Circuit Court for Montgomery County
Case No. 441353V

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 973

September Term, 2023

ROY JOSEPH

v.

THOMAS HOWES

Nazarian,
Kehoe, S.,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: June 21, 2024

A party seeking to enforce a settlement agreement must have entered an agreement in the first place. Roy Joseph and Thomas Howes were litigating a libel case in the Circuit Court for Montgomery County when Mr. Joseph moved to enforce a purported oral settlement agreement. Mr. Howes opposed the motion and denied ever agreeing to settle his lawsuit. After a hearing, the circuit court denied the motion on the ground that there was no evidence an agreement had been formed. On appeal, Mr. Joseph contends that the circuit court erred when it found that there was no evidence of an agreement to settle. We affirm.

I. BACKGROUND

This case began in 2017, when Mr. Howes sued Mr. Joseph in the Circuit Court for Montgomery County alleging libel. Four years into the litigation—which included an earlier appeal to this Court, *Joseph v. Howes*, No. 153, Sept. Term 2019 (Md. App. Apr. 20, 2020)—Mr. Joseph claimed that the parties had finally reached an agreement under which Mr. Howes would dismiss his lawsuit with prejudice. Mr. Joseph sought to confirm this purported agreement in an email:

> **From**: [Counsel for Mr. Joseph]
> **Sent**: Thursday, December 29, 2022 8:14 PM
> **To**: [Mr. Howes]
> **Subject**: Howes v. Joseph 441353V Confirmation of Resolution
>
> Mr. Howes,
>
> Attached please find my correspondence confirming the resolution of Case No. 441353V. Please forward your proposed Settlement Agreement at your earliest convenience. Thank you. . . .

Mr. Joseph also sent Mr. Howes a formal letter "to confirm that the . . . case has been resolved" and that Mr. Howes would "prepar[e] the proposed settlement agreement."

The following week, when Mr. Howes didn't respond to his communication, Mr. Joseph's counsel followed up, asking Mr. Howes to "let [him] know the status of the draft Settlement Agreement" and stating that "[w]e should also notify the court to place the case on the stay/stet docket." Mr. Howes replied moments later that he didn't wish to stay the docket until after he spoke with his own counsel.

Five days later, Mr. Joseph sent Mr. Howes an unsigned proposed settlement agreement. Again, Mr. Howes didn't respond. Mr. Joseph waited a couple of weeks to follow up again to request that Mr. Howes consent to placing the case on the stet/stay docket as the next hearing date approached. The same day, Mr. Howes responded: "I don't agree to notify the courts for a stay. We will be moving forward with the hearing."

Despite Mr. Howes's lack of acknowledgement of any agreement whatsoever, Mr. Joseph filed a Motion to Enforce Settlement. He relied entirely on his own emails and letter to prove the existence of a pre-existing oral agreement. Mr. Howes opposed the motion, pointing out that "[Mr. Joseph] hasn't presented any evidence of a[n] agreement resolving this case or a settlement agreement." Mr. Howes explained that he never agreed to resolve the case and had never spoken to Mr. Joseph's counsel (who indeed, had blocked Mr. Howes's phone number) to resolve the case.

At the hearing, Mr. Joseph argued (without a supporting affidavit or sworn testimony) that Mr. Howes had had "an oral conversation" with an insurance adjuster

where the parties agreed to settle, and that he had "confirmed" this oral agreement in the correspondence. Mr. Joseph argued that Mr. Howes had never rejected or contradicted "the fact that the case was settled" and so "at that point the deal was made" and the parties had an enforceable contract. Mr. Joseph insisted that Mr. Howes had the burden of disproving the alleged agreement via "affidavit or other information contradicting that these are legitimate, authentic documents" of their settlement agreement. Mr. Howes appeared *pro se* at the hearing and stated that "I never even spoke to [Mr. Joseph's counsel] about settling this case. So there was no agreement verbally or written."

The trial court denied Mr. Joseph's motion, finding no evidence that Mr. Howes had ever agreed to settle the case:

> Under the plain meaning of [Mr. Howes]'s correspondence with [Mr. Joseph's] counsel, there is no evidence this court can identify or construe as proof of an acceptance of an unrevoked offer by [Mr. Howes]. [Mr. Joseph's] counsel argued in-court that [Mr. Howes] acquiesced to the oral agreement by not firmly disavowing it. However, the court is not persuaded, given [Mr. Howes]'s asserted position then and now that he did "not want to stay the docket" one week after the initial correspondence from [Mr. Joseph's] counsel. . . There is no evidence that [Mr. Howes] accepted the alleged agreement to settle. The court will not order enforcement of the same.

Mr. Joseph appealed the order (allowed under the collateral order doctrine, under *Clark v. Elza*, 286 Md. 208, 213 (1979)), but failed to note his appeal within thirty days as required by Maryland Rule 8-202(a). Mr. Howes, a *pro se* appellee, didn't raise the issue, so we'll exercise our discretion to resolve the barely belated appeal. *See Rosales v. State*,

463 Md. 552, 570 (2019) (failure to comply with Rule 8-202(a) is not jurisdictional and court can consider merits if the issue has been waived).

II. DISCUSSION

There is one question[1] for our review: whether the circuit court erred in denying Mr. Joseph's motion to enforce the settlement agreement. The circuit court denied Mr. Joseph's motion to enforce the settlement on the ground that there was no evidence that Mr. Howes had accepted any offer to settle. Because this case presents a legal question as to whether the documents carried Mr. Joseph's burden of showing there was an agreement between the parties, we review the circuit court's decision *de novo*. *Nesbit v. Gov't Emps. Ins. Co.*, 382 Md. 65, 72 (2004). Finding no error, we affirm.

Mr. Joseph makes two arguments. *First*, he argues that we should reverse because he was entitled to an evidentiary hearing. We reject this argument because it is completely inconsistent with the position he took in the circuit court. Not only did he never ask for an evidentiary hearing, he took the position that *Mr. Howes* bore the evidentiary burden to trigger one. He argued specifically that since Mr. Howes didn't file an affidavit or offer any other "compliant proof" that he never agreed to settle, "the written record has to stand on its own." The circuit court did exactly that—it relied on the "written record" in Mr. Joseph's motion, which contained no evidence of an offer or acceptance. We reject Mr.

[1] Mr. Joseph phrased his Question Presented (which was adopted by Mr. Howes) as: "Did the Circuit Court err in failing to grant the Motion to Enforce Settlement, including erroneously finding there was no evidence establishing the settlement, and in failing to correctly apply well-established Maryland law regarding executory accords?"

Joseph's request to remand for an evidentiary hearing in a case where there are no facts in dispute. *See* Md. Rule 8-131(a) ("Ordinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court."); *Osztreicher v. Juanteguy*, 338 Md. 528, 534 (1995) ("It is well settled in Maryland that the right to appeal may be lost by acquiescence in, or recognition of, the validity of the decision below from which the appeal is taken or by otherwise taking a position which is inconsistent with the right of appeal." (cleaned up)).

Second, Mr. Joseph contends that the circuit court "erroneously ignored and/or misconstrued the documentary evidence, as reflected by the erroneous ruling 'there was no evidence that Plaintiff accepted the alleged agreement to settle.'" Mr. Joseph construes the "confirmatory" correspondence he attached to his motion as "proof of confirmation of a settlement which had already occurred." (Emphasis omitted.) But by their own contents (putting aside any unsworn statements by Mr. Howes), the documents reveal no pre-existing contract. To the contrary, they simply state that there was an agreement and ask Mr. Howe to "forward your *proposed* Settlement Agreement at your earliest convenience" and "prepar[e] the *proposed* settlement agreement." (Emphasis added.) "A contract is formed when an unrevoked offer made by one person is accepted by another." *Prince George's County v. Silverman*, 58 Md. App. 41, 57 (1984). Mr. Howes never acquiesced to the existence of a settlement—he rejected Mr. Joseph's requests to stay the lawsuit. And then we also have Mr. Joseph's representation to the court that Mr. Howes had "an oral conversation" with an insurance adjuster where the parties agreed to settle. Indeed, even

by his own reckoning, Mr. Joseph wasn't present for the purported oral agreement he wanted the court to confirm. We agree with the circuit court that Mr. Joseph's documents, on their face, do not establish an agreement that the court could possibly have enforced.

Mr. Joseph's reliance on *Clark v. Elza*, 286 Md. at 208, doesn't change the outcome. In *Clark*, both parties had acknowledged that an oral agreement had been reached in their auto accident case and they notified the trial judge to remove the case from the trial calendar. *Id.* at 210. After receiving a second opinion with a new physician on the extent of Mr. Elza's injuries, the Elzas changed their minds and advised the court that they were no longer willing to go through with the settlement. *Id.* The Supreme Court of Maryland enforced the oral settlement agreement explaining that "[a]s long as the basic requirements to form a contract are present, there is no reason to treat such a settlement agreement differently than other contracts which are binding." *Id.* at 219. But nothing like that ever happened here—there had been no meeting of the minds in the first place, and no joint representation to the court that the parties had entered one. To the contrary, we have one side claiming in bald conclusory fashion that an agreement existed, the other side disputing that conclusion, and no independent evidence on which the court could resolve the dispute.

We recognize, certainly, the general policy that encourages the settlement of lawsuits, *David v. Warwell*, 86 Md. App. 306, 310–12 (1991), and we encourage the parties in this case to reach a compromise. Unfortunately, there was no evidence of an agreement here and the circuit court didn't err in denying Mr. Joseph's motion to enforce one.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY

AFFIRMED. APPELLANT TO PAY COSTS.