Circuit Court for Prince George's County
Case No.: CAL-15-24078

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 242

September Term, 2017

CADLES OF GRASSY MEADOWS II, LLC

v.

RUSHERN L. BAKER, III

Meredith,
Graeff,
Eyler, James R.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: March 15, 2018

This appeal arises out of a dispute regarding a $50,000 business loan made to Community Teachers, Inc. ("Community Teachers") by Citibank in August 2003. At the time when this loan was made, Rushern Baker, III, appellee, was Community Teachers's executive director. Community Teachers later defaulted on this loan, and Citibank subsequently sold the loan to debt collector Cadles of Grassy Meadows II, LLC ("Cadles"), appellant. Cadles filed suit against Mr. Baker in the Circuit Court for Prince George's County, and alleged that he personally guaranteed repayment of the loan. At trial, Mr. Baker denied having any knowledge of the loan prior to this lawsuit, and he testified that he never signed any of the Citibank loan documents which purported to contain his signature. Cadles's handwriting expert testified that, in her expert opinion, Mr. Baker *had* signed the Citibank loan documents in question.

After a bench trial, the circuit court issued an opinion and ruled in favor of Mr. Baker. The circuit court held that Mr. Baker is not personally responsible for repayment of the balance of the loan because Cadles failed to prove that Mr. Baker signed the Citibank loan documents. In its opinion, the trial judge explained that Cadles's handwriting expert's testimony was "informative but not of much persuasive value."

Cadles timely appealed to this Court, and presents the following question for our review: "Did the trial court abuse its discretion by discounting the testimony of the expert witness as having little persuasive value?"

Because we perceive no reversible error, we will affirm.

FACTS AND PROCEDURAL HISTORY

Mr. Baker was the executive director of Community Teachers from January 2003 to May 2010. In August 2003, Citibank made a $50,000 loan to Community Teachers. The loan application appears to contain Mr. Baker's signature above a line for "Owner's and Co-Signer's Signature." The section of the Citibank loan document which was purportedly signed by Mr. Baker states that each individual signing the application "[a]grees to be jointly and severally liable for any and all amounts which may become due and owing hereunder."

Although payments were made on the loan through December 2012, the loan fell into default thereafter. By the end of 2012, the loan had an outstanding balance of $43,515.28. After the loan fell into default, Citibank sold the loan to Cadles and "assigned to Cadles the right to collect the debt." Cadles then attempted, unsuccessfully, to collect the debt from Community Teachers. After Community Teachers went out of business, Cadles filed suit in the circuit court against Mr. Baker. Cadles alleged that Mr. Baker signed the Citibank loan documents, and, in doing so, personally guaranteed repayment of the loan in the event of default.

At trial, Mr. Baker denied any knowledge of this loan; he testified that he never signed the Citibank loan documents on which his signature supposedly appears. He testified: "I would have known if I was signing a loan application. I wouldn't have just signed it. I would have paid special attention to that." Mr. Baker's testimony also indicates that Community Teachers was adequately funded by the Greeman Family

Foundation such that a loan would not have been necessary. Moreover, the e-mail address which appeared on the Citibank loan documents was not Mr. Baker's; rather, the e-mail address on the loan documents was that of Lisa Ellis, the CFO of Community Teachers until 2006. Mr. Baker testified that his birth date and social security number were known to Ms. Ellis and other executives at Community Teachers, and he also testified that his date of birth had been entered incorrectly on the Citibank loan documents prior to being crossed out and corrected.

Despite Mr. Baker's testimony, Cadles produced an expert in document examination, Katherine M. Koppenhaver, who examined the signatures on the Citibank loan documents and examples of Mr. Baker's signature. Based on her review of the Citibank loan document signatures, and her comparison of these signatures with deeds and mortgages previously signed by Mr. Baker, Ms. Koppenhaver expressed the opinion that Mr. Baker had in fact signed the Citibank loan documents. Although the signatures varied to the untrained eye, Ms. Koppenhaver testified that she came to her conclusion that Mr. Baker signed the Citibank loan documents because the documents were signed "smoothly," and the signatures "show similar habit to [Mr. Baker's] known signatures."

In the circuit court's written opinion, the court stated that it found Mr. "Baker's testimony persuasive," and in contrast, found Ms. Koppenhaver's testimony was "not of much persuasive value." The trial judge opined "that it was likely some other person who had access to the loan documents and knew Baker's personal information had applied for the business loan using Baker's signature." He further explained:

> [T]he Court is not willing to defer to Koppenhaver's sweeping opinion. **The Court found her testimony confusing and at times contradictory.** For example, when viewing Plaintiff's exhibit 27, she initially identified exemplar Q-1 as the signature from Plaintiff's exhibit 2, page 2, one of the Citibank signature cards. Koppenhaver, later identified Q-1 as Baker's signature on the loan application, or Plaintiff's exhibit 5. It took many seconds, approximately two (2) minutes, for her to make this identification. The same was the case for identifying other exemplars. Frankly, the Court did not find her basis for finding that seemingly dissimilar signatures came from Baker was persuasive. **The Court found that her assertion that all of the signatures were done fluidly and 'without tremor' to be a thin basis to conclude varied signatures came from the same person.** The trier of fact is free to believe all, part or none of the testimony of any witness, including expert testimony. **The Court discounts Koppenhaver's testimony finding it informative but not of much persuasive value.**

(Emphasis added.)

The trial judge then stated: "All in all, the Court gave great weight to [Mr. Baker's] testimony," and ruled in Mr. Baker's favor.

Additional facts relevant to this appeal are included in the discussion below.

DISCUSSION

In its brief, Cadles contends that the trial judge's ruling in favor of Mr. Baker was clearly erroneous because the trial judge did not give sufficient weight to Ms. Koppenhaver's expert testimony. Cadles asserts: "While the trial court is shown great deference concerning witness credibility, this determination was based on the time it took Ms. Koppenhaver to answer questions rather than . . . focusing on the complex science that Ms. Koppenhaver was trying to explain in simple terms . . . ." Cadles further contends that the circuit court's "determination that Ms. Koppenhaver was not persuasive is clearly erroneous because [the time that] it took Ms. Koppenhaver to answer questions

concerning the comparison between her own notes and the trial exhibits is not a 'legally sufficient' fact." [1]

Mr. Baker contends that the applicable standard of review for findings of fact is deferential, and the circuit court's ruling was based on the weight the trial judge gave to the evidence. He asserts that trial judges have broad discretion to determine how much weight should be given to a particular piece of evidence. Mr. Baker also argues that there is "ample evidence" in the record to support the trial judge's finding that Mr. Baker had not signed the Citibank loan documents.

Because the present appeal stems from an action tried without a jury, our review is conducted pursuant to Maryland Rule 8-131(c), which provides:

> (c) **Action tried without a jury.** When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. **It will not set aside the judgment of the trial court on the evidence unless clearly erroneous**, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

(Emphasis added.)

This Court has previously recognized that "[a] finding of a trial court is not clearly erroneous if there is competent or material evidence in the record to support the court's conclusion." *Lemley v. Lemley*, 109 Md. App. 620, 628 (1996). In *Liberty Mutual Ins.*

[1] But the trial judge did not find Ms. Koppenhaver's testimony to be unpersuasive merely as a result of her demeanor. The trial judge also "found that [Ms. Koppenhaver's] assertion that all of the signatures were done fluidly and 'without tremor' [is] a thin basis to conclude varied signatures came from the same person."

Co. v. Maryland Auto. Ins. Fund, 154 Md. App. 604, 609 (2004), we further outlined the limited scope of review of factual findings under the clearly erroneous standard:

> Moreover, "[u]nder the clearly erroneous standard, this Court does not sit as a second trial court, reviewing all the facts to determine whether an appellant has proven his case." *Id.* **Nor is it our function to weigh conflicting evidence**. *Bausch & Lomb, Inc. v. Utica Mut. Ins. Co.*, 355 Md. 566, 586-87, 735 A.2d 1081 (1999); *Weisman v. Connors*, 76 Md. App. 488, 547 A.2d 636 (1988), *cert. denied*, 314 Md. 497, 551 A.2d 868 (1989). **Our task is limited to deciding whether the circuit court's factual findings were supported by "substantial evidence" in the record.** *GMC v. Schmitz*, 362 Md. 229, 234, 764 A.2d 838 (2001) (quoting *Ryan v. Thurston*, 276 Md. 390, 392, 347 A.2d 834, 835–36 (1975)). And, in doing so, we must view all the evidence "in a light most favorable to the prevailing party." *Id.*

(Emphasis added.)

As the Court of Appeals held in *Schade v. Maryland State Bd. of Elections*, 401 Md. 1, 32 (2007), "the attribution of credibility to a witness is a finding of fact." In *Starke v. Starke*, 134 Md. App. 663, 683 (2000), Judge Moylan explained that the circuit court has broad discretion to make credibility determinations:

> Resolving disputed credibility and weighing disputed evidence are matters, of course, in the unfettered control of the fact finder. Where either the credibility of a witness or the weight of the evidence is in dispute, therefore, there is no way in which a fact finder, with such matters properly before him, could ever be clearly erroneous for not being persuaded.

See also Edsall v. Huffaker, 159 Md. App. 337, 342 (2004) (quoting *Great Coastal Express, Inc. v. Schruefer*, 34 Md. App. 706, 725 (1977) ("'[T]he trier of fact may believe or disbelieve, accredit or disregard, any evidence introduced . . . .' A reviewing court may not decide on appeal how much weight should have been given to each item of evidence."); Maryland Civil Pattern Jury Instructions, MPJI-Cv 1:4 (5th ed. 2017)

(stating, in pertinent part: "You should give expert testimony the weight and value you believe it should have. You are not required to accept any expert's opinion.").

In the present case, when viewed in a light most favorable to the prevailing party, the circuit court's ruling was not clearly erroneous. In its opinion, the circuit court explained that there was evidence that it credited that supported its ruling in favor of Mr. Baker:

> Frankly, the Court was impressed with [Mr. Baker's] demeanor when answering difficult questions on cross examination; he handled each question in a clear and straightforward manner. All in all, the Court gave great weight to his testimony. After Baker's testimony, [another witness's] rebuttal, and Baker's surrebuttal, the Court was persuaded that it was likely some other person who had access to the loan documents and knew Baker's personal information had applied for the business loan using Baker's signature. Additionally, the Court weighed Baker's consistent and insistent denial that he had applied for a business loan exposing himself to personally guaranteeing its repayment. While Cadles did not have to prove it, as a matter of credibility, the Court would have had a different opinion of Baker's testimony if Cadles showed that Baker somehow profited from the loan.
>
> At the end of the case, the Court was left with Baker's firm denial that he signed for the loan, testimony from a less than convincing expert that he had, and evidence that some other person at CTI knew of Baker's signature and personal information. Even under the preponderance of the evidence standard, the Court finds that the evidence is evenly balanced, if not favoring the defense. The Court's verdict is for the defense.[2]

[2] As this Court held in *Collins/Snoops Associates, Inc. v. CJF, LLC*, 190 Md. App. 146, 162 (2010), "if the trier of fact's state of mind on an issue is in equipoise, then the judgment or verdict must be against the party that had the burden of persuasion on that issue." Accordingly, even if the trial judge had found the evidence evenly balanced, the court would have been obligated to enter judgment in favor of Mr. Baker because the burden of persuasion fell upon Cadles.

We are not at liberty to second-guess the trial judge's first-hand observations of either Ms. Koppenhaver's or Mr. Baker's testimony. Consequently, we will affirm the decision of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.