NOT DESIGNATED FOR PUBLICATION
ARKANSAS COURT OF APPEALS
D.P. MARSHALL JR., Judge

DIVISION IV

CA07-21

31 October 2007

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| ELIZABETH FRAWLEY, APPELLANT | AN APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT [CIV 2005-1102] |
| v. | |
| STANLEY and SUE WOOD, and LALAND and GEORGIA BOOTH, APPELLEES | THE HONORABLE JAMES ROBERT MARSCHEWSKI, CIRCUIT JUDGE |
| | AFFIRMED |

Elizabeth Frawley sued Stanley and Sue Wood to recover an alleged $50,000.00 debt by foreclosing a mortgage. After Frawley presented her case at trial, the circuit court granted the Woods' motion to dismiss the lawsuit. Frawley appeals the dismissal and argues that the circuit court erred in considering inadmissible parol evidence.

I.

In February 2004, Frawley made a contract with the Woods to establish a bail-bond company. The contract consisted of several documents executed over a two-day

period. Frawley loaned the Woods $50,000.00. In a "Promissory Note, Security Agreement," the parties agreed that the Woods would use Frawley's $50,000.00, along with $50,000.00 of their own money, to open "Liz and Stan Bail Bonds, Inc." All this money was for a State-required bond in the form of a certificate of deposit. They agreed that, once the company opened and received its State license, Frawley's $50,000.00 loan would be transformed into a 50% ownership interest in the corporation. The Woods also gave Frawley a mortgage on their home and signed a promissory note attached to that mortgage. In a third contemporaneous document, the parties agreed that Frawley would release her mortgage once two things happened: when she showed half ownership in the corporation at the State Licensing Board, and her name was added to the State-required $100,000.00 CD.

Liz and Stan's Bail Bonds opened as planned and operated for about one year. Then it went out of business and the State took the bond.

Frawley sued the Woods, seeking to foreclose the mortgage and collect on the promissory note. Frawley wanted to recover the $50,000.00, plus interest on the loan. Frawley also sued Laland and Georgia Booth. She alleged that the Booths were necessary parties to the action because they held a first mortgage on the Woods' home. The Booths filed a cross-claim against the Woods, seeking one thing: indemnification if the circuit court found them liable to Frawley. After Frawley presented her case at

trial, the circuit court granted the Woods' motion to dismiss.[1] Here is the exchange:

> [Woods' Attorney]: Your Honor, before we put on testimony, I would move to dismiss on grounds that the Plaintiffs have not made their case.
>
> The Court: Granted. I believe that Ms. Frawley had her interest in the company. She got 50% interest in Liz and Stan, Inc., she got a 50% stock certificate, she operated the business, she knew that's what she got. I think she made a commitment that this property that was security for this initial $50,000[.00] would be returned after the business was incorporated, and she didn't do it.

II.

Frawley first argues that the circuit court erred because she made a *prima facie* case on her claim, *Swink v. Giffin*, 333 Ark. 400, 402, 970 S.W.2d 207, 208 (1998), and because the Woods' motion to dismiss was not specific. Viewing the evidence in the light most favorable to Frawley on the merits, we see no error. *Woodall v. Chuck Dory Auto Sales, Inc.*, 347 Ark. 260, 264, 61 S.W.3d 835, 838 (2001).

Frawley contended that she held a mortgage and promissory note signed by the

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[1]The dismissal order did not mention the Booths' cross-claim against the Woods. Because the Booths' claim was solely for indemnification, and was therefore completely dependent on their alleged liability to Frawley, we see no jurisdictional problem. It is clear to us that the dismissal of Frawley's claim, after it was fully litigated, resolved all the claims among all the parties because the Booths now have no basis for indemnification. *McKibben v. Mullis*, 79 Ark. App. 382, 384–85, 90 S.W.3d 442, 444–45 (2002). Therefore, the dismissal order entered by the circuit court was a final order. *Ibid.*

Woods and that the Woods failed to make payments. We agree that the Woods did not repay the note with cash, but that was not the parties' deal. Frawley testified herself out of court by admitting facts that showed the Woods fulfilled the parties' agreement, and thus Frawley had no case. *Cf. Early v. Bankers Life and Casualty Co.*, 959 F.2d 75, 79 (7th Cir. 1992).

On cross-examination, Frawley agreed that she was "going to be a creditor unless [Liz and Stan Bail Bonds, Inc.] got open, at which point [her] interest would then convert to a 50% interest in the company . . .[.]" Frawley admitted that the company opened its doors and operated for about a year. She admitted that she received her 50% ownership interest in the corporation. Frawley also testified that Stan approached her about releasing the mortgage after the business opened. But she never went to the Licensing Board to tell them that she owned half the corporation. Frawley testified that she could not tell the Board about her ownership interest in Liz and Stan Bail Bonds because her bail-bond license had been revoked.

The circuit court dismissed the case based on Frawley's admissions. The court did not, as Frawley asserts, weigh credibility at the motion-to-dismiss stage. *Cf. Rymor Builders, Inc. v. Tanglewood Plumbing Co., Inc.*, __ Ark. App. __, __, __ S.W.3d __, __ (October 10, 2007). The court was entitled to take Frawley at her word and correct to dismiss her case. She testified unequivocally that she got the benefit of the

bargain—a 50% ownership interest in the corporation that eventually failed.

Frawley next challenges, as a procedural matter, the Woods' non-specific motion to dismiss. While we agree that the motion was not specific, we hold that no reversible error occurred. As we read the transcript, the circuit court may well have interrupted the Woods' lawyer as he was moving to dismiss. In any event, the circuit court explained in detail its reasons for granting the motion.

The specific-grounds rule insures that the particular ground asserted for a dismissal or a directed verdict is brought to everyone's attention. *Ouachita Wilderness Institute, Inc. v. Mergen*, 329 Ark. 405, 413–14, 947 S.W.2d 780, 784–85 (1997). Then the other party can respond, the circuit court can rule, and a complete record will be made for appellate review. Here the court's specific, though quick, ruling eliminated any ambiguity about the reason for its decision. Frawley had an opportunity to respond, albeit belatedly. She was present for the Woods' motion and the circuit court's bench ruling. She could have, but did not, argue against it. Nor did she object at that point to the lack of specificity in the Woods' motion. Had she done so, the Woods could have fleshed out their arguments. Frawley therefore waived the no-specificity error that she now asserts. *Pearrow v. Feagin*, 300 Ark. 274, 278, 778 S.W.2d 941, 943 (1989).

III.

Frawley also claims that the circuit court erred by considering parol evidence at trial. When the parties make a clear and integrated contract in writing, the so-called parol-evidence rule requires the exclusion of prior or contemporaneous oral agreements, or prior written agreements, to vary or contradict the terms of the parties' contract. *Faver v. Faver*, 266 Ark. 262, 267, 583 S.W.2d 44, 46 (1979); WILLISTON ON CONTRACTS § 33.1 (4th Ed. 1999). The essence of this substantive rule of law is in the parties' integration of their contract. All antecedent proposals and negotiations are merged into the written contract, and that contract cannot be varied by extrinsic evidence, whether written or oral. *Brown v. Aquilino*, 271 Ark. 273, 275, 608 S.W.2d 35, 36 (Ark. App. 1980). In this case, Frawley did not contend that the parties made no contract or that they modified their contract later.

Extrinsic documents may be snagged by the rule in some circumstances, *e.g., Lower v. Hickman*, 80 Ark. 505, 509–10, 97 S.W. 681, 681–82 (1906), but the documents to which Frawley objected were not. The circuit court correctly refused to exclude a complaint from the Pulaski County circuit court where Frawley had pleaded that she owned 50% of Liz and Stan Bail Bonds, Inc. This document did not offend the rule because it was created after the parties made their agreement. *Faver*, 266 Ark. at 267, 583 S.W.2d at 46. The complaint was another admission by Frawley. Further, the "Promissory Note, Security Agreement" that Frawley also argued was parol

evidence was actually part of the same contract as the combined mortgage/note on which Frawley sued the Woods. The parties made their agreement in multiple documents. And the circuit court had to consider all of the documents together as one contract. *Integon Life Ins. Co. v. Vandegrift*, 11 Ark. App. 270, 276, 669 S.W.2d 492, 495 (1984). The court therefore properly admitted the rest of the parties' contract into evidence.

Likewise, the circuit court did not err by admitting testimony over Frawley's parol-evidence objections. First, the court correctly overruled Frawley's objection to a question about her occupation; Frawley's occupation is not parol evidence about the parties' contract. The court also did not err in admitting what was by then cumulative testimony about the parties' agreement. On cross-examination and on the court's own examination, Frawley acknowledged the circumstances surrounding her entire agreement with the Woods. It is a close call whether this was parol evidence. *Cf. First National Bank of Crossett v. Griffin*, 310 Ark. 164, 168–72, 832 S.W.2d 816, 818–20 (1992). But in this case the point does not matter. Frawley did not object to this testimony when it was first given. We therefore see no prejudice in the court refusing to exclude later cumulative testimony about those same circumstances.

Affirmed.

BAKER and MILLER, JJ., agree.