STATE OF MICHIGAN

COURT OF APPEALS

ELAINE FRANKLIN,

Plaintiff-Appellant,

v

BRADLEY PETSCH,

Defendant,

and

JACKIE PETSCH,

Defendant-Appellee.

UNPUBLISHED
October 28, 2008

No. 280980
Oakland Circuit Court
LC No. 2006-072960-CK

Before: Servitto, P.J., and Donofrio and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition to co-defendant Jackie Petsch pursuant to MCR 2.116(C)(10) and awarding sanctions against plaintiff. We reverse. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

It was undisputed that a prior oral agreement existed between plaintiff and co-defendant Bradley Petsch, plaintiff's son-in-law, in which plaintiff agreed to loan Bradley $50,000 and Bradley agreed to repay the loan with interest. The point of contention was whether the oral agreement also involved Jackie Petsch, plaintiff's daughter. The trial court found that the oral agreement was reduced to a writing that was a complete expression of the agreement and, since that writing did not include Jackie, parol or extrinsic evidence could not be presented in an attempt to establish that Jackie was a party to the agreement.

Whether parol or extrinsic evidence should be used in contract interpretation is a question of law that this Court reviews de novo. *In re Estate of Kramek*, 268 Mich App 565, 573; 710 NW2d 753 (2005). Bradley drafted the promissory notes of August 1, 2002, and August 11, 2004, with no input from plaintiff (in fact, plaintiff claimed to have never seen the August 11, 2004, note until Bradley's deposition). The two notes were also signed by Bradley but not by plaintiff. Bradley never indicated that he viewed either note as a complete expression of his agreement with plaintiff, and the notes contained no merger clause. Rather, Bradley's stated intent regarding the August 1, 2002, note was to provide plaintiff with legal protection in case he and Jackie divorced and Jackie tried to avoid repaying plaintiff. The August 1, 2002, and August

11, 2004, notes were also incomplete in that they did not include important terms of the agreement, such as the fact that interest was charged. Therefore, the parol evidence rule was erroneously applied in this case since the evidence did not first establish that the parties viewed any writing as a complete and accurate expression of the agreement and should not have been used as a basis to grant Jackie's motion for summary disposition.

A summary disposition motion brought under MCR 2.116(C)(10) tests the factual sufficiency of the claim and may be granted if, considering the substantively admissible evidence in a light most favorable to the nonmoving party, there is no genuine issue concerning any material fact and the moving party is entitled to judgment as a matter of law. *Coblentz v City of Novi*, 475 Mich 558, 567-568; 719 NW2d 73 (2006). In this case, the parties made competing claims regarding the circumstances under which the initial oral agreement was made and whether there was a "meeting of the minds" on Jackie's involvement in the loan. In support of her claims, plaintiff presented evidence that Jackie was the one who made the initial request for the funds, plaintiff loaned the money to Jackie and Bradley, and Bradley provided the August 1, 2002, note to plaintiff for her legal protection because it was possible that, if he and Jackie were divorced, Jackie might not repay plaintiff (which, in plaintiff's opinion, indicated Bradley's belief that Jackie was legally responsible for repayment).[1] Viewing plaintiff's evidence in the light most favorable to her as the nonmoving party, we find a genuine issue of fact existed regarding Jackie's involvement and whether she was a party to the oral agreement for plaintiff to lend money. As such, the trial court erred when it granted Jackie's motion for summary disposition.

In light of this conclusion, the trial court's order granting sanctions should also be reversed since Jackie is no longer a "prevailing party" under MCL 600.2591(3)(b).

Reversed.

/s/ Deborah A. Servitto
/s/ Pat M. Donofrio
/s/ Karen M. Fort Hood

[1] Jackie does not argue that this evidence was inadmissible but, rather, claims that plaintiff's affidavit contradicted plaintiff's deposition testimony, thus invalidating it. This argument fails. In her June 5, 2006, deposition, plaintiff stated that the only evidence she had of Jackie's indebtness was plaintiff's truthful recounting of the circumstances in which the oral agreement was made. In her September 25, 2006, affidavit made in opposition to Jackie's motion for summary disposition, plaintiff listed the additional evidence of Bradley preparing the August 1, 2002, note out of concern that Jackie might attempt to avoid repayment of the loan. This statement by Bradley was made during his June 19, 2006, deposition and was, therefore, not even known by plaintiff when she made her June 5, 2006, deposition.