Circuit Court for Howard County
Case No.: 13-C-15-103505

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 698

September Term, 2016

MUHAMMAD AMIN

v.

SYED W. FARHAT

Arthur,
Shaw Geter,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw Geter, J.

Filed: August 10, 2017

*This is an unreported opinion, and 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 from a complaint for monetary damages in the Circuit Court for Howard County. Appellant Muhammad Amin alleged that appellee Syed W. Farhat had not repaid a loan from November 17, 2009 of $60,000.00. Appellee denied the contention, and instead argued that the loan was for $6,000.00, some of which he had already repaid. After a trial, the court held appellant had not sustained his burden of proof to sufficiently establish the validity of the notes or amounts paid, and, therefore, found for the appellee.

On appeal, appellant presents the following questions for our review:

1. Did the trial court err in disregarding the two notes, the first note partially prepared in Farhat's handwriting and the second note prepared totally in Farhat's handwriting, wherein Farhat on two separate occasions acknowledged the loan to him from Amin was in the amount of $60,000.00?

2. Assuming that the trial court did not err on this issue, did the trial court err in not reaching the conclusion that Farhat was indebted to Amin in at least the amount of $6,000.00, which Farhat acknowledged was the actual amount of the loan which he received?

For the reasons set forth below, we shall affirm the order of the circuit court.

BACKGROUND

On May 12, 2015, appellant Muhammad Amin filed a complaint in the Circuit Court for Howard County, seeking repayment of an alleged $60,000 loan he made to appellee Syed F. Farhat. There are two Notes supporting this loan signed by both parties, one dated November 17, 2009 and one June 3, 2011. Appellant averred appellee did make some payments, but had failed to pay the total amount due.

Appellant simultaneously filed a motion for summary judgment. Appellee filed an answer to the motion for summary judgment, denying appellant's allegations and requested

the court deny the motion for summary judgment. On August 6, 2015, the motion was denied.

A trial on the complaint was held on May 13, 2016. Appellant there testified he gave appellee $60,000.00 in cash, in mostly $100 bills as a loan in 2007. Upon questioning by the court, appellant clarified that he took out a home equity loan in 2006 for $100,000 upon the request of appellee, and, thereafter, lent appellee the $60,000. He took out the loan under the guise of purchasing a gas station, which he testified was actually given to him for free, and that he did not use the line of credit for the gas station. He continued that he refinanced his home later in 2007 because appellee had not repaid the loan, and that, in an attempt to secure repayment from appellee, had appellee sign the Notes in 2009 and 2011.

Appellee, conversely, testified that appellant had loaned him $6,000 in either June or July of 2009. He continued that appellant, thereafter, approached appellee and said he needed the $6,000, and, because appellee could not yet repay the loan, asked him to sign a note for $60,000. Appellee testified appellant planned to use the note to get a loan from a "private party" for 10% of the loan.

Appellee further testified that his brother, Iqbal Syed, had accompanied him to pick up the $6,000 from appellant. Because Iqbal was unavailable the day of trial, appellee proffered his testimony that he had witnessed appellee receive $6,000 from appellant in "mostly [$]100s." Appellee also testified that he had made some payments to appellant, but that when some of his checks bounced, he began repaying in cash. Appellee testified that he repaid appellant $1,800.00.

Muhammad Shoaib, a friend of both parties also testified at the trial. He stated that although he had been a witness to the signing of the 2009 note, he did not actually witness the transfer of any money. Shoaib also testified that he picked up some payments from appellee for appellant.

Both notes, as well as appellant's home equity credit documents and some checks from appellant's loan settlement, were admitted into evidence.

After taking the case *sub curia*, the court, in a memorandum entered May 17, 2016, entered judgment for appellee. The court found that both appellant and appellee's testimonies about the transactions were "confusing." The court finally concluded that appellant had not met his burden of establishing "the validity of the notes, the amounts received by the appellee, the payments made on the notes, and the balance now due," and, therefore, entered judgment in favor of appellee.

This appeal followed.

STANDARD OF REVIEW

Maryland Rule 8-131(c) states

> 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.

DISCUSSION

I. The court did not err in finding in favor of appellee.

Appellant contends the court erred in finding in favor of appellee. He states that the two notes offered into evidence are "unambiguous" and "state absolutely and distinctly, without any reservation or ambiguity, that [appellee] borrowed $60,000." He contends that, given this "absolute clarity," the court erred in allowing appellee to present testimony that the loan had been for a different amount.[1] Appellee, however, argues that the loan was actually for $6,000, and that he and appellant only wrote $60,000 on the note so that appellant "could borrow 10% of [that] amount," to cover the loan until appellee could repay him.

This Court "review[s] the factual findings of the Circuit Court for clear error, observing 'due regard to the opportunity of the trial court to judge the credibility of the witnesses.'" *City of Bowie v. Mie Properties, Inc.*, 398 Md. 657, 676 (2007). "In addition, 'we must consider the evidence in the light most favorable to the prevailing party and decide not whether the trial judge's conclusions of fact were correct, but only whether they were supported by a preponderance of the evidence.'" *Id*. (citing *Colandrea v. Wilde Lake Cmty. Ass'n*, 361 Md. 371, 393-94 (2000) (internal citations omitted)).

[1] Appellant also argues "that the notes in question amount to negotiable instruments." Appellant, however, offers no support or explanation for this contention. "[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal." *Anne Arudnel County v. Harwood Civic Ass'n*, 442 Md. 595, 614 (2015) (citing *Klauenberg v. State*, 355 Md. 528, 552 (1999) (refusing to consider an argument when on statement to that effect was "lumped in" with another argument.)). Therefore, we will not address this argument.

"In Maryland, as in the majority of states, it is the rule, in either breach of contract or tort cases, that the burden of proof is on the plaintiff, or on the party who asserts the affirmative of an issue." *Board of Trustees, Community College of Baltimore County v. Patient First Corp.*, 444 Md. 452, 469 (2015) (internal citations omitted). "The phrase 'burden of proof' encompasses two distinct burdens: the burden of production and the burden of persuasion." *Id.* "The party that bears the burden of production must produce sufficient evidence on an issue to present a triable issue of fact." *Id.* "The burden of persuasion," then, "comes into play only after the parties have sustained their burdens of production and then only if the fact finder finds the evidence supporting each party of equal weight." *Id.*

At the trial in May of 2016, the court heard from both parties, as well as another witness for appellant, Muhammad Shoaib. Appellant testified that he took out a home equity loan in 2006 for $100,000 upon the request of appellee, and, thereafter, lent appellee the $60,000 in 2007. During appellant's testimony, the court questioned him:

> [The Court]: So you're saying that he told you to go get [a] $100,000 loan on your house?
>
> [Amin]: Yes.
>
> [The Court]: Do you do this when anybody tells you to do something like that? If I told you to go get $100,000 loan---
>
> [Amin]: He is [sic] my very good friend at that time.
>
> …
>
> [The Court]: Ok, so you get the $100,000, okay?
>
> [Amin]: Yes.

[The Court]: Ok what do you do with the $100,000?

[Amin]: I give him.

[The Court]: All $100,000?

[Amin]: No. $60,000 he take.

[The Court]: So you gave it to him. Did you write him a check?

[Amin]: No, he say give me cash. I bring from bank.

…

[The Court]: Okay. But your bank records would show – I mean, when the bank gave you $100,000 they gave you a check.

[Amin]: Yes.

[The Court]: And then at some point you take $60,000 out of that account in cash.

[Amin]: Yes.

[The Court]: Okay. And your bank statement would show that you took $60,000 out in cash on a certain date in 2007.

[Amin]: That account is closed.

[The Court]: I know it's closed but would your bank records show that?

[Amin]: Yes. I do it, no problem.

[The Court]: Do you have those bank records here today?

[Amin]: No, not today. I go to bank and I request that again for him.

Appellant, however, did not enter any of the relevant bank records. Shoaib testified only that he had witnessed the signing of the 2009, but had not witnessed appellant give appellee

any money. Appellee, conversely, testified that he had only received $6,000 from appellant.

Appellant had the burden of establishing, not only that they had a note for the loan for $60,000, but that a transfer in funds had occurred. Appellant presented no evidence regarding the amount given by him to appellee, other than his own testimony.

After hearing testimony from both parties, the circuit court consequently held that appellant had failed to meet this burden and establish "the validity of the note, the amounts received by [appellee], the payments made on the note and the balance now due." Furthermore, it found that "[t]he testimony of both [appellant and appellee] about the financial transactions between them was confusing, contradictory and finally lacked full credibility on both sides."

On appeal, we give "'due regard to the opportunity of the trial court to judge the credibility of the witnesses,'" and, considering the evidence in the light most favorable to the prevailing party, we find that the circuit court's holding was not clearly erroneous. *City of Bowie, supra,* 398 Md. at 676.

II. **The court did not err in failing to find that appellee owed appellant $6,000.**

Appellant argues that if we fail to find appellee owed him $60,000, we should find that appellee owed appellant "at least" $6,000. Appellee, however, contends that appellant's complaint below does not request an "alternative amount," and therefore appellant's argument should be denied.

Again, appellant offered no evidence to establish any amount actually paid to appellee other than his own testimony, which the court expressly ruled was confusing and

contradictory. Giving "'due regard to the opportunity of the trial court to judge the credibility of the witnesses,'" and, considering the admittedly scarce evidence in the light most favorable to appellee, we again find that the circuit court's holding was not clearly erroneous. *City of Bowie*, *supra*, 398 Md. at 676.

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