

[Cite as *Norris, L.L.C. v. Daney*, 2010-Ohio-5140.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94437

NORRIS, LLC

PLAINTIFF-APPELLANT

vs.

MEREDITH DANEY

DEFENDANT-APPELLEE

**JUDGMENT:
REVERSED**

Civil Appeal from the
Parma Municipal Court
Case No. 09 CVF 02295

BEFORE: Gallagher, A.J., Celebrezze, J., and Cooney, J.

RELEASED AND JOURNALIZED: October 21, 2010

ATTORNEY FOR APPELLANT

James R. Russell, Jr.
11 South Forge Street
Akron, OH 44304

ATTORNEY FOR APPELLEE

Keith M. Herbers
506 Pearl Street
Berea, OH 44017-1242

SEAN C. GALLAGHER, A.J.:

{¶ 1} Appellant Norris, LLC, d.b.a. Christopher Norris Photographers (“Norris”), appeals the judgment of the Parma Municipal Court in favor of Meredith Daney (“Ms. Daney”). For the reasons set forth herein, we reverse.

{¶ 2} Ms. Daney and Norris entered into a contract (the “Contract”) in which Norris agreed to provide photography services for Ms. Daney’s wedding. Ms. Daney canceled the Contract prior to her scheduled wedding date. Norris attempted to collect on the balance it claimed Ms. Daney owed

for her failure to cancel the Contract 60 days prior to August 8, 2008. Ms. Daney sent a letter to the collection agency disputing the debt.

{¶ 3} On June 4, 2009, Norris filed a complaint against Ms. Daney, alleging breach of contract and unjust enrichment based on Ms. Daney's contract with Norris to photograph her wedding. A bench trial commenced on November 30, 2009. The only two witnesses who testified were Christopher Norris, Norris's primary director, and Ms. Daney.

{¶ 4} It is undisputed that on December 13, 2006, Ms. Daney and Norris entered into the Contract in which Norris agreed to photograph Ms. Daney's wedding on August 3, 2007. The total amount due Norris from Ms. Daney under the contract was \$3,203.50, and Ms. Daney paid a \$500 deposit. Paragraph 4 of the Contract states "* * * If this agreement is canceled within sixty (60) days of the Wedding Date, Buyer shall be responsible for the full contract price." Paragraph 18 of the Contract states "* * * Any changes, amendments, deletions or cancellations * * * must be in writing and signed by all parties."

{¶ 5} In June 2007, Ms. Daney called Norris and informed the woman who answered the telephone that she had changed her wedding date from August 3, 2007, to August 8, 2008. Ms. Daney asked if Norris was available to photograph her wedding on the later date. Ms. Daney was told that, under the terms of the Contract, any changes had to be in writing and that

she should send a letter requesting the change. Ms. Daney testified she was told she could send a letter or an email and that the date change could be accommodated.

{¶ 6} On June 25, 2007, Norris received a written communication from Ms. Daney informing the office of her rescheduled wedding date. According to Ms. Daney, she did not receive confirmation that Norris could photograph her wedding on the later date, but she assumed it was confirmed because of the conversation she had with the woman at the office about the new date.

{¶ 7} Ms. Daney testified that sometime in August 2007, she and her fiancé canceled their wedding altogether. She testified she contacted all her wedding vendors, including Norris, to cancel their services. Specifically, Ms. Daney testified that because she had been told in June 2007 that she had to make changes to the Contract in writing, she sent Norris an email as notification of her cancellation.

{¶ 8} Mr. Norris testified that his office kept a log of client contacts showing the date and subject matter of oral and written communications with Norris. A copy of the log showing the dates and subject of communication between Norris and Ms. Daney was introduced into evidence. Mr. Norris testified the log indicated that Ms. Daney called on June 20, 2007, and informed his office that she wanted to reschedule her wedding from August 3, 2007, to August 8, 2008. The log also indicated that Norris received a letter

from Ms. Daney to that same effect on June 25, 2007. A copy of the June 2007 letter was admitted into evidence.

{¶ 9} Mr. Norris then testified that his office never received any written or oral communication from Ms. Daney canceling the Contract. Therefore, Norris contacted Ms. Daney the week prior to her second scheduled wedding date to review the plans for photography. At that time, Norris believed Ms. Daney still needed its services. Ms. Daney informed Norris that she had canceled the Contract through an email she sent in August 2007; she refused to pay the balance due under its terms.

{¶ 10} Ms. Daney was not able to produce a copy of the email she claims she sent Norris in August 2007. She testified she no longer used the Yahoo email account from which she sent the cancellation notice, and her parents no longer had the computer from which it was sent.¹ Norris's log does not show receipt of any communication from Ms. Daney after June 25, 2007. At the close of the evidence, the trial court found in favor of Ms. Daney.

{¶ 11} Norris timely appealed, raising two assignments of error.

{¶ 12} "I. The trial court erred as a matter of law by determining that a party could timely cancel the contract in a manner expressly excluded by the contract."

¹ Ms. Daney offers no explanation for her failure to save a copy of the email or attempt, in the course of this litigation, to obtain a copy by accessing her old account.

{¶ 13} Norris argues that the trial court erred by construing the Contract to allow for cancellation in the manner chosen by Ms. Daney, which is not expressly allowed under its terms. We agree.

{¶ 14} “[B]ecause the issue is a question of contract law, Ohio appellate courts must determine whether the trial court’s order is based on an erroneous standard or a misconstruction of the law.” *Continental W. Condominium Unit Owners Assn. v. Howard E. Ferguson, Inc.*, 74 Ohio St.3d 501, 502, 1996-Ohio-158, 660 N.E.2d 431. A de novo standard of review is used regarding the interpretation of a written contract. *Lovewell v. Physicians Ins. Co. of Ohio*, 79 Ohio St.3d 143, 144, 1997-Ohio-175, 679 N.E.2d 1119. “The purpose of contract construction is to effectuate the intent of the parties[,]” and that intent “is presumed to reside in the language they chose to employ in the agreement.” *Kelly v. Med. Life Ins. Co.* (1987), 31 Ohio St.3d 130, 132, 509 N.E.2d 411.

{¶ 15} Paragraph 18 of the Contract states “* * * Any changes, amendments, deletions or cancellations * * * must be in writing and signed by all parties.” It does not expressly include or exclude the use of email communication, as opposed to a handwritten or typed letter on paper. No other paragraph of the Contract specifically addresses the method of written communication required. Therefore, it was not error for the trial court to

conclude that email communication between the parties was an acceptable form of writing.

{¶ 16} We find that the Contract, which specified cancellation in writing only, contemplated and permitted that writing could be done via email. Nonetheless, we find that Ms. Daney's failure to receive confirmation in writing from Norris is fatal to her case.

{¶ 17} In *Montgomery v. Rojeck Marketing Group, Inc.*, Cuyahoga App. No. 79310, 2002-Ohio-484, this court reviewed a contract that required the signature of both parties when making modifications to its original terms. We held that one party's failure to sign off on a modification as the contract required renders the contract unaltered.

{¶ 18} Paragraph 18 of the Contract clearly requires that in order for cancellation of Norris's services to be effective, written notification must be signed by all parties. We find no ambiguity in the terms of the Contract on this issue.²

{¶ 19} Even if Ms. Daney sent an email in 2007, as the trial court believed she did, there was no evidence or testimony from either party that Norris signed off on the cancellation notice or in any way confirmed receipt of her alleged email. Absent both parties' written acknowledgment that Ms.

² We note that Ms. Daney's letter of June 25, 2007, which changed her wedding date, was also not confirmed by a written response from Norris; however, that prior change to the Contract is not the subject of this appeal.

Daney canceled the Contract 60 days prior to her wedding date, she is bound by its terms as written, including payment of the full balance due and owing.

{¶ 20} Although email would be a proper method of canceling the Contract, the trial court erred by allowing Ms. Daney to cancel the Contract without Norris's also signing off on the written notification. Norris's first assignment of error is sustained, and the decision of the trial court is reversed. Having determined that the trial court erred in finding in Ms. Daney's favor as a matter of law, Norris's second assigned error is moot.

Judgment reversed.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

SEAN C. GALLAGHER, ADMINISTRATIVE JUDGE

FRANK D. CELEBREZZE, JR., J., and
COLLEEN CONWAY COONEY, J., CONCUR