

Commonwealth of Kentucky

Court of Appeals

NO. 2005-CA-002121-MR

THOMAS J. YOUNG

APPELLANT

v. APPEAL FROM SCOTT CIRCUIT COURT
HONORABLE PAUL F. ISAACS, JUDGE
ACTION NO. 02-CI-00490

NEAL CLARKE AND ATLAS FARM, LLC

APPELLEES

OPINION
AFFIRMING

** ** * ** * **

BEFORE: ACREE, DIXON AND KELLER, JUDGES.

ACREE, JUDGE: This is an appeal from the Scott Circuit Court's judgment entered after a bench trial denying the claims of Thomas Young against Neal Clarke and Atlas Farm, LLC, (collectively referred to as "Clarke") and awarding Clarke damages on his counterclaim against Young in the sum of \$1,745.96. After reviewing the record, we find that the circuit court's findings of fact are not clearly erroneous and its conclusions of law are not contrary to law. We therefore affirm the lower court's judgment in all respects.

PROCEDURAL AND FACTUAL BACKGROUND

In September of 2001, Young purchased a farm at auction located in Scott County, Kentucky for approximately \$1.7 million. Clarke resided on the farm for more than six years prior to Young's acquisition. During that period, Clarke managed the farm for the previous owner through Atlas Farm, LLC, a limited liability company created for that purpose. Following the purchase, Young agreed to allow Clarke to remain on the farm as a tenant. This permitted Clarke to continue operation of his thoroughbred horse business consisting of approximately 80 to 90 horses.

Although the parties negotiated some terms of a lease and drafts of a proposed lease were exchanged, a formal written lease agreement between the parties was never executed. Despite the lack of a formal written instrument, the testimony of both parties indicated that they orally agreed to general lease terms that would apply until a formal written agreement could be reached. However, the record shows these terms were not entirely clear even to the parties themselves.

Given that the lease was oral, many details which would normally be included in a written lease, such as time, location and amount of payment, were left unspecified. Consequently, even though Young assumed ownership of the property in October of 2001, Clarke did not make his first payment until April of 2002. Young did not raise objection to this delay, but readily accepted Clarke's check in the amount of \$36,000 for the months of November 2001 through April 2002. In the ensuing months, from May of 2002 until September of 2002, Clarke tendered to Young five more checks,

each in the amount of \$6,000, for a total of \$30,000. During this time, Clarke and Young continued to negotiate the terms of the proposed written lease. However, despite their efforts, a common ground could not be reached. In July of 2002, negotiations broke down completely. In August of the same year, Young demanded that Clarke vacate the farm. Clarke vacated the farm a month later, in September of 2002, and Young took possession of the farm.

After Clarke vacated the farm, Young brought suit against Clarke claiming he was owed damages for back rent and for Clarke's failure to properly maintain the farm during his tenancy. Specifically, Young alleged that Clarke left the manager's house in disrepair and the farm improperly maintained. In addition, because Clarke did not bring it to Young's attention that water was pooling beneath the manager's house where Clarke resided, Young claimed damages for clean-up and repair costs of the house and subsequent lost rental value. Clarke filed a counterclaim against Young to recover \$1,745.96, the amount which Clarke had paid for improvements and expenses that had not been reimbursed, and for lost profits from his detrimental reliance on Young's assurances that he would be able to continue residency at the farm for the foreseeable future.

After considering all the evidence at trial, the Scott Circuit Court found that Clarke had left the house in good repair, had properly maintained the farm, and did not owe Young back rent. It further held that because the pooling of water below the

manager's house existed before Young bought the property, Mr. Clarke was under no duty to advise him of the predicament.

On Clarke's counterclaim, the circuit court found that Young had indeed agreed to reimburse Clarke for the expenses which the court held Clarke paid on Young's behalf. Regarding the claim for detrimental reliance, the court held that even though Clark had reasonably relied on Young's assurances to his detriment, because Clarke failed to prove that his lost profits were due to Young's actions, he could not recover.¹

STANDARD OF REVIEW

Under CR 52.01, the findings of fact of the Scott Circuit Court “shall not be set aside unless clearly erroneous.” Moreover, “due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.” “The trial court's conclusions of law, however, including its interpretation of the . . . contract, are subject to independent appellate determination.” *Morganfield National Bank v. Damien Elder & Sons*, Ky., 836 S.W.2d 893 (1992).

ANALYSIS

Young presents six arguments. His first two arguments challenge the factual findings that Clarke properly maintained the farm and the residence. With respect to the farm, the court found that it “was left in good condition and that no such damages exist.” Regarding the condition of the manager's home, the court found that the “house was in good and orderly repair,” and that the “carpets were clean and the inside of the house was in good repair.” Young claims these findings are clearly erroneous because

¹ This portion of the circuit court's ruling is not before this Court on appeal.

they are contrary to some of the evidenced he presented, particularly his own testimony. But Clarke presented contrary testimony bolstered by photographic evidence of the condition of the farm on the day he vacated the premises. It is clear from our examination of the record, including those photographs, that the trial court's findings that the farm and residence were not in disrepair is properly grounded. We cannot say that the trial court's rulings were clearly erroneous.

Young's third and related argument challenges the trial court's conclusion that he did not present proper evidence of damages. Because we agree with the trial court's ruling that Clarke was not liable for such damages, this argument is moot. The trial court said as much when it stated that “Young offered no testimony regarding the individual items on the bills or that such invoices were incurred *as a result of damages caused by Clarke* or the details of the work performed.” (Emphasis supplied). We interpret this to mean that although Young established that he paid for certain repairs after Clarke vacated the property, he did not establish that Clarke's actions or failures to act made those repairs necessary. That is, Young did not provide sufficient evidence to find that he would not have had to pay for those repairs if Clarke had not been a tenant on the premises.

Young's fourth argument is that the lower court erred when it found that the parties agreed to a monthly rent of \$6,000. Young claimed the parties agreed to rental of \$6,920 per month. Clarke testified that his understanding was that since \$6,000 was the

amount accepted by Young without complaint, it became the agreed upon rental under their oral arrangement.

Young's arguments regarding each of these first four issues are fundamentally flawed in that he presumes that, because they were discussed, all terms proposed to be a part of the written agreement are necessarily part of the oral agreement. We have reviewed the record and arguments made in the briefs and find no evidence to suggest that the tentative oral agreement between the parties included anything beyond a basic month-to-month lease arrangement, which failed to establish even basic terms such as time and amount of payment. Although the oral agreement appeared to require that Clarke maintain the property, there was no set standard by which his maintenance would be measured. Moreover, even though it may have been a fundamental component of the proposed written lease, there is no evidence that Clarke was under any contractual duty to pay \$6,920 under the oral agreement. Thus, to determine the terms of the oral lease beyond what is conceded by the parties in their briefs, we look to the actions of the parties.

Clarke testified that his understanding was that the rental amount would be \$6,000. Acting accordingly, he tendered rent payments to Young totaling \$66,000 over the span of eleven months before being forced to vacate the farm. Whether this was the total rent amount or the net rent amount less \$920 reserved for improvements is not proven by the established terms of the oral lease before the Court or by the evidence presented at trial. That is, there was never a meeting of the minds between Clarke and

Young that this was the computation used to reach the final rental amount. Turning to Young's actions, he accepted the offer of the equivalent of \$6,000 rent for each month without complaint, and without any contractual foundation to show that this amount was in reality only the net payment due after Clarke, by their agreement, held back \$920 per month to make repairs as Young alleged. His acceptance of the \$6,000 was an acceptance of Clarke's offer which demonstrated a meeting of the minds as to that amount. He may have been under the impression that this amount was net of \$6,920, but that impression is not evidence of an agreement to that effect. Simply because it would have been so under his proposed written lease agreement does not, without more, make it a term of the oral agreement. We therefore affirm the lower court's ruling that the actions of the parties with respect to the oral lease established that the rent for the farm was \$6,000.

Young's fifth argument is the court's denial of Young's claim that Clarke should compensate him for lost rent from the date Clarke vacated the property until Young could make repairs to the residence and re-rent the property. Young argues that Clarke's failure to inform him of water accumulation below the residence makes Clarke responsible for lost rent while the repairs were being made.

On this issue, the circuit court held:

(4) A tenant owes no legal duty to the landlord to inform the landlord after the landlord purchased the property occupied by the tenant of any pre-existing conditions on the property which the landlord could have discovered prior to his purchase and Clarke had no duty to inform Young of the pooling water under the house.

Young argues that the court cited no authority for this conclusion of law. Our review of the law reveals nothing that contradicts the trial court's conclusion on this point. Nor has Young pointed us to any contradictory authority. We therefore find that the circuit court correctly held that Clarke was under no duty, absent a contractual obligation creating one, to report the condition of the property to Young and, therefore, Clarke is not liable for his failure to do so.

The final issue is the trial court's ruling on Clarke's counter-claim awarding him expenses incurred during his occupancy of the farm. Clarke testified that Young specifically asked Clarke to advance these expenses on his behalf and that Young further agreed to reimburse Clarke. Though Young presented contradictory testimony, the trial court chose to believe Clarke, holding "these expenses were agreed to be paid by Young." We cannot say that the trial court's finding of such an agreement is clearly erroneous. We therefore affirm the circuit court's ruling on this issue.

CONCLUSION

We find that the Scott Circuit Court's findings of fact, conclusions of law, and judgment are neither clearly erroneous nor contrary to law. We therefore AFFIRM.

ALL CONCUR.

BRIEFS FOR APPELLANT:

John P. Brice
Lexington, Kentucky

BRIEF FOR APPELLEE:

Benjamin Lee Kessinger, III
Lexington, Kentucky