

Cite as 2019 Ark. 146
SUPREME COURT OF ARKANSAS
No. CV-18-114

MIRACLE KIDS SUCCESS ACADEMY,
INC.

APPELLANT

V.

MARVIN MAURRAS

APPELLEE

Opinion Delivered: May 9, 2019

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. 60CV-14-2778]

HONORABLE ALICE GRAY, JUDGE

AFFIRMED; COURT OF APPEALS
OPINION VACATED.

RHONDA K. WOOD, Associate Justice

Miracle Kids Success Academy, Inc., appeals the circuit court’s order granting summary judgment in favor of Marvin Maurras and awarding Marvin attorney’s fees. In this contract dispute, the circuit court concluded that Marvin’s loan to Miracle Kids was payable on demand because the loan agreement did not have a maturity date. We affirm.

I. *Background*

Mary Katherine Hardin and Shelly Decker Keller formed Miracle Kids in August 2008. After its formation, Marvin and his nephew, Chris Maurras, joined Miracle Kids as shareholders and directors with each owning 25 percent of the company’s outstanding stock. On September 23, 2009, the directors unanimously approved an “Operations Agreement.” The Operations Agreement provided that each shareholder agreed to

contribute \$175,000 as start-up capital, and Marvin and Chris agreed to loan an additional \$300,000 to Miracle Kids during the first six months of the company's operation.

On December 11, 2009, the shareholders and directors held another meeting to discuss the start-up funding. They revised the initial funding provision of the original Operations Agreement. Per the December 2009 meeting minutes, they unanimously agreed to treat \$25,000 of the start-up capital for Miracle Kids as a "capital contribution," and to treat the remaining \$150,000 of their contributions as a loan with 5 percent interest per annum. They further agreed to repay Hardin's loan and Keller's loan at a rate of \$5,000 per month, and they agreed to defer repayment of Marvin's and Chris's loans "for now."

Marvin made his initial \$25,000 start-up capital contribution and later funded his \$150,000 loan to Miracle Kids. In June 2014, Marvin demanded repayment of his loan, and Miracle Kids refused to pay. In July 2014, Marvin sued Miracle Kids for repayment of the loan and attorney's fees pursuant to Arkansas Code Annotated section 16-22-308 (Repl. 1999).

Marvin filed a motion for summary judgment on his claim for repayment of the loan. He asserted that because the Operating Agreement as amended by the December 2009 meeting minutes did not include a maturity date for the loan, it was payable in full on demand. Miracle Kids responded to Marvin's motion for summary judgment and filed a counter-summary-judgment motion. Miracle Kids argued that the agreement did not constitute any type of loan instrument to be used for the purpose of demanding payment

from Miracle Kids. It asserted that the December 2009 minutes did not constitute a negotiable instrument. Rather, it claimed that majority-shareholder approval was a condition precedent for repayment. Miracle Kids also asserted that it was financially unable to repay Marvin and that any repayment of the loan would require shareholder approval as required by the Operating Agreement. The circuit court granted Marvin's summary-judgment motion and denied Miracle Kids' motion. The court's final order¹ concluded that because the loan did not have a maturity date, it was payable on demand. The circuit court also awarded Marvin \$19,200 in attorney's fees. The court of appeals reviewed the circuit court's decision and reversed and remanded because genuine issues of material fact existed as to whether the loan agreement was an on-demand contract. *Miracle Kids Success Acad., Inc. v. Maurras*, 2018 Ark. App. 40, 539 S.W.3d 603. Marvin filed a petition for review of the court of appeals' decision, which we granted.

II. Analysis

A. Contract Dispute

The circuit court should grant summary judgment when there is no issue of fact to be litigated, and the moving party is entitled to judgment as a matter of law. *Cannady v. St. Vincent Infirmmary Med'l Ctr.*, 2018 Ark. 35, 537 S.W.3d 259. Summary judgment is

¹The court of appeals had previously dismissed Miracle Kids' appeal for lack of a final order because the circuit court had dismissed two counts in the complaint without prejudice, which was not an adjudication of those counts on the merits. See *Miracle Kids Success Acad., Inc. v. Maurras*, 2016 Ark. App. 445, 503 S.W.3d 94. After dismissal, the circuit court entered an order granting Marvin summary judgment on his claim for repayment of the loan and dismissing the remaining two claims with prejudice.

appropriate when the pleadings, depositions, answers to interrogatories, responses to requests for admission, and affidavits show that there is no genuine issue of matter fact and that the moving party is entitled to judgment as a matter of law. *Id.* The moving party bears the burden of proving that there is no genuine issue of material fact. *Id.* We review questions of law de novo. *Gulfco of La., Inc. v. Brantley*, 2013 Ark. 367, 430 S.W.3d 7.

First, we must consider the language of the December 2009 Minutes, which states:

Company Funding – Based on suggestion of accountant all agree that funding of the company should take place as loans to the company, excluding the initial \$25,000 by each partner which will be a capital contribution. The remaining \$150,000 of required funding by each partner as stated in the Operating Agreement will be held as a liability of the company which will be repaid to each partner. The loans will accrue interest at an annual rate of 5%. MK and SD will be repaid their principal only at a rate of \$5,000 monthly and MM and CM agree to defer loan repayment for now. This will replace the funding descriptions as detailed in the Operating Agreement.

(Emphasis added.)

Miracle Kids contends that the circuit court erred in granting Marvin’s summary-judgment motion because the terms of the minutes are ambiguous, and therefore, the court should consider parol evidence that demonstrates that the shareholders intended for repayment only when Miracle Kids was financially able to repay the loan. We disagree. The agreement contains the amount of the principal and the rate of interest but is silent as to the date of repayment. The agreement states that Marvin and Chris agreed to defer repayment of their loans “for now,” but this is not supplanting a maturity date. A nonnegotiable loan that does not contain a due date is not necessarily ambiguous. The absence of a maturity date does not subject the contract terms to multiple interpretations;

rather, Arkansas law concludes that it is a contract payable on demand. Our well-established common law of contracts is that “[w]here no time is set for the payment of a debt, the debt is in law payable on demand.” *Maddox v. City of Fort Smith*, 346 Ark. 209, 56 S.W.3d 375 (2001); *see Sturdivant v. McCorley*, 83 Ark. 278, 103 S.W. 732 (1907). And a debt that is payable on demand “is due immediately, so that an action can be brought at any time, without any other demand than the suit.” *Id.* Simply because Marvin and Chris agreed to not demand payment “for now” did not create an ambiguous contract.

Miracle Kids also argues that the court should apply the “majority” rule that when “a promise to pay when the promisor ‘is able’ (or a term of the same purport) is conditional, and not an absolute promise to pay, and the promisee is not entitled to recover on such a promise unless the promisor is able to pay the debt.” *Thomas v. Am. Radio & Television, Inc.*, 228 Ark. 1050, 1052, 312 S.W.2d 183, 185 (1958). However, in *Thomas*, the contract specifically provided that the debt was payable when the promisor was financially able. This agreement does not expressly include such a condition, and we will not construe the contract terms to have that meaning based on extrinsic evidence because the language is not ambiguous.

Here, the circuit court correctly rejected Miracle Kids’ attempt to use extrinsic evidence to interpret the agreement because the agreement was plain and unambiguous. Because the agreement was silent as to the maturity date, it was payable on demand. We affirm the circuit court’s decision to grant Marvin’s motion for summary judgment and deny Miracle Kids’ summary-judgment motion.

B. Attorney's Fees

Miracle Kids also appeals the attorney's fees and costs award. Arkansas law recognizes attorney's fees and costs only when a rule or statute expressly provides for the award. Marvin requested attorney's fees under Arkansas Code Annotated § 16-22-308, which permits the prevailing party to collect a reasonable attorney's fee or costs "in any civil action to recover an open account, statement of account, account stated, promissory note, bill, negotiable instrument, or contract relating to the purchase or sale of goods, wares, or merchandise, or for labor or services, or breach of contract." Miracle Kids claims that the December 2009 meeting minutes do not fall into any of these categories outlined by section 16-22-308. However, Miracle Kids failed to make this argument to the circuit court; therefore, it is not preserved for our review. See *Marshall v. State*, 2017 Ark. 347, at 5, 532 S.W.3d 563, 566 ("Furthermore, parties are not permitted to change the grounds for an objection on appeal, but instead are bound by the nature and scope presented at trial.").

Affirmed; court of appeals opinion vacated.

Special Justice SANDY HUCKABEE joins in this opinion.

KEMP, C.J., not participating.

Donald L. Parker II; and *Ronald S. Burnett, Jr.*, for appellant.

Fuqua Campbell, P.A., by: *Haley Heath Burks*, *Phil Campbell*, and *Chris Stevens*, for appellee.