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IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
March 28, 2023 Session

HEIDI PENDAS v. CHRISTOPHER J. IRIZARRY ET AL.

Appeal from the Chancery Court for Montgomery County
No. MC-CH-CV-RE-19-17, MC-CH-CV-RE-19-19 Laurence M. McMillan, Jr., Chancellor

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No. M2022-00603-COA-R3-CV

This case involves an intrafamily dispute over a home and the alleged indebtedness thereon. The trial court found that the son committed promissory fraud with regard to the conveyance of the home and awarded the mother $180,000.00 in damages as the value of the home at the time of the conveyance. The trial court further dismissed a claim against the daughter related to a loan on the property. Both the son and the mother appeal. Discerning no reversible error, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed and Remanded

J. STEVEN STAFFORD, P.J., W.S., delivered the opinion of the court, in which D. MICHAEL SWINEY, C.J., and KENNY ARMSTRONG, J., joined.

B. Nathan Hunt and Macayla F. Heath, Clarksville, Tennessee, for the appellant, Christopher J. Irizarry.

Roger A. Maness, Clarksville, Tennessee, for the appellee, Heidi Pendas.

MEMORANDUM OPINION[1]

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[1] Rule 10 of the Rules of the Court of Appeals of Tennessee provides:

> This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

I. FACTUAL AND PROCEDURAL BACKGROUND

On April 5, 2019, Plaintiff/Appellee Heidi Pendas ("Mother") filed a complaint for damages against two of her three children, Defendant/Appellant Christopher Irizarry ("Son") and Defendant/Appellee Carmen C. Zellman ("Daughter"). Therein, Mother alleged that she and her now-deceased husband had purchased property in Clarksdale, Tennessee on Gardendale Lane for $150,000.00 in cash in 2007. Following the purchase, Mother alleged that she and her husband had borrowed money secured by the property. The proceeds of this loan were divided equally between Son and Daughter, with the understanding that they would pay the mortgage.

In 2013, after the death of Mother's husband, Son and his wife moved into the property with Mother. In or around April 2014, Mother alleged that she was "induced by fraud and undue influence to execute a deed to the Gardendale Lane house to [Son], under the pretext of trying to protect her equity in the house from a creditor[.]" Following the quitclaim deed, Son took out a $129,000.00 loan against the property, which "paid off" the prior loan on the Gardendale Lane home. Eventually, a dispute arose between Mother and Son's wife, causing Mother to vacate the home. As such, Mother alleged that she had been deprived of both her home and "the repayment of the money she lent to [Son and Daughter] in 2007." Mother therefore asked that the deed transferring the home be set aside and for a money judgment against Son and Daughter. Mother also filed an abstract and lien lis pendens concerning the property.

Son and Daughter filed an answer on April 23, 2019. Therein, they admitted that they had benefitted from a loan taken out by Mother and her husband on the property, but denied that any money was owed to Mother on that debt. Son and Daughter denied that the transfer of the Gardendale Lane property was the result of either fraud or undue influence, and further denied that Mother was entitled to any damages. Finally, Son and Daughter alleged that the property had been sold to Defendant Madeline E. Porter for $180,000.00 in 2019. As such, Son and Daughter asked that the lien lis pendens be dismissed.

On April 30, 2019, Mother filed a separate complaint naming Son, Son's wife, Teresa O. Irizarry, and Ms. Porter as defendants (collectively with Daughter, "Defendants"). This complaint re-alleged many of the allegations in the other complaint but further alleged that Ms. Porter was the sister of Son's wife, and that the conveyance to Ms. Porter occurred after her counsel notified Son of Mother's claim to the Gardendale Lane property.[2] As such, Mother alleged that the transfer to Ms. Porter was fraudulent and

[2] Specifically, the letter attached to the complaint, and later made an exhibit at trial, alleged that Son "persuaded [Mother] to deed the Gardendale house over to you under the pretext of trying to protect her equity in the house from a creditor[.]" The letter did not, however, specifically request that the home be re-conveyed to Mother.

should be set aside. Mother filed a second abstract and notice of lien lis pendens on April 30, 2019. Son, his wife, and Ms. Porter filed an answer denying the material allegations in the second complaint on August 5, 2019. On July 2, 2020, the two actions were consolidated by agreed order in the Chancery Court for Montgomery County ("the trial court").

On September 11, 2020, Defendants filed a motion for summary judgment, along with a memorandum of law and a statement of undisputed material facts. On October 30, 2020, Mother responded in opposition to Defendants' motion. On November 6, 2020, the trial court denied Defendants' motion, ruling that there were questions of material facts as to (1) whether a confidential relationship existed; (2) whether Ms. Porter was a bona fide purchaser; (3) whether fraud existed; and (4) whether the loan proceeds were converted.

Trial occurred on March 2, 2022. Mother, Son, Daughter, and Ms. Porter testified. Mother first generally testified to the approximately $120,000.00 loan she and her late husband took out to benefit Son and Daughter, whereby each would receive approximately $60,000.00. Mother testified that she and Son came to an understanding in 2014, when that loan had not yet been fully repaid, where she would quitclaim the Gardendale Lane property to him in order to avoid creditors related to a car loan that she co-signed for her late husband's grandson. According to Mother, however, the conveyance was based on the understanding that Son would return to the property to her in the future when the creditor issues were resolved. In 2018, however, Mother's relationship with Son deteriorated due to allegedly violent conduct by Son's wife. Mother moved out of the home to live with her other son and never returned. According to Mother, Son then reneged on his promise to return the property to her, instead selling it to his wife's sister. Mother admitted that she never paid anything on the 2007 loan, either before or after the 2014 conveyance.

Son admitted that he and Daughter were the beneficiaries of a loan that Mother and her late husband took out on the Gardendale Lane property in 2007, receiving around $60,000.00 each. Son further admitted that approximately $30,000.00 was owed on his loan in 2014. With regard to the quitclaim deed in 2014, Son testified that it was never the parties' intent to re-convey the property to Mother; instead, he testified that he intended to live on the property. He did admit, however, that he sold the property to his wife's sister. Son also testified that any indebtedness Mother owed on the home related to the loans made to her children was extinguished by a loan he took out after he was conveyed the property. Mother was not a party to this loan. Daughter confirmed that Mother and her late husband loaned her $57,000.00 in 2007, but testified that she paid the loan directly to the bank for its duration, that Mother incurred no costs associated with the loan, and that she believed that she no longer owed any amounts to Mother on the loan.

At the conclusion of trial, the trial court asked each party to submit proposed findings of fact and conclusions of law. The trial court issued its written ruling on April 22, 2022. Therein, the trial court found that Mother's testimony that she conveyed the

Gardendale Lane property to Son "with the understanding that [he] would re-convey the property back to her at a later date" was credible. As such, the trial court ruled that Mother had proven that Son obtained the Gardendale Lane property through fraud, as Mother "reasonably relied on what she understood to be her son's promise, i.e., to re-convey her house back to her after the dispute with the grandson's car loan company was resolved." Son, however, "had no intention to follow through on this promise and this constitutes fraud under Tennessee law." But because the trial court found that Ms. Porter was a bona fide purchaser, the trial court dismissed Mother's claim for fraudulent conveyance against her and ruled that Mother was not entitled to a return of the property. Rather, the trial court ruled that Mother was entitled to damages of $180,000.00, or the purchase price paid to Son by Ms. Porter in 2019. The trial court further ruled that Mother had not proven undue influence with regard to the Gardendale Lane transaction.

Finally, the trial court ruled that Mother did not prove her claims against Daughter or Son's wife. In particular, with regard to the claim against Daughter related to the loan, the trial court found as follows:

> In the summer of 2015, [Mother] was owed the sum of at least $30,000.00 by [Daughter]. However, this court is of the opinion that this obligation was extinguished when [Son] secured his June, 2015 loan against the home and paid off the remaining balance of the loan given equally to the twin children in 2007. No claim for contribution or indemnity was asserted between these Defendants. Therefore, the claim asserted by [Mother] against [Daughter] is dismissed.

Son thereafter filed a timely notice of appeal.

II. ISSUES PRESENTED

Son raises the following issues for review, which are taken from his brief with minor alterations:

1. Whether the trial court erred in finding that Mother met her burden of proof at trial.
2. Whether the trial court erred in finding that Son committed promissory fraud.
3. Whether the trial court erred in awarding damages to Mother.

In the posture of Appellee, Mother also raises the following issue: "Whether the trial court erred in dismissing the claim against [Daughter]?"

III. STANDARD OF REVIEW

We review the judgment of the trial court following a bench trial *de novo* upon the record, giving a presumption of correctness to the factual findings of the trial court. Tenn.

R. App. P. 13(d); ***Union Carbide Corp. v. Huddleston***, 854 S.W.2d 87, 91 (Tenn. 1993) (citation omitted). We will not disturb the trial court's finding of fact unless the evidence preponderates against its finding. ***Berryhill v. Rhodes***, 21 S.W.3d 188, 190 (Tenn. 2000) (citation omitted). The evidence preponderates against a trial court's factual finding only where the record supports an alternative finding with greater convincing weight. ***Mosley v. McCanless***, 207 S.W.3d 247, 251 (Tenn. Ct. App. 2006) (citations omitted).

IV. ANALYSIS

A.

Son's first two issues attack the trial court's finding that Mother proved her claim of promissory fraud. A claim of fraud generally has four elements: (1) an intentional misrepresentation of a material fact, (2) the wrongdoer's knowledge that the representation is false, and (3) injury caused by the victim's reasonable reliance upon the representation. ***Keith v. Murfreesboro Livestock Mkt., Inc.***, 780 S.W.2d 751, 754 (Tenn. Ct. App. 1989) (citing ***Holt v. American Progressive Life Ins. Co.***, 731 S.W.2d 923, 927 (Tenn. Ct. App. 1987)). "The fourth element requires that the misrepresentation must relate to an existing fact, or, in the case of promissory fraud, must embody a promise of future action without the present intention to carry out the promise." ***Id.*** (citations omitted). "Fraud is never presumed, and where it is alleged facts sustaining it must be clearly made out." ***Homestead Group, LLC v. Bank of Tenn.***, 307 S.W.3d 746, 751 (Tenn. Ct. App. 2009). When a party is seeking damages as a result of fraud, the burden is a preponderance of the evidence. ***Elchlepp v. Hatfield***, 294 S.W.3d 146, 151 (Tenn. Ct. App. 2008) (citing ***Noblin v. Christiansen***, No. M2005-01316-COA-R3-CV, 2007 WL 1574273, at *11 (Tenn. Ct. App. May 30, 2007) (noting that a higher standard applies when a party seeks to set aside a written agreement due to fraud)).[3]

This case involves promissory fraud, or the allegation that Son promised Mother that he would re-convey the Gardendale Lane property to her in order to induce her to convey it to him. On appeal, Son argues that the trial court erred in finding promissory fraud because Mother presented no evidence that she and Son had an agreement whereby Son would re-convey the house to her once her creditor issue was resolved. According to Son, Mother's testimony that Son "smiled and nodded at her when they discussed the home being re-conveyed to [Mother]" was insufficient evidence to constitute a misrepresentation of material fact.

As an initial matter, we note that Son has cited no legal authority for the proposition that a nod and a smile was insufficient to constitute a misrepresentation of Son's intent in this case. *Cf. Restatement (Second) of Contracts* § 19 (1981) ("Words are not the only

[3] Although Mother sought to set aside the conveyance of the Gardendale Lane property at trial, the trial court denied that claim and Mother has not appealed that issue.

medium of expression. Conduct may often convey as clearly as words a promise or an assent to a proposed promise."). Here, Mother testified that she "repeatedly" informed Son that the conveyance of the house to Son was on the understanding that the house would remain hers. And Mother testified that Son "smiled and nodded" to these statements.[4]

Moreover, Mother's testimony on this issue was not confined to her statement about Son nodding and smiling, as Son suggests. She also testified as follows:

> Q. . . . Now, please, ma'am, what was — did you have an understanding with [Son] about him conveying the house back to you after the car loan situation was resolved?
> A. Yes. . . . So I kept telling him that, when they are settled with the house [that Son and his wife were building on a separate piece of property], my house gets to be given back to me.
> Q. And did he acknowledge that that would be the case?
> A. I'm sorry?
> Q. Did he acknowledge that that would be the case?
> A. Yeah. That was fine with him, at the time anyway.

Thus, Mother presented evidence that Son acknowledged, by at least his conduct, that he consented to the arrangement whereby the Gardendale Lane home would be re-conveyed to Mother at some future point.

The trial court expressly found this evidence credible and found that Son consented to this scheme. And as the Tennessee Supreme Court has explained:

> Unlike appellate courts, trial courts are able to observe witnesses as they testify and to assess their demeanor, which best situates trial judges to evaluate witness credibility. *See* ***State v. Pruett***, 788 S.W.2d 559, 561 (Tenn. 1990); ***Bowman v. Bowman***, 836 S.W.2d 563, 566 (Tenn. Ct. App. 1991). Thus, trial courts are in the most favorable position to resolve factual disputes hinging on credibility determinations. *See* ***Tenn-Tex Properties v. Brownell-Electro, Inc.***, 778 S.W.2d 423, 425–26 (Tenn. 1989); ***Mitchell v. Archibald,*** 971 S.W.2d 25, 29 (Tenn. Ct. App. 1998). Accordingly, appellate courts will not re-evaluate a trial judge's assessment of witness credibility absent clear and convincing evidence to the contrary. *See* ***Humphrey v. David Witherspoon, Inc.***, 734 S.W.2d 315, 315–16 (Tenn. 1987); ***Bingham v. Dyersburg Fabrics Co., Inc.***, 567 S.W.2d 169, 170 (Tenn. 1978).

[4] Specifically, Mother testified as follows: "Repeatedly, I made the same statement to him. This is my house, not yours, and he smiled and nodded."

Wells v. Tennessee Bd. of Regents, 9 S.W.3d 779, 783 (Tenn. 1999). We also give great weight to the trial court's factual findings that rest on credibility. ***In re Est. of Baker v. King***, 207 S.W.3d 254, 268 (Tenn. Ct. App. 2006); *see also* **Rozen v. Wolff Ardis, P.C.**, No. W2019-00396-COA-R3-CV, 2019 WL 6876769, at *5 (Tenn. Ct. App. Dec. 17, 2019) ("Findings that rest on a trial court's credibility determinations, however, are given even greater deference than other factual findings." (citing ***Nashville Ford Tractor, Inc. v. Great Am. Ins. Co.***, 194 S.W.3d 415, 425 (Tenn. Ct. App. 2005))). So the trial court had proper evidence before it to conclude that Son induced Mother to convey the Gardendale Lane property to him based on the false promise that he would re-convey the property to her at a later date.

Although Son points to various evidence that he asserts refutes the trial court's findings, such as the fact that Mother vacated the home and never returned, he took out a loan on the property in his own name, or that there was no proof that the creditor issue that allegedly prompted the conveyance was ever resolved, these facts do not undermine the conclusion that Son, by his conduct or otherwise, promised Mother that he would return the property to her at a future date. The fact that there was no proof that the creditor issue was ever resolved—triggering Son's promise to return the property to Mother—is of little weight, given his sale of the property to his relative shortly after receiving notice that Mother claimed that she was induced to convey the home to Son based on a pretext. In fact, Son's choice to quickly take out a loan on the property and then sell the property to a family member only supports the trial court's conclusion that Son never had the intention of carrying out that agreement. ***Keith***, 780 S.W.2d at 754. Finally, Mother explained that she was required to vacate the home due to the untenable living situation caused by Son's wife. So, after fully considering all of the proof presented and the arguments of the parties, we conclude that the evidence does not preponderate against the trial court's finding that Mother met her burden to show promissory fraud.

Son also argues that Mother failed to rebut the presumption of fairness in the transaction, citing ***Williams v. Spinks***. 7 Tenn. App. 488, 493–94 (1928) ("[I]n all cases, except those involving transactions between persons occupying fiduciary or confidential relations with each other where the right to relief is based upon the alleged commission of the fraud, the presumption is in favor of the fairness of the transaction and the innocence of the person accused, and the burden of proof is upon the party asserting the fraud to establish the same." (citation omitted)). Here, the trial court properly placed the burden on Mother to show fraud and found that Mother had effectively shown that she was deprived of her equity in the home through Son's promissory fraud. Clearly, giving the trial court's credibility and factual findings all due deference, Mother rebutted any presumption of fairness in the transaction.

B.

Son next argues that the trial court erred in calculating Mother's damages at

$180,000.00, or the purchase price of the home when it sold in 2019. In this section of his brief, Son references a single case which he cites for the proposition that "[q]uitclaim deeds are commonly used for business transactions between partners, conveyances between family members, cleaning up a title for title insurance purposes, or gifts." ***Rivkin v. Postal***, No. M1999-01947-COA-R3-CV, 2001 WL 1077952, at *6 (Tenn. Ct. App. Sept. 14, 2001) (involving whether a quitclaim deed constitutes a written offer of marriage). This language, while accurate, has little relevancy to the question of whether the trial court erred in calculating Mother's damages. So Son has cited no legal authority in support of this issue.

Rule 27 of the Tennessee Rules of Appellate Procedure contains mandatory requirements applicable to appellate briefs. For one, the argument of the appellant must include "the contentions of the appellant with respect to the issues presented, and the reasons therefor, including the reasons why the contentions require appellate relief, with citations to the authorities and appropriate references to the record[.]" Tenn. R. App. P. 27(a)(7)(A). This section of Son's brief contains neither citations to the record nor any citations to *relevant* authorities. Courts have routinely held that the failure to make appropriate references to the record and to cite relevant authority in the argument section of the brief as required by Rule 27(a)(7) constitutes a waiver of the issue. ***Bean v. Bean***, 40 S.W.3d 52, 55 (Tenn. Ct. App. 2000); *see also* ***Murray v. Miracle***, 457 S.W.3d 399, 403 (Tenn. Ct. App. 2014) (appeal dismissed because, among other reasons, "the purported argument section of [the] brief contain[ed] no references whatsoever to the record and no citations to authorities"). Moreover, "[i]t is not the role of the courts, trial or appellate, to research or construct a litigant's case or arguments for him or her, and where a party fails to develop an argument in support of his or her contention or merely constructs a skeletal argument, the issue is waived." ***Sneed v. Bd. of Pro. Resp. of Supreme Ct.***, 301 S.W.3d 603, 615 (Tenn. 2010). Here, Son's failure to include citation to any relevant authorities, coupled with his failure to cite to the record, renders this argument waived.

Even considering this argument despite Son's deficient briefing, we conclude that it is without merit. "The proper measure of damages for fraud is that the injured party should be compensated for actual injuries sustained by placing him or her in the same position he or she would have been had the fraud not occurred." ***Harrogate Corp. v. Sys. Sales Corp.***, 915 S.W.2d 812, 817 (Tenn. Ct. App. 1995) (citing ***Youngblood v. Wall***, 815 S.W.2d 512, 518 (Tenn. Ct. App. 1991)). "Fraud cannot be merely speculative but must be proved to a reasonable certainty as a matter of law." ***Id.*** (citing ***Haynes v. Cumberland Builders, Inc.***, 546 S.W.2d 228, 233 (Tenn. Ct. App. 1976)).

Here, the trial court found that Mother was deprived of the Gardendale Lane home as a result of Son's fraud. As previously discussed, the evidence does not preponderate against this finding. Although the house was purchased in 2007, Mother testified that the house was worth up to $300,000.00 by the time of the conveyance. But the trial court did not credit this testimony, finding instead that the fair market value of the home at the time of the quitclaim deed was $180,000.00, the purchase price of the home in 2019. This was

only $5,000.00 more than what Son claimed was the assessed value of the home.[5] In making this finding, the trial court explained that while an addition was made to the home following the conveyance to Son, there was no evidence from which it could discern how the addition affected the home's value. And the trial court clearly chose a figure within the range of values presented to it. *See* ***Neamtu v. Neamtu***, No. M2008-00160-COA-R3-CV, 2009 WL 152540, at *4 (Tenn. Ct. App. Jan. 21, 2009) ("When valuation evidence is conflicting, the court may place a value on the property that is within the range of the values presented." (citing ***Watters v. Watters***, 959 S.W.2d 585, 589 (Tenn. Ct. App. 1997))). As such, we cannot conclude that the evidence preponderates against the trial court's finding that Mother incurred $180,000.00 in damages when she was deprived of the Gardendale Lane home due to Son's promissory fraud.

C.

Mother raises a single affirmative issue in this appeal concerning the dismissal of her claim against Daughter. Unfortunately, Mother's argument on this issue suffers the same infirmity as Son's argument as to damages in that it is not supported by citation to any relevant legal authorities.[6] Specifically, Mother cites no legal authority in support of her argument except as to her contention regarding the appropriate standard of review.[7]

The mandatory briefing requirements of Rule 27(a) apply equally to an appellee when he or she chooses to raise affirmative issues on appeal. ***Forbess v. Forbess***, 370 S.W.3d 347, 356 (Tenn. Ct. App. 2011) (citing Tenn. R. App. P. 27(b) (requiring that an appellee who requests affirmative relief must include "the issues and arguments involved in his [or her] request for relief" in the appellee brief)). So Mother was likewise required to support her arguments with relevant legal authorities. Because she did not, her argument is likewise waived.

And again, even if this issue was properly briefed, Mother has not persuaded us that the trial court erred in finding that Mother suffered no damages owed by Daughter. Here, Son testified that the original loan was extinguished when he took out another loan on the property after it was conveyed to him by Mother. Mother points to no documents showing

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[5] The only "proof" of this assessed value was this questioning of Mother:

> Q. If I told you, ma'am, at that time that the property had a tax assessed value of $175,500, would you have any reason to disagree with that?
>
> A. I would not.

[6] Mother only cites minimally to the appellate record in this portion of her brief, but she does include two references to the record—a reference to a trial exhibit and a quotation from the trial court's final order.

[7] The case cited, however, does not stand for the proposition asserted, as it does not involve whether a debt was extinguished, as Mother appears to suggest. *See* ***Bowden v. Ward***, 27 S.W.3d 913, 916 (Tenn. 2000) (stating that "[t]he ultimate question for our review is whether Ward's claim against the decedent's estate was timely filed").

any indebtedness was still owed by Mother related to either the Gardendale Lane property or the loan made to Daughter. And the proof showed that Mother never paid the loan or incurred any other costs associated with the loan. Moreover, the trial court awarded Mother $180,000.00 in damages for the full value of the home. Thus, it does not appear that Mother established that she suffered any damage related to the loan to Daughter. Considering the totality of the evidence, we cannot conclude that the trial court erred in dismissing this claim.

V. CONCLUSION

The judgment of the Montgomery County Chancery Court is affirmed, and this cause is remanded to the trial court for further proceedings consistent with this Opinion. Costs of this appeal are taxed one-half to Appellant Christopher J. Irizarry, and one-half to Appellee Heidi Pendas, for which execution may issue if necessary.

S/ J. Steven Stafford
J. STEVEN STAFFORD, JUDGE