

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 203

September Term, 2016

MOHAN NIRALA,

v.

AMBEDKAR INTERNATINOAL
CENTER, INC., et al.

Arthur,
Beachley
Shaw Geter,

JJ.

Opinion by Shaw Geter, J.

Filed: May 18, 2017

*This is an unreported opinion, and may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This is an appeal from a judgment of the Circuit Court for Prince George’s County, granting appellees’ claims for declaratory judgment, breach of contract, conversion, and constructive fraud, amongst other claims. Appellees Kranthi Tappita, Rakesh Gupt, Rama Krishna Bhupathi, Sita Ram Mahey, Sandeep Chavan, Vijay Kumar (“Shankar”), and Ambedkar International Center, Inc. (“AIC”), filed a civil action against appellant Mohan Nirala alleging that he had been acting as a rogue *alter ego* of AIC. They also alleged that appellant had mismanaged AIC funds and transferred AIC property to himself.

At trial, appellees presented evidence that after appellant was removed from his position by the Board of Directors, he continued to hold himself out as the Board President. They also presented evidence that appellant expended the AIC’s funds without the knowledge or approval of the Board. Appellant countered that appellees were never properly elected to the Board of Directors, and, therefore, they did not have authority to remove him. Following the close of evidence and statements by counsel, the circuit court held that appellees were members of the Board of Directors; appellant had been properly removed, had unlawfully converted AIC’s property, and breached AIC’s memorandum of understanding and his fiduciary duties. Appellant was required to account for all monies that came into his name under AIC. He subsequently filed two motions to alter or amend the judgment, which were denied.

We have reworded appellant’s question¹ presented as follows:²

1. Did the Trial Court err in finding that signing the Memorandum of Understanding was sufficient to elect Tappita, Gupt, Bhupathi and Chavan as members of AIC’s Board of Directors?

For the reasons set forth below, we shall affirm the order of the circuit court.

BACKGROUND

In 2008, appellant Mohan Nirala founded Satyaguru Inc., a Maryland non-profit corporation, which was later renamed Ambedkar International Center, Inc. (“AIC”). In 2012, AIC’s first Board directors were Muni Subramani, Sita Ram Mahey, Vijay Kumar (“Shankar”), and appellant.

That year, AIC issued its Articles of Incorporation and Bylaws. Relevant to the instant appeal, Section 4.01 requires the number of directors on the Board to be “not less than three and not greater than seven.” Sections 4.03 and 4.04 respectively detail the process by which directors would be nominated and elected. Sections 4.08 and 4.09 detail

¹ In his brief, appellant asked:

1. Did the Trial Court err in finding that Tappita, Gupt, Bhupathi and Chavan were members of AIC’s Board of Directors where: 1) they were not nominated and approved as directors to the Board pursuant to AIC’s Bylaws, 2) their addition would have exceeded the maximum number of directors of the Board allowed by AIC’s Bylaws, 3) Shanker admitted that signers of the November 17, 2012 Memorandum of Understanding did not thereby become a director of the Board but rather still had to be formally approved by the AIC Board pursuant to the Bylaws and that there were three “Board of Directors” but nine “board members,” and 4) Nirala’s esignature on the MOU had a different IP address than that of his computer?

² Appellees offered additional questions presented for our review. Because we find that the circuit court did not err in finding appellees were properly appointed to AIC’s Board, we need not address appellees’ other contentions.

the process and notice required to call any special board meetings, including those to remove a director, as per section 4.18.

On November 17, 2012, Kranthi Tappita, Rakesh Gupt, Rama Krishna Bhupathi, and Sandeep Chavan signed a Memorandum of Understanding (“MOU”) with AIC, which specified that a signor of the MOU, who agreed to make a donation, would be a board member. Shankar testified that appellant also signed the November 17 MOU. Appellees Tappita, Gupt, Bhupathi, and Chavan each made the necessary \$2,500 contribution, and, thereafter, actively participated in the board meetings.

A dispute arose between the parties in July 2013 deriving from appellant’s management of AIC and whether appellees were the proper directors. On October 12, 2013, at a meeting, the Board voted to remove appellant as President, but he continued to act in a manner presenting himself as in control of AIC.

Appellant denies these claims, and argues that appellees Tappita, Gupt, Bhupathi, and Chavan did not go through the formal bylaw approval process and that their inclusion on the board was a violation of the bylaws’ maximum number of board members. Thus, he contends that they are not directors. According to him, the only members of the board of directors are himself, Dr. Laxmi Berwa, Mahey, and Dr. Sakya Mohan. He asserts that they were elected in 2013 after the dispute, and that appellees were merely “board members.” He also claims that his signature on the MOU adding appellees to the Board of Directors was fraudulently signed. Finally, he argues his removal was improper because he did not receive prior notice of the meeting where he was removed, as required by AIC’s bylaws.

Conversely, appellees argue that the purpose of the MOU was to increase the Board of Directors and having made the AIC contribution required by the MOU, appellees are now directors. They further contend that the Board officially decided at an October 27, 2012 meeting that signors of the MOU would become directors upon receipt of their contribution. Appellees claimed appellant assisted in preparing the MOU and that he was fully aware that those who signed the MOU would become directors. In addition, appellant, in 2013, was provided notice of their intent to conduct a meeting to remove him from the board. He chose not to attend.

On May 15, 2016, appellees Tappita, Gupt, Bhupathi, Mahey, Chavan, Shankar, and AIC, brought suit against appellant. After a four day bench trial, the circuit court, on September 27, 2015, awarded judgment in favor of appellees. The court granted declaratory judgment, stating that appellees constituted the proper Board of Directors “that will run and operate” AIC. The court further held that appellant had breached the MOU and was properly removed as President of the Board of Directors. The court ordered appellant to account for all monies transferred to his name from AIC; and provided injunctive relief, prohibiting appellant from competing with, or causing a likelihood of confusion or misunderstanding as to his association with, AIC. The court also found that appellant had converted AIC’s real property. Thus, he was ejected from that property, and title was quieted.

Appellant filed his first motion to alter or amend judgment on October 8, 2015, which was subsequently denied. He filed a second motion to alter or amend on January

27, 2016, which was also denied. On February 2, 2016, the court ordered the case be closed statistically.

This appeal followed.

STANDARD OF REVIEW

Maryland Rule 8-131(c) states

When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

DISCUSSION

I. **The circuit court did not err in finding that Tappita, Gupt, Bhuptahi, and Chavan were members of AIC’s Board of Directors.**

Appellant contends that appellees Tappita, Gupt, Bhupathi, and Chavan were not properly elected to the Board of Directors per AIC’s bylaws. He argues that the court erred in finding that signing the Memorandum of Understanding (“MOU”) was sufficient to make appellees directors, and that their addition to the board exceeded the number allowed by AIC’s bylaws. Moreover, he contends that his signature on the MOU was forged. He argues that it was clearly erroneous for the court to find that appellees were directors, and that their subsequent actions were improper. Appellees contrarily argue that they provided sufficient evidence to support the court’s finding. Moreover, appellees contend, even if, *arguendo*, appellant was correct, equity mandated appellant’s removal from the Board.

This Court “review[s] the factual findings of the Circuit Court for clear error, observing ‘due regard to the opportunity of the trial court to judge the credibility of the witnesses.’” *City of Bowie v. Mie Properties, Inc.*, 398 Md. 657, 676 (2007). “In addition,

‘we must consider the evidence in the light most favorable to the prevailing party and decide not whether the trial judge’s conclusions of fact were correct, but only whether they were supported by a preponderance of the evidence.’” *Id.* (citing *Colandrea v. Wilde Lake Cmty. Ass’n*, 361 Md. 371, 393-94 (2000) (internal citations omitted)).

Throughout the four day trial, the court heard from numerous witnesses for both appellant and appellees, and admitted into evidence documents from both parties. Before giving its oral holding, the judge detailed the many witnesses who testified, and went through the various evidentiary disputes, including the appellant’s alleged fraudulently signed MOU.

The court first noted that Nirala, Mahey, Shankar, and Subramani “were the founders on July 23rd, 2012 when it was the – when AIC was formed,” but there was later a memorandum of understanding in November of 2012 between AIC and Shankar, Chavan, Nirala, Mahey, Bhupathi, Tappita, and Gupta. The court found that appellant’s signature on the November 2012 MOU was “authentic and [it was] not persuaded by [appellant’s] testimony that this is a fraudulent document.” Further, the court stated that appellant’s “removal was in accordance with the bylaws in terms of notice being provided to him of a meeting to take place.”

The court noted that, having “observed their demeanor,” it found appellees’ testimonies credible, and that, in “view[ing] [the evidence] in light of all the other evidence,” it found appellant was not credible. The court concluded that:

“I made my decision based on – based on my – how I was persuaded according to the evidence.”

The circuit court ultimately held that the signing of the MOU was sufficient to establish the signors as directors, and, therefore, their removal of appellant, and subsequent actions, were proper. In its written Judgment and Order, the court listed AIC's directors as Shankar, Mahey, Bhupathi, Jagdish Bankar, Tappita, Dinesh Singh, Sanjay Kumar, Mahendra Kumar, Kranthi Kumar Tappita, Gupt, and Venkat Maraju. Pertinent to the instant case, the court specifically found that appellees Tappita, Gupt, Bhupathi, and Chavan, as of November of 2012, were directors.

In our view, the record reflects that the trial court clearly and intently listened, observed and assessed the credibility of the witnesses and, thereafter, weighed all of the evidence. As such, the court could reasonably find that AIC leadership had accepted the signing of the MOU, and the requisite investment, as sufficient to establish Board membership. There was also ample evidence that the MOU signors acted as directors. Appellant himself attests that appellees Tappita, Gupt, Bhupathi, and Chavan all attended Board meetings, where no objection was lodged as to their participation.

Appellant contends, nevertheless, that the record is “rife with distinctions between ‘board members’ and ‘board of directors.’” He singularly points to an email, sent by Shankar, which refers to there being three board of directors and nine board members. Appellant's contention, however, is a distinction without a difference. In the same email, Shankar states that “all decisions of AIC have been made with the majority of the consent of the board members,” and that appellant had appointed Sakya and Berwa to the Board of Directors “without the consent of the other Board of Directors and board members.”

On appeal, appellate courts resolve all evidentiary conflicts in the prevailing party's favor. *First Union Nat'l Bank v. Steele Software Sys. Corp.*, 154 Md. App. 97, 107 n.1 (2003), *cert. denied*, 380 Md. 619 (2004). We give “due regard to the opportunity of the trial court to judge the credibility of the witnesses,” and, considering the evidence in the light most favorable to the prevailing party, we find that the circuit court's holding was not clearly erroneous. *City of Bowie, supra*, 398 Md. at 676.

Having affirmed the court's holding pertaining to the members of the Board of Directors, we need not address the other issues addressed by the court and presented by appellees, as they rely on the premise that appellees were the proper directors of AIC.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE'S COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**