STATE OF MICHIGAN

COURT OF APPEALS

CHESTER CZUBKO, JR., Plaintiff-Appellee,	UNPUBLISHED September 27, 2002
v	No. 229887 Kalkaska Circuit Court
LOWELL F. HENLINE and JOAN L. HENLINE, Defendant-Appellants.	LC No. 99-006604-CH

Before: Wilder, P.J., and Bandstra and Fitzgerald, JJ.

PER CURIAM

Defendants Lowell and Joan Henline appeal as of right from entry of judgment for plaintiff Chester Czubko, Jr., following a bench trial. We affirm.

I. Facts and Proceedings

In the early 1990s, defendants wanted to purchase a 10-acre parcel of land in Kalkaska County that separated their 69-acre parcel of land from Sickle Lake and the northwest border of their 119-acre parcel.[1] The 10-acre parcel was owned by the state of Michigan, and defendants learned that the state would permit a direct sale to them, rather than conducting a sealed-bid auction, if the owners of the adjoining property would notify the state that they were not interested in purchasing the 10-acre parcel. Because defendants owned the property to the east and west of the parcel, defendants needed the consent of the owners of the property to the north and the south of the parcel. The Husses, the property owners to the north, notified the state that they were not interested in the strip of land. The property to the south was then owned by plaintiff, but was previously owned by his father, Chester Czubko, Sr., and was considered "family" property.[2]

At deer camp in the fall of 1992, defendant Lowell Henline met with plaintiff's father, and the two discussed the sale of the 10-acre parcel. Plaintiff's father told Lowell Henline that

[1] Defendants' 69-acre parcel is located to the west of the lake. Their other parcel, covering approximately 119 acres, begins close to the west side of the lake and extends to the east and south.

[2] By the time of trial, plaintiff had conveyed the property to his sons.

he was interested in purchasing part of the 10-acres because he wanted to build a new cabin on higher ground. In February 1993, a mutual friend of both parties, Robert Johnson, arranged a meeting between plaintiff's father (plaintiff was unable to attend) and Lowell Henline to discuss the sale of the parcel. At that meeting, Chester Czubko, Sr., agreed to indicate to the state that he did not want to purchase the 10-acre parcel. The dispute in this case concerns what Lowell Henline promised in return.

Shortly after that meeting, plaintiff discussed the meeting with his father and wrote Lowell Henline a letter detailing what he perceived to be the terms of the agreement. The letter stated, in part:

> We have agreed to withdraw from any bid process on the condition that, if you were the successful bidder, you would sell me that half of the section that borders the property I currently own at a price of half of your cost.
>
> I believe this accurately portrays our previous conversations. Please contact me if it does not.

Defendants' letter in response stated, in part:

> It seems we have a slight difference in the interpretation of the purchase of the state property. Not having an accurate survey of the particle [sic] it is difficult to say how the parcel lays in reference to your border and mine. . . . . We do agree that the cost would reflect an amount according to what my purchase price is and any additional costs incurred. . . . Let me also assure you that my wife Joan and my heirs are in agreement with me on this matter.

The letter was typed by Joan Henline, and, over her husband's name, she signed the letter "Lowell and Joan." Defendants claim that they believed that they would sell twenty to forty feet of the parcel, but not five acres. They did not, however, expressly communicate their understanding before plaintiff's father, acting with plaintiff's permission, gave the state approval to sell the property to defendants. The sale of the 10-acre parcel to defendants was completed in 1995, but defendants did not notify any of the Czubkos that they had received title to the property. Plaintiff did not learn that the property had been transferred to defendants until 1996, when his father made a Freedom of Information Act request to get the information.

In 1998, plaintiff's father and his uncle, Leo Czubko, confronted Lowell Henline about "closing the deal." Henline informed them that he was not selling five acres to them.[3] Because Henline would not follow through with the agreement, plaintiff filed a complaint requesting specific performance of the agreement and damages for his loss of use of the five acres. Defendants argued at trial that the primary dispute was "what property was subject to the sale that was agreed to between the parties." The trial court, following a bench trial, granted specific performance, concluding that there was a contract for the sale of the southern half of the parcel

[3] His exact words at this encounter are also in dispute. Chester, Sr., and Leo Czubko testified that Henline refused to sell any of the property, but Henline claimed that he said he would sell some of it, but not five acres.

and that the two letters quoted above satisfied the statute of frauds. Even if the writings did not satisfy the statute of frauds, the court continued, plaintiff's part performance of the agreement made the statute of frauds inapplicable. This appeal followed.

II. Standard of Review

We review the trial court's findings of fact in a bench trial for clear error and review de novo its conclusions of law. *Chapdelaine v Sochocki*, 247 Mich App 167, 169; 635 NW2d 339 (2001).

III. Analysis

Defendants claim on appeal that the trial court erroneously concluded that the parties entered into a contract for the sale of land; that any contract that did exist was not enforceable because it did not comply with the statute of frauds; that Joan Henline did not participate in the agreement; and that the trial court clearly erred by finding that the agreement reached was for the sale of the southern half of the parcel. We reject all of defendants' claims.

Regarding the existence of a contract, defendants argue that there was confusion between Chester, Sr., and Chester, Jr. Defendants claim that plaintiff may have proven that a contract existed between defendants and Chester, Sr., but not plaintiff. Chester, Sr., defendants argue, was the person doing the negotiating and plaintiff, in his letter to defendants, spoke in the first person concerning their previous discussions.[4] Defendants did not specifically raise this argument at trial and have failed to demonstrate how any such confusion would invalidate the contract. "It is beyond doubt that the actual mental processes of the contracting parties are wholly irrelevant to the construction of contractual terms. Rather, the law presumes that the parties understand the import of a written contract and had the intention manifested by its terms." *Zurcher v Herveat*, 238 Mich App 267, 299; 605 NW2d 329 (1999).

We find that the trial court properly found that a contract existed between plaintiff and defendants. The essential provisions of a binding contract for the sale of land are: (1) the property; (2) the parties; and (3) the consideration. *Id.* at 290-291. The letters referenced above clearly describe each of these terms. The property is described in plaintiff's letter as "the 10 acres of State owned property bordering Sickle Lake in Springfield Township; Section 14; Kalkaska County" and "that half of the section that borders the property I currently own." The letters also clearly describe the parties to the contract. "A contract meets this requirement by designating 'the names of the buyer and the seller with sufficient certainty so as to identify them.'" *Id.* at 283. Plaintiff's signature and address identify him as the buyer of the parcel, and defendants are identified as the sellers by their names in the letter. The consideration is clearly set forth in plaintiff's statement that "we have agreed to withdraw from any bid process on the condition that, if you were the successful bidder, you would sell me that half of the section that borders the property I currently own at a price of half of your cost," and defendants' response that "we do agree that the cost would reflect an amount according to what my purchase price is and any additional costs incurred."

[4] We note, however, that plaintiff did direct defendants to contact him at *his* address (not his father's) if they disputed the terms of the agreement.

Defendants argue, however, that the "slight difference in the interpretation of the purchase of the state property" that they indicated in their letter prevented the formation of a contract. We disagree. For a response to an offer to be deemed a counteroffer rather than an acceptance, it must change a material term of the offer in a material way. *Zurcher, supra* at 296-297. We find that the "slight difference" defendants noted does not amount to a material change in a material term. In fact, when read in context, the "slight difference" appears not to be a change at all, but merely an acknowledgment that the exact boundaries of the ten-acre parcel had not yet been determined.[5]

Defendants next contend that because the material matters in the agreement were not clear, specific performance was not appropriate in this case. "[T]he power to grant specific performance rests within the sound discretion of the court." *Zurcher, supra* at 300, quoting *Foshee v Krum,* 332 Mich 636, 643; 52 NW2d 358 (1952). Specific performance is not an appropriate remedy where the material terms of the contract are not ascertainable. *Zurcher, supra* at 296. Given our decision that the material terms of this contract were clearly described, we find that the trial court did not abuse its discretion by granting plaintiff specific performance.

Defendants next argue that the agreement did not satisfy the statute of frauds. MCL 566.101 *et seq*. Defendants, however, confuse the *substance* of a binding contract with the sufficiency of its *form* under the statute of frauds by arguing that because the terms of the agreement were not certain, the documents did not satisfy the statute of frauds. "The substance of a binding contract for the sale of land is a subject separate from its sufficiency under the statute of frauds and one that is governed by . . . general contract law . . . ." *Zurcher, supra* at 279. We have already determined that the substance of the letters was sufficient to create a contract for the sale of land. In order for that contract to be enforceable, however, it must comply with MCL 566.108, which states:

> Every contract for the leasing for a longer period than 1 year, or for the sale of any lands, or any interest in lands, shall be void, unless the contract, or some note or memorandum thereof be in writing, and signed by the party by whom the lease or sale is to be made, or by some person thereunto by him lawfully authorized in writing. [MCL 566.108.]

As the Court in *Zurcher* recognized, the statute of frauds is satisfied if the contract is in writing and is signed by the seller or someone lawfully authorized by the seller in writing. *Zurcher, supra* at 277. Defendants did not raise any arguments in the trial court concerning whether the letters did not satisfy the statute of frauds for either of these reasons, and do not do so on appeal.

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[5] This uncertainty does not affect our determination that the property was adequately described in the letters. "A description is sufficient if, when read in the light of the circumstances of possession, ownership, situation of the parties, and their relation to each other and to the property, as they were when negotiations took place and the writing was made, it identifies the property." *Zurcher v Herveat,* 238 Mich App 267, 294; 605 NW2d 329 (1999), quoting *Stanton v Dachille,* 186 Mich App 247, 259; 463 NW2d 479 (1990). In *Zurcher*, this Court found that despite listing the wrong county in the property description, the subject property was satisfactorily described. *Id.* at 293-294.

However, as the trial court found, the statute of frauds does not prevent enforcement of this contract in any event because of plaintiff's part performance. MCL 566.110 provides that "nothing in this chapter contained shall be construed to abridge the powers of the court of chancery to compel the specific performance of agreements, in cases of part performance of such agreements." Plaintiff partially performed the agreement when his father, acting on his behalf, informed Walter Linn of the Department of Natural Resources that the state was free to proceed with the sale to defendants.

Defendants also claim that the agreement is void because Joan Henline did not participate in the negotiations leading up to the formation of the contract and at no time agreed to sell the property. Defendants did not raise this argument in the trial court, so it has not been properly preserved for our review. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999).

Defendants do correctly indicate, though, that the trial court's opinion does not address Joan Henline's participation in the ultimate agreement. Remand, however, is not required here. "A court's failure to find the facts does not require remand where it is manifest that the court was aware of the factual issue, that it resolved the issue, and that further explication would not facilitate appellate review." *People v Legg*, 197 Mich App 131, 134-135, 494 NW2d 797 (1992). We do not need further factual explication to determine that Joan Henline was also a party to the agreement. The evidence shows that she typed the letter stating that she agreed to participate in the sale and then she signed the letter. Moreover, she testified that the letter was composed of "a combination of thoughts of both of us." The trial court's failure to address her as a defendant does not require reversal of its decision.

Finally, defendants contend that the trial court erroneously concluded that the agreement between the parties included land touching Sickle Lake and the favorable high ground on the parcel. Again, their subjective intentions do not affect the validity of the agreement they entered into with plaintiff. Although the precise borders of the land were not certain at the time the agreement was made, the trial court found that defendants agreed to sell the southern half of the 10-acre parcel. Only defendants' testimony supported their claim that the agreement was for the sale of twenty to forty feet, rather than five acres, of the parcel. It is the role of the trier of fact to weigh conflicting testimony, *Forton v Laszar*, 239 Mich App 711, 717; 609 NW2d 850 (2000), and we defer to the trial court's ability to weigh the evidence. *Nabozny v Pioneer State Mutual Insurance Co*, 233 Mich App 206, 209; 591 NW2d 685 (1998), rev'd on other grounds, 461 Mich 471 (2000). Because the evidence does not clearly preponderate against the trial court's conclusion regarding the amount of land defendants agreed to sell and plaintiff agreed to purchase, we will not disturb its conclusion. *Forton, supra* at 717.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald