

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-001867-MR

NICOLE BAKER

APPELLANT

v. APPEAL FROM GRANT CIRCUIT COURT
HONORABLE REBECCA LESLIE KNIGHT, JUDGE
ACTION NO. 16-CI-00329

ROBERT M. DAOUST

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: DIXON, GOODWINE, AND MAZE, JUDGES.

DIXON, JUDGE: Nicole Baker appeals from a judgment of the Grant Circuit Court entered upon an involuntary dismissal pursuant to CR 41.02(2). We affirm.

Baker was involved in a romantic relationship with Robert M. Daoust from 2011 to 2015. At the beginning of the relationship, Baker lived in Corinth, Kentucky, with her young son, of whom she shared a 50/50 split parenting time

arrangement with the child's father. When Baker did not have parenting time, she visited Daoust at his home in Alabama. In 2014, Daoust sold his home and used a portion of the proceeds from the sale to purchase a house in Williamstown, Kentucky, for \$16,000. The deed to the property was solely in Daoust's name. The house required major renovations, and the parties rented an apartment in Lexington for eight months while the house in Williamstown was being repaired.

In early 2015, Daoust and Baker moved into the Williamstown property. By Thanksgiving of 2015, the parties had ended their romantic relationship; however, Daoust allowed Baker and her son to continue living at the house with him for approximately eleven months. In September 2016, Daoust listed the property for sale with a realtor for \$69,900. After Baker learned Daoust had received an offer of \$65,000 for the property, she demanded an equal share of the proceeds from the sale. Daoust refused to split the sale proceeds with Baker, and she subsequently filed a complaint in Grant Circuit Court alleging breach of contract and unjust enrichment.

In her complaint, Baker asserted the parties had agreed to equally share the profits from the sale of the Williamstown house in consideration of Baker's physical efforts in the actual renovation and her contribution of \$22,000 toward necessary supplies. Daoust denied the allegations asserted in the complaint, and after a period of discovery, the matter was set for a bench trial.

Baker introduced the testimony of two of the parties' neighbors, Marilyn Fockele and Huey Norman, who described the parties as working together on the renovation project to "flip" the house. Baker testified on her own behalf and introduced documentary evidence to substantiate her claims. According to Baker, she advised Daoust that she did not want her name on the deed to the Williamstown property because of a tax debt she owed to the IRS. Baker opined she worked on the renovations daily for several months performing manual labor that included hanging drywall, and installing flooring, plumbing, and cabinets.

The documentary evidence showed that Baker utilized a checking account in the name of her father's estate, of which she was the administratrix. Baker tendered copies of a \$10,000 check written to Daoust with "death [illegible]" in the memo line, asserting she intended the check to be used for renovation expenses. On cross-examination, Baker conceded, however, that she told Daoust the check was to reimburse him for money he spent on behalf of her father's estate. Likewise, as to checks that were written to "cash", Baker asserted that she gave the cash to Daoust for the renovation expenses. Finally, Baker submitted numerous receipts for supplies but acknowledged that the accounts listed on the receipts belonged solely to Daoust.

At the conclusion of Baker's proof, Daoust moved for involuntary dismissal pursuant to CR 41.02(2). The court granted the motion and rendered

findings of fact, conclusions of law, and judgment of dismissal in favor of Daoust.

This appeal followed.

CR 41.02(2) provides, in relevant part:

In an action tried by the court without a jury, after the plaintiff has completed the presentation of his evidence, the defendant . . . may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. . . . If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52.01.

A motion for involuntary dismissal pursuant to CR 41.02(2) in a bench trial is similar to a motion for directed verdict in a jury trial. *Morrison v. Trailmobile Trailers, Inc.*, 526 S.W.2d 822, 824 (Ky. 1975). Notably however, since the trial court must assess the evidence to render factual findings under CR 41.02(2), the “court does not, as in the case of a motion for a directed verdict, indulge every inference in the plaintiff’s favor.” *Id.* In the case at bar, Baker bore the burden of proof and risk of non-persuasion regarding the issues upon which the court made factual findings. *Id.* (citing CR 43.01). In a bench trial,

[w]hen the trial court makes a finding of fact adverse to the party having the burden of proof and his is the only evidence presented, the test of whether its finding is clearly erroneous is not one of support by ‘substantial evidence,’ but rather, one of whether the evidence adduced is so conclusive as to compel a finding in his favor as a matter of law.

Id.

On appeal, Baker argues the trial court erred by dismissing her claims because she produced evidence that the parties orally agreed she would purchase materials and work on the renovations and, in return, Daoust would give her an equal share of the proceeds from the sale of the property. Baker contends the numerous receipts, canceled checks, and her own testimony established that Daoust was unjustly enriched when he refused to honor their agreement.

“Not every agreement or understanding rises to the level of a legally enforceable contract.” *Kovacs v. Freeman*, 957 S.W.2d 251, 254 (Ky. 1997).

“Under Kentucky law, an enforceable contract must contain definite and certain terms setting forth promises of performance to be rendered by each party.” *Id.*

“One of the essential elements of a contract, if not the most essential element, is the requirement that there be an agreement between the parties.” *King v. Ohio*

Valley Fire & Marine Ins. Co., 212 Ky. 770, 280 S.W. 127, 129 (1926). In the

case at bar, Baker testified as to the parties’ financial arrangements, asserting that she usually reimbursed Daoust when he purchased materials for the house.

According to Baker, she reimbursed Daoust in cash and wrote him a \$10,000 check

as payment toward the renovation expenses. On cross-examination however,

Baker conceded the \$10,000 check was to repay Daoust for expenses relating to

her father’s estate. Baker further acknowledged that she was not certain whether

Daoust used any of the money she gave him for renovation expenses.

The trial court concluded that Baker failed to establish that a contract existed between the parties. After reviewing the record, we agree with the reasoning of the trial court on this issue:

For there to be a Breach of Contract, the Court has to be convinced that a contract (either oral and/or written) was in existence. It is undisputed that there was no written contract between the parties concerning the real estate. That leaves only a cause of action concerning an oral contract. After taking proof on the issue, carefully listening to [Baker] and her witnesses, and judging credibility, the Court as a threshold matter concludes that no contract ever existed because there was not a meeting of the minds between the parties. [Baker], at best, may have had a unilateral belief that she may have been entitled to some proceeds, however, the proof does not support that she and [Daoust] had entered into an agreement that she was to receive any proceeds upon the sale of the home.

The trial court properly dismissed Baker's breach of contract claim pursuant to CR 41.02(2).

As to Baker's claim for unjust enrichment, the trial court concluded dismissal was proper pursuant to *Mullins v. Mullins*, 797 S.W.2d 491(Ky. App. 1990). Baker argues *Mullins* is factually distinguishable and must be narrowly construed.

Mullins involved a husband and wife who lived in a home owned by the husband's father. *Id.* at 492. During the marriage, the couple made improvements to the house using marital funds. *Id.* When the couple subsequently

divorced, the wife sought to recover a portion of the marital funds spent on the improvements. *Id.* A panel of this Court affirmed the trial court's determination the wife was not entitled to recover any of the funds under an unjust enrichment theory because she did not have title to the property. *Id.* at 493. The Court explained:

Under *Anglin v. Pennington*, 296 Ky. 142, 176 S.W.2d 277 (1943), only '[o]ne who actually believes, and has no reason to believe to the contrary, that his title is good, is entitled to recover the enhancement in value resulting from the improvements which he erects.' Testimony by appellant clearly shows she knew title rested in Jesse. . . . Because appellant knew she had no title, she is precluded from recovery under an unjust enrichment theory.

Id.

Despite Baker's argument to the contrary, we believe *Mullins* is applicable to the circumstances presented here. Although Baker believed she was contributing to the value of the house, it was undisputed that she knew the deed was in Daoust's name only. According to Baker, she did not want her name on the deed because of a tax debt she owed to the IRS. Baker further acknowledged that Daoust used his own money to pay the \$16,000 purchase price. Here, as in *Mullins*, Baker could not prevail on a theory of unjust enrichment because she knew she did not have title to the property. *See id.* The trial court properly dismissed Baker's unjust enrichment claim.

For the reasons stated herein, the judgment of the Grant Circuit Court
is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

Steven N. Howe
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