[Cite as *Sharp v. Vaughanscapes, L.L.C.*, 2024-Ohio-4749.]

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

GEOFF SHARP, ET AL.	:	JUDGES:
	:	
	:	Hon. Patricia A. Delaney, P.J.
Plaintiffs-Appellees	:	Hon. William B. Hoffman, J.
	:	Hon. John W. Wise, J.
-vs-	:	
	:	Case No. 23CAE090052
	:	
VAUGHANSCAPES LLC, ET AL.	:	
	:	
	:	
Defendants-Appellants	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Delaware County Court of Common Pleas, Case No. 21CVH080385
JUDGMENT:	AFFIRMED
DATE OF JUDGMENT ENTRY:	September 30, 2024

APPEARANCES:

For Plaintiffs-Appellees:	For Defendants-Appellants:
THOMAS ROSENBERG ASHLEY PARISI ROETZEL & ANDRESS, LPA 41 South High St. Huntington Center, 21st Floor Columbus, OH 43215	DOUG HOLTHUS CARA A. WRIGHT ZACHARY WEIGEL FREEMAN MATHIS & GARY LLP 65 East State St., Ste. 2550 Columbus, OH 43215

Delaney, P.J.

{¶1} Defendant-appellant Vaughanscapes LLC appeals from the March 13, 2023 "Judgment Entry Memorializing Jury Verdict of March 10, 2023" of the Delaware County Court of Common Pleas. Plaintiffs-appellees are Geoff and Nicole Sharp.

FACTS AND PROCEDURAL HISTORY

{¶2} This case arose in early 2019 when the Sharps decided to renovate their existing backyard pool and patio. The Sharps' original plan changed and they decided to replace the existing wood-walled pool with a fiberglass pool. Geoff Sharp was referred to Dennis Brown of Elite Pools and Spas, who advised he could assist with installation of a fiberglass pool and referred Sharp to Vaughanscapes to serve as the project's general contractor.[1]

{¶3} The Sharps and Vaughanscapes entered a contract for demolition of the existing pool, excavation and installation of a new fiberglass pool, set-up of a pool smart control system and bluestone paver patio. The total contract price was $136,565.00, with a payment schedule requiring 10% due upon signing; 25% due on day one on site; 35% due at excavation and pre-pool delivery; 15% due upon concrete completion; and 15% due upon project completion.

{¶4} Vaughanscapes demolished the original pool and Ken Vaughan began excavating for installation of the new pool. During excavation, an underground septic line was struck and the line was repaired by Chuck's Septic, a septic service provider.

[1] Elite Pools and Spas ("Elite") was a defendant in the action below but is not a party to the instant appeal.

{¶5} Vaughanscapes installed the new pool and a subbase. Ken Vaughan and Dennis Brown confirmed the pool was set correctly. Once the pool was installed, Vaughanscapes began filling it with water, securing it with rebar and backfilling around the pool.

{¶6} Vaughanscapes laid the bluestone pavers. When the Sharps purchased the pavers, the supplier suggested they use poly sand to secure the pavers. Poly sand is a material meant to harden, like a mortar, to secure the pavers in place. Ken Vaughan suggested the use of Techniseal poly sand and the Sharps agreed. The first attempt to install the poly sand failed.

{¶7} Ken Vaughan contacted Techniseal for assistance in remediation of the failure and the company sent representative Tony Trevino to the site. He confirmed the poly sand was failing. Vaughanscapes manually scraped and removed the failed installation and prepared for a second application. Vaughanscapes applied the poly sand for a second time with Trevino overseeing the application process. Trevino confirmed Vaughanscapes had properly installed the poly sand on the second application.

{¶8} The Sharps also noted the pool heater was not functioning properly; it was repaired by a representative from Hayward, the heater manufacturer, at no cost to the Sharps. The Sharps also noted issues with the automatic pool cover; a representative from Coverstar ensured the pool cover was operating correctly.

{¶9} The Sharps also asserted hollow spots had formed underneath the pool; Nicole Sharp testified a hollow spot larger than a basketball was migrating beneath the pool. Ken Vaughan and Dennis Brown walked the bottom of the pool looking for hollow

spots and found none. Over objection, Jason Craycraft of Omni Scapes, LLC testified there were multiple hollow spots under the pool.

{¶10} Ultimately the Sharps asserted a litany of problems with Vaughanscapes' work on the project, including, e.g., accusing the Sharps of not paying their bills; misrepresentation of the project's completion status; failure to secure appropriate permits; failure to have a licensed electrician perform the electrical work; failure to install a handrail required by the contract but accepting payment for same; failure to honor warranties; failure to install actuators required by the contract despite accepting payment for same; failure to install poly sand in a workmanlike manner; misrepresentation of the status of the poly sand; unworkmanlike installation of pool equipment, mechanicals, and electrical work; unworkmanlike installation of the drainage system under the pool; resulting property damage; and an overall failure to address the homeowners' concerns that component parts of the pool and patio were not correct and insisting the project was complete.

{¶11} Craycraft was disclosed as the Sharps' expert witness. Craycraft has been in the construction industry with a focus on hardscapes, concrete work, and pool installation for over 25 years; he is a certified installer of Leisure Pools. Craycraft prepared two reports regarding the project. The first was attached to the complaint and outlined his observations as of a visit to the site in November 2020, including his observations about the patio, pool electrical work, plumbing work, and pool equipment. The second report addressed new problems that arose after the complaint was filed.

{¶12} Vaughanscapes deposed Craycraft on October 5, 2022, and questioned his experience and background. After the deposition, Vaughanscapes filed a motion in limine to exclude Craycraft from testifying as an expert. The Sharps filed an affidavit of Craycraft

reiterating his experience and the opinions previously discussed in his reports and deposition. The trial court overruled the motion in limine, determining Craycraft was qualified to testify as an expert based on his experience as outlined in the affidavit and through his deposition testimony.

{¶13} Dennis Brown, the owner of Elite Pools and Spas, LLC, was a witness for defendant Elite during Elite's case-in-chief at trial. Brown testified regarding his experience installing pools; his company; and his recollection of the Sharps' project. The role of Brown and Elite was ordering the fiberglass pool shell from Leisure Pools, delivering the pool shell, installing the pool shell, and plumbing the pool after installation. Vaughanscapes and the Sharps had opportunities to cross-examine Brown at trial.

{¶14} Tony Trevino is a regional salesperson for Techniseal, a poly sand manufacturer. He was called as a witness during Vaughanscapes' case-in-chief because he assisted Vaughanscapes in addressing the poly sand failures during the project. Trevino testified as to his background, experience, and recollection of his involvement with the Sharps' project.

{¶15} At the conclusion of the project, the Sharps refused to make the final payment because they alleged Vaughanscapes failed to properly complete the work in a workmanlike manner. Vaughanscapes filed a mechanic's lien on the Sharps' property for the remaining amount due on the contract. The Sharps asserted Vaughanscapes' work on the pool and patio was defective in numerous ways including: the installation of poly sand between the paver stones; improperly functioning pool equipment; missing equipment; improper drainage over and under the patio; hollow spots behind the pool shell; and damage to siding, gutters, and trees.

{¶16} In Delaware County Court of Common Pleas Case No. 21-CV-H-06-0258, Vaughanscapes filed suit against Geoff Sharp asserting breach of contract, foreclosure of the mechanic's lien, and unjust enrichment for the amount due on the contract.

{¶17} The Sharps then initiated the suit underlying the instant appeal, asserting claims for violations of the Consumer Sales Practices Act against defendants Vaughanscapes, Kenneth Vaughan, Elizabeth Vaughan, and Elite. The Sharps also alleged claims against Vaughanscapes for breach of contract, negligence, quiet title to remove the mechanic's lien, and declaratory judgment related to the validity of the mechanic's lien. In that suit, Vaughanscapes asserted counterclaims against the Sharps for breach of contract and unjust enrichment, and various cross-claims against Elite not relevant to this appeal.

{¶18} Vaughanscapes dismissed case number 21-CV-H-06-0258 and the matter proceeded under the instant trial court case number: 21-CV-H-08-0385.

{¶19} Vaughanscapes sought summary judgment as to all claims asserted by the Sharps. Summary judgment was granted as to the Sharps' claims for a violation of R.C. 901.51, a violation of the Ohio Home Construction Service Supplier' Act, and slander of title. The remaining claims proceeded to trial by jury and judgment was entered as follows:

> Judgment in favor of the Sharps on their CSPA claim against Vaughanscapes in the amount of $54,288 in economic damages and $2,500 in non-economic damages.
>
> Judgment in favor of Ken Vaughan and Elizabeth Vaughan on the Sharps' CSPA claim for individual liability.

Judgment in favor of the Sharps on their breach of contract claim against Vaughanscapes in the amount of $5,712.

Judgment in favor of the Sharps on their negligence claim against Vaughanscapes in the amount of $1,452.

Judgment in favor of the Sharps on their action to quiet title.

Judgment in favor of the Sharps on Vaughanscapes' claim for declaratory relief, with a declaration that the mechanic's lien was invalid and that title should be clear of the lien.

Judgment in favor of the Sharps on the counterclaim asserted by Vaughanscapes for breach of contract.

{¶20} The trial court found that Vaughanscapes' CSPA violation was committed knowingly.

{¶21} Vaughanscapes moved for judgment notwithstanding the verdict. The motion was overruled.

{¶22} Following a hearing regarding attorney's fees, the trial court awarded the Sharps attorney's fees and issued its "Judgment Entry (1) Awarding Attorney's Fees Following Jury Verdict, (2) Adopting Magistrate's 6/15/23 Decision, and (3) Entering Final Judgment" on August 11, 2023.

{¶23} Vaughanscapes now appeals from the trial court's entry of August 11, 2023.

{¶24} Vaughanscapes raise four assignments of error:

ASSIGNMENTS OF ERROR

{¶25} "I. THE TRIAL COURT ERRED IN PERMITTING JASON CRAYCRAFT TO OFFER OPINION TESTIMONY AT THE TRIAL OF THIS MATTER AND IN

PROHIBITING DENNIS BROWN AND ANTHONY TREVINO FROM OFFERING OPINION TESTIMONY AT THE TRIAL IN THIS MATTER."

{¶26} "II. THE VERDICT IN FAVOR OF APPELLEES ON THEIR CLAIM FOR VIOLATIONS OF THE OHIO CONSUMER SALES PRACTICES ACT IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND INTERNALLY INCONSISTENT WITH THE JURY'S RESPONSES TO INTERROGATORIES."

{¶27} "III. THE TRIAL COURT ERRED IN AWARDING APPELLEES TREBLE DAMAGES."

{¶28} "IV. THE TRIAL COURT ERRED IN AWARDING APPELLEES ATTORNEYS' FEES."

ANALYSIS

I.

{¶29} In its first assignment of error, Vaughanscapes argues the trial court erred in permitting Jason Craycraft to provide expert opinion testimony and in disallowing Dennis Brown and Tony Trevino to provide expert opinion testimony and/or to testify as fact witnesses with particularized knowledge. We disagree.

Standard of review: abuse of discretion

{¶30} A trial court's ruling concerning the admission of expert testimony of opinion is within the sound discretion of the trial court and will not be disturbed absent an abuse of discretion. *Moore v. Mercy Med. Ctr.*, 5th Dist. Stark No. 2023 CA 00145, 2024-Ohio-2610, ¶ 35, citing *Beattie v. McCoy,* 2018-Ohio-2535, 115 N.E.3d 867, ¶ 25 (1st Dist.). Generally, "[t]rial courts have broad discretion in determining the admissibility of expert testimony, subject to review for an abuse of discretion." *Terry v. Caputo*, 115 Ohio St.3d

351, 2007-Ohio-5023, 875 N.E.2d 72, ¶ 16. Abuse of discretion is defined as more than an error of law, but a decision that is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore,* 5 Ohio St.3d 217, 450 N.E.2d 1140 (1983).

Testimony of Craycraft

{¶31} Vaughanscapes first argues the trial court should have excluded Craycraft from testifying as an expert because the two reports he prepared did not comply with Civ.R. 26(B)(7). Pursuant to Civ.R. 26(B)(7), parties must submit expert reports and curricula vitae (CV) in accordance with the time schedule established by the trial court. Civ.R. 26(B)(7)(b). A party may not call an expert to testify unless a written report has been provided to opposing counsel. Civ.R. 26(B)(7)(c). The report "must disclose a complete statement of all opinions and the basis and reasons for them as to each matter on which the expert will testify. It must also state the compensation for the expert's study or testimony." *Id*. Craycraft did not submit a CV or a statement of compensation for his testimony. The trial court found the absence of these items not fatal to Craycraft's appearance as an expert witness. Vaughanscapes points to no authority supporting its premise that a lack of CV is dispositive of whether a witness may testify as an expert.

{¶32} Vaughanscapes further argues Craycraft's testimony should have been excluded pursuant to Evid.R. 702, which provides in pertinent part:

> A witness may testify as an expert if the proponent demonstrates to the court that it is more likely than not that all of the following apply:

> (A) The witness' testimony either relates to matters beyond the knowledge or experience possessed by lay persons or dispels a misconception common among lay persons;
>
> (B) The witness is qualified as an expert by specialized knowledge, skill, experience, training, or education regarding the subject matter of the testimony;
>
> (C) The witness' testimony is based on reliable scientific, technical, or other specialized information and the expert's opinion reflects a reliable application of the principles and methods to the facts of the case. * * * *.

{¶33} Vaughanscapes argues Craycraft did not establish he was qualified to provide expert testimony because the reports did not include a curriculum vitae or a statement of Craycraft's compensation; Craycraft testified he did not rely on any industry standards or publications in reaching his opinions; and his opinions were largely based on a visual inspection.

{¶34} The trial court considered Craycraft's reports, deposition testimony, and the affidavit setting forth his credentials in deeming Craycraft to be an expert on general industry standards and best practices for landscaping, hardscaping, and pool installation, as well as compliance with manufacturers' installation specifications. The trial court premised its opinion on Craycraft's extensive experience; he was also retained as an expert witness in two other cases and has never been disqualified as an expert witness. The trial court did find Craycraft could not testify about applicable building codes or

statutory or regulatory provisions and about the projects compliance with any such "codes."

{¶35} Craycraft supplied his initial report and the supplemental report at least 30 days prior to trial and prior to his deposition; Vaughanscapes therefore had the opportunity to depose Craycraft on his opinions, basis, fees, and qualifications. The trial court noted the lack of the CV and fee statement did not frustrate the purpose of Civ.R. 26 and the goal of the 2020 amendment was met. Upon review of the trial court's parsing of Craycraft's experience, qualifications, and reliability, we find no abuse of discretion in permitting the witness to testify as an expert.

{¶36} Further, upon our review of the record of Vaughanscapes' objections to Craycraft in the motion in limine and at trial, we agree with the Sharps that several arguments have been advanced on appeal that were not before the trial court, to wit: purportedly impermissible testimony regarding industry standards and best practices; unreliable or nonexistent methodology; and lack of an opinion in terms of probability. Vaughanscapes' objections during Craycraft's testimony addressed proximate cause, which it argued conflicted with the trial court's ruling on the motion in limine. "It is well established that a party cannot raise any new issues or legal theories for the first time on appeal." *Walcutt v. Greer*, 5th Dist. Delaware No. 23 CAE 09 0083, 2024-Ohio-2094, ¶ 21, citing *Carrico v. Drake Constr.*, 5th Dist. Stark No. 2005 CA 00201, 2006-Ohio-3138, 2006 WL 1689192, ¶ 37.

{¶37} We conclude there is no abuse of discretion with respect to the trial court's rulings on Craycraft's testimony because Vaughanscapes had full knowledge of his

opinions, qualifications, and compensation; had ample opportunities to prepare its defense; and was not surprised at trial by the testimony offered by Craycraft.

Dennis Brown and Tony Trevino

{¶38} Appellant argues the trial court should have permitted Dennis Brown and Tony Trevino to testify as experts, essentially arguing "tit for tat" that if Craycraft could testify as an expert, fairness demands the same for Brown and Trevino. Brown, however, was Elite's witness and was never called by Vaughanscapes; nor did Brown provide an expert report. Trevino also did not provide an expert report. Both witnesses testified as to their experience and observations and we find no abuse of discretion.

{¶39} Vaughanscapes' first assignment of error is overruled.

II.

{¶40} In its second assignment of error, Vaughanscapes argues the jury's verdict is against the manifest weight of the evidence. We disagree.

{¶41} In *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, the Ohio Supreme Court clarified the standard of review appellate courts should apply when assessing the manifest weight of the evidence in a civil case. The Ohio Supreme Court held the standard of review for manifest weight of the evidence for criminal cases stated in *State v. Thompkins*, 78 Ohio St.3d 380, 678 N.E.2d 541 (1997) is also applicable in civil cases. *Eastley*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517. A reviewing court is to examine the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses and determine "whether in resolving conflicts in the evidence, the finder of fact clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered." *Id.*;

see also Sheet Metal Workers Local Union No. 33 v. Sutton, 5th Dist. Stark No. 2011 CA 00262, 2012-Ohio-3549, 2012 WL 3200846. "In a civil case, in which the burden of persuasion is only by a preponderance of the evidence, rather than beyond a reasonable doubt, evidence must still exist on each element (sufficiency) and the evidence on each element must satisfy the burden of persuasion (weight)." *Eastley, supra*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517.

{¶42} As an appellate court, we are not fact finders; we neither weigh the evidence nor judge the credibility of witnesses. *Markel v. Wright*, 5th Dist. Coshocton No. 2013CA0004, 2013-Ohio-5274, 2013 WL 6228490. Further, "an appellate court should not substitute its judgment for that of the trial court when there exists * * * competent and credible evidence supporting the findings of fact and conclusion of law." *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984). The underlying rationale for giving deference to the findings of the trial court rests with the knowledge that the trial judge is best able to view the witnesses and observe their demeanor, gestures, and voice inflections, and use these observations in weighing the credibility of the proffered testimony. *Id.* Accordingly, a trial court may believe all, part, or none of the testimony of any witness who appears before it. *Rogers v. Hill*, 124 Ohio App.3d 468, 706 N.E.2d 438 (4th Dist.1998).

{¶43} Vaughanscapes argues the jury verdict finding them liable for violations of the CSPA was against the manifest weight of the evidence and internally inconsistent with the jury's response to interrogatories.

{¶44} The CSPA was discussed by this court in *Swoger v. Hogue,* 5th Dist. Tuscarawas No. 2013 AP 011 0045, 2015-Ohio-506, at ¶ 36-39:

The Ohio Consumer Sales Practices Act ("CSPA"), which is codified in R.C. Chapter 1345, prohibits unfair or deceptive acts and unconscionable acts or practices by suppliers in consumer transactions. The act is intended to be remedial and should be construed liberally in favor of consumers. *Einhorn v. Ford Motor Co.,* 48 Ohio St.3d 27, 29, 548 N.E.2d 933 (1990).

Whereas R.C. 1345.02 prohibits unfair or deceptive acts or practices, R.C. 1345.03 prohibits unconscionable acts or practices in connection with consumer transactions, whether such acts or practices occur before, during, or after a transaction. This section lists a number of circumstances to be taken into consideration in determining whether an act or practice is unconscionable. In order to recover for unconscionable acts or practices, the consumer must prove that the supplier acted unconscionably and knowingly. *Karst v. Goldberg,* 88 Ohio App.3d 413, 418, 623 N.E.2d 1348 (1993).

In order to establish a CSPA violation, the court must determine that the transaction between the parties was one to which the CSPA applied. A "consumer transaction" is defined as any "sale, lease, assignment, award by chance, or other transfer of an item of goods * * * to an individual for purposes that are primarily personal, family, or household[.]" R.C. 1345.01(A). However, this statute must be read in conjunction with R.C. 1345.02 and R.C. 1345.03, which provide that a supplier is prohibited from doing certain things "in

> connection with a consumer transaction." The consumer need not prove the supplier intended to commit an unfair or deceptive act to establish a violation of the CSPA, but need only prove such an act was committed. *Garner v. Borcherding Buick, Inc.,* 84 Ohio App.3d 61, 64, 616 N.E.2d 283 (1992).
>
> To determine if a specific act or practice is a deceptive sales practice which violates the general directive of R.C. 1345.02(A), one must look to three separate sources. First, R.C. 1345.02(B) contains an enumerated list of practices that are unfair or deceptive. Second, pursuant to R.C. 1345.05(B)(2), the attorney general is authorized to adopt substantive rules defining acts or practices that violate R.C. 1345.02. These rules are found in the Ohio Administrative Code. Third, Ohio courts have defined a variety of specific acts and practices which are unfair or deceptive. *Frey v. Vin Devers, Inc.,* 80 Ohio App.3d 1, 6, 608 N.E.2d 796 (1992). See, also, *Fletcher v. Don Foss of Cleveland, Inc.,* 90 Ohio App.3d 82, 86, 628 N.E.2d 60 (1993).

{¶45} R.C. 1345.02(B)(2) provides that it is deceptive for a supplier to represent that the subject of a consumer transaction is of a particular standard, quality, grade, style, prescription, or model, if it is not. Thus, work performed by a supplier must be done in a workmanlike manner, and failure to do so may give rise to a violation of the CSPA.

{¶46} The jury found that Vaughanscapes failed to perform in a workmanlike manner because its work was "so poor as to be unconscionable" or "was coupled with

some deceptive or unfair practice by Vaughanscapes that misled the Sharps about the nature of the product or service that they were receiving." (Jury Interrogatory # 1B). The jury was instructed that an unconscionable act or practice is one that is outrageous or misleads the consumer about the nature of the product or service received. A factor in determining unconscionability is whether Vaughanscapes knowingly made a misleading statement of opinion on which the Sharps were likely to rely to their detriment. The record is replete with evidence that Vaughanscapes poorly performed its work on the project; as the trial court pointed out, the issue was whether the work was either so poor as to be unconscionable or was coupled with a deceptive or unfair practice. The Sharps established a litany of Vaughanscapes' failures on the project, any of which could have been found to be unfair or deceptive and rendered Vaughanscapes' performance unconscionable. This litany included, e.g., misrepresentation of project completion status, failure to secure proper permits, failure to install a handrail that was called for under the contract and accepted payment for same; unworkmanlike installation of the drainage system under the patio; resulting property damage; failure to install an actuator; misrepresenting that the poly sand was properly installed; and an overall failure to address the homeowners' concerns about component parts of the project and insisting the project was complete. The evidence at trial supported the Sharps' litany of performance failures by Vaughanscapes.

{¶47} Vaughanscapes' premise is that because the jury found Ken and Elizabeth Vaughan did not individually violate the CSPA, and are the only members of the Vaughanscapes LLC, the finding of a violation by Vaughanscapes is inconsistent. Vaughanscapes should have objected prior to the jury being discharged. The law is clear

that where the inconsistencies between a general verdict and an interrogatory are apparent before the jury is discharged, the inconsistency is waived unless a party raises an objection prior to the jury's discharge. *Telecom Acquisition Corp. I v. Lucic Ents., Inc.*, 8th Dist. No. 102119, 2016-Ohio-1466, 62 N.E.3d 1034, ¶ 45.

{¶48} Moreover, Vaughanscapes' liability is not dependent upon the individual liability of Ken and Elizabeth Vaughan, and Vaughanscapes points to no such authority.

{¶49} The verdict is not against the manifest weight of the evidence and the second assignment of error is overruled.

III.

{¶50} In its third assignment of error, Vaughanscapes argues the trial court erred in trebling the economic damages awarded by the jury for the claim brought pursuant to the Ohio Consumer Sales Practices Act. We disagree.

{¶51} The award of treble damages and attorney fees under the CSPA is within the sound discretion of the trial court, and will only be reversed upon a showing of an abuse of that discretion. In order to rise to the level of an abuse of discretion, the trial court's decision must be unreasonable, arbitrary or unconscionable, and not merely an error of law or judgment. *Blakemore v. Blakemore* (1983) 5 Ohio St.3d 217, 450 N.E.2d 1140.

{¶52} Under the CSPA, pursuant to R.C. 1345.09(B), a consumer may collect treble damages only

> [w]here the violation was an act or practice declared to be deceptive or unconscionable by rule adopted under division (B)(2) of section 1345.05 of the Revised Code before the consumer

> transaction on which the action is based, or an act or practice determined by a court of this state to violate section 1345.02 or 1345.03 of the Revised Code and committed after the decision containing the determination has been made available for public inspection under division (A)(3) of section 1345.05 of the Revised Code[.]

{¶53} Accordingly, for treble damages to be awarded pursuant to R.C. 1345.09(B): (1) the act or practice must have been declared, pursuant to R.C. 1345.05(B)(2), to be deceptive or unconscionable by a regulation promulgated by the Attorney General, or (2) an Ohio court must have previously determined that the act or practice violated R.C. 1345.02 or 1345.03 and that court decision must have been made available for inspection by the public under R.C. 1345.05(A)(3). See *Snider v. Conley's Serv.* (June 12, 2000), 5th Dist. No.1999CA00153. With regard to the second option, R.C. 1345.05(A)(3) provides that the Attorney General shall "[m]ake available for public inspection * * * all judgments, including supporting opinions, by courts of this state that determine the rights of the parties * * *, determining that specific acts or practices violate [R.C.] 1345.02 or 1345.03[.]"

{¶54} The Sharps were required to produce evidence demonstrating the requirements of R.C. 1345.09(B) in order to receive treble damages. *Doff v. Lipford*, 5th Dist. Stark No. 2019CA00017, 2019-Ohio-2318, ¶ 38, citing *Bodenberg v. Duggan Homes, Inc*., 2nd Dist. Montgomery No. 20311, 2004-Ohio-5935 ¶ 24. In other words, plaintiffs "must either show that the act or practice was declared to be deceptive or unconscionable by a regulation promulgated by the Attorney General, or that an Ohio

court previously determined that the act or practice violated R.C. 1345.02, 1345.03, or 1345.031 and that court decision was made available for public inspection." R.C. 1345.09(B); *Nelson v. Pieratt*, 12th Dist. Clermont No. CA2011-02-011, 2012-Ohio-2568 ¶ 20.

{¶55} In the instant case, the trial court found the Sharps cited to multiple cases made available in the Public Inspection File (PIF) in the complaint, pretrial brief, and during trial upon argument for directed verdict. The Sharps met their burden of providing the trial court with citations to decisions in the Attorney General's PIF demonstrating the acts and practices at issue in this case were previously found to be violations of the CSPA, to wit, *The Pool Man*, PIF No. 10003073 and *Maimon v. Day*, PIF No.10001095 (May 31, 1990). The trial court determined the facts of both cases are sufficiently similar to the instant case to put Vaughanscapes on notice that its conduct could violate the CSPA. See, *Marrone v. Philip Morris USA, Inc.,* 110 Ohio St.3d 5, 2006-Ohio-2869, 850 N.E.3d 31.

{¶56} Further, the trial court properly found sufficient evidence existed to find that Vaughanscapes committed a knowing violation of the CSPA. For purposes of the CSPA, "knowingly" committing an act or practice in violation of R.C. Chapter 1345 means that the supplier need only intentionally do the act that violates the Consumer Sales Practices Act; the supplier does not have to know that his conduct violates the law for the court to grant attorney fees. *Einhorn v. Ford Motor Co.*, 48 Ohio St.3d 27, 30, 548 N.E.2d 933 (1990), citing *Brooks v. Hurst Buick–Pontiac–Olds–GMC*, 23 Ohio App.3d 85, 491 N.E.2d 345 (1985).

{¶57} Vaughanscapes has failed to establish that the trial court acted unreasonably, arbitrarily, or unconscionably in awarding treble damages an attorney fees. *Nicholson v. Davis Auto Performance*, 5th Dist. No. 2023 CA 0022, 2024-Ohio-205, 233 N.E.3d 1277, ¶ 28.

{¶58} Vaughanscapes' third assignment of error is overruled.

IV.

{¶59} In its fourth assignment of error, Vaughanscapes argues the trial court erred in awarding attorney's fees to the Sharps. We disagree.

{¶60} Attorney's fees are not mandated under the CSPA. R.C. 1345.09 sets out the remedies available to a consumer for a violation of the CSPA: "The court *may* award to the prevailing party a reasonable attorney's fee limited to the work reasonably performed, if either of the following apply: (1) The consumer complaining of the act or practice that violated this chapter has brought or maintained an action that is groundless, and the consumer filed or maintained the action in bad faith; (2) The supplier has *knowingly* committed an act or practice that violates this chapter." (Emphasis added.) R.C. 1345.09(F). *Charvat v. Ryan*, 116 Ohio St.3d 394, 2007-Ohio-6833, 879 N.E.2d 765, ¶ 24.

{¶61} As discussed supra, the Ohio Supreme Court addressed the definition of "knowingly" in *Einhorn v. Ford Motor Co.*, 48 Ohio St.3d 27, 548 N.E.2d 933 (1990), and a defendant "does not have to know that his conduct violates the law for the court to grant attorney fees" pursuant to R.C. 1345.09(F). *Id*. at 30. "[A] trial court may award a consumer reasonable attorney fees when the supplier in a consumer transaction intentionally committed an act or practice which is deceptive, unfair or unconscionable."

Id. The decision to award attorney's fees is committed to the sound discretion of the trial court. *Id.,* ¶ 26. The trial court has the discretion to determine whether attorney fees are warranted under the facts of each case.

{¶62} As discussed supra, the jury found Vaughanscapes violated the CSPA and the trial court found the knowing violation justified an award of attorney fees. The trial court thereupon adopted the magistrate's findings, applied the lodestar calculation, considered all eight factors of Ohio Rule of Professional Conduct 1.5(a), and applied the common-core analysis; to wit, the trial court determined an award of $172,043.00 was reasonable. There is a strong presumption that the reasonable hourly rate multiplied by the number of hours worked, which is sometimes referred to as the "lodestar," is the proper amount for an attorney-fee award. *Phoenix Lighting Group, L.L.C. v. Genlyte Thomas Group, L.L.C.*, 160 Ohio St.3d 32, 2020-Ohio-1056, 153 N.E.3d 30. Based upon our review of the record, including the trial court's exhaustive, well-reasoned analysis, we find Vaughanscapes' arguments unavailing.

{¶63} Vaughanscapes has not demonstrated the trial court abused its discretion in its award of attorney's fees. The fourth assignment of error is overruled.

CONCLUSION

{¶64} Vaughanscapes' four assignments of error are overruled and the judgment of the Delaware County Court of Common Pleas is affirmed.

By: Delaney, P.J.,

Hoffman, J. and

Wise, J., concur.