IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
March 10, 2020 Session

IN RE ESTATE OF JOHN R. FARMER

Appeal from the Chancery Court for Robertson County
No. CH-15-CV-497 Laurence M. McMillan, Jr., Chancellor

No. M2019-01335-COA-R3-CV

Appellant challenged the trial court's ruling that determined when interest began to accrue on a promissory note. Appellant argues that the trial court issued a sua sponte ruling without allowing additional evidence to be presented. Because Appellant failed to meet its burden to show reversible error, we affirm the trial court's ruling.

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 ARNOLD B. GOLDIN and KENNY ARMSTRONG, JJ., joined.

James B. Johnson, Nashville, Tennessee, for the appellant, Mary F. Eden.

B. Nathan Hunt and Catherine W. Cheney, Clarksville, Tennessee, for the appellees, Barbara Ann Shelton, Peggy Jo Duffer, Michael S. Farmer, Rudolph Scott Farmer, and Timothy Lee Farmer.

MEMORANDUM OPINION[1]

BACKGROUND

[1] Rule 10 of the Rules of the Court of Appeals states:

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 When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

Appellant/Petitioner Mary F. Eden ("Appellant") signed a promissory note with her father, John R. Farmer ("Decedent"), on July 31, 2011. According to the promissory note, Decedent agreed to loan $212,919.56 to Appellant, which would be repaid through 120 monthly payments of $2,155.71. The loan was subject to 4% interest. Appellant made either four or five payments on the promissory note between September 15, 2011 and March 9, 2013. Decedent died on October 29, 2015. After Decedent's passing, Appellant made regular payments on the loan.

Decedent's estate was opened in the Robertson County Chancery Court ("the trial court"). As part of the estate matter, the trial court found that Decedent had placed Appellant's loan obligation in forbearance while he remained alive. At that hearing, however, the trial court stated that it was not ruling whether interest applied on the note or when that interest would accrue. On May 31, 2019, Appellees/Respondents Barbara Shelton, Rudolph Scott Farmer, Michael S. Farmer, Timothy Lee Farmer, and Peggy Jo Duffer (collectively, "Appellees") filed a Motion for Determination, which requested that the trial court determine the amount of interest Appellant owed on the promissory note. Appellees asserted that interest should have started to accrue on July 31, 2011, the day of Decedent's passing. In a response filed June 7, 2019, Appellant responded that the trial court should deny the motion because Appellees "failed to present any facts or sworn testimony in support of their motion." Appellant requested that the trial court conduct an evidentiary hearing and take testimony about the issue. Appellant also stated she could not be present for the hearing. The hearing occurred as scheduled on June 10, 2019. Appellant was not present, but her counsel was. The trial court questioned the attorneys as to whether it had already considered the issue and whether there was a need to hear testimony on the issue again. Counsel for Appellant and Appellees stated that no testimony had been presented regarding interest and that the trial court had not yet determined when the interest began to accrue. No testimony or evidence was presented. The trial court took Appellees' motion under advisement at the end of the hearing.

On June 24, 2019, the trial court entered the following order:

> This cause is before the court for a determination of the amount of principal and interest owed by [Appellant] on a certain Promissory Note dated July 31, 2011. Upon the statements of counsel and the record as a whole, the court is of the opinion that the Promissory Note at issue should have begun to accrue interest on the date of its making, and that the amortization schedule attached to the Motion as Exhibit B, prepared by Eric Jones, CPA, properly calculates the amount of interest and principal owed by [Appellant].

Following the order, the note was subsequently assigned from the estate's administrator ad litem to Appellees, who were also issue of Decedent. According to statements made at

oral argument, the trial court closed the Decedent's estate.[2] Appellant timely filed a notice of appeal to this Court.

ISSUES PRESENTED

Appellant raised one issue on appeal, which we restate as follows: whether the trial court erred when finding that interest began to accrue when the promissory note in question was executed without receiving any evidence or testimony from witnesses.[3] Appellees separately argue that Appellant's appeal is frivolous and that they are entitled to damages under the state's frivolous appeal statute.

DISCUSSION

As an initial matter, we must first note the deficiencies of Appellant's brief submitted to this Court. Rule 27 of the Tennessee Rules of Appellate Procedure states that arguments must be supported through appropriate references and citations to the appellate record and relevant authorities. *See* Tenn. R. App. P. 27(a)(7). Beyond a cursory reference to a standard of review,[4] Appellant fails to cite any legal authority to support her arguments. Further, the brief itself fails to include a table of contents and a table of authorities, both of which are required under the Rules of Appellate Procedure. *See* Tenn. R. App. P. 27(a)(1)–(2). Repeatedly, the Supreme Court of Tennessee has stated that courts are under no obligation "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 Prof'l Responsibility of Supreme Court***, 301 S.W.3d 603, 615 (Tenn. 2010). Despite the deficient briefing on this issue, we will proceed to consider whether the trial court erred by ruling about the accrual of interest without permitting Appellant to present evidence.

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[2] While both parties submitted at oral argument that Decedent's estate is closed, the appellate record presented to this Court did not indicate the closure of the estate. At oral argument, this Court therefore requested that Appellees supplement the record to confirm that the estate was closed. On April 9, 2020, Appellees filed a notice with this Court attaching a September 9, 2019 order closing Decedent's Estate.

[3] In her brief, Appellant frames this issue as the trial court ruling sua sponte on the interest issue. Sua sponte means "'(o)f his or its own will or motion; voluntarily; without prompting or suggestion.'" ***State v. Hodges***, No. 89-295-III, 1989 WL 155681, at *2 (Tenn. Crim. App. Dec. 28, 1989), *aff'd,* 815 S.W.2d 151 (Tenn. 1991) (quoting *Black's Law Dictionary* 1592 (4th ed. 1951)). Here, Appellees filed a motion asking the court to rule on the interest issue. The trial court's action was therefore not sua sponte.

[4] This citation itself is puzzling. Specifically, Appellant's only citation to authority is to the de novo standard of review applicable to issues of law. Of course, the application of this standard of review belies Appellant's entire argument that this was a factual rather than a legal matter that required the presentation of evidence to adjudicate.

As we interpret the issue presented, Appellant argues that the trial court prevented her from presenting evidence to oppose Appellees' motion to determine when the accrual of interest on the promissory note began. Generally, the trial court's decision to admit or exclude evidence is upheld absent an abuse of discretion. ***Mercer v. Vanderbilt Univ.***, 134 S.W.3d 121, 131 (Tenn. 2004) (citing ***Otis v. Cambridge Mut. Fire Ins. Co.***, 850 S.W.2d 439, 442 (Tenn. 1992)). An abuse of discretion occurs when a trial court "applied an incorrect legal standard, or reached a decision which is against logic or reasoning that caused an injustice to the party complaining." ***State v. Shirley***, 6 S.W.3d 243, 247 (Tenn. 1999) (quoting ***State v. Shuck***, 953 S.W.2d 662, 669 (Tenn. 1997)).

When a court rules to exclude evidence, error may not be found unless a substantial right of a party was affected and "the substance of the evidence and the specific evidentiary basis supporting admission were made known to the court by offer or were apparent from the context." Tenn. R. Evid. 103(a). As this Court has previously outlined,

> An erroneous exclusion of evidence requires reversal only if the evidence would have affected the outcome of the trial had it been admitted. ***Pankow v. Mitchell***, 737 S.W.2d 293, 298 (Tenn. Ct. App. 1987). Reviewing courts cannot make this determination without knowing what the excluded evidence would have been. ***Stacker v. Louisville & N. R.R. Co.***, 106 Tenn. 450, 452, 61 S.W. 766 (1901); ***Davis v. Hall***, 920 S.W.2d 213, 218 (Tenn. Ct. App. 1995); ***State v. Pendergrass***, 795 S.W.2d 150, 156 (Tenn. Crim. App. 1989). Accordingly, the party challenging the exclusion of evidence must make an offer of proof to enable the reviewing court to determine whether the trial court's exclusion of proffered evidence was reversible error. Tenn. R. Evid. 103(a)(2); ***State v. Goad***, 707 S.W.2d 846, 853 (Tenn. 1986); ***Harwell v. Walton***, 820 S.W.2d 116, 118 (Tenn. Ct. App. 1991). Appellate courts will not consider issues relating to the exclusion of evidence when this tender of proof has not been made. ***Dickey v. McCord***, 63 S.W.3d 714, 723 (Tenn. Ct. App. 2001); ***Rutherford v. Rutherford***, 971 S.W.2d 955, 956 (Tenn. Ct. App. 1997); ***Shepherd v. Perkins Builders***, 968 S.W.2d 832, 833-34 (Tenn. Ct. App. 1997).
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> As stated, an offer of proof must contain the substance of the evidence and the specific evidentiary basis supporting the admission of the evidence. Tenn. R. Evid. 103(a)(2). These requirements may be satisfied by presenting the actual testimony, by stipulating to the content of the excluded evidence, or by presenting an oral or written summary of the excluded evidence. Neil P. Cohen, et al. *Tennessee Law of Evidence* § 103.4, at 20 (3d ed. 1995).

Thompson v. City of LaVergne, No. M2003-02924-COA-R3-CV, 2005 WL 3076887, at *9 (Tenn. Ct. App. Nov. 16, 2005); *see also* ***Bean v. Wilson Cty. Sch. Sys.***, 488 S.W.3d 782, 793–94 (Tenn. Ct. App. 2015) ("Without knowing the substance of the excluded evidence, we are unable to assume that the evidence would have been admissible and that it would have affected the outcome of the trial."); ***Dossett v. City of Kingsport***, 258 S.W.3d 139, 145 (Tenn. Ct. App. 2007) (holding that a trial court did not err in holding an *in limine* hearing when a party made no offer of proof of evidence that would be presented in an *in limine* hearing that would establish his standing to challenge a city ordinance).

In ***Hampton v. Braddy***, a party argued that evidence was improperly excluded after a trial court granted a motion in limine limiting evidence that a spouse could present in a divorce without making an offer of proof supporting her assertion. 270 S.W.3d 61, 65 (Tenn. Ct. App. 2007). While we concluded that a motion in limine and subsequent arguments provided "some clue" to the evidence that could have been excluded, the motion and oral arguments "[did] not rise to the level of an offer of proof containing the substance of the evidence and the specific evidentiary basis supporting the admission of this evidence." ***Id.*** at 65–66.

Based on the record provided to this Court, we cannot ascertain what evidence Appellant intended to provide in opposition to Appellees' motion. Appellant had multiple opportunities to present proof or some sort of offer of proof in this action. She responded to Appellees' motion by stating that Appellees had no evidence to support its assertions and calling for a hearing where testimony could be presented. When a hearing was held days later, Appellant's counsel offered no testimony or affidavits from witnesses and made no summary of any evidence that could be provided to the trial court in the future. After the order was entered, no apparent efforts were made to ask the trial court to amend the trial court's order or provide any sort of proof illustrating that the order was wrongly decided. While Appellant possessed multiple opportunities to present or outline potential evidence supporting her claims, she did not provide the trial court (or consequently, this Court) any idea of what proof she would attempt to provide in opposition to the motion in question.[5] In short, we do not know what proof would have

[5] Because Appellant asserts that this was a factual issue necessitating the presentation of evidence, we utilize the rules applicable to evidentiary issues. The trial court, however, ruled that evidence was not necessary and ruled on this issue as a matter of law, somewhat akin to the grant of a summary judgment motion. *Cf.* ***Fisher v. Revell***, 343 S.W.3d 776, 779 (Tenn. Ct. App. 2009) (citing ***Rainey v. Stansell,*** 836 S.W.2d 117, 119 (Tenn. Ct. App. 1992)) ("Construction of a contract is particularly suited to disposition by summary judgment."). Appellant's brief cannot be reasonably construed as making any argument that the trial court erred in its conclusion of law; rather, the only argument presented on appeal is that the trial court should have considered evidence before ruling on Appellees' motion. As noted *supra*, relief on that argument is hampered because Appellant has failed to show what evidence, if any, it would have presented on this issue. Even if the trial court's ruling was considered in the nature of summary judgment, Appellant's failure to present evidence in support of her claims remains problematic. A non-moving party, when required to establish a material fact is in dispute,

been presented if Appellant was allowed to offer testimony and other evidence in a subsequent hearing.

Further, the record and arguments presented to this Court do not provide any context to what evidence could have been offered or a specific evidentiary basis supported admission of the evidence. *See* Tenn. R. Evid. 103(a)(2); *cf.* ***Singh v. Larry Fowler Trucking, Inc.***, 390 S.W.3d 280, 286 (Tenn. Ct. App. 2012) (where the presence of a full deposition, a motion *in limine*, and a subsequent ruling provided sufficient context to determine the "substance of the evidence and the specific evidentiary basis supporting admission or exclusion" without an offer of proof). Even if, *arguendo*, the trial court erred in not allowing Appellant to present evidence, we cannot reverse that action without an offer of proof that details the excluded evidence and could establish that the outcome of the case would have differed if the evidence was admitted. For this reason, we deem Appellant's issue on appeal to be waived and affirm the trial court's order concerning the accrual of interest tied to the promissory note.

Separately, we recognize that Appellees request an award of damages against Appellant for filing a frivolous appeal. We may award damages on appeal when it appears that "the appeal from any court of record was frivolous or taken solely for delay[.]" Tenn. Code Ann. § 27-1-122. Appeals are considered frivolous when they are "'devoid of merit'" or have "'no reasonable chance of success.'" ***Khan v. Regions Bank***, 572 S.W.3d 189, 196 (Tenn. Ct. App. 2018) (quoting ***GSB Contractors, Inc. v. Hess***, 179 S.W.3d 535, 547 (Tenn. Ct. App. 2005)). We have previously granted an award of damages for a frivolous appeal where the appellant's brief was "so severely deficient that this Court [wa]s unable to determine even what issues [the party was] attempting to raise on appeal." ***Murray v. Miracle***, 457 S.W.3d 399, 404 (Tenn. Ct. App. 2014). We have also granted damages when a brief's deficiencies were coupled with reliance on documents not contained in the appellate record, *see* ***Rummage v. Rummage***, No. M2016-02356-COA-R3-CV, 2018 WL 2134018, at *5 (Tenn. Ct. App. May 9, 2018), or an inadequate appellate record. *See* ***Chiozza v. Chiozza***, 315 S.W.3d 482, 493 (Tenn. Ct. App. 2009). Although Appellant's brief does not fully comply with Rule 27 and Appellant was not ultimately successful in this appeal, we were not wholly prevented from considering Appellant's arguments due to inadequate briefing or due to an inadequate appellate record. Given the hesitancy this Court exercises in awarding damages under section 27-1-122, we decline to award fees in this case.

CONCLUSION

The judgment of the Robertson County Chancery Court is affirmed. This cause is

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must bring forth specific facts, not conclusory statements, supporting its claim. ***Byrd v. Hall***, 847 S.W.2d 208, 216 (Tenn. 1993). Thus, Appellant's failure to submit evidence of the facts it disputed again defeats any claimed error on appeal.

remanded to the trial court for all further proceedings as may be necessary and consistent with this Opinion. Costs of this appeal are taxed to Appellant, Mary F. Eden, for which execution may issue if necessary.

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J. STEVEN STAFFORD, JUDGE