

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2019-CA-01335-COA

EDWARD A. SOFFRA

APPELLANT

v.

**SHIELDSBORO DEVELOPMENT, INC. AND
NIKKI S. TINGSTROM, INDIVIDUALLY**

APPELLEES

DATE OF JUDGMENT: 07/26/2019
TRIAL JUDGE: HON. JENNIFER T. SCHLOEGEL
COURT FROM WHICH APPEALED: HANCOCK COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT: MICHAEL D. HAAS JR.
ATTORNEY FOR APPELLEES: NIKKI S. TINGSTROM (PRO SE)
NATURE OF THE CASE: CIVIL - REAL PROPERTY
DISPOSITION: AFFIRMED IN PART; REVERSED AND
REMANDED IN PART - 12/01/2020

MOTION FOR REHEARING FILED:

MANDATE ISSUED:

BEFORE WILSON, P.J., LAWRENCE AND McCARTY, JJ.

WILSON, P.J., FOR THE COURT:

¶1. Nikki Tingstrom bought a home on Genin Street in Bay St. Louis from Edward Soffra. The sale was owner-financed. Tingstrom gave Soffra a down payment and a promissory note secured by a deed of trust. Less than six months later, Soffra sent Tingstrom a notice of default, which alleged that she had missed payments and threatened foreclosure. Tingstrom denied that she was in default, but Soffra eventually foreclosed on the property. Tingstrom then sued Soffra in chancery court, alleging wrongful foreclosure, breach of contract, and conversion. After trial, the chancellor found that Soffra had wrongfully foreclosed on the property, breached the duty of good faith and fair dealing, and committed the tort of

conversion. The chancellor set aside the foreclosure, awarded compensatory and punitive damages, and cancelled the deed of trust.

¶2. On appeal, Soffra argues that the chancellor erred (1) by finding that he wrongfully foreclosed on the property; (2) by awarding excessive damages; (3) by both awarding damages and setting aside the foreclosure, “resulting in a dual recovery”; (4) by establishing a new payment plan for Tingstrom’s remaining debt to Soffra; (5) by finding that he committed the tort of conversion; and (6) by awarding punitive damages without first making findings regarding his net worth. We affirm the chancellor’s findings that Soffra wrongfully foreclosed on the property and converted Tingstrom’s personal property. We also affirm the award of punitive damages. However, we reverse and remand the award of compensatory damages, as the amount awarded is not supported by evidence presented at trial. We also agree with Soffra that the chancellor erred by cancelling the parties’ deed of trust and establishing a new payment plan and new legal relationship between the parties. We reverse and remand for further proceedings on that issue as well.

FACTS AND PROCEDURAL HISTORY

¶3. On September 23, 2015, Tingstrom purchased a home on Genin Street in Bay St. Louis from Soffra. Tingstrom received a warranty deed in exchange for a \$10,000 down payment and a promissory note for \$75,000 secured by a deed of trust.¹ There was no

¹ Tingstrom actually purchased the property and signed the deed of trust and promissory note on behalf of Shieldsboro Development Inc., and Tingstrom and Shieldsboro are both plaintiffs in this action. According to Tingstrom, Shieldsboro is an S Corporation. Tingstrom is its president, and her son, Brandon, is its sole shareholder. For simplicity, we will refer to the plaintiffs collectively as “Tingstrom.”

interest on the promissory note. The note required Tingstrom to pay \$600 on the 23rd of each month, beginning on October 23, 2015, with a balloon payment for the balance of the note due on September 23, 2020, or, at Tingstrom's option, September 23, 2022. Tingstrom testified that Soffra owner-financed the sale because the property was in such poor condition that no bank would finance it. She testified that she had spent more than \$50,000 making improvements to the home, including more than \$40,000 that she received under a disability insurance policy to make accommodations for her disability.

¶4. Tingstrom made the \$10,000 down payment at the closing. Tingstrom testified that she next paid Soffra \$600 in cash for her October 2015 mortgage payment. According to Tingstrom, they met in the parking lot of a bank, and Soffra signed a handwritten receipt for the cash.² At trial, Soffra claimed that the receipt was forged, and he denied that Tingstrom ever made her October 2015 payment. There is now no dispute that Tingstrom made all payments from November 2015 through January 2016.

¶5. Tingstrom testified that she mistakenly wrote a check on the wrong bank account for her February 2016 payment. She testified that she contacted Soffra when she realized her mistake but that he tried to cash the check anyway. The check bounced. On March 3, Tingstrom received a letter from Soffra's attorney notifying her that she was in default. The letter asserted that she had missed her January 2016 and February 2016 payments and owed a late fee for the January payment and attorney's fees. The letter demanded a total payment of \$1,849.46 to bring the note current. The letter stated that Soffra would initiate foreclosure

² The handwritten receipt is dated October 1, 2016, but Tingstrom testified that the payment was made on October 1, 2015.

proceedings if payment was not made within thirty days.

¶6. Tingstrom responded to the letter and enclosed a cashier's check for \$1,543.46. Her response detailed some of the problems she had experienced with Soffra. She stated that Soffra had changed the agreed upon method of payment, harassed her, trespassed on the property, and tampered with her mailbox. Tingstrom stated that the cashier's check was for the February 2016 payment plus fees for the returned check, the March 2016 payment, and 2015 property taxes. She denied that she had missed the January payment. Tingstrom stated that she would not pay attorney's fees because she was not in default. Tingstrom also enclosed cancelled checks showing her payments for November through January.

¶7. Soffra's attorney sent Tingstrom another letter on April 13, 2016, stating that Soffra had rejected Tingstrom's \$1,543.46 cashier's check because it was insufficient. In this letter, Soffra claimed—for the first time—that Tingstrom had also failed to make her October 2015 payment. Soffra now claimed that Tingstrom owed \$2,906.01—\$600 payments for October 2015, February 2016, and March 2016; \$319.46 in prorated property taxes; \$7 in fees for the returned check; \$24 for late fees on the October and February payments; \$6.74 for certified mail; and \$724.81 in attorney's fees. Enclosed with the letter was a notice for a foreclosure sale scheduled on May 12, 2016.

¶8. Although Soffra's April 13 letter did not mention it, Soffra apparently had realized by this point that Tingstrom had, in fact, made her January 2016 payment. Soffra admitted at trial that Tingstrom made her January 2016 payment. In addition, although Soffra's letter claimed that Tingstrom owed him for property taxes, Soffra had already received a letter

from the closing attorney notifying him that *he owed Tingstrom* \$847.18 for property taxes because he had underpaid his prorated property taxes at closing.

¶9. At trial, Tingstrom testified that she refused to pay attorney's fees because she had never been in default. Tingstrom asked an attorney she knew, Donald Rafferty, to help her make payments to Soffra. After the April letter and notice of foreclosure, Rafferty suggested that Tingstrom pay an amount to try to end the dispute. On May 12, 2016, Rafferty issued a check for \$2,250 on behalf of Tingstrom to cover the February, March, and April 2016 payments, plus taxes and certain fees that Soffra claimed. Tingstrom testified that she just wanted to live in peace and denied that the payment was an admission that she was in default. The payment did not cover the disputed October 2015 payment or attorney's fees. Although the payment was not enough to cover the amount that Soffra alleged was due, Soffra cancelled the foreclosure sale.

¶10. On May 31, Soffra's attorney sent Rafferty a letter stating that there were only two unresolved issues between the parties: Soffra still maintained (1) that he had not received a payment in October 2015 (and that Tingstrom's receipt was a forgery) and (2) that Tingstrom owed him attorney's fees. The letter proposed a settlement of all issues that involved the hiring of a handwriting expert to examine the October 2015 receipt. The letter also advised Tingstrom that the May 2016 payment was due as of May 23. On June 17, 2016, Soffra accepted a check for \$600, presumably for the May 2016 payment.

¶11. On August 12, 2016, Soffra's attorney sent Rafferty a letter notifying him that Tingstrom was in default by three payments: the still-disputed October 2015 payment plus

the June and July 2016 payments. The letter rescinded any previous offer to settle and demanded full payment of all disputed payments and fees. The letter enclosed a notice of trustee's sale scheduled for September 9, 2016. On August 24, Rafferty sent a \$600 check to Soffra's attorney, but Soffra rejected it as insufficient. On September 9, 2016, Soffra repurchased the property at the foreclosure sale for \$70,000³ and received a substitute trustee's deed.

¶12. Tingstrom testified at trial that she never received notice of the trustee's sale. She testified that in October 2016, she received a complaint for eviction that Soffra had filed in justice court.⁴ Soffra acknowledged that the notice of default and notice of the trustee's sale were not mailed or delivered to Tingstrom. Soffra argued that his letter to Rafferty was sufficient because he believed that Rafferty represented Tingstrom. However, Tingstrom maintained that Rafferty was not her attorney and only acted as a "payment agent" because Soffra would not accept payments directly from her. Rafferty did not represent Tingstrom in chancery court, nor was he called as a witness.

¶13. Tingstrom continued occupying the property following the foreclosure. On December 6, 2016, she filed a complaint in chancery court for wrongful foreclosure. Her complaint alleged that Soffra had breached their contract by conducting a wrongful foreclosure, had breached the duty of good faith and fair dealing, and had committed the tort of conversion by charging her attorney's fees and other penalties. She sought to set aside the foreclosure

³ We assume this was a credit bid in substance, although the record does not show the details of the foreclosure sale.

⁴ The eviction proceeding was later dismissed.

and damages. Soffra answered and filed a counterclaim. There was no further action in the case until January 2018.

¶14. In April 2018, the chancellor entered an agreed order setting the case for trial in August and requiring Tingstrom to deposit \$12,000 into the court registry. This amount represented the money Tingstrom owed to that date for monthly payments under the promissory note. The chancellor also ordered Tingstrom to begin making her \$600 monthly payment, plus property taxes for the month, into Soffra's attorney's trust account. Tingstrom paid the \$12,000 into the court's registry.

¶15. Following a hearing in August 2018, the chancellor released the \$12,000 in the court registry to Soffra. The chancellor also ordered Tingstrom to deposit \$2,850 into her attorney's trust account to be paid to Soffra to satisfy "all court-ordered payments through August 2018." The chancellor also ordered Tingstrom to continue making monthly payments and to secure insurance on the property with Soffra as an insured. As ordered, Tingstrom paid Soffra \$2,850.

¶16. A few days after the August hearing, there was an electrical fire at the property. Tingstrom was not home at the time, and the fire was ruled an accident. Tingstrom testified that she suspected arson, but she had no evidence to support her suspicion. Tingstrom testified that she tried to secure permits to repair the home but that the city would not issue permits to her because she was no longer the record owner. Tingstrom alleged that Soffra had instructed the city not to issue permits to her. Soffra denied this allegation, but he admitted that he had called the city to ask whether Tingstrom had obtained any permits.

¶17. After the fire, Tingstrom was unable to live in the home, and she relocated temporarily to Florida. While she was gone, she asked her friend Theresa Collins to park a truck at the house. Collins testified that she parked a truck at the house and drove by the property to check on it every few days. Near the end of November, the truck went missing. Collins eventually located the truck at a scrap yard. An employee at the scrap yard told Collins that Soffra had hired him to tow the truck.

¶18. Collins also testified that around the time the truck went missing, someone removed personal property from the house. Collins stated that Tingstrom's son removed some items after the fire but that he left furniture, lamps, a microwave, and a refrigerator in the house. Collins later discovered that the furniture, microwave, and refrigerator were gone. Soffra denied that he removed any of the disputed property from the house.

¶19. At a hearing on December 14, 2018, Soffra alleged that Tingstrom had not made a monthly payment since the August 2018 hearing. Soffra also stated that Tingstrom had received a check from her insurer for approximately \$12,000 for damage caused by the fire. Soffra told the chancellor that the city had threatened to condemn the property unless it was cleaned up and repaired. He asked the chancellor for possession of the property and the insurance proceeds so that could clean up and repair the property. Tingstrom said that she was not living at the property due to the state of the residence and that she still had personal items in the home. She mentioned that the home had been broken into several times since the fire. She admitted that she had received a check from the insurance company.

¶20. The chancellor ordered Tingstrom to sign the insurance check over to Soffra. Based

on the transcript of the hearing, it appears that Tingstrom signed and gave the check to Soffra that day. The chancellor ordered Tingstrom to vacate the property on or before December 23, 2018, and ordered that “[a]ny remaining personal property shall be deemed to be abandoned and [Soffra] can dispose of same in any reasonable manner.”

¶21. Trial began in January 2019. Tingstrom represented herself at trial. She testified that Soffra breached their contract by not accepting payments that she tendered. She said that Soffra had violated the duty of good faith and fair dealing by harassing her and interfering with her attempts to make payments. She claimed that Soffra had expressed regret about selling the house, and she believed he was trying to make her give it up. She also alleged that Soffra threatened her son once when her son was at the property. She claimed that Soffra told her that he had killed someone before and that he would kill her too.

¶22. Tingstrom also complained that Soffra had changed how and to whom payments should be made. She claimed that Soffra asked her to write checks to his wife because he was trying to avoid having to report the income. She also accused Soffra of going through her mail and taking bills and invoices. She said that a postal worker had retrieved some mail after Soffra allegedly tampered with it.

¶23. Soffra denied that he ever threatened Tingstrom or her son⁵ or trespassed on the property. He also denied that he was trying to avoid reporting income. He admitted that he had cashed checks made out to his wife, but he denied that he asked Tingstrom to write the

⁵ Tingstrom’s son, Brandon, also testified that Soffra did not threaten him. Based on Brandon’s testimony, the chancellor found that Tingstrom’s allegations that Soffra threatened Brandon “were not credible.”

checks out to her. He also denied that he ever requested cash payments and denied receiving the disputed October 2015 payment. He maintained that Tingstrom's handwritten receipt was forged. He denied that he had ever tampered with Tingstrom's mail. He testified that he had gone through her mail to look for something addressed to him, but he claimed that Tingstrom gave him permission to do so.

¶24. Tingstrom maintained at trial that she was not in default when Soffra first alleged that she was in default. She said that any subsequent default was due to Soffra's attorney's refusal to accept payments. She claimed that Soffra and his attorney caused unnecessary delays and confusion.

¶25. After both parties rested, the chancellor ruled that Soffra wrongfully foreclosed on the property in September 2016 because he failed to provide proper notice of the foreclosure and arbitrarily refused Tingstrom's attempted payments (while demanding "additional fees and penalties to which he was not entitled"). The chancellor also found that Soffra and his attorney had engaged in a pattern of harassment and intimidation. She specifically found that Soffra had gone to Tingstrom's property to harass her, had paid someone to take the truck that was parked at the home, and had tampered with Tingstrom's mail.

¶26. The chancellor found that Soffra engaged in malicious behavior for the purpose of getting his property back. She found credible Tingstrom's claim that Soffra had expressed regret over selling the property. The chancellor found that Soffra had almost no credibility based on "his demeanor," "evasive answers," "refusal to answer questions," and "conflicting testimony." The chancellor cancelled the substitute trustee's deed conveying the property

to Soffra, ordered Soffra to return the insurance proceeds from the fire (approximately \$12,400) to Tingstrom, and set the case for a trial on compensatory and punitive damages. The chancellor later clarified that Soffra was required to turn over the remaining insurance proceeds to Tingstrom but could deduct any payments he made for repairs that were supported by receipts.

¶27. At a subsequent show-cause hearing, Soffra presented some evidence of payments he made for repairs. The chancellor granted him credit for \$2,172.67 and ordered him to pay the balance of the insurance proceeds (\$10,065.50) to Tingstrom. The chancellor denied Soffra credit for electrical work that was not done to code by a certified electrician with proper permits. The chancellor found that Soffra was in contempt for failing to turn over any of the insurance proceeds for over three months. She ordered him to be incarcerated until he paid Tingstrom. Soffra paid Tingstrom the next day and was released from jail.

¶28. During the trial on damages, Tingstrom testified that some of Soffra’s “repairs” had caused further damage. The electrical work was done without a permit, was not up to code, and did not pass the city’s inspection. Tingstrom also claimed that she lost the opportunity to submit additional claims to her insurer because she was not able to make repairs to the home promptly.⁶

¶29. In a final judgment, the chancellor found that the foreclosure by Soffra was wrongful because it was “conducted prematurely”—i.e., with less than the thirty days’ notice required by the deed of trust—“and in bad faith, premised on a pattern of abusive behavior.” The

⁶ Although Tingstrom’s testimony was unclear, she was probably referring to recoverable depreciation.

chancellor acknowledged that Tingstrom was technically in default at the time of the foreclosure, but the chancellor also found that the foreclosure would not have occurred but for Soffra's prior erroneous allegations of default. The chancellor found that Soffra had also violated the covenant of good faith and fair dealing by harassing Tingstrom and refusing to engage with her in good faith.

¶30. The chancellor set aside the foreclosure and awarded Tingstrom possession of the property. She also awarded compensatory and punitive damages based on Soffra's behavior following the August 2018 fire. The chancellor found that Soffra converted Tingstrom's personal property after the fire when he removed or destroyed property she had left in the home. The chancellor also found that Soffra delayed repairs to the home, which "forced [Tingstrom] to rely . . . on her disability insurance to make necessary repairs."

¶31. The chancellor awarded compensatory damages of \$50,313.84, which consisted of \$10,000 for lost or destroyed personal property and \$40,313.84 for repairs she made to the home. The chancellor's \$10,000 award for personal property was based on the coverage limit for contents under Tingstrom's homeowners insurance policy. The \$40,313.84 award for repairs to the home was based on payments that Tingstrom received under a disability insurance policy, which she had used to make improvements to the home. The chancellor also awarded punitive damages of \$7,139.11, representing the reasonable attorney's fees Tingstrom incurred prior to trial while she was represented by counsel. The chancellor deducted \$3,200.53 from the total award for property taxes Soffra paid. Thus, the total award to Tingstrom was \$54,252.42.

¶32. The chancellor then calculated that Tingstrom had paid Soffra a total of \$15,850 under the promissory note and thus owed a remaining balance of \$59,150.⁷ The chancellor granted Soffra a judgment for the net amount of \$4,897.58—i.e., the balance on the promissory note less Tingstrom’s damages. The chancellor found that “[t]o reduce the potential for future conflict,” it was in both parties’ “best interest” to terminate their “contractual relationship” and cancel the deed of trust. The chancellor then ordered Tingstrom to pay \$400 per month into the court registry (for subsequent disbursement to Soffra) until her remaining debt of \$4,897.58 was paid in full. Finally, the judgment provided:

Should Shieldsboro^[8] fail to make six (6) consecutive payments . . . , it will be in default, and the remaining balance under this judgment shall become due and owing as one balloon payment. Upon written notice of its default, Shieldsboro shall have thirty (30) days to make payment in full of the remaining sum or . . . be subject to the contempt powers of this Court.

The chancellor noted that Soffra could also enroll the judgment until it was paid in full.

¶33. Soffra filed a notice of appeal from the final judgment.

STANDARD OF REVIEW

¶34. “We employ a limited standard of review on appeals from chancery court.” *Legacy Hall of Fame Inc. v. Transp. Trailer Serv. Inc.*, 139 So. 3d 105, 107 (¶9) (Miss. Ct. App. 2014). We “will not disturb the factual findings of a chancellor when supported by

⁷ This calculation appears to be erroneous. The evidence shows that Tingstrom had paid a total of at least \$20,700 under the promissory note: \$600 in October 2015; \$600 in November 2015; \$600 in December 2015; \$600 in January 2016; \$2,250 in May 2016; \$600 in June 2016; \$12,000 pursuant to a court order in April 2018; \$2,850 pursuant to a court order in August 2018; and \$600 in January 2019.

⁸ *See supra* note 1.

substantial evidence unless we can say with reasonable certainty that the chancellor abused [her] discretion, was manifestly wrong, clearly erroneous or applied an erroneous legal standard.” *Biglane v. Under The Hill Corp.*, 949 So. 2d 9, 13-14 (¶17) (Miss. 2007) (brackets omitted) (quoting *Cummings v. Benderman*, 681 So. 2d 97, 100 (Miss. 1996)). The chancellor, as the trier of fact, is the sole judge of the credibility of witnesses and the weight of the evidence. *Mayton v. Oliver*, 247 So. 3d 312, 322 (¶¶33-34) (Miss. Ct. App. 2017). We review issues of law de novo. *Biglane*, 949 So. 2d at 14 (¶17).

ANALYSIS

¶35. Soffra challenges the chancellor’s factual findings and her award of damages. He argues that there was no wrongful foreclosure because Tingstrom was in default. He also argues that Tingstrom failed to plead or prove conversion.⁹

¶36. Soffra also argues that the chancellor gave Tingstrom a double recovery by not only setting aside the foreclosure and cancelling the deed of trust but also awarding compensatory damages. In addition, he argues that the chancellor’s award of damages is excessive and is not supported by the evidence. Finally, he argues that the chancellor erred by awarding punitive damages without first calculating his net worth.

¶37. Tingstrom failed to file a brief on appeal. When the appellee fails to file a brief, this Court has two options. First, we may take the appellee’s failure to file a brief as a confession of error and reverse. This option is favored when the record is complicated or of large volume and the case has been thoroughly

⁹ Soffra does not address the chancellor’s finding that he breached the covenant of good faith and fair dealing. *See Cenac v. Murry*, 609 So. 2d 1257, 1272 (Miss. 1992) (“All contracts contain an implied covenant of good faith and fair dealing in performance and enforcement.”).

briefed by the appellant with apt and applicable citation of authority so that the brief makes out an apparent case of error. However, if the record can be conveniently examined and such examination reveals a sound and unmistakable basis or ground upon which the judgment may be safely affirmed, we may disregard the appellee's error and affirm.

Thornton v. Holloway, 49 So. 3d 125, 128-29 (¶10) (Miss. Ct. App. 2010) (citations and quotation marks omitted).

¶38. We affirm the chancellor's findings of wrongful foreclosure and conversion and award of punitive damages because there are "sound and unmistakable" grounds for affirming those parts of the judgment. *Id.* However, we reverse the award of compensatory damages because it is not supported by the evidence, and we remand for a new determination of damages. We also reverse the chancellor's decision to cancel the deed of trust and establish an entirely new payment plan subject to judicial oversight. Tingstrom's remaining debt to Soffra should be repaid in a manner consistent with the original terms of the parties' promissory note secured by the parties' deed of trust.

I. Foreclosure

¶39. On appeal, Soffra argues that the foreclosure sale was valid because Tingstrom was in default at the time.¹⁰ However, Soffra completely fails to address the chancellor's finding that the foreclosure was conducted without proper notice.

¹⁰ The chancellor acknowledged that Tingstrom was behind on two payments in August 2016 (presumably the June and July 2016 payments). Soffra also argues that Tingstrom also failed to make her first month's payment in October 2015. As discussed above, Tingstrom had a handwritten receipt for that payment, but Soffra alleged the receipt was forged. The chancellor was suspicious of Soffra's claim because he failed to mention the alleged nonpayment for six months—including in his first notice of default in February 2016. The chancellor found Tingstrom's testimony regarding the disputed payment more credible. That finding is supported by substantial evidence and is not clearly erroneous.

¶40. “Mississippi is a non-judicial foreclosure state.” *Blanchard v. Mize*, 186 So. 3d 403, 406 (¶13) (Miss. Ct. App. 2016) (quoting *Pennell v. Wells Fargo Bank N.A.*, No. 1:10-cv-00582-HSO-JMR, 2012 WL 2873882, at *6 (S.D. Miss. July 12, 2012)). “As such, Mississippi law does not require the mortgagee to directly notify the mortgagor of an impending foreclosure.” *Id.* (quoting *Pennell*, 2012 WL 2873882, at *6). By statute, a sale under a deed of trust only requires notice by publication and by posting at the county courthouse. *Id.*; see Miss. Code Ann. § 89-1-55 (Rev. 2011).

¶41. Although the statute requires only publication and posting at the courthouse, “the parties to the deed of trust may contract for more notice than required by statute.” K. F. Boackle, *Mississippi Real Estate Foreclosure Law* § 3:11 (2d ed.), Westlaw (database updated Sept. 2020) (citing *Wilczinski v. Watson*, 110 Miss. 86, 69 So. 1009 (1915)); see also *EB Inc. v. Allen*, 722 So. 2d 555, 561 (¶21) (Miss. 1998) (“[A]ny requirements beyond those expressed in the applicable statutes are determined by the provisions of the note and deed of trust.”). If a deed of trust “requires more” notice than the statute, “then the terms of the [deed of trust] as to notice . . . must be followed and complied with in accordance with the contract of the parties.” *Wilczinski*, 110 Miss. at 94, 69 So. at 1010. “The right to contract is sacred, and the parties should be left free and untrammelled in their right to agree upon and incorporate [into the deed of trust] any lawful provisions not in conflict with the statute in question.” *Id.*¹¹ If the lender fails to comply with the contractual notice requirements set out

¹¹ A deed of trust that purports to provide *less* notice than required by the statute “would be in conflict with the statute,” in which case “the terms of the statute would prevail.” *Id.* at 93-94, 69 So. at 1010.

in the deed of trust, “the sale by the trustee [is] void.” *Id.* at 94-95, 69 So. at 1011; *accord Enochs v. Miller*, 60 Miss. 19, 21-22 (1882).

¶42. In the instant case, the parties contracted for additional notice in their deed of trust. The deed of trust provided that prior to acceleration and foreclosure, Soffra was required to give Tingstrom a written notice setting forth “(a) the default; (b) the action required to cure the default; (c) a date, *not less than 30 days from the date the notice is given to [Tingstrom]*, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by [the deed of trust] and sale of the Property.” (Emphasis added).¹²

¶43. Soffra failed to comply with the notice requirements of the deed of trust. On August 12, 2016, Soffra’s attorney sent Rafferty a letter enclosing notice of a foreclosure sale scheduled for September 9, and the sale was held on September 9. Tingstrom argued at trial that Soffra was required to send notice to her, not Rafferty.¹³ Regardless, the notice did not satisfy the notice requirements of the deed of trust because notice was given only twenty-eight days before the sale. Thus, the chancellor correctly found that “the foreclosure sale took place prematurely.” Indeed, on appeal, Soffra completely fails to address this finding

¹² The promissory note also required thirty days’ notice prior to acceleration.

¹³ The deed of trust required Soffra to mail notice to Tingstrom at Shieldsboro Development’s post office box. There is no evidence that Soffra ever sent notice of the foreclosure sale to Tingstrom at that address or at her home address. Soffra’s attorney stated that he sent the notice to Rafferty because he believed that Rafferty represented Tingstrom. However, Tingstrom testified that Rafferty did not represent her but only acted as a “payment agent” to facilitate payments to Soffra’s attorney. Tingstrom denied that she ever received the August 12 notice. She testified that she “wasn’t aware of the foreclosure until [she] was served [with a notice of] eviction in October.”

by the chancellor.

¶44. Under Mississippi law, “[t]he deed of trust itself is a contract between the parties,” and it is our duty to enforce the parties’ contract according to its terms. *Wilczinski*, 110 Miss. at 94, 69 So. at 1011. This case involves only the two parties to the contract: Soffra and Tingstrom. Soffra failed to comply with the terms of the deed of trust and gave Tingstrom “less [notice] than that contracted for and provided by the deed of trust itself.” *Id.* Therefore, “we are constrained to hold that the sale by the trustee was void.” *Id.* at 94-95, 69 So. at 1011. The chancellor did not err by setting aside the substitute trustee’s deed on that ground. *Id.*; *accord Enochs*, 60 Miss. at 21-22.

II. Conversion

¶45. Soffra next challenges the chancellor’s finding that he committed the tort of conversion. He asserts that the chancellor erred by finding that he converted Tingstrom’s personal property because Tingstrom did not allege in her complaint, or amend her complaint to allege, that he had taken her property¹⁴ and/or because he removed some of the property in compliance with a court order. However, Soffra fails to develop either contention or provide any meaningful citation to the record or relevant authority. His brief argument on appeal cites only Tingstrom’s complaint and includes no discussion of the evidence, any relevant authorities, or supporting argument.

¶46. We conclude that this issue is waived because Soffra fails to develop any meaningful argument to show that the chancellor committed reversible error. *See Doss v. Claiborne*

¹⁴ The alleged takings occurred well after Tingstrom filed her complaint.

Cnty. Bd. of Supervisors, 230 So. 3d 1100, 1104 (¶10) (Miss. Ct. App. 2017) (“In the absence of meaningful argument and citation of authority, an appellate court generally will not consider an assignment of error. A cursory argument without further reason or explanation is inadequate.” (citation, quotation marks, brackets, and ellipsis omitted)); *Concerned Citizens of Raven Wood Subdivision v. Pearl River County*, 172 So. 3d 1234, 1236 (¶10) (Miss. Ct. App. 2014) (“It is axiomatic that the trial court’s judgment is presumed to be correct and that the appellant bears the burden of showing reversible error . . .”).

¶47. We also conclude that Soffra’s argument is without merit. “When issues not raised by the pleadings are tried by expressed or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.” M.R.C.P. 15(b). Moreover, a party’s failure to make a formal motion to amend the pleadings “does not affect the result of the trial on these issues.” *Id.* At trial, the opposing party may object to evidence “on the ground that it is not within the issues made by the pleadings.” *Id.* However, “the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would [cause] prejudice.” *Id.* At trial, Tingstrom presented evidence in support of her claim that Soffra converted her personal property, and Soffra does not show that he made any contemporaneous objection on the ground that the issue was not pled. Therefore, we conclude that the issue was tried by implied consent.

III. Damages

¶48. Soffra argues that the chancellor erroneously allowed Tingstrom a double recovery

by both setting aside the foreclosure and awarding damages. Soffra also argues that the amount of compensatory damages that the chancellor awarded is not supported by the evidence. Finally, he argues that the chancellor erred by awarding punitive damages without first making a finding regarding Soffra's ability to pay punitive damages. We address these issues in turn.

A. The chancellor did not grant Tingstrom an impermissible double recovery.

¶49. In support of his first argument, Soffra cites the Mississippi Supreme Court's statement that "[g]enerally," when there has been a wrongful foreclosure, "the mortgagor has the right to elect between (1) having the sale set aside and (2) recovering from the mortgagee the damages suffered as a result of the wrongful foreclosure." *Nat'l Mortg. Co. v. Williams*, 357 So. 2d 934, 936 (Miss. 1978) (quoting 55 Am. Jur. 2d *Mortgages* § 535, at 516-17 (1971)). Soffra argues that Tingstrom can only "elect between" these two remedies and cannot have both.

¶50. We disagree with Soffra's argument that the chancellor granted an impermissible double recovery in this case. The rule stated in *Williams* is qualified: the Court said that "[g]enerally" the plaintiff in a wrongful foreclosure case "has the right to elect between (1) having the sale set aside and (2) recovering . . . damages." *Id.*¹⁵ That statement is accurate *in general*, i.e., in most cases. For example, a court should not set aside the foreclosure and

¹⁵ See also *Henderson v. Copper Ridge Homes LLC*, 273 So. 3d 750, 756 (¶29) (Miss. 2019) ("Generally, a wrongful-foreclosure claimant 'has the right to elect between (1) having the sale set aside and (2) recovering from the mortgagee the damages suffered as a result of the wrongful foreclosure.'" (quoting *Williams*, 357 So. 2d at 936)).

then award damages premised on a permanent loss of the property. Such an award would be a double recovery.

¶51. But that is not what the chancellor did in this case. Rather, the chancellor awarded Tingstrom damages because the chancellor found that Soffra’s misconduct delayed repairs after the August 2018 fire and thereby caused additional damage to the property. Merely setting aside the sale would not have been an adequate remedy for such damages because it would have left Tingstrom with a property that was less valuable than before as a result of Soffra’s misconduct. The chancellor did not err by awarding compensatory damages to make Tingstrom whole for losses that the order setting aside the foreclosure did not remedy. *See Union Carbide Corp. v. Nix*, 142 So. 3d 374, 390 (¶40) (Miss. 2014) (“[T]he purpose of compensatory damages is to make the plaintiff whole[.]”).¹⁶

B. The award of compensatory damages is excessive and lacks support in the evidence.

¶52. Soffra next argues that the chancellor’s award of compensatory damages is excessive and is not supported by the evidence. The chancellor awarded Tingstrom two categories of compensatory damages. She awarded Tingstrom \$10,000 for “Soffra’s removal and destruction of . . . Tingstrom’s personal property” based on the “insured value” of the contents of the home “at the time the fire and subsequent removal occurred.” The chancellor also awarded \$40,313.84 for Soffra’s “reckless repairs to the residence” based on “\$40,313.84 in disability insurance” payments that Tingstrom “utilized and earmarked for

¹⁶ In addition, as discussed above, the chancellor awarded damages for Soffra’s conversion of Tingstrom’s personal property. Such damages are entirely separate from any remedy for the wrongful foreclosure.

the purpose of making repairs to the home.”

¶53. “Compensatory damages are such damages as will compensate the injured party for the injury sustained, and nothing more” *Parsons v. Walters*, 297 So. 3d 250, 259 (¶32) (Miss. 2020) (internal quotation mark omitted) (quoting *Richardson v. Canton Farm Equip., Inc.*, 608 So. 2d 1240, 1250 (Miss. 1992)). “Compensatory damages should not be awarded as a means of punishment or deterrent for a defendant’s reprehensible behavior, for [that] is the role of punitive damages” *Id.*

¶54. In addition, “the plaintiff . . . carries the burden of proving the amount of damages with reasonable certainty” *Adams v. U.S. Homecrafters Inc.*, 744 So. 2d 736, 740 (¶13) (Miss. 1999). “In any case a plaintiff is required to place into evidence such proof of damages as the nature of his case permits, with as much accuracy as . . . reasonably possible for him.” *Thomas v. Global Boat Builders & Repairmen Inc.*, 482 So. 2d 1112, 1116 (Miss. 1986). An award of damages must be reversed if it is speculative and is not based on the evidence presented at trial. *Univ. of S. Miss. v. Williams*, 891 So. 2d 160, 175-76 (¶46) (Miss. 2004). Applying these standards, we agree with Soffra that the award of compensatory damages in this case must be reversed and remanded.

¶55. With respect to personal property, the record contains a copy of the declarations page of Tingstrom’s homeowners insurance policy that shows that the insured value of the “contents” of her home prior to the August 2018 fire was \$10,000. However, the fire damaged some of Tingstrom’s personal property, and her insurer paid her \$866.38 for that loss. In addition, Tingstrom’s son subsequently removed some of her furniture and other

personal property in a U-Haul truck. Thus, the evidence is clear that Soffra did *not* convert all of the personal property that was insured for \$10,000 under Tingstrom’s homeowners policy. Accordingly, it was arbitrary to award that amount as damages.

¶56. The evidence presented at trial concerning the nature and value of the personal property that Soffra allegedly converted was limited and vague. It consisted primarily of Collins’s testimony that some pieces of furniture, a refrigerator, a microwave, and other items went missing around the time that Soffra allegedly paid someone to remove a truck from the house to be sold for scrap.¹⁷ The evidence supports a reasonable inference and the chancellor’s finding that Soffra removed some of Tingstrom’s personal property from the home. However, the evidence does not support an award in the arbitrary amount of \$10,000. Accordingly, we reverse and remand for a new determination of damages for Soffra’s conversion of personal property.¹⁸

¶57. The chancellor’s award of \$40,313.84 for Soffra’s “reckless repairs to the residence” is also problematic. This award was based solely on the sum of three checks that Tingstrom received from her disability insurer in 2017. The chancellor stated that Soffra’s conduct after the August 2018 fire caused delays that prevented Tingstrom from submitting additional “claims to her [homeowners] insurance company for coverage.” The chancellor stated that

¹⁷ The truck belonged to Collins or Collins’s nephew and was ultimately returned. Thus, it is not part of Tingstrom’s conversion claim.

¹⁸ Soffra also argues that he cannot be found liable for converting property that he removed from the home in compliance with the December 2018 court order. *See supra* ¶20. However, based on the testimony at trial, the only substantial evidence of conversion is of items that went missing prior to December 2018.

as a result, Tingstrom was “forced to rely instead on her disability insurance to make the necessary repairs.”

¶58. The evidence is sufficient to support a finding that Tingstrom sustained damages as a result of delayed repairs and inadequate repairs, but it does not support the amount of damages awarded. Specifically, the evidence does not support any connection between the disability insurance payments received by Tingstrom (\$40,313.84) and any damages that Soffra actually caused. Tingstrom received those disability insurance payments between July and September 2017—one year *before* the fire. In addition, Tingstrom stated that she used these funds to make improvements to the home and make it “ADA standard” *prior to* the fire. There is nothing in the record to suggest that this figure bears any relationship to any damages caused by the wrongful foreclosure or any other conduct by Soffra. Thus, the use of this figure as the basis for an award of damages was arbitrary and is not supported by substantial evidence. Accordingly, we also reverse and remand for a new determination of the amount of any damages to the home proximately caused by Soffra.

C. The chancellor did not err by awarding punitive damages.

¶59. Soffra argues that the chancellor “committed reversible error by failing to make a finding of [his] net worth before awarding punitive damages.” Soffra relies on the punitive damages statute, Mississippi Code Annotated section 11-1-65 (Rev. 2019). That statute provides that “the fact finder, in determining the amount of punitive damages, shall consider, to the extent relevant, . . . the defendant’s financial condition and net worth” and also caps punitive damages at two percent of the defendant’s net worth for a defendant with a net

worth of \$50,000,000 or less. *Id.* § 11-1-65(1)(e), (3)(a)(vi).

¶60. Soffra’s argument is waived. Despite having ample notice that the chancellor intended to award punitive damages,¹⁹ Soffra failed to raise this issue at trial or present any evidence of his net worth. “Proof of net worth is not required to award punitive damages. For a defendant to mitigate potential punitive damages, it is his responsibility to present proof of his net worth and financial condition.” *Moore v. McDonald*, 210 So. 3d 563, 566 (¶8) (Miss. Ct. App. 2017) (brackets and ellipsis omitted) (quoting *Woodkrest Custom Homes Inc. v. Cooper*, 108 So. 3d 460, 469 (¶¶41-42) (Miss. Ct. App. 2013)). In addition, a defendant waives his right to rely on the statutory punitive damages cap when he fails to present any evidence to establish his net worth. *Id.* Accordingly, the chancellor did not err by awarding punitive damages.

IV. Remedy

¶61. Soffra also argues that the chancellor erred “by creating a [new] contract between [the parties and] by establishing a [new] payment plan for [Tingstrom].” As discussed above, the chancellor not only set aside the foreclosure and substitute trustee’s deed but also cancelled the parties’ promissory note and deed of trust. In place of the note and deed of trust, the chancellor gave Soffra a judgment for \$4,897.58, which represented the chancellor’s calculation of the remaining balance due under the promissory note less the damages awarded to Tingstrom. The chancellor further ordered that Tingstrom should pay that

¹⁹ In January 2019, at the conclusion of the phase of the trial on the validity of the foreclosure and liability, the chancellor “determined that [Tingstrom was] entitled to punitive damages.” The chancellor then stated that there would be a trial on both actual damages and punitive damages. That trial on damages was held in May 2019.

amount in monthly installments of \$400, with the court registry to serve as a payment intermediary. The chancellor also stated that Tingstrom would be subject to the court's contempt powers if she failed to pay.

¶62. We agree with Soffra that the chancellor erred by cancelling the deed of trust and establishing an entirely new contract and payment plan between the parties. As discussed above, a successful plaintiff in a wrongful foreclosure case generally may elect to “hav[e] the sale set aside.” *Henderson*, 273 So. 3d at 756 (¶29) (emphasis added) (quoting *Williams*, 357 So. 2d at 936). However, we have found no authority suggesting that the court may or should go a significant step further and eliminate the mortgagee's security interest in the property. Nor have we found any authority for the remedy ordered in this case—a new, judicially created payment plan that substitutes the court's contempt powers for the mortgagee's contractual rights under the deed of trust. While we have affirmed the chancellor's finding that the *foreclosure sale* was void because Soffra failed to comply with the notice requirements of the deed of trust, that finding does not void the underlying deed of trust or promissory note. Particularly given Tingstrom's failure to file a brief, we conclude that Soffra has “ma[de] out an apparent case of error” on this issue. *Thornton*, 49 So. 3d at 128 (¶10) (quoting *J.J. v. Smith*, 31 So. 3d 1271, 1273 (¶10) (Miss. Ct. App. 2010)). Accordingly, we reverse the cancellation of the deed of trust and remand for further proceedings and a remedy consistent with this opinion.

¶63. On remand, the chancellor must make new findings regarding compensatory damages. The chancellor will also need to re-calculate the total payments that Tingstrom has made

under the promissory note.²⁰ As in the original judgment, the chancellor may deduct the total damages awarded to Tingstrom from Tingstrom's remaining balance under the promissory note. The chancellor should order Tingstrom to pay the net amount due to Soffra in a manner consistent with the terms of the promissory note. Further, Tingstrom's remaining debt under the promissory note should remain secured by the parties' deed of trust.

CONCLUSION

¶64. We affirm the chancellor's findings that Soffra wrongfully foreclosed on the property and converted Tingstrom's personal property. We also affirm the chancellor's award of punitive damages. We reverse the cancellation of the parties' deed of trust. We also reverse and the award of compensatory damages because the amount awarded is excessive and lacks support in the evidence. We remand the case for a new determination of compensatory damages, a correct calculation of the balance due under the promissory note, and a remedy consistent with this opinion.

¶65. **AFFIRMED IN PART; REVERSED AND REMANDED IN PART.**

**BARNES, C.J., CARLTON, P.J., GREENLEE, WESTBROOKS, McDONALD,
LAWRENCE AND McCARTY, JJ., CONCUR.**

²⁰ The chancellor should correct any errors in the calculation used in the original judgment (*see supra* note 7) and take account of all subsequent payments by Tingstrom.