

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Luz D. Reyes, as Personal
Representative of The Estate of
J'Mel D. Dowdell, Sr.,
Deceased,
Appellant-Petitioner,

v.

Semeret Adhanom,
Appellee-Intervenor.

February 13, 2024

Court of Appeals Case No.
23A-ES-1669

Appeal from the Marion Superior
Court

The Honorable Melanie L.
Kendrick, Magistrate

Trial Court Cause No.
49D08-2205-ES-17898

Memorandum Decision by Judge Brown
Judges Tavitas and Foley concur.

Brown, Judge.

[1] Luz D. Reyes, as the personal representative of the estate of J'Mel D. Dowdell, Sr., ("the Estate") appeals the trial court's judgment in favor of Semeret Adhanom and its award of attorney fees and costs. We reverse and remand.

Facts and Procedural History

[2] On May 26, 2022, Reyes petitioned for supervised administration of the Estate and appointment as personal representative of the Estate, which the court granted. On November 18, 2022, Adhanom filed a motion to intervene, claiming that, on October 14, 2020, Dowdell had "authored and personally executed a Commercial Promissory Note . . . as 'Borrower' in favor of Ms. Adhanom, as 'Lender' to assist in the renovation" of his home, pursuant to which Dowdell had promised to repay the borrowed principal amount of \$25,000 plus \$22,000 in interest no later than April 13, 2021. Appellant's Appendix Volume II at 16. The motion stated that "[n]otwithstanding Mr. Dowdell's breach, in an effort to protect their collective interest in the Home, Ms. Adhanom extended a second loan to Mr. Dowdell to finish the renovation of the Home by tendering him a cashier's check . . . in the amount of \$25,000 and made payable to Button Nose Kidz, LLC," and that Button Nose Kidz, LLC was "an entity solely owned by Mr. Dowdell." *Id.* at 18. It asserted further that "Mr. Dowdell never financed a mortgage to pay off the Note or otherwise gave a mortgage to Ms. Adhanom to secure her interest in the Home if such third-party financing was unavailable—the minimal action to protect her interest as he intended," the debt should be classified as secured, "[o]n March 31, 2022, Ms. Adhanom filed a Notice of Intention to Hold Mechanic's Lien for

\$72,000,” and “the Home was sold and closed on October 21, 2022, for \$135,000 and the indebtedness was not paid off.” *Id.* at 17-19. Adhanom attached exhibits to her motion to intervene, which included a Commercial Promissory Note, two cashier’s checks, her Notice of Intention to Hold Mechanic’s Lien, and “records maintained by the Metropolitan Board of Realtors” related to Dowdell’s home. *Id.* at 19.

[3] On December 20, 2022 the court issued a Notice Setting In Person Hearing, stating that the case was “set for Hearing on Motion to Intervene (Objection filed)” *Id.* at 47.

[4] On January 30, 2023, the court held a hearing on Adhanom’s motion to intervene at which Adhanom’s counsel did not seek to admit any evidence. At the hearing, the court stated:

So first things first. So let’s see. So I am going to go ahead and approve the motion to intervene at this time, just on the actual intervening.

Transcript Volume II at 4. The following exchange subsequently occurred:

[The Estate’s Counsel]: . . . I do understand the Court saying well, you are in -- we are going to allow you to intervene because otherwise, we couldn’t have this . . . hearing.

[The Estate’s Counsel]: But as to the claim itself, are we trying that claim today? I am not sure what we are doing in that regard.

THE COURT: Well, it is my understanding that-- well, I guess we should have addressed that. It seems like there is not a

question of fact over whether the claim exists; is that correct? It is whether or not it is allowed?

[The Estate's Counsel]: Oh, no. Well --

THE COURT: I mean --

[The Estate's Counsel]: -- I don't -- I am not sure how to respond to that. I do have a response why we don't think it is a valid claim. But these other things are in play as well, so.

THE COURT: Well, I think, I mean, essentially, the issue, so yes, I guess, would be my answer that we are trying that claim today.

[The Estate's Counsel]: Okay.

THE COURT: Yeah.

[The Estate's Counsel]: Very good.

THE COURT: So go ahead.

[The Estate's Counsel]: Okay.

Id. at 11-12. Adhanom's counsel made arguments but no witnesses testified and no evidence was admitted.

[5] The following arguments were then made by the Estate:

[The Estate's Counsel]: . . . There is zero evidence. There is zero evidence before this Court anyway. And I believe if they were going to make a claim, they had an obligation to put the evidence on. They have no witness. Counsel's statements to this Court are not evidence. My statements to this Court are not evidence. They have to put evidence on. They need documentation. They need a witness. And they need a witness who can avoid saying

stuff that [Dowdell] can't counter, and I don't know that is possible.

* * * * *

So there is no evidence before this Court, certainly none that would back the claim. And the documents themselves that Counsel has put forth as, I am not sure what. To me, it is not evidence. There has been no tender of that offer of those being evidence. And if there is, then I think there has to be a witness that explains how it is that those checks and that promissory note connect directly to [Dowdell] in such a way to make him personally liable. And I don't think the evidence is there. I think whatever documents they put in front of this Court, if it was evidence, utterly fail to do that. And so we would ask that the Court deny this claim and allow this claimant to go directly to whatever is left with these companies.

Id. at 22, 24.

[6] On February 24, 2023, the court issued an order and found, in part, that the promissory note made clear “that it was [Dowdell’s] intent to borrow funds from Ms. Adhanom, and it was [Dowdell] who agreed to repay Ms. Adhanom pursuant to the terms and conditions of the Note, as well as provide a mortgage on the Property,” Adhanom was entitled to an undetermined amount of attorney fees and \$77,000 for breach of contract. Appellant’s Appendix Volume II at 53. On February 24, 2023, the court also granted Semeret’s motion for judicial notice stating: “[w]hen [Dowdell] herein entered into the October 14, 2020, Promissory Note with Intervenor herein, [Dowdell] was the sole member of BNK Development, LLC (‘BNK’) and BNK’s principal address was 120 E.

Market Street, Ste. 409, Indianapolis, Indiana 46204,” “BNK was a subsidiary of Button Nose Kidz, LLC,” and “BNK was administratively dissolved on April 5, 2021.” Appellee’s Appendix Volume II at 44. On March 8, 2023, the court ordered the Estate to pay “attorney’s fees and costs totaling \$14,231.10 in addition to the \$77,000.00 it owes Ms. Adhanom in connection with [Dowdell’s] breach of contract.” *Id.* at 48.

[7] On March 22, 2023, the Estate filed a Motion to Correct Error and requested that “[t]he fees award should be set aside until a hearing can be held on the same and for all parties to the estate to attend and object to the request.” Appellant’s Appendix Volume II at 60. On March 23, 2023, the court vacated its award of attorney fees and set a hearing on the matter of attorney fees for May 9, 2023.

[8] On April 20, 2023, the Estate filed a Verified Motion for Relief from Order Pursuant to Trial Rule 60(B), alleging that it had discovered new evidence about payments made by Dowdell. At a hearing on June 12, 2023, the court denied the motion and heard argument about attorney fees. On June 12, 2023, the court entered an order denying the Estate’s motion and ordering “that this Court’s February 24, 2023, final judgment in favor of Intervenor Semeret Adhanom and against the Estate, on Intervenor’s breach of contract claim, in the amount of Seventy Seven Thousand Dollars (\$77,000.00), plus attorney’s fees, shall remain in full force and effect.” Appellee’s Appendix Volume II at 81.

[9] On June 20, 2023, the court issued a Final Order Awarding Attorney’s Fees and Costs in Relation to Final Order on Intervenor’s Breach of Contract Claim, and it awarded “attorney’s fees and costs totaling \$25,892.79 (\$25,660.00 in fees and \$232.79 in costs) in addition to the \$77,000.00 the Estate owes Ms. Adhanom in connection with [Dowdell’s] breach of contract.” Appellant’s Appendix Volume II at 15. The court noted that there was no just reason for delay and that final judgment pursuant to Ind. Trial Rule 54(B) was entered in favor of Adhanom. The Estate filed its notice of appeal on July 19, 2023.

Discussion

[10] The Estate argues the trial court “entered a judgment against [it], finding certain facts to be true though no evidence supported those findings.” Appellant’s Brief at 16. Adhanom argues that the court “properly considered the evidence presented at the January 30, 2023 Hearing, [and] took judicial notice of certain relevant facts” before reaching its decision, and that “the evidence presented by [her] by way of her Verified Motion to Intervene and Verified Reply supports the findings set forth in the trial court’s Final Judgment.” Appellee’s Brief at 22.¹

¹ To the extent Adhanom argues the Estate’s appeal is untimely, we note Ind. Appellate Rule 9(A)(1) provides that “[a] party initiates an appeal by filing a Notice of Appeal with the Clerk . . . within thirty (30) days after the entry of a Final Judgment is noted in the chronological Case Summary.” Ind. Appellate Rule 2(H) provides that “[a] judgment is a final judgment if . . . the trial court in writing expressly determines under Trial Rule 54(B) . . . that there is no just reason for delay and in writing expressly directs the entry of judgment (i) under Trial Rule 54(B) as to fewer than all the claims or parties” On June 20, 2023, the court issued its Final Order Awarding Attorney’s Fees and Costs in Relation to Final Order on Intervenor’s Breach of Contract Claim and awarded “attorney’s fees and costs totaling \$25,892.79 (\$25,660.00 in fees and \$232.79 in costs) in addition to the \$77,000.00 the Estate owes Ms. Adhanom” Appellant’s Appendix

[11] “When, as here, the trial court enters findings of fact and conclusions thereon, we apply the following two-tiered standard of review: we determine whether the evidence supports the findings and the findings support the judgment.” *Estate of Lee v. Lee & Urbahms Co.*, 876 N.E.2d 361, 366 (Ind. Ct. App. 2007). “The trial court’s findings of fact and conclusions thereon will be set aside only if they are clearly erroneous, that is, if the record contains no facts or inferences supporting them.” *Id.* A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made. *Id.* This court neither reweighs the evidence nor assesses the credibility of witnesses, but considers only the evidence most favorable to the judgment. *Id.* at 367.

[12] The record reveals that the trial court’s February 24, 2023 Order Granting Intervenor Semeret Adhanom’s Verified Request for Court to Take Judicial Notice of Certain Facts took judicial notice of only three facts including that “[w]hen [Dowdell] herein entered into the October 14, 2020, Promissory Note with Intervenor herein, [Dowdell] was the sole member of BNK Development, LLC (‘BNK’) and BNK’s principal address was 120 E. Market Street, Ste. 409, Indianapolis, Indiana 46204,” “BNK was a subsidiary of Button Nose Kidz, LLC,” and that “BNK was administratively dissolved on April 5, 2021.” Appellee’s Appendix Volume II at 44. In its February 24th order, the court referenced “the arguments presented by and through the parties’ respective

Volume II at 15. The court noted that there was no just reason for delay and that final judgment pursuant to Ind. Trial Rule 54(B) shall be entered in favor of Adhanom. On July 19, 2023, the Estate filed a notice of appeal. We cannot say that the notice of appeal is untimely.

motions and replies,” the arguments presented on January 30, 2023, and “the testimony heard and evidence submitted by way of Ms. Adhanom’s Verified Motion to Intervene and her Verified Reply in further support thereof” Appellant’s Appendix Volume II at 48. In the findings of fact, it cites only Adhanom’s motion to intervene and its attached exhibits and the three facts of which it took judicial notice pertaining to [Dowdell’s] relationship with Button Nose Kids, LLC. The transcript of the January 30th hearing demonstrates that the Estate’s counsel responded to the arguments of Adhanom’s counsel, no testimony was presented, and no evidence was admitted during the hearing. With no admitted evidence, we cannot say the findings are supported by evidence. *See Mann v. Russell’s Trailer Repair, Inc.*, 787 N.E.2d 922, 929-930 (Ind. Ct. App. 2003) (noting that the trial court erred when it considered exhibits attached to a brief in support of a motion to pierce but not offered into evidence and reversing and remanding for a new trial), *trans. denied*.

[13] For the foregoing reasons, we reverse and remand for an evidentiary hearing.

[14] Reversed and remanded.

Tavitas, J., and Foley, J., concur.