NOT DESIGNATED FOR PUBLICATION

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA08-192

JOSE CONTRERAS, APPELLANT V. EDUARDO RAMOS, APPELLEE	**Opinion Delivered** 17 DECEMBER 2008 APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT [NO. CV2006-7185] THE HONORABLE JAMES MOODY JR., JUDGE AFFIRMED

D.P. MARSHALL JR., Judge

After working together to re-open Jose's Club Latino at a new location, Eduardo Ramos and Jose Contreras fell out. Ramos claimed that he and Contreras acted as business partners in re-opening the club. According to Ramos, Contreras wanted to own the club alone and sought to buy him out. The parties therefore agreed, said Ramos, that Contreras would pay him $79,000.00 for his interest in the club, and Contreras signed a promissory note confirming his obligation. Contreras told a different story. He had owned and operated Jose's at two other locations in Little Rock. He said that the two men were never business partners. Contreras maintained that he had merely hired Ramos to renovate a new location for the club and agreed to pay no more than $35,000.00 for the job.

Ramos sued Contreras to collect the $79,000.00 note. After a bench trial, the circuit court found that Contreras had broken his contract with Ramos. It awarded Ramos $79,000.00, minus $2,500.00 that Contreras had already paid. The court also awarded some attorney's fees, pre-judgment interest, and litigation costs. Neither of the parties asked the circuit court to make findings of fact, and the court made none. Contreras appeals, not challenging the damage award itself, but the court's application of the parol-evidence rule. Ramos has not filed a brief on appeal.

During his bench ruling, the circuit judge made the following statement:

> [I]t's my understanding that parol—with regard to the parol evidence rule, no conversation or negotiations prior to the entry of the contract are admissible to alter the terms of the contract. The exception to that is in the event that there is fraud in the inducement of signing the contract. The only parol evidence that I am going to consider would be offered for that purpose, just so the record is clear.

Contreras argues that the circuit court erred by applying the parol-evidence rule because no written contract existed between the parties. But he waived this argument because he invited the error that he now complains about. At trial, Contreras's lawyer asked the court to apply the rule.

> My objection is this. Your Honor, if this is a contract, as so far as they have suggested, the parol evidence rule applies. If this is a promissory note, it hasn't been pled as a promissory note and breach thereof. So I need clarification.
>
> I object to any testimony about a promissory note in this case because it hasn't been pled as a promissory note. And I object to any testimony surrounding the contract because the parol evidence [rule] applies, and

the contract speaks for itself.

Later, when the court announced that it was applying the rule, Contreras made no objection. An appellant may not assert error in the trial court's action if he agreed to it. *Harness v. Arkansas Public Service Commission*, 60 Ark. App. 265, 273, 962 S.W.2d 374, 377 (1998). Contreras invited the application of the parol-evidence rule; he thus cannot assert error in the circuit court's acceptance of his invitation.

On the merits of Contreras's argument, the judgment must still be affirmed. It is clear to us that the circuit court considered parol evidence in deciding this case.

First, the judge said that he would consider parol evidence offered to prove fraud in the inducement. Contreras alleged that he could not read or speak English proficiently and that, though he signed a promissory note, he did not understand what the note obligated him to do. Contreras further claimed that he never intended to promise to pay Ramos $79,000.00. Finally, Contreras alleged that the attorney, in whose office he signed the note, told Contreras that he would not be obligated to pay $79,000.00. Contreras was attempting to show that he was fraudulently persuaded to sign the note—a purpose for which the circuit court said it would consider parol evidence. Ramos offered countervailing proof about a third-party interpreting the note for Contreras and about the parties' various meetings haggling over the amount to be paid. In the wake of all this parol evidence, the court implicitly rejected Contreras's fraudulent-inducement defense.

Second, the court could not have determined that a contract existed, and that a breach occurred, if it had not considered some parol evidence. The only written evidence of a contract was the promissory note, which was vague about consideration and the parties' mutual obligations—both essential elements of a valid contract. *Simmons v. Simmons*, 98 Ark. App. 12, 15, 249 S.W.3d 843, 846 (2007). We are therefore convinced that, contrary to the circuit judge's closing statement, he considered some testimony about the parties' pre-note dealings in reaching his conclusion that the parties had an enforceable agreement. And we see no clear error in the circuit court's resolution of the dispute. Contreras testified that he and Ramos had an agreement. Contreras claimed, however, that his liability was capped at less than the face amount of the note. This case was thus nothing more than a swearing match about how much Contreras owed Ramos. The parties presented directly conflicting evidence on this point. "Where there are two permissible views of the evidence, the fact-finder's choice between them cannot be clearly erroneous." *Rymor Builders, Inc. v. Tanglewood Plumbing Company, Inc.*, 100 Ark. App. 141, 147, 265 S.W.3d 151, 155 (2007).

Affirmed.

ROBBINS and VAUGHT, JJ., agree.