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Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-001584-MR

BEVERLY BRADEN BAILEY,
ERNEST DONALD BRADEN, JR.,
MICHAEL LEE BRADEN, AND
LARRY THOMAS BRADEN — APPELLANTS

v.

APPEAL FROM BRECKINRIDGE CIRCUIT COURT
HONORABLE ROBERT A. MILLER, JUDGE
ACTION NO. 08-CI-00131

ENDEAVOR ENERGY
RESOURCES, LP — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: DIXON, MOORE AND THOMPSON, JUDGES.

DIXON, JUDGE: Appellants, Beverly Braden Bailey, Ernest Donald Braden, Jr., Michael Lee Braden, and Larry Thomas Braden (collectively "the Bradens"), appeal from an order of the Breckenridge Circuit Court granting summary

judgment in favor of Appellee, Endeavor Energy Resources, LP, on their claims of trespass, conversion, unjust enrichment, and nuisance. Finding no error, we affirm.

The property at issue herein is a seven-acre tract located on an 81-acre farm owned by the Bradens in Breckinridge County, Kentucky. On December 12, 1995, the Bradens entered into an oil and gas lease with Kentucky Resources Development, Corp. ("KRDC"), which was owned and operated by a relative of the Bradens. The lease was for oil and natural gas drilling and production on the Bradens' property for a period of three years "and as long thereafter as [oil or natural gas] are produced from said land." After the three-year initial term of the lease, KRDC could extend the lease at its option, without producing oil or gas, by paying an annual shut-in fee[1] of $81($1 per acre). The lease permitted KRDC to have free use of the property for all operations and limited its liability to no more than the actual damage it caused to "agricultural crops on said land." The lease was also freely assignable by KRDC.

Between December 1995 and December 1998, KRDC drilled two natural gas wells on the property. The first well, Braden #1, was drilled to a depth of 6,503 feet and was non-productive. It was subsequently plugged back to 1,875 feet and capped by KRDC. The second well, Braden #2, was drilled to a depth of 1,760 feet and proved to be a good source of natural gas. However, due to governmental restrictions requiring the construction of a natural gas pipeline to market production from a gas well, Braden #2 was never placed into production.

[1] A shut-in fee is a payment for the right to continue to access and test a well even though it is not producing oil or gas.

KRDC also constructed two large unlined pits adjacent to the wells to contain drilling fluids and brine water produced from the wells during testing.[2] Significantly, at the time the wells were drilled, Kentucky regulations did not require the pits to be lined. As a result of KRDC's drilling and testing, the pits had standing water in them for a significant period of time.

In June 2001, KRDC assigned its rights under the lease to Endeavor.[3] In late 2001, Endeavor tested Braden #2, but because of its inconvenient location in relation to Endeavor's other producing wells, it thereafter laid dormant for a few years. However, due to an admitted accounting oversight, Endeavor failed to pay the $81 yearly shut-in fee contemplated by the lease from 2002 through 2007. Nevertheless, in 2002, the Bradens contacted Endeavor to inquire whether Endeavor would be willing to remediate the property. Endeavor agreed to do so and hired Henning Construction to bulldoze and grade the storage pits KRDC had previously constructed and sow grass on top of the newly flattened ground. The process was in compliance with the Kentucky Division of Water's guidelines and requirements for remediating such land.

In late Summer or early Fall of 2005, based upon the erroneous assumption that it still had a valid lease for the Braden property, Endeavor again tested Braden #2 to determine if it would be financially feasible to construct a

[2] The Braden wells are located in a geologic formation called the New Albany Shale that stretches through parts of Illinois, Indiana and Kentucky. Most gas wells from the New Albany Shale produce water along with natural gas. This water is commonly known as brine water, waste water, or produced water.

[3] KRDC actually sold a package of leases in Breckenridge County, totaling roughly 25,000 acres, to Endeavor.

pipeline to the well. At that time, Endeavor constructed a gravel road to Braden #2 and installed a gate limiting public access to the property. Notably, since the storage pits constructed by KRDC no longer existed, all water produced by Braden #2 was held in a large fiberglass tank Endeavor placed at the site. Endeavor lacked the equipment and manpower to haul its own water[4] and contracted with Ronnie Trogden Oil Field Services ("Trogden") and Henning Construction to handle all of its brine water removal in Breckinridge County. The record indicates that Trogden hauled the majority of Endeavor's water and disposed of it in Trogden's federally-licensed injection well. In 2008, Henning began transporting water for Endeavor to an oil field in Livermore, Kentucky.

In the fall of 2005, while mowing the property, Ernest Braden, Jr. and Beverly Bailey Braden noticed that Endeavor was testing Braden #2. While Beverly subsequently claimed in her deposition to be outraged at Endeavor's trespass, Ernest testified that the family was excited about the well potentially producing gas. The Braden's legal counsel thereafter contacted Endeavor to inform it of the lease breach, and that the lease needed to be renewed or the Bradens would consider it to be a trespasser on the property. When lease negotiations failed, Endeavor removed its equipment from the property. Since May 2006, the Bradens have had sole control of the property.

[4] A well operator must dispose of its produced water. It can be disposed either by injecting it into appropriately licensed injection wells or into an oilfield flood, a process whereby produced water is injected into an oil well to loosen oil from the formation increase production.

In May 2008, the Bradens filed suit in the Breckenridge Circuit Court against Endeavor. The original complaint and subsequent amendments thereto asserted claims of trespass, nuisance, unjust enrichment, and conversion of natural gas on the Braden property, and sought both compensatory and punitive damages. Specifically, the Bradens alleged that from 2002 through May 2008, Endeavor illegally dumped thousands of gallons of brine water from its other wells in Breckinridge County into Braden #1 and on to the surface of the Braden property. The Bradens claimed that the alleged dumping constituted a trespass and a nuisance, and further that Endeavor was unjustly enriched by the savings it incurred in not having to properly dispose of its water. The Bradens also sought damages for the cost of remediating the property.

On February 21, 2012, Endeavor filed a motion for partial summary judgment, arguing that the Bradens failed to create any genuine issue of material fact and that their claims of trespass (other than unintentional trespass),[5] nuisance, and unjust enrichment failed as a matter of law, as did the request for punitive damages. Specifically, Endeavor argued that the Bradens had offered no evidence showing that Endeavor dumped brine water on the property and no evidence of any injury to the surface of the property, as their own expert testified that he did not know if the alleged contamination injured the property or whether remediation

[5] Endeavor has always conceded that it inadvertently trespassed when it entered onto the property for the period of time in which it had failed to pay the yearly shut-in fee of $81. During that time, Endeavor burned natural gas from Braden #2 during testing without knowledge that the leases had terminated. As such, a judgment of $52,647.00 (based upon calculations provided by plaintiffs' counsel at the hearing on the pending dispositive motions) plus interest was entered against Endeavor. The judgment was paid and accepted by the Bradens.

was even necessary. Further, Endeavor contended that the record was devoid of any evidence that damage to the property, if any, was caused by Endeavor's conduct. Endeavor again cited to the testimony of the Bradens' own expert who could not opine as to how long the mild contamination had been present on the property. He admitted that any contamination could have originated as early as 1996 or 1997 (before Endeavor ever entered on the property), when KRDC drilled the wells and created two large unlined brine pits.

In March 2012, the trial court held an extensive hearing on the motions for summary judgment. Significantly, during the hearing, the Bradens acknowledged that they were not making any claim for damage caused to the property by KRDC prior to the assignment of the lease to Endeavor. They also conceded that they had no firsthand knowledge or proof of any dumping on the property, and that their case relied entirely on circumstantial evidence.

On May 2, 2012, the trial court held a second hearing to resolve several motions in limine filed by Endeavor. Specifically, Endeavor sought to exclude the testimony of several of the Bradens' witnesses; any evidence concerning the alleged remediation costs and amount of unjust enrichment; and any evidence of subsurface and ground water contamination. During the hearing, the trial court ruled that the Bradens' expert, David Doyle, was not qualified to testify as to the necessity or cost of any remediation on the Braden property. The trial court also excluded the testimony of several other witnesses not disclosed by the Bradens. Notably, at the end of the hearing, the trial court asked counsel for

the Bradens what evidence of damages he could present in light of the court's rulings. Counsel admitted that they would be unable to prove actual damages as to surface or subsurface contamination. Again, the Bradens reaffirmed that they were not seeking any damages for the property prior to Endeavor's time as lessee. The trial court observed at that point that, in the absence of any evidence, a jury could not be permitted to speculate as to the Bradens' purported damages.

On August 16, 2012, the trial court rendered a lengthy and thorough opinion ruling on the parties' various motions, and granting summary judgment in favor of Endeavor. In its order, the trial court made several significant observations:

> It should be noted that no surface or subsurface soil samples were taken at the time of the assignment of the lease to verify whether KRDC had caused any surface or subsurface contamination of the Braden farm, and particularly the seven acres in and around the two wells. At the conclusion of the parties' arguments, the Court inquired of Plaintiff's counsel whether the Plaintiffs were making any claims for surface or subsurface contamination which might have been caused by KRDC prior to its lease assignment to Endeavor in June 2001. Plaintiff's counsel responded "NO." Endeavor could have been held liable for any surface or subsurface contamination caused prior to 2001, because it accepted a blanket assignment from KRDC and did not directly lease the premises from the Bradens. Based upon Plaintiffs' negative response to the Court after years of litigation, Endeavor cannot be held liable for any contamination of the Braden farm prior to its assignment in 2001. There was no surface of subsurface testing of soil on the Braden farm prior to June 2001 to establish a baseline of what, if any, contamination existed as of the date of the assignment.
> …

> There is no way for Plaintiffs to prove whether any alleged soil contamination was caused by Endeavor or its predecessor, KRDC.
>
> As for alleged surface contamination based upon elevated levels of sodium and chloride in the relevant area, Plaintiffs 1) failed to test the soil prior to Endeavor's entry on the premises under its assignment to establish Endeavor, and not KRDC caused the contamination; 2) failed to retain any witness capable of establishing what any cost of remediation would be upon which a jury could render a verdict. This Court cannot permit a jury to speculate about damages.

With respect to whether there was any genuine issue of fact as to whether Endeavor dumped brine water on the Braden property, the trial court noted, "Plaintiffs have not disclosed a single witness who has observed **a single load of brine water**, or pure water for that matter, being dumped onto the Braden property by Endeavor, its agents, servants or employees." (Emphasis in original). With respect to whether the property required remediation, the trial court found, "Endeavor's disclosed expert has opined that the isolated spots of elevated sodium and chloride levels do not require remediation. Plaintiffs have no qualified expert to rebut the opinion." Finally, the trial court determined that there was no genuine issue of material fact with respect to the Bradens' theory of damages for unjust enrichment:

> Plaintiffs' only disclosed witness for damages on its unjust enrichment theory is a representative at the Valley Creek Waste Water Plant in Elizabethtown, Kentucky.… Since it is impossible for Valley Creek to treat waste water from Breckinridge County and/or with an excessive chloride level, the alleged cost of treatment is irrelevant and inadmissible as competent evidence. Absent some reliable, relevant testimony from a competent witness, a jury would

> be left to speculate upon any damages related to unjust enrichment.
>
> Plaintiffs' expert witness, David Doyle, had never dealt with saltwater/brine samples or crop growth. He would have been precluded from testifying about anything other than the samples he took. He cannot testify on the value or damages on the unjust enrichment claim.

The court aptly summarized the Bradens' lack of evidence on all issues of liability and damages as follows:

> [T]he Plaintiffs failed or refused to retain witnesses, expert or otherwise qualified to testify to 1) any subsurface contamination; 2) the date, time or cause of any surface contamination other than by conjecture, speculation or extremely circumstantial evidence; 3) the nature and extent of any reasonable remediation; 4) the reasonable cost of any reasonable remediation; and/or 5) the diminution in fair market value of the Braden property caused by Endeavor after its assignment of lease until October 2006.

The trial court did rule, however, that Endeavor was liable to the Bradens for the annual $81annual shut-in fee it failed to make, compensation for the amount of natural gas it flared off while testing Braden #2 during the time in which it had failed to pay the fee, and nominal damages for trash and debris left on the property by Endeavor. As such, the trial court entered a judgment against Endeavor for trespass in the amount of $324.00, for conversion in the amount of $52,647.00, and for nuisance in the amount of $300.00, and plus interest. The trial court dismissed the remainder of the Bradens' claims. This appeal ensued.

Our standard of review on appeal of a summary judgment is "whether the trial court correctly found that there were no genuine issues as to any material

fact and that the moving party was entitled to judgment as a matter of law." *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996). Summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." CR 56.03. The trial court must view the record "in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor." *Steelvest v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). Summary judgment is proper only "where the movant shows that the adverse party could not prevail under any circumstances." *Id.* Significantly, however, "Belief is not evidence and does not create an issue of material fact." *Sparks v. Trustguard Ins. Co.*, 389 S.W.3d 121, 124 (Ky. App. 2012) (*Quoting Humana of Kentucky, Inc. v. Seitz*, 796 S.W.2d 1, 3 (Ky. 1990)). Similarly, a party cannot survive summary judgment based on "speculation and supposition." *O'Bryan v. Cave*, 202 S.W.3d 585, 588 (Ky. 2006).

The Bradens first argue that the trial court improperly acted as a fact-finder, rather than reviewing the record for genuine issues of material fact pursuant to CR 56. The result, according to the Bradens, was that the trial court essentially conducted a bench trial rather than submitting the case to a jury. We find this argument wholly without merit.

The Bradens' argument appears to be based on the fact that the trial court styled its judgment "Findings of Fact, Conclusion of Law and Judgment."

As the substance of the trial court's opinion demonstrates, however, the phrase "Findings of Fact" is a misnomer. The trial court clearly applied the correct standard of review under CR 56, and, in fact, discussed such at length in its judgment. The trial court did not find facts, but analyzed whether the Bradens had presented evidence sufficient to create a genuine issue of material fact under CR 56. We conclude that the trial court properly examined the record for genuine issues of material fact and, finding none, entered summary judgment in favor of Endeavor.

The Bradens next argue that the trial court erred in granting summary judgment. They contend that although the evidence was circumstantial, they proved that Endeavor produced large quantities of brine water; Endeavor's disposal records were fabricated; the Braden farm was a "perfect" place to dump such water; the property had indications of contamination, including dead foliage; Endeavor constructed a road to facilitate the dumping process; and there were numerous tire tracks around the well sites, indicating that large water-hauling trucks were present. As such, the Bradens contend that there were numerous issues of material fact and the trial court failed to view all inference in their favor. We must disagree.

As the trial court herein noted, the discovery in this matter was substantial and the record is voluminous. Over the course of four years, the parties took twenty-one depositions. The Bradens propounded 22 interrogatories, 230 requests for admission, and 120 requests for production of documents. Endeavor

produced 4,310 pages of documents in response to discovery requests. The record establishes that much of the Bradens' discovery efforts were directed toward their theory that Endeavor and its water haulers conspired to cover up their alleged dumping of water on the Braden property by creating a fake paper trail after the fact. Yet Endeavor produced invoices and cancelled checks from Trogden to demonstrate that it utilized Trogden for its water hauling in Breckinridge County. Further, Endeavor did not begin using Henning to dispose of water until 2008, nearly two years after it removed its equipment from the Braden property. Henning employees testified that they took the water to an oil field in Livermore, Kentucky, which is consistent with August Henning's testimony, the content of the water hauling invoices, and daily run tickets. Despite the fact that the invoices have dates, invoice numbers, and descriptions of work done, the Bradens have maintained, without any supporting evidence, that such were all created after-the-fact to create the appearance of legitimate transactions.

The Bradens alleged that Endeavor built the gravel road to support the "weight of heavy trucks such as those filled with water." However, the evidence established that Endeavor built roads on most of its Breckinridge County properties, which is customary. Further, there was no dispute that Trogden utilized large dual-wheeled vacuum trucks, which is a customary method of transportation for hauling water. Like Trogden's, both of Henning's water-hauling trucks were dual-wheeled tandem axle trucks. Such nullified the Bradens' suggestion that tire tracks on the property somehow supported their theory of water-dumping because

all tracks found on the property were made by single rear-wheeled light duty vehicles.

Similarly, the Bradens claimed that there were "[e]levated levels of sodium and chloride consistent with discharge" on the Braden property. However, the Bradens' own expert stated in his deposition that despite finding mild levels of brine contamination he could not give an opinion as to the cause, origin, or how long the contamination had been present on the property, or even that remediation was necessary. The Bradens produced no evidence to attribute the mild contamination to Endeavor rather than to KRDC, which had kept brine water in two large unlined storage pits in the 1990s. The Bradens point out that "Endeavor's first expert, Terracon … arrived at the opinion that there was a likely discharge at the site." Indeed, Terracon was a consulting expert that tested the property and found possible mild contamination in areas of the soil. However, Endeavor's other disclosed expert, Dr. Kerry Sublette, an expert in brine contamination and remediation, opined that such low and isolated levels were not indicative of dumping but rather an isolated discharge that could have occurred when KRDC leased the property. She further opined that the remediation cost for such mild contamination would be zero, as the soil is self-healing. Again, the Bradens produced no evidence to dispute such findings.

We must agree with the trial court that the Bradens' case against Endeavor was dependent upon layers of speculation and surmise. Their conclusory and unsupported assertions about what they considered to be genuine issues of

material fact are simply not supported by any evidence of record. Accordingly, summary judgment was proper.

The Bradens next argue that the trial court abused its discretion in awarding compensatory, but not punitive, damages on their claims for conversion and nuisance. Citing to *Craig & Bishop, Inc. v. Piles*, 247 S.W.3d 897 (Ky. 2008), the Bradens contend that a punitive damages instruction should have been submitted to a jury for both intentional torts. We disagree and further find that the Bradens have waived their right to appeal this issue.

Under Kentucky law, it is well-settled that, in the absence of a statute, "[a] party who voluntarily accepts the benefits of a judgment cannot prosecute an appeal to reverse it." *Complete Auto Transit v. Louisville & N. R. Co.*, 273 S.W.2d 385, 386 (Ky. 1954). Rather, "a party takes as [sic] indefensibly inconsistent position when he accepts the satisfaction of a money judgment and then appears before this Court asking that such judgment be reversed." *Id.* at 387. Herein, the trial court entered judgment in favor of the Bradens on their claims for conversion and nuisance based on the fact that Endeavor remained on the property and flared off some gas after it inadvertently failed to pay the $81 yearly fee. Endeavor thereafter tendered payment of the judgment and the Bradens voluntarily accepted such. Having done so, they cannot now take the position that the court's award was incorrect.

Notwithstanding the procedural deficiency, the Bradens have failed to cite to any evidence of record that would have warranted punitive damages, but

instead take the position that simply because compensatory damages were awarded they were also entitled to punitive damages. However, Kentucky limits punitive damages to cases in which a plaintiff demonstrates by clear and convincing evidence that a defendant has acted toward the plaintiff with fraud, oppression, malice, or gross negligence. KRS 411.184; *Williams v. Wilson*, 972 S.W.2d 260, 264-65 (Ky. 1998). The Bradens' claim for trespass and conversion were based upon Endeavor's failure to pay the yearly $81 shut-in fee, as well as its subsequent flaring of gas on Braden #2. Had Endeavor made the payments, it would have had the right to do exactly what it did – enter onto the property and flare off natural gas for the purpose of testing a well. Failing to make the $81 yearly payments was a simple accounting error and certainly not sufficient evidence to warrant punitive damages. Similarly, the Bradens' claim for nuisance alleged that Endeavor: 1) left trash and debris on the property when it vacated the property and 2) contaminated the property with brine water. As previously discussed, the trial court properly held that the Bradens failed to create any genuine issue of material fact in support of their allegations regarding contamination. This left only the $300 worth of trash and debris accidentally left on the Braden property when Endeavor vacated the land. The trial court did not err in finding that this negligent but innocent conduct did not warrant punitive damages.

The Bradens next argue that the trial court erred in excluding the testimony of their expert witness, David Doyle, concerning the presence of elevated levels of sodium and chloride on the property consistent with brine

dumping. Doyle was the Bradens' sole expert on soil testing, alleged contamination, and the reduction in value of the Braden property. In September 2011, Doyle collected surface soil samples on the Braden property and produced a report stating that the Braden property had evidence of brine contamination that would cost $324,000 to fully remediate. In his deposition, however, Doyle conceded that he had no experience in brine testing or remediation, and could not determine if remediation was necessary or if his method of remediation was reasonable, but only came to a cost figure at the request of the Bradens. Moreover, he had no opinion as to how long the purported contamination had been there, whether such was caused by Endeavor, or whether the levels resulted in any actual harm to the property. Finally, Doyle admitted that had not computed the remediation cost estimate, but instead had asked an unnamed colleague at his firm to do so. As Endeavor pointed out during the hearing, said colleague was not disclosed as an expert or identified on the Bradens' witness list, denying Endeavor the opportunity to cross examine the person or challenge the data.

Contrary to the Bradens' argument on appeal, the trial court did not exclude Doyle's opinions regarding the levels of chloride and sodium present on the Braden property and, in fact, ruled that he would be permitted to testify about the soil samples he took. He was precluded, however, from testifying about any measure of damages, or the cause of the sodium and chloride levels on the property. We are of the opinion that the trial court properly excluded such testimony as he admittedly lacked the scientific, technical or other specialized

knowledge necessary to calculate remediation costs, and he could not have testified to opinions based on hearsay.

Similarly, the Bradens challenge the trial court's exclusion of Thomas Sander's testimony that his employer, Valley Creek Treatment Facility, charged $0.08 per gallon to dispose of brine water. The Bradens sought to admit the evidence in support of their unjust enrichment claim to show the amount of money Endeavor saved by dumping the water on their property rather than at a licensed facility. The Bradens argue on appeal that the evidence was admissible under KRE 803(6) as a business record or KRE 701 as non-expert testimony. Again, we disagree.

The Bradens clearly misunderstand the trial court's basis for excluding Sander's testimony. The undisputed evidence was that Valley Creek did not accept brine water produced outside of Elizabethtown or water that had a chloride content as high as that produced by Endeavor. As the trial court properly observed, "Since it is impossible for Valley Creek to treat waste water from Breckinridge County and/or with an excessive chloride level, the alleged cost of treatment is irrelevant and inadmissible as competent evidence." Obviously, the trial court excluded the testimony, not because it was hearsay or impermissible opinion evidence, but simply because it was irrelevant. See KRE 402.

The Bradens next argue that the trial court erred in denying their claim for unjust enrichment. In their brief, they focus on whether Kentucky law would recognize a claim for unjust enrichment in the context of tortious use of another's

real property, pointing out that such is an issue of first impression in Kentucky. Essentially, it is their position that they put forth credible evidence that Endeavor was using their farm as a dumping ground and that it was "unjustly enriched to the extent that it conducted its activities while avoiding the cost that was associated with legitimate disposal."

To establish a claim for unjust enrichment, a plaintiff must establish: "(1) [a] benefit conferred upon defendant at plaintiff's expense; (2) a resulting appreciation of benefit by defendant; and (3) inequitable retention of benefit without payment for its value." *Guerin v. Fulkerson*, 354 S.W.3d 161, 165 (Ky. App. 2011) (*Citing Jones v. Sparks*, 297 S.W.3d 73, 78 (Ky. App. 2009)). However, "[s]parse bits of information . . . rooted largely in conjecture" are not sufficient to support an unjust enrichment claim. *Guerin*, 354 S.W.3d at 166.

The Bradens alleged that Endeavor was unjustly enriched by saving money it would have spent on brine water disposal when it dumped water on the Braden property. However, as the trial court noted, they failed to present any evidence in support of this claim other than pure conjecture and attorney argument. No witness testified to any knowledge of Endeavor dumping water on the Braden property. As previously noted, the Bradens' own expert could not give an opinion as to the cause or the timing of the mild contamination present on the property. Endeavor produced invoices and cancelled checks demonstrating that it properly transported and disposed of its brine water. Nevertheless, the Bradens have continued to suggest – again, without any supporting evidence – that Endeavor

conspired with its water haulers to defraud the Bradens and the courts by creating a fake paper trail after the fact to create the appearance of legitimate transactions. This is exactly the type of "sparse bits of information . . . rooted largely in conjecture" upon which Kentucky law refuses to award damages for unjust enrichment. *Id*.

It is apparent from the trial court's comments during the hearings, as well as its written judgment, that it did not dismiss the Bradens' claim for lack of a cognizable legal theory. Rather, the unjust enrichment claim was dismissed because of a complete and total lack of evidence. On appeal, the Bradens make no effort to identify evidence of record that would support their claim of unjust enrichment under any theory. We conclude that the trial court's decision was proper.

Finally, the Bradens contend that the trial court erred by refusing to grant a default judgment in their favor for Endeavor's alleged refusal to disclose documents that "go to the very heart of Endeavor's brine dumping scheme." Further, they argue that they "have clearly demonstrated to an absolute certainty that Endeavor purposefully, willfully, and in bad faith destroyed or secreted documents that [they] needed to prove their case."

As with the other issues presented herein, the Bradens' argument is based on nothing other than pure conjecture and speculation. Nowhere in their brief do they specify what documents Endeavor failed to produce or how Endeavor failed to comply with the trial court's orders relating to discovery. It is well-settled

that a trial court has broad discretion when it comes to whether to grant or deny a motion for a default judgment, and we will not disturb such decision unless the trial court has abused that discretion. *S.R. Blanton Development, Inc. v. Investors Realty and Management Co., Inc*., 819 S.W.2d 727, 730 (Ky. App. 1991). For a trial court to have abused its discretion, its decision must have been arbitrary, unreasonable, unfair or unsupported by sound legal principles. *Clark v. Commonwealth*, 223 S.W.3d 90, 95 (Ky. 2007). We certainly cannot find, based on the record before us, that the trial court abused its discretion.

After reviewing the record, the lengthy video hearings, and the judgment, it is plainly apparent that the trial court was painstakingly thorough in its resolution of the issues herein. The fact of the matter is the Bradens failed to introduce any evidence that could warrant a verdict in their favor.

Accordingly, the judgment of the Breckenridge Circuit Court is affirmed.

ALL CONCUR.

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