NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE

ARIZONA COURT OF APPEALS

DIVISION ONE

OTTAWA UNIVERSITY, *Plaintiff/Appellee*,

v.

ELIE MAMBOLEO, *Defendant/Appellant*.

No. 1 CA-CV 16-0503
FILED 10-3-2017

Appeal from the Superior Court in Maricopa County
No. CV2014-010846
The Honorable David B. Gass, Judge

AFFIRMED

COUNSEL

Elie Mamboleo, Phoenix
Defendant/Appellant

MEMORANDUM DECISION

Presiding Judge Kenton D. Jones delivered the decision of the Court, in which Judge Jon W. Thompson and Chief Judge Samuel A. Thumma joined.

J O N E S, Judge:

¶1 Elie Mamboleo appeals a judgment entered in favor of Ottawa University (OU) following a jury verdict. For the following reasons, we affirm.

FACTS[1] AND PROCEDURAL HISTORY

¶2 Mamboleo attended academic courses at OU in 2000 and 2001 and paid his tuition using the proceeds from student loans. In October 2010, Mamboleo and OU entered into an agreement establishing a payment plan for Mamboleo's outstanding student loan obligation (the Repayment Agreement). Mamboleo failed to make the agreed-upon payments.

¶3 In October 2014, OU sued Mamboleo alleging breach of the Repayment Agreement and seeking $6,890 plus interest and fees. Mamboleo denied any indebtedness to OU and filed a counterclaim seeking $68,900 in "emotional[], intellectual[] and consequential" damages arising from OU's "willingly and knowingly neglect[ing]" Mamboleo's rights.

¶4 Following a three-day trial, the jury found in favor of OU on all claims. The trial court awarded OU its attorneys' fees and costs and entered final judgment in favor of OU in the total amount of $14,967 plus post-judgment interest accruing at 4.5% per annum. Mamboleo timely

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[1] "We view the facts and all inferences in the light most favorable to sustaining the jury verdict and resulting judgment." *Hyatt Regency Phx. Hotel Co. v. Winston & Strawn*, 184 Ariz. 120, 123 (App. 1995) (citing *Bradshaw v. State Farm Mut. Auto. Ins.*, 157 Ariz. 411, 414 (1988), and *Rhue v. Dawson*, 173 Ariz. 220, 223 (App. 1992)).

appealed, and this Court has jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) §§ 12-120.21(A)(1)[2] and -2101(A)(1).

DISCUSSION

¶5 Mamboleo argues the jury's verdicts, upon which the judgment is based, must be overturned because: (1) the Repayment Agreement "was 'Null and Void' immediately thereafter its signature"; (2) OU's claims were barred by the applicable six-year statute of limitations, *see* A.R.S. § 12-548(A); and (3) he was not awarded damages on his counterclaims.[3]

¶6 Unless resolved by a pretrial motion, the existence and terms of a contract are questions of fact for the jury. *See Firchau v. Barringer Crater Co.*, 86 Ariz. 215, 222 (1959); *Burkett v. Morales*, 128 Ariz. 417, 419 (App. 1981). Where, as here, a party appeals from a general verdict, "it must be assumed that the jury passed upon every material issue of fact presented to them, and that the findings thereon were such as to support the verdict." *Elliott v. Landon*, 89 Ariz. 355, 357 (1961).

¶7 The trial court instructed the jury that OU was required to prove a valid contract existed, Momboleo materially breached the contract, and Mamboleo's breach damaged OU. This standard instruction properly reflects the requirements for a breach of contract claim under Arizona law. *See, e.g., Keg Rests. Ariz., Inc. v. Jones*, 240 Ariz. 64, 75, ¶ 41 (App. 2016). In finding for OU, the jury necessarily found the Repayment Agreement was a valid contract that Mamboleo materially breached. Mamboleo has not shown the contract was null and void and, to the extent he argues the jury should have reached a different result, he asks us to reweigh the evidence, which this Court will not do. *See Anderson v. Nissei ASB Machine Co.*, 197 Ariz. 168, 173, ¶ 14 (App. 1999) (citing *Hutcherson v. City of Phx.*, 192 Ariz. 51, 56 (1998)).

¶8 Additionally, as the appellant, Mamboleo bears the burden to ensure "the record on appeal contains all transcripts or other documents necessary for us to consider the issues raised on appeal." *Baker v. Baker*, 183

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[2] Absent material changes from the relevant date, we cite a statute's current version.

[3] OU did not file an answering brief. Although we could regard this failure as a confession of error, *see* ARCAP 15(a)(2); *Thompson v. Thompson*, 217 Ariz. 524, 526 n.1, ¶ 6 (App. 2008), in our discretion, we decline to do so, *see Nydam v. Crawford*, 181 Ariz. 101, 101 (App. 1994).

Ariz. 70, 73 (App. 1995); *see also* ARCAP 11(c)(1)(B). Mamboleo did not provide any transcripts of the trial, and we therefore presume, in the absence of any evidence to the contrary, the record supports the judgment. *Kohler v. Kohler*, 211 Ariz. 106, 108 n.1, ¶ 8 (App. 2005) (citing *Baker*, 183 Ariz. at 73). On this record, Mamboleo has failed to prove clear error in the jury's findings and verdicts.

¶9 Mamboleo also argues he is entitled to damages arising from OU's purported misconduct. This contention is directly controverted by the jury's verdict finding in favor of OU on the counterclaim. Absent a transcript, we presume that verdict is supported by the record, *see supra* ¶ 8, and find no error.

CONCLUSION

¶10 The judgment in favor of OU is affirmed.