

2018 IL App (2d) 171009-U
No. 2-17-1009
Order filed August 31, 2018

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> ESTATE OF LESLIE MANDELSTEIN,) Deceased))))) (Barbara Mandelstein, as Independent Executor) of the Estate of Leslie Mandelstein, Deceased,) Plaintiff-Appellant v. The Estate of Lester) Mandelstein and Custom Planning, LLC,) Defendants-Appellees).)	Appeal from the Circuit Court of Lake County. No. 14-P-899 Honorable Donna Jo Vorderstrasse, Judge, Presiding
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PRESIDING JUSTICE HUDSON delivered the judgment of the court.
Justices Jorgensen and Schostok concurred in the judgment.

ORDER

¶ 1 *Held:* (1) Trial court did not abuse its discretion in denying plaintiff's motion for leave to file jury demand; (2) trial court did not err as a matter of law in finding that defendant did not owe a fiduciary duty to decedent's estate; (3) trial court did not abuse its discretion in denying plaintiff's request for expenses pursuant to section 35-65(d) of the Limited Liability Company Act (805 ILCS 180/35-65(d) (West 2014) (repealed by Pub. Act 99-637 (eff. July 1, 2017))); and (4) trial court did not err as a matter of law in concluding that plaintiff failed to plead a cause of action for recovery of the value of decedent's sole proprietorship.

¶ 2 I. INTRODUCTION

¶ 3 Plaintiff, Barbara Mandelstein, as independent executor of the Estate of Leslie Mandelstein (Leslie), deceased, filed a five-count complaint against defendants Lester

Mandelstein (Lester) and Custom Planning Group, LLC (CPG).¹ Count I requested an accounting of CPG, count II alleged a breach of fiduciary duty against Lester, count III sought a constructive trust against Lester and CPG, count IV alleged conversion against Lester, and count V was for dissociation from CPG and the purchase of Leslie's membership interest in CPG pursuant to section 35-60 of the Limited Liability Company Act (Act) (805 ILCS 180/35-60 (West 2014) (repealed by Pub. Act 99-637 (eff. July 1, 2017))). Following a four-day bench trial, the trial court found in favor of defendants and against plaintiff on the first three counts of the complaint. The court found in favor of plaintiff and against defendants on the last two counts of the complaint. The court awarded plaintiff \$17,000 plus prejudgment interest under count IV and \$19,707 plus prejudgment interest under count V. Plaintiff now appeals, raising four principal arguments: (1) whether the trial court erred in denying her motion for leave to file a jury demand; (2) whether the trial court erred in holding that Lester did not owe a fiduciary duty to Leslie's estate; (3) whether the trial court erred in denying plaintiff's request for fees and expenses under section 35-65(d) of the Act (805 ILCS 180/35-65(d) (West 2014) (repealed by Pub. Act 99-637 (eff. July 1, 2017))); and (4) whether the trial court erred as a matter of law in holding that Leslie's sole proprietorship was not at issue in this case. We affirm.

¶ 4

II. BACKGROUND

¶ 5 The facts giving rise to this dispute are briefly summarized below. We will discuss any other relevant facts in connection with the issues to which they pertain. In the early 1990s, Lester, Leslie (Lester's son), and several other individuals formed CPG as a limited liability company. CPG provided individualized investment advice to its clients. In the years following

¹ Lester died on July 23, 2016. On September 22, 2016, the trial court granted defendants' motion to substitute Lester's estate for Lester, individually, as a party in the case.

CPG's formation, several members left the company, leaving Lester and Leslie as the only remaining members of CPG. Although CPG did not have a written operating agreement, it was not disputed that as of the early 2000s, Lester and Leslie each had 50% capital ownership of CPG.

¶ 6 CPG obtained clients from seminars. In addition, both Lester and Leslie had their own personal clients who were obtained apart from the seminars. All clients were serviced out of one office. Each client executed an asset-management agreement—a contract between a “registered investment advisor” (RIA) and the client which, among other things, provided the RIA with the right to manage the client's assets and collect an advisory fee from the client's account. From CPG's inception, Lester had been an RIA. CPG was also an RIA. Initially, however, Leslie was not an RIA. As a result, he was unable to enter into an asset-management agreement with any client under his name. Instead, Leslie served as an agent under Lester and all clients serviced by Leslie were under asset-management agreements with either CPG (those clients obtained through seminars) or Lester (all non-CPG clients). Leslie was credited for any advisory fees earned by the clients he serviced regardless of how the asset-management agreement was structured. Leslie became an RIA on January 2, 2014. At that time, Leslie had some of his clients execute asset-management agreements under his name.

¶ 7 Leslie died on August 31, 2014. Following Leslie's death, Lester contacted Leslie's clients to request that they sign new asset-management agreements with him. In 2015, Lester entered into an asset purchase agreement with Moonstone Asset Management, Inc. (Moonstone) and Karen Natkin for the purchase of Lester's assets. CPG also entered into an asset purchase agreement with Moonstone and Natkin for CPG's assets. The list of assets acquired included “customer lists,” “goodwill and trade names,” and “furniture and equipment.” Some clients on

the customer lists had been Leslie's before his death, although, as noted, they had signed new asset-management agreements with Lester after Leslie's passing.

¶ 8 Following Leslie's death, plaintiff (Leslie's wife) was appointed the independent executor of Leslie's estate. On February 10, 2015, plaintiff, then represented by the law firm of Chuhak & Tecson, P.C. (Chuhak), filed the five-count complaint at issue "to recover for [Leslie's] estate that share of distributions due to her deceased husband *** and the value of his share of the limited liability company he co-owned with *** Lester." Count I of the complaint was a demand for an accounting of CPG. Count II alleged a breach of fiduciary duty against Lester. Count III sought the imposition of a constructive trust against Lester and CPG. Count IV alleged conversion against Lester for advisory fees allegedly attributable and payable to decedent and which Lester "wrongfully refused to distribute to [Leslie's] estate." Count V was titled "Dissociation [*sic*] from LLC and Purchase of Decedent's Membership Interest" and sought a determination of the fair value of Leslie's distributional interest in CPG as of the date of his death pursuant to section 35-60 of the Act, entry of an order requiring CPG to purchase Leslie's distributional interest in CPG at its fair value as of the date of Leslie's dissociation, and an award of attorney fees. Each defendant filed an answer and affirmative defenses to plaintiff's complaint as well as a counterclaim against plaintiff. Lester died on July 23, 2016, while this matter was pending in the trial court. Linda Rukin, Lester's daughter, was appointed as independent executor of Lester's estate.

¶ 9 Meanwhile, on June 9, 2016, the trial court granted plaintiff's motion for substitution of counsel. At that time, Chuhak withdrew as plaintiff's counsel and the Voelker Litigation Group filed an appearance in its stead.² On July 25, 2016, plaintiff filed a motion for leave to file a jury

² Prior to trial, the Voelker Litigation Group withdrew as counsel for plaintiff and the

demand *instanter* pursuant to Illinois Supreme Court Rule 183 (eff. Feb. 16, 2011). In the motion, plaintiff alleged that prior counsel “erroneously failed to file a jury demand when [her] complaint was originally filed.” Plaintiff further alleged that substitute counsel did not realize the “inadvertent mistake” until July 19, 2016. Following further briefing by both parties on the motion, the trial court scheduled a hearing on the matter. On September 22, 2016, the trial court denied plaintiff’s motion for leave to file a jury demand.³

¶ 10 A bench trial was held over a course of four days, commencing on August 15, 2017. One of the principal issues at trial concerned the makeup of CPG. It was defendants’ position that there were three separate entities operating out of CPG’s office—Lester’s sole proprietorship, Leslie’s sole proprietorship, and a stand-alone CPG. Plaintiff, in contrast, asserted that there was just one entity, which she referred to as a “consolidated CPG.” The parties presented extensive witness testimony and documentary evidence to support their respective positions, including portions of Lester’s evidence deposition testimony taken prior to his death. In addition, each party presented an expert to value Leslie’s distributional interest in CPG. Sook Lee, plaintiff’s retained expert, valued Leslie’s 50% interest in a “consolidated CPG” at \$205,000, as of August 31, 2014. Lee testified that if the court were to find three separate entities, she would value Leslie’s sole proprietorship at \$139,000 and 100% of a stand-alone CPG at \$55,000. Katherine Puffer, defendants’ retained expert, valued 100% of a stand-alone CPG at \$73,000, as of August 31, 2014.

Stoltman Law Offices entered an appearance as counsel for plaintiff.

³ Prior to trial, plaintiff renewed her motion for leave to file a jury demand. However, she withdrew the motion before the trial court ruled on it.

¶ 11 At the close of evidence, the trial court found in favor of defendants and against plaintiff on count I (accounting), count II (breach of fiduciary duty), and count III (constructive trust) of the complaint. The court found in favor of plaintiff and against defendants on count IV (conversion) and count V (dissociation) of the complaint. The court awarded plaintiff \$17,000 plus prejudgment interest under count IV and \$19,707 plus prejudgment interest under count V. The court's ruling was premised on its finding that the businesses did not consist of a "consolidated CPG," but rather of three individual entities: (1) Lester's sole proprietorship, (2) Leslie's sole proprietorship, and (3) CPG. The court based this finding on "substantial documentation" presented at trial and evidence of the parties' business practices.

¶ 12 The court further found that Leslie's interest in CPG terminated on the date of his death. Thus, the court concluded, Lester did not owe Leslie any fiduciary duty as a member of CPG after Leslie died except to buy out Leslie's interest pursuant to the Act. In support of this conclusion, the court noted that there was no buy-sell agreement to extend the fiduciary relationship. Further, the court found that CPG's clients could not be shared with Leslie after Leslie's death due to restrictions on receipt of investment advisory fees under the law. The court valued 100% of a stand-alone CPG at \$64,000 (the median of the experts' valuations) and Leslie's 50% share of CPG at \$32,000. The court subtracted \$12,293 (Leslie's negative capital account balance at the time of his death) from the \$32,000 valuation, resulting in a net valuation of Leslie's share of CPG at \$19,707.

¶ 13 The court also observed that there was a "fiduciary argument and conversion argument" regarding fees that Leslie earned in the third quarter of 2014, prior to his death. The court found that the only testimony of any consequence on this point appeared through plaintiff, who testified that Lester mentioned holding approximately \$17,000 in fees for Leslie and that he was not sure

what to do with it. The court also noted that among the documents admitted into evidence was a statement breaking down the advisory fees each entity earned in the third quarter, during which Leslie died, although the statement did not specify when the fees were earned. Based on plaintiff's testimony and the exhibit, however, the court concluded that \$17,000 in advisory fees were owed to Leslie as and for fees earned in the third quarter of 2014 prior to Leslie's death.

¶ 14 The court denied plaintiff's request for attorney fees, costs, expenses, and punitive damages, finding that any delay in payment was attributable not to defendant, but to the lack of clear documentation regarding the organization and operation of the business entities. The court noted that under the Act, attorney fees, costs, and expenses are left to the discretion of the trial court. See 805 ILCS 180/35-65 (West 2014). The court concluded that neither party acted arbitrarily, vexatiously, or without good faith. In this regard, the court explained that while the testimony at trial illustrated that there was animosity between plaintiff and Rukin, it was not to the degree of an "evil motive," "reckless indifference," or other outrageous conduct that would allow for an award of attorney fees, costs, expenses, or punitive damages to plaintiff.

¶ 15 Finally, the court concluded that the case was about "CPG only" because "nothing has been pled regarding Leslie's sole proprietorship." The court observed that plaintiff's complaint does not request that defendant pay for the value of Leslie's sole proprietorship. The court noted that the sole proprietorship does not fall under the Act since the court determined that there were three separate business entities. Even though a value was presented for Leslie's sole proprietorship, the court found that there was no legal basis presented in the pleadings upon which the court could award this value. Plaintiff filed a timely notice of appeal from the trial court's ruling.⁴

⁴ Each defendant filed a notice of cross-appeal. Defendants subsequently moved to

¶ 16

III. ANALYSIS

¶ 17 Plaintiff advances four primary arguments on appeal. First, she argues that the trial court erroneously denied her motion for leave to file a jury demand. Second, she argues that the trial court erred as a matter of law in holding that Lester did not owe a fiduciary duty to Leslie's estate. Third, she argues that the trial court erred in denying her request for fees and expenses under section 35-65(d) of the Act (805 ILCS 180/35-65(d) (West 2014)). Finally, plaintiff claims that the trial court erred as a matter of law in holding that Leslie's sole proprietorship was not at issue in the pleadings in this case. We address each contention in turn.

¶ 18

A. Jury Demand

¶ 19 Plaintiff first argues that the trial court erroneously denied her motion for leave to file a jury demand. Section 2-1105(a) of the Code of Civil Procedure provides in relevant part as follows:

“A plaintiff desirous of a trial by jury must file a demand therefor with the clerk at the time the action is commenced. A defendant desirous of a trial by jury must file a demand therefor not later than the filing of his or her answer. Otherwise, the party waives a jury.” 735 ILCS 5/2-1105(a) (West 2016).

See also *Charles v. Gore*, 248 Ill. App. 3d 441, 447 (1993). In this case, plaintiff commenced her action on February 10, 2015, upon filing her complaint against defendants. Further, in July 2015, plaintiff filed answers to defendants' counterclaims. However, it was not until July 25, 2016, after she replaced her original attorneys, that plaintiff filed her motion for leave to file a jury demand. Therefore, plaintiff's jury demand, which was filed more than 17 months after she withdraw their cross-appeals. We granted defendants' motions on May 11, and May 21, 2018. Accordingly, we proceed solely on the appeal filed by plaintiff.

initiated her suit against defendants and more than 12 months after she answered defendants' counterclaims, was clearly untimely.

¶ 20 Illinois Supreme Court Rule 183 (eff. Feb 16, 2011) gives the trial court discretion to grant a party's late request for a jury trial. *In re Estate of Burren*, 2013 IL App (1st) 120996, ¶ 29; *Paul H. Schewendener, Inc. v. Larrabee Commons Partners*, 338 Ill. App. 3d 19, 28-29 (2003). A party seeking leave to file a late jury demand must show both good cause for the delay and an absence of prejudice or inconvenience. *Baldassari v. Chelsa Development Group, Inc.*, 195 Ill. App. 3d 1073, 1077 (1990). The burden of establishing these elements lies with the party seeking relief. *Zella Wahnon & Associates v. Bassman*, 79 Ill. App. 3d 719, 725 (1979). Whether to allow leave to file a late demand for a jury trial rests within the sound discretion of the trial court, and its decision will not be overturned on appeal absent an abuse of that discretion. *Koehler v. Packer Group, Inc.*, 2016 IL App (1st) 142767, ¶ 36; *Trapani v. Trapani*, 109 Ill. App. 2d 202, 207 (1969). An abuse of discretion occurs when a ruling is arbitrary, fanciful, or unreasonable or when no reasonable person would take the view adopted by the trial court. *In re Estate of LaPlume*, 2014 IL App (2d) 130945, ¶ 49.

¶ 21 In this case, the trial court denied plaintiff's motion for leave to file a jury demand in a minute order. In doing so, plaintiff asserts that the trial court ignored "controlling analogous precedent that would have allowed [her] to file a jury demand." Specifically, she claims that the carelessness of her original attorneys constituted good cause for the delay and that the trial court made no finding that filing an untimely jury demand would create any prejudice or inconvenience. Plaintiff, however, has not carried her burden of establishing that the trial court abused its discretion in denying her motion for leave to file a jury demand.

¶ 22 Plaintiff contends that this case is “directly analogous” to *Stephens v. Kasten*, 383 Ill. 127 (1943), and that *Stephens* supports a finding that she established good cause for the late filing of her jury demand. In *Stephens*, the plaintiffs filed a complaint for damages alleging the defendants were negligent in the operation of an automobile. The defendants were initially represented by an attorney retained by their insurance company to defend them. Neither party filed a jury demand. Several months after the plaintiffs filed their complaint, the defendants hired an attorney of their own choosing, and he filed a written jury demand. The plaintiffs moved to strike the jury demand. The defendants were not timely notified of the plaintiffs’ motion and did not appear in court to contest it. After the trial court granted the plaintiffs’ motion, the defendants moved to extend the time for filing a demand for jury trial. The trial court denied the defendants’ motion. The case went to trial, and the court ruled against the defendants. On appeal, the defendants challenged the trial court’s denial of their motion for an extension of time in which to file their jury demand. The *Stephens* court concluded that the trial court abused its discretion in denying the defendants’ late request for a jury demand. *Stephens*, 383 Ill. at 133-35. In support of its holding, the court emphasized that the defendants lost their right to a jury trial because of the “careless action” of the insurance company’s attorney, an attorney who was not chosen by the defendants and who was representing the interests of the insurance company. *Stephens*, 383 Ill. at 135.

¶ 23 Invoking *Stephens*, plaintiff insists that her original attorneys “carelessly failed to make a jury demand” and that because the supreme court found the careless action of the attorney in *Stephens* constituted good cause for the late filing of a jury demand, this court should find the alleged carelessness of her original attorneys also amounted to be good cause. However, part of the rationale of the *Stephens* decision was that the defendants in that case were initially

represented by an attorney whom they did not choose and who did not necessarily represent their interests. Here, in contrast, plaintiff was at all times represented by an attorney of her own choosing. This fact alone readily distinguishes the present case from *Stephens*. More significantly, we observe that other than the fact that her original attorneys did not file a jury demand, plaintiff does not elucidate what exactly rendered this decision “careless.” As defendants point out, it is entirely possible that plaintiff’s original attorneys opted not to file a jury demand for strategic reasons. Further, to the extent that plaintiff believes that the lone fact that she replaced her original attorneys constituted good cause for a late jury demand, the case law does not support her position. See *Burren*, 2013 IL App (1st) 120996, ¶ 29 (rejecting notion that a change of attorneys constitutes good cause for a late jury demand).

¶ 24 Plaintiff also fails to establish the second element necessary to support the late filing of a jury demand—the absence of prejudice or inconvenience. Notably, although plaintiff claims that “[a]llowing leave to file a jury demand early in the proceedings would not prejudice defendants,” she fails to support this conclusory statement with any facts of record, development, or analysis. Plaintiff does maintain that the alleged error of the trial court is “directly analogous to the error in *Hernandez* [*v. Power Construction Co.*, 73 Ill. 2d 90 (1978)] and *Stephens* [383 Ill. 127] where the Illinois Supreme Court held it was an abuse of discretion to deny an untimely jury demand pursuant to [Rule 183].” However, respondent fails to address precisely how *Hernandez* and *Stephens* support her argument that defendants would not be prejudiced or inconvenienced if she had been allowed to file an untimely jury demand. Plaintiff also directs us to *McGrath Heating & Air Conditioning v. Gustafson*, 38 Ill. App. 3d 465 (1976), but again fails to address how that case supports her position. Indeed, we note that the issue in *McGrath* did not involve an untimely jury demand, but rather whether an answer to a counterclaim and reply to

affirmative defenses may be filed for the first time during the final argument in the case, after the close of all evidence. See *McGrath*, 38 Ill. App. 3d at 466-67. Because plaintiff's argument regarding the lack of prejudice or inconvenience is conclusory and unsupported by any developed legal analysis or pertinent legal authority, it is forfeited. Illinois Supreme Court Rule 341(h)(7) (eff. Nov. 1, 2017) (requiring an appellant's brief to contain argument consisting of "the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on"); *People v. Taylor*, 2013 IL App (2d) 110577, ¶ 31 (holding that a party's failure to develop an argument or cite to relevant authority results in forfeiture of the issue on appeal); *Wolfe v. Menard Inc.*, 364 Ill. App. 3d 338, 348 (2006) (observing that a conclusory assertion without any supporting analysis does not constitute an argument for purposes of Illinois Supreme Court Rule 341(h)(7)).

¶ 25 In sum, we cannot say that the trial court's denial of plaintiff's motion for leave to file a jury demand constituted an abuse of discretion because plaintiff failed to carry her burden of showing good cause for the delay and an absence of prejudice or inconvenience.

¶ 26 **B. Fiduciary Duty**

¶ 27 Plaintiff next challenges the trial court's finding regarding Lester's fiduciary duties. The trial court found that Lester did not owe Leslie any fiduciary duty as a member of CPG after Leslie died except to buy out Leslie's interest in CPG pursuant to the Act. In support of its holding, the trial court observed there was no buy-sell agreement that would have extended the fiduciary relationship and CPG's clients could no longer be shared with Leslie after Leslie's death due to the restrictions on receipt of investment advisory fees under the law. Plaintiff argues that the trial court erred as a matter of law in holding that Lester did not owe a fiduciary duty to Leslie's estate. We disagree.

¶ 28 In this case, CPG had no operating agreement so the only applicable duties are those prescribed by the Act itself. See 805 ILCS 180/15-5 (West 2014). Statutory interpretation is a question of law subject to *de novo* review. *People v. Amans*, 2018 IL App (2d) 170405, ¶ 35. The Act provides that a member is dissociated from a limited liability company upon the occurrence of any of several specified events, including a member's death. 805 ILCS 180/35-45(8)(A) (West 2014). Upon a member's dissociation from a limited liability company, "the company must cause the dissociated member's distributional interest to be purchased under Section 35-60 [(805 ILCS 180/35-60 (West 2014) (repealed by Pub. Act 99-637, § 10 (eff. July 1, 2017)))]". 805 ILCS 180/35-55(a) (West 2014). Section 35-60 of the Act provides in relevant part that once a member is disassociated by death, the remaining members of the limited liability company "shall purchase a distributional interest of a member for its fair value determined as of the date of the member's disassociation." 805 ILCS 180/35-60 (West 2016) (repealed by Pub. Act 99-637, § 10 (eff. July 1, 2017)). As the foregoing makes clear, Lester had no duty to plaintiff other than to purchase Leslie's distributional interest in CPG for its fair value determined as of the date of Leslie's disassociation. In fact, this is what the trial court found, valuing Leslie's interest in CPG on the date of his death at \$19,907, and ordering Lester's estate to pay this amount. Plaintiff does not appeal this determination.

¶ 29 Plaintiff nevertheless contends that the trial court disregarded controlling precedent from this court that "require[s] business partners and shareholders to not breach fiduciary duties owed to the estate of deceased partners and shareholders." Specifically, plaintiff asserts that the trial court ignored *Prignano v. Prignano*, 405 Ill. App. 3d 801 (2010), which, plaintiff asserts, is analogous to this case. According to plaintiff, correctly applying *Prignano* to the facts of this case "would prohibit Lester from transferring Leslie's clients away from his estate and selling

Leslie's business to a third party with no compensation paid to [Leslie's] estate." Plaintiff represents that *Prignano* concerns a fiduciary duty owed to the estate of the decedent by his surviving brother, who took over the family business. In reality, *Prignano* is about a decedent and his brother who purportedly agreed that the survivor of them would buy out the other's share of their businesses using proceeds from life insurance policies. In this case, the evidence presented at trial clearly established the lack of a buy-sell agreement, operating agreement, or any other plan of succession. Moreover, *Prignano* did not involve an application of the Act. For these reasons, plaintiff's reliance on *Prignano* is misplaced.

¶ 30 Plaintiff further argues that even if *Prignano* does not apply to members of a limited liability company, section 35-60(a) of the Act (805 ILCS 180/35-60(a) (West 2014)), created a duty to purchase Leslie's distributional interest. As noted above, however, this is exactly what the trial court found, valuing Leslie's interest in CPG on the date of his death at \$19,907, and ordering Lester's estate to pay this amount. Plaintiff nevertheless claims that her rights under section 35-60(a) were somehow "disrupted" by Lester's willful breaches of fiduciary duties. Specifically, plaintiff contends that "[i]t was impossible to timely determine the value of what remained of Leslie's business, whether his sole proprietorship or part of CPG, because Lester stole away the records and transferred the clients before Leslie's body was cold." However, the trial court found that defendants cooperated throughout the case with discovery. Plaintiff does not argue otherwise, and she does not elucidate if or how she was prejudiced by Lester's alleged conduct. Indeed, we note that Lee, plaintiff's valuation expert had sufficient information to value CPG both as a consolidated entity and a stand-alone entity separate from Lester's and Leslie's sole proprietorships. Moreover, plaintiff does not appeal the trial court's finding that there were three separate entities, and she does not challenge the trial court's valuation of

Leslie's interest in CPG on the date of his death. Given this record, it is not clear to us how plaintiff's rights under section 35-60 of the Act were "disrupted."

¶ 31 Plaintiff also claims that even if *Prignano* does not apply, section 30-25 of the Act (805 ILCS 180/30-25 (West 2016)) provides her with "the rights of a current member under Section 10-15 [of the Act]" for purposes of settling the estate. However, section 30-25 did not become effective until July 1, 2017. See Pub. Act 99-637, § 5 (adding 805 ILCS 180/30-25 (eff. July 1, 2017)). In its ruling, the trial court noted that the Act was substantially amended effective July 1, 2017. The court stated that the new provisions were not retroactive and that it would apply the provisions of the Act that were in effect "at the time of the death of LESLIE and the time of the filing of the complaint." Plaintiff does not challenge this finding on appeal. Moreover, we find no indication that plaintiff even argued for the applicability of section 30-25 in the trial court. Given this record, we decline to address plaintiff's reliance on section 30-25. Plaintiff alternatively requests that we "fill the statutory gap in the *** Act between the moment a member dies and when his interest is distributed by holding a member owes fiduciary duties to the estate of a deceased member prior to distribution" pursuant to section 35-60(a) of the Act (805 ILCS 180/35-60(a) (West 2014)). Plaintiff, however, cites no authority that would allow us to do so. As a result, we decline this invitation.

¶ 32 Lastly, plaintiff contends that the trial court erred because Lester's breach of fiduciary duty occurred prior to Leslie's death as the trial evidence established that the locks were changed on CPG's offices before Leslie died. Plaintiff, however, has forfeited this claim by failing to cite any legal authority in support of her position. Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017) (requiring an appellant's brief to contain argument consisting of "the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on");

Taylor, 2013 IL App (2d) 110577, ¶ 31 (holding that a party’s failure to develop an argument or cite to relevant authority results in forfeiture of the issue on appeal).

¶ 33 In short, the trial court correctly determined that Lester had no duty to plaintiff other than to purchase Leslie’s distributional interest in CPG for its fair value determined as of the date of Leslie’s disassociation in accordance with section 30-60 of the Act. Therefore, we reject plaintiff’s argument that the trial court erred as a matter of law in holding that Lester did not owe fiduciary duties to Leslie’s estate.

¶ 34 C. Fees and Expenses

¶ 35 Next, plaintiff argues that the trial court erroneously denied her request for fees and expenses under section 35-65(d) of the Act (805 ILCS 180/35-65(d) (West 2014) (repealed by Pub. Act 99-637, § 10 (eff. July 1, 2017))). Section 35-65(d) provides as follows:

“(d) If the court finds that a party to the proceeding acted arbitrarily, vexatiously, or not in good faith, it *may* award one or more other parties their reasonable expenses, including attorney’s fees and the expenses of appraisers or other experts, incurred in the proceeding. The finding may be based on the company’s failure to make an offer to pay or to comply with section 35-60 [(805 ILCS 180/35-60 (West 2014) (repealed by Pub. Act 99-637, § 10 (eff. July 1, 2017)))].” (Emphasis added.) 805 ILCS 180/35-65(d) (West 2014) (repealed by Pub. Act 99-637, § 10 (eff. July 1, 2017)).

As the language of the statute makes clear, the imposition of expenses under section 35-65(d) is discretionary. See *Krautsack v. Anderson*, 223 Ill. 2d 541, 554 (2006) (noting that use of the word “may” in a statute ordinarily connotes discretion); *Gile v. Gile*, 333 Ill. App. 3d 1161, 1166 (2002) (noting that legislative use of the word “may” in a statute is generally signals a legislative intent to vest the trial court with discretion in awarding relief). Thus, our review of a trial court’s

decision whether to award expenses under section 35-65(d) involves a two-step process. See *Jacobo v. Illinois Workers' Compensation Comm'n*, 2011 IL App (3d) 100807WC, ¶¶ 24-25 (applying two-part analysis in assessing whether award of discretionary penalties and fees is appropriate under sections 16 and 19(k) of the Workers' Compensation Act). Initially, we determine whether the trial court's factual findings are against the manifest weight of the evidence. *Jacobo*, 2011 IL App (3d) 100807WC, ¶ 25. A trial court's factual findings are against the manifest weight of the evidence only when an opposite conclusion is clearly apparent. *Short v. Pye*, 2018 IL App (2d) 160405, ¶ 53. Second, we determine whether the trial court abused its discretion in deciding whether to award expenses under the facts presented. *Jacobo*, 2011 IL App (3d) 100807WC, ¶ 25. As noted earlier, an abuse of discretion occurs when a ruling is arbitrary, fanciful, or unreasonable or when no reasonable person would take the view adopted by the trial court. *LaPlume*, 2014 IL App (2d) 130945, ¶ 49.

¶ 36 The trial court found that neither plaintiff nor defendants acted arbitrarily, vexatiously, or not in good faith because the parties had “valid arguments and a good faith basis upon which to make the arguments they have made.” As such, the trial court declined to award expenses under section 35-65(d) of the Act. In contesting this finding, plaintiff relies solely on an alleged offer Lester made to purchase Leslie's share of the business. According to plaintiff, “it was undisputed at trial that Lester admitted Leslie's share of the combined business was worth \$200,000, offered to pay [plaintiff] \$200,000, then reneged on the offer,” after which Lester “stole and sold” Leslie's business. Plaintiff asserts that Lester's conduct was vexatious, not in good faith, and supports the imposition of penalties and fees under section 35-65(d) of the Act.

¶ 37 Contrary to plaintiff's argument, however, the evidence was not “undisputed” as to whether Lester believed Leslie's share of the combined business was worth \$200,000 and

whether he offered to pay plaintiff that amount to acquire Leslie's interest. In this regard, plaintiff testified that three days after Leslie's death, she spoke with Lester regarding the sale of Leslie's share of the business. It was plaintiff's understanding that the business was being marketed at that time for \$600,000, meaning that Leslie's share was worth \$300,000. Plaintiff asked Lester to make her an offer for Leslie's share of the business, and Lester suggested \$200,000. Plaintiff testified that she accepted the offer and asked Lester to have his attorney "draw something up" for her to sign. Plaintiff further testified that she returned to CPG's offices several days later with her friend, Sheila Schwalb. At that time, plaintiff again spoke with Lester about the offer and Lester told plaintiff that he would try to get her the money within 10 days. Schwalb also testified that Lester offered to pay plaintiff \$200,000 for Leslie's share of the business. In contrast, when Lester was asked at his evidence deposition whether he made an offer to plaintiff to buy Leslie's portion of the business, he responded that it "wasn't an offer as far as [he] was considered [*sic*]." Lester explained that several months prior to Leslie's death, Leslie asked him about selling the business. Lester told Leslie to "pursue it" and Leslie obtained a few offers. According to Lester, his discussion with plaintiff was merely to relay what had happened. Lester nevertheless acknowledged that he may have mentioned a "specific figure[]" to plaintiff based on "what a buyer had said they would pay for the business." Rukin testified that she was at CPG's offices when plaintiff and Schwalb visited after Leslie's death. Rukin did not hear Lester offer any money to plaintiff for Leslie's share of the business.

¶ 38 As the foregoing establishes, the parties presented conflicting evidence regarding whether Lester believed Leslie's share of the combined business was worth \$200,000 and whether he offered to pay plaintiff that amount to acquire Leslie's interest. As the trier of fact, it was within the province of the trial court to resolve conflicts in the evidence, assess the credibility of the

witnesses, and assign weight to the witness's testimony. *Napcor Corp. v. JP Morgan Chase Bank, NA*, 406 Ill. App. 3d 146, 154 (2010). In this case, the trial court recognized the conflicting testimony regarding whether Lester offered plaintiff \$200,000 after Leslie died for Leslie's share of the combined business. The court found that plaintiff was "sincere and credible in her testimony regarding her belief that this offer was made by Lester." However, the court observed that there was "conflict and disparate views" regarding the value of Leslie's interest in CPG and the value of the same was never agreed upon. As a result, the court found that any delay in buying out Leslie's interest in CPG was due to "the lack of clear documentation" regarding the manner in which the businesses at issue operated. These findings were reasonable based on the evidence presented at trial. As such, we cannot say that a conclusion opposite that of the trial court regarding this factual finding is clearly apparent. Further, under these facts, we hold that the trial court did not abuse its discretion by concluding that an award of expenses under section 35-65(d) of the Act was not warranted.

¶ 39

D. Pleading

¶ 40 Finally, plaintiff argues that the trial court erred as a matter of law in finding that she failed to properly plead a cause of action to recover for Leslie's sole proprietorship. Plaintiff acknowledges that her complaint was "inartfully pled" and "clumsy." Nevertheless, she asserts that the complaint was sufficient to state a claim for payment of the value of Leslie's sole proprietorship since pleadings are to be liberally construed, her expert opined without objection as to the value of Leslie's sole proprietorship, and her pre- and post-trial briefs argued the value of Leslie's sole proprietorship.

¶ 41 "The complaint frames the issues before the trial court." *Walker v. McGuire*, 2015 IL 117138, ¶ 39. To state a cause of action, a claim must be both legally and factually sufficient,

that is it must set forth a legally recognized claim as its basis for recovery and facts which bring the claim within the legally recognized cause of action. *Casualty Insurance Co. v. Hill Mechanical Group*, 323 Ill. App. 3d 1028, 1033 (2001). Courts characterize pleadings by their content rather than their title. *Township of Jubilee v. State of Illinois*, 2011 IL 111447, ¶ 34. Pleadings are to be liberally construed with a view toward doing substantial justice between the parties. *Township of Jubilee*, 2011 IL 111447, ¶ 34. Nevertheless, the requirement that a pleading shall be liberally construed will not sustain a complaint which wholly fails to state a cause of action. *McCauley v. Chicago Board of Education*, 66 Ill. App. 3d 676, 679 (1978). The determination whether a viable cause of action has been pled is one of law so our review is *de novo*. *Weiss v. Waterhouse Securities, Inc.*, 335 Ill. App. 3d 875, 882 (2002).

¶ 42 In its ruling, the trial court stated that this case “is about CPG only, nothing has been pled regarding LESLIE’s sole proprietorship.” The court elaborated:

“The Court finds that the Plaintiff’s complaint does not request that the Defendant LESTER pay for the value of LESLIE’s sole proprietorship. It does not fall under the Illinois LLC Act now that the Court has found three separate entities. Even though a value has been presented for LESLIE’s sole proprietorship, there is no legal basis presented in the pleadings upon which the Court can award this value. The Court is bound by the pleadings as is Plaintiff.”

Plaintiff did not file a motion to reconsider the trial court’s ruling and at no time did she seek leave to amend the pleadings to conform to the proofs. See 735 ILCS 5/2-616(c) (West 2014) (“A pleading may be amended at any time, before or after judgment, to conform the pleadings to the proofs, upon terms as to costs and continuance that may be just.”); *Fitchie v. Yurko*, 212 Ill. App. 3d 216, 223-24 (1991) (allowing plaintiffs to amend their complaint at the close of their

case to conform pleadings to the proof).

¶ 43 In support of her argument that her complaint was sufficient to state a cause of action for the value of Leslie's sole proprietorship, plaintiff first directs us to count II of her complaint. However, plaintiff does not explain how the allegations in count II substantiate her argument that the trial court erred as a matter of law in finding that she failed to properly plead a cause of action to recover for Leslie's sole proprietorship. Instead, plaintiff merely quotes portions of three paragraphs from count II (which consisted of a total of seven paragraphs plus a prayer for relief), emphasizing that two of the cited paragraphs reference Leslie's estate. Since plaintiff's argument that count II of her complaint was sufficient to state a cause of action for the value of Leslie's sole proprietorship is conclusory and unsupported by any developed legal analysis, it is forfeited. Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017) (requiring appellant's brief to contain argument consisting of "the contentions of the appellant and the reasons therefor"); *A.L. Dougherty Real Estate Management Co., LLC v. Su Chin Tsai*, 2017 IL App (1st) 161949, ¶ 52 (holding that a party's failure to meaningfully develop an argument results in forfeiture of the issue on appeal); *Wolfe*, 364 Ill. App. 3d at 348 (observing that a conclusory assertion without any supporting analysis does not constitute an argument for purposes of Illinois Supreme Court Rule 341(h)(7)).

¶ 44 Forfeiture aside, we fail to see how count II of plaintiff's complaint supports her position. Count II of plaintiff's complaint was captioned "Breach of Fiduciary Duty Against Lester Mandelstein." In its entirety, Count II of the complaint reads as follows:

"20. [Plaintiff] realleges and incorporates by reference Paragraphs 1 through 16 [the general allegations] as if set forth herein for this Paragraph 20 of Count II.

21. Lester has a 50% capital membership interest in CPG and has also acted as

CPG's de facto manager who handles the bank account and other account records regarding the CPG advisory fees. Lester calculates and determines the quarterly distributions attributable and payable to himself and to [Leslie].

22. In his role as co-owner of CPG and his responsibilities as manager of CPG, Lester owed [Leslie] and now his estate, a fiduciary duty regarding the payment of advisory fees to Leslie and his estate.

23. Despite his fiduciary duties, shortly after [Leslie's] death, Lester contacted clients who were clients developed by [Leslie] during his lifetime, whose business was valuable to either the estate or CPG, and took actions to divert those clients away from the estate or CPG, to Lester.

24. Despite his fiduciary duties, and despite the acknowledged fact that CPG received funds attributable and payable to [Leslie] for advisory fees in the third and fourth quarters of 2014, related to clients serviced by [Leslie], Lester has failed to provide [plaintiff] with information regarding the amount of the advisory fees attributable and payable to [Leslie] and intentionally failed to pay those funds to [Leslie's] estate, despite the requests made by [plaintiff's] counsel.

25. Lester's failure to provide the information described above, his attempts to divert clients from the estate or CPG to himself, and his failure to pay [Leslie's] estate [Leslie's] advisory fees, are breaches of his fiduciary duties to [Leslie].

26. Lester's breaches of his fiduciary duties have caused [plaintiff] and [Leslie's] estate damages, including the unpaid advisory fees, and the costs of this supplemental proceeding to collect those fees.

WHEREFORE, Plaintiff, as Executor of [Leslie's] Estate request that this Court

enter an order:

- A. granting judgment in her favor and against Defendant Lester Mandelstein in an amount of damages to be determined at trial, plus punitive damages, prejudgment interest and costs; and
- B. granting any other relief this honorable Court deems just and proper.”

When read in full, it is clear that count II alleges that Lester owed a fiduciary duty to pay certain advisory fees to plaintiff. Count II does not reference Leslie’s sole proprietorship. Therefore, even liberally construed, count II is a claim for breach of fiduciary duty and the recovery of advisory fees. It does not state a cause of action to recover for the value of Leslie’s sole proprietorship. Accordingly, plaintiff’s claim to the contrary lacks merit.

¶45 Citing to *McKinney v. Nathan*, 1 Ill. App. 2d 536, 543 (1954), plaintiff alternatively asserts that even if she failed to properly plead a cause of action to recover for the value of Leslie’s sole proprietorship, this issue was sufficiently presented to and argued before the trial court so as to allow the court to rule on the matter. The trial court addressed plaintiff’s position. Notably, as set forth above, the court acknowledged that plaintiff presented evidence at trial of the alleged value of Leslie’s sole proprietorship. The court, however, found that this alone was insufficient where the pleadings were devoid of any cause of action upon which to award plaintiff the value of Leslie’s sole proprietorship. We agree with the trial court. It is not the function of the trial court to develop the legal reasoning for a claim based on pieces of information presented by the parties. See *Aircraft & Diesel Equipment Corp. v. Hirsch*, 331 U.S. 752, 763 (1947) (“Something more than a mere suggestion of [a] claim or relief is required to bring into play [the] judicial power of affording remedy.”). Based on our review of the pleadings and in light of the record before us, we cannot say that the trial court erred in finding that

plaintiff's complaint failed to properly plead a cause of action to recover for the value of Leslie's sole proprietorship.

¶ 46

IV. CONCLUSION

¶ 47 For the reasons set forth above, we affirm the judgment of the circuit court of Lake County.

¶ 48 Affirmed.