MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Steven J. Vaughan,
Appellant-Defendant,

v.

Charles R. Vaughan,
Appellee-Plaintiff.

June 1, 2021

Court of Appeals Case No. 20A-PL-2243

Appeal from the Tippecanoe Circuit Court

The Honorable Sean M. Persin, Judge

Trial Court Cause No. 79C01-1910-PL-137

Mathias, Judge.

[1] Over the course of several years, Charles R. Vaughan ("Father") advanced more than $1.1 million to his son, Steven J. Vaughan ("Son"). Father later initiated an action against Son for repayment of those funds. Following a bench

trial, the Tippecanoe Circuit Court entered judgment in favor of Father in the amount of $1,160,451.72. Son now appeals, presenting two issues for our review, which we restate as the following three:

I. Whether Father and Son entered into an attorney-client relationship;

II. Whether the funds Son received from Father were gifts, rather than loans; and

III. Whether Father's claim for repayment of the funds is barred by the applicable statute of limitations.

[2] We affirm.

Facts and Procedural History

[3] Father is a semi-retired attorney who practices law at Vaughan & Vaughan—a Lafayette, Indiana firm founded by his own father and his uncle. Son is an artist, and he has struggled to earn a steady income. Father began disbursing funds to Son in 1996 when Son moved from California back to Indiana. While in California, Son had a job at a "big name" company that paid him a "big salary." Tr. p. 8. But when Son moved back to Indiana, he did not find similar success. Instead, Son needed money "to live on and just to get by." *Id.* at 9.

[4] Over the next several years, whenever Son asked for money, Father's accountant, David Miller ("Accountant"), wired funds to Son on Father's behalf. Accountant tracked each disbursement in an electronic ledger. In addition to giving Son money for living expenses, Father gave Son money to

pursue various entrepreneurial projects. For example, between 2000 and 2005, Father gave Son $70,000 so that he could start a sunglass retail business. That business ultimately failed. Accountant also made direct payments to cover some of Son's other expenses, including child support payments to Son's ex-wife, interest payments to First Merchants Bank, and credit card payments to Discover.

[5] In 2018, Father decided to have an estate plan prepared. As part of the estate planning process, Father determined he should "formalize[] a note," *id*. at 9, to memorialize Son's obligation to repay the funds Father had given him over the years. In turn, Father scheduled a meeting with Accountant, Son, and Son's older brother to discuss and execute a promissory note. On October 26, three days before the meeting, Son wrote a note in his cell phone titled "Estate loans" in which he expressed his nervousness about the upcoming discussion. Ex. Vol. at 29–30.

[6] During the meeting, which lasted "[f]ifteen minutes to a half hour," Tr. p. 48, Son signed a promissory note (the "Note"), without objection, in the presence of Father, Accountant, and Son's older brother. The Note states:

> Amount of Obligation: whatever 'Balance' is owed upon Maturity Date . . . .
>
> On or before the earlier of the following two (2) events, which event shall be deemed the "Maturity" date of this Promissory Note ("Note"): (a) written demand by Charles R. Vaughan or his representative, or (b) nine (9) months following the death of Charles R. Vaughan, the undersigned Borrower, Steven J.

> Vaughan (hereafter, the "Borrower"), hereby promise to pay to the order of Charles R. Vaughan (hereafter the "Lender") . . . the sum of whatever monies have been borrowed from Lender by Borrower and are then owed upon Maturity of this Note as such borrowed monies are set forth as the "Balance" in a certain "General Ledger" (which General Ledger represents the accounting of such monies loaned from Lender to Borrower [or on Borrower's behalf] over an extensive period of time) which "General Ledger" is attached hereto and is incorporated herein . . . . Borrower shall be obligated to repay Lender for all monies borrowed . . . together with interest thereon . . . at the rate of eight per centum (8%) per annum after Maturity until paid in full, together with attorney's fees and costs of collection . . . .

Ex. Vol. at 5.

[7] On October 15, 2019, one year after the Note was executed, Father delivered to Son a formal demand for payment on the Note *Id*. at 13. Accountant's electronic ledger showed that, as of that date, Son had received a total of $1,160,451.72 from Father.

[8] The next day, Father filed a complaint seeking judgment for the full amount of the Note, plus interest calculated at eight percent per annum from the Note's maturity date. Appellant's App. pp. 20–21. After holding a bench trial on September 3, 2020, the trial court entered judgment in favor of Father and against Son in the amount of $1,160,451.72. Son now appeals.

Standard of Review

[9] The trial court entered findings of fact and conclusions of law at Father's oral request. In such cases, we review the findings and conclusions as if the trial

court issued them sua sponte, and we apply a two-tiered standard of review. *Leever v. Leever,* 919 N.E.2d 118, 122 (Ind. Ct. App. 2009). First, we determine whether the evidence supports the findings; second, we determine whether the findings support the judgment. *Id.* In making these determinations, we do not reweigh the evidence, and we consider only the evidence favorable to the trial court's judgment. *Est. of Henry v. Woods*, 77 N.E.3d 1200, 1204 (Ind. Ct. App. 2017). Additionally, when findings of fact are unchallenged, we accept them as true. *Henderson v. Henderson*, 139 N.E.3d 227, 232 (Ind. Ct. App. 2019).

[10] We will not set aside the findings or the judgment unless there is no evidence supporting the findings or the findings fail to support the judgment. *Bowden v. Agnew*, 2 N.E.3d 743, 748 (Ind. Ct. App. 2014). However, while we defer substantially to findings of fact, we owe no deference to the trial court's conclusions of law. *Fraley v. Minger*, 829 N.E.2d 476, 483 (Ind. 2005). We review questions of law de novo, and a judgment is clearly erroneous if it relies on an incorrect legal standard. *Id.*

Attorney-Client Relationship

[11] Son first argues that he and Father were in an attorney-client relationship when Father asked Son to execute the Note. Specifically, Son asserts that because he and Father were in an attorney-client relationship, Father breached a "duty not to advise [Son] in a matter involving [Father's] self-interest." Appellant's Br. at 14. The trial court concluded that Father did not act as Son's attorney, and we find that the court's conclusion is not clearly erroneous.

[12] An attorney-client relationship may be express, or it may be implied by the conduct of the parties. *In re Kinney*, 670 N.E.2d 1294, 1297 (Ind. 1996). "Attorney-client relationships have been implied where a person seeks advice or assistance from an attorney, where the advice sought pertains to matters within the attorney's professional competence, and where the attorney gives the desired advice or assistance." *Douglas v. Monroe*, 743 N.E.2d 1181, 1184 (Ind. Ct. App. 2001) (quoting *In re Anonymous*, 655 N.E.2d 67, 71 (Ind. 1995)). While a would-be client's subjective belief that he is consulting a lawyer in his professional capacity and the would-be client's intent to seek professional advice are important factors, "a would-be client's unilateral belief cannot create an attorney-client relationship." *Douglas*, 743 N.E.2d at 1185 (quoting *Hacker v. Holland*, 570 N.E.2d 951, 955 (Ind. Ct. App. 1991), *trans. denied*). There must be evidence of a consensual relationship, which can exist only after both attorney and client have consented to its formation. *Kinney*, 670 N.E.2d at 1297.

[13] Here, the trial court found that Father did not provide legal advice to Son and that Father has never acted as Son's lawyer. Appellant's App. at 14. The court also determined that, "[w]hen [Son] needed money to cover his business endeavors, support payments and personal debt, he did not seek legal advice from [Father]." *Id.* at 17. Instead, Son "sought money from his father, who happened to be a lawyer." *Id.* Son, however, suggests that a single statement in Father's trial testimony amounts to "an admission that [Father] gave [Son] legal advice on the Note." Appellant's Br. at 13 (citing Tr. p. 39). When asked at trial whether he has ever represented Son as his attorney, Father stated, "Never[,]

not as his attorney." Tr. p. 17. Father further testified that he was not serving as Son's attorney on the day the Note was executed. *Id*.

[14] Son does not cite to any other evidence in the record demonstrating that he and Father consented to formation of an attorney-client relationship. On review, we will not search the record to find a basis for a party's argument. *See Nealy v. Am. Fam. Mut. Ins. Co.*, 910 N.E.2d 842, 845 n.2 (Ind. Ct. App. 2009); Ind. Appellate Rule 46(A)(8)(a). We also will not reweigh the evidence, which is in essence what Son has asked us to do. Given the evidence presented at trial, we cannot say the court clearly erred in concluding that Father and Son did not enter into an attorney-client relationship.[1]

Loans vs. Gifts

[15] Son next argues that the trial court erred in concluding the funds he received from Father were gifts rather than loans. In determining whether an exchange of money is a loan or a gift, we consider factors such as "an expectation or agreement regarding repayment or the accrual and payment of interest." *Crider v. Crider*, 15 N.E.3d 1042, 1062 (Ind. Ct. App. 2014). If not a gift, there must be "an adequate foundation for a legally implied or created promise to render back its value." *Grose v. Bow Lanes*, 661 N.E.2d 1220, 1225 (Ind. Ct. App. 1996). In the absence of a written agreement, an implied promise to pay may be inferred

[1] Because we conclude the trial court did not err in concluding no attorney-client relationship existed, we do not address Son's corollary argument that Father failed to overcome any presumption that the Note is voidable.

"from the conduct, situation, or material relations of the parties." *Id.*; *see also* *Cole v. Cole*, 517 N.E.2d 1248, 1250 (Ind. Ct. App. 1988) (inferring an agreement to repay from the "circumstances, the character of the debt, and the substantial amounts involved"); *Phegley v. Phegley*, 629 N.E.2d 280, 282 (Ind. Ct. App. 1994) (notation of "loan" on a check and payor's expectation of repayment implied money was not a gift).

[16] Son claims the $1.1 million Father provided him are not loans for two reasons: (1) Son never made any payments; and (2) prior to 2019, Father never demanded repayment. However, Father testified that when he advanced funds to Son, "[i]t was loaning . . . I said we'll keep track of what we loan you, any time you want to know what the balance is, you can ask [Accountant]." Tr. p. 9. Indeed, Accountant kept an electronic ledger of the funds Father disbursed to Son over the years. *Id.* at 44–45. Father further testified that he never filed gift tax returns, *id.* at 104, and that "[Son] got a loan . . . . I expect to get paid for it," *id.* at 106.

[17] Moreover, Son filed a "Family Law Financial Affidavit" in his 2006 divorce case certifying that his debts included "Business loans from father." Ex. Vol. at 25. And several years later—just days before signing the Note—Son drafted a memo in his cell phone titled "Estate loans." *Id.* at 29. The Note references Father as "Lender" and Son as "Borrower." *Id.* at 5. It states that "Borrower shall be obligated to repay Lender for all monies borrowed from Lender per the 'Balance' owed, as reflected in the General Ledger." *Id.* One year after the Note was executed, Father delivered to Son a written demand for payment upon the

Note. Tr. p. 30; Ex. Vol. at 13. Having reviewed this evidence, we are not persuaded by Son's suggestion that the disbursements more closely resemble gifts.

[18] Again, Son's claim amounts to a request that we reweigh this evidence in his favor, which we will not do. We conclude that on the unique facts and circumstances of this case the trial court did not err in determining Father made loans to Son.

Statute of Limitations

[19] Finally, Son claims Father's action to collect on the Note is barred by "the six-year statute of limitations for a quantum meruit claim." Appellant's Br. at 21. Son contends that, as a result, Father cannot attempt to collect any disbursements made before 2012.

[20] Son's argument again misses the mark. Father has not raised a claim for quantum meruit; he sued Son for payment upon the Note.[2] When a lender files a claim for payment upon a promissory note, two statutes of limitations apply. *Blair v. EMC Mortgage, LLC*, 139 N.E.3d 705, 710 (Ind. 2020). Indiana Code section 34-11-2-9 is the general statute of limitations for actions upon promissory notes. *Id.* This statute provides: "An action upon promissory

[2] On the other hand, *Son* filed a counterclaim for quantum meruit, asserting that he "expected and is entitled to payment" for providing "eldercare services" to Father's wife—Son's own mother. Appellant's App. p. 41. The trial court heard testimony from Son's sister and nephew on Son's counterclaim and ultimately denied it "in its entirety." *Id.* at 18.

notes . . . . executed after August 31, 1982, must be commenced within six (6) years after the cause of action accrues." I.C. § 34-11-2-9(b). Indiana Code section 26-1-3.1-118, which specifically governs "an action to enforce the obligation of a party to pay a note payable at a definite time," provides that "if demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay the note must be commenced within six (6) years after the demand."

[21] Taking these two statutes together, as our supreme court recently explained, lenders may ordinarily "recover the entire amount owed on a promissory note by filing suit within six years of the note's maturity date." *Blair*, 139 N.E.3d at 711. The Note here, by its plain language, matures upon "written demand by Charles R. Vaughan or his representative," or "nine (9) months following the death of Charles R. Vaughan," whichever is earlier. Ex. Vol. at 5. Father delivered a written demand for payment to Son on October 15, 2019. In turn, Father was required to commence an action to collect on the Note within six years of that date. He filed his complaint on October 16, 2019, Appellant's App. p. 20, one day after demanding repayment and well within the six-year limitations period. On these facts, the trial court did not err in concluding that Father's claim is not time-barred.

Conclusion

[22] Son has not established that the evidence presented to the trial court fails to support the court's findings or that the court applied an incorrect legal standard.

We therefore conclude that the trial court did not clearly err in entering judgment in Father's favor.

Affirmed.

Riley, J., and Crone, J., concur.