

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM M. HESSELL, GERALD HESSELL,
and ROBERT A. HESSELL,

UNPUBLISHED
October 16, 2008

Plaintiffs-Appellees,

v

No. 276642
Alpena Circuit Court
LC No. 03-003357-CH

JERRY C. SOCIER and CAROL L. SOCIER,

Defendants-Appellants.

Before: Hoekstra, P.J., and Cavanagh and Zahra, JJ.

PER CURIAM.

Defendants appeal as of right the trial court's order granting plaintiffs specific performance of the parties' March 7, 2002 contract, in which defendants agreed to sell plaintiffs a portion of an 80-acre parcel they would acquire from the state of Michigan in a land exchange. Because the trial court's factual findings were supported by the record and did not violate the law of the case, we affirm.

I

This appeal is the second time this case is before the Court. The trial court had previously granted summary disposition to plaintiffs on the basis that defendant husband operated as defendant wife's agent in signing the contract and, therefore, her signature was not necessary to the contract. On appeal, we concluded that this finding was improper because the trial court engaged in fact finding regarding the scope of an agency relationship that is reserved for a trier of fact to determine. *Hessell v Socier*, unpublished opinion per curiam of the Court of Appeals, issued April 6, 2006 (Docket No. 257192).

On remand, following a bench trial, the trial court found that defendant husband, while in defendant wife's presence, signed the contract at her direction and with her manifestation of consent. Specifically, the trial court found that "at some point prior" to the March 7, 2002 meeting, defendant wife had authorized her husband to enter into the contract. Accordingly, the trial court held that defendant husband was defendant wife's agent with the authority to sign the contract on her behalf. It again ordered specific performance of the contract.

II

Defendants claim that the trial court's factual finding that defendant wife authorized defendant husband to sign the contract "at some point prior to the meeting" violated the law of the case and was clearly erroneous.

This Court reviews a trial court's factual findings in a bench trial for clear error and its conclusions of law de novo. *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 512; 667 NW2d 379 (2003). A finding is clearly erroneous where, after reviewing the entire record, the Court is left with a definite and firm conviction that a mistake has been made. *Id.* Whether a trial court failed to follow an appellate court's ruling on remand is a question of law reviewed de novo. *Schumacher v Dep't of Natural Resources*, 275 Mich App 121, 127; 737 NW2d 782 (2007).

According to plaintiffs, the trial court's finding that "at some point prior to the meeting" defendant wife authorized defendant husband to act as her agent in signing the contract violated the law of the case because the same finding had been reversed by this Court in the first appeal. The law of the case doctrine provides that a ruling by an appellate court on a particular issue binds the appellate court and all lower courts with respect to the issue. *Ashker v Ford Motor Co*, 245 Mich App 9, 13; 627 NW2d 1 (2001). Consequently, "a trial court may not take any action on remand that is inconsistent with the judgment of the appellate court." *Kalamazoo v Dep't of Corrections (After Remand)*, 229 Mich App 132, 135; 580 NW2d 475 (1998). Defendants' argument misconstrues this Court's prior opinion. This Court reversed the trial court's order granting summary disposition to defendants in the prior opinion because, by finding that defendant husband acted as defendant's wife in signing the contract, the trial court engaged in impermissible factfinding. *Hessell, supra*, slip op 2. The reversal of the trial court's order was not based on the fact that any authorization by defendant wife to defendant husband to sign the contract on her behalf was given before the September 7, 2002 meeting. Moreover, because the Court remanded the case due to the existence of a factual dispute regarding whether defendant husband acted as defendant wife's agent in signing the contract, the law of the case doctrine did not prevent the trial court from revisiting the issue. See *Brown v Drake-Willock Int'l*, 209 Mich App 136, 144; 530 NW2d 510 (1995).

Next, defendants argue that the trial court's findings were clearly erroneous because it rejected their contention that defendant husband could only be considered defendant wife's agent if, immediately preceding the signing of the contract, defendant wife orally directed defendant husband to sign the contract on her behalf. Defendants have not, however, provided citation to any legal authority to support their position. "A party may not leave it to this Court to search for authority to sustain or reject its position." *Magee v Magee*, 218 Mich App 158, 161; 553 NW2d 363 (1996).

Nonetheless, direct evidence, as well as indirect evidence, may establish that an agent entered into a contract at the principal's request. See *Morton v Murray*, 176 Ill 54, 61-62; 51 NE 767 (1898). Based on the trial court's factual findings regarding the indirect evidence and defendant wife's own testimony, we cannot say that the trial court's finding that defendant husband was defendant wife's agent with the authority to sign the contract on her behalf was

clearly erroneous. As found by the trial court, defendant wife was present throughout the entire March 7, 2002 meeting, the contract was read aloud at the meeting, and defendant wife nodded her head affirmatively when the parties were asked if they were in agreement with the contract.¹ In addition, as testified to by defendant wife, before the meeting, she and defendant husband had discussed giving plaintiffs an easement, and, upon leaving the meeting, she believed that defendant husband had given plaintiffs, on his behalf as well as her behalf, an easement. Under these circumstances, which indicate that defendant husband's act of signing the contract was also the act of defendant wife, the trial court's finding that defendant husband was defendant wife's agent and that he signed the contract for her under her direction was not clearly erroneous.² Accordingly, we affirm the trial court's order granting specific performance of the contract.³

Affirmed.

/s/ Joel P. Hoekstra
/s/ Mark J. Cavanagh
/s/ Brian K. Zahra

¹ While these factual findings conflicted with defendants' trial testimony, the factual findings are supported by the testimony of plaintiffs. Therefore, these factual findings are not clearly erroneous.

² We do not find it relevant that the contract provided for the sale of property, rather than for the sale of an easement. Defendant husband signed the contract, and the trial court's finding that defendant husband also acted as defendant wife's agent in signing the contract was not clearly erroneous. While defendants may have been mistaken about the legal effect of the contract, a unilateral mistake is not a defense to the enforcement of a deliberately executed contract. See *Rzepka v Michael*, 171 Mich App 748, 756; 431 NW2d 441 (1988).

³ We need not address defendants' argument that the trial court erred in holding that the equities of the case required circumvention of the statute of frauds.