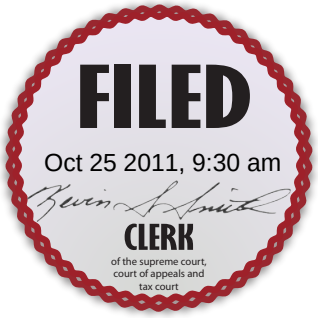

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IN THE
COURT OF APPEALS OF INDIANA

DOROTHY CHANDLER,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 49A02-1102-PL-119
	)	
CHRIS HAIR, individually, d/b/a C&C CONSTRUCTION and d/b/a RIGHT TOUCH SERVICES or another venture or partnership, and JEFF NORRIS,	)	
	)	
Appellees-Defendants.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable David A. Shaheed, Judge

October 25, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Plaintiff Dorothy Chandler appeals from the trial court's order entering judgment on the evidence in favor of Appellee-Defendant Chris Hair, individually, d/b/a C&C Construction and d/b/a Right Touch Services or another joint venture or partnership (collectively "Hair"). Chandler also appeals from the jury's verdict in favor of Appellee-Defendant Jeff Norris. We affirm.

FACTS AND PROCEDURAL HISTORY

In early 2006, Chandler purchased a home on Willcrest Drive in Indianapolis. Prior to moving into the home, Chandler decided to have "some things done to the [home,]" including having all of the rooms painted and the bathrooms and kitchen updated ("the renovation project"). Tr. p. 9. Chandler's real estate agent arranged for Chandler to meet with Tim Jelks regarding the renovation project. During this meeting, at which Chandler, Jelks, and Chandler's real estate agent were present, Chandler detailed the work that she wanted done. Jelks later provided Chandler with a standard work-order form that identified Right Touch Services as the entity that would be performing the work. The work-order form also identified Jelks as the business manager and customer contact for Right Touch Services. The work-order form did not refer to Right Touch Services as a partnership or joint venture.

Chandler used the work-order form to itemize the work she wanted completed during the renovation project. Jelks reviewed the work-order form and provided Chandler with the estimated cost of the renovation project. Upon reviewing the estimate, Chandler hired Right Touch Services to complete the renovation project and paid Jelks a down payment of $4500. Chandler did not meet or see Hair at any time before hiring Right Touch Services to complete the renovation project or paying Jelks the $4500 down payment. Numerous individuals, including Hair, worked on the renovation project on behalf of Jelks and Right Touch Services.

During the renovation project, Chandler saw Hair at the home on two occasions. On one occasion, Chandler noticed that the workers were using the wrong paint color in some of the rooms. Chandler told Hair that the workers were using the wrong paint color before reporting the issue to Jelks. Chandler did not ask Hair if he was in partnership with Jelks, and at no time did Chandler see Hair do any painting or work on any of the bathrooms in the home. Other than the single comment to Hair regarding the paint issue, all of Chandler's communications regarding the renovation project were with Jelks. Chandler also saw Hair at the home on the morning when he came to the home and asked Chandler to give a letter to Jelks. Hair told Chandler that the letter informed Jelks that he was quitting and that he would not be working on the home renovation project anymore. Hair gave Chandler the key to the house that Jelks had given to him and left.

Eventually, the relationship between Chandler and Jelks deteriorated. Chandler hired her brother-in-law, Norris, to complete the renovation project. Among other work, Norris

installed a toilet in the home. Chandler became sick after moving into her home and blamed her illness on exposure to sewer gas caused by an allegedly improperly installed toilet.

On March 6, 2008, Chandler filed suit against Hair and Norris. Chandler filed a second amended complaint against Hair and Norris on December 23, 2009.[1] With respect to Hair, Chandler alleged that Hair was liable for certain damages under theories of negligence and breach of contract because Right Touch Services was a joint venture between Hair and Jelks. With respect to Norris, Chandler alleged that Norris was liable for certain damages under a theory of negligence because he used inadequate wax seals to fix the upstairs toilets.

The trial court conducted a jury trial beginning on June 15, 2010, with Chandler resting her case on June 16, 2010. At the close of Chandler's case, Hair made an oral motion for judgment on the evidence, arguing that Chandler had failed to present sufficient evidence to support her claim that Hair was involved in a joint venture with Jelks and, consequently, that Chandler failed to prove her negligence and breach of contract claims. The trial court granted Hair's request for judgment on the evidence and dismissed all counts against Hair. The trial court also determined that Chandler had failed to establish a medical necessity for treatment, and excluded evidence relating to her claimed medical expenses. The jury trial continued with respect to Chandler's claims against Norris, and on June 17, 2010, the jury found in favor of Norris and against Chandler. Chandler subsequently filed a motion to set aside the directed verdict and a motion to correct error, both of which were denied by the trial court. This appeal follows.

[1] It is unclear from the record when Chandler filed her first amended complaint.

DISCUSSION AND DECISION

Initially, we note that Chandler failed to include the entire transcript for review on appeal. The transcript on appeal consists of only Chandler's trial testimony, and, as such, our review of the record on appeal is limited to Chandler's testimony, the exhibits admitted into evidence during Chandler's testimony, and the procedural documents detailing the history of this matter below.

I. Whether the Trial Court Acted Within Its Discretion in Issuing Judgment on the Evidence in Favor of Hair

Chandler contends that the trial court abused its discretion in entering judgment on the evidence in favor of Hair. The purpose of a motion for judgment on the evidence is to test the sufficiency of the evidence, and the grant or denial of a motion for judgment on the evidence is within the broad discretion of the trial court and will be reversed only for an abuse of that discretion. *Northrop Corp. v. Gen. Motors*, 807 N.E.2d 70, 86 (Ind. Ct. App. 2004) (citing *Hartford Steam Boiler Inspection & Ins. Co. v. White*, 775 N.E.2d 1128, 1133 (Ind. Ct. App. 2002)), *trans. denied*. The relevant portion of Indiana Trial Rule 50 reads as follows:

> Judgment on the Evidence–How Raised-Effect. Where all or some of the issues in a case tried before a jury or an advisory jury are not supported by sufficient evidence ..., the court shall withdraw such issues from the jury and enter judgment thereon....

Ind. Trial Rule 50(A).

On appeal, we use the same standard of review as the trial court in determining the propriety of a judgment on the evidence. *Northrop*, 807 N.E.2d at 87; *Hartford Steam*

Boiler, 775 N.E.2d at 1133. When the trial court considers a motion for judgment on the evidence, it must view the evidence in a light most favorable to the non-moving party. *Northrop*, 807 N.E.2d at 87; *Hartford Steam Boiler*, 775 N.E.2d at 1133. Judgment may be entered only if there is no substantial evidence or reasonable inferences to be drawn therefrom to support an essential element of the claim. *Northrop*, 807 N.E.2d at 87; *Hartford Steam Boiler*, 775 N.E.2d at 1133.

> When reviewing a trial court's ruling on a motion for judgment on the evidence, we examine the evidence and the reasonable inferences most favorable to the plaintiff from a quantitative as well as qualitative perspective. [*Hitachi Const. Mach. Co., Ltd. v. AMAX Coal Co.*, 737 N.E.2d 460, 463 (Ind. Ct. App. 2000), *trans. denied*.] Quantitatively, evidence may fail only where there is none at all; however, qualitatively, it fails when it cannot reasonably be said that the intended inference may logically be drawn therefrom. *Id*. The failure of inference may occur as a matter of law when the intended inference can rest on no more than speculation or conjecture. *Id*.

Hartford Steam Boiler, 775 N.E.2d at 1133.

Joint Ventures

Chandler argues that the trial court abused its discretion in granting judgment on the evidence in favor of Hair because she presented testimony from which one could logically infer that Right Touch Services was a joint venture between Hair and Jelks.

> A joint venture has been defined as an association of two or more persons formed to carry out a single business enterprise for profit. *Byrd v. E.B.B. Farms*, 796 N.E.2d 747, 753 (Ind. Ct. App. 2003), *trans. denied* (citing *Inland Steel* [*v. Pequignot*, 608 N.E.2d 1378 (Ind. Ct. App. 1993)]). For a joint venture to exist, the parties must be bound by an express or implied contract providing for (1) a community of interests, and (2) joint or mutual control, that is, an equal right to direct and govern the undertaking, that binds the parties to such an agreement. *Id*. at 754. A joint venture is similar to a partnership except that a joint venture contemplates only a single transaction. *Id*. A joint venture agreement *must* also provide for the sharing of profits. *Id*.

Walker v. Martin, 887 N.E.2d 125, 138 (Ind. Ct. App. 2008), *trans. denied* (emphasis added).

A joint venture will arise only from an express or implied contract. *DLZ Ind., LLC v. Greene County*, 902 N.E.2d 323, 328 (Ind. Ct. App. 2009) (citing *Byrd v. E.B.B. Farms*, 796 N.E.2d 747, 754 (Ind. Ct. App. 2003)). That relationship might be expressly defined in a contract or it might be implied from the conduct of the parties, but a joint venture will not arise by operation of law. *Id*. (citing *Lafayette Bank & Trust v. Price*, 440 N.E.2d 759, 762 (Ind. Ct. App. 1982)). Nor, notably, does merely calling a relationship a "joint venture" mean that a joint venture exists. *Id*. (citing *Minniear v. Estate of Metcalf*, 153 Ind. App. 213, 216, 286 N.E.2d 700, 703 (1972)). As with all contracts, whether or not there is a joint venture is ultimately a question of the intent of the parties, here, Hair and Jelks.

In the instant matter, Chandler's assertion that Hair and Jelks were involved in a joint venture must fail. *See Walker*, 887 N.E.2d at 138. With respect to joint or mutual control, *i.e.*, an equal right to direct and govern the undertaking, the evidence most favorable to Chandler demonstrates that Jelks gave a key to the home to Hair so that Hair "could let everybody in" and Hair asked Chandler to deliver a letter to Jelks in which Hair told Jelks that he was quitting because "[u]nfortunately I don't believe this venture between us will work out." Exhibit 2. Chandler also testified that on one occasion, Jelks referred to Hair as his business associate.

Further, nothing in the record even suggests that Hair had the right to direct the workers or held any decision-making or extra responsibilities during the renovation project. Hair's name was not listed on any documents relating to Right Touch Services, Chandler did

not meet Hair before receiving the quote from and agreeing to hire Right Touch Services to complete the renovation project, and Chandler conceded that she never asked Hair if he was a partner of Jelks. In addition, apart from one occasion where Chandler told Hair before informing Jelks that the workers were using the wrong paint color, all of Chandler's contact regarding the renovation project was with Jelks. As a result, we conclude that the above-stated evidence and testimony does not support a reasonable inference that Hair had joint or mutual control over the renovation project, *i.e.*, an equal right to direct and govern the renovation project. Moreover, Hair's statement that he was quitting because he did not believe that the "venture" between himself and Jelks would work out is insufficient to prove that a joint venture exists. *See DLZ Ind.*, 902 N.E.2d at 754. Thus, the above-stated evidence and testimony, without more, cannot support a reasonable inference that Hair had joint or mutual control over Right Touch Services.

With respect to the sharing of profits, the evidence most favorable to Chandler demonstrates that Jelks gave Hair money to buy supplies for the renovation project. Tr. p. 17. This fact alone, however, cannot reasonably support an inference that Hair and Jelks intended to share profits. To the contrary, Hair's statement in his resignation letter to Jelks that he was billing for material and labor for the home renovation seems to indicate that Hair was not entitled to profits but rather compensation for his labor and reimbursement for materials purchased for the renovation project.

Upon review, we conclude that the evidence presented could not support a reasonable inference that Hair had joint or mutual control over Right Touch Services or that the alleged

relationship between Hair and Jelks provided for the sharing of profits. Moreover, there is no evidence suggesting that Hair even worked in the bathroom in question, let alone installed the toilet that allegedly leaked sewer gas, and as such, could not support a finding that Hair was individually liable for the allegedly negligent installation of the toilet. Accordingly, we conclude that the trial court acted within its discretion in determining that Hair was entitled to judgment on the evidence.

II. Whether the Jury Verdict in Favor of Norris Should be Set Aside

Chandler also contends that the jury verdict in favor of Norris should be set aside and the matter remanded for retrial because it is unclear whether the jury determined that Norris was not at fault or was "tainted by Hair and the medical bills being out of the case." Appellant's Br. p. 33. Chandler, however, provides no authority supporting her claim that the lack of a clear explanation as to why the jury found as it did necessitates retrial. Moreover, upon review, the record demonstrates that the trial court instructed the jury to return Jury Verdict Form A in favor of Norris if it determined that Norris was not at fault. Following its deliberation, the jury returned Jury Verdict Form A in favor of Norris. Thus, one may reasonably infer that the jury found in favor of Norris because it determined that he was not at fault for Chandler's alleged injuries. We will not disturb this determination.[2]

III. Whether Norris is Entitled to Recover Attorney's Fees

[2] Chandler also contends that the trial court misapplied *Cook v. Whitsell-Sherman*, 796 N.E.2d 271 (Ind. 2003), relating to the admissibility of medical bills, and erred in allowing Dr. Israel to testify because Dr. Israel did not meet the thresholds for expert witnesses under Indiana Rules of Evidence 702(b) and 703. However, we are unable to review these claims because Chandler did not include the portions of the transcript relating to these claims in the record on appeal. Accordingly, we must conclude that Chandler has waived these claims on appeal.

Norris argues that he is entitled to recover attorney's fees from Chandler because her appeal is "utterly lacking in plausibility and merit." Appellee Norris's Br. p. 5. With respect to attorney's fees, Indiana Appellate Rule 66(E) provides that "the Court may assess damages [including attorney's fees] if an appeal, petition, or motion, or response, is frivolous or in bad faith." In the instant matter, while Chandler's claims were ultimately unsuccessful, we cannot conclude that her claims were permeated with bad faith or frivolity. As such, we deny Norris's request for appellate attorney's fees.

The judgment of the trial court is affirmed.

BARNES, J., concurs.

ROBB, C.J., concurs without opinion.