STATE OF MICHIGAN

COURT OF APPEALS

MARTHA DIAZ WILLIAMS,

Plaintiff-Counterdefendant-Appellant,

v

CAROL BROWN,

Defendant-Counterplaintiff-Appellee.

UNPUBLISHED
May 12, 2000

No. 213931
Mason Circuit Court
LC No. 96-011386-CZ

Before: Jansen, P.J., and Hoekstra and Collins, JJ.

PER CURIAM.

Plaintiff appeals as of right from a final order in this action to dissolve a purported partnership. We vacate the trial court's opinion and order and remand.

This case arises out of an agreement between the parties, who are sisters, and their mother concerning the use of a leasehold interest in a cottage located in the Epworth Assembly in Ludington, Michigan. After the mother's death, the relationship between the sisters deteriorated and disputes arose about the use of the cottage, which led to this action.

Plaintiff first argues that the trial court erred by failing to find that a partnership was created because the parties stipulated to the existence of a partnership agreement. We disagree. The determination of whether a partnership exists is a question of fact. *Miller v City Bank & Trust Co*, 82 Mich App 120, 123; 266 NW2d 687 (1978). This Court reviews a trial court's findings of fact for clear error. *Bracco v Michigan Technological University*, 231 Mich App 578, 585; 588 NW2d 467 (1998).

Under the Michigan Uniform Partnership Act, MCL 449.1 *et seq.*; MSA 20.1 *et seq.*, a partnership is defined as an association of two or more persons to carry on as co-owners a business for profit. MCL 449.6(1); MSA 20.6(1). Our review of the record indicates that the evidence fails to show that the parties formed a partnership. Although the agreement allowed the cottage to be rented if both parties consented, there was no business purpose or profit-making motive to their agreement. Instead, the record shows that this was a family vacation spot that the sisters agreed to share, not a business that they agreed to run. Despite the language in the agreement referring to the sisters as

"partners" and purporting to form a general partnership, no true partnership existed under the act. See MCL 449.6(1); MSA 20.6(1). Thus, the court's implicit finding that no partnership was formed was not erroneous. Moreover, to the extent that the parties' stipulation may have characterized their agreement as rising to the level of partnership formation, it amounted to a legal conclusion regarding the parties' relationship. Stipulations relating to questions of law are not binding. *In re Finlay Estate*, 430 Mich 590, 595-596; 424 NW2d 272 (1988); *In re Ford Estate*, 206 Mich App 705, 708; 522 NW2d 729 (1994).

Plaintiff next argues that the trial court erred by imposing a constructive trust where neither party alleged the creation of a constructive trust or offered proofs showing the creation of one. A careful reading of the court's opinion leads us to conclude that the court did not create a constructive trust. See *Kammer Asphalt Paving Co, Inc v East China Twp Schools*, 443 Mich 176, 188; 504 NW2d 635 (1993) (explaining when imposition of a constructive trust is appropriate); *Reed & Noyce, Inc v Municipal Contractors, Inc*, 106 Mich App 113, 120; 308 NW2d 445 (1981). We are satisfied that the court simply misapplied the label "constructive trust" and that the parties have misunderstood the remedy granted. Because no constructive trust was actually ordered, plaintiff's argument is without merit.

Next, plaintiff argues that the trial court abused its discretion when it failed to dissolve the "partnership" because both parties requested dissolution of their "partnership" and because both parties produced testimony clearly showing their relationship had deteriorated to the point that dissolution of their "partnership agreement" was appropriate. Again, we disagree. As previously discussed, there was no partnership in this case because the agreement between the parties was not entered into to carry on a business. MCL 449.6(1); MSA20.6(1). Thus, there was no partnership to dissolve and the court did not err in denying plaintiff's prayer for dissolution. To the extent that plaintiff argues that the court deprived her of a property interest by making it impossible for her to liquidate her interest, her argument is without merit. The court's order left intact all provisions of the agreement that were not subject to the court's order, and those provisions allow the parties to modify the terms of the agreement and to arbitrate disputes. Therefore, there are means under the agreement by which plaintiff may dispose of any interest she may have pursuant to the agreement should she choose to avail herself of them.

Finally, plaintiff argues that the trial court erred in changing the unambiguous terms of the written agreement between the parties. We agree. In the present case, the trial court's orders were contrary to the agreement and made without authority. As stated above, partnership law does not apply here; however, the agreement entered into is a valid contract. The contract between the parties is unambiguous and, as such, should be construed according to the contractual language. *Kondzer v Wayne County Sheriff*, 219 Mich App 632, 634-635; 558 NW2d 215 (1996) ("[A] well-settled principle of contract law is that a signed contract, complete on its face, unambiguous in its terms, and intended to be a complete integration of the agreement cannot be changed without the consent or subsequent agreement of the parties."). Thus, the court's role is to enforce the plain meaning of the terms of the contract, rather than attempt to fashion some other relief.[1] According to the contract, if a dispute arises, it should be submitted to the arbitrator agreed upon by the parties. We conclude that the trial court erred by disregarding the terms of the contract and formulating its own resolution of the

matter. Instead, the trial court should have utilized strict contract law and enforced the contract as written, including the provision that requires the parties to arbitrate their disputes.

Vacated and remanded for further action consistent with this opinion. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ Joel P. Hoekstra
/s/ Jeffrey G. Collins

[1] For example, rather than enforcing the contract as written, the court essentially rewrote the contract to provide different possession times where the unambiguous contract language clearly delineated the terms of possession.