

FILED

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Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
January 11, 2023 Session

KEMETRIA YARBROUGH v. DARRYL MITCHELL

**Appeal from the Circuit Court for Shelby County
No. CT-000338-18 Felicia Corbin Johnson, Judge**

No. W2021-01174-COA-R3-CV

In this contract action, the defendant appeals the trial court's judgment in favor of the plaintiff for failure to comply with Rule 52.01 of the Tennessee Rule of Civil Procedure. Upon review, we conclude that the trial court has failed to include in its final order appropriate findings of fact and conclusions of law as required by Rule 52.01. Thus, we vacate the trial court's judgment and remand this case to the trial court for the entry of a more detailed order.

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

J. STEVEN STAFFORD, P.J., W.S., delivered the opinion of the court, in which KENNY ARMSTRONG and CARMA DENNIS MCGEE, JJ., joined.

Marcus D. Ward, Memphis, Tennessee, for the appellant, Darryl Mitchell.

Terita M. Hewlett, Memphis, Tennessee, for the appellee, Kemetria Yarbrough.

MEMORANDUM OPINION¹

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 When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.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

Plaintiff/Appellee Kemetria Yarbrough (“Appellee”) filed a civil warrant in the Shelby County General Sessions Court on December 15, 2017. Therein, she alleged that Defendant/Appellant Darryl Mitchell (“Appellant”) failed to pay back \$12,000.00 she loaned to him pursuant to an oral contract in 2008. On January 23, 2018, a \$12,000.00 judgment was entered against Appellant. Appellant appealed to the Shelby County Circuit Court (“the trial court”) on January 25, 2018.

Appellee filed her amended complaint on December 27, 2018, alleging breach of contract and unjust enrichment. Appellee alleged that she provided a \$12,000.00 loan to Appellant by way of two \$6,000.00 checks on December 16 and 17, 2008. Appellee also stated that “[t]he parties agreed that the amount was to be repaid” by Appellant, but no payments had been made prior to her filing. Appellee included with her amended complaint a sworn statement of account.

Appellant filed a motion to dismiss for failure to state a claim on February 28, 2019. Therein, Appellant alleged that because the 2017 civil warrant came eight years after the breach of oral contract alleged by Appellee, Appellee’s claim was barred by the six-year statute of limitations for breach of contract actions and matters of account. Appellee responded that Appellant’s motion was untimely, being filed more than thirty days after he was served with the amended complaint. No disposition of this motion to dismiss appears in the record on appeal.

On April 1, 2019, Appellee moved for leave to amend her complaint a second time. The attached second amended complaint stated that Appellant “ha[d] not made any payments to [Appellee] since December 2015.” Appellee’s prayer for relief still requested a full \$12,000.00 judgment. Appellee’s motion to amend was heard on January 10, 2020, and eventually granted by order of August 7, 2020. Appellant did not file an answer in response to this or any earlier complaint.

After much delay, based in part on inclement weather, Appellant’s health, and the COVID-19 pandemic, trial was held via Zoom on June 23 and 24, 2021. On June 22, 2021, one day before trial, Appellant filed a motion to dismiss Appellee’s second amended complaint. Once again, Appellant argued that the six-year statute of limitations for breach of contract actions barred Appellee’s claim, regardless of the fact that Appellee alleged a single payment was made in December 2015. Appellee responded in opposition to Appellant’s motion, again arguing that the motion was untimely. Appellee noted that expiration of the statute of limitations is an affirmative defense that should have been pleaded within thirty days of the filing of the second amended complaint. Appellee also argued that Appellant’s motion lacked merit, as the 2015 payment “was an acknowledgement and express willingness to pay the debt and cured or revived any statute of limitations issue.”

On June 24, 2021, the second day of trial, Appellee filed a motion in limine requesting that the trial court exclude any proof by Appellant that any money he received from Appellee was a gift. Appellee stated that the affirmative defense of gift was waived based on Appellant's failure to so plead prior to trial. Appellee also filed a supplemental response and memorandum of law opposing Appellant's motion to dismiss. Appellee reiterated that Appellant failed to amend his responsive pleadings to include the affirmative defenses raised in the motion within the thirty-day timeframe set by the trial court. Appellee also raised the concepts of revival and estoppel as tolling the statute of limitations.

Following the conclusion of trial, Appellant filed a motion requesting findings of fact and conclusions of law on August 30, 2021. He alleged that the trial court initially declined his offer to have the parties submit proposed findings of fact and conclusions of law because the trial court's oral findings and conclusions would be included in the Zoom recording of the proceedings. Eventually, the trial court did request that Appellee submit a proposed final order. Appellant stated that after reviewing Appellee's proposed order he requested access to the recording of the trial to submit his own proposed order. Appellant stated that he made additional requests for the recording on July 15 and 22, 2021, but was informed on July 29, 2021 that the recording could not be found.² Appellant stated that he eventually submitted a proposed final order on August 9, 2021, without the benefit of the trial court's oral findings and conclusions. Because the recording could not be located, Appellant requested that the trial court submit written findings and conclusions in accordance with the Tennessee Rules of Civil Procedure.

The trial court's final order was entered September 3, 2021. After describing the testimony offered by the parties, the trial court stated as follows:

10. After careful review of the testimony of both parties, this court credits the testimony of [Appellee] that she loaned [Appellant] \$12,000 of which [Appellant] repaid in 2015.

11. The Court finds that there were several term extensions to the contract and [Appellant's] payment on December 15, 2015, was an acknowledgement and an express willingness to pay the debt which cured or revived any statute of limitations issue. Therefore, [Appellant's] Motion to Dismiss challenging

² None of the three requests for the recordings are in the record before us, nor is there anything advising that the recording could not be found. Appellant has included some emails with his reply brief, but as it does not appear that they were presented to the trial court, we do not consider these. *Chandler v. Chandler*, No. W2010-01503-COA-R3-CV, 2012 WL 2393698, at *6 (Tenn. Ct. App. June 26, 2012) (“We are not permitted to consider documents that were not made part of the appellate record.” (citing *McDowell v. McDowell*, No. M2000-02153-COA-R3-CV, 2001 WL 856585, at *1 (Tenn. Ct. App. July 31, 2001) (appellate courts may only review what is in the record and not what might have been or should have been included))). Still, it does not appear that Appellee disputes that the Zoom recording is not available.

the statute of limitations is denied.

12. The Court further finds that [Appellee] proved a prima facie case of unjust enrichment as an alternative theory in this cause and [found] that [Appellee] conferred a benefit of \$12,000.00 upon [Appellant]. The Court [found Appellant] appreciated and accepted the benefit and [Appellant] was unjustly enriched because he did not use the money for the purpose intended and kept the \$12,000.00.

As a result, Appellant's motion to dismiss was denied, and the trial court ordered Appellant "to pay a total judgment in the amount of \$11,850.00 as breach of contract damages or alternatively for damages for unjust enrichment, which consists of the \$12,000.00 loan minus the \$150.00 previously received by [Appellee]."

Appellant filed his notice of appeal on October 4, 2021. No statement of the evidence was filed. After twice receiving additional time in which to file the appellate record, Appellant filed his notice of no transcript on April 19, 2022.

II. ISSUES PRESENTED

Appellant raises the following issues on appeal, which are taken directly from his brief:

- 1.) Whether the Trial Court submitted sufficient findings of fact and conclusions of law as mandated by Tennessee Rules of Civil Procedure 52.01 and 52.02.
- 2.) Whether the Trial Court relied on inadmissible evidence and / or sufficient facts in determining the existence of oral contract and subsequently breach of contract between the parties, and whether the Trial Court submitted sufficient findings of fact and conclusions of law to establish its ruling.
- 3.) Whether the trial Court submitted sufficient findings of fact and conclusions of law to determine Plaintiff's claim for breach of contract was not time barred by the statute of limitations.

III. DISCUSSION

Although Appellant sets out three issue statements in his brief, each essentially asks us to determine whether the trial court has set out sufficient findings of fact and conclusions of law to support its ruling. After our review, we determine that the trial court failed to make the necessary findings of fact and conclusions of law required by Tennessee Rule of Civil Procedure 52.01. Accordingly, we vacate the judgment of the trial court and remand the matter for the entry of an order with appropriate findings of fact and conclusions of

law.

The Tennessee Rules of Civil Procedure mandate that after hearing a case without a jury, a trial court “shall find the facts specially and shall state separately its conclusions of law and direct the entry of the appropriate judgment.” Tenn. R. Civ. P. 52.01. Prior to July 2009, trial courts needed to make specific findings of fact and conclusions of law only “upon request made by any party prior to the entry of judgment,” but the current version of Rule 52.01 requires these findings in every bench trial.³ *Hardin v. Hardin*, No. W2012-00273-COA-R3-PT, 2012 WL 6727533, at *3 (Tenn. Ct. App. Dec. 27, 2012) (quoting *Poole v. Union Planters Bank N.A.*, No. W2009-01507-COA-R3-CV, 337 S.W.3d 771, 791 (Tenn. Ct. App. 2010) (noting the amendment)). This Court has repeatedly held that the requirement is “not a mere technicality.” See, e.g., *id.* (quoting *In re K.H.*, No. W2008-01144-COA-R3-PT, 2009 WL 1362314, at *8 (Tenn. Ct. App. May 15, 2009)). Instead, the requirement that trial courts provide specific findings of fact and conclusions of law serves three main purposes: “to facilitate appellate review, to ‘make definite precisely what is being decided by the case,’ and ‘to evoke care on the part of the trial judge in ascertaining and applying the facts.’” *Manning v. Manning*, 474 S.W.3d 252, 260 (Tenn. Ct. App. 2015) (quoting *Lovlace v. Copley*, 418 S.W.3d 1, 34–35 (Tenn. 2013)). “Indeed, by clearly expressing the reasons for its decision, the trial court may well decrease the likelihood of an appeal.” *Lovlace*, 418 S.W.3d at 35 (citing *Hardin*, 2012 WL 6727533, at *5).

When a trial court makes the required findings of fact and conclusions of law, we review its “factual findings de novo upon the record, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise.” *Cain-Swope v. Swope*, 523 S.W.3d 79, 86 (Tenn. Ct. App. 2016) (citing *Kelly v. Kelly*, 445 S.W.3d 685, 692 (Tenn. 2014) (citing Tenn. R. App. P. 13(d))). If a trial court fails to make appropriate findings and conclusions, however, “this court is left to wonder on what basis the court reached its ultimate decision,” and we are rendered “unable to afford appropriate deference to the trial court’s decision.” *Manning*, 474 S.W.3d at 260 (first quoting *In re K.H.*, 2009 WL 1362314, at *8; and then quoting *In re Connor S.L.*, No. W2012-00587-COA-R3-JV, 2012 WL 5462839, at *4 (Tenn. Ct. App. Nov. 8, 2012)). The typical remedy for a trial court’s failure to meet the requirements of Rule 52.01 is for the appellate court to remand the case back to the trial court with directions to issue sufficient findings and conclusions. *Lovlace*, 418 S.W.3d at 36 (citations omitted). But when the case involves “only a clear legal issue,” or when the court’s decision is “readily ascertainable,” we may “soldier on” with our review despite the trial court’s noncompliance with Rule 52.01. *F & M Mktg. Servs., Inc. v. Christenberry Trucking & Farm, Inc.*, No. E2015-00266-COA-R3-CV, 2015 WL 6122872, at *6 (Tenn. Ct. App. Oct. 19, 2015) (quoting *Pandey v. Shrivastava*, No. W2012-00059-COA-R3-CV, 2013 WL 657799 (Tenn. Ct. App. Feb. 22, 2013)).

³ And, regardless, Appellant here did make a request for additional findings prior to the trial court’s issuance of its final order of judgment.

There is no bright-line test to determine whether a trial court's order is adequate, but "the findings of fact must include as much of the subsidiary facts as is necessary to disclose to the reviewing court the steps by which the trial court reached its ultimate conclusion on each factual issue." *Lucy v. Lucy*, No. W2020-01275-COA-R3-CV, 2021 WL 2579763, at *3 (Tenn. Ct. App. June 23, 2021) (quoting *Lovlace*, 418 S.W.3d at 35). Certainly "[a] trial court must do more than simply state its decision." *Id.* (quoting *Howard v. Beasley*, No. W2019-01972-COA-R3-CV, 2020 WL 6149577, at *3 (Tenn. Ct. App. Oct. 20, 2020)). Likewise, "recounting the proof presented is not the same as making the findings of fact required to adjudicate an issue." *Friedsam v. Kristle*, No. M2021-00530-COA-R3-CV, 2022 WL 3654658, at *9 (Tenn. Ct. App. Aug. 25, 2022). So although summarizing the testimony and evidence presented at trial "may be necessary and helpful to the trial court in making its findings and conclusions, the court must go beyond mere summation by linking the evidence to its clearly stated findings of fact and conclusions of law." *Rosebrough v. Caldwell*, No. W2018-01168-COA-R3-CV, 2019 WL 6898218, at *4 (Tenn. Ct. App. Dec. 18, 2019) (quoting *In re S.S.-G.*, No. M2015-00055-COA-R3-PT, 2015 WL 7259499, at *12 (Tenn. Ct. App. Nov. 16, 2015)).

This Court has previously discussed this distinction and noted that the trial court failed to make appropriate factual findings to underpin its conclusion within the context of the termination of parental rights. See *In re S.S.-G.*, 2015 WL 7259499, at *13. In that case, we concluded that while the trial court's order did "contain a lengthy summary of the testimony adduced at the hearing and a few credibility determinations," it did not "go so far as to make sufficient independent findings of facts based upon the evidence." *Id.* at *12. We went on to explain that:

This Court is a reviewing court. This means that we independently review the evidence de novo on the record. Accordingly, a trial court's mere summation of the evidence is not helpful to our review. Rather, it is the trial court's independent findings based on the evidence that are necessary for meaningful appellate review.

Id. The trial court was directed to make more detailed findings upon remand to "aid appellate review[.]" *Id.* at *13.

The trial court in *F & M Marketing Services, Inc. v. Christenberry Trucking & Farm, Inc.*, also faced issues with Rule 52.01 while deciding whether to pierce the defendants' corporate veil. No. E2015-00266-COA-R3-CV, 2015 WL 6122872 (Tenn. Ct. App. Oct. 19, 2015). While acknowledging that the final judgment included some relevant factual findings, the Court of Appeals determined that the trial court did not "render a legal conclusion" regarding how the facts fit into the test for piercing the corporate veil, such that it was "impossible to decipher upon which factors the trial court based its decision." *Id.* at *6. Because piercing the corporate veil is a fact-intensive decision, we did not soldier

on with our review, and instead remanded the case for the entry of an order compliant with Rule 52.01.

Unfortunately for our review, the trial court's final judgment in this case contains similar shortcomings. For its factual underpinnings, the trial court primarily recites the testimony of the parties, making only a singular statement of credibility. This is simply not the same as making findings of fact. *Friedsam*, 2022 WL 3654658, at *9. Without linking the testimony to specific, relevant factual findings in some way, the trial court merely summarizes the trial proceedings instead of explaining its decision. See *Rosebrough*, 2019 WL 6898218, at *4. As this appears to be a classic case of “she said, he said,” where Appellee claims there was an oral contract and Appellant denies any contract between the parties, a lack of factual findings deeply undercuts our ability to evaluate the trial court's reasoning. In particular, the trial court failed to cite any authority to establish the elements of breach of contract or, in the alternative, unjust enrichment, from which we could discern the rationale behind its holding that these claims had been proven. Additional findings would be especially useful here where the trial court found in favor of Appellee on two seemingly contradictory theories—breach of contract and unjust enrichment. Compare *Tolliver v. Tellico Vill. Prop. Owners Ass'n*, 579 S.W.3d 8, 25 (Tenn. Ct. App. 2019) (holding that to prevail in a breach of contract action, the plaintiff must show, inter alia, “the existence of an enforceable contract”), with *Whitehaven Cmty. Baptist Church v. Holloway*, 973 S.W.2d 592, 596 (Tenn. 1998) (holding that courts will impose an obligation under a theory of unjust enrichment when “there is no contract between the parties or a contract has become unenforceable or invalid”). While the invocation of alternative theories even up to the time of judgment does not necessarily create reversible error, it would be helpful to understand the trial court's reasoning in finding in favor of Appellee as to both theories. See *Dallas v. Shelby Cnty. Bd. of Educ.*, 603 S.W.3d 32, 47 (Tenn. Ct. App. 2019) (“[T]his Court has recognized on multiple occasions that alternative theories may be maintained as late as presentation to the jury or even following verdict.”). We are therefore “left to wonder” how the trial court “reached its ultimate decision[.]” *Manning*, 474 S.W.3d at 260.

Additionally, it appears that by at least the last day of trial Appellant raised the affirmative defenses of the expiration of the statute of limitations and gift. Appellee objected to both defenses as untimely and improperly raised. However, the trial court made no findings regarding the timeliness or propriety of the raising of these defenses. We assume for the purposes of this appeal, then, that the trial court found these defenses to have been timely and properly raised. See *Morgan Keegan & Co. v. Smythe*, 401 S.W.3d 595, 608 (Tenn. 2013) (“[W]hen construing orders and judgments, effect must be given to that which is clearly implied, as well as to that which is expressly stated.”). But the trial court's discussion of the merits of each defense is sparse at best. No mention of the gift defense is made in the order at all. With regard to the statute of limitations, arguably the central focus of this case, the trial court said nothing more than that “there were several term extensions to the contract and [Appellant's] payment on December 15, 2015, was an

acknowledgement and an express willingness to pay the debt which cured or revived any statute of limitations issue.” This lone sentence explains that there were “several extensions” made to the parties’ oral contract, but details exactly none of the specifics—when the extensions were made, why the extensions were made, or until when the repayment period was extended. Instead, the only specific action cited as extending the statute of limitations was a single payment made in December 2015. The trial court did not cite any law to support its conclusion that this payment negated Appellant’s statute of limitations defense. Without more specific findings and legal conclusions to support a finding that the statute of limitations was somehow extended through this single payment or through the vague extensions barely mentioned by the trial court, we are essentially left to guess as to how the trial court reached its result on this central issue.

In sum, the trial court’s final order fails to provide sufficient factual findings and legal conclusions as required by Rule 52.01. In these circumstances, we have held that the most appropriate remedy is the vacating of the trial court’s judgment. *See Hardin*, 2012 WL 6727533, at *5; *Lovlace*, 418 S.W.3d at 36. Moreover, the trial court’s reasoning is not “readily ascertainable” here and so we decline to soldier on. *Lucy*, 2021 WL 2579763, at *4. Thus, we vacate the trial court’s judgment and remand this matter to the trial court. Upon remand, the trial court shall enter an order containing sufficient findings and conclusions so as to comply with Rule 52.01. All other issues are therefore pretermitted. *See Hardin*, 2012 WL 6727533, at *5 (concluding that a party’s “failure to properly file a transcript or statement of the evidence does not trump the trial court’s failure to follow the mandates of Rule 52.01 by making detailed findings of fact and conclusions of law.”).

IV. CONCLUSION

The judgment of the Shelby County Circuit Court is vacated, and this matter is remanded to the trial court for further proceedings consistent with this Opinion. Costs of this appeal are taxed to Plaintiff/Appellee Kemetria Yarbrough, for which execution may issue if necessary.

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