

Circuit Court for Worcester County
Case No. 23-C-16-000339

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1333

September Term, 2021

JUSTIN T. McNULTY

v.

JOHN J. McNULTY, *et al.*

Graeff,
Zic,
Tang,

JJ.

Opinion by Tang, J.

Filed: December 13, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This case arises out of a dispute between Justin McNulty, appellant, and some of his siblings regarding the administration of a family trust. In 2017, after two lawsuits were filed in the Circuit Court for Worcester County, the parties reached a settlement agreement requiring the trust to pay appellant and his sister¹ \$45,000 in exchange for releasing their interests in the trust property.

Years later, appellant moved to invalidate the agreement, alleging primarily that the trustees materially breached the agreement by failing to timely tender the settlement payment. Following an evidentiary hearing, the trial court denied appellant's motion. Thereafter, appellant, acting *pro se*, noted this appeal, raising two questions, which we have rephrased for clarity:²

1. Did the trial court err in admitting a non-certified check and a check ledger into evidence?
2. Did the trial court err in refusing to set aside the settlement agreement?

For the reasons that follow, we affirm the circuit court's judgment.

¹ Appellant's sister, Kathleen *infra*, is not a party to this appeal. To avoid confusion, we shall refer to the siblings by their first names.

² The questions as phrased by appellant in his brief are:

1. Was the petitioner denied his constitutional rights to due process when the lower court allowed unsubstantiated and unauthenticated evidence to be admitted?
2. Did the trial court error in denying the petitioners claim for breach of contract when the defendants failed to meet their contractual obligations?

BACKGROUND

In 2009, John McNulty, Sr. and Lucille McNulty established the McNulty Family Revocable Trust for the benefit of their seven children: Marilou, Kathleen, John Jr., Joseph, James, Margaret, and appellant. Upon the death of the parents, appellant and Kathleen served as co-trustees of the trust.

In 2015, Marilou, John Jr., Joseph, and Margaret (collectively, “appellees”) petitioned the circuit court (in Case No. 23-C-15-000668) to assume jurisdiction over the trust and remove appellant and Kathleen as trustees. In 2016, the court granted the petition, removed appellant and Kathleen as trustees, and appointed Marilou and Joseph as successor trustees. In a separate case (Case No. 23-C-16-000339), appellees filed a complaint alleging, *inter alia*, that appellant and Kathleen had breached their fiduciary duties as trustees of the trust.

A. Settlement Agreement

In May 2017, the parties reached an oral settlement agreement which was reduced to a writing (“Settlement Agreement”). The Settlement Agreement provided in pertinent part,

Within twenty-one (21) days after the date of full execution of this Agreement, the Trust shall pay [appellant] and [Kathleen] the aggregate sum of Forty-five Thousand Dollars (\$45,000.00) cash or certified funds (“Settlement Amount”) for which they release and renounce any further claim or beneficial interest in or to the Trust property and/or the Estate of Lucille M. McNulty. Upon such payment of the Settlement Amount, the said [appellant] and [Kathleen] shall have no further beneficial interest in the Trust property and/or the Estate of Lucille McNulty and shall be deemed to

have received their full lawful share without any further claim or interest as beneficiaries thereof[.]³

By July 2017, neither appellant nor Kathleen had signed the Settlement Agreement. Accordingly, appellees filed a motion to enforce the Settlement Agreement.

On November 7, 2017, the court granted appellees’ motion and entered an order enforcing the Settlement Agreement and incorporating it therein by reference. The court also ordered appellant and Kathleen to pay \$7,525 to appellees in attorney’s fees to be deducted from the \$45,000 payment. The order did not provide that payment be made by a certain date. Neither Kathleen nor appellant filed an appeal from that judgment.

B. Parties’ Motions

In November 2020, Kathleen, through counsel, filed a “Motion to Reopen the Case to Enforce the Settlement Agreement” (“Motion to Reopen”) pursuant to Maryland Rule 2-506(b),⁴ claiming that Marilou and Joseph, as trustees, failed to tender payment of \$37,475 (\$45,000 less \$7,525 in attorney’s fees) pursuant to the November 7, 2017 order and the Settlement Agreement. She sought entry of a judgment against the trust in the amount for \$37,475 plus costs and fees.

In response, appellees filed a “Counter Motion to Enforce Settlement Agreement and Request for Attorney’s Fees” (“Counter Motion”), explaining that Marilou tendered

³ The Settlement Agreement did not include a time-of-essence clause.

⁴ Maryland Rule 2-506(b) provides that an “action may be reopened at any time upon request of any party to the settlement to enforce the stipulated terms through the entry of judgment or other appropriate relief.”

the payment of \$37,475 thrice by check but neither appellant nor Kathleen cashed any of the checks. Appellees requested that the court enter an order directing appellant and Kathleen to accept the payment.

The court scheduled a hearing on Kathleen’s Motion to Reopen and appellees’ Counter Motion for September 29, 2021. The day before the hearing, appellant and Kathleen jointly filed a *pro se* “Motion for Contempt, Request to Invalidate Settlement Agreement and Request for Damages” (“Motion to Invalidate”).⁵ Appellant and Kathleen alleged that appellees failed to pay the settlement amount in the time and manner set forth in the Settlement Agreement. With respect to relief, appellant and Kathleen sought a remedy different from that requested by Kathleen in her Motion to Reopen. They claimed that appellees’ actions constituted “a basic breach of contract” that required the Settlement Agreement “to be declared null and void.” Among other relief, they asked the court to “[i]nvalidate the forced settlement agreement[.]”⁶

In an apparent effort to align strategies, Kathleen withdrew her Motion to Reopen. Although the motion that prompted the reopening of the case was withdrawn, appellees

⁵ By this time, Kathleen was acting *pro se*. Kathleen’s counsel had filed a motion to strike his appearance, which the court granted in February 2021.

⁶ Although the Motion to Invalidate was titled, in part, as one for contempt and damages, appellant and Kathleen did not request a finding of contempt or an award for damages. In addition to seeking invalidation of the Settlement Agreement, they sought financial documents and an investigation into the “fraudulent mismanagement of the McNulty Trust by [Marilou].”

insisted that their Counter Motion stand on its own. Thus, the motions before the court on September 29, 2021 were the Counter Motion and the Motion to Invalidate.

C. Motions Hearing

The following summarizes the pertinent evidence adduced at the hearing on September 29, 2021.

After the court entered the November 7, 2017 order enforcing the Settlement Agreement, Marilou mailed a non-certified check to Kathleen in the amount of \$37,475 on December 13, 2017. She also sent a copy of the check, accompanied by a letter, to appellant that same day. In support, Marilou offered into evidence a copy of the check, a copy of the trust’s check ledger, and a copy of the letter she sent to appellant. The court admitted those documents into evidence without objection.

Marilou testified that the non-certified check she sent on December 13, 2017 was never cashed. In the years that followed, she did not receive any communication from either appellant or Kathleen regarding any failure on her part to pay the settlement amount. Kathleen and appellant, on the other hand, testified that they never received this check. Appellant further countered that he contacted Marilou after the court issued its November 7, 2017 order to inform her that the money had not been received, but Marilou told him that “she was not going to give [him] a dime.”

According to Marilou, she was first alerted to the non-payment issue when Kathleen moved to reopen the case in late 2020. Kathleen’s filing prompted Marilou to send Kathleen a certified check in the amount of \$37,475 on December 21, 2020. After learning

that that check had not been cashed, Marilou sent another certified check on February 2, 2021. This third check had also not been cashed.

Kathleen acknowledged that she had received the certified check but refused to accept that payment because, by that time, Marilou had “breached the contract” by failing to make the payment in a timely manner. Appellant acknowledged the same, testifying that he refused the payment and would continue to refuse such payment, because Marilou had breached the terms of the Settlement Agreement. He maintained that, consistent with the Settlement Agreement, Marilou had twenty-one days following the issuance of the court’s November 2017 order to make the payment. According to appellant, that time frame was pivotal because his house had been in foreclosure, and he needed the funds immediately. Because Marilou’s payment was not made within that time, appellant and Kathleen insisted that the Settlement Agreement should be “null and void” and that they should be reinstated as beneficiaries of the trust.

D. Oral Ruling and Order

At the conclusion of the hearing, the court denied the Motion to Invalidate and found that appellant and Kathleen were not entitled to any of the requested relief. In so doing, the court found credible Marilou’s assertion that payment was tendered in December 2017. The court also found that the twenty-one-day provision in the Settlement Agreement was not “concrete and absolute” and that the agreement did not “call for time being of the essence.” The court noted that the Settlement Agreement was not “executed” until the court issued its November 7, 2017 order, that appellant and Kathleen had thirty days to

appeal from that order and that, consequently, Marilou had a valid reason for delaying payment until the time to appeal expired.

The court also found that appellant was not credible in his assertion that the twenty-one-day period was a substantial part of the Settlement Agreement. The court explained that appellant’s near total lack of effort in pursuing a timely remedy after Marilou purportedly failed to make the requisite payment following the court’s November 7, 2017 order was contradictory to his position that he needed the money immediately. The court reasoned that appellant and Kathleen’s desire to repudiate the agreement was “more about sour grapes as far as the original resolution of this case.” Ultimately, the court found that Marilou had substantially complied with the terms of the Settlement Agreement and, therefore, there was no basis to invalidate the Settlement Agreement.

On October 6, 2021, the court entered an order denying appellant’s Motion to Invalidate and granting appellees’ Counter Motion. This timely appeal followed.

STANDARD OF REVIEW

“When reviewing an action tried without a jury, we review the judgment of the trial court ‘on both the law and evidence.’” *Balt. Police Dep’t v. Brooks*, 247 Md. App. 193, 205 (2020) (citing *Banks v. Pusey*, 393 Md. 688, 697 (2006)). We “will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and [we] will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.” Md. Rule 8-131(c). Issues of law, however, are reviewed *de novo*. *Brooks*, 247 Md. App. at 205.

DISCUSSION

Preliminarily, we observe that appellant’s brief is critically deficient. Maryland Rule 8-504(a)(6) requires that an appellate brief contain “[a]rgument in support of the party’s position on each issue.” This means that “[a]n appellant is required to articulate and adequately argue all issues the appellant desires the appellate court to consider in the appellant’s initial brief.” *Oak Crest Vill., Inc. v. Murphy*, 379 Md. 229, 241 (2004). “[I]t is not incumbent upon this Court, merely because a point is mentioned as being objectionable at some point in a party’s brief, to scan the entire record and ascertain if there be any ground, or grounds, to sustain the objectionable feature suggested” and then search for law to support his position. *State Rds. Comm’n v. Halle*, 228 Md. 24, 32 (1962); *Van Meter v. State*, 30 Md. App. 406, 408 (1976). “[W]here a party initially raise[s] an issue but then fail[s] to provide supporting argument, this Court has declined to consider the merits of the question so presented but not argued.” *Fed. Land Bank of Balt., Inc. v. Esham*, 43 Md. App. 446, 457 (1979).

In the instant matter, as detailed *infra*, the argument section of appellant’s brief comprises a few sentences spanning two pages. Other than citing to two cases for uncontroversial propositions, appellant fails to provide any legal authority to support his contentions.⁷ While we are mindful that appellant is *pro se*, the Rules “apply to laymen

⁷ Appellant’s reply brief provides no further clarification. There, appellant argues that the Settlement Agreement should be invalidated because the parties “never reached a mutual agreement oral or written,” and the court did not have the authority to enforce the agreement against appellant. The validity and enforceability of the Settlement Agreement are not before this Court. Because appellant did not appeal from the entry of the November 7, 2017 order enforcing the Settlement Agreement, any question as to its validity and

and lawyers alike.” *Tretick v. Layman*, 95 Md. App. 62, 68 (1993). “[T]he Maryland Rules ‘are not guides to the practice of law but precise rubrics established to promote the orderly and efficient administration of justice and . . . are to be read and followed.’” *Rollins v. Cap. Plaza Assocs., L.P.*, 181 Md. App. 188, 197 (2008) (citations omitted).

With these principles in mind, we turn to the issues raised by appellant.

I.

Appellant contends that the court erred when it admitted into evidence a copy of the December 2017 check and a copy of the trust’s check ledger. The sum and substance of appellant’s argument in this regard is as follows:

The trial court violated petitioners 6th and 14th amendment rights when it accepted into evidence documentation that the petitioner did not have the chance to examine or have adversarial challenged.

The trial court relied heavily on the authenticate of the uncontested documents submitted by [Marilou] in ruling against petitioners, without this evidence defendant’s case is undocumented.

The trial judge showed abuse of discretion in accepting evidence at the time of the hearing that was not examined or inspected and in which no supportive or corroborating evidence was offered. He considered this evidence without proper examination, in violation of the petitioner’s right to due process.

The trial court’s decision must be reversed if it is not legally correct and it’s based on a violation of constitutional rights.⁸

enforceability is firmly settled and is not subject to review. *See R & D 2001, LLC v. Rice*, 402 Md. 648, 663 (2008) (“When an issue of fact or law is actually litigated and determined by a valid and final judgment, . . . the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim.”) (citations and quotations omitted).

⁸ Citations to the record are omitted.

In essence, as best we understand, appellant challenges the authenticity of the documents admitted at the hearing. However, appellant fails to adequately argue and cite to authority to provide a framework for our consideration. Thus, the argument has not been properly presented for our review.

In addition to the Rule 8-504(a)(6) violation, appellant’s argument is not preserved for our review. Ordinarily, the appellate court will not decide any issue “unless it plainly appears by the record to have been raised in or decided by the trial court[.]” Md. Rule 8-131(a). As the Court of Appeals has explained,

the purpose of the preservation rule is to prevent unfairness and require that all issues be raised in and decided by the trial court, and these rules must be followed in all cases. Put another way, the rule exists to prevent sandbagging and to give the trial court the opportunity to correct possible mistakes in its rulings. An appeal is not an opportunity for parties to argue the issues they forgot to raise in a timely manner at trial. Nor should [a litigant] rely on this Court, or any reviewing court, to do their thinking for them after the fact.

Peterson v. State, 444 Md. 105, 126 (2015) (cleaned up) (quotations and citations omitted).

To preserve an issue for appellate review, “[the] party must make it clear that [the party] has an objection to the particular evidence.” *Fireman's Fund Ins. v. Bragg*, 76 Md. App. 709, 719 (1988). “[W]hen a party has the option either to object or not to object, as he sees fit, his failure to exercise the option while it is still within the power of the trial court to correct the error, constitutes a waiver of error estopping him from bringing it to the attention of the [appellate court].” *Banks v. State*, 203 Md. 488, 495 (1954). Here, appellant did not object when the documents at issue were introduced and subsequently admitted. See Md. Rule 5-103(a)(1) (an error may not be predicated upon a ruling that

admits evidence unless “a timely objection or motion to strike appears of record”). Accordingly, appellant failed to preserve his challenge to the admissibility of the check and ledger.⁹

II.

Appellant asserts that Marilou was required to pay the settlement amount within twenty-one days of November 7, 2017, which she failed to do. He also asserts that Marilou was required to make the initial payment by way of a certified check or cash, which she also failed to do. He argues that Marilou’s failure to make a timely payment in the manner set forth in the Settlement Agreement constitutes a material breach. Therefore, according to appellant, the court should have “rescinded” the agreement. The sum and substance of appellant’s argument in this regard is:

Under MD law “the formation of a contract requires mutual assistance, an agreement definite in its terms, and sufficient consideration” *CTI/DC, Inc v. Selective Ins. Co of Am.*, 392 F.3d 114, 123 (4th Cir. 2004) The terms of the settlement agreement clearly and sufficiently address the requirements for a binding contract under Maryland Law.

“to prevail in an action of breach of contract, a plaintiff must prove that the defendant owed the plaintiff a contractual obligation and that the defendants breached that obligation” see *Taylor v. nationsbank N.A.* 365 Md.

⁹ With respect to the admissibility of the challenged documents, we note that “[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” Md. Rule 5-901(a). That includes “[t]estimony of a witness with knowledge that the offered evidence is what it is claimed to be.” Md. Rule 5-901(b)(1). The documents at issue here – the copy of the check and the check ledger – were authenticated by Marilou’s testimony. Being the one who wrote the check and compiled the check ledger, she had first-hand knowledge that those documents were what she claimed them to be. Appellant’s assertion that the documents were doctored or fraudulent appears to bear on the weight of evidence, not on admissibility.

166, 776 A2d 645, 651 (Md. 2001) for defendants failure to provide payment in the designated manner and timeframe clearly spelled out in the text of the agreement warrants a clear material breach of contract

* * *

It is the Petitioners assertion that the court of appeals remand the case back to the lower courts to rescind the settlement agreement

Aside from citing to two cases for uncontroversial propositions, appellant does not cite to any legal authority to support his contention that the court erred in refusing to set aside the Settlement Agreement. We decline to address appellant’s argument because it was neither sufficiently developed nor supported by any legal authority. *Bos. Sci. Corp. v. Mirowski Fam. Ventures, LLC*, 227 Md. App. 177, 209 (2016) (we are not “required to address an argument on appeal when the appellant has failed to adequately brief his argument”); *Mathis v. Hargrove*, 166 Md. App. 286, 318 (2005) (declining to address the assignment of error because appellant did not cite to legal authority to provide a framework for the Court’s consideration).

Even if we were to consider the merits of appellant’s contention, nothing in the record persuades us that the court erred in declining to invalidate the Settlement Agreement. In Maryland, “[s]ettlement agreements are enforceable as independent contracts, subject to the same general rules of construction that apply to other contracts.” *Maslow v. Vanguri*, 168 Md. App. 298, 316 (2006). When a settlement agreement

has been entered into between competent parties, it is not within the power of either party to rescind it without an option to do so or without the consent of the other party, in the absence of fraud, duress, or undue influence, or

unless either party is estopped by his own conduct, *or the equities of his position are otherwise such that he should not be permitted to enforce it.*

Vincent v. Palmer, 179 Md. 365, 371-72 (1941) (emphasis added).

“[I]f there has been well established breach of a contract, and the injury caused thereby is irreparable, or if the damages that might be awarded would be impossible or difficult to determine or inadequate, the injured party may invoke the aid of equity to obtain a rescission.” *Id.* at 373. To justify rescission, the failure to perform under the contract must be “a substantial breach tending to defeat the object of the contract.” *Id.* Rescission will not be granted “for casual or unimportant breaches.” *Id.* Ordinarily, whether a given breach is material or essential is a question of fact. *Barufaldi v. Ocean City, Chamber of Com., Inc.*, 196 Md. App. 1, 23 (2010) (citations omitted).

In the instant matter, the court determined that the Settlement Agreement was not “executed” until the court issued its order enforcing the agreement on November 7, 2017. It also determined that, because appellant had thirty days to appeal the court’s November 7, 2017 order, it was reasonable for Marilou to withhold payment until the appeal period, meaning appellant and Kathleen’s ability to continue challenging the agreement, had expired. That the initial payment came in the form of a non-certified check rather than a certified check or cash was not “materially deficient,” according to the court. After crediting Marilou’s testimony that she tendered payment on December 13, 2017, the court concluded that she substantially complied with the terms of the Settlement Agreement. Under the circumstances, the court’s finding that Marilou did not materially breach the

Settlement Agreement is not clearly erroneous. The court did not err in refusing to set aside the Settlement Agreement.

**JUDGMENT OF THE CIRCUIT COURT
FOR WORCESTER COUNTY AFFIRMED;
COSTS TO BE PAID BY APPELLANT.**