2022 VT 56

No. 21-AP-261

Donald James Sutton, Jr. — Supreme Court

v. — On Appeal from Superior Court, Bennington Unit, Civil Division

Felicity Purzycki — June Term, 2022

Cortland Corsones, J.

Antonin I.Z. Robbason of Ryan Smith & Carbine, LTD., Rutland, for Plaintiff-Appellant/ Cross-Appellee.

Merrill E. Bent of Woolmington, Campbell, Bent & Stasny, P.C., Manchester Center, for Defendant-Appellee/Cross-Appellant.

PRESENT: Reiber, C.J., Eaton, Carroll and Waples, JJ., and Teachout, Supr. J. (Ret.), Specially Assigned

¶ 1. **EATON, J.** This civil action stems from a dispute between former business partners regarding the turnover of records pursuant to a stipulated judgment entered following the dissolution of their business relationship. Plaintiff filed a complaint seeking to enforce the stipulated judgment's record turnover requirement and pleading various related causes of action for injuries arising out of defendant's failure to turn over the records immediately following the judgment. The trial court dismissed the related claims as time-barred and, following prolific motion practice and several hearings, adjudicated the enforcement claim on the merits in favor of defendant. We agree with the trial court's orders in all but one aspect. Because we come to a

different conclusion on whether certain types of documents are subject to the stipulated judgment's turnover requirement, we remand for the trial court to modify its judgment consistent with this opinion.

I. Facts & Procedural History

¶ 2. The factual and procedural background of this case is complex. Unless otherwise indicated, the following facts are undisputed. Plaintiff Donald James Sutton, Jr. owns and operates multiple tree nursery and landscaping businesses. Plaintiff hired defendant Felicity Purzycki to work at his business Elhannon Nurseries, LLC (EN) in 2006 as a parttime bookkeeper and later as a fulltime office employee. In this role, defendant had access to EN's digital and physical files. In 2009, plaintiff and defendant formed Elhannon Wholesale Nurseries, LLC (EWN) with plaintiff owning 75% and defendant owning 25%. EWN took over a tree nursery formerly operated by EN and acted as a wholesale provider of trees to EN, which did landscape contracting. Defendant also solely owned a separate landscaping business, Apex Nurseries, Inc. Defendant continued to handle bookkeeping for EN and took on EWN's bookkeeping as well.

¶ 3. Eventually, the parties' business relationship deteriorated, resulting in a lawsuit that was settled with a stipulated judgment on June 20, 2011. The stipulated judgment addresses various issues to tie up the separation of the parties' business interests, such as indemnity and liabilities. Of note for the present appeal, the stipulated judgment states, "[Defendant] agrees to immediately transfer any and all interest in [EWN] to [plaintiff]. Included in [plaintiff]'s dissociation from [EWN] is the immediate return to [plaintiff] of all files, records, bank account information, and all other business records." Per the stipulated judgment, Apex was placed in a receivership, a certified public accountant was appointed the receiver, and the receiver was authorized to conduct an audit of Apex and EWN.

¶ 4. The events following the stipulated judgment are contested and revolve around the extent of defendant's compliance with the requirement that she turn over various business records.

Details of the specific exchanges are immaterial to the outcome of this case. Suffice to say plaintiff asserts that defendant failed to turn over the business records required. In the years following the stipulated judgment, plaintiff was involved in two federal lawsuits, to which defendant was not a party, but during which she provided EN and EWN business records pursuant to court orders. Plaintiff then sued defendant in federal district court in Vermont alleging various causes of action regarding a 2010-2011 barter transaction between defendant, acting on behalf of EWN, and a third party. Although the substance of that lawsuit centered on whether defendant was authorized to conduct the barter transaction, the matter of defendant's alleged possession of business records in violation of the stipulated judgment arose at various points throughout those proceedings. However, the federal court explicitly did not rule on any claims for business records. In July 2019, it entered its final judgment, which was later affirmed on appeal. See Elhannon Wholesale Nurseries, LLC v. Purzycki, 838 F. App'x 627 (2d Cir. 2021).

¶ 5. In May 2019, plaintiff filed a complaint against defendant in Vermont superior court that included seven counts. In Count I, plaintiff alleged that defendant failed to turn over certain business records as required under the stipulated judgment and requested the court enforce the stipulated judgment and require defendant to turn over said business records to achieve compliance. In Counts II-VII, plaintiff sought relief for harms sustained due to defendant's alleged failure to comply with the stipulated judgment.

¶ 6. Defendant filed a motion to dismiss plaintiff's complaint, which the trial court denied as to Count I but granted as to Counts II-VII. Defendant argued, inter alia, that plaintiff's claims were barred by the statute of limitations and claim preclusion. Starting with the statute of limitations, the trial court concluded that Counts II-VII were subject to a different, shorter limitations period than Count I and were time-barred. The court then concluded that Count I was not barred by the statute of limitations or doctrine of claim preclusion. Thus, the litigation continued as to Count 1.

¶ 7. On November 25, 2019, plaintiff filed a motion to enforce prior judgment, arguing defendant had not fulfilled her obligation to turn over records under the stipulated judgment. Following three hearings over the course of 2020, the trial court ruled on plaintiff's motion on November 12, 2020, and concluded that defendant promptly returned all EWN business records to plaintiff or made them available for copying. It determined that she had some copies of business records in her attorneys' possession but that they had all been previously made available to plaintiff. The court, however, decided that the stipulated judgment prohibited defendant from retaining copies of EWN records and ordered her to transfer any remaining copies to plaintiff. It declined to award plaintiff attorney's fees to the extent he was requesting them because it found that defendant's failure to turn over copies was not a willful violation of the stipulated judgment. The court noted that its ruling on the motion to enforce seemed coextensive with Count I of the complaint but set the case for a status conference to determine whether further proceedings would be required.

¶ 8. Plaintiff then moved to amend the trial court's order on the motion to enforce in December 2020. He sought to correct certain findings for being inconsistent with the evidence in the record, delete the paragraph on attorney's fees and leave the issue open for further motion practice, and add certain instructions to ensure defendant's compliance with the 2011 stipulated judgment. On February 1, 2021, the court granted defendant's motion in part, amending certain findings that did not change the legal outcome of its order, and denied the motion in all other respects.

¶ 9. On December 29, 2020, in response to various motions seeking the court's intervention to facilitate defendant's transfer of business records to plaintiff, the trial court altered its order on the motion to enforce to provide more detailed instructions for compliance. One emblematic point of contention was the transfer of a thumb drive containing the backup of a work computer defendant used in her role as bookkeeper. Plaintiff argued that he needed the original

thumb drive while defendant wanted to copy the records on the thumb drive to a new thumb drive for turnover because the original contained attorney work product that could not be removed. The court allowed defendant to copy the records from the original thumb drive onto a new thumb drive for turnover and kept the original under seal with the court.

¶ 10. In February 2021, plaintiff filed a motion to direct defendant to turn over documents subject to the stipulated judgment. He argued that various documents were still missing and therefore defendant was not in compliance with the stipulated judgment or the trial court's November 2020 order on the motion to enforce. Following a hearing, the trial court denied the motion on March 5. It concluded that defendant had complied with its November 2020 order and therefore fulfilled her turnover obligations. However, it instructed defendant to advise her attorneys that they could not return any EWN documents in their possession to her.

¶ 11. The same day, the court issued its decision on the merits. It determined that plaintiff's motion to enforce was coextensive with Count I, the sole remaining claim in plaintiff's complaint. Concluding there was nothing left to be determined, it dismissed Count I and stated that its November 2020 order on the motion to enforce, as amended on December 29, 2020, and February 1, 2021, would serve as its final decision on the merits.

¶ 12. On April 2, plaintiff filed a motion to amend the decision on the merits and requested a hearing under Vermont Rules of Civil Procedure 52(b), 54(b), 59(e), and 60(b). He again contended that the trial court's findings were contrary to the evidence. He also asserted that newly discovered evidence unveiled during the turnover process demonstrated that the court's findings and conclusions regarding defendant's compliance with her turnover obligations were in error. Further, he proposed that the trial court mischaracterized his February 2021 motion to direct defendant to turn over documents. As a result, he argued that the court should amend its order from dismissal of Count I to judgment for plaintiff on Count I. Following a hearing, the trial court denied this motion on October 4, 2021, noting that plaintiff's arguments were repetitive of those

made in previous motions, determining that the newly discovered evidence would not alter its conclusions, and declining to reweigh the evidence in plaintiff's favor.

¶ 13. To accompany the motion to amend, plaintiff filed multiple new exhibits, which defendant moved to strike for having been submitted after the close of evidence and as being irrelevant to the outcome of the case. The trial court held a hearing on this motion at the same time as its hearing on the motion to amend and issued its order on October 4. It determined that the exhibits would not alter its decision and stated that plaintiff failed to aver that the exhibits were not previously available to him to justify why he could not have introduced them in any of the previous hearings. It allowed the exhibits to remain in the file for purposes of appellate review.

¶ 14. The court issued a final judgment on October 4, 2021, reaffirming its previous statement that the November 2020 order on the motion to enforce, as amended on December 29, 2020, and February 1, 2021, would serve as the final decision on the merits and dismissing plaintiff's complaint. Plaintiff appealed and defendant cross-appealed.

¶ 15. On appeal, plaintiff argues that the trial court erred in the following ways: (1) limiting turnover under the stipulated judgment to EWN records; (2) denying plaintiff's February 2021 motion for turnover by concluding nothing in the motions supported plaintiff's contention that defendant still possessed records and by ruling that there was nothing left to be determined; (3) denying plaintiff's motion to amend its findings because they contradicted the evidence in the record and were undermined by newly discovered evidence; (4) crediting defendant's testimony that she had turned over records in her possession contrary to evidence undermining her assertions; (5) allowing defendant to turn over a copy of a thumb drive as opposed to the original thumb drive because the original contained attorney work product; (6) denying plaintiff's demand for attorney's fees without briefing or a hearing; and (7) dismissing Counts II-VII as time-barred. Defendant argues that: (1) Count I should have been dismissed on the basis of

claim preclusion; and (2) the trial court erred when it concluded that defendant was not allowed to retain copies of records under the stipulated judgment.

¶ 16. To begin, we address all arguments pertaining to Count I. We conclude that the doctrine of claim preclusion did not prohibit plaintiff from bringing Count I and therefore the trial court correctly declined to dismiss it on that basis. Turning to the merits, we interpret the stipulated judgment and determine that, under the judgment's plain language, defendant was required to turn over only EWN records and was not prevented from retaining copies of records turned over. We then reject plaintiff's various challenges to the trial court's findings, which are not clearly erroneous. Next, we conclude that plaintiff is not entitled to the original thumb drive and therefore the trial court did not err in preventing that item from being turned over to him. Further, we conclude that the trial court did not abuse its discretion when it denied plaintiff's request for attorney's fees. Lastly on Count I, we determine that the trial court did not abuse its discretion when it denied plaintiff's motion to amend the court's judgment. The outcome of these conclusions is that the trial court correctly adjudicated plaintiff's enforcement claim in favor of defendant and appropriately dismissed Count I. Having disposed of Count I, we turn to Counts II-VII and conclude that they were properly dismissed as time-barred.

II. Claim Preclusion

¶ 17. We start with whether the doctrine of claim preclusion barred plaintiff from bringing Count I seeking to enforce the stipulated judgment because he failed to raise this claim during the 2019 federal case. Count I was not barred by claim preclusion and the trial court correctly declined to dismiss on this ground.

¶ 18. Plaintiff, his wife, and EWN sued defendant in federal court over a 2010-2011 barter arrangement between defendant, on behalf of EWN, and a third party. Relying on legal theories such as fraud, theft, conversion, and unjust enrichment, plaintiff argued that he was unaware of and did not authorize the barter transaction. Following a bench trial, the federal court

concluded that plaintiff expressly authorized the barter transaction and ruled in favor of defendant in July 2019. In that order, the district court noted that the issue of business records "loomed over th[e] case without being directly relevant." It concluded that it had "no basis on which to resolve the issue of the claim for records" because defendant chose to litigate that case on the merits rather than raise the stipulated judgment as an affirmative defense to plaintiff's claims.

¶ 19. As stated above, plaintiff commenced this action in Vermont superior court in April 2019. In the complaint, plaintiff explained the background of his business relationship with defendant and attached the stipulated judgment. He alleged that defendant had provided some but not all records required under the stipulated judgment and therefore had not complied with her obligations. He also alleged that defendant retained copies of some records that she turned over to him. With Count I, he sought to enforce the stipulated judgment and asked the court to require defendant to turn over all records, including any copies, in her possession.

¶ 20. "We review motions to dismiss de novo." Deutsche Bank v. Pinette, 2016 VT 71, ¶ 9, 202 Vt. 328, 149 A.3d 479. Under Vermont Rule of Civil Procedure 12(b)(6), we "assume the facts pleaded in the complaint are true and make all reasonable inferences in the plaintiff's favor and will conclude that a party fails to state a claim only when it is beyond doubt that there exist no facts or circumstances that would entitle the plaintiff to relief." Baldauf v. Vt. State Treasurer, 2021 VT 29, ¶ 8, __ Vt. __, 255 A.3d 731 (quotations omitted). In addition to the contents of a complaint, documents relied on in a complaint merge into the pleadings, and we may take judicial notice of court decisions or documents without converting the 12(b)(6) motion into one for summary judgment. In re Russo, 2013 VT 35, ¶ 16 n.4, 193 Vt. 594, 72 A.3d 900. Whether claim preclusion applies to a set of facts is a legal question we review de novo. Faulkner v. Caledonia Cnty. Fair Ass'n, 2004 VT 123, ¶ 5, 178 Vt. 51, 869 A.2d 103.

¶ 21. Claim preclusion, also referred to as res judicata, "bars the litigation of a claim or defense if there exists a final judgment in former litigation in which the parties, subject matter and

causes of action are identical or substantially identical." Lamb v. Geovjian, 165 Vt. 375, 379, 683 A.2d 731, 734 (1996) (quotation omitted). When the claims are identical or sufficiently similar, the doctrine applies to claims that were or should have been raised. Id. at 380, 683 A.2d at 734. It "advances the efficient and fair administration of justice" and "flows from the fundamental precept that a final judgment on the merits 'puts an end to the cause of action, which cannot again be brought into litigation between the parties upon any ground whatever.' " Faulkner, 2004 VT 123, ¶¶ 8-9 (quoting Nevada v. United States, 463 U.S. 110, 130 (1983)).

¶ 22. Our analysis begins and ends with the identicality of the claims, which has not been met in this case based on the pleadings. There is no dispute that Count I seeking to enforce the stipulated judgment was not actually litigated in the federal case, so we ask instead whether it should have been raised there. See Iannarone v. Limoggio, 2011 VT 91, ¶ 14, 190 Vt. 272, 30 A.3d 655 ("Claim preclusion does not require that the claim was actually litigated in an earlier action; rather, the doctrine bars parties from litigating claims or causes of action that were or should have been raised in previous litigation." (quotation omitted)). To evaluate whether two causes of action are sufficiently similar such that they should have been brought together, we adopted the principles in the second Restatement of Judgments. Faulkner, 2004 VT 123, ¶¶ 11-15.

¶ 23. The second Restatement embodies the trend toward a "broader approach" to whether claims constitute the "same cause of action," and asks whether the subsequent claim stems from "all or any part of the transaction, or series of connected transactions, out of which the [first] action arose." Id. ¶ 12 (quoting Restatement (Second) of Judgments § 24(1) (1982) [hereinafter Restatement (Second)]). We determine the scope of a "transaction" by "giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage." Id. ¶ 13 (quoting Restatement (Second) § 24(2)). Moreover, even if the claims do not constitute the same transaction because there is

insufficient overlap, the second action may still be precluded if it "stems from the same transaction." Id. (quoting Restatement (Second) § 24 cmt. b). Thus, claim preclusion may apply even though the second action relies on different evidence or legal theories, or seeks relief not requested in the first action. Id. ¶ 14 (citing Restatement (Second) § 25).

¶ 24. The 2019 federal case and Count I are not part of the same transaction or series of transactions. The facts essential to the federal case involve a 2010-2011 barter transaction between defendant, on behalf of EWN, and a third party. The facts underlying Count I begin with the 2011 stipulated judgment, which postdates the barter transaction, and continue into the following years during which plaintiff sought document turnover from defendant. The former had ended before the latter even began. See SEC v. First Jersey Sec., Inc., 101 F.3d 1450, 1464 (2d Cir. 1996) ("If the second litigation involved different transactions, and especially subsequent transactions, there generally is no claim preclusion."). They fall on opposite sides of a line between what happened during the business relationship and what happened after the business relationship deteriorated. This delineation in terms of what the parties did in furtherance of their shared business endeavors and what the parties did to dissolve their business relationship is instructive because it separates the federal and state claims in terms of time and origin. See Restatement (Second) § 24(2).

¶ 25. Turning to whether these claims would form a convenient trial unit, the causes of action in the two complaints are not determinative but are useful. See Restatement (Second) § 24 cmt. b ("[T]he relevance of trial convenience makes it appropriate to ask how far the witnesses or proofs in the second action would tend to overlap the witnesses or proofs relevant to the first."); see also Demarest v. Town of Underhill, 2021 VT 14, ¶ 13, 214 Vt. 250, 256 A.3d 554 (explaining that action may be barred "even where it will include evidence or grounds or theories of the case not presented in the first action, or . . . remedies or forms of relief not demanded in the first action" (quotations omitted)). Plaintiff's claims in the federal action included fraud, theft, conversion, and unjust enrichment all arising out of the barter transaction. To the contrary, Count I seeks to enforce

a state court judgment, the remedy for which is a court finding defendant to be noncompliant and instructing her to complete the steps needed to comply, i.e., turn over the necessary business records to plaintiff. When we compare these claims, the evidence needed to support them differs substantially, as the first case centered on a verbal barter transaction and the second revolves around document turnover events that postdate the termination of the business relationship altogether. See Demarest, 2021 VT 14, ¶ 16 (stating that subsequent claims "where witnesses or proof needed in the second action overlap substantially with those used in the first action" are normally precluded (quotations omitted)).

¶ 26. It is also significant that the outcome of one claim in this situation does not impact the outcome for the other claim; plaintiff's success or failure in the federal case would not have consequences for his ability to obtain the records allegedly in defendant's possession, and vice versa. Cf. Nat. Res. Bd. Land Use Parcel v. Dorr, 2015 VT 1, ¶¶ 12-13, 198 Vt. 226, 113 A.3d 400 (concluding claim preclusion applied where argument raised in second case attacked "necessary predicate" to outcome in first case); Iannarone, 2011 VT 91, ¶¶ 19-20 (determining that claim preclusion applied where outcome of property sale at issue in first case implicated whether claim in second case was necessary and claim in second case was available during first case). Although issues involving the records were present throughout the federal case, the records were, as the federal judge noted, not actually relevant to the outcome. This fact reemphasizes that the federal claims and Count I were not a convenient trial unit.

¶ 27. Moving on to the parties' expectations, this factor is more complicated. As repeated above, although the stipulated judgment and turnover of business records were unnecessary to the resolution of the federal case, they did come up enough to be addressed in the federal court's final order. However, defendant chose not to raise the existence of the stipulated judgment as an affirmative defense in the federal case, which prevented the federal court from having the opportunity to interpret or apply the stipulated judgment, including as it pertained to record

turnover. In the end, we cannot conclude that the parties expected the issue of defendant's alleged retention of business records in violation of the stipulated judgment to be finally resolved or forever barred based on what happened in the federal case.

¶ 28. Evaluating plaintiff's motivation also presents complexities. Plaintiff's liability for 2003-2005 taxes following an audit of EWN was mentioned both in the federal case and plaintiff's complaint in this case. Defendant proposes that plaintiff's purported tax liability is central to both litigations. However, in both the federal court's order and in the complaint, the only mention of plaintiff's tax liability is in relation to his attempts to obtain the records supposedly in defendant's possession. In essence, defendant would like us to conclude that plaintiff's motivation in both the federal case and in this case was to obtain the business records allegedly in defendant's possession, which purportedly would prove plaintiff is not liable for the tax judgment assessed against him.

¶ 29. However, the fact that the tax liability and records were mentioned in the federal case is insufficient for us to reach that conclusion, particularly considering that the procedural posture is a motion to dismiss.[1] See Baldauf, 2021 VT 29, ¶ 8 (explaining that dismissal is only appropriate when it is "beyond doubt that there exist no facts or circumstances that would entitle the plaintiff to relief"). To draw this conclusion from the information in the complaint and incorporated documents would be an inference against plaintiff as the nonmoving party, which is

[1] In support of this argument, defendant states that plaintiff testified in the federal case that his purpose in bringing the federal lawsuit was to force defendant to turn over the records. Although the federal court mentions this in its order, we are unable to take judicial notice of this assertion for purposes of determining the outcome of the motion to dismiss. "A judicially noticed fact must be one not subject to reasonable dispute in that it is . . . capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." V.R.E. 201(b). Courts cannot generally take judicial notice of findings of fact from other proceedings for the truth asserted therein. See In re A.M., 2015 VT 109, ¶ 36, 200 Vt. 189, 130 A.3d 211 (citing extensive case law); see also Jakab v. Jakab, 163 Vt. 575, 579, 664 A.2d 261, 263 (1995) ("It is improper to judicially notice the content of testimony in another proceeding."). Because plaintiff's statements regarding his motivations in bringing the federal lawsuit are not an indisputable fact subject to judicial notice nor are they contained in plaintiff's complaint, we cannot consider them here.

impermissible at this stage. See Birchwood Land Co. v. Krizan, 2015 VT 37, ¶ 6, 198 Vt. 420, 115 A.3d 1009 ("We assume as true all facts as pleaded in the complaint, accept as true all reasonable inferences derived therefrom, and assume as false all contravening assertions in the defendant's pleadings."). Even if we were permitted to draw this conclusion and this fact alone could weigh motivation in favor of preclusion, motivation is one of multiple factors, none of which are dispositive. See Restatement (Second) § 24 cmt. b (explaining that "no single factor is determinative").

¶ 30. There is some overlap between the federal case and Count I. Both stem from the parties' business relationship, the eventual fallout of that business relationship, and subsequent attempts to fully settle business matters between the parties. However, some overlap between two claims is insufficient to establish that they are part of the same transaction or series of transactions. See In re 15-17 Weston Street NOV, 2021 VT 85, ¶ 25, __Vt. __, 266 A.3d 770 (concluding that claim preclusion did not bar city's enforcement proceeding regarding unit in apartment building where city was party to two prior permitting proceedings for said apartment building). Ultimately, we cannot say, pragmatically, that the two claims at issue are sufficiently interrelated that plaintiff should have sought to enforce the stipulated judgment during the federal case. See Restatement (Second) § 24(2) ("What factual grouping constitutes a 'transaction,' and what groupings constitute a 'series,' are to be determined pragmatically . . . ."). Weighing the factors set out above using the facts alleged in the complaint, Count I was not barred under the doctrine of claim preclusion. [2]

[2] Defendant argues that Count I could have been brought in the federal case. We acknowledge that our claim-preclusion precedent uses "could have been" and "should have been" interchangeably. See Carlson v. Clark, 2009 VT 17, ¶ 13 n.4, 185 Vt. 324, 970 A.2d 1269. We also agree that in order for claim preclusion to apply, it has to have been possible for the claim to be brought in the previous case. See Restatement (Second) § 26(1)(c) (explaining general rule for claim preclusion does not apply where litigant was unable to seek relief in first action due to lack of subject-matter jurisdiction). A federal court may hear a state law claim under certain circumstances, for example by exercising supplemental jurisdiction. See 28 U.S.C. § 1367(a)

III. Interpretation of Stipulated Judgment

¶ 31. Proceeding with Claim I, we now interpret the stipulated judgment and address each party's arguments on this basis. First, we determine that the judgment did not prohibit defendant from retaining copies of records she turned over. Second, we conclude that the judgment limited turnover to EWN records. The facts essential to this issue stated below are uncontested.

¶ 32. When the parties' business relationship deteriorated, defendant sued plaintiff on behalf of herself, Apex, and EWN. The parties settled this lawsuit in June 2011, and the court entered their stipulated agreement as judgment. The stipulated judgment provides, "[Defendant] agrees to immediately transfer any and all interest in [EWN] to [plaintiff]. Included in [defendant]'s dissociation from [EWN] is the immediate return to [plaintiff] of all files, records, bank account information, and all other business records." It places Apex into a receivership and authorizes an audit of Apex and EWN to be conducted by the receiver. It requires defendant to "agree to facilitate the return of any files to [plaintiff]" and to cooperate with the receiver regarding entering Apex into receivership and "the audit of both [EWN] and Apex." The parties to this judgment include plaintiff, defendant, EWN, and Apex.

¶ 33. In the present action, plaintiff filed a complaint against defendant. Count I sought to enforce the stipulated judgment, proposing that defendant had failed to comply with her obligations to turn over "all" business records to plaintiff. In November 2019, plaintiff filed a "motion to enforce specific term of prior judgment," requesting the trial court enforce the 2011

(providing federal courts with jurisdiction over state claims "that are so related to claims in the action . . . that they form part of the same case or controversy"). However, beyond looking at the mere possibility of bringing a claim, including the essential baseline of subject-matter jurisdiction, we utilize the transactional analysis provided in the Restatement (Second) to determine whether claims are sufficiently similar such that they are precluded from relitigation. Faulkner, 2004 VT 123, ¶¶ 11-15. For this reason, this opinion exclusively uses "should have been" when discussing claim preclusion. Weighing the relevant factors, we conclude that the claims are not the "same" for purposes of claim preclusion. Because we resolve this case using Vermont claim preclusion principles, we need not analyze the federal court's jurisdiction to hear Count I had it been brought.

stipulated judgment and order defendant to turn over the business records in her possession. The trial court held three hearings on the motion, and at one, the issue of how to interpret the stipulated judgment arose. Two specific issues were presented: (1) whether defendant was required to turn over business records for entities other than EWN; and (2) whether defendant was required to turn over all copies of business records.

¶ 34. Following a hearing, the trial court concluded that the stipulated judgment was ambiguous as to whether defendant was required to turn over copies. It then determined that the intent of the agreement was to separate the parties' businesses between them, and that the dissolution of their business relationship was not amicable. Considering these facts, it concluded that it would be inconsistent with the intent of the parties' agreement to allow defendant to retain copies of EWN records.

¶ 35. On appeal, the parties take the same positions they had below. In his appeal, plaintiff argues that the trial court erred when it concluded that turnover should be limited to EWN records. In her cross-appeal, defendant argues that the trial court erred when it determined that she was not allowed to keep any copies. The same legal standard applies to both issues.

¶ 36. We review the trial court's interpretation of a stipulated judgment de novo. Youngbluth v. Youngbluth, 2010 VT 40, ¶ 8, 188 Vt. 53, 6 A.3d 677. An agreement incorporated into a final judgment has the effect of final judgment. Tschaikowsky v. Tschaikowsky, 2014 VT 83, ¶ 8, 197 Vt. 303, 103 A.3d 943. "The binding force of a [stipulated judgment] comes from the agreement of the parties," and they are therefore "to be interpreted as contracts." Johnson v. Robinson, 987 F.2d 1043, 1046 (4th Cir. 1993); see also Sumner v. Sumner, 2004 VT 45, ¶ 9, 176 Vt. 452, 852 A.2d 611 ("We have used contract principles to construe divorce decrees based on stipulations.").

¶ 37. A contract "must be interpreted according to the parties' intent as expressed in the writing." Lussier v. Lussier, 174 Vt. 454, 455, 807 A.2d 374, 376 (2002) (mem.). If a contract

"fairly admits of but one interpretation," then it is unambiguous. Isbrandtsen v. N. Branch Corp., 150 Vt. 575, 580-81, 556 A.2d 81, 85 (1988) (quotation omitted). Where possible, we determine whether a writing is unambiguous solely using its own language. See City of Newport v. Village of Derby Ctr., 2014 VT 108, ¶ 14, 197 Vt. 560, 109 A.3d 412 ("The court must accept the plain meaning of the language and not look to construction aids if the language is not ambiguous." (quotation and brackets omitted)). In doing so, "[w]e look to the plain meaning of individual terms" but also read the contract's provisions together, viewing them "in their entirety." In re Cole, 2008 VT 58, ¶ 19, 184 Vt. 64, 954 A.2d 1307 (quotation omitted). If the plain language is clear, "we take the words to represent the parties' intent, and the plain meaning of the language governs our interpretation of the contract." Southwick v. City of Rutland, 2011 VT 105, ¶ 5, 190 Vt. 324, 30 A.3d 1298 (citation omitted). However, if the plain language of the contract alone cannot resolve whether the contract is ambiguous, we may look to "limited extrinsic evidence of circumstances surrounding the making of the agreement" to aid in our inquiry. Kipp v. Est. of Chips, 169 Vt. 102, 107, 732 A.2d 127, 131 (1999) (quotation omitted). If the extrinsic evidence in combination with the text of the writing supports a different interpretation to that reached when evaluating the text of the writing alone, and both interpretations are reasonable, then the writing is ambiguous. Isbrandtsen, 150 Vt. at 579, 556 A.2d at 84.

¶ 38. In sum, "[i]f the court concludes the writing is unambiguous, it must declare the interpretation as a matter of law; if it reaches the opposite conclusion, interpretation of the ambiguous contract becomes a question of fact." Constr. Drilling, Inc. v. Eng'rs Constr., Inc., 2020 VT 38, ¶ 12, 212 Vt. 323, 236 A.3d 193. Whether a writing is ambiguous is a legal question reviewed de novo. Id.

A. Retention of Copies

¶ 39. On appeal, defendant contends that the stipulated judgment does not prohibit her from retaining copies of EWN records. She asserts that the judgment is unambiguous because it

contains no language indicating that it covers copies of records. Further, she proposes that even if the judgment is ambiguous, the evidence does not demonstrate that the parties intended to restrict her ability to retain copies.

¶ 40. The judgment does not expressly mention copies; it requires turnover of "all files, records, bank account information, and all other business records." It is unclear from this language alone whether "all other business records" may include copies of the described documents. However, we may look to the overall purpose of the stipulated judgment as expressed in its language for guidance. See Isbrandtsen, 150 Vt. at 580, 556 A.2d at 85 (stating we interpret contracts to "form a harmonious whole"). The purpose of the stipulated judgment was to separate the parties' businesses between them, plaintiff receiving EWN and defendant receiving Apex. This overarching purpose is evident from the agreement's text, which attempts to conclusively settle business affairs between the parties by dissociating defendant from EWN and addressing collateral issues like division of property and release of liabilities.

¶ 41. In this context, requiring defendant to turn over business records to plaintiff facilitated her transferring complete control of EWN to plaintiff. It gave him the records potentially needed to run the business. Access to all relevant files, records, bank account information, and similar documents provided plaintiff with the information he needed to do the bookkeeping that defendant formerly handled. The fact that the turnover requirement is contained within the same provision as the language transferring defendant's interest in EWN to plaintiff reinforces this conclusion. Defendant's retention of copies did not frustrate plaintiff's use of the records or his purpose in having them; he needed a single set of EWN's records from defendant to run that business and therefore required one original or appropriate duplicate of each record. Thus, when we evaluate the agreement as an integrated whole, it becomes clear that "all other business records" does not include copies. See Cole, 2008 VT 58, ¶ 19 (explaining that we read contracts as whole). We therefore conclude that the provision requiring defendant to return "all files,

records, bank account information, and all other business records" means a full, single set of business records and does not govern what happens to copies.

¶ 42. Reading the stipulated judgment as a whole, we also find no reason to read in an obligation to turn over copies of records. "[W]e may not insert terms into an agreement by implication unless the implication arises from the language employed or is indispensable to effectuate the intention of the parties." Downtown Barre Dev. v. C&S Wholesale Grocers, Inc., 2004 VT 47, ¶ 9, 177 Vt. 70, 857 A.2d 263. No such implication or indispensable need arises here.

¶ 43. Beyond the provision containing the turnover requirement interpreted above, the stipulated judgment contains ample terms for dissociating defendant. It addresses various significant components of defendant's dissociation from EWN, including setting up the Apex receivership and the audit, indemnification, severance pay, who would be responsible for pending EWN work, and release of liabilities. Moreover, the judgment specifically addresses what would happen to certain property—defendant to keep the improvements to her property, her car, two crab apple trees, a laptop, and a tractor—with no mention of copies of records. In terms of the laptop, the judgment does not mention what would need to happen to business records or metadata stored on it. The lack of any mention of copies where the fate of other property is specifically addressed demonstrates that the stipulated judgment does not govern copies. For these reasons, we conclude that the text of the judgment does not imply a need for defendant to turn over all copies to achieve compliance. See Ill. Bell Tel. Co. v. Reuben H. Donnelley Corp., 595 F. Supp. 1192, 1199 (N.D. Ill. 1984) (interpreting contract requiring turnover of "all records" and concluding that nothing in language of agreement prohibited party from retaining copies).

¶ 44. Turning over copies is also not indispensable to effectuating the intent of the parties as manifested in the stipulated judgment. As explained above, the parties' intent was to separate their business relationship and plaintiff is able to run EWN entirely separate from defendant even

if she possesses copies of records from when she was involved in the business. See Downtown Barre Dev., 2004 VT 47, ¶ 9 ("Vaguely implied conditions may not be inserted into an agreement . . . ."). Accordingly, we conclude that the stipulated judgment is unambiguous and does not require defendant to turn over copies of records. Because we conclude the judgment is unambiguous, we reach neither party's arguments involving extrinsic evidence.

¶ 45. Having decided that defendant was not prohibited from keeping copies of EWN records, we accordingly remand for the trial court to modify its judgment consistent with this conclusion.

B. Limiting Records to EWN

¶ 46. Next, we address plaintiff's assignment of error to the trial court's interpretation. He argues that the trial court erred in limiting the turnover to EWN records, arguing that the stipulated judgment is unambiguous and that "all" records should be read expansively. In the alternative, if the judgment is ambiguous on this issue, he proposes that the parties' intent to fully separate their businesses counsels that an appropriate interpretation of the agreement should result in neither party possessing the records of the other party in any respect and therefore defendant should not retain any business records, not only for EWN, but for any companies belonging to plaintiff.

¶ 47. We conclude that the stipulated judgment unambiguously limits turnover to EWN records. The language of the judgment is clear on its face and we need not turn to extrinsic evidence to reach our conclusion. See Vill. of Derby Ctr., 2014 VT 108, ¶ 14 (stating that when agreement's terms are unambiguous, we need not reach extrinsic evidence of parties' intent). Under the stipulated judgment, defendant is required to "return to [plaintiff] all files, records, bank account information, and all other business records." That very same sentence provides context for what "all" records means; it begins, "[i]ncluded in [defendant's] dissociation from [EWN]." The return of records is "included" in defendant's dissociation from EWN specifically, which

indicates that the purpose of turnover is to facilitate this dissociation. It follows that the documents turned over would be EWN documents specifically.

¶ 48. The other sentence in the same paragraph supports this conclusion. The paragraph first states that defendant must "transfer any and all interest in [EWN] to plaintiff." In doing so, it sets up the object of the paragraph: ending defendant's involvement with EWN. Because this paragraph only refers to defendant's dissociation from EWN and the mention of returning records is "included" in the context of this dissociation as a whole, "all" records refers to all EWN records in her possession.

¶ 49. The remaining context of the judgment reaffirms this reading. See Cole, 2008 VT 58, ¶ 19 ("[C]ontract provisions must be viewed in their entirety and read together." (quotation omitted)). The only businesses mentioned in the judgment are EWN and Apex. EWN and Apex are also the only businesses party to the judgment. Per the parties' agreement, plaintiff got to keep EWN while Apex, defendant's company, was placed in a receivership. To facilitate this process, the receiver was authorized to conduct an audit of EWN and Apex. EWN is the only business involved in this judgment that continues to operate. Plaintiff needs EWN business records formerly in defendant's control as bookkeeper as he is now the sole owner of EWN. All this information points to limiting defendant's turnover to EWN records.

¶ 50. Plaintiff's argument that " 'all' means all" is unpersuasive. It is divorced from the context of the judgment as a whole and the context of the sentence and provision within which this word is contained. We may not read the word "all" in isolation as plaintiff requests. See Besaw v. Giroux, 2018 VT 138, ¶ 27, 209 Vt. 388, 205 A.3d 518 (explaining that we interpret contracts to form "harmonious whole" rather than adopting "an interpretation which focuses on one provision heedless of context" (quotation omitted)); see also Frew v. Janek, 780 F.3d 320, 329 (5th Cir. 2015) (explaining that interpretation relying on "one word, taken out of context, would be wholly inconsistent with the rules of contract interpretation"). Moreover, reading the sentence

requiring turnover in its entirety and within the context of the agreement as a whole is not reading "additional words" into the judgment as plaintiff contests. In fact, this argument ignores fundamental principles of contract interpretation. See, e.g., Cole, 2008 VT 58, ¶ 19 ("[C]ontract provisions must be viewed in their entirety and read together." (quotation omitted)); 11 Williston on Contracts § 32:6 (4th ed.) ("The ancient maxim noscitur a sociis summarizes the rule of both language and law that the meanings of particular words may be indicated or controlled by associated words."). Because we conclude that the judgment "fairly admits of but one interpretation," we do not reach plaintiff's arguments involving extrinsic evidence. Isbrandtsen, 150 Vt. at 580-81, 556 A.2d at 85; see also Southwick, 2011 VT 105, ¶ 5 (explaining that where contract language is clear, "we take the words to represent the parties' intent, and the plain meaning of the language governs our interpretation of the contract").

¶ 51. In review of both parties' arguments regarding the interpretation of the stipulated judgment, the outcome can be summarized succinctly as this: the stipulated judgment required defendant to turn over all EWN records to plaintiff but did not prohibit her from retaining copies thereof.

IV. Findings

¶ 52. At various points in plaintiff's briefs, he raises concerns with the trial court's findings. The trial court found that in 2011 defendant turned over to plaintiff or made available for copying a full set of EWN records in her possession. Because it concluded that defendant was not entitled to retain copies of EWN records under the stipulated judgment, it identified copies in her possession based on the evidence before it and directed her to turn them over to plaintiff. Once defendant turned over the identified copies, the trial court repeatedly found that she had no EWN records or copies in her possession anymore. Based on these findings, the trial court concluded that defendant complied with her obligations for turnover under the stipulated judgment and its orders enforcing the stipulated judgment. As a result, it denied plaintiff's motion to direct turnover

and motion to amend its findings, and it dismissed Count I seeking to enforce the stipulated judgment.

¶ 53. On appeal, plaintiff argues that the trial court erred in denying his motion to direct turnover and motion to amend because he provided sufficient evidence to prove that defendant did not turn over all records in her possession. He attacks the credibility of defendant, who testified repeatedly that she turned over all EWN records in her possession, and points to various parts of the record that he asserts undermines her statements and the trial court's findings. Through his efforts to challenge the trial court's findings, he seeks reversal of the trial court's orders, which were based on those findings.

¶ 54. "We will uphold a trial court's conclusions concerning a mixed question of law and fact if the court applies the correct legal standard and its conclusions are supported by its factual findings." In re Est. of Maggio, 2012 VT 99, ¶ 28, 193 Vt. 1, 71 A.3d 1130 (quotation omitted). "Findings made by a trial court will not be set aside unless, taking the evidence in the light most favorable to the prevailing party, and excluding the effect of modifying evidence, they are clearly erroneous." Cameron v. Double A. Servs. Inc., 156 Vt. 577, 581, 595 A.2d 259, 261 (1991). It is the trial court's duty to "determine[] the credibility of witnesses and weigh[] the persuasive effect of [the] evidence." In re Costco Stormwater Discharge Permit, 2016 VT 86, ¶ 4, 202 Vt. 564, 151 A.3d 320 (quotation omitted). To prevail on appeal, "an appellant must show there is no credible evidence to support the finding, not just that the finding is contradicted by substantial evidence." Moyers v. Poon, 2021 VT 46, ¶ 21, __ Vt. __, 266 A.3d 1253 (quotation omitted).

¶ 55. Reviewing the record, there is credible evidence to support the trial court's findings. Defendant repeatedly testified that she turned over all EWN records in her possession, and the trial court found this testimony credible. The receiver testified that defendant turned over desktop computers in 2011 that were up to date with EWN financial data and that defendant's counsel at the time provided him with physical records for EWN. The receiver also testified that sometimes

files have been corrupted or lost, whether due to technical issues or how the businesses were run. That plaintiff asserts substantial contradictory evidence is present in the record is insufficient to establish clear error. See Stannard v. Stannard Co., 2003 VT 52, ¶ 8, 175 Vt. 549, 830 A.2d 66 ("Findings are reviewed for clear error, and will not be disturbed even if contradicted by substantial evidence . . . ."). To the extent plaintiff requests this Court subsume the role of the factfinder and determine the credibility of witnesses and persuasive effect of the evidence on appeal, we decline to do so. See Anderson-Friberg Co. v. S. G. Phillips Corp., 137 Vt. 565, 566, 409 A.2d 560, 561 (1979) ("Like the weighing of the evidence, the credibility of witnesses and the persuasiveness of their testimony are to be determined solely by the trier of fact."). We accordingly will not disturb the trial court's findings.

¶ 56. The trial court's findings support its conclusion, reiterated in various orders responding to plaintiff's motions below, that defendant complied with her turnover obligations under the stipulated judgment.[3] Defendant turned over a full set of EWN records soon after the stipulated judgment was entered. All her subsequent record productions, whether in the present or other litigation, were mere duplicates of those originally produced. Based on these findings, there was nothing left for defendant to turn over to plaintiff in order to satisfy the stipulated judgment. Accordingly, the trial court's denial of plaintiff's motion to direct turnover and motion to amend, and its dismissal of Count I seeking to enforce the stipulated judgment were supported by the

[3] Plaintiff complains that the trial court "mischaracterized" his motion to direct turnover as seeking to enforce the trial court's December 2020 order directing defendant on how to comply with her obligations under the stipulated judgment. He asserts his motion sought to enforce the stipulated judgment itself. He therefore claims the trial court should not have dismissed Count I because the trial court did not definitively address all issues presented to it. To the extent this argument restates plaintiff's contentions that the evidence obtained throughout the course of the proceedings below shows that defendant has additional EWN records concealed, we have already concluded that the trial court's findings are not clearly erroneous. Regardless of what plaintiff sought to enforce with his motion and how the trial court interpreted it, the outcome is the same. The trial court's finding that defendant turned over all EWN records in her possession supports its conclusion that she complied with her obligations under the 2011 stipulated judgment. Because she had complied, the court concluded there was nothing left to enforce.

findings. See Est. of Maggio, 2012 VT 99, ¶ 28 (noting we will uphold trial court's conclusions if they apply correct legal standard and are supported by factual findings).

V. Thumb Drive

¶ 57. We now address plaintiff's argument that the trial court erred when it allowed defendant to turn over a copy of a thumb drive as opposed to the original.

¶ 58. In 2011, defendant copied all the records from a work computer onto a thumb drive before turning the computer over to the receiver. The receiver then released the computer to plaintiff. When the trial court concluded that defendant was not allowed to retain copies of records, it ordered her to transfer the thumb drive to plaintiff. Defendant filed a motion to alter the court's order, stating that the thumb drive contained attorney work product, including metadata that could not be removed from the original thumb drive. She therefore requested the court permit her to move the contents of the original thumb drive to a new thumb drive to turn over to plaintiff. The trial court ordered the copy thumb drive be sent to plaintiff and had the original placed under seal with the court. In various motions, plaintiff continued to maintain that the original thumb drive contained evidence that defendant failed to turn over all EWN records in her possession. The trial court found that defendant was credible and that she copied all EWN records from the original thumb drive to the new thumb drive provided to plaintiff.

¶ 59. On appeal, plaintiff argues that he has a substantial need for the original thumb drive, even if it contains attorney work product, because it has information unavailable anywhere else.[4] Plaintiff cites rules and precedent relating to discovery. However, the trial court withheld

[4] In his principal brief, plaintiff states that he argued below that metadata cannot be attorney work product and reiterates in his conclusion that metadata does not constitute attorney work product. He cites only Vermont Rule of Civil Procedure 26(b)(6)(A), which describes the procedure by which a party shall make a claim of privilege. This argument is inadequately briefed and therefore waived. See V.R.A.P. 28(a)(4)(A) (requiring principal brief to contain "the issues presented, how they were preserved, and appellant's contentions and reasons for them—with citations to the authorities, statutes, and parts of the record on which appellant relies"); New Eng. Rd. Mach. Co. v. Calkins, 121 Vt. 118, 122, 149 A.2d 734, 738 (1959) ("A general statement that

the original thumb drive from being turned over to plaintiff when it granted in part defendant's motion to alter the court's order on plaintiff's motion to enforce. The original thumb drive is therefore subject to an enforcement order, not a discovery order.

¶ 60. Plaintiff is not entitled to the original thumb drive or its metadata under the 2011 stipulated judgment. As explained above, plaintiff is entitled to a single, full set of EWN business records to the extent those records exist and are in defendant's possession. See supra, III.A. Significantly, plaintiff does not argue that the metadata on the original thumb drive is an EWN business record. He accordingly is not entitled to the thumb drive on this basis. Further, we concluded above that defendant was entitled to retain copies of business records. See supra, III.A. Therefore, plaintiff cannot rely on the fact that the original thumb drive contains copies to compel the court to turn it over to him. Moreover, the trial court found that defendant had already provided plaintiff with all EWN documents in her possession, including those contained on the original thumb drive. As detailed above, we decline to disturb this finding on appeal. See supra, IV. Thus, he is not entitled to the original thumb drive to obtain a full set of EWN records either. In sum, the trial court did not err when it blocked turnover of the original thumb drive to plaintiff, because plaintiff is not entitled to the original thumb drive or anything on it under the stipulated judgment.

VI. Attorney's fees

¶ 61. Next plaintiff challenges the trial court's decision to deny his request for attorney's fees without accepting briefing or holding a separate hearing. Plaintiff requested attorney's fees for defendant's alleged violation of Count I in his complaint. In the trial court's November 2020 order denying plaintiff's motion to enforce the stipulated judgment, it denied plaintiff's request for attorney's fees. It reasoned that defendant promptly turned over EWN records to allow plaintiff

error was committed, without citing authorities, stating grounds and supporting the point by argument is inadequate briefing and merits no consideration."). We accordingly decline to address it.

to run EWN and that her retention of copies, which the trial court concluded was prohibited, was not a willful violation of the judgment because the judgment was ambiguous. Following plaintiff's motion to amend, which in part challenged the denial of his request for attorney's fees, the trial court reaffirmed its decision, explaining that "all issues which would pertain to attorney's fees were thoroughly presented" over the three hearings on the motion to enforce. It found that defendant had not acted in bad faith nor was her conduct unreasonably obstinate. It dismissed Count I, including the request for attorney's fees, in its final decision on the merits.

¶ 62. It is unclear from plaintiff's principal brief whether his argument is one of procedure—that a hearing must be held before such denial occurs—or substance—that the court abused its discretion in how it considered the merits of plaintiff's request for attorney's fees. Although plaintiff mentions a violation of due process, this argument was not raised below and is therefore not preserved for appeal. See In re White, 172 Vt. 335, 343, 779 A.2d 1264, 1270 (2001) (stating that "[w]e have repeatedly stressed that we will not address arguments not properly preserved for appeal" and "[t]o properly preserve an issue for appeal a party must present the issue with specificity and clarity in a manner which gives the trial court a fair opportunity to rule on it." (quotation omitted)). Plaintiff also provides no citation or reasoning in support of his conclusory statements that the trial court was required to accept briefing and hold a hearing before declining to award attorney's fees. See V.R.A.P. 28(a) (requiring brief to include "issues presented, how they were preserved, and appellant's contentions and the reason for them—with citations to the authorities, statutes, and parts of the record on which the appellant relies"); Johnson v. Johnson, 158 Vt. 160, 164 n.*, 605 A.2d 857, 859 n.* (1992) (declining to address argument that failed to meet V.R.A.P. 28(a)). We accordingly will not address whether the trial court was required to accept briefing or hold a hearing specifically on attorney's fees prior to dismissing Count I. See State v. Taylor, 145 Vt. 437, 439, 491 A.2d 1034, 1035 (1985) (refusing to consider arguments where litigant provided "no support whatsoever" because "we will not construct an appellate case

for either party out of whole cloth"). However, plaintiff does discuss the court's equitable power to assess attorney's fees in both his principal and reply brief. Thus, we proceed to evaluate the trial court's evaluation of the merits of plaintiff's claim for attorney's fees.

¶ 63. Plaintiff's claim for attorney's fees is founded in equity rather than law. See In re Gadhue, 149 Vt. 322, 327, 544 A.2d 1151, 1154 (1987) (stating that generally Vermont follows "American Rule," which dictates that attorney's fees will not be awarded "absent special legal i.e., statutory authority or as a matter of contract" (quotations and brackets omitted)). Courts have "historic powers of equity . . . to award attorney's fees as the needs of justice dictate." Id. "This power must be exercised with cautious restraint, however—only in those exceptional cases where justice demands an award of attorney's fees, such as where a party is unjustly forced to endure a second round of litigation." Agency of Nat. Res. v. Lyndonville Savings Bank & Tr. Co., 174 Vt. 498, 501, 811 A.2d 1232, 1236 (2002) (mem.) (citations omitted). We accordingly review the trial court's decision declining to award attorney's fees for an abuse of discretion. Leiter v. Pfundston, 150 Vt. 593, 597, 556 A.2d 90, 93 (1988).

¶ 64. The trial court did not abuse its discretion when it declined to award plaintiff attorney's fees. Plaintiff's request for fees is predicated on his belief that defendant purposefully failed to comply with the stipulated judgment. As the trial court repeatedly stated in its assiduous consideration of plaintiff's arguments, it found that she did not act in bad faith and had turned over all EWN records as required, and we have declined to disturb the trial court's findings. See Town of Milton Bd. of Health v. Brisson, 2016 VT 56, ¶ 30, 202 Vt. 121, 147 A.3d 990 (explaining that even where second round of litigation is incurred, exception to American Rule "is triggered only by conduct that could be described as in bad faith, vexatious, wanton, oppressive, or unreasonably obstinate"). Moreover, where the trial court concluded that defendant acted in good faith when retaining copies although she was not permitted to under the stipulated judgment, we have concluded that even her decision to keep copies of records was permissible under the judgment's

plain language. See supra, III.A. The trial court therefore acted within its discretion when it declined to use its equitable powers to award plaintiff attorney's fees. See Gadhue, 149 Vt. at 330, 544 A.2d at 1156 (observing that award of attorney's fees is "appropriate only in exceptional cases and for dominating reasons of justice" (quotation omitted)); Knappmiller v. Bove, 2012 VT 38, ¶ 4, 191 Vt. 629, 48 A.3d 607 (mem.) ("Our standard from departing from [the American Rule] is demanding.").

VII. Motion to Amend

¶ 65. In April 2021, plaintiff filed a motion to amend judgment.[5] In that motion, amongst other complaints, he challenged the trial court's finding that defendant turned over all EWN records and its conclusion that she complied with the 2011 stipulated judgment in good faith. In support, he submitted "newly discovered evidence" obtained, including a backup drive containing EWN records in the possession of a third party that was allegedly created by defendant. The trial court denied plaintiff's motion to amend. It noted first that plaintiff's arguments were repetitive of those made in motions the court previously ruled on and then declined to amend its findings and conclusions because it was satisfied with its weighing of the evidence in the record. Turning to the "newly discovered evidence," the trial court explained that even if it were to accept plaintiff's evidence, it would not alter its findings or conclusions.

¶ 66. On appeal, plaintiff contends that the trial court erred in denying his motion for failure to make averments as to why the evidence presented was not previously available or provide evidence justifying a change in the trial court's findings. He also proposes that the trial court abused its discretion because it refused to amend its findings and conclusions based on the evidence plaintiff presented.

[5] Plaintiff cited Vermont Rules of Civil Procedure 52(b), 54(b), 59(e), and 60(b) below but on appeal refers to it as a "Rule 59 Motion." The motion is accordingly reviewed as a motion to amend pursuant to Rule 59(e).

¶ 67. We review the trial court's decision on a Rule 59(e) motion to amend judgment for an abuse of discretion. N. Sec. Ins. Co. v. Mitec Elec., Ltd., 2008 VT 96, ¶ 34, 184 Vt. 303, 965 A.2d 447. Rule 59(e) motions to alter or amend judgment allow "the trial court to revise its initial judgment if necessary to relieve a party against the unjust operation of a record resulting from the mistake or inadvertence of the court and not the fault or neglect of a party." Id. ¶ 41 (quotation omitted). A Rule 59(e) motion "must clearly establish either a manifest error of law or fact or must present newly discovered evidence." Id. ¶ 44 (quotation omitted).

¶ 68. The trial court did not abuse its discretion here. First, it is not an abuse of discretion where a trial court denies a motion to amend because the movant reiterates earlier failed arguments. See Palmer v. Champion Mortg., 465 F.3d 24, 30 (1st Cir. 2006) (stating motion for reconsideration's denial was not abuse of discretion where plaintiff merely reiterated failed arguments trial court considered and found wanting). Second, as explained above, the trial court's judgment did not contain a manifest error of law or fact such that its declining to amend its judgment based on credibility and weight-of-the-evidence arguments could be considered an abuse of discretion. See Rubin v. Sterling Enters., Inc. 164 Vt. 582, 588-89, 674 A.2d 782, 786 (1996) (stating trial court did not abuse discretion where motion to amend offered evidence going to witness credibility and trial court declined to consider it). Third, the trial court's decision was not, as plaintiff contends, solely based on plaintiff's failure to demonstrate that his evidence was truly "newly discovered." Although it concluded that it needed not consider plaintiff's evidence, it did not ignore plaintiff's arguments or evidence altogether. The trial court clearly stated that, even if it considered all the "newly discovered" evidence submitted, that evidence would not change its findings or conclusions. It accordingly "reconsider[ed] issues previously before it, and generally . . . examine[d] the correctness of the judgment" as required by Rule 59. See Drumheller v. Drumheller, 2009 VT 23, ¶ 36, 185 Vt. 417, 972 A.2d 176 (quotation omitted). We discern no

"manifest abuse of discretion" in the trial court's denial of plaintiff's motion to amend. Chelsea Ltd. P'ship v. Town of Chelsea, 142 Vt. 538, 540, 458 A.2d 1096, 1098 (1983).

VIII. Statute of Limitations

¶ 69. Having resolved the issues raised pertaining to Count I, we turn to Counts II-VII. Counts II-VII allege harms sustained due to defendant's alleged failure to comply with the stipulated judgment and include: spoliation, fraudulent inducement/justifiable reliance, indemnification, conversion, trespass to chattel, and replevin. Defendant moved to dismiss plaintiff's complaint, arguing all his causes of action were brought after the statute of limitations had run. The trial court concluded that Count I was not time-barred because the eight-year statute of limitations for actions on judgments in 12 V.S.A. § 506 applied and plaintiff commenced this action within eight years of the 2011 stipulated judgment. On Counts II-VII, it determined that the general six-year statute of limitations for civil actions in 12 V.S.A. § 511 applied and had run because plaintiff's cause of action accrued in 2011 when he alleged that he first encountered difficulties with obtaining business records from defendant.

¶ 70. Plaintiff argues the trial court erred when it dismissed Counts II-VII as time-barred, applying the six-year statute of limitations in 12 V.S.A. § 511. He proposes that the applicable statute of limitations to these causes of action is eight years as provided in 12 V.S.A. § 506. In the alternative, he argues that even if 12 V.S.A. § 511 applies to Counts II-VII, the six-year limitations period had not run. We conclude that the six-year limitations period in § 511 is applicable and that Counts II-VII are time-barred.

¶ 71. The following facts are as stated in plaintiff's complaint. As business manager for EWN, defendant had access to extensive financial and business records. In 2010 and 2011, the parties' business relationship broke down. During this time, defendant engaged in certain actions that demonstrated her "longstanding bad-faith conduct towards plaintiff." On June 20, 2011, the parties entered into a stipulated judgment to fully separate their business relationship and settle

related affairs to facilitate that separation. Pursuant to the stipulated judgment, defendant was required to immediately return all business records to plaintiff. Immediately after entry of the stipulated judgment, defendant turned over some but not all documents as required. Following that time, she turned over more records, which demonstrated how her initial record production was incomplete. Defendant never turned over the "main part" of the business records subject to the stipulated judgment.

A. Applicable Statute

¶ 72. We begin by determining the appropriate limitations period. Which statute of limitations applies to a claim is a legal question reviewed de novo. Huntington v. McCarty, 174 Vt. 69, 71, 807 A.2d 950, 952 (2002). "When interpreting statutory provisions, we begin with the plain language of the statute . . . ." Clark v. DiStefano, 2018 VT 82, ¶ 8, 208 Vt. 139, 195 A.3d 379. "[O]ur goal is to effectuate the intent of the Legislature," and "[i]f the statutory language is clear and unambiguous, we will enforce it according to its terms as an expression of that intent." Billewicz v. Town of Fair Haven, 2021 VT 20, ¶ 14, 214 Vt. 511, 254 A.3d 194.

¶ 73. The general statute of limitations for civil actions is six years as set forth in 12 V.S.A. § 511. Vermont also has a statute of limitations for actions on judgments, 12 V.S.A. § 506, which provides: "Actions on judgments and actions for the renewal or revival of judgments shall be brought by filing a new and independent action on the judgment within eight years after the rendition of the judgment, and not after." Section 506 is a specific exception to the general rule in § 511. See 12 V.S.A. § 511 (exempting actions "brought upon the judgment or decree of a court" from six-year rule stated therein). Thus, if Counts II-VII do not fall under § 506, § 511 governs by default.

¶ 74. The operative language at issue is "actions on judgments," specifically the meaning of "on." First, "on" may have a variety of meanings in different contexts and connotes a direct connection between the cause of action and the judgment. See On, Merriam-Webster Online

Dictionary, https://www.merriam-webster.com/dictionary/on [https://perma.cc/S539-3FT3] (providing multiple definitions including as "a function word to indicate the cause or source"). Viewed in isolation, this may seem to allow such tenuous connection as plaintiff suggests, encompassing any cause of action that involves a judgment. However, when we read the full language of § 506 and view it in light of the statutory scheme set out for civil limitations periods, it is clear that "actions on judgments" in § 506 requires, at a minimum, that the action be to enforce a judgment. See State v. Charette, 2018 VT 48, ¶ 7, 207 Vt. 372, 189 A.3d 67 (explaining that construction that may make sense when viewing language in isolation is contrary to plain language of statute where context as whole points to other construction as Legislature's intended meaning); In re Judy Ann's Inc., 143 Vt. 228, 231, 464 A.2d 752, 754 (1983) ("[W]e will not excerpt a word or phrase and follow what purports to be a literal reading without considering the entire statutory scheme.").

¶ 75. An "action on a judgment" is a term for a cause of action that originates from the common law. See Koerber v. Middlesex Coll., 136 Vt. 4, 6, 383 A.2d 1054, 1056 (1978) (asserting that § 506 "directly acknowledges the existence" of common-law action on judgment). "Every judgment gives rise to a common-law cause of action to enforce it, called an action upon a judgment." 47 Am. Jur. 2d Judgments § 722 (2022). It is "an original or new cause of action, independent of the action that resulted in the judgment," the "main purpose" of which "is to obtain a new judgment that will facilitate the ultimate goal of securing satisfaction of the original cause of action." 50 C.J.S. Judgments § 1231 (2022). The common law history of actions on judgments and the manner in which that has been acknowledged in § 506 indicates that the eight-year statute of limitations specifically applies to actions seeking to enforce a judgment, which is not the case here.[6]

[6] There is authority stating that, at common law, an action on a judgment could only be pursued for monetary judgments. See, e.g., French v. Goetz Brewing Co., 101 P.2d 354, 356

¶ 76. This reading also fits with the overall language of § 506. See Noble v. Fleming's Est., 121 Vt. 57, 59, 147 A.2d 889, 890 (1959) (explaining that we consider "the whole and every part of the statute"). Section 506 applies to "actions on judgments and actions for the renewal or revival of judgments." Renewing or reviving a judgment results in a new judgment that restarts the statute of limitations, thereby providing the litigant with eight more years to seek satisfaction of the judgment in their favor. See Blake v. Petrie, 2020 VT 92, ¶ 12, 213 Vt. 347, 245 A.3d 768 ("[A]n action to renew a judgment does not seek assistance in collecting on a debt, but rather is an action to keep the existing judgment debt alive for another eight years."). When we read "actions on judgments" with "actions for renewal or revival of judgments," the statute has a unified focus on allowing the litigant to obtain the right provided in the initial judgment, either through renewal for additional time to seek satisfaction of the right or enforcement to obtain the right immediately.

¶ 77. Significantly, the eight-year limitations period in § 506 aligns with the time provided for the court to issue execution, a process to enforce a judgment for the payment of money. 12 V.S.A. § 2681; V.R.C.P. 69; see also Koerber, 136 Vt. at 6-7, 383 A.2d at 1055-56 (stating that in Vermont, unlike in other states, litigants may maintain execution proceedings or actions on judgment to seek enforcement of judgment). As we have explained in the context of monetary judgments, "by allowing the same amount of time for actions on a judgment or execution," the Legislature has made a policy determination to establish a "definite time" in which

(Wash. 1940) ("[T]o sustain an action upon a judgment or decree, plaintiff must show defendant to have become bound by a personal judgment for the unconditional payment of a definite sum of money . . . ."). Further, Koerber, our case acknowledging the statute's links to the common-law cause of action, involved a judgment creditor's ability to recover a debt as opposed to enforcement of a judgment requiring a party to perform specific acts. 136 Vt. at 6, 383 A.2d at 1055. However, we need not narrowly define "actions on judgments" or decide whether § 506 is limited to actions on money judgments in this opinion. See also Johnston v. Johnston, 2019 VT 34, ¶ 19, 210 Vt. 279, 212 A.3d 627 (declining to determine whether, "as a general matter, a motion to enforce constitutes an 'action on a judgment' for purposes of § 506" and deciding case based on type of action presented). Counts II-VII do not seek to enforce any judgment and the applicable limitations period for Count I, seeking to enforce the stipulated judgment, is not raised on appeal.

a litigant may seek enforcement of a judgment. Blake, 2020 VT 92, ¶ 9. Reading "actions on judgments" in § 506 to mean a specific type of action for enforcement fits within this scheme to establish a set timeline for seeking satisfaction of a judgment in one's favor.

¶ 78. In summary, when we look to the plain language of § 506 as a whole and related statutes, the Legislature intended an eight-year limitations period to specifically govern actions to enforce a judgment. See Noble, 121 Vt. at 59, 147 A.2d at 890 ("[T]he true meaning of the Legislature is to be ascertained not from a literal sense of the words used, but from a consideration of the whole and every part of the statute, the subject matter, the effect and consequences[,] and the reason and spirit of the law."). At least one other state has come to a similar conclusion. See Cain v. Midland Funding, LLC, 256 A.3d 765, 787-91 (Md. 2021) (concluding "action on a judgment" in Maryland statute meant "action to enforce rights granted by" judgment and therefore statute of limitations for actions on judgments did not apply to claims for unjust enrichment and money damages where wrongful conduct merely "involved" entry of judgment).

¶ 79. Counts II-VII are causes of action for damages arising out of defendant's alleged failure to comply with the 2011 stipulated judgment and are therefore not "actions on judgments" under § 506. Though the judgment provides factual background essential to these claims, this is insufficient to make them actions to "enforce" a judgment. See Fitzgerald v. Congleton, 155 Vt. 283, 293, 583 A.2d 595, 601 (1990) (concluding in legal malpractice action that damages sought for emotional distress constituted injuries to person under § 512 but damages sought for costs incurred as result of underlying legal case fell under limitations provisions in § 511, even though all damages arose out of same underlying conduct). The claims in Counts II-VII have elements that must be met that go beyond interpreting and enforcing the stipulated judgment. Moreover, each of these six causes of action seek relief beyond that provided in the stipulated judgment, including damages for the injuries sustained because of plaintiff's inability to access certain records. Although Count VII, replevin, seeks possession of records subject to the stipulated

judgment as well as other personal documents, it does not actually seek to enforce the judgment. See Replevin, Black's Law Dictionary (11th ed. 2019) (defining replevin as "lawsuit to repossess personal property wrongfully taken or detained"). Accordingly, we conclude § 511 applies to Counts II-VII.[7]

B. Analysis of Complaint under § 511

¶ 80. We now apply § 511 to Counts II-VII to determine whether these claims were properly dismissed as time-barred. "We review decisions on a motion to dismiss de novo under the same standard as the trial court and will uphold a motion to dismiss for failure to state a claim only if it is beyond doubt that there exist no facts or circumstances that would entitle the plaintiff to relief." Krizan, 2015 VT 37, ¶ 6 (quotation omitted). We assume all factual allegations pleaded by the non-moving party and reasonable inferences drawn therefrom are true and all contravening assertions in the non-movant's pleadings are false. Amiot v. Ames, 166 Vt. 288, 291, 693 A.2d 675, 677 (1997). Raising a statute-of-limitations defense in a motion to dismiss is appropriate and such motion will be granted when "the face of plaintiff's complaint show[s] his claim to be time-barred." Fortier v. Byrnes, 165 Vt. 189, 193, 678 A.2d 890, 892 (1996).

¶ 81. Under § 511, a civil action must "be commenced within six years after the cause of action accrues." Generally, accrual occurs upon "discovery of facts constituting the basis of the

[7] Plaintiff argues in passing that the trial court's dismissal must be reversed because the court failed to address plaintiff's argument that applying § 511 to Counts II-VII would violate the separation-of-powers doctrine. Before the trial court, plaintiff proposed that the Legislature could not limit the court's authority to implement and enforce its orders by imposing a statute of limitations on Counts II-VII. As explained above, we conclude that Counts II-VII do not seek to enforce a court order and instead plead common-law causes of action to remedy injuries allegedly caused as a result of defendant's failure to comply with a court order. Having rejected the fundamental premise of plaintiff's argument, we need not reach the substance of this constitutional claim regarding the Legislature's ability to impose a limitations period on enforcing court orders generally. See State v. Giant of St. Albans, Inc., 128 Vt. 539, 548, 268 A.2d 739, 744 (1970) (declining to reach constitutional issue not raised by facts in case). Therefore, assuming arguendo that the trial court's failure to explicitly address this specific argument was in error, it was harmless.

cause of action or the existence of facts sufficient to put a person of ordinary intelligence and prudence on inquiry which, if pursued, would lead to the discovery." Abajian v. TruexCullins, Inc., 2017 VT 74, ¶ 12, 205 Vt. 331, 176 A.3d 524 (quotation and emphasis omitted); see also Univ. of Vt. v. W.R. Grace & Co., 152 Vt. 287, 290, 565 A.2d 1354, 1357 (1989) (adopting discovery rule for § 511). In other words, discovery occurs and the limitations period begins when a plaintiff "knows or should know of the injury and its cause." McLaren v. Gabel, 2020 VT 8, ¶ 35, 211 Vt. 591, 229 A.3d 422 (per curiam) (quotation and brackets omitted). Thus, the question before us is whether plaintiff had enough information to put a reasonable person on notice that they should investigate whether defendant had not complied with the 2011 stipulated judgment by April 29, 2013, six years before this action was commenced.

¶ 82. The statute of limitations began to run in June 2011 and, as discussed below, Counts II-VII are therefore time-barred. The stipulated judgment requires the "immediate" turnover of "all" records. In his 2019 complaint, plaintiff alleged that defendant produced "some documents immediately after" entry of the stipulated judgment on June 20, 2011. From that point, plaintiff had access to the records defendant turned over and could have investigated whether anything was missing. Significantly, plaintiff asserted that "defendant ha[d] not turned over the main part of the documents." (emphasis added). Citing conduct that led to the breakdown of the parties' business relationship, the complaint also stated that defendant had "longstanding bad-faith conduct towards" plaintiff.

¶ 83. These facts were sufficient to put a reasonably prudent person in plaintiff's situation on inquiry notice of the claims in Counts II-VII. To put it succinctly, a person with a history of difficulties with plaintiff, including litigation over business dissolution that required a clause specifically for record turnover, failed to turn over the "main part" of the records "immediately" after June 20, 2011, as the stipulated judgment required. See Agency of Nat. Res. v. Towns, 168 Vt. 449, 452, 724 A.2d 1022, 1024 (1998) ("[T]he plaintiff is ultimately chargeable with notice of

all the facts that could have been obtained by the exercise of reasonable diligence in prosecuting the inquiry." (quotation and brackets omitted)). Considering the quantity of records allegedly missing and the expediency anticipated for their turnover, there was ample information available to plaintiff that defendant likely failed to comply with the stipulated judgment such that one would investigate the turnover to determine what is missing and how those missing documents could impact EWN's business operations moving forward. See Rodrigue v. VALCO Enters., Inc., 169 Vt. 539, 541, 726 A.2d 61, 63 (1999) (mem.) ("The plaintiff need not have an airtight case before the limitations period begins to run."). Because we determine as a matter of law that plaintiff had enough information that he should have investigated his causes of action in June 2011, it is immaterial when, according to him, he actually uncovered that certain records were in defendant's possession. For these reasons, plaintiff's causes of action in Counts II-VII accrued more than six years before he commenced this action in spring 2019. On the face of plaintiff's complaint, Counts II-VII were time-barred and therefore properly dismissed.[8]

IX. Conclusion

¶ 84. Based on the pleadings, Count I was not barred by the doctrine of claim preclusion and the trial court properly denied defendant's motion to dismiss that claim. On the merits of Count I, defendant was required to turn over all EWN records to plaintiff and was not required to turn over all copies under the stipulated judgment. The trial court's findings that defendant turned over a full set of EWN records to plaintiff soon after the stipulated judgment was entered in 2011

[8] Plaintiff argues that the trial court's subsequent findings contradicted its conclusions in the order dismissing Counts II-VII and that this demonstrates that it was not "beyond doubt" that no facts existed that would have entitled plaintiff to relief based on his complaint. Krizan, 2015 VT 37, ¶ 6. We need not determine whether the trial court drew impermissible inferences from the complaint because it would not change the outcome here. "We review the trial court's dismissal order de novo, and we may affirm on any ground." Davey v. Barker, 2021 VT 94, ¶ 2, __ Vt. __, 274 A.3d 817. The supposed impermissible assumptions and contradictory subsequent findings to which plaintiff cites are irrelevant to our conclusion on when accrual occurred and therefore present no basis for reversal.

are not clearly erroneous and therefore will not be disturbed on appeal. The trial court did not err in preventing plaintiff from obtaining the original thumb drive because he is not entitled to the thumb drive or its contents under the stipulated judgment. Moreover, it did not abuse its discretion when it declined to award attorney's fees to plaintiff or when it denied plaintiff's motion to amend. Counts II-VII were properly dismissed as time-barred, because the general six-year limitations period in 12 V.S.A. § 511 applied and those causes of action accrued in 2011, approximately eight years before plaintiff filed his complaint. For these reasons, we remand for the trial court to modify its judgment consistent with this opinion.

Remanded for the trial court to revise its judgment consistent with this opinion.

FOR THE COURT:

_____

Associate Justice