

FILED

05/12/2023

Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs May 1, 2023

REGIONS BANK v. DOCTOR R. CRANTS

Appeal from the Chancery Court for Davidson County
No. 20-0293-III I'Ashea L. Myles, Chancellor

No. M2022-01314-COA-R3-CV

This case involves enforcement of an arbitration award arising from a defaulted promissory note. The plaintiff brought suit against the defendant for breach of contract and enforcement of a promissory note. Ultimately, the parties participated in binding arbitration per the terms of their agreement. The plaintiff obtained an award in arbitration against the defendant. Thereafter, the plaintiff filed a motion in the trial court to confirm and enforce the arbitration award. The trial court granted the plaintiff's motion, and the defendant now appeals. Having reviewed the record, we determine that the defendant has waived his argument on appeal and affirm the trial court's order.

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

ARNOLD B. GOLDIN, J., delivered the opinion of the Court, in which ANDY D. BENNETT and KRISTI M. DAVIS, JJ., joined.

Doctor R. Crants, Nashville, Tennessee, Pro se.

Walter N. Winchester, E. Brian Sellers, and Rachel M. Hester, Knoxville, Tennessee, for the appellee, Regions Bank.

OPINION

BACKGROUND AND PROCEDURAL HISTORY

On February 14, 2014, Doctor R. Crants ("Defendant") executed a promissory note (the "Note") with Regions Bank ("Plaintiff"). The Note had a principal amount of \$437,112.66, and a maturity date of February 14, 2019. On February 4, 2019, Defendant and Plaintiff executed a new agreement extending the maturity date for the Note from February 14, 2019, to May 14, 2019. Based on correspondence between Plaintiff and

Defendant, the Note's maturity date was then later again extended until August 14, 2019.

Defendant failed to pay the Note when it ultimately became due on August 14, 2019. On February 27, 2020, Plaintiff's counsel sent a demand letter to Defendant, advising him that the Note had matured on August 14, 2019, and was in default due to Defendant's failure to pay the Note at maturity. The demand letter advised Defendant that the payoff amount of the Note at that time was \$279,030.04. The letter further demanded that Defendant pay the Note in full by March 8, 2020. Defendant, however, failed to pay the Note on March 8, 2020, as demanded.

On March 13, 2020, Plaintiff filed a complaint in the Chancery Court for Davidson County, Tennessee, to enforce the Note. After several continuances, the trial court entered an order setting a deadline of August 21, 2020, for Defendant¹ to respond to Plaintiff's complaint.

On August 20, 2020, Defendant filed his answer to the complaint. In his answer, Defendant admitted that he had executed the Note and had not paid it in full. Defendant also admitted to receiving Plaintiff's demand letter that he pay the Note in full by March 8, 2020. However, Defendant asserted that the Note included a provision that any claims, disputes, or controversy arising out of the business relationship between Plaintiff and Defendant must be resolved by binding arbitration. Defendant's pleading also asserted a counterclaim against Plaintiff. Additionally, the same day Defendant filed his answer, he filed a motion asking the court to submit the case to binding arbitration pursuant to the Note. Plaintiff filed its response to Defendant's motion wherein it agreed that the Note provided for binding arbitration.

The trial court subsequently entered an order granting arbitration, and in a later order, it specified that Defendant was ordered, in accordance with the terms of the Note, "to pay, on or before January 5, 2021, the fees required to initiate and proceed to arbitration." This later order also specifically provided that "if the Defendant fails to comply with the January 5, 2021 deadline then the Plaintiff may file in this Court a motion that the Defendant has waived his right to arbitration and for this case to be reopened and litigated in this Court." Defendant attempted to appeal the trial court's arbitration ruling to this Court, but the appeal was dismissed by this Court upon a determination that we lacked subject-matter jurisdiction.

Following the dismissal of Defendant's appeal, the parties participated in arbitration, and, on July 25, 2022, the arbitrator issued an award in Plaintiff's favor for

¹ Defendant has represented himself pro se throughout these proceedings, both in the trial court and on appeal. Pro se litigants such as Defendant are entitled to fair and equal treatment by the courts, and courts should take into account that they may have no legal training. *Hessmer v. Hessmer*, 138 S.W.3d 901, 903 (Tenn. Ct. App. 2003). Nevertheless, courts must not excuse pro se litigants from complying with the same substantive and procedural rules that represented parties are expected to observe. *Id.*

recovery on the Note and dismissed Defendant's counterclaim. Thereafter, on August 17, 2022, Plaintiff filed a motion in the trial court to confirm the arbitration award and for entry and enforcement of a judgment; Plaintiff sent a copy of the motion and notice of a setting regarding it to Defendant via U.S. Mail. Defendant did not respond to the motion. On September 16, 2022, the trial court conducted a hearing on Plaintiff's motion to confirm, a hearing which Defendant acknowledges he attended. The same day, the trial court entered an order confirming the arbitration award and entered a judgment against Defendant in the amount of \$358,242.22. Defendant then filed his notice of appeal.

ISSUES PRESENTED FOR REVIEW

We have restated what we discern to be Defendant's issue on appeal as follows:

1. Whether Plaintiff sufficiently complied with Davidson County Local Rule 26 for the Twentieth Judicial District of Tennessee, such that it was appropriate for the trial court to enter its order confirming the arbitration award and issue a judgment against Defendant.

In its brief, Plaintiff raises two issues on appeal, restated as follows:

1. Whether Defendant has waived his argument on appeal.
2. Whether Plaintiff is entitled to damages for a frivolous appeal pursuant to Tennessee Code Annotated section 27-1-122.

DISCUSSION

Waiver

At the outset, we address Plaintiff's threshold issue as to whether Defendant has waived his argument asserted on appeal. As noted, we discern Defendant's singular issue to be whether Plaintiff sufficiently complied with Davidson County Local Rule 26 for the Twentieth Judicial District of Tennessee ("Local Rule 26"), such that it was appropriate for the trial court to enter its order confirming the arbitration award and issue a judgment against Defendant. Defendant argues in his brief that Plaintiff did not comply with Local Rule 26, claiming Plaintiff did not give him proper notice of the hearing on its motion. Observing that Local Rule 26 provides that there be a fourteen day minimum for notice of hearings on motions, Defendant maintains that he only received notice via an email exchange with Plaintiff's counsel on September 12, 2022, when the hearing on Plaintiff's motion was set for September 16, 2022.² He further argues that the notice did not contain

² In its brief, Plaintiff refutes Defendant's assertion regarding notice, stating that it filed its motion to confirm the arbitration award on August 17, 2022, along with a separately filed request to docket the case for September 16, 2022. Plaintiff states that the motion and the request to docket filings both contained

required language under Local Rule 26 directing that the notice “shall advise all other parties that failure to file and serve a timely written response to the motion will result in the motion being granted without further hearing.”

Plaintiff argues that Defendant waived his issue on appeal concerning notice because he attended the hearing, as admitted in his brief. Moreover, Plaintiff points out that Defendant does not cite to any support in the record showing that he raised the issue of notice at the hearing or that he had a “meritorious defense” to the motion. We agree with Plaintiff’s contentions that Defendant waived his issue on appeal. First, Plaintiff is correct that Defendant did indeed attend the hearing on the motion, as indicated by his own brief. As such, this in itself could be interpreted as waiver of notice. Indeed, an appearance may waive the *sufficiency* of notice. *Tennessee Jurisprudence*, Appearances, § 16 (citing *Young v. Hare*, 30 Tenn. 303, 303–04 (Tenn. 1850)). Accordingly, simply by way of appearing at the hearing on Plaintiff’s motion, Defendant could be said to have waived any argument related to notice.

Our discussion on Defendant’s waiver could potentially end here given that Defendant attended the hearing. Here, though, Defendant argues in his brief that “the trial court denied [him] an opportunity to tell the court that [Plaintiff’s] failure to give [him] 14 days notice and its failure to include the warning regarding failing to file a response was the cause of [his] failure to file and serve a timely response.” However, the record lacks any support for this contention. Specifically, there is neither a transcript of the hearing on the motion nor a statement of the evidence contained in the record on appeal. It is the duty of Defendant as the appellant in this matter “to prepare the record which conveys a fair, accurate, and complete account of what transpired in the trial court regarding the issues which form the basis of the appeal.” *In re M.L.D.*, 182 S.W.3d 890, 894 (Tenn. Ct. App. 2005). “The appellant also has the burden to provide this Court with a transcript of the evidence or a statement of the evidence from which we can determine whether the evidence preponderates for or against the findings of the trial court.” *Id.* at 894–95 (citing *Coakley v. Daniels*, 840 S.W.2d 367, 370 (Tenn. Ct. App. 1992)). Because there is no support for the notion that Defendant raised an issue concerning notice, or the sufficiency thereof, before the trial court, despite his presence at the hearing, we conclude that Defendant has waived his issue concerning notice and we will not address it on appeal.

Frivolous Appeal

Plaintiff requests damages for a frivolous appeal pursuant to Tennessee Code Annotated section 27-1-122, which provides:

When it appears to any reviewing court that the appeal from any court of

a certificate of service on Defendant, dated August 17, 2022, and both were mailed to Defendant at the address that Defendant “ha[d] maintained throughout the proceedings.”

record was frivolous or taken solely for delay, the court may, either upon motion of a party or of its own motion, award just damages against the appellant, which may include, but need not be limited to, costs, interest on the judgment, and expenses incurred by the appellee as a result of the appeal.

Tenn. Code Ann. § 27-1-122. “Determining whether to award these damages is a discretionary decision.” *Young v. Barrow*, 130 S.W.3d 59, 66–67 (Tenn. Ct. App. 2003) (citing *Banks v. St. Francis Hosp.*, 697 S.W.2d 340, 343 (Tenn. 1985)). “A frivolous appeal is one that is devoid of merit, or one that has no reasonable chance of succeeding.” *Id.* (internal citation omitted). “[A]n appeal in which the reviewing court’s ability to address the issues raised is undermined by the appellant’s failure to provide an adequate record is deemed frivolous because it has no reasonable chance of succeeding.” *Id.* (citing *Brooks v. United Unif. Co.*, 682 S.W.2d 913, 915 (Tenn. 1984)).

Here, Defendant’s appeal rests solely on whether he received sufficient notice as to the hearing on Plaintiff’s motion pursuant to Local Rule 26. However, because Defendant failed to file either a transcript or statement of the evidence in the appellate record, as was his duty, there is nothing in this record to support Defendant’s claim that he raised the issue concerning notice before the trial court, despite his appearance at the hearing on the motion. As such, there is nothing in this record to review. Accordingly, we deem this appeal frivolous, and Plaintiff is entitled to the costs it incurred in defending against it, including reasonable attorney’s fees incurred on appeal.

CONCLUSION

Based on the foregoing, we find Defendant’s argument on appeal waived and affirm the trial court’s order. Furthermore, we remand the case to the trial court for an assessment of damages in accordance with Tennessee Code Annotated section 27-1-122.

s/ Arnold B. Goldin
ARNOLD B. GOLDIN, JUDGE