Cite as 2023 Ark. App. 489

ARKANSAS COURT OF APPEALS

DIVISION III
No. CV-21-443

IN THE MATTER OF THE ESTATE OF LEXA PAGE, SR., DECEASED LEXA PAGE, JR. APPELLANT V. ANNETTE PAGE AND THE ESTATE OF LEXA PAGE, SR., DECEASED APPELLEES	Opinion Delivered November 1, 2023 APPEAL FROM THE OUACHITA COUNTY CIRCUIT COURT [NO. 52PR-19-33] HONORABLE HAMILTON H. SINGLETON, JUDGE AFFIRMED

BART F. VIRDEN, Judge

This case involves the administration of decedent Lexa Page, Sr.'s (decedent's), estate. Decedent's son, Lexa Page, Jr., appeals the Ouachita County Circuit Court decision to exclude certain evidence that he claims supports the formation of a trust. Appellant contends that because a trust was created, the circuit court erred in awarding decedent's wife, Annette Page, a homestead and dowery interest in the property appellant claims funds the trust. Appellant also challenges the constitutionality of the principles of homestead and dowery, and he appeals the denial of his motion for a new trial. We affirm.

I. *Relevant Facts*

In 1991, at the end of the decedent's first marriage to Maylean Page, Maylean conveyed by quitclaim deed real property located at 204 North Haley in Camden to decedent. The deed was filed in April 1994. In June 2006, decedent obtained a loan and purchased real property located at 3069 Apache Drive, also in Camden. In 2007, decedent obtained a construction loan and built a house on the lot. Decedent and Annette Page married in November 2008, and the couple lived in the home at 3069 Apache Drive. In March 2011, decedent took out another loan, and he and Annette purchased the lot adjacent to 3069 Apache Drive, located on Comanche Street. In 2018, decedent filed for divorce from Annette.

Decedent died intestate on February 21, 2019. He was survived by his wife and appellant.[1] The circuit court appointed a third-party personal representative of the estate, and on April 20, 2019, Annette filed a petition claiming homestead in 3069 Apache Drive, a dower interest in the remaining real property, and a one-third interest in the decedent's personal property.

On March 6, 2020, appellant filed a document with the circuit court titled "Notice of merger ab initio" in which appellant asserted that an oral trust had been created in 1989 and "merged by testamentary act and free will via testamentary trust instrument executed on 7-13-18." Appellant requested a bond pursuant to the terms of the "Bey-Page-Bey Heirs Family Trust" and judicial review of decedent's estate.

[1]Decedent and Annette's divorce hearing was scheduled for March 2019.

On October 15, 2020, the administrator of the estate filed an inventory and accounting setting forth that 3069 Apache Drive was valued at $301,050; the adjacent lot had a value of $26,400; and 204 N. Haley was estimated to be worth $70,300 subject to a $42,000 mortgage. Three vehicles made up a part of the personal property and were collectively valued at $17,150. Estate expenses of $28,789.94 were deducted from several cash accounts collectively worth $30,775.02, leaving $1,985.08 remaining. The total value of decedent's estate was $416,885.08.

On October 20, 2020, the court held a hearing on the matter. Appellant testified that shortly before his father and Annette were married in 2008, the Apache Drive house was finished, and his father lived in the house. Appellant testified that he helped with the construction of the home by mowing and doing "different stuff like that on the property."

Appellant explained that in 2014, he agreed to take over the remaining payments on the 206 N. Haley mortgage. He stated that the 204 N. Haley and 3069 Apache Drive properties were commingled when decedent used 204 N. Haley as collateral for a loan to build a retaining wall at the Apache Drive house and when decedent created an oral trust with the Apache Drive house funding the trust. Appellant testified that he agreed to pay the remaining $30,000 on the Haley house mortgage because he was the beneficiary of the oral trust funded by the Apache Drive house. To support his assertion that a trust was created, appellant requested exhibit 4 be admitted. Exhibit 4 is a collection of three documents appellant described as "part of Schedule A to the Trust Documents." Annette objected to the admission of exhibit 4 and requested appellant lay a proper foundation for the

documents. Appellant testified that his father filed the documents with the circuit clerk on July 13, 2018. He described the first notarized document as the acceptance of the warranty deed for the Apache Drive lot, dated June 27, 2006, signed by him as "heir" and also by his father. Appellant testified that his father signed and filed the notice of acceptance with the circuit court clerk; however, the other documents included in exhibit 4 had not been filed with the court. The second document in exhibit 4, one of the unfiled documents, is in appellant's handwriting and dated July 11, 2018. "Schedule A the list of the property that funded the trust" is written at the top of the first page. Appellant stated that he originally wrote the document on July 11, 2018 and mailed it to himself "for me to get it and to be able to trace the document back." He stated that the document "is a copy of the original document that we sent in the mail. That would be a registered mail number at the top." The other unfiled documents included in exhibit 4 are the envelope appellant testified "Schedule A" was mailed in and a receipt from the post office bearing a registered mail number. Annette objected to the relevancy of the documents, asserting, "I'm not sure what it's being offered for," and "[W]e've got a written page that was authored by someone else that was not filed with the court, and I don't know that that is appropriate to come in under the same exhibit." Appellant contended that the purpose of the documents was to prove that a constructive trust was created. The court concluded, "This doesn't make a constructive trust. I'm sorry, it just doesn't. You may proffer it, but it's not coming into evidence." Appellant proffered exhibit 4.

Appellant also requested that exhibits 5 and 5A be admitted to show that he was the owner of 204 N. Haley. Exhibits 5 and 5A, which were admitted, are a contract date stamped April 25, 2014, for the sale of 204 N. Haley from decedent to appellant for $30,000, to be paid in installments of $600 a month for sixty months.[2] Appellant explained that in 1994, his mother agreed to quitclaim her interest in 204 N. Haley to decedent if decedent transferred the property to appellant as a beneficiary. Appellant testified that he paid $600 a month in cash to his father until the last two months, and when his father died in February 2019, only the March and April payments were outstanding. Decedent still held the mortgage at the time of his death, and appellant made the last two payments by phone to the mortgagor using his bank card. Appellant did not bring proof of any payments with him to the hearing, but he stated he could produce evidence of payment.

Annette testified that together, she and decedent decided to buy the lot located at 3069 Apache Drive. Annette explained that she was involved in the planning and construction of the home, working on the home five days a week during the building process and that appellant mowed the property on the weekends. She testified that she and decedent began living in the home together shortly after they were married in early 2009. They paid the mortgage together, and Annette used her own furniture and purchased new furniture and items for the home. In August 2012, the couple purchased real property located at 832 Chestnut in Camden. Both decedent's and Annette's names were listed on the deed, and

[2]The contract provides that it was executed on April 25. The contract itself does not bear the year it was executed.

she had the right of survivorship in the home; thus, 832 Chestnut was not a part of decedent's estate. Additionally, Annette stated that she owned a home located at 580 Succession, also in Camden.

In December, appellant filed an amended exception to inventory of certain real property listed in decedent's estate asserting that he owned in fee simple 204 N. Haley and the three vehicles included in the estate.

The circuit court entered the findings of fact and conclusions of law on April 20, 2021, finding the following. In June 2006 decedent purchased lot 18 Cherokee West subdivision/3069 Apache Drive before he was married to Annette, and his name alone appears on the note. In November 2007, while engaged to and living with Annette, decedent took out a construction loan to build the house at 3069 Apache Drive. A year later, decedent and Annette married. In June 2009, decedent consolidated the mortgages into a single thirty-year mortgage. Though he was married, decedent represented himself as a single person on this mortgage. In March 2011, decedent bought the lot adjacent to 3069 Apache Drive, and Annette's name appeared on the note. Previously, in 1991, at the time of decedent's divorce from his first wife, decedent received a quitclaim deed for 204 N. Haley from his ex-wife, and the deed was filed in 1994. In August 2012, Annette and decedent purchased a house at 832 Chestnut as tenants by the entirety with the right of survivorship. Decedent owned three vehicles at the time of his death, two of which are in appellant's possession and one of which is inoperable. On April 2, 2019, Annette filed her petition for dower interest and homestead in 3069 Apache Drive. The Pages' divorce action alleging eighteen months'

separation was pending at the time of decedent's death. Appellant proffered exhibit 4 asserting that "Schedule A to the Trust Documents" creates a constructive trust, and his father conveyed 3069 Apache Drive to the constructive trust and ultimately to him. In appellant's exception to the inventory filing, he asserted that 3069 Apache Drive was transferred to the Page-Bey-Page Heirs Family Trust, which is not the same as the constructive trust he alleges was formed on July 13, 2018. The Bey-Page Bey? (page 2)Page-Bey-Page Heirs Family Trust was not identified or offered as an exhibit at the hearing on October 20, 2020. The contract for sale of the house at 204 N. Haley from decedent to appellant dated April 25, 2014, provides that appellant was obligated to pay $600 a month for sixty months. Appellant did not provide proof that he made the payments.

The circuit court's conclusions of law are as follows. The property located at 832 Chestnut vested in Annette upon decedent's death because the property was owned by them as tenants by the entirety with right of survivorship. Annette has a one-third dower interest in all real property owned by decedent at his death, including 3069 Apache Drive and the lot adjacent to it, and 204 N. Haley. Appellant does not own 204 N. Haley, and this conclusion is supported by the lack of evidence that he paid $600 a month to decedent for the property and because the mortgage on the house is still $42,000. There was no deed transfer to appellant, and even if decedent had transferred it to appellant, it would be invalid because Annette did not release her dower interest in the property. Even if there were evidence that 3069 Apache Drive had been transferred to a trust, it would be invalid because Annette did not release her dower interest, and Annette claimed it as her homestead.

Annette and decedent remained married at the time of his death, and Annette has a one-third dower interest in all personalty owned by decedent, including the three vehicles, which the court ordered to be sold by the administrator of the estate and the funds used to pay the statutory allowances due Annette. The order was entered May 24, 2021.

On June 7, 2021, appellant filed a motion for a new trial. He asserted that

> 2. In particular, the record in this matter should be reopened as the heir of the decedent, Lexa Page, should be allowed to present evidence, which includes appropriate documentation, to prove up that much of the property at issue should have gone outside of probate proceedings and allowed to directly transfer to the surviving son of the decedent, Lexa Page.
>
> 3. Furthermore, the finding of the Court allows for the widow of the decedent to be unjustly enriched, to the detriment of Lexa Page, Jr. the only son of the decedent, and the estate.
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> 4. As a result, and in order to prevent a miscarriage of justice, the Order of the Court entered on May 24, 2021, should be set aside and a new trial on the merits should be entered forthwith.

The motion was deemed denied on July 7. Appellant timely filed his notice of appeal, and this appeal followed.

II. *Discussion*

A. Exhibit 4

For his first point on appeal, appellant contends that the circuit court erred by refusing to admit exhibit 4 because it was admissible on various bases including to prove intent, plan, or motive; to show admissions of party opponent; res gestae; and as residual evidence. None of the above aspects of appellant's argument are preserved for appeal because they were not raised to the circuit court. It is well settled that our appellate courts will not

consider arguments raised for the first time on appeal. *Scudder v. Ramsey*, 2013 Ark. 115, 426 S.W.3d 427.

Additionally, appellant asserts that the court should have admitted exhibit 4 because it is a part of the public record. During his testimony, appellant clarified that the only document that had been filed with the court and made part of the public record was the first two-page document in exhibit 4, the "Notice of Acceptance," which was date-stamped July 13, 2018, and provided that the decedent accepted a warranty deed dated June 27, 2006, for lot 18 in Cherokee West Subdivision, which, after development, became 3069 Apache Drive. The remainder of proffered exhibit 4, including appellant's handwritten "Schedule A" (the list of property that appellant claimed funded the constructive trust), the envelope Schedule A appellant asserts was mailed in on July 11, 2018, and the receipt for payment for sending a letter by certified mail were never filed with the circuit court or otherwise made a part of the public record. Appellant contended that he had properly laid the foundation for exhibit 4, and the documents should be admitted as evidence of a constructive trust. The court refused to admit exhibit 4 and commented that the documents did not create a constructive trust. Ultimately, appellant did not obtain a clear ruling from the court regarding the reason for exhibit 4's exclusion. When an appellant fails to obtain a ruling on an issue from the circuit court, his or her argument is not preserved for appeal because there is no decision of the circuit court for this court to review. *Ark. Wildlife Fed'n v. Ark. Soil & Water Conservation Comm'n*, 366 Ark. 50, 233 S.W.3d 615 (2006). Here, there is no clear ruling for this court

to review, and we decline to reach this point on appeal. *See Garrett v. Neece*, 2019 Ark. App. 178, 574 S.W.3d 686.

In a related argument on appeal, appellant contends that exhibit 4 is admissible as rebuttal evidence; thus, the circuit court erred by excluding it. Appellant asserts that the circuit court's discretion in denying the admission of rebuttal evidence is "narrow," and the circuit court unfairly and "unduly restricted [appellant's] testimony or evidence or by prejudging the case in denying proffered Exhibit 4."

Admissibility of rebuttal evidence lies within the sound discretion of the circuit court, and we will not reverse absent a showing of abuse of that discretion. *Edwards v. Stills*, 335 Ark. 470, 984 S.W.2d 366 (1998); *Bell v. State*, 334 Ark. 285, 973 S.W.2d 806 (1998). Genuine rebuttal is evidence that is offered in reply to new matters; however, the fact that the evidence could have been presented in the plaintiff's case-in-chief does not preclude its introduction on rebuttal if it serves to refute evidence raised by the defense. *Id.*

During rebuttal, appellant attempted to admit proffered exhibit 4 again in a different form. The exhibit contained the same Notice of Acceptance contained in exhibit 4, which, as stated above, had been filed with the circuit court on July 13, 2018; however, it also contained a real property transfer tax affidavit of compliance form regarding 3069 Apache Drive. The form is signed by the decedent and dated July 13, 2018. The form provides a space for the signor to write in the appropriate exemption, and on that line, the decedent wrote "Notice of Acceptance." Annette opposed the admission of the exhibit, asserting, "I'm not sure that that is appropriate in rebuttal[.]" Appellant offered no argument regarding the

exhibit and clarified: "I don't believe that the court having that copy is going to change the court's determination, I just want my record to be complete, and that is all I'm trying to achieve. I have no argument about it, Judge. I've argued and you ruled." The circuit court denied the request to admit the documents, and they were marked as proffered exhibit 6.

On appeal, appellant asserts that the circuit court erred in denying his request for the admission of exhibit 4 as rebuttal evidence, and he makes no argument regarding exhibit 6. Moreover, there is no clear argument below regarding either exhibits 4 or 6 to help us discern appellant's argument on appeal. It is not the duty of this court to research or develop arguments for an appellant on appeal. *See Martin v. Pierce*, 370 Ark. 53, 63–64, 257 S.W.3d 82, 90 (2007). Appellant's failure to develop an argument precludes review by this court, and we affirm on this point.

B. Formation of a Trust

Appellant contends that the circuit court erred by ruling that no oral trust, express written trust, or constructive trust was formed; however, appellant did not obtain a ruling from the circuit court regarding the formation of an oral or written trust. When a circuit court does not rule on an issue, it is an appellant's responsibility to obtain a ruling to preserve the issue for appeal. *See Pritchett v. Spicer*, 2017 Ark. 82, 513 S.W.3d 252. Accordingly, we decline to reach those issues.

The circuit court did rule that a *constructive* trust was not created by proffered exhibit 4. On appeal, appellant argues that the circuit court erred because he was entitled to an equitable mortgage or a constructive trust on the basis of his contribution to building the

Apache Drive home, which was completed before his father and Annette's marriage. He also contends that he paid the mortgage on the N. Haley home; thus, Annette would be unjustly enriched by receiving an interest in either property. Appellant's argument is not well taken.

A constructive trust is a remedial rather than a substantive institution. *Herring v. Ramsey*, 2021 Ark. App. 249, at 5, 626 S.W.3d 116, 119. It is an implied trust that arises by operation of law when equity demands. *Higgins v. Higgins*, 2010 Ark. App. 71, at 10, 374 S.W.3d 56, 62. The basis of a constructive trust is the unjust enrichment that would result if the person having the property were permitted to retain it. *Id.*

An implied trust is an equitable remedy designed to disregard the legal title. Imposition of a constructive trust does not depend exclusively on the misconduct or misrepresentation on the part of a party against whom a constructive trust operates. *Betts v. Betts*, 326 Ark. 544, 932 S.W.2d 336 (1996). While a confidential relationship does not in itself give rise to a constructive trust, an abuse of confidence rendering the acquisition or retention of property by one person unconscionable against the other suffices generally to ground equitable relief in the form of the declaration and enforcement of a constructive trust. *Hall v. Superior Fed. Bank*, 303 Ark. 125, 134, 794 S.W.2d 611, 615–16 (1990) (citing 76 Am. Jur. 2d *Trusts* § 228 (1975)).

To impose a constructive trust, there must be full, clear, and convincing evidence leaving no doubt with respect to the necessary facts; the burden is especially great when a title to real estate is sought to be overturned by parol evidence. *Nichols v. Wray*, 325 Ark. 326, 333, 925 S.W.2d 785, 789 (1996). The test on review is not whether we are convinced that

there is clear and convincing evidence to support the circuit court's findings but whether we can say that its findings are clearly erroneous. *Higgins*, 2010 Ark. App. 71, at 11, 374 S.W.3d at 62. A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake was made. *Id.* Disputed facts and determinations of credibility are within the province of the fact-finder. *Id.*

The circuit court did not err in determining that no constructive trust was formed. Appellant does not assert that any fraud, constructive fraud, false promise, or violation of confidential or fiduciary duty occurred that would give rise to a constructive trust. Instead, appellant contends that his contribution to the construction of the Apache Drive home and mortgage payments on the N. Haley home provide a basis for the circuit court to have imposed a constructive trust; however, appellant's testimony that he mowed the lawn and did "different stuff like that" on the weekends is the only evidence he offered regarding his interest in the Apache Drive home. In contrast, Annette testified that she worked on the Apache Drive house "at least five days a week" during its construction, she and decedent lived in the home before and during their marriage, and marital funds were used to pay the mortgage throughout the marriage. As to 204 N. Haley, appellant asserted below that he and his father entered a contract for the sale of the home for $30,000. He testified that he paid his father, who held the mortgage, in $600 monthly installments. Appellant never produced any proof of payments he testified he made toward the mortgage, and the home was still encumbered by a $42,000 mortgage at the time of the inventory of decedent's estate. In no

way was there full, clear, and convincing evidence leaving no doubt regarding the facts necessary to demonstrate a constructive trust was formed, and we affirm.

C. Annette's Dower and Homestead Rights

Appellant's next two points on appeal pertain to Annette's dower and homestead rights in her husband's estate. Our standard of review with respect to statutory and constitutional interpretation is de novo. *Simmons First Bank of Ark. v. Bob Callahan Servs., Inc.*, 340 Ark. 692, 13 S.W.3d 570 (2000). "On appeal, our task is to read the laws as they are written, and interpret them in accordance with established principles of statutory and constitutional construction. . . . The fundamental rule is that the words of the constitution or statute should ordinarily be given their obvious and natural meaning." *Hodges v. Huckabee*, 338 Ark. 454, 458, 995 S.W.2d 341, 345 (1999). Furthermore, we are not bound by the decision of the circuit court; however, in the absence of a showing that the circuit court erred in its interpretation of the law, that interpretation will be accepted as correct on appeal. *Id.* We do not reverse a finding of fact by the circuit court unless it is clearly erroneous. *Middleton v. Lockhart*, 344 Ark. 572, 43 S.W.3d 113 (2001). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made. *Id.*

Article 9, section 3 of the Arkansas Constitution provides that

> [t]he homestead of any resident of this State, who is married or the head of a family, shall not be subject to the lien of any judgment or decree of any court, or to sale under execution, or other process thereon, except such as may be rendered for the purchase money, or for specific liens, laborers' or mechanics' liens for improving the same, or for taxes, or against executors, administrators, guardians, receivers, attorneys for

moneys collected by them, and other trustees of an express trust, for moneys due from them in their fiduciary capacity.

The object and purpose of the homestead law is to protect the family from dependence and want. *Middleton*, 344 Ark. 572, 43 S.W.3d 113. "It is intended to preserve the family home. Furthermore, the law is to be liberally construed in the interest of the family home, and . . . it is not terminated by the death of a spouse[.]" *Fitton v. Bank of Little Rock*, 2010 Ark. 280, at 6, 365 S.W.3d 888, 892.

First, appellant argues that the circuit court erred because Annette "already had a homestead and is not entitled to two." Appellant asserts that Annette owned two other homesteads, 832 Chestnut and 580 Succession. Appellant's argument is not well taken.

In *Stone v. Stone*, 185 Ark. 390, 47 S.W.2d 50 (1932), Ida Stone, the widow of Joe Caldwell, claimed and was awarded homestead in her husband's estate and claimed rents from that estate for twenty-five years. Within that twenty-five years, Ida remarried W.C. Stone; however, Ida was widowed again when W.C. died intestate. Ida claimed her homestead rights in W.C.'s estate, and W.C.'s children contested her right to homestead, claiming she already had a homestead from her first marriage. The probate court agreed and denied her homestead right. The children also sought to remove her dower rights, but the probate court allowed those to a limited extent. Ida appealed to the circuit court, which granted her homestead in the marital home and "also assigned dower to her in the whole estate after carving out the 80 acres allowed as homestead." *Stone*, 185 Ark. at 392, 47 S.W.2d at 50. W.C.'s children appealed to the supreme court, which held that "the homestead

acquired by a former marriage is not forfeited or abandoned by a subsequent marriage and removal to the homestead of the second husband." *Id.*, 47 S.W.2d at 50. Similarly, in the instant case, Annette, as the decedent's widow is entitled to the homestead on her husband's death. *See id*. The fact that she acquired her own home before the marriage does not affect her right to homestead or dower, and we affirm.

Second, appellant asserts that the circuit court erred in relying on Ark. Code Ann. §§ 18-12-403 (Repl. 2015) and 28-11-301 (Repl. 2012), ruling that dower and homestead apply here because "under the trusts, the property was never a part of the estate of decedent." Appellant's argument stems from his foundational argument that a trust was formed, excluding 3069 Apache Drive from decedent's estate. Because we have affirmed the circuit court's decision that no trust was formed, we need not reach this issue.

Additionally, appellant asserts that statutory dower and homestead rights run afoul of the Equal Protection Clause; however, appellant does not propound any argument related to his constitutional challenge and instead directs this court to his posttrial brief in which he addressed the issue. This court held in *Emis v. Emis*, 2017 Ark. App. 372, at 11, 524 S.W.3d 444, 452, that "to allow counsel to incorporate trial arguments by reference would eviscerate our rules regarding briefing length and would render meaningless our holdings that we do not address arguments that are not sufficiently argued or briefed to this court." Accordingly, we decline to address this point on appeal.

D. Motion for a New Trial

For his final point on appeal, appellant asserts that the circuit court erred by refusing to grant his motion for a new trial pursuant to Ark. R. Civ. P. 59. Rule 59 provides that

> (a) *Grounds.* A new trial may be granted to all or any of the parties and on all or part of the claim on the application of the party aggrieved, for any of the following grounds materially affecting the substantial rights of such party: (1) any irregularity in the proceedings or any order of court or abuse of discretion by which the party was prevented from having a fair trial; (2) misconduct of the jury or prevailing party; (3) accident or surprise which ordinary prudence could not have prevented; (4) excessive damages appearing to have been given under the influence of passion or prejudice; (5) error in the assessment of the amount of recovery, whether too large or too small; (6) the verdict or decision is clearly contrary to the preponderance of the evidence or is contrary to the law; (7) newly discovered evidence material for the party applying, which he could not, with reasonable diligence, have discovered and produced at the trial; (8) error of law occurring at the trial and objected to by the party making the application. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.
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> . . . .
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> (c) *Form of Motion*. The motion must be in writing setting forth in separate paragraphs the grounds or assignments of error relied upon for a new trial. The grounds mentioned in section (a)(2), (3) and (7) of this rule must be supported by affidavits showing their truth and may be controverted in the same manner.

In his motion, appellant asserted that the circuit court should set aside the May 24 order and allow a new hearing, arguing the following:

> 2. In particular, the record in this matter should be reopened as the heir of the decedent, Lexa Page, should be allowed to present evidence, which includes appropriate documentation, to prove up that much of the property at issue should have gone outside of probate proceedings
>
> 3. Furthermore, the finding of the Court allows for the widow of the decedent to be unjustly enriched, to the detriment of Lexa Page, Jr. the only son of the decedent, and the estate.

In the above motion, appellant did not specify which documents he would present to the court or assert that they were newly discovered evidence that he could not, with reasonable diligence, have discovered and produced at the trial. He did not attach the required affidavits showing the documents' truth. Instead, appellant baldly claimed that the unnamed documents would prove that the property in question "should have gone outside the probate proceedings."

Appellant's argument supporting his motion for a new trial did not comply with Rule 59, which, as stated above, requires that if a party requests a new trial on the basis of additional evidence, the evidence must be newly discovered, and affidavits showing their truth must be attached to the petition; thus, we affirm the denial of his motion.

Moreover, appellant's argument on appeal regarding the denial of his motion for a new trial is similarly lacking:

> Lexa—by his payments and work on the house–prior to decedent's marriage to Annette—is entitled to equitable relief, for unjust enrichment to Annette, as discussed above. . . . The motion states what Lexa wanted to show. Trial courts have long allowed supplemental evidence even after the case is closed.

As we held in our discussion of dower and homestead, we do not allow the incorporation of trial arguments by reference, and appellant's assertion that the "motion states what Lexa wanted to show" is not well taken. *See Ennis*, *supra*.[3] We affirm.

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[3]Additionally, in his reply brief, appellant expands his argument beyond the scope of his motion for a new trial below. A new issue may not be raised for the first time in the appellant's reply brief. *JurisDictionUSA, Inc. v. Loislaw.com, Inc.*, 357 Ark. 403, 183 S.W.3d 560 (2004); *Partin v. Bar of Ark.*, 320 Ark. 37, 894 S.W.2d 906 (1995).

Affirmed.

ABRAMSON and HIXSON, JJ., join.

Robert S. Tschiemer, for appellant.

Stone & Sawyer, PLLC, by: *Jeffrey Sawyer*, for appellees.