MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Patrick B. McEuen
McEuen Law Office
Portage, Indiana

IN THE COURT OF APPEALS OF INDIANA

Brian Meyer,
Appellant-Defendant,

v.

Thomas Meyer, Personal Representative of the Estate of Laverne Meyer,
Appellee-Plaintiff

January 18, 2023

Court of Appeals Case No. 22A-PL-1677

Appeal from the Jasper Circuit Court

The Honorable John D. Potter, Judge

Trial Court Cause No. 37C01-1902-PL-187

Crone, Judge.

Case Summary

[1] Thomas Meyer, the personal representative of Laverne Meyer's estate, filed a petition to collect the outstanding debts of Laverne's son Brian. After a hearing, the trial court entered judgment against Brian for $27,828.81. On appeal, Brian argues that he owes the estate only $5,292.12 and that Thomas failed to establish that he promised to repay the balance to Laverne. We agree, so we reverse and remand.

Facts and Procedural History[1]

[2] Laverne died in October 2017, and his son Thomas, Brian's brother, was appointed personal representative of his estate. In February 2019, Thomas filed a petition alleging that Brian "had a mutual, open, and current account" with Laverne "upon which he owed $44,751.08[,]" including $2,000 for a promissory note executed in October 2015. Appellant's App. Vol. 2 at 16. Thomas requested "the principal sum of $2,000.00 on the note plus 15% interest per annum, $150 in late fees, plus attorney fees, all as provided in the Note[,]" as well as "recovery of the account balance of $42,751.08 plus interest provided by law at 8%." *Id*.

[3] In June 2022, after a hearing, the trial court issued an order in which it found that Brian owed the estate a total of $5,292.12 on the promissory note,

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[1] We remind Brian's counsel that an appellant's statement of facts "should be a concise narrative of the facts stated in a light most favorable to the judgment and should not be argumentative." *Ruse v. Bleeke*, 914 N.E.2d 1, 5 n.1 (Ind. Ct. App. 2009).

including late fees, interest, and reasonable attorney fees. The court also found as follows:

> [Thomas] introduced a list of monies and debts [totaling $31,346.29] paid by [Laverne] on behalf of Brian Meyer as Plaintiff's Exhibit 4. The list was shown to [Thomas] prior to [Laverne's] death by [Laverne] to specifically show the money owed. It is clear that [Laverne] considered these amounts loaned monies to be repaid as he wrote them off of his taxes as non-business debt for five years at the rate of $3000.00 against ordinary income. Some of the amounts on that list are not attributable to Brian Meyer and he should not owe some of those items to the Estate of Laverne Meyer[, including $7,500 that Laverne paid to Thomas in February 2010 to reimburse him for a payment that Thomas made to Brian].
>
> There were other disputed charges including the 2/15/10 tractor repair from Castognia's John Deere for a tractor being used by someone other than Brian Meyer in the amount of $1274.60. Additionally, there is an entry for $35.00 for [Brian's son and an unknown third party] on 10/6/10. Of the $31,346.29 claimed by [Thomas] $8,809.60 are not owed by Brian Meyer. The maximum amount owed by Brian Meyer from [Laverne's] loans to Brian Meyer is $22,536.69.

Appealed Order at 2-3. The court denied Thomas's request for additional attorney fees and entered judgment against Brian for $27,828.81. Brian filed a motion to correct error, which was denied. This appeal followed.

Discussion and Decision

[4] Brian does not dispute that he owes the estate $5,292.12 on the promissory note, but he does challenge the trial court's finding that he owes the remaining

$22,536.69. Where, as here, a trial court enters findings sua sponte, we typically review "issues covered by the findings with a two-tiered standard of review that asks whether the evidence supports the findings, and whether the findings support the judgment." *Kakollu v. Vadlamudi*, 175 N.E.3d 287, 295 (Ind. Ct. App. 2021), *trans. denied*. "Any issue not covered by the findings is reviewed under the general judgment standard, meaning a reviewing court should affirm based on any legal theory supported by the evidence." *Id*. Thomas has not submitted an appellee's brief, so we may reverse the trial court if Brian's brief presents a case of prima facie error. *Hahn-Weisz v. Johnson*, 189 N.E.3d 1136, 1140-41 (Ind. Ct. App. 2022). In this context, prima facie error means on first appearance, at first sight, or on the face of it. *Id*. at 1141. "This less stringent standard of review 'relieves [us] of the burden of controverting arguments advanced in favor of reversal where that burden properly rests with the appellee.'" *Id*. (alteration in *Hahn-Weisz*) (quoting *Jenkins v. Jenkins*, 17 N.E.3d 350, 352 (Ind. Ct. App. 2014)). "We are obligated, however, to correctly apply the law to the facts in the record in order to determine whether reversal is required." *Id*.

[5] The gist of Brian's argument is that neither Plaintiff's Exhibit 4 nor any other evidence presented at the hearing established that he promised, either expressly or impliedly, to repay Laverne the $22,536.69 at issue, and therefore the trial court erred in finding him liable for those alleged debts. We must agree.

[6] The trial court resolved the issue under a loan theory, which Thomas did not allege in his petition. In any event, under this theory, Thomas bore the burden

of proving that Laverne provided money to Brian "temporarily on condition of repayment[.]" *Lend*, Black's Law Dictionary (11th ed. 2019). Stated differently, Thomas bore the burden of proving that Brian promised to repay the money that Laverne provided him. The bare-bones list in Plaintiff's Exhibit 4, entitled "BILLS PAID ON BEHALF OF BRIAN MEYER BY LAVERNE & NANCY MEYER," does not satisfy this burden. Ex. Vol. at 18. Nor does the evidence that Laverne wrote off some of the alleged debts on his taxes. In fact, Brian points out that Laverne's accountant acknowledged that he could not "speak to whether there was any documentation showing the understanding of the recipients of those funds that they were due back." Tr. Vol. 2 at 20. In sum, Brian has made a prima facie showing that the loan theory is a nonstarter.

[7] In his petition, Thomas alleged that the monies were owed under an open account theory, but Plaintiff's Exhibit 4 establishes that this theory is inapposite because there was no reciprocity of dealing between Laverne and Brian. *See Sollers Point Co. v. Zeller*, 145 N.E.3d 790, 799 (Ind. Ct. App. 2020) (emphasis in *Sollers Point*) (quoting 1 Am. Jur. 2d *Accounts and Accounting* § 5) ("For a mutual and open account to exist, there must be a mutual relationship, that is, there must be reciprocity of dealing. A mutual open account is an open account where there are items debited and credited on both sides of the account rather than simply a series of transactions always resulting in a debit to one party and a credit to the other party; each party to a mutual account occupies both a debtor and a creditor relation with regard to the other party. *Thus, an account is generally not considered mutual if all the items are on one side.*"). Or, as Brian

succinctly puts it, "all transactions on this alleged 'open account' are [on] one (1) side of the ledger." Appellant's Br. at 15.

[8] Finally, Brian admits the possibility that we could affirm the trial court based on an account stated theory, but he points out that this theory also lacks any support in the record. "An account stated is an agreement between the parties that all items of an account and balance are correct, together with a promise, express or implied, to pay the balance." *Jackson v. Trancik*, 953 N.E.2d 1087, 1091 (Ind. Ct. App. 2011). "An agreement that the balance is correct may be inferred from delivery of the statement together with the account debtor's failure to object to the amount of the statement within a reasonable time." *Id*. Brian observes that "the record is devoid of any evidence" that Laverne ever delivered Plaintiff's Exhibit 4 to him or that he ever expressly or impliedly promised to pay the balance. Appellant's Br. at 12. At the hearing, Brian acknowledged that he saw the exhibit on Laverne's computer in 2015, but he argues, and we agree, that this acknowledgement, without more, falls well short of establishing the existence of an account stated. Accordingly, we reverse and remand with instructions to reduce the judgment against Brian to $5,292.12, which is the uncontested amount owed on the promissory note.

[9] Reversed and remanded.

May, J., and Weissmann, J., concur.