2024 IL App (4th) 230436-U

NO. 4-23-0436

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
March 20, 2024
Carla Bender
4th District Appellate
Court, IL

BRETT WILLIAMS GETTINGS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Jersey County
THE ESTATE OF ROBERT MICHAEL HIGGINS,	)	No. 19L31
Defendant-Appellant.	)	
	)	Honorable
	)	Allison Lorton,
	)	Judge Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Doherty and Lannerd concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the trial court's denial of defendant's motion for judgment notwithstanding the verdict or for a new trial where (1) defendant conceded the issue of contract formation and invited the claimed jury instruction error raised on appeal, (2) defendant's concession and invitation of error relieved plaintiff of the burden to present evidence of contract formation, and (3) the court committed no abuse of discretion.

¶ 2 Defendant, the Estate of Robert Michael Higgins (Estate), appeals following a jury verdict in favor of plaintiff, Brett Williams Gettings, in Brett's breach of contract action against the Estate. The Estate argues that the trial court erroneously denied its motion for judgment notwithstanding the verdict (JNOV) because Brett presented no evidence of a valid, enforceable contract, and the court erroneously instructed the jury. The Estate further argues that the court should have granted a new trial because the jury's verdict was against the manifest weight of the evidence and the result of an unfair trial. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The following facts were adduced at trial. Additional facts will be provided in the analysis section as needed to address the issues on appeal.

¶ 5 Brett and Michelle Gettings operated a grain farm in Fieldon, Illinois. In 2013 and 2014, the Gettings were planning to build a new shed on their property, as one of their other sheds was failing. In winter 2014-2015, the Gettings decided that they wanted a 60-foot by 120-foot shed with (1) a 15-foot "lean-to overhang," (2) a concrete apron leading up to the main overhung door with two other overhung doors on the side, and (3) "an office *** slash possibly apartment on the [southwest] corner." They also wanted a heated concrete floor, though they were not "positive" about its thickness. Additionally, they wanted a wash pit with a drain in the floor.

¶ 6 The Gettings entered into an oral agreement with Higgins for the construction of the shed. Higgins was Brett's friend and operated a company called OL' Duke Farm Structures. On January 20, 2015, the Gettings secured a loan in the amount of $324,000, with $112,000 to be used to pay off an existing loan and $215,000 as a new line of credit for the shed.

¶ 7 On February 23, 2015, Higgins sent a letter to the Gettings' banker, Chris Simon of the Bank of Calhoun County (Bank). The letter was on OL' Duke Farm Structures letterhead and had a subject line that provided, "Proposed Budget for Gettings 60' by 120' building." In the body of the letter, Higgins indicated that he was providing a "proposed budget for the new shop Brett wants to build." The letter relayed that the shed would have the following specifications:

> "1) 60' x 120' x24' [*sic*] tall at the eave.
>
> 2) 15' x 120' open overhang (no post) closed at each end.
>
> 3) 4" Insulation, walls, ceiling in shop area. None in the overhang area in rear of building.

4) Doors; 2-3070 walk doors, 1-30’ x 20’, 1-24’ x20’ [*sic*], 1-16’x16’ [*sic*] roll-up overhung doors

5) Concrete; trench footing, walls, piers, 8” concrete slab with 1/2” rebar 2” O.C. ea. direction.”

The letter also included the following itemized costs and requests for initial payments:

“Arco/OL’ Duke Building - $69,998.00

OL’ Duke Labor - $31,500.00

OL’ Duke Concrete - $88,700.00

OL’ Duke Doors - $18,000.00

O[L]’ Duke Office - $9,000.00

Total $217,188.00

30% down to order building from Arco Building wired or check $20,998.00

10% Mobilization, overhead to start project to OL’ Duke wired or check $21,718.80”

¶ 8 Higgins also prepared a drawing, dated February 23, 2015, that depicted a 60-foot by 120-foot shop with heated floors represented by wavy lines, overhead doors, a floor drain, an office on the southeast of the building, and a 15-foot overhang.

¶ 9 On February 25, 2015, the Bank disbursed $20,998 to Arco Buildings and $21,718 to OL’ Duke Farm Structures to initiate the construction of the building. On April 24, 2015, a disbursement in the amount of $52,824 was made to Spirco Manufacturing for the building, which was delivered that day.

¶ 10 Higgins began construction of the building in May 2015. However, the crew Higgins had hired was inexperienced. Higgins soon asked Kenneth Grizzle to correct several

mistakes made during the initial phase of construction. By July 2015, Higgins asked Grizzle for additional, more substantial help. Grizzle, who had some project management experience, agreed. Over the next several months, the Bank disbursed, *inter alia,* $15,000 for the "Partial erection of metal building" and $46,350 for "Red steel erection labor" and "Concrete labor." Throughout this time, the Bank also paid invoices to vendors for such items as materials for a water line and concrete. Soon, the Gettings became concerned because the funding for the building was "[r]unning out." Additionally, Higgins's health was deteriorating such that by the summer, he was unable to work a full day or venture far from his truck due to the heat. As a result, Grizzle spent some days at the site by himself. Grizzle noted that he was "disappointed" with Brett because, even though Brett knew "we were struggling" and were "really shorthanded," he did not check on the workers' welfare, provide help, or show concern.

¶ 11 By December 2015, all work on the shed ceased. At that time, the walls of the structure were not completed, and seams were incorrectly made. This left gaps that needed to be repaired. Additionally, the structure had no roof or doors, there was no concrete on the apron, and the office was not complete. Portions of the building and building materials were exposed to the elements through the winter. This caused concrete in portions of the floor to sink, insulation to sag, panels intended for use on the roof to become discolored, and tin to be blown off the building.

¶ 12 Over the next several months, the Gettings communicated with Higgins and asked on several occasions when he would return to finish the shed. Higgins responded that his health issues had prevented him from working and that he was "trying to keep alive to finish this job and stay around for my kids." Despite additional communications with Higgins, no work was conducted on the shed until September 2016, when the Gettings hired other contractors to complete the building. Among the new hires were (1) William Scott, who conducted repairs and completed

the building for $15,750, (2) Behrens Home Improvement, which framed the walls of the office for $9850, (3) B & P Construction, which installed metal siding and the roof of the office and apartment for $6900, and (4) Helitech, which repaired concrete flooring that had shifted for $2627.50. The Gettings incurred additional costs of $19,557.93 for more office framing materials and $35,400 for the overhead doors that had not been purchased previously. According to Scott, he was paid an initial fee to commence the completion of the building on September 30, 2017, and he received a final payment on October 6, 2017, at which time the building was completed.

¶ 13 On December 31, 2019, after Higgins passed away, Brett initiated the instant action against the Estate for breach of contract. The Estate admitted that Higgins created the proposed budget, which listed a sum of $217,188, but denied that an oral contract was accepted by Brett and Higgins or that any agreement contemplated heated floors or the office. As affirmative defenses, the Estate asserted, *inter alia*, that any damages claimed by Brett should be offset by amounts not contemplated by the proposed budget, including (1) an increase in building material pricing, (2) the addition of a heated floor, office, and apartment, which "increased the cost of construction as budgeted," (3) Brett's purchase of building materials at a higher cost than proposed in the budget, (4) Brett's failure to purchase overhead doors before they increased in price, (5) Brett's failure to mitigate damage to building materials left exposed to the elements, and (6) Brett's failure to purchase and install overhead doors once it became apparent that Higgins's health prevented him from continuing the construction of the building.

¶ 14 At trial, the parties contested, *inter alia*, whether the purported oral agreement between the Gettings and Higgins was sufficiently definite to be enforceable, considering that the proposed budget letter did not mention several items the Gettings claimed were contemplated by the oral agreement. During their testimony, the Gettings claimed that, although the proposed

budget did not mention features such as heated floors, a wash bay, a concrete apron, or a two-story office and apartment attachment, they were nevertheless contemplated in the oral agreement and included in the budget. Brett testified that the budget proposal did not "mention a lot of things," but "it was still the original plan was [*sic*] to have heated floors and a wash bay." He further testified that "[j]ust because [the budget proposal] doesn't mention it doesn't mean it wasn't there."

¶ 15 At the conclusion of Brett's case-in-chief, the Estate moved for a directed verdict, arguing, in part, that no enforceable contract existed because there were no definite terms. The Estate argued that the budget proposal letter "speaks for itself," in that it was a "proposal for certain work," and that Brett sought to establish terms that were "not expressed in the budget proposal that [he was] relying upon to try to establish a price." Brett's counsel responded that "obviously there is a contract whether it's oral or written" and that, accordingly, the "contractor went there and did substantial work." Thus, he argued, the question was now whether the total amount of money listed in the proposed budget was a contracted "set amount of money" or "just a budget" for purposes of calculating damages. The trial court denied the Estate's motion for a directed verdict as to this issue, noting:

> "[W]e have evidence properly admitted evidence [*sic*] that said this is what he did, this is what was paid for, these were the vendors that provided the materials and this is what he did up to that point and I think it is up to a jury to decide uh, whether or not what Mr. Higgins was paid um, under those circumstances and what he started to do and compare that with the end product whether or not the Getttings' [*sic*] were damages [*sic*] by his failure to give him a building at that point."

¶ 16 At an initial jury instruction conference, the trial court opined that affirmative matters had been raised, "but just" as to "a particular damage." Thus, the court wanted to find "the

clearest way to present this to the jury." Thereafter, the court and the Estate's counsel made the following comments:

> "THE COURT: Because it sounds like, I mean, because I think price is an essential element of every contract. You know, I think that part is done especially with respect to the rulings on the directed verdict. So, you've got a budget. There's some things we agree to add to that budget that aren't [Higgins's] fault. We got a building that was built to a certain point.
>
> [THE ESTATE'S COUNSEL]: Yeah.
>
> THE COURT: So, we have an agreement. We had a contract. We've got partial performance. Now is whether or not [*sic*] the question really has become calculating the damages from what the Plaintiff thought he was going to receive as a benefit of the bargain from that contract. Usually, simply is [*sic*] the difference between what he ended up paying and what [Higgins] agreed to build it for but we've got some discrepancies there. So, maybe you guys will work on [instruction] 700.01 coming to an agreement on how we're going to lay that out. Clearly and succinctly with the jury and I'll get involved in 700.01 if need be, to resolve any disputes because I think that I think that [*sic*] may, you know, here's what he agreed to do. Here's what we do agree on. This is for you to decide.
>
> [THE ESTATE'S COUNSEL]: All right."

The conversation later continued:

> "THE COURT: These are all ones that I'm just trying to maybe filter what we what we [*sic*] agree upon, what we definitely don't need and what needs to be worked on[.] *** You [(the Estate's counsel)] had given, you know, prices and

> essential [*sic*] element of every contract and yeah, I think we're beyond that argument now in light of the directed verdict finding. You know, contract must be clear and definite and certain in all of its terms. So, probably be [*sic*] removing those instructions. I guess the question for you, Charlie [(the Estate's counsel)] too, I'm looking at your breach of contract instruction, Charlie. 700.10. You say the Defendant claims he did not breach the contract but admits that he failed to install all of the metal walls in a workman like manner and failed to reasonably cover the office floor resulting in it sinking.
>
> [THE ESTATE'S COUNSEL]: Oh, I think that must have been before…
>
> THE COURT: I mean, there's no doubt that there was a breach because there was no finished building.
>
> [THE ESTATE'S COUNSEL]: Right."

The Estate's counsel raised no objection and did not argue that the existence of an enforceable contract remained at issue.

¶ 17 During the Estate's case-in-chief, it presented the testimony of Jeanine Shaner, who managed Higgins's office on a part-time basis. Shaner testified, *inter alia*, that she typed the budget proposal and noted that several "change[s] in the building" were made. Among them was a change in the location of the doors, resulting in an additional cost of approximately $4000. Further changes included an increase in the price of concrete and the addition of (1) an apartment above the office, (2) a sink, and (3) heated flooring. Shaner noted that the addition of the heated floors "would've been done the day the proposed budget had been turned in," as she remembered Higgins telling her that day the Gettings "were wanting to to [*sic*] now do, you know, heated

floors." Shaner indicated that she watched Higgins draw the "squiggly lines" representing heated floors on the building plans.

¶ 18 At a subsequent jury instruction conference, the following exchange occurred:

> "THE COURT: *** The instruction 700.11, 'The Defendant has admitted the decedent did not complete the building and negligently performed in the partial erection of the building. The extent of the damages for the failure to complete the building and for the corrective repairs is still in dispute.' So, is that an accurate instruction that we all agree on?
>
> [THE ESTATE'S COUNSEL]: I think so.
>
> THE COURT: So, we don't have to worry—offer and acceptance, all this other stuff about contract law. I mean, I'm not confusing the jury with that.
>
> [THE ESTATE'S COUNSEL]: Right."

The Estate's counsel did not argue that the existence of an enforceable contract remained at issue. Thereafter, while discussing verdict forms, the following exchange occurred:

> "THE COURT: I mean, because there's no doubt there was work. There was no doubt that he started but if they find that you've there's [*sic*] sufficient evidence that he couldn't complete it and they don't want they don't wish to assign any damages to the defendant, I think that's your zero verdict form.
>
> [THE ESTATE'S COUNSEL]: Okay. All right.
>
> THE COURT: Because we're not going through each element of damages and offer and acceptance and all that stuff.
>
> [THE ESTATE'S COUNSEL]: All right.

THE COURT: It is what it is and then the alternative is a plaintiff's verdict with a blank line.

[THE ESTATE'S COUNSEL]: Yeah and that's fine."

Again, the Estate's counsel raised no objection. Following that exchange, the Estate's counsel offered an instruction that read,

" 'When I say a party has the burden of proof on any proposition or use the expression "if you find" or "if you decide" I mean, you must be persuaded considering all the evidence in the case that proposition on which he has the burden of proof is more probably true than not true.' "

Neither party's counsel objected to this instruction.

¶ 19 Following closing arguments, the trial court instructed the jury, in part, as follows. (We note that the final instructions do not appear in the record. However, the report of proceedings includes the instructions as read to the jury by the court.)

"When I say that a party has the burden of proof on any proposition or use the expression, 'if you find' or 'if you decide' I mean that you must be persuaded considering all of the evidence in the case that a proposition in which he has the burden of proof is more probably true than not true."

The court continued:

"A partly oral and partly written contract is *** as valid and enforceable as a written contract. The Defendant has admitted that the decedent did not complete the building and negligently performed in the partial erection of the building. The extent of the damages for the failure to complete the building and for the corrective repairs is still in dispute."

Following its deliberations, the jury found in favor of Brett and awarded him $108,901 in damages. The court entered judgment in accordance with that verdict.

¶ 20 The Estate subsequently filed a motion for JNOV, for a new trial, or alternatively, for remittitur. The Estate argued, *inter alia*, that Brett failed to prove the formation of an enforceable contract based upon specific terms and that the trial court failed to properly instruct the jury as to the applicable burden of proof. In denying the Estate's motion, the court found that there was evidence that Higgins agreed to construct a building for Brett and that Higgins received payment despite failing to complete it. The court also found that, because the Estate had offered the instruction detailing the burden of proof of which it now complained, it was entitled to no relief. This appeal followed.

¶ 21 II. ANALYSIS

¶ 22 On appeal, the Estate argues that the trial court erred in denying its motion for JNOV because (1) Brett failed to present evidence establishing that an enforceable contract existed and (2) the court "in effect directed the verdict with respect to contract formation" and failed to instruct the jury on that issue. The Estate also argues that the court abused its discretion in denying a new trial because the jury's verdict was (1) against the manifest weight of the evidence and (2) the result of an unfair trial.

¶ 23 Initially, we comment on the state of the record on appeal. The Estate has only filed a partial report of proceedings. Additionally, the transcripts contained in the report of proceedings appear to be out of order (for example, the transcript of the examination of a witness called by the Estate appears after the transcript in which the trial court instructed the jury), and no time stamps appear on the transcripts to assist this court in determining the order of proceedings. Moreover, while the final jury instructions as read to the jury by the court appear in the report of proceedings,

the final instructions themselves do not appear in the common law record. It is the appellant's burden to present a sufficiently complete record so we can determine whether a claimed error occurred. *Hassard v. DS Retail, LLC,* 2023 IL App (4th) 220687, ¶ 33. Here, although the Estate alleges insufficient evidence of an enforceable contract, improper jury instructions, and a jury finding that was against the manifest weight of the evidence, the Estate failed to provide (1) a complete and properly ordered transcript of the proceedings and (2) the final jury instructions submitted to the jury. While an appellant risks dismissal of an appeal where an insufficient record is submitted to this court, we choose not to take that drastic measure here, where Brett does not contend that information relevant to the disposition of these issues is absent from the record or that the trial transcript inaccurately relayed the instructions submitted to the jury. *Hassard,* 2023 IL App (4th) 220687, ¶ 33. However, we will resolve any doubts arising from the incomplete record against the Estate. *Hassard,* 2023 IL App (4th) 220687, ¶ 33.

¶ 24 A. Contract Formation

¶ 25 The Estate's first two arguments regarding contract formation are interrelated. Thus, we address them together in this section, though in a different order than presented in the Estate's brief. The Estate argues that the trial court "erred in not considering" jury instructions pertaining to the issue of contract formation, and thus, failed to instruct the jury on the issue of whether there was an enforceable contract. The Estate contends that, by failing to do so, the court effectively "directed the verdict" in favor of Brett on the issue of contract formation and improperly withheld that issue from the jury. From this premise, the Estate asserts that its motion for JNOV should have been granted because the Estate presented no evidence from which the jury could have found that an enforceable contract existed.

¶ 26 A motion for JNOV "should be granted where the evidence and inferences therefrom, viewed in the light most favorable to the nonmoving party, so overwhelmingly favor[ ] the movant that no contrary verdict based on that evidence could ever stand." (Internal quotation marks omitted.) *Hassard*, 2023 IL App (4th) 220687, ¶ 31 (quoting *Hall v. Cipolla*, 2018 IL App (4th) 170664, ¶ 100). In ruling on a motion for JNOV, the trial court only considers the evidence and inferences in the light most favorable to the opponent and does not weigh the evidence or determine the credibility of the witnesses. *Hassard*, 2023 IL App (4th) 220687, ¶ 31. We review the court's ruling on a motion for JNOV *de novo*. *Hassard*, 2023 IL App (4th) 220687, ¶ 31.

¶ 27 "[O]ral agreements are binding so long as there is an offer and acceptance to compromise and there is a meeting of the minds as to the terms of the agreement." *Quinlan v. Stouffe*, 355 Ill. App. 3d 830, 837 (2005). To be enforceable, the essential terms of a contract must be definite and certain. *Quinlan*, 355 Ill. App. 3d at 837. A contract is sufficiently definite and certain if the court is " 'enabled from the terms and provisions thereof, under proper rules of construction and applicable principles of equity, to ascertain what the parties have agreed to do.' " *Quinlan*, 355 Ill. App. 3d at 838 (quoting *Midland Hotel Corp. v. Reuben H. Donnelley Corp.*, 118 Ill.2d 306, 314 (1987)). An enforceable contract must include a meeting of the minds or mutual assent as to its terms. *Quinlan*, 355 Ill. App. 3d at 838. Whether an oral contract exists, its terms and conditions, and the parties' intent are questions of fact. *Kemp v. Bridgestone/Firestone, Inc.*, 253 Ill. App. 3d 858, 865 (1993).

¶ 28 We first turn our attention to the jury instruction issue. We review a trial court's decision to grant or deny an instruction for an abuse of discretion. *Marsh v. Sandstone North, LLC*, 2020 IL App (4th) 190314, ¶ 35. Instructions should be sufficiently clear such that they do not mislead and should fairly and correctly state the law. *Marsh*, 2020 IL App (4th) 190314, ¶ 35.

When the issue is whether the applicable law was conveyed accurately, the issue is a question of law, and our standard of review is *de novo*. *Marsh*, 2020 IL App (4th) 190314, ¶ 35. However, we will not reverse a court for giving faulty instructions unless they clearly misled the jury and resulted in prejudice to the appellant. *Marsh*, 2020 IL App (4th) 190314, ¶ 36. Moreover, if a complaining party fails to make a specific objection during the jury instruction conference, that party forfeits the right to challenge that instruction on appeal. *Bruntjen v. Bethalto Pizza, LLC*, 2014 IL App (5th) 120245, ¶ 152. This is because a timely objection assists the court in correcting any problems and prohibits the challenging party from gaining an advantage by obtaining a reversal based on the party's own failure to act. *Bruntjen*, 2014 IL App (5th) 120245, ¶ 152. Further, the doctrine of invited error prevents a party who induced the court to make an error or consented to such error from complaining of that error on appeal. *Bruntjen*, 2014 IL App (5th) 120245, ¶ 152.

¶ 29 As is relevant here, the trial court read the following instruction to the jury: "The Defendant has admitted that the decedent did not complete the building and negligently performed in the partial erection of the building. The extent of the damages for the failure to complete the building and for the corrective repairs is still in dispute." The Estate argues that the court should have instructed the jury as to "the formation of a contract including offer and acceptance, or the determination of definite and specific terms including price." The Estate contends that the court's failure to do so deprived the jury of the opportunity to consider that issue. The Estate's argument misses the mark.

¶ 30 The record clearly establishes that the Estate did not object to the proposed instruction, and in fact, consented to the manner in which the issues were presented to the jury. For example, when the trial court noted that it believed the issue of whether the oral contract had a sufficiently definite price was "done," the Estate's counsel responded, "Yeah." Similarly, when

the court noted, "we have an agreement" and "[w]e had a contract," the Estate's counsel replied, "All right." Indeed, when the court asked if the instruction quoted above was "an accurate instruction that we all agree on," the Estate's counsel answered, "I think so." Further, when the court suggested that "we don't have to worry" about the contractual elements of "offer and acceptance," the Estate's counsel responded, "Right." At no point did the Estate's counsel object to the instructions or the manner in which the issues were presented to the jury. Nor did counsel clarify to the court that it was not conceding the issue of contract formation. Accordingly, not only did the Estate fail to object to the instruction given, but it invited the error of which it now complains. The Estate is prohibited from seeking reversal due to a purported error which it induced and to which it consented, and therefore, it may not raise this issue on appeal. See *Bruntjen*, 2014 IL App (5th) 120245, ¶ 154 (the appellant forfeited the right to challenge a jury instruction where the appellant did not object to it at the instruction conference and instead endorsed it).

¶ 31 In light of our disposition of the Estate's argument regarding jury instructions, the Estate's claim that Brett failed to present evidence of an enforceable contract must also fail. The Estate argues that Brett failed to show that Higgins agreed to build the shed, including all features not explicitly accounted for in the proposed budget letter, for a fixed contract price of $217,188. The Estate asserts that, absent such evidence, there was no showing of a meeting of the minds, and the agreement was too indefinite to be enforced. Initially, we note that, contrary to the Estate's argument, Brett *did* present evidence that Higgins had agreed to build a shed that included features not explicitly noted in the budget proposal letter. Specifically, both Brett and Michelle testified that, while the proposed budget did not specifically mention features such as heated floors, a wash bay, an office and apartment attachment, and other items, they were nevertheless contemplated in the oral agreement entered into by Higgins and were included in the proposed budget he prepared.

¶ 32 In any event, because the Estate conceded the existence of an enforceable contract and consented to jury instructions that withheld that issue from the jury, Brett was relieved of his burden to prove the existence of an enforceable contract. Thus, the Estate failed to establish that the evidence so overwhelmingly favored it that no contrary verdict based on the evidence could ever stand.

¶ 33 Accordingly, we hold that the trial court did not err in denying the Estate's motion for JNOV.

¶ 34 B. Whether the Trial Court Erred in Failing to Order a New Trial

¶ 35 The Estate also argues that the trial court should have granted its motion for a new trial because (1) the jury's verdict was against the manifest weight of the evidence, (2) inflammatory and prejudicial testimony was improperly presented to the jury, (3) a higher burden of proof should have applied to Brett due to Higgins's inability to testify, and (4) Higgins's health issues constituted a "valid reason" for his failing to finish the shed.

¶ 36 When a party requests a new trial, the trial court weighs the evidence and may set aside the verdict and order a new trial if the verdict is contrary to the manifest weight of the evidence. *Hassard*, 2023 IL App (4th) 220687, ¶ 32. A verdict is against the manifest weight of the evidence if the opposite conclusion is clearly evident or the jury's findings are unreasonable, arbitrary, and not based upon any of the evidence. *Hassard*, 2023 IL App (4th) 220687, ¶ 32. A reviewing court will not reverse the trial court's ruling on a motion for a new trial unless the court abused its discretion. *Hassard*, 2023 IL App (4th) 220687, ¶ 32. In determining "whether the court abused its discretion, we consider whether the jury's verdict was supported by the evidence and whether the losing party was denied a fair trial." *Hassard*, 2023 IL App (4th) 220687, ¶ 32.

¶ 37 1. *Whether the Jury's Verdict Was Against the Manifest Weight of the Evidence*

¶ 38 In arguing that the jury's verdict was against the manifest weight of the evidence, the Estate again relies upon the purported lack of evidence of an enforceable contract. The Estate asserts that there was no meeting of the minds, because the terms of the oral contract were not sufficiently definite. We reject this argument for the reasons noted above. Namely, Brett did present evidence that the terms of the oral contract included items not specifically listed in the proposed budget letter. In any event, the Estate (1) conceded this issue at the jury instruction conferences and (2) consented to the submission of jury instructions reflecting that concession.

¶ 39 2. *Whether Inflammatory Evidence Was Improperly Submitted to the Jury*

¶ 40 Next, the Estate argues that irrelevant testimony about Higgins's billing practices was improperly introduced and that such evidence prejudiced the Estate by suggesting that Higgins may have been "over billing [*sic*] or fraudulently billing [Brett]." In particular, the Estate complains of testimony from Simon, the Gettings' banker, that the mobilization fee listed on the proposed budget letter was "more than we normally see" and that Higgins failed to provide receipts or a "list of items" detailing "where this money's going."

¶ 41 Notably, the Estate acknowledges that it "did not object to the individual instances of prejudicial testimony." "A court's evidentiary rulings may not be challenged on appeal if they have not been properly preserved." *Babikian v. Mruz*, 2011 IL App (1st) 102579, ¶ 13. Attempting to remedy its lack of objection, the Estate cites two cases, *Underwood v. Pennsylvania R.R. Co.*, 34 Ill. 2d 367 (1966), and *Jackson v. Chicago Transit Authority*, 133 Ill App. 2d 529 (1971), to argue that objections are not necessary where "incidents of prejudicial testimony may operate only to rivet the jury's attention more firmly to the prejudicial argument." *Underwood* and *Jackson*, however, are distinguishable. *Underwood* concerned the plaintiff's *counsel* engaging in repeated prejudicial comments, remarks about correspondence not in evidence, and improper questioning

of a witness. *Underwood*, 34 Ill. 2d at 370. Additionally, many of the prejudicial remarks in *Underwood* were objected to by opposing counsel. *Underwood*, 34 Ill. 2d at 370-71. Similarly, *Jackson* concerned (1) remarks made by the plaintiff's counsel which suggested that the defendants' counsel was withholding evidence and (2) arguments by the plaintiff's counsel during closing argument which improperly highlighted the plaintiff's race. *Jackson*, 133 Ill. App. 2d at 533-34.

¶ 42 Here, the purportedly prejudicial material complained of by the Estate was witness testimony that the Estate had the opportunity to object to but failed to do so. We further note that the record shows that the Estate's counsel also questioned witnesses about the very type of evidence it now complains of on appeal. For example, the Estate's counsel referenced Higgins's lack of detailed billing as compared to other vendors when counsel asked Simon whether it was Simon's and Brett's responsibility "to require whatever kind of a detailed bill" they wanted when Higgins requested payment. "A party cannot complain on appeal that the trial court erred in admitting evidence that the party both failed to object to and introduced." *Arkebauer v. Springfield Clinic*, 2021 IL App (4th) 190697, ¶ 69. Accordingly, this argument fails.

¶ 43 3. *Whether the Trial Court Should Have Applied a Higher Burden of Proof to Brett Due to Higgins's Inability to Testify*

¶ 44 The Estate next argues that the trial court should have granted a new trial because it improperly instructed the jury that the burden of proof applicable to Brett was "probably more true than not true." The Estate contends that any purported admissions of a deceased individual, such as Higgins, must be more carefully scrutinized, and thus, Brett was required to prove his claims by clear and convincing evidence.

¶ 45 The instruction at issue here read:

> "When I say that a party has the burden of proof on any proposition or use the expression, 'if you find' or 'if you decide' I mean that you must be persuaded considering all of the evidence in the case that a proposition in which he has the burden of proof is more probably true than not true."

Notably, the Estate did not object to this instruction at the jury instruction conference. A party forfeits review of an error regarding jury instructions "if he did not object to the instruction or offer an alternative instruction." *In re Charles K.*, 405 Ill. App. 3d 1152, 1163 (2010). Indeed, the Estate overlooks that *it* was the party that introduced the instruction of which it now complains. As previously noted, the doctrine of invited error prohibits a party from complaining of an error on appeal which that party induced the trial court to make or to which that party consented. *Bruntjen*, 2014 IL App (5th) 120245, ¶ 152. Accordingly, the Estate is entitled to no relief on this issue.

¶ 46 4. *Evidence of Higgins's Health Issues*

¶ 47 Finaly, the Estate argues that, because Higgins's "personal presence was essential to complete the building," evidence that Higgins was suffering from "severe health issues" established a "valid reason for him not returning to finish the job." The Estate cites *Ames v. Sayler*, 267 Ill. App. 3d 672 (1994), in support of this argument. *Ames*, however, concerned whether a farming contract constituted an unassignable personal services contract, such that it did not survive the death of one of the parties. *Ames*, 267 Ill. App. 3d at 673, 676. According to the court, the determinative factor was whether the parties entered into the contract with the understanding that it would be performed by the decedent and no others. *Ames*, 267 Ill. App. 3d at 677. Because the evidence supported that conclusion, the court determined that the contract terminated upon the death of the decedent. *Ames*, 267 Ill. App. 3d at 677.

¶ 48 Here, the Estate points to nothing in the record indicating that the parties believed only Higgins would perform the construction of the shed. In fact, the evidence established that (1) Higgins hired a crew to help build the shed, (2) Higgins asked Grizzle to fix mistakes and assist with the completion of the building, and (3) the Gettings were aware that Grizzle and a crew were assisting in the erection of the building. Moreover, the record showed that, for at least some time, work was being done on the shed even when Higgins could not work a full day or venture far from his truck due to his declining health. Notably, Grizzle testified that he spent several days at the site alone. *Ames*, therefore, does not support the Estate, and since the record does show that Higgins's presence was "essential to complete the building," we reject this argument.

¶ 49 Because the Estate cannot establish that the jury's verdict was unsupported by the evidence or that the Estate was denied a fair trial, we conclude that the trial court did not abuse its discretion by denying the Estate's motion for a new trial.

¶ 50 III. CONCLUSION

¶ 51 For the reasons stated, we affirm the trial court's judgment.

¶ 52 Affirmed.