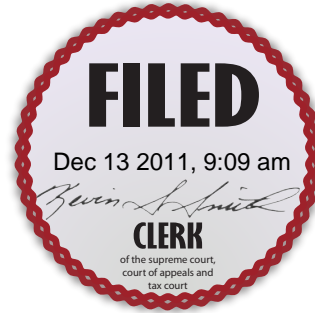


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEY FOR APPELLEE:

MACARTHUR DRAKE
Gary, Indiana

TRENT A. MCCAIN
McCain Law Offices, P.C.
Merrillville, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

ALMAZ M. WHYTE,
Appellant-Defendant,

vs.

SAM CHRISTIE,
Appellee-Plaintiff.

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No. 45A05-1010-SC-749

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Julie N. Cantrell, Judge
The Honorable Michael N. Pagano, Magistrate
Cause No. 45D09-1003-SC-1031

December 13, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Almaz M. Whyte appeals the small claims court's judgment in favor of Sam Christie and against Whyte in the amount of \$5,250 for the balance due on a verbal loan agreement made between the parties.

We affirm.

ISSUE

1. Whether the small claims court erred by concluding that Christie had standing to file a claim for money he borrowed from third parties to loan to Whyte.
2. Whether the small claims court erred by concluding that Christie's claim was filed within the six-year statute of limitation.
3. Whether the evidence was sufficient to support the small claims court's judgment against Whyte for \$5,250.

FACTS

Christie and Whyte's late-husband, both of whom were from Jamaica, were associates and long-time friends. In December 2003, Whyte's adult son, Keith, was in jail in Chicago. Whyte discussed with Christie the fact that she did not have enough money for bail. Christie agreed to help Whyte obtain the necessary funds to bail Keith out of jail before Christmas. Christie did not have cash available, so he gave Whyte a check for \$10,000 from his American Express line of credit. After the bank would not cash the check, Christie informed Whyte that he would get cash advances on some of his other credit cards and would try to obtain funds from other associates of her late husband. There is no evidence that Whyte objected to the manner in which Christie was going to obtain the funds.

On December 22, 2003, Christie took out two cash advances from his credit cards, totaling \$5,500, and contacted Carl Jones, Lincoln Donaldson, and Dr. Eugene Bentley, who all agreed to loan some money for Keith's bail. Christie then borrowed \$3,000 from Jones and \$2,500 from Dr. Bentley,¹ added his own \$5,500 from the cash advances, and then gave the \$11,000 to Whyte as a loan for Keith's bond.² Whyte agreed that she would pay back the money once the bail bond was satisfied and the bond released. Christie and Whyte did not put anything in writing regarding the loan amount or terms.

Whyte did not use the released bond funds to reimburse Christie.³ However, between March 2004 and December 2005, Whyte made five payments to Christie totaling \$5,750. Specifically, in March 2004, Whyte gave Christie her first loan payment in the amount of \$2,500.⁴ She then made payments to Christie for \$500 on March 10, 2005 and \$1,000 on July 2, 2005.⁵ Whyte's next payment came in the form of a \$750 credit to Christie in exchange for the rental use of her Jamaican villa.⁶ Whyte made another

¹ Dr. Bentley, who was located in Washington D.C., sent a check, which was made payable to Whyte, to Christie who then gave the check to Whyte.

² After Keith had already been released on bond, Donaldson gave Christie \$2,500, which Christie applied to offset one of his credit card cash advances.

³ The bond funds were used to pay Keith's attorney's fees.

⁴ For Whyte's first payment, Christie directed her to make her \$2,500 check payable to Donaldson to reimburse him for his contribution. After receiving the check from Whyte, Christie gave the check to Donaldson.

⁵ These payments were made via cashier checks payable to Christie.

⁶ For this payment, Christie received a check from a Canadian associate who had rented Whyte's Jamaican villa in July 2005.

payment of \$1,000 to Christie on December 22, 2005.⁷ Thereafter, Whyte did not make any further payments.

From the payments Christie received from Whyte, he paid Jones back the \$3,000 Jones had loaned to Christie. From 2006 through 2009, whenever Christie saw Whyte, he asked her about the remainder of the loan owed, but he never received any additional payments. In March 2010, Christie filed a notice of claim with the small claims court. He alleged that he loaned \$11,305⁸ to Whyte; that Whyte had made payments totaling \$5,750; that she had made her last payment on December 22, 2005; and that she, therefore, owed him \$5,555.

The small claims court held a bench trial on July 15, 2010. During the trial, both parties testified that Christie had loaned Whyte money to help her bail her son out of jail, but they disputed the total amount of the loan. Christie testified that he had loaned Whyte \$11,000, while Whyte testified that Christie had loaned her only \$5,500 and that she had paid it back. As a defense, Whyte argued that Christie did not have standing to seek money on behalf of a third party such as Dr. Bentley, who had made his check payable to Whyte. Christie, however, argued that he had borrowed the money from Dr. Bentley to loan to Whyte and that Whyte knew that some of the money that she was to receive was to come from loans from third parties. The small claims court summarized Christie's argument as follows: "So the long and the short, you're saying, it's just a

⁷ This payment was made via a cashier check payable to Christie.

⁸ In addition to the \$11,000 loan, Christie included \$305 for cash advance fees and interest from his credit cards.

simple contract from start to finish that [Whyte] knew the money was coming from other places and that [Christie] was gonna be on the hook as the middle-man[.]” (Tr. 90). Whyte also initially raised a statute of limitation defense; but, upon questioning by the small claims court, her attorney clarified that Whyte was actually raising the defense of accord and satisfaction. Specifically, Whyte argued that the defense of accord and satisfaction barred Christie’s claim against her because she had already repaid him the \$5,500 that he personally loaned her.

The small claims court took the matter under advisement and, thereafter, issued its judgment in favor of Christie and against Whyte in the amount of \$5,250. The court’s order provided, in relevant part:

This case arises out of an unwritten loan agreement. The court would first note that the absence of a writing to support the specifics of the loan significantly hinders the court’s ability to determine the specifics of the agreement. This is compounded by the fact that the court found all the witnesses to be credible. Thus, the court attributes discrepancies in their testimony to memory degradation and differing perspectives. In light of this and the fact that [Christie] bears the burden of proof, the court makes the following factual findings and legal conclusions.

In December 2003, [Whyte’s] son Keith was incarcerated in Illinois. [Whyte] contacted [Christie] who indicated he would help [Whyte] obtain the necessary funds to bail Keith out of jail. [Whyte] was aware that [Christie] would be seeking funds from third parties that would have to paid back although she was never advised of the specifics as to where or how [Christie] obtained the money he provided to her. The court would further note that Plaintiff had been a long time friend of [Whyte] and her deceased husband.

* * * * *

[Christie] urges that, via cash advances he secured from Mr. Carl C. Jones, Dr. Eugene Bentley, Mr. Lincoln Donaldson and from his own funds, totals \$11,305.00; this amount includes finance charges. [Whyte] urges she received only \$5500.00 from [Christie] and that more than this amount has been paid back.

First, the court is not satisfied that [Christie] has carried his burden of proof regarding finance and other charges. As such, this reduces the amount that can be claimed by [Christie] to \$11,000.00. However, the court is satisfied that, on this set of facts, [Christie] has standing to claim monies potentially owed to third-parties because he is personally liable to those individuals for reimbursement. Moreover, the court is satisfied that [Whyte] is mistaken with regard to the amount of money she received from [Christie]. Giving credit to [Whyte] for the payments and “value” exchanged already, results in [Whyte] owing [Christie] an additional \$5250.00. Judgment shall enter accordingly.

(App. 9-10).

Whyte then filed a motion to correct error, arguing that: (1) the court had erred by concluding that Christie had standing to claim monies owed to third parties because he was personally liable to the third parties for reimbursement; and (2) the evidence was insufficient to support the judgment. Whyte also requested a stay of the proceedings supplemental. The small claims court held a hearing and denied Whyte’s motion to correct error. After Whyte filed a notice of appeal, the small claims court granted Whyte’s motion to stay proceedings supplemental pending appeal upon posting an appeal bond in the amount of the judgment. Additional facts will be provided as necessary.

DECISION

Whyte appeals the judgment entered against her by the small claims court.

Judgments in small claims actions are “subject to review as prescribed by relevant Indiana rules and statutes.” Ind. Small Claims Rule 11(A). Under Indiana Trial Rule 52(A), the clearly erroneous standard applies to appellate review of facts determined in a bench trial with due regard given to the opportunity of the trial court to assess witness credibility. This “deferential standard of review is particularly important in small claims actions, where trials are ‘informal, with the sole objective of dispensing speedy justice between the parties according to the rules of substantive law.’” *City of Dunkirk Water & Sewage Dep’t v. Hall*, 657 N.E.2d 115, 116 (Ind. 1995) (quoting S.C.R. 8(A)). But this deferential standard does not apply to the

substantive rules of law, which are reviewed de novo just as they are in appeals from a court of general jurisdiction.

Trinity Homes, LLC v. Fang, 848 N.E.2d 1065, 1067-68 (Ind. 2006).

1. Standing

Whyte first argues that the small claims court erred by concluding that Christie had standing.

“Standing is a judicial doctrine which focuses on whether the complaining party is the proper party to invoke the court’s jurisdiction.” *Shourek v. Stirling*, 621 N.E.2d 1107, 1109 (Ind. 1993). “[T]he general rule is that only those persons who have a personal stake in the outcome of the litigation and who show that they have suffered or were in immediate danger of suffering a direct injury as a result of the complained-of conduct will be found to have standing.” *St. Mary’s Med. Ctr., Inc. v. McCarthy*, 829 N.E.2d 1068, 1072 (Ind. Ct. App. 2005), *reh’g denied*. “Absent this showing, complainants may not invoke the jurisdiction of the court.” *Id.* (citation and internal quotations omitted).

Whyte contends that Christie failed to show any personal stake or injury because the evidence revealed that the check Dr. Bentley sent to Christie was made payable to Whyte. Christie argues that “[t]he impact of unpaid debts owed by Whyte to Christie should be considered no more or less damaging to Christie whether he received funds from a bank, a friend, or from his own personal checking account or credit card.” Christie’s Br. at 4-5.

Although the record suggests that the check Dr. Bentley sent to Christie was made payable to Whyte, the evidence in the record also reveals, and the small claims court

concluded, that it was Christie who contacted and borrowed the money from Dr. Bentley and, thus, had standing to bring his claim for monies loaned to Whyte. Specifically, the small claims court determined that Christie “ha[d] standing to claim monies potentially owed to third-parties because he is personally liable to those individuals for reimbursement.” (App. 10). In other words, the small claims court based its conclusion that Christie had standing on its finding of fact that Christie had borrowed money from third parties to loan to Whyte.

The evidence at trial supports the trial court’s factual determination. At trial, the parties did not dispute the fact that Christie had loaned money to Whyte to bail her son out of jail; the main dispute was regarding the amount of the loan personally owed to Christie. Christie testified that the total loan amount was \$11,000, while Whyte testified that it was \$5,500. The record reveals that Christie did not personally have enough cash to loan to Whyte so he took cash advances from his credit cards and borrowed additional money from others—specifically, Jones, Donaldson, and Dr. Bentley—so he could gather enough money to loan to Whyte. Christie told Jones, Donaldson, and Dr. Bentley, who were friends of Whyte’s late husband, the reason why he sought money from them. Almost immediately, Jones and Dr. Bentley sent their respective funds to Christie,⁹ who then delivered them, along with his own funds, to Whyte.

⁹ Jones—who was in Gary where Christie lived—gave cash to Christie, while Dr. Bentley—who was in Washington D.C.—sent a check to Christie.

Because the evidence reveals that Christie loaned Whyte a total of \$11,000, some of which he borrowed money from Jones, Donaldson, and Dr. Bentley, the small claims court did not err by concluding that Christie had standing to file a claim.

2. Statute of Limitation

Whyte also argues that the trial court erred by not dismissing Christie's claim as filed beyond the six-year statute of limitation.

As the loan at issue in this case was an unwritten agreement for the payment of money, the applicable statute of limitation was six years. Ind. Code § 34-11-2-7 (explaining that a cause of action for "[a]ctions on accounts and contracts not in writing" must be commenced within six years after the cause of action accrues).

Whyte argues that Christie's cause of action, which was filed in March 2010, was untimely because the six-year statute of limitation began to run when Keith was released from jail on bond in December 2003 and Christie's action was filed more than six years after Keith's release on bond.

Whyte, however, has waived any argument regarding the statute of limitation because her attorney conceded the issue at trial. *See McGill v. Ling*, 801 N.E.2d 678, 687 (Ind. Ct. App. 2004) ("Generally, a party may not raise an issue on appeal that was not raised to the trial court[.]"), *trans. denied*. During final arguments of the bench trial, Whyte's attorney conceded that that statute of limitation began to run in December 2005 when Whyte made her last payment to Christie and that Christie had until 2011 to file his claim as follows:

BY [WHYTE'S] ATTORNEY []: . . . I also believe that we have a statute of limitations problem here, Judge.

BY THE COURT: And how so? Isn't it - - Let's say it's a verbal contract. It's six years from the breach, right?

BY [WHYTE'S] ATTORNEY []: Correct.

BY THE COURT: Well, and technically, the breach would have been as soon as payments stopped in '05. Wouldn't they have until '11 to file?

BY [WHYTE'S] ATTORNEY []: That is correct, Judge.

BY THE COURT: Okay. Unless I [am] missing something.

BY [WHYTE'S] ATTORNEY []: No. No.

BY THE COURT: I'm asking. I'm not telling.

BY [WHYTE'S] ATTORNEY []: Yeah, that's true, Judge, that, uh, the law - - Indiana Law 34-1-2-1^[10] says that - -

* * * * *

BY [WHYTE'S] ATTORNEY []: says that, uh, the statute of limitations for contracts not in writing is six years.

BY THE COURT: Okay.

BY [WHYTE'S] ATTORNEY []: That is correct. However, our argument is that since the loan was satisfied, as it relates to this particular plaintiff [Christie], that - -

BY THE COURT: Uh-huh.

BY [WHYTE'S] ATTORNEY []: - - for him to now come back five years later, we believe that, uh, - -

BY THE COURT: Accord and satisfaction.

BY [WHYTE'S] ATTORNEY []: - - there's accord and satisfaction as it relates to [Christie].

¹⁰ The statute cited by Whyte's attorney was repealed in 1998. The statute of limitation for contracts not in writing is now found at Indiana Code section 31-11-2-7.

BY THE COURT: Okay.

(Tr. 94-96). Thereafter, Whyte argued that there was accord and satisfaction as to Christie for \$5,500, which is the amount that Whyte contended Christie had personally loaned to her.

Because Whyte conceded the statute of limitation issue at trial, she cannot now raise the issue on appeal. *See McGill*, 801 N.E.2d at 687. Accordingly, we cannot say that the small claims erred by not dismissing Christie's claim as barred by the statute of limitation.

3. Sufficiency of Evidence

Lastly, Whyte argues that the evidence was insufficient to support the trial court's determination that Christie "ever delivered any more money to Whyte than the \$5,500.00 which Christie acknowledges that Whyte re-paid him." Whyte's Br. at 8. In other words, Whyte argues that the evidence is insufficient to support the trial court's determination that the amount of the loan was \$11,000.

The question of the amount of the loan was a determination of fact, not law; therefore, we review for clear error. *McKeighen v. Daviess County Fair Bd.*, 918 N.E.2d 717, 722 (Ind. Ct. App. 2009). In so doing, we will not reweigh the evidence or revisit credibility determinations. *Id.*

Whyte acknowledges that the evidence regarding the amount of money Christie loaned Whyte is "Christie's word against Whyte's." Whyte's Br. at 8. Whyte's challenge to the trial court's judgment on appeal amounts to nothing more than a request

that we reweigh the evidence presented before the trial court, which we will not do. *McKeighen*, 918 N.E.2d at 722.

Based upon the record, we conclude that the evidence was sufficient for the small claims court to find that Christie loaned Whyte a total of \$11,000 and that the balance due and owing at the time of trial was \$5,250. Accordingly, we affirm the small claims court's judgment.

Affirmed.

FRIEDLANDER, J., and VAIDIK, J., concur.