STATE OF MICHIGAN

COURT OF APPEALS

GARY L. PAIGE,

Plaintiff/Counter Defendant-Appellants,

and

B&G VENDING CO., INC.,

Plaintiff/Counter-Plaintiff/Third-Party Plaintiff-Appellee/Cross Appellee,

v

TERRY PAIGE,

Defendant/Counter-Plaintiff/Third-Party Plaintiff-Appellee/Cross-Appellee,

and

ROBERT RINN,

Defendant/Counter-Plaintiff/Third-Party Plaintiff-Appellee-Cross-Appellee,

and

DANA PAIGE,

Defendant-Appellee/Cross-Appellee,

and

PAIGE ENTERPRISES,

Third-Party Defendant/Cross-

UNPUBLISHED
August 6, 2009

No. 283811
Shiawassee Circuit Court
LC No. 04-001544-CB

Appellant,

and

MICHELLE PAIGE,

Third-Party Defendant.

Before: O'Connell, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

Plaintiff Gary Paige ("Gary") appeals as of right the January 30, 2008 judgment, following a bench trial before Shiawassee Acting Circuit Judge Terrance P. Dignan,[1] in favor of defendants Terry Paige ("Terry"), Robert Rinn ("Rinn") and Dana Paige ("Dana"). This action arises out of a business dispute between Gary, Terry and Rinn regarding the ownership and operation of two video game vending corporations, Paige Enterprises and B&G Vending Co., Inc. ("B&G"). We affirm.

The issues Gary raises on appeal fall into two categories – challenges to the propriety of the bench trial verdict and challenges to the propriety of the trial court's post-trial orders. These issues, as well as the issue raised by Paige Enterprises on cross-appeal, were raised before and decided by the trial court and, therefore, they are properly preserved for appeal. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999).

We preface our discussion of the issues by noting that, despite Gary's contention otherwise, for the most part, the general assertion as to each of them is simply that the trial court got the facts wrong; that is, that the trial court's factual findings were clearly erroneous. There is some allegation of legal error, but the essence of each claim of error is based on the trial court's factual findings.

We review the trial court's findings of fact following a bench trial for clear error, recognizing the trial court's unique opportunity to observe the witnesses appearing before it, and giving due deference to the trial court's superior ability to judge their credibility. MCR 2.613(C); *Moore v Detroit Entertainment, LLC*, 279 Mich App 195, 202; 755 NW2d 686 (2008); *Glen Lake-Crystal River Watershed Riparians v Glen Lake Ass'n*, 264 Mich App 523, 531; 695 NW2d 508 (2004); *Ambs v Kalamazoo Co Rd Comm*, 255 Mich App 637, 652; 662 NW2d 424 (2003); *Gumma v D & T Construction Co*, 235 Mich App 210, 221; 597 NW2d 207 (1999); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996). To be clearly erroneous, a trial court's finding must be more than maybe or even

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[1] Judge Dignan, a District Judge, was sitting by assignment.

probably wrong. *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made. *Ambs, supra* at 652; see also *Sinicropi v Mazurek*, 279 Mich App 455, 462; 760 NW2d 520 (2008) ("Clear error exists when some evidence supports a finding, but a review of the entire record leaves the reviewing court with the definite and firm conviction that a mistake has been made."). This Court reviews a trial court's conclusions of law de novo. *Beason v Beason*, 453 Mich 791, 804; 460 NW2d 207 (1990); *Ligon v Detroit*, 276 Mich App 120, 124; 739 NW2d 900 (2007).

We find, generally, that there was ample evidence to allow the trial court to reach the factual conclusions it reached. Although, in this "he said-he said" case, there was sufficient evidence to find in favor of either party, the trial court's rulings were properly premised on its assessment of witness credibility. Having found Terry more credible than Gary, and concluding that Rinn was the most credible witness that testified, the trial court's factual findings were, accordingly, in line with the version of events offered by Terry and Rinn. As discussed in more detail below, there is no basis in the record for this Court to find clear error in that regard.

I. Bench Trial Verdict

A. Conversion

In his complaint, Gary asserted that Terry and Dana wrongfully converted B&G funds "for their own use and benefit" by collecting them without legal authority and depositing them into their personal checking account. Gary asserts that the conversion was complete when Terry and Dana deposited B&G funds into their own personal bank account – regardless whether they accounted for those funds or how they were used – without legal authority to do so. Gary further asserts that Rinn is also liable for conversion, because "he allowed Terry and Dana Paige to deposit B&G receipts into their personal bank account" instead of opening a corporate checking account for those funds, thus "act[ing] in concert with" Terry and Dana in converting B&G's money for their own use and benefit. Gary sought treble damages, attorney fees and costs pursuant to MCL 600.2919a.

In a civil context, conversion is "any distinct act of domain wrongfully exerted over another's personal property in denial of or inconsistent with the rights therein." *Foremost Ins Co v Allstate Ins Co*, 439 Mich 378, 391; 486 NW2d 600 (1992); *Dept of Agriculture v Appletree Marketing, LLC*, 280 Mich App 635, 645; 761 NW2d 277 (2008). "In general, it is viewed as an intentional tort in the sense that the converter's actions are wilful, although the tort can be committed unwittingly if unaware of the plaintiff's outstanding property interest." *Foremost, supra* at 391. And, MCL 600.2919a provides in relevant part:

> (1) A person damaged as a result of either or both of the following may recover 3 times the amount of actual damages sustained, plus costs and reasonable attorney fees:
>
> (a) Another person's stealing or embezzling property *or converting property to the other person's own use*.

Thus, to state a claim for conversion, Gary was required to establish that Terry and Dana wrongfully converted B&G money to their "own use."

The trial court found, based on testimony from Terry, Dana and Rinn, that Terry and Dana were acting with legal authority – first from Gary and Rinn, and then after Rinn "rehired" Terry, from Rinn – and on behalf of B&G when collecting B&G accounts. The court also found that, while they should not have deposited these funds into their personal account, Terry and Dana had no intent to, and did not, convert the funds to their own use, considering that they accounted for all such funds to Rinn.

Both Rinn and Terry testified that Rinn gave Terry and Dana authority to continue collecting those B&G accounts that Terry had been servicing, and both acknowledged that Rinn required and Terry provided a detailed accounting of B&G funds collected and expended for business purposes by Terry and Dana. Additionally, Rinn testified that he never took B&G money and that he acted at all times to protect the company, including by requiring Terry and Dana to fully account for B&G funds collected. Thus, there was sufficient testimony presented at trial that, if credited, established that Terry and Dana, acting on authority from Rinn, did not "wrongfully exert[] [dominion] over another's personal property," but rather that they were acting as B&G's agents in collecting B&G funds and, having properly accounted to Rinn for those funds, they did not convert them to "their own use." The trial court did not clearly err by so concluding.

B. Tortious interference

As this Court has explained:

> The elements of tortious interference with a business relationship are the existence of a valid business relationship or expectancy, knowledge of the relationship or expectancy on the part of the defendant, an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and resultant damage to the plaintiff. To establish that a lawful act was done with malice and without justification, the plaintiff must demonstrate, with specificity, affirmative acts by the defendant that corroborate the improper motive of the interference. Where the defendant's actions were motivated by legitimate business reasons, its actions would not constitute improper motive or interference. [*Mino v Clio School Dist*, 255 Mich App 60, 78; 661 NW2d 586 (2003), quoting *BPS Clinical Laboratories v Blue Cross & Blue Shield of Michigan*, 217 Mich App 687, 698-699; 552 NW2d 919 (1996) (citations omitted).]

Gary argues that the trial court clearly erred by finding that Terry, Dana and Rinn did not tortiously interfere with B&G's business relationships. Gary asserts, plainly, that "there is no dispute that B&G had business relationships with its customers," that Terry, Dana and Rinn knew of these relationships, that Terry and Dana collected money from the accounts, that Gary "was not allowed on several of the customers' premises," and that "there can be no question" that Terry's, Dana's and Rinn's "interference damaged B&G because the money collected from those customers was not deposited into B&G's corporate account." However, as the trial court noted, there was no evidence whatsoever presented at trial, nor any referred to on appeal, to

show that Gary's exclusion from customer premises was induced in any way by Terry, Dana or Rinn. Indeed Gary's argument on appeal essentially asks this Court to assume causation, despite testimony that Gary was excluded from customer sites because the customers did not know him and had never dealt with him.

To establish his claim, Gary was required to establish that Terry, Dana and/or Rinn engaged in some affirmative, intentional act to interfere with B&G's business relationship with its customers, and that they did so motivated by other than a legitimate business reason. *Mino, supra*. Gary did not meet this burden. Instead, the record indicated that Terry and Dana continued to service B&G accounts on behalf of B&G, as directed by Rinn, in order to maintain B&G's business relationships with those customers. Thus, the trial court did not clearly err by finding no cause of action for tortious interference. *Id*.

C. Breach of corporate and fiduciary duties

Gary argues that the trial court erred by concluding that Rinn did not breach his fiduciary duties to B&G. Rather, Gary asserts that the evidence overwhelmingly established that Rinn breached his duties by allowing Terry to conduct B&G business, allowing Terry and Dana to deposit B&G money into their personal account, denying Gary access to financial reports and information relating to collection of B&G money, "interfering with the operation and financial success of B&G by permitting diversion of receipts, and causing confusion among current and potential customers." Gary argues that Rinn collaborated with Terry to "freeze" Gary out of B&G's customers and rehired Terry to the detriment of B&G, preventing Gary from properly operating the company.

Michigan law requires that a corporate director or officer discharge his duties in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner that he reasonably believes to be in the best interests of the corporation. MCL 450.1541a(1)(a), (b), and (c). "It is beyond dispute that in Michigan, directors and officers of corporations are fiduciaries who owe a strict duty of good faith to the corporation which they serve," *Production Finishing Corp v Shields*, 158 Mich App 479, 486; 405 NW2d 171 (1987), and that they must manage the affairs of the corporation solely in the interest of the corporation. *L A Young Spring & Wire Corp v Falls*, 307 Mich 69, 101, 11 NW2d 329 (1943). The trial court found that Rinn met these duties, concluding that he acted at all times in good faith and in the best interests of B&G, and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances. There was sufficient evidence presented at trial to support this finding.

Gary's allegations that Rinn breached his fiduciary duty arise, almost exclusively, from Rinn's "rehiring" of Terry to continue servicing B&G customer accounts. For example, Gary asserts that, because Rinn rehired Terry and allowed he and Dana to collect customer accounts, Gary could not prepare B&G's tax returns, because he did not have sufficient information to do so. He complains, in essence, that neither Rinn nor the trial court believed him that Terry was stealing from the company, and that, considering that Terry was terminated for stealing, Rinn breached his duties by allowing him to continue servicing B&G accounts. He further complains that, contrary to the trial court's ruling, "no ordinary prudent person would think it is acceptable to allow a terminated employee to deposit corporate money into the terminated employee's personal bank account allowing the money to be commingled."

As with the preceding issues, however, the crux of this issue is, essentially, that the trial court erred by believing Terry and Rinn, and not Gary. Accepting the trial court's assessment of credibility, we conclude that the court did not clearly err by finding that Rinn was acting in good faith, in the best interest of B&G, when he rehired Terry to continue servicing those B&G accounts long-serviced by him, in order to maintain those accounts in good standing for the benefit of the company. Rinn specifically testified that he feared that, without Terry, many of B&G's customer accounts would be lost. While it was admittedly not prudent to allow B&G funds to be deposited into a personal account, any potential breach of duty in that regard was mitigated by Rinn's demand that Terry maintain and provide a full accounting of all B&G funds collected by Terry and Dana. By virtue of that accounting, Rinn was able to ensure that B&G funds were used only for proper business purposes. The determination whether Rinn was acting in good faith and in what he reasonably believed to be the best interests of B&G rested on an assessment of Rinn's credibility. The trial court, having found Rinn to be credible, did not clearly err by finding that Rinn did not breach his fiduciary duties to the company.

D. Ownership of B&G

Gary acknowledges on appeal that the "trial court was correct in its Opinion that either Gary Paige or Terry Paige was not being truthful . . . and was also correct that [it] would have to evaluate credibility regarding this claim." He argues, however, that the trial court clearly erred by finding Terry and Rinn to be more credible than him, and by ignoring "the substantial amount of evidence" supporting Gary's claim and the "complete lack of evidence" supporting Terry's claim.

In assailing Terry's credibility, Gary points to Terry's admission that he had not filed an income tax return since 1998, and to the appointment of a receiver for Paige Specialties in Terry's divorce action, as well to Terry's description of conduct that, if true, Gary asserts would constitute fraud in both the divorce and bankruptcy proceedings. However, Terry's testimony regarding the formation of B&G was corroborated, unequivocally, by Rinn, as well as by the testimony of Ed Pellegrini and by Gary's own congratulatory fax to Terry, for which Gary could offer no other explanation. Gary argues that the only reason Rinn "sided" with Terry was to recover $80,000 he previously loaned to Terry; Rinn denied any such motivation, explaining that he was merely doing what was right. As noted above, this Court will accord due deference to a trial court's assessment of the credibility of the witnesses appearing before it. *Glen Lake-Crystal River Watershed Riparians*, *supra* at 531; *Ambs*, *supra* at 652; *Zeeland Farm Services*, *supra* at 195. On this issue, and generally, the trial court found Rinn to be more credible than Gary. There is no basis to conclude that it clearly erred by doing so.

Gary points to B&G's corporate documents bearing only his and Rinn's name as substantiating his version of events. However, these documents are inapposite. Although they corroborate that Gary and Rinn formed B&G as equal shareholders, and served as its only officers and directors, they do not in any fashion address the underlying issue of the motivation for the formation of the company or whether there was a separate, underlying agreement that Gary would transfer his interest in B&G to Terry at some future point in time. Likewise, that Gary and Rinn signed contracts for equipment and personally guaranteed loans for the business does not counter in any way Terry's version of events, as corroborated by Rinn. Indeed, accepting Terry's version of events, one would not expect to see his name on any of the

documents referenced by Gary, and especially on financial documents, considering that his bankruptcy and divorce proceedings remained pending.

The trial court carefully assessed the credibility of the witnesses, considered the documentary evidence presented and concluded that there was an agreement between Gary and Terry, as asserted by Terry and corroborated by Rinn, that Gary would transfer his interest in B&G to Terry at some future time. As noted above, the existence of this agreement was further corroborated by the testimony of Ed Pellegrini and by Gary's congratulatory fax to Terry. Therefore, on the record before it, the trial court did not clearly err in finding that such an agreement existed.

Gary next argues that Terry's claim is barred by B&G's bylaws, which provide:

> The corporation shall be entitled to treat the holder of record of any share or shares of stock as the holder-in-fact thereof, and accordingly, shall not be bound to recognize an equitable or other claim to or interest in such share on the part of any other person, whether or not it shall have express or other notice thereof, save as expressly provided by the laws of the State of Michigan.

However, this, too, is inapposite to resolution of Terry's claim. The trial court was not asked to require B&G to recognize an equitable interest in favor of Terry in the company. Rather, it was asked to enforce a verbal agreement between Gary and Terry to transfer Gary's interest in B&G to Terry. Nothing in the quoted bylaw would prohibit the trial court from recognizing such an agreement to transfer company stock.

Next, Gary argues that Terry's claim is barred by the statute of frauds. In this regard, MCL 555.132 provides in relevant part:

> (1) In the following cases an agreement, contract, or promise is void unless that agreement, contract, or promise, or a note or memorandum of the agreement, contract, or promise is in writing and signed with an authorized signature by the party to be charged with the agreement, contract, or promise:
>
> (a) An agreement that, by its terms, is not to be performed within 1 year from the making of the agreement.

The trial court found Terry and Gary's agreement to be valid, noting that it was capable of being completed within a year, and thus, was not required to be in writing.

Gary does not argue that his agreement to transfer his interest in B&G was, by its terms, not to be performed within a year. Rather, he cites a 1908 Michigan Supreme Court case, *Sprague v Hosie*, 155 Mich 30; 118 NW 497 (1908), for the proposition that a sale of corporate stock must be in writing to be enforced. In that case, our Supreme Court determined that shares of corporate stock are "goods" within the meaning of the statute of frauds, and thus, are subject to its terms. *Id*. at 34. At the time, the statute of frauds required that, to be valid, contracts for the sale of "goods, wares or merchandise, for the price of fifty dollars or more," were required to be in writing. *Id*. at 35. Accordingly, the Court found invalid a parol contract for the sale of corporate stock at a price of $3080. *Id*. Contrary to Gary's assertion, *Sprague* does not stand for

the general proposition that *all* sales of stock are required to be in writing. Rather, *Sprague* merely held that shares of stock are goods and thus, the sale of such shares is subject to the requirements of the statute of frauds.[2] Where the statute of frauds would not otherwise bar enforcement of an oral agreement, *Sprague* does not require otherwise. *Id.* See also, *Peninsula Leasing Co v Cody*, 161 Mich 604, 610; 126 NW 1053 (1910).

Gary also cites MCL 450.1305 as barring Terry's claim to an interest in B&G. MCL 450.1305(1) provides, "[a] subscription for shares made before or after organization of a corporation is not enforceable unless in writing and signed by the subscriber." Again, however, Terry was not attempting to enforce a subscription for shares of stock in B&G. Rather, he sought enforcement of an agreement between he and Gary regarding a transfer of Gary's interest in the company. Nothing in MCL 450.1305 proscribes enforcement of an oral agreement by a shareholder to transfer his interest to another, non-subscribing party.

Finally, Gary argues, at least implicitly, that the trial court erred by declining to find that Terry's claim was barred by the doctrine of "unclean hands," because Terry's actions constituted bankruptcy fraud. However, Gary does not cite any authority to establish that the acquisition of assets from a creditor, after that creditor has successfully moved to have those assets excluded from the bankruptcy estate, by an entity in which the debtor has an interest, as part of an arms-length transaction, constitutes fraud on the trustee. Keeping in mind that it was the creditors – Firestone Financial, Atlas and American Vending – that obtained the property from the trustee, for the purpose of selling it to recoup monies owed by Paige Specialties, and that B&G purchased the assets from the creditors, and had no dealings whatsoever with the bankruptcy trustee and made no representations of any kind to that court, we do not conclude that the trial court erred in determining that Terry did not have "unclean hands" so as to bar enforcement of his claim to enforce Gary's promise to transfer his interest in B&G to Terry.

In sum, we affirm the trial court's verdict. Considering the testimony and evidence summarized above and affording the proper deference to the trial court's assessment of the witnesses appearing before it, *Glen Lake-Crystal River Watershed Riparians*, *supra* at 531; *Ambs*, *supra* at 652; *Zeeland Farm Services*, *supra* at 195, we do not find that the trial court committed clear error in its factual findings. And, Gary did not establish, nor do we discover, any legal error in the trial court's conclusions of law.

II. Post-trial Orders

Nor did the trial court err in entering its post-trial orders against Gary. There was sufficient evidence presented to permit the trial court to calculate the amount of damages suffered by B&G as a result of Gary's conduct to a reasonable certainty. Further, nowhere in the court's ruling from the bench, on January 8, 2008, or in its order effectuating that ruling, entered

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[2] Further, as was recognized very shortly thereafter, "[t]he statute of frauds has no application in a case where the arrangement does not provide for or contemplate a sale of stock." *Peninsula Leasing Co v Cody*, 161 Mich 604, 610; 126 NW 1053 (1910) (citation omitted). As Terry points out, the agreement did not contemplate a *sale* of stock

on January 22, 2008, did the court affirmatively hold Gary in contempt. Rather it awarded a money judgment against Gary and Paige Enterprises for equipment belonging to Rinn and B&G that was wrongfully withheld or disposed of. Thus, there is no basis for a claim of error regarding a contempt finding. And, even if there were, the trial court's award of an additional money judgment against Gary was appropriate, without regard to any finding of contempt. Thus, any erroneous finding of contempt would have been harmless.

As with the issues previously discussed, much of Gary's allegations of error in the trial court's post-trial orders against him are based on an underlying claim that the trial court should have credited Gary's testimony, and not Terry's and Rinn's. We will not discuss that assertion at length, considering the foregoing lengthy analysis, but note, again, that this Court affords due deference to the trial court's assessment of the credibility of the witnesses appearing before it. *Glen Lake-Crystal River Watershed Riparians, supra* at 531; *Ambs, supra* at 652; *Zeeland Farm Services, supra* at 195. In this regard, we further note Gary's reticence in providing the trial court with any information whatsoever about B&G's financial status, even refusing at one point to indicate whether there was an amount closer to $10,000 or to $500,000 in the corporate bank account, as well as the trial court's observation that Terry kept "meticulous" records, while Gary's records were poor.

A. Damages to B&G

As this Court recently explained:

> A plaintiff asserting a cause of action has the burden of proving damages with reasonable certainty, and damages predicated on speculation and conjecture are not recoverable. Damages, however, are not speculative simply because they cannot be ascertained with mathematical precision. Although the result may only be an approximation, it is sufficient if a reasonable basis for computation exists. Moreover, the law will not demand that a plaintiff show a higher degree of certainty than the nature of the case permits. Thus, when the nature of a case permits only an estimation of damages or a part of the damages with certainty, it is proper to place before the [fact-finder] all the facts and circumstances which have a tendency to show their probable amount. Furthermore, the certainty requirement is relaxed where damages have been established but the amount of damages remains an open question. [*Health Call of Detroit v Atrium Home & Health Care Services, Inc*, 268 Mich App 83, 96-97; 706 NW2d 843 (2005) (citations and internal quotation marks omitted).]

Applying these principles to the instant case, there was sufficient evidence presented to permit the trial court to calculate damages. Terry presented detailed testimony, based on his collection reports, documents produced by Gary, his knowledge of the number and type of B&G's accounts, and his knowledge of B&G's business and of the industry, to allow the fact-finder to determine the approximate amount of damages suffered. Considering the nature of the case, this constituted a "reasonable basis for computation" which, while not allowing ascertainment of damages with "mathematical precision," allowed the fact-finder to determine their "probable amount." The trial court did not err by awarding damages based on Terry's testimony and supporting documentation. *Health Call of Detroit, supra*.

B. Contempt

Regarding Gary's assertion that the trial court erred by holding him in contempt, we do not conclude, initially, that the trial court actually held Gary in contempt. At the end of the January 8, 2008 hearing, the trial court stated

> With regard to contempt, you know, at this point in time, what I've done is I've awarded a money judgment in lieu of – in lieu of any sanction. I mean it's not possible for me to do anything else at this point in time, but I would reserve the right to order attorney fees. If you submit something, I'll take a look at it and determine whether I would do that or not.

We interpret this as granting the money judgment on the basis of the substantive issues raised and decided, in lieu of any contempt finding. Likewise, the order effectuating the trial court's January 8, 2008 ruling from the bench does not state that the trial court found Gary to be in contempt. It is well settled that a court only speaks through written judgments and orders. *Tiedman v Tiedman*, 400 Mich 571, 576; 255 NW2d 632 (1977); *Stackhouse v Stackhouse*, 193 Mich App 437, 439; 484 NW2d 723 (1992). There being no finding of contempt in the trial court's January 22, 2008 written order, Gary's assertion that the trial court held him in contempt at the January 8, 2008 hearing lacks merit.

Nonetheless, the trial court did appear to address the standard of proof for a contempt finding, suggesting, perhaps, that it was intending to hold Gary in contempt. At the conclusion of the January 8, 2008 hearing, the trial court remarked:

> And the one thing I need to address, the [sic] with regard to the burden of proof, and I base my finding on a preponderance of the evidence. There's two lines of cases. One holds – one says, an older line says clear and unequivocal. I'm – I'm finding this in making my findings by a preponderance of the evidence. There is a line of cases. The most recent line that says that's the standard. That's the standard that I – that I used in making this determination.

Although it does not refer to contempt, this comment appears to refer to some confusion in the case law regarding the appropriate burden of proof for establishing civil contempt. Thus, it is at least arguable that the trial court's ruling could be characterized as a contempt ruling and all parties seem to believe that the trial court held Gary in contempt. In that context, then, we briefly address Gary's assertion of error regarding a contempt finding.

This Court reviews a trial court's decision regarding a contempt motion for an abuse of discretion. *DeGeorge v Warheit*, 276 Mich App 587, 591; 741 NW2d 384 (2007). A trial court abuses its discretion when its decision results in an outcome falling outside the range of principled outcomes. *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006). "Civil contempt proceedings seek compliance through the imposition of sanctions of indefinite duration, terminable upon the contemnor's compliance or inability to comply." *DeGeorge*, *supra* at 592. "Although civil sanctions may also have a punitive effect, the sanctions are primarily coercive to compel the contemnor to comply with the order." *Id*. By contrast, sanctions for criminal contempt are punitive and their purpose is to "punish past disobedient conduct by imposing an unconditional and definite sentence." *Id*. The contempt levied here, if

any, of a money judgment for missing equipment which could be reduced by production of that missing equipment and which was designed to coerce Gary into compliance with prior orders and judgments, was thus, civil, not criminal.

Regarding the appropriate standard of proof for civil contempt, while case law is not unequivocal on this issue,[3] it would seem that the standard of proof for civil contempt is more stringent than in other civil actions, and thus, that proof of contempt must be "clear and unequivocal." *In re Contempt of Robertson*, 209 Mich App 433, 439; 531 NW2d 763 (1995). See also, *People v Matish*, 384 Mich 568, 572; 184 NW2d 915 (1971); *In re Contempt of Calcutt*, 184 Mich App 749, 757; 458 NW2d 919 (1990); *Detroit Bd of Ed v Detroit Federation of Teachers*, 55 Mich App 499, 505-506; 223 NW2d 23 (1974). To the extent that the trial court found Gary in contempt, it expressly did so by a preponderance of the evidence.

However, any error in this regard was harmless, as it is apparent that Gary did not comply with the orders of the court, and thus, it is plainly evident from the record that the "clear and unequivocal" standard of proof was satisfied. See, e.g., *Beauchamp v Yeo*, unpublished opinion per curiam of the Court of Appeals, issued June 13, 2006 (Docket No. 259940) ("the unrefuted evidence would clearly support a finding as to the disputed elements of their claim under the appropriate standard of proof, any error in applying the incorrect standard of proof amounts to harmless error that does not require reversal.").

III. Cross-appeal

On cross-appeal, Paige Enterprises argues that there was no basis for the trial court to enter judgment in favor of B&G against Paige Enterprises. Although this issue presents a closer question than the issues raised on direct appeal, we again conclude that the trial court did not err in entering its November 6, 2007 money judgment against Paige Enterprises, as well as against Gary, because Paige Enterprises was a party to the action, was represented by counsel throughout the proceedings, had ample notice that, because of Gary's conduct in commingling funds and assets of Paige Enterprises and B&G, B&G was asserting claims against it, and had an opportunity to defend against those claims.

Paige Enterprises correctly notes that "[a] trial court does not have the authority to grant relief based on a claim that was never pleaded in a complaint or requested at any time before or during trial." *Reid v State of Michigan*, 239 Mich App 621, 630; 609 NW2d 215 (2000). See also, *Peoples Savings Bank v Stoddard*, 359 Mich 297, 325; 102 NW2d 777 (1960); *City of Bronson v American States Ins Co*, 215 Mich App 612, 619; 546 NW2d 702 (1996). That said,

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[3] Compare *In re Contempt of Auto Club Ins Ass'n*, 243 Mich App 697, 712; 624 NW2d 443 (2000) (civil contempt need only be proved by a preponderance of the evidence) with *People v Matish*, 384 Mich 568, 572; 184 NW2d 915 (1971) (court may punish for contempt "only when the contempt is clearly and unequivocally shown") and *In re Contempt of Calcutt*, 184 Mich App 749, 757; 458 NW2d 919 (1990) ("the standard of proof is more stringent than in other civil actions: proof of contempt must be clear and unequivocal.").

however, it would seem apparent that the converse is equally true: a trial court may grant relief on a claim if the relief was requested before the trial court renders its decision.

The trial court entered its November 6, 2007 money judgment in favor of B&G "against Counter-Defendants, Gary L. Paige and Paige Enterprises, Inc." after determining that B&G was entitled to return of the profits earned since its inception, which Gary commingled with Paige Enterprises' assets, by depositing B&G money in the Paige Enterprises account. Paige Enterprises asserts that this was inappropriate, because at no time did B&G assert any claim against Paige Enterprises, and thus, that it had no opportunity to defend against any such claim and was unfairly surprised and prejudiced by the trial court's ruling. However, the record belies this assertion.

There is no dispute that Paige Enterprises was a party to this action and that it was represented by counsel throughout the proceedings, first by Gary's attorneys, Steven Spender and Dawn Weier, and later, after ownership of Paige Enterprises was transferred to Michelle Paige in her divorce proceedings against Gary, by Mark Newman. It is also apparent, from the first post-trial motion filed by Terry and Rinn on behalf of B&G, in October 2006, seeking relief against Gary *and* Paige Enterprises, that relief was being sought from Paige Enterprises as a result of Gary's conduct in placing B&G assets in Paige Enterprises' accounts. And, the response to that motion was filed on behalf of Gary and Paige Enterprises. Likewise, the June 21, 2007 motion filed by Rinn, Terry and B&G to compel compliance with the court's orders and judgment, which resulted in the entry of the money judgment about which Paige Enterprises now complains, specifically alleged a failure to comply with the court's orders and judgment by "Gary L. Paige and/or Paige Enterprises, Inc." That motion further alleged that "the continuing actions of Gary L. Paige provide a sufficient basis in fact for this [c]ourt to modify its Opinion [at trial that the doctrine of unclean hands prevented the trial court from awarding Paige Enterprises to Terry] and award Terry L. Paige the sole ownership of Paige Enterprises, Inc. Justice compels the transfer of all of the assets of Paige Enterprises, Inc., to Terry L. Paige and that the alleged transfer from Gary L. Paige to Michelle L. Paige be set aside as fraudulent." While the record does not reflect that Paige Enterprises answered this motion on its own behalf, its counsel was present at all hearings on that motion. Thus, Paige Enterprises assertion to this Court that it had no opportunity to defend against any claim of relief as to it, is belied by the record.

Thus, since October 2006, Gary defended against claims that Paige Enterprises possessed and/or improperly transferred, sold or disposed of B&G's assets, by submitting evidence he believed showed that all assets possessed by Paige Enterprises were purchased by and for that company. And indeed, at trial, Gary made numerous efforts to show that certain equipment was purchased by and for Paige Enterprises. Paige Enterprises does not indicate in any way what defenses it would or could have raised had B&G's claim for relief been pleaded earlier, and it does not otherwise specify how it was prejudiced by the procedure below.

Michigan is a notice pleading state, and thus, as Paige Enterprises argues, "a party must be put on notice as to the claims made against it, so that it may have an opportunity to defend the action." However, this Court has explained that the only requirement for stating a cause of action "is a presentation of factual allegations that *would reasonably inform defendants of the 'nature of the claims' against which defendants are called on to defend*." *Smith v Stolberg*, 231 Mich App 256, 260-261; 586 NW2d 103 (1998), quoting MCR 2.111(B)(1). Thus, for example,

where a new theory of liability is presented that "fit[s] within the 'scope of the general factual allegations' previously pleaded in support of another claim, this Court has found that a complaint met the pleading requirements set forth under MCR 2.111(B)(1)." *Id*., quoting *Iron Co v Sundberg, Carlson & Assoc, Inc*, 222 Mich App 120, 124; 564 NW2d 78 (1997). Applying these principles to the post-trial proceedings at issue here we conclude that Paige Enterprises was "reasonably informed" of the nature of the claims against it, and it was given ample opportunity, over numerous hearings to defend against those claims.

The November 6, 2007 money judgment was awarded to restore to B&G the corporate profits and equipment wrongfully commingled with Paige Enterprises's assets, or otherwise appropriated by Gary on behalf of and for Paige Enterprises. We note that Gary admitted that he deposited B&G money in Paige Enterprises's accounts, that there was evidence that B&G equipment was used on Paige Specialties' routes, that Paige Enterprises was apprised that claims were being asserted against "Gary L. Paige and/or Paige Enterprises" as early as October 2006, more than a year prior to entry of the November 2006 money judgment, and that the motion resulting in entry of the money judgment against Paige Enterprises was filed more than four months earlier. On these bases, we find no error in the trial court's entry of the judgment against Paige Enterprises, despite the fact that, absent Gary's conduct in commingling B&G and Paige Enterprises assets, there was no basis asserted for relief against Paige Enterprises.

We affirm. Appellees and cross-appellees, as the prevailing parties, may tax costs pursuant to MCR 7.219.

/s/ Peter D. O'Connell
/s/ Richard A. Bandstra
/s/ Pat M. Donofrio