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**IN THE
COURT OF APPEALS OF INDIANA**

GEORGE LONG, JR., d/b/a)
GEORGE'S WOOD YARD,)
)
Appellant-Defendant,)

vs.)

WOOD-MIZER PRODUCTS, INC.,)
)
Appellee-Plaintiff.)

No. 49A02-0610-CV-934

APPEAL FROM THE MARION COUNTY SUPERIOR COURT
The Honorable Kenneth H. Johnson, Judge
Cause No. 49D02-0505-PL-018943

August 31, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant George A. Long, Jr., d/b/a George's Wood Yard (Long), appeals the trial court's order finding Long liable for his breach of a promissory note and security agreement with appellee-plaintiff Wood-Mizer Products, Inc. (Wood-Mizer), for the purchase of a portable sawmill. Long makes a number of unsuccessful arguments that are supported by scant citations to the record and little supporting authority. Finding no error, we affirm the judgment of the trial court.

FACTS

Long executed a promissory note with an effective date of December 19, 2003, in which he promised to pay Wood-Mizer \$29,480.20 plus interest for a portable sawmill and accessories thereto. Long made the required monthly payments until April 2005, after which time he stopped all payments. As of May 3, 2005, Long owed \$24,355.89 plus interest at 12% per year, attorney fees,¹ and other costs including storage costs in the amount of \$1800.

Long also executed a security agreement on December 19, 2003, pursuant to which he granted Wood-Mizer a security interest in the sawmill. The agreement provides that it "shall be governed by, and construed in accordance with, the laws of the State of Indiana." Appellee's App. p. at 41. It further provides that "[t]he parties agree that in the event legal action becomes necessary, jurisdiction and preferred venue shall be in Indianapolis, Marion County, Indiana, at the option of [Wood-Mizer]." Id. at 40.

¹ The trial court found that Wood-Mizer is entitled to attorney fees and other costs but has not yet held a hearing on the amount of those fees and costs.

During Long's tenure in possession of the sawmill, he placed at least two phone calls to Wood-Mizer, complaining about difficulties he had been having with the machinery. In February 2004, a Wood-Mizer employee diagnosed a problem reported by Long and shipped a replacement part at no charge pursuant to the sawmill's warranty. In February 2005, Wood-Mizer shipped Long four bolts at no cost. Wood-Mizer also provided Long with additional service and parts as needed pursuant to the warranty at no cost to Long.

Special skills and education are not required to operate the sawmill, but training is strongly encouraged. Long attended a training session at Wood-Mizer's headquarters in Indianapolis before taking possession of the sawmill. Additionally, Wood-Mizer later arranged for an employee to visit Long to provide additional training at no cost to him. Long testified that Wood-Mizer's training was adequate.

On May 13, 2005, Wood-Mizer filed a complaint against Long, seeking damages for breach of the note and agreement and foreclosure of its perfected security interest in the sawmill.² On June 22, 2005, Long responded to the complaint and filed a counterclaim. We infer from the parties' arguments and the documents included in the record on appeal that Long's counterclaim alleged that the sawmill was defective and that, as a result, Wood-Mizer had breached the agreement and Long was entitled to stop payment thereon. Long also argued that Indianapolis was an improper venue, inasmuch as he is a resident of Louisiana.

² Although both parties filed two-volume appendices, neither Wood-Mizer's complaint nor Long's counterclaim are included in the record on appeal.

Pursuant to the agreement, when Long defaulted by failing to make the required monthly payments, Wood-Mizer was entitled “without limitation, the right to take possession” of the sawmill. Id. at 40. On June 5, 2006, the trial court granted Wood-Mizer prejudgment right to possess the sawmill. On July 14, 2006, the trial court ordered that Wood-Mizer was entitled to immediate possession of the sawmill and accessories thereto and ordered Long to surrender that equipment immediately. Thereafter, Wood-Mizer took possession of the sawmill, paying \$1800 to remove it from storage in Louisiana. Apparently, Long retained parts of the sawmill—the drive side blade guide roller assembly and ignition keys—and refused to give them to Wood-Mizer.

Wood-Mizer transported the sawmill back to Indianapolis. It replaced the missing parts and serviced the sawmill, cleaning and lubricating neglected parts, replacing and aligning the blade, and adjusting the belts. Following the repairs and maintenance, Wood-Mizer conducted and videotaped a two-hour test of the sawmill. After being in storage for over a year, the sawmill “performed perfectly throughout the two hour demonstration, did not exhibit any of the problems alleged by Long, and produced approximately 1,550 boardfeet of lumber.” Appellee’s Br. p. 5.

Following a bench trial on August 25, 2006, the trial court entered findings of fact and conclusions of law on September 25, 2006, which provide, in pertinent part, as follows:

2. Long agreed . . . that jurisdiction and venue for any disputes between him and Wood-Mizer . . . would be in the State Court of Indiana located in Marion County, Indiana.

4. Long further submitted himself to the jurisdiction of the Superior Court of Marion County, Indiana by filing his Counterclaim against Wood-Mizer, utilizing the discovery tools allowed by the Indiana Rules of Court and participating in the trial on August 25, 2006.

5. This Court enjoys jurisdiction and venue over this matter.

6. Long defaulted in his obligations under the note and security agreement by failing to make payments when due.

7. . . . A money judgment in the sum of \$28,487.70 plus interest of \$8.01 per day . . . is hereby entered [against Long].

10. Wood-Mizer is entitled to permanent possession of the Sawmill and is entitled to sell the Sawmill in a commercially reasonable manner. Long shall receive credit for the sale against the judgment in a sum equal to the net proceeds of the sale. . . .

11. Long is ordered to surrender any portion of the Sawmill in his possession or over which he has control

13. The uncontroverted testimony, corroborated by video tape demonstrated that the Sawmill . . . was able to produce 1550 boardfeet of lumber and could have produced more.

14. This demonstrated to the court that although there were corrections and repairs that needed to be performed to this Sawmill, they were done and the Sawmill at this stage was not defective as that term is defined in law that could form a basis for [Long] to declare [Wood-Mizer] in default under the contract in question here.

15. The evidence presented tended to demonstrate that at least a part of [Long's] struggle with this Sawmill, was due to his lack of knowledge and experience in its operation.

16. Wood-Mizer performed its obligations under the Loan Documents, including the warranty.

17. Long expressly waived his right to seek exemplary damages in the Loan Documents.

18. Long has not been damaged by any action or lack of action by Wood-Mizer or its agents or employees.

19. Judgment is hereby entered in favor of Wood-Mizer and against Long concerning all matters raised in Long's Counterclaim.

Appellee's App. p. 10-12 (internal citations omitted). Long now appeals.

DISCUSSION AND DECISION

Initially, we observe that the majority of Long's arguments are not cogent and that he provides scant citation to supporting authority or the record. Consequently, he has essentially waived the entirety of his appeal. Zoller v. Zoller, 858 N.E.2d 124, 127 (Ind. Ct. App. 2006) (holding that a party waives any issue for which it fails to develop a cogent argument or support with adequate citation to authority). Waiver notwithstanding, we will strive to discern his salient arguments and address them substantively to the extent we are able to do so.³ See Hass v. State Dep't of Transp., 843 N.E.2d 994, 997 (Ind. Ct. App. 2006) (observing that although briefs written by pro se litigants may be difficult to understand, we prefer to address issues on their merits when possible).

Where, as here, a trial court has entered specific findings and conclusions along with its judgment under Trial Rule 52, we apply a two-tiered standard of review. Keesling v. T.E.K. Partners, LLC, 861 N.E.2d 1246, 1250 (Ind. Ct. App. 2007). First, we consider whether the evidence supports the findings, construing the findings liberally in support of the judgment. Findings are clearly erroneous only when a review of the record leaves us firmly

³ Long raises a number of new arguments in his reply brief. We will not address these arguments. See Hepburn v. Tri-County Bank, 842 N.E.2d 378, 380 n.1 (Ind. Ct. App. 2006) (holding that "[a]ppellants are

convinced that a mistake has been made. Next, we determine whether the findings support the judgment. A judgment is clearly erroneous when the findings of fact and conclusions thereon do not support it, and we will disturb the judgment only when there is no evidence supporting the findings or the findings fail to support the judgment. We do not reweigh the evidence, but only consider the evidence favorable to the trial court's judgment. Id.

Long first raises a number of complaints regarding the fact that the litigation took place in Indiana and was governed by Indiana law. As noted above, however, the security agreement explicitly provides that it is governed by the laws of Indiana and that any disputes arising thereunder would be litigated in Marion County. Appellant's App. p. 40-41. Moreover, by filing a counterclaim and taking part in the litigation in Indiana in other ways, Long waived any argument regarding personal jurisdiction. See Maust v. Estate of Bair, 859 N.E.2d 779, 783 (Ind. Ct. App. 2007) (holding that "a party shall be estopped from challenging the trial court's jurisdiction where the party has voluntarily availed itself or sought the benefits of the court's jurisdiction"). Consequently, we find that the litigation properly took place in Marion County and that the trial court properly applied Indiana law to the dispute.

Long next raises a number of nebulous complaints regarding the discovery process. Wood-Mizer requested several extensions of time to respond to Long's counterclaim and discovery requests. The trial court granted those extensions. Long has neither established

not permitted to present new arguments in their reply briefs, and any argument an appellant fails to raise in his initial brief is waived for appeal"), trans. denied.

that the trial court abused its discretion in granting the extensions nor shown that he was harmed thereby. Additionally, Long complains that the trial court denied his motion to compel Wood-Mizer to respond to certain discovery requests, but fails to mention that his motion was filed less than two weeks before trial was scheduled to begin. Moreover, Long did not establish that he had complied with the requirements of Indiana Trial Rule 26.⁴ Under these circumstances, we find that the trial court did not abuse its discretion during the discovery process.⁵

On June 29, 2006, Long moved to withdraw his counterclaim so that he could pursue litigation against Wood-Mizer in Louisiana. The trial court inadvertently granted his motion, but after Wood-Mizer objected, the trial court reinstated the counterclaim. Trial Rule 41(C)

⁴ Among other things, Trial Rule 26(F) requires that

[b]efore any party files any motion or request to compel discovery pursuant to Rule 37, or any motion for protection from discovery pursuant to Rule 26(C), or any other discovery motion which seeks to enforce, modify, or limit discovery, that party shall:

- (1) Make a reasonable effort to reach agreement with the opposing party concerning the matter which is the subject of the motion or request; and
- (2) Include in the motion or request a statement showing that the attorney making the motion or request has made a reasonable effort to reach agreement with the opposing attorney(s) concerning the matter(s) set forth in the motion or request. This statement shall recite, in addition, the date, time and place of this effort to reach agreement, whether in person or by phone, and the names of all parties and attorneys participating therein. If an attorney for any party advises the court in writing that an opposing attorney has refused or delayed meeting and discussing the issues covered in this subsection (F), the court may take such action as is appropriate.

The court may deny a discovery motion filed by a party who has failed to comply with the requirements of this subsection.

⁵ To the extent that Long raises arguments regarding unspecified discovery requests, we cannot and will not address them because of the lack of specificity and citations to the record.

provides that a party may voluntarily dismiss a counterclaim only “before a responsive pleading is served” Here, Long moved to withdraw his counterclaim nearly nine months after Wood-Mizer had served and filed its response thereto. Consequently, the trial court did not abuse its discretion by correcting its error and reinstating Long’s counterclaim following Wood-Mizer’s objection.

Long next argues that the trial judge violated a number of judicial canons. Essentially, Long complains about the trial court’s “abusive attitude” toward Long and the “favoritism” that it allegedly showed to Wood-Mizer. Appellant’s Br. p. 5. Long also protests about the trial court’s multiple rulings against him in the discovery process. As noted above, the trial court did not abuse its discretion in ruling on the parties’ various discovery motions. Moreover, the mere fact that a judge has ruled against a party does not establish bias. Brown v. State, 684 N.E.2d 529, 534 (Ind. Ct. App. 1997).

As for the trial court’s supposed bias against Long and favoritism toward Wood-Mizer, Long relies substantially on “evidence” and “key testimony [sic]” that is “missing” from the record. Appellant’s Br. p. 9. We will certainly not rely upon missing testimony as evidence of judicial bias. See Dean v. Ins. Co. of N. Am., 453 N.E.2d 1187, 1191 (Ind. Ct. App. 1983) (noting that “the trial court record is accorded absolute verity”). And the limited remaining portions of the record to which Long directs our attention in support of this argument do not overcome the presumption that judges are not biased or prejudiced for or against litigants appearing before them. Brown, 684 N.E.2d at 534. Indeed, as noted by Wood-Mizer,

[t]he trial court made every effort to accommodate Long's unfamiliarity with trial procedures, explaining what standards apply to pro se litigants, the purpose of opening statements, the separation of witness[es] rule, explaining that objections to evidence must be based on the evidence rules, advising Long not to interrupt testimony, explaining why [the court] was sustaining a hearsay objection, and instructing Long how to get evidence into the record. . . . What little evidence . . . was presented to support Long's case was elicited through questions from the bench. The trial court went to great lengths to help Long at trial.

Appellee's Br. p. 15 (internal citations omitted). Under these circumstances, we conclude that Long has failed to establish that the trial court violated any judicial canons or in any way acted improperly.

Finally, Long turns to the trial court's judgment, arguing that the warranty was a fraudulent contract of adhesion and that the evidence does not support the judgment. Essentially, Long contends that he decided to purchase Wood-Mizer's sawmill based on the company's description of its warranty in advertisements. According to Long, however, the actual warranty he executed diverged from the described warranty. He also complains that he only saw one side of the two-page document, thereby missing a majority of the pertinent terms thereof. It is well established that "parties are obligated to know the terms of the agreement they are signing, and cannot avoid their obligations under the agreement due to a failure to read it." Park 100 Investors, Inc. v. Kartes, 650 N.E.2d 347, 349 (Ind. Ct. App. 1995). He has offered no evidence that Wood-Mizer in any way prevented him from reading the entire document. Additionally, Long has offered no citation to the record in support of his fraud/contract of adhesion argument—the description he allegedly relied upon in Wood-

Mizer's advertisement is not contained in the record, so we cannot make a comparison.⁶ Consequently, we find that the trial court properly enforced and upheld the warranty.

Finally, evidence in the record establishes that Long executed the note, the security agreement, and the warranty, all of which were valid and enforceable documents. Long's last payment on the note occurred on April 17, 2005, despite the fact that a significant balance remained outstanding. Tr. p. 42-43. Wood-Mizer incurred expenses as a result of repossessing the sawmill. Id. After Wood-Mizer repossessed the sawmill, it performed maintenance and repairs on the machinery, which were necessary because of Long's neglect and removal of key parts of the sawmill. Id. at 42-44, 55, 67-68. After performing the necessary maintenance and repairs, Wood-Mizer performed a two-hour test of the sawmill, during which time it operated perfectly. Long did not operate the sawmill correctly. Id. at 148. Long waived the right to seek exemplary damages and never offered evidence that he suffered any damages as a result of Wood-Mizer's actions herein.

This evidence supports the trial court's findings. The sawmill was not defective and Long was not entitled to stop payment on the note. Long owes Wood-Mizer \$28,487.70 plus interest of \$8.01 per day, plus collection expenses including repossession expenses and

⁶ On February 2, 2007, Long filed a "motion to compel corrected transcript and production of missing evidence or proof acceptable to this honorable court evidence existed." The motions panel held this motion in abeyance for the writing panel, and we deny the motion contemporaneously with this decision, inasmuch as Long is attempting to add to the record on appeal documents and other evidence that were not before the trial court. We also hereby strike the portions of Long's appendix containing documents that were not part of the record below.

Finally, on June 25, 2007, Long filed a motion "to submit evidence contradictory to bogus evidence identified before this honorable court as appellees' exhibit P." The motions panel held this motion in abeyance for the writing panel, and we deny it contemporaneously with this decision, inasmuch as Long is, yet again, attempting to add to the record on appeal documents that were not before the trial court.

attorney fees and costs, the sum of which will be determined at a later hearing before the trial court. Finally, Long has not established that he was damaged by any action—or lack thereof—taken by Wood-Mizer. Consequently, the trial court properly found for Wood-Mizer on its complaint and on Long’s counterclaim.

The judgment of the trial court is affirmed.

BAILEY, J., and VAIDIK, J., concur.