

Circuit Court for Wicomico County
Case No. C-22-CV-22-000329

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 1916

September Term, 2022

NEGEDE GEDAMU

v.

GEORGE LEE WEBSTER

Reed,
Beachley,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Getty, J.

Filed: April 2, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

George Lee Webster (“Webster”), the Appellee, inherited two promissory notes from the estate of his mother, Norma Lee Carr (“Carr”). Both promissory notes contained confession of judgment provisions and were executed by Negede Gedamu¹ (“Gedamu”), the Appellant. Webster, through his attorney, filed a Complaint for Confessed Judgment against Gedamu in the Circuit Court for Wicomico County.

After the court granted an order for entry of judgment, Gedamu, represented by counsel, then filed a Motion to Modify Confessed Judgment which was denied by the court and is the subject of this appeal. Both Gedamu and Webster are pro se in this appeal.

One question is raised in this appeal, which we have rephrased as²:

¹ Webster also included Alemnesh A. Gedamu, Negede Gedamu’s wife, in the complaint, as she also signed the promissory notes at issue. She did not note an appeal.

² Gedamu presented the following questions:

1. Did the trial court err in ruling in favor of the appellee while[] appellant pleaded to disclose legally sufficient defense.
2. Did the trial court err in its decision to grant the appellee’s motion [] without leave to amend.

Webster identifies the following “issues” originating from Gedamu’s brief:

1. The Appellant[’]s brief does not conform to applicable Maryland Rules.
2. Did the Trial Court err in ruling in favor of the Appellee while[] Appellant pleaded to disclose legally sufficient defense.
3. Did the court err in its decision to grant the Appellee’s motion without leave to amend.
4. Appellee’s failure to produce a viable contract to constitute a claim.
5. Appellee’s failure to produce accurate account report to constitute a claim.
6. Appellee’s Mother Mrs. Norma Lee Webster Carr waived late fees.

(continued)

Did the circuit court err in denying Gedamu’s Motion to Modify Confessed Judgment without leave to amend?

For the following reasons, we affirm the circuit court’s decision to deny Gedamu’s motion to modify the confessed judgment.

BACKGROUND

On November 1, 2006, Gedamu and Carr signed a promissory note wherein Gedamu agreed to pay Carr \$50,000 with an interest rate of 8% per year (the “2006 Note”). The promissory note provided that Gedamu was to pay in 35 consecutive monthly installments of \$500, with the remaining principal and interest due on November 2, 2009. The greater of 5% of the payment or \$2 was to be assessed as a late fee if any payment or part thereof was 15 or more days late.

On November 13, 2007, Gedamu and Carr signed a second promissory note (the “2007 Note”). Gedamu was to pay Carr \$30,000, payable on demand, subject to the same interest rate and late fee provisions as the 2006 Note.

Both the 2006 and 2007 Note contained the following confessed judgment clause:

THE undersigned hereby waive(s) the benefit of the Homestead Exemption and all right to exemption from execution as to the debt evidenced by this obligation and if default be made in the payment of the above debt or interest or either of them, or any installment thereof, at the time limited for the

(continued)

Webster also requested that this Court dismiss the appeal. We find Webster’s first “issue” to be without merit, as dismissal for nonconformity with the Rules is discretionary and courts are generally more lenient with pro se litigants. *In re Joshua W.*, 94 Md. App. 486, 491 (1993); *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam). Gedamu’s brief substantially complied with the Maryland Rules, and we decline to dismiss on the basis of noncompliance.

payment thereof, as aforesaid, or upon the breach of any covenant or condition of the mortgage securing this obligation, then this entire debt and interest shall immediately become due and payable, and the undersigned hereby authorize(s) and empower(s) any attorney at law of the State of Maryland, or elsewhere, after such default or breach, to appear for the undersigned in any Court of Record of the State of Maryland, or elsewhere, to waive the issue and service of process against the undersigned and confess a judgment against the undersigned for the amount that may then be due on this obligation, with costs of suit and Fifteen per cent (15%) collection charges and/or attorney's fees, which the undersigned hereby covenant(s) to pay, and also to release all errors or right to prosecute a petition in error and all stay of execution upon such judgment or proceeding.

Carr died on December 31, 2017. Webster, her son, was appointed as the personal representative of her estate on January 19, 2018. On October 5, 2022, as personal representative, Webster assigned both promissory notes to himself.

Webster filed a Complaint for Confessed Judgment in the Circuit Court for Wicomico County on October 5, 2022. The complaint contained two counts against Gedamu. The first count pertained to the 2006 Note, asserting that Gedamu failed to pay the installments due on and after September 2, 2021, and failed to pay the debt in full upon written demand. The second count pertained to the 2007 Note, asserting that Gedamu defaulted in the installments due for the 2007 Note and failed to pay in full upon written demand. In total, Webster's complaint requested an aggregate payment of \$14,925.64 for the principal, interest, and late fees for both loans, as well as \$2,238.00 for attorney's fees, not including costs of suit. The circuit court entered judgment in favor of Webster on October 12, 2022, and issued notice of the judgment to Gedamu on the same day.

On November 17, 2022, Gedamu filed a Motion to Modify Confessed Judgment. The substance of the motion reads in full as follows:

- (1) [Gedamu] acknowledge[s] that money is owed on the subject promissory note;
- (2) [Carr] had made modifications to the Promissory note during her lifetime that [Webster] had agreed to honor and had honored for a period of time, including but not limited to, due dates of payment and waiver of late fees;
- (3) That [Gedamu] ha[s] attempted on several occasions to get a payoff figure for the note from [Webster], but the number was either not forthcoming or it would arbitrarily change, and [Webster] also refused a payoff payment made by [Gedamu] in 2021, by way of summarily returning the payment drafts;
- (4) That [Gedamu is] anxious to resolve the situation, but [Webster’s] payoff figures are far in excess of the amount due and owing which is approximately Six Thousand Dollars (\$6000), including all costs.

Gedamu requested that the judgment be “reduced accordingly.” No additional exhibits or affidavits were attached to the motion.

In opposition to the motion, Webster argued that under Maryland Rule 2-611(d), the court can open, vacate, or modify a confessed judgment only if it finds that the defendant has shown “a substantial and sufficient basis for an actual controversy as to the merits of the action.” Webster asserted that any facts Gedamu could put forward as a defense to the judgment would be inadmissible under the parol evidence rule or Dead Man’s Statute.

The circuit court ultimately denied Gedamu’s motion on December 7, 2022, stating that he had “failed to set forth any evidentiary proffers which would be admissible to establish that there is a substantial and sufficient basis for an actual controversy as to the merits of the action.” Gedamu timely appealed.

DISCUSSION

“A confession of judgment clause in a debt instrument is a device designed to facilitate collection of a debt. It is a provision by which debtors agree to the entry of

judgment against them without the benefit of a trial in the event of default on the debt instrument.” *Schlossberg v. Citizens Bank of Md.*, 341 Md. 650, 655 (1996) (citing Paul V. Niemeyer and Linda M. Schuett, *Maryland Rules Commentary* 464 (2d ed. 1992)).

Maryland Rule 2-611 provides the procedures for requesting a confessed judgment. Sections (a)–(c) of the Rule govern the steps required of the plaintiff requesting the entry of the judgment and of the court in entering that judgment. Sections (d) and (e) govern the defendant’s ability to modify a confessed judgment:

(d) **Motion by defendant.** The defendant may move to open, modify, or vacate the judgment within the time prescribed for answering by sections (a) and (b) of Rule 2-321 [“Time for Filing Answer”]. The motion shall state the legal and factual basis for the defense to the claim.

(e) **Disposition of motion.** If the court finds that there is a substantial and sufficient basis for an actual controversy as to the merits of the action, the court shall order the judgment by confession opened, modified, or vacated and permit the defendant to file a responsive pleading.

Put differently, Rule 2-611(d) requires that “the court . . . determine whether the defendant has a potentially meritorious defense to the confessed judgment complaint.” *Schlossberg*, 341 Md. at 656. The question of whether the defendant has set forth a meritorious defense is a question of law that we review *de novo*. *NILS, LLC v. Antezana*, 171 Md. App. 717, 727–28 (2006); *Pease v. Wachovia SBA Lending, Inc.*, 416 Md. 211, 220 (2010).

This Court has described two defenses that would constitute meritorious defenses if substantially and sufficiently pleaded: “1) the execution of the promissory note itself or 2) the amount of debt due on the note.” *Antezana*, 171 Md. App. at 728. The defendant carries the burden of showing that a meritorious defense exists, but the burden of proof is

relatively low. *Gambo v. Bank of Md.*, 102 Md. App. 166, 185 (1994). Still, the defendant “must adduce evidence in support of his [or her] motion sufficient to persuade the fair and reasoned judgment of an ordinary [person] that there are substantial and sufficient grounds for an actual controversy as to the merits of the case.” *Stankovich v. Lehman*, 230 Md. 426, 432 (1963). The defendant does not need to show that they will ultimately prevail, but “if the evidence is such that persons of ordinary judgment and prudence could fairly draw different inferences from it, the controversy should not be decided as a matter of law but instead should be submitted to a trier of fact.” *Id.* “Although motions to vacate or strike judgments by confession must be supported by satisfactory evidence of defenses supporting the vacation of such judgments, trial judges must assure themselves that improper advantage has not been taken of the maker of the note.” *Garliss v. Key Fed. Sav. Bank*, 97 Md. App. 96, 103–04 (1993) (citing *Remsburg v. Baker*, 212 Md. 465 (1957)). However, the “burden of proof to vacate a confessed judgment is not fulfilled by the mere assertion of a defense.” *Murray v. Steinmann*, 29 Md. App. 551, 559 (1975).

Gedamu fundamentally presents one defense to the confessed judgment: that he owes less under the 2006 and 2007 Notes than was entered against him in the confessed judgment. Facially, this constitutes a meritorious defense to a confessed judgment, because it contests the amount due. *Antezana*, 171 Md. App. at 728. However, Gedamu failed to

meet even the low evidentiary and pleading bar required for motions to open confessed judgments.³

As previously mentioned, a defendant to a confessed judgment seeking to amend such judgment must show that “the evidence is such that persons of ordinary judgment and prudence could fairly draw different inferences from it.” *Stankovich*, 230 Md. at 432. Gedamu presented *no* evidence before the circuit court that supported his broad factual and legal statements that there may have been oral modifications to the Notes. Although Gedamu presents additional facts before this Court, our review is limited to what was before the trial court in his motion to modify. *See Messing v. Bank of Am., N.A.*, 373 Md. 672, 684 (2003) (“Under this standard [for *de novo* review], we review the trial court’s ruling on the law, considering the same material from the record and deciding the same legal issues as the circuit court.”); Md. Rule 8-414(a) (“The [reviewing] court ordinarily may not order an addition to the record of new facts, documents, information, or evidence that had not been submitted to the lower court.”).

The mere assertion that “[Carr] had made modifications to the Promissory note during her lifetime that [Webster] had agreed to honor and had honored for a period of

³ In his opposition to Gedamu’s motion to modify and repeated in his brief in this Court, Webster argued that either or both the parol evidence rule and/or the Dead Man’s Statute, Md. Code (2006, 2020 Repl. Vol.), Courts & Judicial Proceedings § 9-116, would prevent the admission of any evidence that Gedamu could produce to support his defense if the judgment were opened. We do not address these arguments, as we agree with the circuit court that Gedamu “failed to set forth any evidentiary proffers which would be admissible to establish that there is a substantial and sufficient basis for an actual controversy as to the merits of the action as required by Rule 2-611[(d)].”

time,” without more, is not “sufficient to persuade the fair and reasoned judgment of an ordinary [person] that there are substantial and sufficient grounds for an actual controversy as to the merits of the case.” *Stankovich*, 230 Md. at 432. Gedamu produced no evidence of payments made at a date later than the one contained in the 2006 Note, no evidence of a late payment made without the assessment of late fees, nor any evidence that would otherwise indicate either Carr’s or Webster’s agreement to an oral modification. In *Murray v. Steinmann*, this Court held that Murray’s motion to vacate confessed judgment was insufficient. 29 Md. App. at 559. In his motion, Murray asserted that he entered into the contract at issue “based on certain false and misleading statements and representations,” without providing any other details about those statements and representations. *Id.* at 553. Here, Gedamu has offered more than Murray did by providing some alleged facts, but his motion to modify is still insufficient to meet his burden because it lacks any evidence in support of these facts.

Gedamu asserts that, under Rule 2-303 (“Form of Pleadings”), his motion to modify met the pleading standards. Rule 2-303(a) requires that “[a]ll averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances.” Rule 2-303(b) requires that “[e]ach averment of a pleading shall be simple, concise, and direct. . . . A pleading shall contain only such statements of fact as may be necessary to show the pleader’s entitlement to relief or ground of defense.” Although he does not say so outright, Gedamu’s contention regarding Rule 2-303 appears to be that his motion to modify was

necessarily concise and without extraneous information. However, as Rule 2-303(b) states, the statements in a pleading should be limited to “such statements of fact *as may be necessary to show the pleader’s entitlement to relief or ground of defense.*” (Emphasis added.) Gedamu’s motion to modify was concise, but it failed to show his entitlement to relief under Rule 2-611(d) and the standards for opening a confessed judgment.

Gedamu also contends that the circuit court erred in not giving him leave to amend his complaint. This issue is not preserved for our review. Although “nothing in the rule [on allowing amended pleadings] precludes the court from permitting leave to amend on its own initiative,” *Higginbotham v. Pub. Serv. Comm’n of Md.*, 171 Md. App. 254, 276 (2006) (quoting Paul V. Niemeyer & Linda M. Schuett, *Maryland Rules Commentary* 205 (3d ed. 2003)), Maryland appellate courts have made clear that a party must request leave to amend in the circuit court in order to preserve the issue on appeal. *See Bender v. Schwartz*, 172 Md. App. 648, 689 (2007) (finding no error in circuit court’s failure to grant leave to amend where party did not request such leave); *Noellert v. Noellert*, 169 Md. 559, 562 (1936) (declining to disturb sustained demurrer without leave to amend where party did not ask for leave to amend). There is nothing in the record that demonstrates that Gedamu indicated in any way to the circuit court that he wanted leave to amend his motion. As such, we will not disturb the circuit court’s denial of Gedamu’s motion to modify the confessed judgment without leave to amend on the sole ground that the circuit court did not, on its own initiative and without indication that it was desired, give Gedamu leave to amend.

CONCLUSION

For the foregoing reasons, we affirm the circuit court's decision to deny Gedamu's motion to modify the confessed judgment.

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