Cite as 2023 Ark. App. 578

# ARKANSAS COURT OF APPEALS

DIVISION I
No. CV-23-140

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| SCOTT THOMASON<br>APPELLANT<br><br>V.<br><br>THOMASON INVESTMENTS, LLC; AND MARY ANNE THOMASON<br>APPELLEES | Opinion Delivered December 13, 2023<br><br>APPEAL FROM THE BOONE COUNTY CIRCUIT COURT [NO. 05CV-18-424]<br><br>HONORABLE ELLEN BRANTLEY, JUDGE<br><br>AFFIRMED |

**RAYMOND R. ABRAMSON, Judge**

Scott Thomason appeals the order entered by the Boone County Circuit Court following a bench trial. On appeal, Scott argues that the circuit court erred by entering a judgment against him because (1) Thomason Investments did not have standing and was not the real party in interest, and (2) the evidence does not support the judgment. We affirm.

This case involves a dispute between family members. Scott Thomason and Todd Thomason are brothers. Todd is the managing member of Thomason Investments, LLC (Thomason Investments). Mary Anne Thomason[1] is Scott's daughter.

[1]The record includes different spellings of Mary Anne. For consistency, we use the spelling from the latest complaint (Mary Anne) unless we are quoting from the record that contains an alternative spelling.

On February 9, 2022, Thomason Investments filed an amended complaint against Scott alleging that Scott did not pay a promissory note. Specifically, it alleged that on March 13, 2009, Scott executed a promissory note for $65,249.69 with an interest rate of 10 percent per annum with Thomason Investments. Thomason Investments further alleged that on June 10, 2009, Scott executed a replacement promissory note for "$89,594.69, with an interest rate of 10% per annum, in installments payable upon request, in five-year terms for a total of 20 years." Thomason Investments alleged that Scott failed to pay the note, and it requested "$89,594.69 together with accrued interest of $115,401.08, $24.55 per diem, with the aforementioned continuing to accrue until paid" and reasonable attorney's fees.

Thomason Investments attached a copy of the June 2009 replacement note. The replacement note states, "This note replaces note dated March 13-09 in the amount of 65,249.69." The note further states that Scott promises to pay to the order of "Mary Ann Thomason or c/o Thomason Investments, LLC." Thomason Investments, however, did not attach the March 2009 note, and it alleged that the note is presumed destroyed or in the wrongful possession of Scott or a third party. It claimed that in March 2012, Scott entered Todd's residence and unlawfully removed the March 2009 promissory note.

On March 2, 2023, the court held a bench trial. At the beginning of the trial, the parties stipulated to the existence of the March 2009 promissory note without providing the original note. The parties submitted to the court the issue of the validity of Scott's signature on the replacement note.

Todd testified that in 2009, Scott approached him and asked for financial assistance due to a foreclosure. Todd explained that he had previously funded an account for Scott's daughter Mary Anne, and the account had a $90,000 balance.[2] So he decided to loan Scott Mary Anne's money. He further explained that he "took Maryanne's money" and "put it into Thomason Investments." He testified that Scott signed the promissory notes at Todd's home on March 13 and June 10, 2009, and that he wrote five checks.

Todd introduced copies of five checks from Todd Thomason, Thomason Investments, totaling $89,594.69. Two checks are dated March 13, 2009, and the other checks are dated April 13, April 29, and June 10, 2009. One of the March 13 checks is written to "FNB," and the other four checks are written to Scott. Todd testified that he wrote the first check to "FNB" because he wanted "to be sure that it would stop the foreclosure." He explained that "FNB" is "First National Bank."

Mary Anne testified that in 2018, Todd showed her a copy of the promissory note. She stated that she confronted Scott about it, and he stated that he burned the note. Mary Anne also testified that Scott later told her that he was planning to sell property to "set things right."

Dr. Dawn Phillips testified as a handwriting expert for Thomason Investments. She explained that she compared Scott's signatures on public records to the signature on the

[2]Todd funded the account on their father's dying request to care for Scott and his family.

replacement note. She stated that the signature on the replacement note is Scott's legitimate signature and that there is no indication of forgery.

Scott testified and denied signing the promissory notes. He also denied burning the March 2009 promissory note, but he acknowledged telling Mary Anne that he destroyed it. He stated that he was "hungry and tired" and said "the first thing that came to [his] mind."

Joseph Lucas testified as a handwriting expert for Scott. He also compared Scott's known signature to the June 2009 replacement promissory note. He testified that the signature is a forgery.

During the trial, Scott moved to dismiss the complaint, arguing that "the proper party to bring this action is not Todd Thomason" and that "the real party in interest is Maryanne Thomason." He argued that the testimony showed that the money belonged to Mary Anne, and he stated that "today is when we realized that the consideration was Maryanne Thomason's to give not Thomason Investments." The court took the motion under advisement. The parties then had conversations off the record.

Thereafter, Thomason Investments informed the court that the parties had come to an agreement, and it moved "to keep the record open in order to add Ms. Maryanne Thomason as a party." The court then stated, "So what you're saying is, you'll finish the trial today . . . [t]hen you will give her the opportunity to join as a Plaintiff, and then we'll have a decision." Thomason Investments' attorney replied, "And as I understand it, just to be clear, I want us all to be on the same page, and I think we are. Which is if Ms. Maryanne Thomason

is added as a party, their motion earlier would be moot." Scott's attorney responded, "That's correct."

At the conclusion of trial, the court stated,

> Well, I think I indicated that I would just give some preliminary findings, but I understand. I can't round this up until we determine whether or not Maryanne Thomason wishes to join this plaintiff. . . . So I am likely to find that, in fact, Scott Thomason did sign the document. Now, if Maryanne joins, that makes it a little bit simpler. If she doesn't join, even though I am likely to find that Scott signed the document, there is a question of whether or not this note would entitle Thomason Investments to collect on it because of the fact that it says it to Maryanne or Care of Thomason Investments. So I don't really know what that means. So I think that the best thing to do is to say within—today is March the 16th and by April the 4th, which I think is a Monday, Maryanne Thomason shall decide whether or not she is going to proceed in this suit. And if she does, I will render an opinion. And if she doesn't then we will have to have some further, not court, but let you all argue or brief the issue of what does it mean to say or care of Thomason Investments.

Following the trial, on March 28, Thomason Investments filed a second amended complaint adding Mary Anne as party. On April 1, Thomason Investments moved to join Mary Anne to the action. The motion states, "At trial, upon agreement and stipulation Plaintiff's counsel and Defendant's counsel, the parties agreed that this matter could be continued, with the record being held open for purposes of joining Mary Anne Thomason a/k/a Marry Ann Thomason as a Plaintiff." On that same day, the court granted the motion to join, and it noted the parties' agreement.

On November 8, the court entered an order. The court found that Scott signed the promissory note, and it credited Thomason Investments' handwriting expert. The court therefore entered a personal judgment against Scott "in favor of Mary Anne" for $89,594.69 with interest of 10 percent per annum beginning on June 10, 2009. This appeal followed.

Following a bench trial, our standard of review asks whether the circuit court's findings were clearly erroneous or clearly against the preponderance of the evidence. *See Hartness v. Nuckles*, 2015 Ark. 444, 475 S.W.3d 558. A finding is clearly erroneous when, although there is evidence to support it, the reviewing court, considering all the evidence, is left with the definite and firm conviction that a mistake has been committed. *Kitchens v. City of Fort Smith*, 2023 Ark. App. 408, 675 S.W.3d 884. Disputed facts and determinations of witness credibility are within the province of the trier of fact. *Id.* For questions of law, our review is de novo. *See Gulfco La., Inc. v. Brantley*, 2013 Ark. 367, 430 S.W.3d 7.

On appeal, Scott first argues that the circuit court erred in entering the judgment because Thomason Investments was not the real party in interest and did not have standing to bring suit. He argues that "[w]hoever is the property owner has standing and is the real party in interest." He asserts that the evidence reflected that the money belonged to Mary Anne, and she is therefore the real party in interest. He complains that she was not added as a party until after the trial had concluded. [3]

However, at trial, Scott stipulated to Thomason Investments' adding Mary Anne as a party, and he agreed that the stipulation would moot his motion to dismiss. Parties are bound by their stipulation and should not be heard on appeal to assert an argument that is contrary to it. *Pike v. Spradlin*, 2009 Ark. App. 392. We further point out that the court

[3]Scott's argument on appeal is difficult to follow. He conflates the issues of standing and real party in interest.

entered the judgment against Scott "in favor of Mary Anne Thomason," not Thomason Investments. Accordingly, we find no reversible error on this point.[4]

Scott additionally argues that the evidence is insufficient to support the judgment. He argues that the circuit court erred by finding that Scott's signature on the replacement promissory note was genuine. He relies on his expert witness's testimony that the signature on the replacement note is a forgery, and he also points out that Thomason Investments offered no evidence that he unlawfully removed the note from Todd's home. Scott's argument is an invitation to reweigh the evidence presented and make credibility determinations in his favor, which we cannot do on appeal. *Kinard v. Kinard*, 2023 Ark. App. 96, 661 S.W.3d 253. Accordingly, we find no error by the circuit court. We therefore affirm the judgment.

Affirmed.

WOOD and HIXSON, JJ., agree.

*Robert S. Tschiemer*, for appellant.

*Cullen & Co., PLLC*, by: *Tim Cullen*, for appellees.

[4]Scott claims that this court can consider standing for the first time on appeal. He is incorrect. The supreme court has held that standing is not akin to subject-matter jurisdiction. *Gildehaus v. Ark. Alcoholic Beverage Control Bd.*, 2016 Ark. 414, at 5 n.1, 503 S.W.3d 789, 793 n.1 (citing *Chubb Lloyds Ins. Co. v. Miller Cnty. Cir. Ct.*, 2010 Ark. 119, 361 S.W.3d 809). It is a defense that may be waived by the parties. *Id.*