

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-000501-MR

ANILKUMAR S. PATEL

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT
HONORABLE R. JEFFREY HINES, JUDGE
ACTION NO. 06-CI-00446

MAHENDRA P. PATEL

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, NICKELL, AND TAYLOR, JUDGES.

CLAYTON, JUDGE: Anilkumar S. Patel (Anil) appeals the decision of the McCracken Circuit Court awarding him \$4,930 for repayment of money owed to him by Mahendra P. Patel (Mike). Specifically, Anil argues that the trial court erred in its determination of the original loan amount, and therefore Mike owes him more than the amount awarded. Having reviewed the record, the arguments of the parties, and the applicable law, we affirm.

FACTS AND PROCEDURAL BACKGROUND

The facts in this case involve money owed back and forth between Anil and Mike. Anil filed his complaint on April 27, 2006, for a judgment of \$45,450. According to Anil's complaint, Mike owed him \$42,500 for alleged loans and \$2,950 for unpaid wages. In his trial brief and at trial, however, Anil amended the amount owed to \$24,030 because in February and March 2005 three (3) payments, which totaled \$18,470, were made to reduce the amount of the money paid by third parties on Mike's behalf. To resolve the issues in this dispute, a bench trial was held on January 31, 2007.

During the trial the parties presented conflicting testimony regarding various business entanglements. First, while Anil claimed he was owed a loan, Mike countered that Anil's purported loan actually represented a business investment by Anil in Baker Energy, Inc. (Baker Energy is now known as Jay Ambica, which operates the T-Mart in Paducah, Kentucky.) In fact, Anil provided copies of his two (2) \$20,000 cashier checks, which were made out to Baker Energy. The additional \$2,500 was in cash, which Mike acknowledged, but said it was for a personal loan. Furthermore, Mike admitted at trial that the money benefited him. Ken Patel (Ken), a retired real estate broker, testified at trial that Anil had wanted to buy a 20% share of Baker Energy, but it did not work out between the parties. Ken is acquainted with both parties. He also stated that he had spoken with Mike about the money and its need for repayment. During Mike's testimony, he acknowledged that he had spoken more than once with Ken about

the dispute. Essentially, Anil claims that he is still owed \$24,030 (\$42,500 less \$18,470).

In Mike's version, Anil, who was moving to Chicago and getting married, never loaned him money but invested in Baker Energy, Inc. According to Mike and his witnesses, Anil M. Patel (Mike's son), Ramesh Patel (Ramesh), Mike, Anil and the owner of Shree Meladi, Inc., had a meeting, sometime in December 2004, wherein allegedly Anil agreed to a set-off portion from Shree Meladi to off-set a portion of the \$42,500 owed him by Mike. He would exchange part of the money he paid for Baker Energy for Mike's profits from Shree Meladi. (Shree Meladi is a gas station/convenience store in Oklahoma.) Mike claimed that Anil and he were part owners of Shree Meladi.

During trial, Mike proffered a document wherein, he claims, the parties prepared an accounting for the above transaction and agreed that Mike still owed \$23,400 to Anil. Mike and his witnesses allege the \$23,400 amount on the document represents this debt and that Anil's signature shows his agreement. Therefore, Mike contends that his debt to Anil, less the set-off amount for Shree Meladi, is reduced to \$23,400. This amount is then further reduced by \$18,470 in third-party payments leaving a remaining debt of \$4,930.

At trial, Mike, his son, and Ramesh testified that they were present at the time of the accounting and witnessed Anil sign the document. The document submitted, Defendant's Exhibit 1, shows a number of calculations, foreign script, and some English words. It is not dated nor does it delineate its purpose. And,

more importantly, it is a copy not an original. Anil at trial rebutted the validity of the document by providing the original in blue ink. The original, Plaintiff's Exhibit 2, does not contain any notation about the \$23,400 or Anil's signature. Anil claims it is not his signature and a fraud. No explanation for the difference between the parties' exhibits was proffered by Mike, other than the fact that Mike and his witnesses claim that they saw Anil sign the document. (His supposed signature – A.S.P. - is on their copy.) Additionally, to dispute their testimony, Anil stated he never had an ownership interest in Shree Meladi, never reported any business income or loss from it on his tax return, and is not noted as an owner on its corporate records.

Regarding employment Anil gave detailed testimony that, between June 2, 2004, and August 10, 2004, he worked sixty-two (62) days for \$550 per week. Anil contends that he worked nine (9) weeks but was only paid \$2,000. Hence, he claims he is still owed wages in the amount of \$2,950. Yet, Mike counters regarding Anil's claim for unpaid wages, that Anil was paid \$500 per week and worked for four (4) weeks only. To support this assertion, Mike provided a copy of Anil's paycheck and copies of the 2004 employee tax information. Furthermore, his son, Anil M. testified that he and Anil worked the same job during that same time period and that Anil only worked four (4) weeks and was so paid.

Following the bench trial, the trial court issued its Findings of Fact, Conclusions of Law and Judgment on February 9, 2007. Therein, the court held

that Anil was still owed \$4,930, based on Mike's calculations, had been paid in full for his employment, and further, that Mike correctly established the facts of the case.

ANALYSIS

The proper standard of review of trial court's evidentiary rulings is abuse of discretion. *Goodyear Tire & Rubber Co. v. Thompson*, 11 S.W.3d 575 (Ky. 2000). And Kentucky Rule of Civil Procedure (CR) 52.01 states in pertinent part, for actions tried without a jury, "due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." In circumstances of conflicting testimony, a reviewing court may not and will not disturb the findings of the trial court so long as it is supported by substantial evidence. *Bentley v. Bentley*, 500 S.W.2d 411-12 (Ky. 1973), (citing *Sharp v. Sharp*, 491 S.W.2d 639 (Ky. 1973) and *Adams v. Adams*, 412 S.W.2d 857 (Ky. 1967)). Furthermore, our Court has stated "[s]ubstantial evidence has been conclusively defined by Kentucky courts as that which, when taken alone or in light of all the evidence, has sufficient probative value to induce conviction in the mind of a reasonable person." *Bowling v. Natural Resources and Environmental Protection Cabinet*, 891 S.W.2d 406, 409 (Ky. App.1995).

Moreover, CR 52.01 requires the court to make specific findings of fact and separate conclusions of law before rendering judgment in a bench trial. *Skelton v. Roberts*, 673 S.W.2d 733 (Ky. App. 1984). The language found in this rule is mandatory. *Id.*; *Standard Farm Stores v. Dixon*, 339 S.W.2d 440 (Ky.

1960). Furthermore, the findings must be supported by substantial evidence. *See Bowling*, 891 S.W.2d at 409.

With respect to the trial court's finding that Anil has been adequately compensated by Mike, \$2,000, and for the correct period of time, one month, we defer to the principle that the trial court judge is in the best position to evaluate the factual matters in a bench trial, and we perceive no abuse of discretion. Hence, we affirm this portion of its judgment.

But with regards to the remaining amount of the loan, the trial court left certain findings unclear. We observe that Anil has cast doubt upon the probative value of Mike's evidence. To summarize, while it is true that there is no writing supporting the proposition that the money exchanged between the parties was a loan, it is uncontroverted that Mike owes money to Anil. Additionally, the parties do not dispute the original amount of the loan/investment, \$42,500. But the question is the amount of the loan that Mike still owes Anil. Mike claims, based on the amount listed in a purported accounting, that he only owes \$4,930. Here, the court does not address the differences between the original and the copy of the document purporting to demonstrate the accuracy of Mike's accounting. And Anil claims, based on the original amount of the transaction less the third-party payments, that he is still owed \$24,030.

Simply put, given the evidence, we think the trial court did not address the issue of whether the loan was still \$24,030 (Anil's claim) or \$23,400 (Mike's claim). A perusal of the Trial Order shows that it perfunctorily remarks

“[u]pon reviewing of the evidence, the Court finds that the Defendant has correctly established the facts of the case.” Neither the record nor the trial court’s findings allow us to conclusively ascertain the rationale behind the court’s finding as to the amount of Mike’s remaining obligation to Anil. However, CR 52.04 states:

A final judgment shall not be reversed or remanded because of the failure of the trial court to make a finding of fact on an issue essential to the judgment unless such failure is brought to the attention of the trial court by a written request for a finding on that issue or by a motion pursuant to Rule 52.02.

Hence, under CR 52.04, a party must bring to the attention of the trial court, by written request, the necessity for a finding on an issue. See *Abuzant v. Shelter Ins. Co.*, 977 S.W.2d 259-60 (Ky. App. 1998). Therefore, Anil has waived any argument he may have had as to the adequacy of the findings of fact because he did not make a written request to the trial court for more specific findings as required by CR 52.04.

Therefore, we affirm the judgment of the McCracken Circuit Court.

TAYLOR, JUDGE, CONCURS IN RESULT ONLY.

NICKELL, JUDGE, CONCURS IN RESULT ONLY AND FILES SEPARATE OPINION.

NICKELL, JUDGE, CONCURRING IN RESULT ONLY: I concur with the result reached by the majority but write separately to express my concern that one could read this opinion to say the trial court failed to consider all the evidence presented during the bench trial. I have no reason to draw such a conclusion. Although the trial court’s findings of fact could have been more

extensive, the mere fact that its order did not specifically reference all the evidence adduced at the bench trial does not automatically mean the court ignored any evidence or acted arbitrarily. *Miller v. Eldridge*, 146 S.W.3d 909, 921 (Ky. 2004). Thus, I refrain from making such an inference.

I agree with the majority's conclusion that Anil's failure to follow the mandates of CR 52.04 forecloses any argument regarding the completeness of the trial court's findings of fact. However, the trial court did make some findings of fact and we must apply the mandates of CR 52.01 to those findings. I believe that based upon the record before us the findings actually made by the trial court were supported by substantial evidence and therefore were not clearly erroneous. Absent substantial evidence, we would be required to reverse the decision regardless of whether the argument was properly preserved under CR 52.04. *Miller, supra*, 146 S.W.3d at 922; *See also Cherry v. Cherry*, 634 S.W.2d 423 (Ky. 1982). On the facts before this Court, I cannot conclude the trial court abused its discretion in reaching its decision.

For these reasons, I concur with the majority in result only.

BRIEF FOR APPELLANT:

Todd A. Farmer
Paducah, Kentucky

BRIEF FOR APPELLEE:

Zachary D. McMillan
Paducah, Kentucky