NOT DESIGNATED FOR PUBLICATION

No. 126,577

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

Living Trust of WAYNE H. WOODMANCY,
Living Trust of GLORIA WOODMANCY,
and WANDA FUNK,
Appellees/Cross-Appellants,

v.

CAMRON FUNK,
Appellant/Cross-Appellee.

MEMORANDUM OPINION

Appeal from Wallace District Court; KEVIN BERENS, judge. Oral argument held March 5, 2024. Opinion filed April 26, 2024. Affirmed.

Terrence J. Campbell, of Barber Emerson, LC, of Lawrence, argued the cause, and *Larry G. Michel*, of Kennedy Berkley, P.A., of Salina, was on the brief for appellant/cross-appellee.

Jeffrey M. Cure, of Cure Law, P.C., of Goodland, and *Christopher P. Carrington*, pro hac vice, and *Todd E. Mair*, pro hac vice, of Richards Carrington, LLC, of Denver, Colorado, for appellees/cross-appellants.

Before SCHROEDER, P.J., ISHERWOOD and PICKERING, JJ.

PER CURIAM: Beginning in 1996, Camron Funk started borrowing money from his grandparents to help finance his farming operation. Now, Wanda Funk, as sole trustee of the Living Trust of Wayne H. Woodmancy and the Living Trust of Gloria Woodmancy, filed suit against her son, Camron, based on breach of contract for payment of loans made to Camron by the trusts. Following numerous pretrial motions, the matter proceeded to a bench trial wherein the district court determined there were multiple loan

agreements, written and oral, between Camron and the trusts. At the time of trial, Camron had satisfied all obligations reflected in the written agreements. The district court held there was a valid oral agreement for additional loans, for which Camron owed $338,320.44 in outstanding principal. However, the district court concluded there was no agreement to pay interest on this outstanding balance.

Camron appeals, arguing: (1) The district court erred in denying his motion for summary judgment based on his affirmative defenses of statute of limitations, novation, and lack of existence of a contract; (2) the district court erred in denying his request for a jury trial; (3) the district court improperly admitted hearsay evidence; and (4) the district court's determination of the outstanding principal is not supported by the record. Wanda cross-appeals, arguing the district court erred in finding there was no agreement to pay interest on the loans made under oral contracts.

After careful review and as fully explained below, we affirm the district court.

FACTUAL AND PROCEDURAL BACKGROUND

Gloria and Wayne Woodmancy, the parents of Wanda and the grandparents of Camron, formed the trusts named in this case and were the trustees of those trusts until Wayne died in 2005. At that time, Gloria and Wanda became cotrustees of both trusts. After Gloria died in 2014, Wanda became the sole trustee and sole beneficiary of the trusts. From 1996 to 2006, Camron received numerous loans from the trusts in excess of $3 million primarily to help finance his farming operations. Gloria kept a running ledger of Camron's loans and repayments.

By 2007, only the initial loan in 1996 in the amount of $100,000 was reduced to writing; the others were completed through oral agreements. In January 2007, Camron and Gloria executed a real estate agreement in which Gloria's trust sold a piece of real

property to Camron and his wife. In September 2007, Camron entered into a promissory note wherein Camron promised to pay Gloria's trust $500,000, plus interest, in 20 annual payments. Camron did not receive any additional funds under the 2007 note. Rather, the note was executed to begin the process of repayment for some of the amounts already loaned to Camron. Gloria and Camron agreed he would pay the remaining balance of the loans as he was able.

In January 2013, Gloria informed Camron in a letter she was going to have an accountant review her records to complete a full accounting of Camron's debt. Camron did not respond to Gloria's letter. Gloria and Wanda retained Douglas Sederstrom to perform the accounting. Wanda asked Sederstrom to apply a 4.73% interest rate because that rate had previously been applied in the 2007 promissory note. Sederstrom determined Camron owed a remaining balance of $1,497,369.15, based on the application of a 4.73% annual interest rate. In June 2013, Camron paid off the 2007 note. That same month, Wanda subsequently sent Camron a letter with Sederstrom's accounting, asking that he agree to a repayment plan on the remaining balance. Camron did not respond to Wanda's June 2013 letter or to a second letter she sent in October 2013.

In January 2016, Wanda filed suit against Camron on behalf of the trusts, alleging Camron failed to pay the outstanding debts when demanded. The matter was originally scheduled for a jury trial. However, the parties filed numerous motions, including competing summary judgment motions. Camron argued he was entitled to judgment as a matter of law on the affirmative defenses of statute of limitations, the doctrine of novation, and lack of an enforceable agreement. The district court denied Camron's motion. Wanda subsequently filed a motion in limine to prevent Camron from presenting any evidence to the jury related to novation, which the district court granted. Based on this order, the parties entered into a stipulation and asked the district court to vacate the order for jury trial, which it did. The relevant portions of the stipulation provided Wanda would file a motion for summary judgment on the issue of interest, and that motion

would be unopposed regarding (1) the existence of an unpaid principal and (2) the accrual date for Wanda's cause of action. The stipulation further provided that any matters not resolved in Wanda's motion for summary judgment would proceed to a bench trial. Thereafter, Wanda filed her motion for summary judgment, which the district court denied.

Camron later filed an objection to the bench trial, which the district court overruled. At the bench trial, the district court denied Camron's renewed motions for judgment as a matter of law on his previously asserted defenses. The district court determined there were multiple loan agreements, written and oral, between Camron and the trusts. At the time of trial, Camron had satisfied all obligations reflected in the written agreements. The district court held there was a valid oral agreement for additional loans, for which Camron owed $338,320.44 in outstanding principal. However, the district court concluded there was no agreement to pay interest on this outstanding balance. Camron timely appealed, and Wanda timely cross-appealed. Additional facts are set forth as necessary.

ANALYSIS

Camron's Appeal

We deem the entirety of Camron's arguments waived or abandoned due to improper briefing. To begin with, Camron's statement of facts is largely improper. Many of Camron's record citations are to matters asserted in his pretrial motions and pleadings. Supreme Court Rule 6.02(a)(4) (2023 Kan. S. Ct. R. at 36) requires a brief to contain "[a] concise but complete statement, without argument, of the facts that are material to determining the issues to be decided in the appeal. The facts . . . must be keyed to the record on appeal by volume and page number." However, simply citing to *something* in the record does not satisfy the rule. "When facts are necessary to an argument, the record

must supply those facts and a party relying on those facts must provide an appellate court with a specific citation to the point in the record *where the fact can be verified*." (Emphasis added.) *Friedman v. Kansas State Board of Healing Arts*, 296 Kan. 636, 644, 294 P.3d 287 (2013). "[Citing] to the point in the record where [the appellant] made the same assertion before the district court" does not satisfy this burden. 296 Kan. at 644.

Here, Camron largely conflates his prior arguments with record evidence. This wholly undermines the purpose of requiring parties to support their arguments with evidence. An argument does not become self-probative simply by repeating it at various stages of the proceedings. Granted, the majority of the more questionable assertions in Camron's statement of facts are largely immaterial to the issues on appeal. But the overall deficiencies in his statement of facts are significantly compounded by his failure to cite to the record in his arguments regarding preservation of the issues and/or to support specific factual arguments.

In each of the issues he raises, and the various subpoints thereunder, Camron fails to cite to the record on appeal to show where the issues were raised and ruled on below. He further makes numerous factual claims in each of his arguments without any record citations. In fact, Camron does not include a single record citation in any of his arguments. Thus, we cannot reasonably infer Camron is showing the issues were preserved by the overall context of his arguments, in spite of his failure to explicitly address preservation. This is further complicated by the fact Camron complains of several matters that could relate to both the district court's rulings on the parties' summary judgment motions and the district court's trial rulings. Because these issues implicate differing standards of review depending on the nature and timing of the ruling (and whether prior objections were preserved), we would be forced to go through numerous inferential hurdles to fully address the issues raised in Camron's brief—an exercise we decline to undertake.

Supreme Court Rule 6.02(a)(5) (2023 Kan. S. Ct. R. at 36) requires the appellant to provide a pinpoint reference to where each issue was raised and ruled on below or explain why the issues should be considered on appeal if not raised below. Our Supreme Court has held Rule 6.02(a)(5) is to be strictly enforced. *State v. Godfrey*, 301 Kan. 1041, 1043-44, 350 P.3d 1068 (2015). An appellant who fails to comply with this rule risks a ruling that the issue is improperly briefed and will be deemed waived and abandoned. See *State v. Williams*, 298 Kan. 1075, 1085, 319 P.3d 528 (2014). The only time Camron addressed preservation of any of the issues is in response to Wanda's argument that he waived his hearsay arguments for failing to address preservation in his opening brief. But Camron's reply brief cites to his statement of facts—again, not a proper citation for his arguments as required by Rule 6.02(a)(5).

Moreover, because Camron does not cite to or address the various rulings below with any particularity, he is essentially arguing about his claims of error in the abstract. He broadly complains about various matters but never addresses the district court's rationale for its rulings, much less explain if/how that reasoning was erroneous. "Error is never presumed," and an appellant has an affirmative duty to show "the judgment below is erroneous and that his substantial rights have been prejudicially affected thereby." *Phillips v. Fisher*, 205 Kan. 559, 560, 470 P.2d 761 (1970). We find Camron cannot meet his burden to show error by simply pointing out the district court's rulings could be wrong in *some* context. Rather, he is required to show error in the specific rationale of the district court's rulings based on the actual context in which they were made as reflected by the record. In *State v. Novotny*, 297 Kan. 1174, 1180, 307 P.3d 1278 (2013), our Supreme Court held that where the district court offers alternative bases for its ruling, the entirety of the issue is deemed waived or abandoned if the appellant only addresses one basis, even if the appellate court would reverse the basis addressed. We apply the same rationale here as Camron fails to address any specific basis for the district court's rulings.

We observe Camron's brief cites to authorities in his arguments but often does not explain how the authority applies to the facts of this case. In large part, he seems to be citing authority for the standard of review or overarching legal principles applicable to his arguments, but he is not actually supporting his arguments with that authority. Failure to support a point with pertinent authority or failure to show why a point is sound despite a lack of supporting authority or in the face of contrary authority is like failing to brief the issue. *In re Adoption of T.M.M.H.*, 307 Kan. 902, 912, 416 P.3d 999 (2018). An issue not briefed is deemed waived or abandoned. *State v. Davis*, 313 Kan. 244, 248, 485 P.3d 174 (2021). Given his largely abstract discussion of the issues on appeal, we cannot discern or infer how the authorities Camron cites relate to the relevant bases for the district court's rulings.

Further, in his arguments regarding his affirmative defenses, Camron asserts the district court erred in denying his motion for summary judgment.

> "A party who has lost on summary judgment . . . can preserve any legal issues on appeal by including them into a trial motion for judgment as a matter of law. Thus, we consider [an appellant's] arguments in the context of his trial motion for judgment as a matter of law. [Citation omitted.]" *Budd v. Walker*, 60 Kan. App. 2d 189, 197, 491 P.3d 1273 (2021).

> "Generally, a party may not 'appeal an order denying summary judgment after a full trial on the merits' because that 'order retains its interlocutory character as simply a step along the route to final judgment. . . . Once the case proceeds to trial, the full record developed in court supersedes the record existing at the time of the summary judgment motion.' [Citation omitted.]" *Evergreen Recycle v. Indiana Lumbermens Mut. Ins. Co.*, 51 Kan. App. 2d 459, 490, 350 P.3d 1091 (2015).

Thus, because Camron briefs and complains about the denial of his motion for summary judgment after trial, that claim is not reviewable. See 51 Kan. App. 2d at 490.

We find Camron has fallen woefully short of his burden to show error on appeal given the numerous deficiencies in his briefing. See *In re Marriage of Williams*, 307 Kan. 960, 977, 417 P.3d 1033 (2018) (issues not adequately briefed deemed waived or abandoned). Thus, we affirm the district court's rulings on all issues Camron raises.

Wanda's Cross-Appeal

Wanda cross-appeals the district court's finding there was no agreement to pay interest other than as set forth in the written notes. She argues this finding is not supported by substantial competent evidence.

Substantial competent evidence refers to legal and relevant evidence that a reasonable person could accept as being adequate to support a conclusion. *Geer v. Eby*, 309 Kan. 182, 190, 432 P.3d 1001 (2019). "When making [a substantial competent evidence] determination, an appellate court must not weigh conflicting evidence, pass on the credibility of witnesses, or redetermine questions of fact." *Granados v. Wilson*, 317 Kan. 34, 41, 523 P.3d 501 (2023). "[A]n appellate court . . . must not substitute its own judgment of the facts and assessment of witness credibility for that of the district court, even when it reasonably finds witness testimony 'unpersuasive.' See *Khalil-Alsalaami v. State*, 313 Kan. 472, 476, 486 P.3d 1216 (2021)." *Granados*, 317 Kan. at 55.

Wanda's argument essentially fails right out of the gate. She asserts "the district court gave undue weight to two facts": (1) Gloria's ledger "did not keep a 'running balance' or indicate which 'payments were applied to interest or principal,'" and (2) Camron's testimony he did not recall any agreement as to interest. Wanda asserts Camron's testimony is "self-serving . . . [and] holds little weight." She then argues "the district court ignored compelling evidence demonstrating that the parties agreed the loans were with interest."

But Wanda does not demonstrate the district court ignored any of the evidence she cites. At best, the district court's ruling reflects it did not weigh the evidence as Wanda desired. We cannot substitute our own weighing of the evidence for the district court's. *Granados*, 317 Kan. at 55. Regardless of how compelling Wanda feels the evidence showed an agreement to pay interest, the district court was not persuaded by this evidence; rather, it credited and gave greater weight to conflicting evidence. Even though reasonable people might disagree, it does not mean the district court's decision is not supported by substantial competent evidence. See *Granados*, 317 Kan. at 44, 55. We affirm the district court's finding there was no agreement to pay interest on the remaining loans.

Affirmed.