Cite as 2023 Ark. App. 401

ARKANSAS COURT OF APPEALS

DIVISION III
No. CV-22-195

CITY OF BATESVILLE APPELLANT V. INDEPENDENCE COUNTY APPELLEE	Opinion Delivered September 27, 2023 APPEAL FROM THE INDEPENDENCE COUNTY CIRCUIT COURT [NO. 32CV-20-25] HONORABLE HOLLY MEYER, JUDGE AFFIRMED

RAYMOND R. ABRAMSON, Judge

This is an appeal from a final order entered on January 6, 2022, by the Independence County Circuit Court. The parties in this case, the City of Batesville (the City) and Independence County (the County), are in a dispute regarding the funding of the Independence County Jail, particularly whether there was an agreement between the parties to fund the jail; whether the daily rate for the jail fees set out in the County Ordinance 2015-21 (Ordinance 21) applies; whether each party has complied with either an agreement or satisfied the daily rate of the Ordinance; and what, to any extent, is the amount of damages that one party may have caused the other party. The circuit court found in favor of the County, and the City appeals. We affirm.

The City and the County had what could be described as a fragile working relationship. In fact, Batesville Mayor Rick Elumbaugh went so far as to state that there was

a lot of "mistrust." The County operated the District Court and the local detention center. The District Court was the judiciary forum for all cities within the county, and similarly, the county detention center housed inmates for county offenders and for the various cities' offenders.[1] Apparently, for some period of time, the County had required the various cities to contribute their portion of the operational costs of the District Court. The amount of the City's apportionment for the District Court is not contained in the record; however, it is clear from the record that Batesville had been regularly remitting some sort of payments to the County for its portion of the District Court operational costs.

By early 2015, the County became concerned that the costs for housing the inmates (jail costs) at the detention facility was increasing and becoming a burden on the county budget. The quorum court and the county judge began discussions that the various cities should contribute their portion of the jail costs for housing each city's prisoners.

On May 11, 2015, the County passed Ordinance 21, setting a daily rate for housing prisoners of the municipalities. The Ordinance set a daily rate of $150 for the first day of incarceration, and $44 a day thereafter.

ORDINANCE 2015-21

. . . .

AN ORDINANCE ESTABLISHING A DAILY FEE TO BE CHARGED MUNICIPALITIES FOR KEEPING PRISONERS OF MUNICIPALITIES IN THE INDEPENDENCE COUNTY JAIL, DECLARING EMERGENCY, AND FOR OTHER PURPOSES

[1]While our record is not clear how many cities were participants in the District Court and detention center, we do know that the list included the cities of Batesville, Newark, and Pleasant Plains.

> WHEREAS, in the absence of an agreement on jail costs between a county and all municipalities having law enforcement agencies in the county, Ark. Code Ann. 12-41-506 authorizes the quorum court, by ordinance, establish a daily fee to be charged municipalities for keeping prisoners of municipalities in the county jail; and
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> . . . .
>
> WHEREAS, the costs of incarceration are based upon the prior year's expenses and will henceforth be established in January of each year.
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> . . . .
>
> Article 1. The fee to be charged municipalities for keeping prisoners of municipalities in the county jail shall be $150 for the first day of incarceration and $44/day for each subsequent day.

Independence Cnty., Ark., Ordinance 2015-21 (May 11, 2015).

Ordinance 21 did not set forth a procedure on how to collect the jail costs. Further discussions were held.

On July 13, 2015, the County passed Ordinance 2015-31 (Ordinance 31), giving municipalities within the county the opportunity to enter into an alternative agreement to pay for housing prisoners of the municipalities, an agreement that offered a different rate than Ordinance 21. Ordinance 31 also included provisions on how the costs were to be collected from the cities.

ORDINANCE 2015-31

> AN ORDINANCE ADOPTING THE MEMORANDUM OF UNDERSTANDING REGARDING REIMBURSEMENT FOR JAIL EXPENSES BETWEEN INDEPENDENCE COUNTY, ARKANSAS AND THE CITIES AND TOWNS WITHIN INDEPENDENCE COUNTY, ARKANSAS, AND FOR OTHER PURPOSES

. . . .

IT IS THEREFORE hereby agreed that:

Section 1. Payments. To help defray operation costs of the jail, the City agrees to pay thirty percent (30%) of general fine moneys *collected each month* upon tickets, charges and citations adjudicated in District Court on City offenses.

. . . .

Section 4. If the City fails to ratify this agreement, the County may, at its option, impose the charges set out in County Ordinance No. 15 [the per diem rates]; passed by the Quorum Court May 12, 2015.

Section 5. The duration of this agreement shall be one (1) year, subject to extension by agreement of the parties.

Independence Cnty., Ark., Ordinance 2015-31 (July 13, 2015) (emphasis added).

The proposed agreement, which was styled as a Memorandum of Understanding (MOU), was intended to serve as an interlocal agreement and provided that the municipalities would "pay thirty (30%) of fine moneys collected each month upon tickets, charges and citations adjudicated in District Court on City offenses" to offset housing municipal prisoners. While the record is not particularly clear, it is apparent that the County officials and the City officials were having discussions regarding this new reimbursement of "jail costs" with Batesville and the other cities. Many municipalities entered into the MOU; the City did not.

On September 8, 2015, the City passed Resolution 2015-09-03 (the Resolution) addressing jail costs. The Resolution almost mirrored the County's MOU; however, the City changed some of the language. The Resolution acknowledged that the City has the

responsibility to provide detention facilities and that "it is in the best interest of the City to contribute additional funds to the operation of the County Jail." To that end, the Resolution provides the following in pertinent part:

RESOLUTION 2015-09-03-R

. . . .

> Section 1. To help defray operational costs of the jail, the city shall pay Independence County thirty percent (30%) of general fine money *collected and distributed back to the city* each month upon tickets, charges and citations adjudicated in District Court on City Offenses.

Batesville, Ark., Ordinance 2015-09-03 (Sept. 8, 2015) (emphasis added).

The County had properly provided the City with notice of Ordinance 21 and had sent them the MOU contained within Ordinance 31, but the City never provided the County notice of the Resolution. It is apparent that the County intended for the City to be responsible for 30 percent of the fines collected by the District Court regardless of whether the fines were remitted to the City, and the City intended to limit its responsibility to 30 percent of the fines collected by the District Court and distributed to the City. The record showed that the City did not even budget for this 30 percent jail cost because it intended to pay the jail costs from the money remitted to the City from the District Court each month. Clearly, the City did not execute the County's MOU, and there is no evidence that the County explicitly accepted the City's Resolution. So, there was not a binding written agreement between the City and the County.

The jail cost payment plan commenced in July 2015. On August 20, 2015, the county treasurer (County Treasurer) submitted the first invoice to the City for its portion of the new jail fees. The County invoice provided that the total amount of general fines collected by the District Court for Batesville for July 2015 was $9,188.39 and that the City owed 30 percent of that amount, or $2,756.51, to the County. The city treasurer (City Treasurer) testified that she received the invoice from the County Treasurer and advised the County Treasurer that he did not need to send monthly statements and that she could simply calculate the 30 percent total fines collected each month and remit it accordingly. It is unclear whether the County Treasurer agreed; however, that was the billing protocol that the parties undertook from August 2015 until December 2016.

The court heard testimony and reviewed the above documents. The court found that the parties had a "tacit agreement" for the payment of the jail fees for this period. The court did not describe any of the terms of the tacit agreement. And importantly, the court did not determine if the City's responsibility for its portion of the jail expenses was dependent on receiving fine moneys collected from the District Court.

In January 2017, the City stopped making payments to the County for its portion of the District Court operational expenses.[2] This created a financial crisis at the District Court. It appears that there were discussions between the county judge (County Judge) and the Batesville mayor (Mayor) for the purpose of convincing the City to recommence its payments

[2]This issue is not on appeal. It is apparent from the record that there was separate litigation on this issue, and the issues in this case were sometimes conflated with those.

for the District Court costs. Those discussions were fruitless, and the City continued to refuse to make the payments. County Judge Robert Griffin testified that because the City was not paying its portion of the District Court expenses, he "created a court order from the county court ordering the administrative clerk to start remitting [100 percent of the fines collected] directly to the County to run the District Court." The County Judge apparently had statutory authority for doing so. Arkansas Code Annotated section 16-17-707(b)(2) (Supp. 2023) specifically provides the following: "Any district court that is funded solely by the county shall pay all sums collected from the first or second class of accounting records into the county treasury and shall pay all uniform filing fees and court costs collected into the county administration of justice fund."

Early in 2017, the District Court began remitting 100 percent of the fines collected on behalf of the City to the County as payment for the City's portion of the District Court operating costs. That same year, the City stopped paying the County for the housing of municipal prisoners in the county jail. What followed was what could have been expected. The City was operating under its understanding that payment of the jail fees was dependent on receiving its share of fines collected from the District Court to pay its 30 percent of the jail fees. However, per the County Judge's orders, 100 percent of those collected fines were

now being delivered directly to the County as payment of the District Court operational expenses and not toward the City's portion of the jail costs.[3]

In response to the City's cessation of payments, the County Treasurer sent an invoice to the City in May 2017 requesting payment of the jail costs again in the amount of 30 percent of the amount collected by the District Court. The City Treasurer received the invoice and called the County Treasurer. The City Treasurer testified as follows:

> Q: [After the new bill in 2017] did you tell [the County Treasurer], you don't have to worry about sending a bill because we don't have the money to pay this, save a stamp, save an envelope, it's not worth it?
>
> A: I don't know if those were my exact words, but I did tell him that they had all the fine money and he needed to, in my opinion, dedicate thirty percent of all the City's fine money toward the jail for that expense.
>
> . . . .
>
> THE COURT: Okay. Did you or do you know of anybody else on behalf of the City, that communicated to the County, that money you're keeping, thirty percent of it is paying our jail fees?
>
> A: Other than me, no. I don't know of anyone else.

In summary, the City Treasurer told the County Treasurer that the City could not pay the 30 percent invoice because the County had already taken all of the fine money collected. Further, the City Treasurer told the County Treasurer that "he needed to, in my opinion, dedicate thirty percent of all the City's fine money toward the jail for that expense." After

[3]The County filed suit against the City for damages relating to the City's failure to pay its portion of the District Court operational costs. That lawsuit was dismissed and is not contained in this record.

that initial conversation in May 2017, the City Treasurer never heard back from the County and never received any further invoices.

The County Treasurer testified to his recollection of those same events.

Q: Okay. Did you send a bill or remit a bill to the City of Batesville to pay anything for jail fees?

A: Yes . . . [I sent a bill in] approximately 2015 . . . [and] again in 2017, I started sending a bill again.

Q: Okay. Why did you stop sending a bill in 2015?

A: [The City Treasurer] had called me and said that she could times the District Court fines times thirty percent and send a check.

. . . .

Q: Okay. You said, again, in 2017 you sent a bill?

A: I did.

Q: And who did you send that bill to?

A: To—I believe it was just addressed to the City of Batesville.

Q: And what became of that bill?

A: Nothing. . . . I got a phone call, and the City Treasurer] said, save your stamp, save your envelope, it's not in my budget, I can't pay it. . . . So . . . that was the last bill I sent.

Q: Okay. Did you ever have any conversations with the sheriff concerning the bills? Sending bills to the City of Batesville?

A: No.

The testimony of the City Treasurer and the County Treasurer are remarkedly similar. After the County Treasurer sent one invoice in May 2017 for 30 percent of the fines collected by

the District Court, the City Treasurer said she could not pay it because the County took the fine money, no further discussions were had by either party, and no further invoices were sent by the County.

On February 18, 2020, the County filed suit against the City, seeking payment from the City for housing its "municipal prisoners" in the Independence County Jail. The County relied on Arkansas Code Annotated section 12-41-506, which provides:

> (a)(1) In the absence of an agreement on jail costs between a county and all municipalities having law enforcement agencies in the county, the quorum court in a county in this state may by ordinance establish a daily fee to be charged municipalities for keeping prisoners of municipalities in the county jail.
>
> (2) The fee shall be based upon the reasonable expenses which the county incurs in keeping such prisoners in the county jail.
>
> (b)(1) Municipalities whose prisoners are maintained in the county jail shall be responsible for paying the fee established by the quorum court in the county.
>
> (2) When a person is sentenced to a county jail for violating a municipal ordinance, the municipality shall be responsible for paying the fee established by an agreement or ordinance of the quorum court in the county.
>
> (3) Municipalities may appropriate funds to assist the county in the maintenance and operation of the county jail.
>
> (c)(1) Each county sheriff shall bill each municipality monthly for the cost of keeping prisoners in the county jail.
>
> (2) Each county sheriff shall remit to the county treasurer monthly the fees collected under this section, and such fees shall be credited to the county general fund.
>
> (d) Counties shall give priority to in-county municipalities over contracts for out-of-county prisoners.

Ark. Code Ann. § 12-41-506 (a)–(d) (Repl. 2010).

The County asserted that Ordinance 21 set the jail housing fee for Batesville's municipal prisoners, that no agreement existed between it and the City, and that the City failed to pay for its municipal prisoners in accordance with the ordinance. The City, on the other hand, contended that there was an agreement and that it had satisfied said agreement.

Following a bench trial on August 16, 2021, the circuit court found in favor of the County, holding that (1) no agreement existed between May 2017 and the date of the trial and (2) that Ordinance 21 was "the law" concerning the daily rate for housing municipal prisoners. The circuit court further found that even though the sheriff did not send a bill to the City, as required by statute, the City did not have an agreement with the County, nor did it become absolved of its obligation to pay for its prisoners. In its January 6, 2022 order memorializing its findings, the circuit court also awarded damages to the County in the amount of $174,682.00. This timely appeal followed.

The City's first appellate point is that Arkansas Code Annotated section 12-41-506 creates two mechanisms to defray the costs of housing municipal prisoners in a county jail. Because this is a matter of statutory interpretation, we review the issue de novo. *Magness v. Graddy*, 2021 Ark. App. 119, at 7, 619 S.W.3d 878, 883. This court is "not bound by the circuit court's determination"; however, we "will accept a circuit court's interpretation of the law unless it is shown that the court's interpretation was in error." *Id.* (citing *Brock v. Townsell*, 2009 Ark. 224, 309 S.W.3d 179; *Cockrell v. Union Planters Bank*, 359 Ark. 8, 194 S.W.3d 178 (2004)). Further, in conducting our review, we strive "to reconcile statutory provisions to make them consistent, harmonious, and sensible in an effort to give effect to every part."

Magness, 2021 Ark. App. 119, at 8, 619 S.W.3d at 883 (citing *Ark. Dep't of Corr. v. Shults*, 2018 Ark. 94, 541 S.W.3d 410). Finally, we "will not read into a statute language that was not included by the legislature." *Id.*

Here, the circuit court found there was not an agreement between the two parties. For the circuit court to have found otherwise would have required the court to read into the statute a "remedy" that was not included by the legislature. Nowhere in the statute does it address how an agreement is formed. Instead, the only mention of an agreement occurs in paragraph (a) when the statute establishes that an agreement will supersede a county ordinance as the determiner of a daily rate for housing municipal prisoners. The word "agreement" most certainly does not appear in paragraph (c). Instead, paragraph (c) provides that "[e]ach sheriff shall bill each municipality monthly for the cost of keeping prisoners in the county jail." Here, the City has not shown that the circuit court's interpretation of the law was in error.

In the bench trial, the City argued that the circuit court erred in ignoring paragraph (c) of Arkansas Code Annotated section 12-41-506 and, instead, isolated paragraph (b) of the statute when interpreting it. Having reviewed the record, we disagree.

The circuit court properly considered the statute in its entirety to reconcile all provisions of the statute to ultimately make the statute sensible. In doing so, the circuit court was able to determine the legislative intent germane to the statute's creation. For instance, the circuit court started its ruling by addressing paragraph (a) of the statute, ruling that the County had an ordinance and that it set a reasonable daily rate and that there was no

alternative agreement presented to the court. The court recognized it was important to resolve the issues presented in paragraph (a) before it could move on to determine whether the City had a duty to pay the County pursuant to paragraph (b). The court also found that paragraph (c) was not as important as paragraph (a) to the overarching intent of Arkansas Code Annotated section 12-41-506. As such, we do not find the City's argument that because the sheriff did not send a bill to the City the parties had an alternative agreement to be persuasive.

Ultimately, the circuit court held that the primary purpose of Arkansas Code Annotated section 12-41-506 was to establish who bears the "responsibility" for paying for municipal prisoners housed in a county jail. The court interpreted this statute to mean that the City was obligated to pay for its use of the county jail. However, the City did not, and it is now obligated to pay damages to the County. Because we cannot say the circuit court erred in its interpretation here, we affirm the first appellate point.

The City next argues that pursuant to the doctrine of implied contracts, the circuit court erred in finding that the "tacit" agreement to pay 30 percent of the municipal fines to the County lapsed in 2017, and therefore, it should not be liable for damages based on the daily rate pursuant to Arkansas Code Annotated section 12-41-506.

This court "will not reverse a finding made by the circuit court unless it is clearly erroneous." *Priesmeyer v. Huggins*, 2021 Ark. App. 410, at 6, 637 S.W.3d 274, 278 (citing *Daniel v. Spivey*, 2012 Ark. 39, 386 S.W.3d 424). Further, a clearly erroneous finding must be "clearly against the preponderance of the evidence." *Phifer v. Ouellette*, 2022 Ark. App. 78,

at 5, 641 S.W.3d 48, 52 (citing *Mauldin v. Snowden*, 2011 Ark. App. 630, at 2, 386 S.W.3d 560, 562). A finding is clearly erroneous "when, although there is evidence to support [a finding], the reviewing court on the entire evidence is left with a firm conviction that an error has been committed. *Mauldin*, 2011 Ark. App. 630, at 2, 386 S.W.3d 560, 562 (citing *Omni Holding & Dev. Corp. v. C.A.G. Invs., Inc.*, 370 Ark. 220, 258 S.W.3d 374 (2007)).

In *K.C. Properties of N.W. Arkansas, Inc. v. Lowell Investment Partners, LLC*, 373 Ark. 14, 28–29, 280 S.W.3d 1, 13 (2008), our supreme court set forth the standard for determining whether an implied agreement exists:

> In 1 Williston, *Contracts* § 3 (3d ed. 1957) contracts implied in fact are treated as true contracts arising from mutual agreements and intents to promise where the agreement and promise have not been expressed in words and it is noted at page 11, "The elements requisite for an informal contract, however, are identical whether they are expressly stated or implied in fact." The difference between an expressed contract containing an actual promise and an implied contract where the contract is implied from the conduct of the parties is merely in the mode of manifesting assent and in the mode of proof. Both express and implied contracts are founded upon mutual assent of the parties and require a meeting of the minds. 17 C.J.S. *Contracts* § 3 at pp. 553–54 (1963) [(quoting *Crosby v. Paul Hardeman, Inc.*, 414 F.2d 1, 7–8 (8th Cir. 1969))].
>
> We have held that a contract implied in fact derives from the "presumed" intention of the parties as indicated by their conduct. *Steed v. Busby*, 268 Ark. 1, 593 S.W.2d 34 (1980) (citing *Caldwell v. Missouri State Life Ins. Co.*, 148 Ark. 474, 230 S.W. 566 (1921)). An implied contract is proven by circumstances showing the parties intended to contract by circumstances showing the general course of dealing between the parties. *Id.*

(Citation omitted.)

Here, the City does not meet this burden. The circuit court found that when the City stopped paying for the use of the county jail in May 2017, the agreement lapsed. On appeal,

the City admits there is no agreement but argues an implied contract exists. Mutual agreement is one of the findings a court must make in order to find that an implied contract exists. *See Berry v. Cherokee Vill. Sewer, Inc.*, 85 Ark. App. 357, 155 S.W.3d 35 (2004). And while "a contract may arise by implication from the conduct of the parties [*see Steed v. Busby*, 268 Ark. 1, 593 S.W.2d 34 (1980)]; . . . to be enforceable it must be definite and certain in terms." *Taggart v. Ne. Ark. Rehab. Hosp.*, 316 Ark. 39, 41, 870 S.W.2d 717, 719 (1994) (alteration in original) (citing *Welch v. Cooper*, 11 Ark. App. 263, 670 S.W.2d 454 (1984)).

During the trial, the County and the City presented the court with the MOU concerning jail housing fees as well as the Resolution concerning jail housing fees. During the course of testimony, it became clear that the County intended the MOU to spell out one thing, while the City intended it to spell out another. And by comparing the two, it became evident that the MOU and the Resolution did not mirror one another.

As the circuit court noted, "[I]f you look at the Resolution that the city passed, it doesn't exactly mirror the MOU. And if you look at the MOU, you know, the City kind of thought it was getting one thing, and the County thought it was getting another . . . . [A] lot of things weren't even described in the Resolution or in the MOU." In short, the terms were neither definite nor certain.

There was testimony from the Mayor in which he said he would not sign the MOU due to "mistrust." He stated that the City never sent the Resolution to the County, and when asked how he could rely on the conduct of the parties when there had been so much mistrust, he answered, "I have no comment." The interpretation of the City's actions and the County's

inaction was a factual question for the court to resolve by weighing the testimony and evidence. In light of the City's acknowledgement that it was responsible for its share of the jail costs as set forth in the Resolution,[4] we cannot say that the circuit court erred in finding that an agreement did not exist for the period of May 2017 through the time of trial, and similarly, we cannot hold that the circuit court erred in awarding damages on the basis of Ordinance 21.[5]

In light of the evidence and the testimony presented, we hold that the circuit court did not err in its finding that the parties did not have a mutual agreement and that no implied contract existed. Accordingly, we affirm.

Affirmed.

VIRDEN and HIXSON, JJ., agree.

John Wilkerson, for appellant.

Daniel R. Haney, for appellee.

[4]"[I]t is in the best interest of the City to contribute additional funds to the operation of the County Jail."

[5]The parties do not dispute the circuit court's assessment of damages in the amount of $174,682.