utilities when the home was not rented, which came to $2,500, of which she claimed Williams owed $1,250. Carriere also paid for various repairs to the roof, to a shed, to a water-sewer line, et cetera, over the years, totaling $8,066.50, of which Williams would owe $4,033.25. Carriere asked that Williams pay her share of all these expenses and that Williams be ordered to transfer her interest in the property to Carriere for refinancing purposes.

¶10. Williams testified and agreed that the terms of the contract that she and Carriere had agreed to were correct. She explained that the "flip" was to have taken no longer than a few months, but it extended beyond that time. In the interim, the economic fortunes of both her and Carriere had changed. Williams said that her income was drastically reduced in 2008, and she struggled to pay her share of the expenses until she no longer could. She allegedly gave Carriere ample notice of her situation and intent to withdraw from the agreement. During their meeting in July 2008, Williams said she offered to turn the property over to Carriere so Carriere could refinance it. She offered to take nothing for transferring her interest; she just could not be further burdened by the debts of the house.

¶11. The county court judge ruled from the bench. He found that the women had formed

a legally enforceable oral contract that Williams had breached. He ordered that Williams pay Carriere damages in the amount of $40,432.83 and that she deed her interest in the property to Carriere and pay the costs of any refinancing Carriere had to undertake. Judgment on this ruling was entered on June 27, 2013.

¶12. Thereafter, Williams hired an attorney, who appealed the county court's decision to the Harrison County Circuit Court on July 26, 2013. The attorney argued that the county court erred in ordering the transfer of the property and that by doing so, the county court lost jurisdiction because the property itself was worth more than the county court's $200,000 jurisdictional limit. He further argued that the contract violated the statute of frauds because it was an oral contract concerning real property and was therefore unenforceable. Further, he claimed that the county court erred in assessing damages and in ordering Williams to pay the refinancing costs. On this issue, he asserted that the case should have been construed as an action for dissolution of a partnership. On May 26, 2020, the circuit court affirmed the county court's judgment, finding that Williams had waived any arguments of partnership dissolution because she did not raise these issues before the county court. The circuit court found no merit to the other issues Williams raised.

¶13. On June 3, 2020, Williams appealed from the circuit court's judgment and raises the following issues: (1) whether the circuit court erred in affirming the county court's breach-of-contract finding; (2) whether the damage assessment of $40,432.83 was manifest error; and (3) whether the circuit court erred in affirming the order requiring Williams to quitclaim the property to Carriere.

Standard of Review

¶14. "When the county court sits as the fact-finder, the circuit court and this Court, as appellate courts, 'are bound by the judgment of the county court if supported by substantial evidence and not manifestly wrong.'" *Turnage v. Brooks*, 301 So. 3d 760, 763 (¶9) (Miss. Ct. App. 2020) (quoting *Bacallao v. Madison County*, 269 So. 3d 139, 144 (¶21) (Miss. Ct. App. 2018) (quoting *Stevens v. Grissom*, 214 So. 3d 298, 300 (¶6) (Miss. Ct. App. 2017))). "Moreover, if the judgment of such court can be sustained for any reason, it must be affirmed, . . . even though the trial judge based it upon the wrong legal reason." *Bacallao*, 269 So. 3d at 145 (¶21).

Discussion

I. Whether the circuit court erred in affirming the county court's breach-of-contract finding.

A. Application of Partnership Law

¶15. Williams contends that the county and circuit courts erroneously considered Carriere's lawsuit as a simple breach-of-contract action rather than a statutory action to dissolve a partnership. In response, Carriere points out that the circuit court correctly found that Williams had failed to raise this issue to the county court, and therefore she is procedurally barred from arguing it on appeal. We agree that the issue is procedurally barred.

¶16. At the county court level, Williams chose to proceed pro se. The Mississippi Constitution allows a person to represent himself or herself in a civil proceeding. *Madison v. DeSoto County*, 822 So. 2d 306, 310 (¶20) (Miss. Ct. App. 2002); *Bullard v. Morris*, 547 So. 2d 789, 790 (Miss. 1989). However, the pro se litigant is bound by the same rules of

practice and procedure as an attorney. *Id.* This includes the requirement that a party give notice to his opponent of his or her claims and defenses. *See* M.R.C.P 4, 8.

¶17. Carriere's complaint pleaded causes of action for breach of contract and breach of the duty of good faith and fair dealing. Williams's answer denied these claims and raised only one substantive defense: failure to mitigate damages. She raised no defense or counterclaim against Carriere for an alleged violation of the Uniform Partnership Act (UPA).[4] Williams mentioned the word "partnership" only twice during the trial.[5] But she made no formal argument to the county court, nor did she raise the various principles of partnership law under the UPA that her attorney later raised to the circuit court and to this Court. The circuit court, sitting as an appellate court, found that Williams had waived this argument by her failure to raise it to the county court.

¶18. The Mississippi Supreme Court has held that arguments raised for the first time on

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[4] The Uniform Partnership Act is codified in Mississippi Code Annotated section 79-13-101 to -1206 (Rev. 2013).

[5] These instances included:

> I diligently did everything I could until I realized that financially I was defeated and could no longer be party to this house. It came to an impasse where the partnership the details of the partnership were changing. Financial situations were changing. I told her five months prior that I wanted to foreclose, and she didn't. She wanted to keep it. (Tr. 121).

and

> I am perfectly agreeable to sign this property over to her. However, I'm not agreeable to pay anything that incurred on the house after November 2008, because she knew it was -- she wanted to keep it and I didn't, and we came to a disagreement within our partnership. (Tr. 122).

appeal are procedurally barred. In *Bay Point Properties Inc. v. Mississippi Transportation Commission*, 201 So. 3d 1046, 1055 (¶18) (Miss. 2016), the supreme court said, "We do not hold trial courts in error on issues not presented to them for consideration." *Id.* Accordingly, we find that Williams is procedurally barred from arguing violations of the UPA.

B. Enforcement of Oral Contract

¶19. Williams next argues that the Carriere-Williams oral agreement was not enforceable because it was not in writing and therefore, violated the statute of frauds found in Mississippi Code Annotated section 89-1-3 (Rev. 2011).[6] Williams further argues that suit could not be based on the agreement under Mississippi Code Annotated section 15-3-1(d) (Rev. 2019) because it was not in writing. Section 89-1-3 requires that lands be conveyed only by a writing that is signed and delivered; section 15-3-1(d)[7] prohibits suits on oral contracts that cannot be performed within fifteen months. In this case, the circuit court correctly pointed

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[6] Section 89-1-3 provides:

> An estate of inheritance or freehold, or for a term of more than one year, in lands shall not be conveyed from one to another unless the conveyance be declared by writing signed and delivered.

[7] Section 15-3-1(d) provides:

> An action shall not be brought whereby to charge a defendant or other party:
>
> . . . .
>
> (d) upon any agreement which is not to be performed within the space of fifteen months from the making thereof; . . . unless, in each of said cases, the promise or agreement upon which such action may be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith or signed by some person by him or her thereunto lawfully authorized in writing.

out that Williams did not plead either of these defenses in her answer, nor did she raise them at the trial before the county court. Under *Bay Point Properties Inc.*, 201 So. 3d at 1055 (¶18), Williams is procedurally barred from raising these statutory defenses on appeal, both to the circuit court and to us.

¶20. Notwithstanding the procedural bar, Williams cites nothing but the two statutes in making this argument. As the circuit court correctly held, contracts pertaining to property are not within the Statute of Frauds merely because real property is part of the contract. The circuit court aptly cited *Lowe v. Hodges*, 726 So. 2d 1289, 1289 (¶2) (Miss. Ct. App. 1998), in which the parties orally agreed that Lowe would receive a three-percent commission if he sold Hodges's land. There we noted that contracts for the sale of land must be in writing, but contracts employing a broker to sell it need not be. *Id.* at 1291 (¶9). In the case at hand, Carriere and Williams entered into an oral contract to purchase and renovate property. The contract itself was not a conveyance of the property itself, and therefore it is not subject to the Statute of Frauds found in section 89-1-3.

¶21. Concerning the applicability of section 15-3-1(d), the testimony showed that Carriere and Williams intended to purchase the home, renovate it in three months, and sell it. They clearly envisioned their agreement to be completed in less than fifteen months. The Mississippi Supreme Court has said where an oral contract was of an indefinite duration and susceptible of performance within fifteen months, it was removed from the section 15-3-1(d) Statute-of-Frauds provision. *Beane v. Bowden*, 399 So. 2d 1358, 1361 (Miss. 1981). Therefore, the oral agreement between Carriere and Williams did not violate the Statute of

Frauds and was enforceable in our courts.

¶22. Finally, "[a] breach-of-contract case has two elements: (1) the existence of a valid and binding contract, and (2) a showing that the defendant has broken, or breached it." *Maness v. K & A Enters. of Miss. LLC*, 250 So. 3d 402, 414 (¶43) (Miss. 2018) (internal quotation marks omitted). In this case, Carriere pleaded that she and Williams had a contract and that Williams breached it. Williams admitted both the existence of the contract and her failure to fulfill her obligations under it. Clearly, the circuit court was correct in affirming the county court's finding that Williams had breached the contract and that Carriere is entitled to damages for that breach.

II. Whether the $40,432.83 damage-award assessment was manifest error.

¶23. Williams argues that Carriere's damages are limited to the $17,500 she pleaded in her complaint. Thus, she argues that an award of $40,432.82 was "manifest error." We disagree.

¶24. In a breach-of-contract case, "[t]he injured party has a right to damages for any breach by a party against whom the contract is enforceable unless the claim for damages has been suspended or discharged." Restatement (Second) of Contracts § 346 (1981). "The court's purpose in establishing a measure of damages for breach of contract is to put the injured party in the position where she would have been but for the breach." *Universal Life Ins. Co. v. Veasley*, 610 So. 2d 290, 295 (Miss. 1992).

¶25. In this case, Carriere pleaded damages for the expenses she had to absorb after Williams stopped paying her share. At the time of the filing of the complaint in 2010, these expenses amounted to $17,500. However, the damages continued to accrue until the case

was tried in 2013. During the trial, Carriere presented documentary evidence of the expenses she had paid, which at that point exceeded $80,000. Williams did not object to this evidence and agreed that she did owe the amount Carriere requested. In *Murrell v. Brown*, 202 So. 3d 287, 290 (¶8) (Miss. Ct. App. 2016), we pointed out that "[t]he Mississippi Supreme Court has held: '[I]f evidence is offered by a party which is outside the scope of the pleadings and the other party fails to object, the opponent will be considered to have impliedly consented to the issue and the pleading will be amended accordingly.'" (Quoting *Lahmann v. Hallmon*, 722 So. 2d 614, 619 (¶16) (Miss. 1998) (citing *Queen v. Queen*, 551 So. 2d 197, 202 (Miss.1989))).

¶26. Accruing damages during litigation was addressed in *Lahmann.* There, the defendant challenged a chancery court judgment for back child support, claiming that the amount was more than was pleaded in the complaint that had been filed months before. *Lahmann*, 722 So. 2d at 619 (¶14). The supreme court said that because Lahmann did not object to the amounts placed into evidence, the pleadings were deemed to be amended. *Id.* at 619 (¶19). The court also said, "Furthermore, Lahmann knew that since he was not currently paying the full amount of child support due, the outstanding amount thereof would continue to increase until trial." *Id.* Similarly, Williams did not object to the amounts placed into evidence. Moreover, she knew that the amounts were steadily accruing because she had paid nothing while the case was pending.

¶27. The damages award was justified and represented no windfall to Carriere. Carriere spent over $80,000 of her own money to maintain the asset after Williams unilaterally

abandoned her responsibilities. In essence, she "loaned" Williams her share of the expenses for which Carriere received no interest. At trial, Williams did not object to the accuracy or reasonableness of the amounts Carriere presented. Carriere sought and was awarded only Williams's share of those expenses. Both women lost money, and the damages award merely equalized the loss. The county court correctly assessed the damages owed to put Carriere in the position she would have been but for the breach. Accordingly, the circuit court did not err in affirming the amount of damages assessed in the county court's judgment.

III. Whether the circuit court erred in affirming a quitclaim transfer of the property.

¶28. Williams challenges the circuit court's affirmation of the county court's order that required her to transfer her interest in the property to Carriere. Williams argues that Carriere did not request this kind of relief in her complaint and that this kind of relief constitutes "special damages" that are required to be specifically pleaded under Rule 9(g) of the Mississippi Rules of Civil Procedure. In response, Carriere argues that Williams never objected to her requests for a transfer of the title that were made at trial, and thus her pleadings were effectively amended to include that request for relief. Moreover, Carriere's complaint did plead for "such other and further relief as the Court deems just and equitable." We address both of Williams's arguments which we find to be without merit.

A. Transfer of Property When Not Specifically Pleaded

¶29. Williams first contends that Carriere did not seek a transfer of the property in her complaint even though she prayed for general relief. In support, Williams erroneously relies on our 2009 decision in *Bluewater Logistics LLC v. Williford* (*Bluewater I*), 55 So. 3d 177

(Miss. Ct. App. 2009), for the proposition that a general prayer for relief could not be construed to include a transfer of property. There, we cited *Barnes v. Barnes*, 317 So. 2d 387, 388 (Miss. 1975), where the supreme court ultimately reversed and rendered a trial court's order that granted land to one party, because the party's pleadings did not ask for the land. *Bluewater I*, 55 So. 3d at 186 (¶20).

¶30. But the supreme court reversed our holding in *Bluewater Logistics LLC v. Williford* (*Bluewater II*), 55 So. 3d 148, 165 (¶76) (Miss. 2011), and overruled *Barnes*. In *Bluewater II*, members of a limited liability company ousted another member named James Williford, who then sued and requested the chancery court to reinstate him and award him damages. *Id*. at 152 (¶5). While litigation was pending, the remaining members rescinded their ouster but stood by their decision to fire Williford, who was also an employee of the company. *Id*. at 153 (¶13). The matter eventually proceeded to trial, and the chancery court found that the value of Williford's interest at the time of the ouster was $316,768.25 and awarded him that amount with interest. *Id*. at 155 (¶21). On appeal, we had reversed and said that the chancery court's order was beyond the pleadings. *Id*. at (¶22). But the Mississippi Supreme court disagreed. *Id.* The court quoted Rule 54(c), which provides that "every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled by the proof and which is within the jurisdiction of the court to grant, even if the party has not demanded such relief in his pleadings . . . ." *Id*. at 158 (¶35). Further, the supreme court said:

> Our decisions have reflected the shift from older forms of "code pleading" to the Rules' "notice pleading" paradigm. In *Pilgrim Rest Missionary Baptist*

> *Church v. Wallace*,[8] we stated "it is axiomatic that the relief need not be limited in kind or amount by the demand but may include relief not requested in the complaint." And in *Turner*,[9] we stated: "A trial judge may award a party any relief to which he is entitled, even if the party fails to make a specific demand for such."

Id. at (¶36). Accordingly, the supreme court said that the complaint was sufficient to put Bluewater on notice that Williford was seeking relief and that the chancery court's order was not beyond the scope of the pleadings. *Id*. at 159 (¶39).

¶31. The dissent points out that in applying these general principles, the supreme court in *Bluewater II* examined Williford's complaint and found that it contained language that put his partners on notice of his demand for damages other than the general prayer for relief. *Id.* at 158 (¶38). But we more recently have applied *Bluewater II* in a contempt matter, where we upheld a reimbursement of a husband's overpayment of child support even though he did not request such relief in his pleadings. *Nelson v. Nelson*, 271 So. 3d 613, 618 (¶14) (Miss. Ct. App. 2018). We noted that the issue had arisen during several conferences with the court and at trial, and the wife agreed that he should either be paid the entire amount that he overpaid or that he should be given a credit in the amount that he overpaid. *Id*. We held that the chancery court was not manifestly wrong in awarding the husband retroactive child support for overpayment. *Id*. at (¶15). This reflects the body of law that has been developed under Rule 15(b) of the Mississippi Rules of Civil Procedure, which specifically allows the amendment of pleadings to conform to the evidence presented at trial: "When issues not

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[8] *Pilgrim Rest Missionary Baptist Church ex rel. Bd. of Deacons*, 835 So. 2d 67, 75 (¶19) (Miss. 2003).

[9] *Turner v. Terry*, 799 So. 2d 25, 39 (¶49) (Miss. 2001).

raised by the pleadings are tried by expressed or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings." *Weiss v. Weiss*, 579 So. 2d 539, 542 (Miss. 1991) (Alimony was tried by consent although the complaint only requested separate maintenance and was not formally amended where a husband put on evidence as to alimony, failed to properly object, and failed to raise any due process considerations.); *Booneville Collision Repair Inc. v. City of Booneville*, 152 So. 3d 265, 270 (¶11) (Miss. 2014) (Statutory liability of tax collectors and clerks who failed to perform their duties was tried by consent in a Mississippi Tort Claims Act case although a purchaser first raised the issue at a hearing on motions to dismiss because the city and collector did not object to the injection of the issue into the case.); *Renfroe v. Berryhill*, 910 So. 2d 624, 628 (¶17) (Miss. Ct. App. 2005) ("The Mississippi Supreme Court has held quite clearly that if no objection is raised to the introduction of issues not embraced within the original pleadings, such issues will be deemed to be tried by implied consent."). In this case, Carriere's complaint was effectively amended to include a prayer for the transfer of the property when it was raised without objection at trial.

¶32. Moreover, Williams was not surprised when Carriere told the county court that she desired an order transferring the property. Williams herself raised the proposition even before the suit was filed (as long as the transfer was on her terms). As Williams told the county court, "I offered her at that time [July 2008] an opportunity just to take the house, whatever money I had put into it, gone. I offered to sign the property over to her. I asked that she refinance it." During discovery, Williams answered an interrogatory, again agreeing

to transfer the property but only if Carriere dropped the lawsuit (i.e., forfeited her legal claim for repayment of the $40,000 Williams owed her). During the trial, Carriere specifically asked for such relief, again without objection by Williams.

¶33. At first blush, it may appear that Carriere unfairly benefitted by the court-ordered transfer of title. The record is silent as to the value of the home at the time of the trial to determine whether any accrued equity might have entitled Williams to a set-off. Williams had ample opportunity to present a claim for a set-off if she had been entitled to one. At trial, she could have presented evidence that the value of the property has appreciated to mitigate her damages. But she did not. After the trial, she employed legal counsel, who could have asked the county court for rehearing on the damages issue and presented proof if the value of the property had appreciated enough to entitle Williams to a set-off. But he did not. On appeal to the circuit court, Williams only challenged the transfer-of-property issue on the ground that the order caused the county court to exceed its jurisdictional authority without any submission of the property's actual worth. Even to this Court, Williams does not claim that the order requiring her to transfer title deprived her of a set-off to the damages ordered. Given how the expenses on this property mounted over the years, from $34,000 in 2010 to $80,000 in 2013, any equity seems unlikely. Moreover, Carriere needed to refinance the property with the court's approval. Thus, if anything, the transfer order relieved Williams of an ongoing obligation.[10]

[10] In fact, the court's order helped Williams, who had testified, "In fact, this property is a hardship for me, because I can't- - I don't- - I'm not eligible for credit because this mortgage is still in my name and my debt to income ratio is so high, no one will loan me a box of toothpicks."

¶34. In addition, Williams herself had knowingly and intentionally abandoned her ownership interest in the property, saying that "after 2008, I no longer made any ownership claim to the property on my income taxes." In essence, the county court merely ordered her to do what Williams wanted. Had the court not ordered the transfer, Williams's obligations under the contract would continue to accrue, leaving both her and Carriere in the untenable position of possible suits in the future. Because Williams was not surprised by the court's order, because she did not object to the entry of evidence concerning transfer of the property, and because the grant of such relief was within the jurisdiction of the county court's injunctive authority,[11] the county court did not err in ordering Williams to transfer her interest in the property to Carriere, and the circuit court did not err in affirming that ruling.

B. Transfer of Property as Special Damages

¶35. Williams also argues that the transfer of property is a type of "special damages" that is required to be specifically pleaded under Rule 9(g) of the Mississippi Rules of Civil Procedure. However, Williams did not raise this issue before the county or circuit courts, and under *Bay Point Properties Inc.*, 201 So. 3d at 1055 (¶18), she is procedurally barred from raising it on appeal. Notwithstanding the procedural bar, we find the transfer of the property was not "special damages" as provided in Rule 9(g). Moreover, if they were, Williams

[11] "County courts, as courts of general jurisdiction, . . . has [sic] concurrent jurisdiction with the circuit and chancery courts in all matters of law and equity wherein the amount in controversy does not exceed $200,000, exclusive of costs and interest. To determine whether a court has subject matter jurisdiction the face of the complaint, nature of the controversy and relief sought must be examined. Because jurisdiction attaches when the complaint is filed county courts cannot be divested of jurisdiction by upwardly fluctuating damages." Johnny C. Parker, *Mississippi Law of Damages* § 1:3 (3d ed.), Westlaw (database updated Oct. 2020).

waived this issue by failing to object to the testimony at trial.

¶36. The language of Rule 9(g) of the Mississippi Rules of Civil Procedure states that "when items of special damage are claimed, they shall be specifically stated." The notes to the Rule provides clarification on the type of damages referred to:

> Rule 9(g) requires a detailed pleading of special damages and only a general pleading of general damages. *General damages are damages that are typically caused by, and flow naturally from, the injuries alleged.* Special damages are damages that are unusual or atypical for the type of claim asserted. Special damages are required to be pled with specificity so as to give the defendant notice of the nature of the alleged damages. Special damages include, but are not limited to, consequential damages, damages for lost business profit, and punitive damages.

M.R.C.P. 9(g) advisory committee notes (emphasis added) (citations omitted). In this case, the transfer of the property to Carriere flows naturally from her claim. Williams had stopped paying her share of the expenses on the rental home, and such expenses would continue to accrue as long as Williams held an interest in the property. Ordering Williams to transfer her interest was the only way to stop the continued accrual of damages. Therefore, the transfer could reasonably be considered as part of general damages.

¶37. Even if such relief were considered to be "special damages," as noted above in the breach-of-contract section, Williams made no objection to the evidence presented about the need for the transfer. Therefore, she waived any requirement of special pleading, and the issue was tried by her implied consent under Rule 15(b) of the Mississippi Rules of Civil Procedure. "An issue may be 'tried by implied consent' if during trial, 'both parties were able to detect that a new issue was being litigated.'" *Ward v. Estate of Cook ex rel. Cook*, 294 So. 3d 1252, 1258 (¶15) (Miss. Ct. App. 2020) (citations omitted). "Where a party offers

no timely objection, we treat the issue as having been tried by implied consent." *Bond v. Bond*, 271 So. 3d 548, 551 (¶6) (Miss. Ct. App. 2018) (quoting *Queen v. Queen*, 551 So. 2d 197, 200 (Miss. 1989)); *see also Woodkrest Custom Homes Inc. v. Cooper*, 108 So. 3d 460, 465 (¶13) (Miss. Ct. App. 2013) (objection to award of damages for emotional distress and mental anguish based on fact that plaintiffs never pleaded claim was waived on appeal where defendants failed to raise the issue in the trial court). In this case, the issue of transfer of the property to Carriere was raised numerous times during the trial with no objection by Williams. Accordingly, the issue was properly tried, and the county court did not err in ordering the transfer of title. Nor did the circuit court err in affirming that order.

Conclusion

¶38. Williams is procedurally barred from arguing that her contract with Carriere was a joint venture because that argument was not raised before the county court. A similar bar applies to Williams's Statute-of-Frauds claims. Despite the bar, we find that the oral contract in this case was not barred from enforcement under Mississippi's Statute-of-Frauds laws. Moreover, Williams waived her challenges to the damages assessed and to the county court order concerning transfer of property to Carriere because Williams failed to object to these issues at trial. Consequently, Carriere's complaint was effectively amended to request this relief when the issues were tried with Williams's consent. Accordingly, we affirm the judgment of the circuit court in this matter.

¶39. **AFFIRMED.**

BARNES, C.J., CARLTON, P.J., WESTBROOKS, McCARTY AND EMFINGER, JJ., CONCUR. WILSON, P.J., CONCURS IN PART AND IN THE

RESULT WITHOUT SEPARATE WRITTEN OPINION. LAWRENCE, J., CONCURS IN PART AND DISSENTS IN PART WITH SEPARATE WRITTEN OPINION, JOINED BY GREENLEE AND SMITH, JJ.

LAWRENCE, J., CONCURRING IN PART AND DISSENTING IN PART:

¶40. I concur with the majority that there was ample evidence to affirm the county court's award of damages for a breach of contract. I take issue with and dissent from the majority opinion affirming the ordering of a transfer of Williams' ownership interest in the property to her business partner without any appraisal, damage assessment, or consideration of Williams' equity interest in that property. The pleadings did not request such an order. The parties did not litigate such an order. Thus, the sua sponte order should have required Carriere to pay Williams, or at least deduct from the damages awarded, any equitable interest Williams had in the subject property. Instead, the sua sponte order was made without any evidence addressing Williams' equity interest in the property. I believe the court abused its discretion by ordering a transfer of property not pled and without evidence at trial needed to ensure it was legally appropriate.

Did the complaint give sufficient notice of a request for a transfer of Williams' property interest?

¶41. The complaint in this case was filed on March 15, 2010. It alleged breach of contract and breach of the duty of good faith and fair dealing. Under the breach-of-contract claim, the Plaintiff requested "[a]n award of the $17,500 plus interest in the amount of 8 percent per annum." Under the breach of good faith and fair dealing, the complaint asserted that "Plaintiff should be awarded $17,053.61 plus attorney's fees plus costs incurred in bringing this action." Nowhere did the complaint ask for specific performance or a transfer of the

legal interest by quitclaim deed. In fact, those words were not in the complaint at all in any shape or form.

¶42. Carriere argues that the prayer for relief provided notice to Williams that she "could be" ordered to transfer her legal interest in the property. Interestingly, a look at the relief language in the complaint fails to support that argument. The relief requested read as follows:

> 1. The total amount owed as a result of Defendant's breach of contract in the amount of $17,500;
>
> 2. In the alternative an award of $17,500 for Defendant's breach of the duty of good faith and fair dealing;
>
> 3. An award of attorney's fees and costs incurred in bringing this action as set forth in the Promissory Note executed by Defendant; [and]
>
> 4. Such other and further relief as the Court deems just and equitable.

¶43. Carriere argues that the words "[s]uch other and further relief as the court deems just and equitable" are sufficient to give a party notice and the court authority to order the actual transfer of a legal interest in a particular piece of property. That version of notice pleadings is a recipe for disastrous results, shocking judgments, and trial by ambush.

¶44. The majority cites the Mississippi Supreme Court case of *Bluewater Logistics LLC v. Williford* (*Bluewater II*), 55 So. 3d 148, 158 (¶37) (Miss. 2011), as authority for justifying the extraordinary relief awarded but not pled in this case. In that case, the supreme court overruled *Barnes v. Barnes*, 317 So. 2d 387 (Miss. 1975), *French v. Davis*, 38 Miss. 218 (1859), and *Tucker v. Cocke*, 32 Miss. 184 (1856), "to the extent that they conflict with the requirements and provisions of the Mississippi Rules of Civil Procedure and subsequent

decisions of this Court." *Bluewater II*, 55 So. 3d at 158 (¶37). But in *Bluewater*, there was at least minimal notice of the damages being sought. As pointed out in the majority opinion, *Bluewater II* reasoned, "Paragraph 5 alleged that ouster was unlawful warranting equitable and **monetary relief**." *Id*. at (¶38) (emphasis added). Here, there are absolutely no words or even a creative insinuation possibly evidencing that the transfer of Williams' property interest was sought or was justified by the breach of contract between the parties.[12] An owner's equitable interest in real property is a legitimate property right and investment interest. Typically, equity value, the difference between what is owed on a piece of property and what it is worth, accumulates in real property the longer the property is owned. It was, for a long time in this country, as sure to grow as the sun was to rise. Courts should not order it away without specificity or notice that it is a possibility in ongoing litigation. Further, courts should not order it away without some evidentiary basis as to the appraised value of the land or the amount owed on any existing debt.[13] This ensures that no unjust enrichment occurs or excessive or unjustified damages would attach to the breaching party.

¶45. Carriere argues that because her counsel said in the opening statement, "She is seeking that the property be signed over to her name" that Williams had notice and the court had authority to order the relinquishment all of Williams' interest in the real property. That argument fails for want of logic. What if her counsel had added in the opening statement that

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[12] Both parties' names were on the warranty deed and deed of trust. In addition, Carriere testified that she and Williams made an oral agreement to evenly split all profits and expenses.

[13] At trial, neither party introduced an appraised value of the property in question or the amount still owed on the existing mortgage.

she suddenly wanted damages for the tort of "fraud" or "punitive damages" without those words being specifically pled in the complaint or acted upon in discovery? The Mississippi Rules of Civil Procedure require notice pleadings for a reason. When a complaint and answer are filed, the issues are joined. Those pleadings can be amended after leave of court and notice to the opposing party. That never occurred in this case. Further, courts tell juries all the time in every trial, opening statements are not evidence. Just as they are not evidence, they are not pleadings either. The potential for serious mischief and a return to the days of trial by ambush would result if a party amends a pleading simply by uttering words in an opening statement.

¶46. Further, Williams, who appeared pro se, testified that she responded to interrogatories propounded by Carriere and said she was willing to deed the property if the present lawsuit was "dropped." In that instance, she would forgo her equity interest, if any, in exchange for not having to pay the approximated $40,000 in damages owed as a result of her breach. Now she has been ordered to pay the $40,432.83 in damages for her breach and also to transfer her interest in the property. If any equity value exists in the property, Williams would lose that interest, and her partner would gain that interest. The court fashioned that legal relief without knowing the value owed or the present worth of the property. *See supra* n.13. When the court ordered the $40,432.83 in damages to be paid, it in theory placed the parties back to equally sharing the expenses of owning the property according to their agreement. This was the relief requested in the complaint. After the order of damages, Carriere had paid no more than Williams in owning the property. But when the court took the next step and

divested Williams of her property interest after ordering her to pay her share of the expenses owed, Carriere may have been unjustly enriched. She could then sell the property and keep for herself all the proceeds minus what was owed; when before the court's order, she would have had to split any profits with Williams.

¶47. If there had been testimony that the amount owed on the mortgage exceeded the value of the real property, I would not be concerned about or dissent regarding Williams' potential loss of her equity interest. But that information is not in the record. There is in the record an appraised value for tax purposes in the amount of $134,251, a landlord insurance policy covering the subject property in the amount of $278,700, and a flood insurance policy covering the subject property in the amount of $250,000. Those three documents are hardly sufficient to ensure that an unpled remedy ordered by the court does not cause an unjust enrichment or a deprivation of a property interest.

¶48. In conclusion, I would hold that the order to transfer the property interest was an abuse of discretion, outside the scope of the pleadings, and a cause of an unnecessary and unjust deprivation of Williams' property interest without sufficient evidence in the record for the court to know the true effect of such an order. Accordingly, I dissent in part.

GREENLEE AND SMITH, JJ., JOIN THIS OPINION.