

Jimmy Vance (“Vance”) appeals the trial court’s judgment ordering him to pay Caesars Entertainment, Inc. (“Caesars”) \$75,000, which was money advanced to him from his established line of credit to gamble at the casino. Vance specifically alleges that the trial court erred in finding that Caesars did not owe him a duty to protect him from gambling losses when he was intoxicated and that he did not present a viable intoxication defense.

We affirm.

FACTS AND PROCEDURAL HISTORY

Caesars operates a riverboat casino on the Ohio River in Harrison County, Indiana. On September 22, 2004, Vance was a gaming patron at Caesars, where, on that date, he maintained an authorized credit line in the amount of \$75,000. Vance was a long-time and experienced casino player, who first visited casinos in Las Vegas in 1974, where he continued to go until around March 2007. Additionally, Vance played at Belterra riverboat casino in Switzerland County, Indiana and casinos in Atlantic City, New Jersey. Vance was also part owner and managing partner of a bingo parlor in Corbin, Kentucky and formerly owned a bingo parlor in Ludlow, Kentucky.

On the night of September 22, 2004, Vance requested and received four \$5,000 drafts, one \$10,000 draft, one \$20,000 draft, and one \$25,000 draft, totaling \$75,000. These drafts, known in the gaming industry as markers, look like counterchecks but are drawn like two-party checks. Under the terms of the credit agreement between Vance and Caesars, the markers would be held in Caesars’s marker bank and, if not satisfied, would be sent to Vance’s bank for payment after twenty-eight days. Vance did not satisfy the markers, and

Caesars sent them for payment to his bank. Each of the checks was rejected for insufficient funds and remained unpaid since October 2004. Vance recalled signing the first four markers in the total amount of \$20,000 and offered to pay Caesars that amount. Caesars demanded the full \$75,000, and Vance withdrew his offer.

Caesars's video surveillance recorded approximately four hours of the events during the evening at issue. The video was missing approximately fifty-five minutes of surveillance due to an inability to locate Vance on the footage. The video showed that Vance signed for the first marker at 8:27 p.m. and received his first drink at 9:17 p.m. He had his second drink at 9:36 p.m. and signed for his second marker at around 9:38 p.m. Vance had his third drink and fourth drink at 9:53 p.m. and 10:21 p.m., respectively. His third marker was signed at 10:26 p.m., and his fifth drink was received at 11:05 p.m. At this point in time, Vance could not be located on the surveillance until 12:01 a.m. on September 23, 2004. Vance then signed for his fourth marker at 12:03 a.m. and his fifth marker at 12:23 a.m. He had his sixth drink at 12:26 a.m. and signed for his sixth marker at 12:44 a.m. The seventh and final drink confirmed to be purchased by him was served to Vance at 12:45 a.m. According to the sequential numbering on the markers, the seventh marker was apparently signed between 11:05 p.m. and 12:03 a.m., when Vance could not be located on the surveillance video. Vance consumed seven alcoholic drinks, along with two coffees, in five-and-a-half hours while gambling at Caesars.

Caesars held the markers signed by Vance for the standard twenty-eight days, and when they submitted the markers to Vance's bank, they were returned for insufficient funds

in the account. Caesars filed a complaint against Vance to recover the money they advanced to Vance pursuant to the credit agreement between the parties. At trial, Vance asserted the affirmative defense of intoxication. Caesars's incident report from the night in question, which was written by Gary Cashman was admitted into evidence. In it, Cashman stated that Vance claimed he was drunk or getting drunk only after he had already spent \$74,850 of his \$75,000. *Pl.'s Ex. 3*. Cashman also noted in the report that, when he spoke with Vance, Vance did not slur his speech and "had excellent motor skills and walked fine." *Id.* Each time Vance was issued a marker, he was informed of the total amount of money for which he had been credited that night and how much credit he had remaining. The report concluded that Vance was not intoxicated, and Cashman stated that he felt that Vance's claim of intoxication was simply a way for Vance to avoid paying his markers. *Id.* Shannon Ruck, the table games supervisor on the night of the incident, testified that she spoke with and observed Vance and found his speech and motor skills to be fine and that he had no trouble walking or navigating the casino floor. Based on her observations and conversations with Vance, she did not believe he was intoxicated that night.

At the conclusion of the bench trial, the trial court entered findings of fact and conclusions thereon and entered judgment in favor of Caesars, finding that Vance failed to present sufficient evidence of his intoxication. The trial court ordered Vance to pay Caesars \$75,000 plus interest at the rate of eight percent per annum. Vance now appeals.

DISCUSSION AND DECISION

Vance argues that the trial court erred when it entered judgment in favor of Caesars and found that his affirmative defense of intoxication was not supported by any evidence. Upon Vance's request, the trial court entered findings of fact and conclusions thereon pursuant to Indiana Trial Rule 52(A), which provides that "[o]n appeal of claims tried by the court without a jury . . . the court on appeal shall not set aside the findings or judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." In applying this rule, we use a two-tiered standard of review: whether the evidence supports the findings and whether the findings support the judgment. *Sagarin v. City of Bloomington*, 932 N.E.2d 739, 743 (Ind. Ct. App. 2010) (citing *City of South Bend v. Dollahan*, 918 N.E.2d 343, 349 (Ind. Ct. App. 2009), *trans. denied* (2010)). Findings are clearly erroneous when the record contains no facts or reasonable inferences supporting them. *Mueller v. Karns*, 873 N.E.2d 652, 657 (Ind. Ct. App. 2007). A trial court's judgment is clearly erroneous if it is unsupported by the findings of fact and the conclusions that rely upon the findings. *Id.* In making these determinations, we cannot reweigh the evidence or judge the credibility of any witness, and we consider only the evidence favorable to the judgment and all reasonable inferences therefrom. *Id.* We must affirm the judgment of the trial court unless the evidence points incontrovertibly to an opposite conclusion. *Kesler v. Marshall*, 792 N.E.2d 893, 896 (Ind. Ct. App. 2003), *trans. denied* (2004).

An affirmative defense is “a defense ‘upon which the proponent bears the burden of proof and which, in effect, admits the essential allegations of the complaint, but asserts additional matter barring relief.’” *GKC Ind. Theatres, Inc. v. Elk Retail Investors, LLC*, 764 N.E.2d 647, 653 (Ind. Ct. App. 2002). “The test of mental capacity to contract is whether the person possesses sufficient mind to understand, in a reasonable manner, the nature and effect of the act in which he is engaged; and in order to avoid a contract it must appear not only that the party was of unsound mind . . . when it was made, but that this unsoundness . . . was of such a character that he had no reasonable perception or understanding of the nature and terms of the contract.” *Daugherty v. Daugherty*, 115 Ind. App. 253, 266-67, 57 N.E.2d 599, 604 (1944).

The evidence presented at trial showed that Caesars and Vance entered into a contractual relationship when Vance applied for and was granted a line of credit from Caesars. Pursuant to this agreement, Caesars agreed to allow Vance access to credit in the amount of \$75,000, and Vance agreed to certain conditions of repayment. No claims of impairment or intoxication at the time this agreement was entered into have been made. Thereafter, on September 22, 2004, Vance requested markers totaling \$75,000, and Caesars advanced him such sum of money. When these markers were presented to Vance’s bank for payment twenty-eight days later, they were returned for insufficient funds. Since that time, Vance has refused to honor the endorsed markers.

Evidence was also presented that, on the evening of September 22, 2004, Vance was served seven alcoholic drinks from the time he signed the first marker until the time he

signed his last marker. No other evidence was presented to demonstrate that Vance was intoxicated at the time he signed the markers. The incident report prepared by Cashman noted that, when Cashman spoke with Vance, Vance did not slur his speech and “had excellent motor skills and walked fine.” *Pl. ’s Ex. 3*. Each time Vance was issued a marker, he was informed of the total amount of money for which he had been credited that night and how much credit he had remaining. The incident report concluded that Vance was not intoxicated, and Cashman added that he felt that Vance’s claim of intoxication was simply a way for Vance to avoid paying his markers. *Id.* Additionally, Ruck spoke with and observed Vance and found his speech and motor skills to be fine and that he had no trouble walking or navigating the casino floor. *Tr.* at 44-45. She concluded that, based on her observations and conversations with Vance, he was not intoxicated that night. *Id.* at 50, 51.

The trial court made the following, pertinent findings:¹

15. Vance consumed alcohol during his visit to Caesars.

September 22, 2004 at 8:27 p.m. Vance signed a marker in the amount of Five Thousand dollars (\$5,000) at 9:30 p.m. Vance requested and signed for another Five Thousand dollars (\$5,000) during that time he consumed two (2) whiskey drinks.

10:26 p.m. Vance requested and signed another marker for Five Thousand dollars (\$5,000). Vance consumed two (2) more whiskey drinks.

11:05 p.m. Vance has whiskey drink number five (5)--

The surveillance does not show Vance from 11:05 p.m. till [sic] 12:01 a.m. Caesars video are [sic] missing fifty-six (56) minutes of Vance’s

¹ We commend the trial court on its thorough findings, which greatly facilitated out appellate review.

drinking and playing. However, the documentary evidence suggests that Vance secured another Five Thousand dollar (\$5,000) marker and most likely continued to consume alcohol.

12:03 a.m. Vance secures another marker for Ten Thousand (\$10,000).

In three hours and thirty-six minutes Vance consumed at least five (5) whiskey drinks and borrowed Thirty Thousand dollar (\$30,000).

12:23 a.m. Vance requests and signs a marker for Twenty Thousand dollars (\$20,000).

12:44 a.m. Vance requests and signs for [a marker for] Twenty-Five Thousand dollars (\$25,000).

In [four] hours and [seventeen] minutes Vance had a minimum of [seven (7)] whiskeys and spent \$75,000.

Vance never thought of himself as an alcoholic. He consumes alcohol once every two (2) to three (3) weeks but does not get drunk on a regular basis. When he drinks, he drinks [three (3) to four (4)] drinks per hour.

....

16. . . . There were no other witnesses and no other proof of intoxication presented for the Court's consideration. Caesars[']s people, who have the training to recognize intoxicated patrons, at no time thought Vance to be impaired.

....

19. Vance alleges that he lacked the capacity to "contract" or make agreements due to his inebriation. He asserts that each new marker constituted a new contract for payment.

Appellant's App. at 5-7 (citations omitted).

The trial court also made the following pertinent conclusions:

. . . When Caesars and Vance concluded the credit line application process and agreed to the amount of credit Caesars would extend, and the conditions for

repayment, their contractual relationship was established. There were no restrictions, no limitations were placed on Vance's account. He had free and unfettered access to his credit line. Vance was not intoxicated when this contract was created.

Accessing money from a line of credit is absolutely the same as getting a cash advance from ones [sic] credit card. It is not in the nature of financial institutions to provide a manager or review each transaction. The very definition of a credit line obviates such a requirement.

“Line of Credit: The maximum amount of borrowing power extended to a borrower by a given lender, to be drawn upon by the borrower as needed.” Black's Law Dictionary 949 (8th ed. 2004). Vance drew money, and no matter how improvidently, he spent that money at the gaming tables.

Vance seeks to avoid, at least part of his debt obligation, by alleging that he was too intoxicated to understand the nature of his acts. Intoxication when used in this manner would be an affirmative defense.

....

There was no evidence presented by Vance to support his defense, other than his list of the times where he was served a drink. There was no testimony and no evidence of impairment presented for the Court's review.

The Defendant cannot avoid payment of a contractual obligation absent a viable affirmative defense. There is a strong presumption in favor of the enforceability of contracts in Indiana, and they will be enforced absent strong reasons to the contrary.

Here we have a bargained for agreement accepted and ratified by the parties.

The intoxication defense though pled is not supported by any evidence.

Id. at 8-9.

The trial court concluded that Vance failed to present sufficient evidence to support his claimed affirmative defense of intoxication, and our review of the evidence supports such a determination. Vance presented no evidence, besides listing the times he was served

drinks, to support the defense that he was intoxicated at the time he signed the markers or that he did not understand what he was doing. We conclude that the evidence presented supported the trial court's findings, and the findings supported the trial court's judgment. The trial court did not err in entering judgment in favor of Caesars in the amount of \$75,000 and ordering Vance to pay such amount.²

Affirmed.

CRONE, J., and BRADFORD, J., concur.

² Vance spends a significant portion of his appellate brief contending that Caesars had a duty to refrain from loaning him substantial amounts of money after it had served him alcohol in an amount that was reasonably foreseeable to cause intoxication. As stated above, Vance failed to present evidence that he was intoxicated at the time that he signed the markers totaling \$75,000. Because he has failed to prove he was intoxicated on the night in question, we decline to reach Vance's argument regarding whether Caesars had a duty to keep from loaning him money when he was intoxicated.