STATE OF MICHIGAN

COURT OF APPEALS

RICK HESSE,

Plaintiff/Counter-Defendant-Appellant,

v

SUPERIOR BUSINESS FORMS, INC.,

Defendant/Counter-Plaintiff-Appellee.

UNPUBLISHED
February 19, 2008

No. 274357
Kalamazoo Circuit Court
LC No. 05-000081-CZ

Before: Markey, P.J., and Meter and Murray, JJ.

PER CURIAM.

In this breach of contract action, plaintiff appeals as of right from the trial court's order that dismissed his complaint, granted judgment for defendant on its counterclaim, and reformed the contract at issue. We affirm.

Defendant employed plaintiff for between 17 and 18 years. Plaintiff held the office of treasurer for defendant. In January 2003, defendant's president, William English, informed plaintiff that he would soon be replaced. At this time, English also told plaintiff that defendant would provide a severance package to take care of plaintiff's family. English mentioned the possibility that severance pay would last for 15 months. A few months later, plaintiff approached English and requested that severance payments be made for 17 months, to coincide with plaintiff's years of service. Plaintiff's notes from this meeting indicate that a discussion took place regarding the reimbursement of plaintiff's health insurance costs for the same amount of time that severance payments were being made. On July 7, 2003, English provided plaintiff with a copy of a separation agreement. The agreement contained terms related to confidentiality, competition, health insurance, and severance payments.

The agreement as signed by plaintiff stated, in part:

> Employer Obligations. In consideration for the mutual promises and covenants set forth herein, including Employee's full and complete release contained in paragraph 4 of this Agreement, Employer agrees to pay Employee severance pay in the amount of $1,850 per week less applicable withholding for FICA, Medicare and state and federal income taxes (hereinafter referred to as "Severance Pay"). The Severance Pay shall be paid in equal installments on

> Employer's regular pay day, less applicable withholding for FICA, Medicare and state and federal income taxes, commencing upon the expiration of the Revocation Period described in paragraph 6 of this Agreement or the Effective Date, whichever is later. In addition to the Severance Pay, for so long as Employer maintains a health insurance plan and Employee elects to continue his coverage pursuant to COBRA, Employer agrees to reimburse Employee for Employee's monthly health premiums to cover Employee and his family (in accordance with his coverage elections made prior to execution of this Agreement) due under COBRA for coverage under the Company health plan then in effect, until December 31, 2004. Employer's obligation to pay Severance Pay shall automatically terminate on the date Employee accepts a position with a new employer. Employer's obligation to reimburse Employee for health insurance premiums shall automatically terminate in the event Employee obtains health insurance from a new employer or through his spouse. In the event of a breach of this Severance Agreement or the Confidentiality and Non-Compete Agreement signed by Employee as a condition of receiving Severance Pay, then Superior shall be entitled to terminate the installments of unpaid Severance Pay and recover any Severance Pay which has been paid to Employee.

Plaintiff unilaterally interpreted this paragraph to mean that severance payments would continue until he became reemployed but that health benefits would cease on December 31, 2004. He indicated that he believed that defendant would be willing to offer such security because English knew that plaintiff was extremely hard working and would not be without employment for long.

Defendant made severance payments through December 31, 2004, which was 17 months after defendant's employment ended and which coincided with the date his health insurance reimbursement ended. After payments ended, plaintiff contacted defendant's accounting department to discuss why severance payments had stopped. The accounting manager simply stated that defendant's severance payments had ended. In February 2005, plaintiff filed this action for breach of contract. Eventually, defendant counterclaimed for reformation of the contract on the basis of a mistake in the writing and plaintiff's purported fraud in not bringing the mistake to defendant's attention. After a bench trial, the trial court reformed the contract so that it contained a termination date for severance pay of December 31, 2004, and it found that there was no breach of contract because defendant paid plaintiff through December 31, 2004.

The first issue on appeal is whether the trial court erred when it admitted parol evidence of the parties' contractual intent to interpret the contract. Although we generally review a trial court's decision to admit evidence for an abuse of discretion, "[w]hether extrinsic evidence should be used in contract interpretation is a question of law that this Court reviews de novo." *In re Kramek Estate*, 268 Mich App 565, 573; 710 NW2d 753 (2005). Moreover, whether a contract is ambiguous and whether the contract was properly interpreted are questions of law that we review de novo. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003).

If a contract term is ambiguous, extrinsic evidence is admissible to assist the fact-finder in determining the intent of the parties. *Id*. at 469-470. A contract is ambiguous "when its provisions are capable of conflicting interpretations," *AFSCME Int'l Union v Bank One*, 267 Mich App 281, 283-284; 705 NW2d 355 (2005) (internal citations and quotation marks omitted),

i.e., "if its provisions may be reasonably understood in different ways." *Universal Underwriters Ins Co v Kneeland*, 464 Mich 491, 496; 628 NW2d 491 (2001). When a contract is ambiguous, the fact-finder must determine the meaning of the provisions "in light of the apparent purpose of the contract as a whole, the rules of contract construction, and extrinsic evidence of intent and meaning." *Klapp*, *supra* at 469 (internal citation and quotation marks omitted). Extrinsic evidence is admitted "not to add or detract from the writing, but merely to ascertain what the meaning of the parties is," especially if that evidence reveals the "contemporaneous understanding of the parties." *Id.* at 469-470 (internal citations and quotation marks omitted).

Here, the contract paragraph related to severance pay is ambiguous on its face, because it is subject to differing reasonable interpretations. First, the paragraph at issue can be interpreted so that the sentence indicating the termination date for health insurance reimbursement, i.e. December 31, 2004, also indicates the termination date for severance pay. Second, the paragraph can be interpreted so that there is no specific end date for severance pay but there is instead a contingent event for termination, i.e., plaintiff's reemployment. Because both of these interpretations are possible from the plain language of the contract, the trial court did not err when it admitted extrinsic evidence of the parties' intent so that it could properly interpret and enforce the contract.[1]

Plaintiff argues that the parol evidence rule prohibits the admission of extrinsic evidence, even to interpret an ambiguity, if the contract contains an integration clause. We disagree. By its own terms, the parol evidence rule is limited to contracts that are unambiguous: "[p]arol evidence of contract negotiations, or of prior or contemporaneous agreements that contradict or vary the written contract, is not admissible to vary the terms of a contract *which is clear and unambiguous*." *Hamade v Sunoco, Inc (R & M)*, 271 Mich App 145, 166; 721 NW2d 233 (2006) (internal citations and quotation marks omitted; emphasis added). Furthermore, Professor Corbin has explained that even if a contract contains an integration clause, extrinsic evidence may be necessary, and is permissible, to assist in the interpretation of an ambiguous contract term. 6 Corbin, Contracts (Revised ed), § 578, p 119. Where "the court seeks merely to interpret a contract term, which is to discern the meaning of a term already contained in the contract, the question of whether the parties intended their agreement to be integrated is not relevant." 5 Corbin, Contracts (Revised ed), § 24.12, p 108.

After admitting extrinsic evidence to interpret the contract, the trial court found that there was a mutual mistake and that the parties had had a "meeting of the minds" that severance pay would last for 17 months. It reformed the contract to include a termination date for severance pay of December 31, 2004. The trial court found that originally, each party misunderstood the meaning the other attributed to paragraph two, but that plaintiff became aware of defendant's mistake and chose to ignore it and make unwarranted assumptions about defendant's intentions. The trial court also found that plaintiff and defendant had a meeting of the minds during their

[1] Even if the trial court admitted extrinsic evidence under slightly different reasoning, we will not reverse if a trial court reaches a correct result for inaccurate reasons. *Liggett Restaurant Group, Inc v City of Pontiac*, 260 Mich App 127, 136-137; 676 NW2d 633 (2003).

second meeting and agreed that severance pay would end on December 31, 2004. Although we believe that the trial court misnamed the mistake a "mutual mistake," we agree with the outcome and find that the reformation of the contract was not an error; therefore, we affirm. *Liggett Restaurant Group, Inc v City of Pontiac*, 260 Mich App 127, 136-137; 676 NW2d 633 (2003).

A mistake of fact is a belief that is not in accord with the facts and that "relate[s] to a basic assumption of the parties upon which the contract is made and which materially affects the agreed performances of the parties." *Shell Oil Co v Estate of Kert*, 161 Mich App 409, 421-422; 411 NW2d 770 (1987). A mistake of fact is distinguished from a mistake of law, which is "a mistake by one side or the other regarding the legal effect of an agreement . . . ." *Casey v Auto Owner's Ins Co*, 273 Mich App 388, 398; 729 NW2d 277 (2006). A mistake of law may also occur when the parties err in the way they reduce the contract to writing, so that what is written does not actually reflect the bargain that was made. *Schmalzriedt v Titsworth*, 305 Mich 119-109, 120; 9 NW2d 24 (1943). Although a court will not usually reform a party's mistaken belief about the legal effect of an instrument, and a unilateral mistake is insufficient to warrant reformation, *Casey*, *supra* at 397, where there is clear and convincing evidence that one party knew that the other party's intent was not accurately reflected in the instrument and knew what the other party's intent was, reformation to reflect the other party's intent is permitted. *Mate v Wolverine Mut Ins Co*, 233 Mich App 14, 24; 592 NW2d 379 (1998); *Woolner v Layne*, 384 Mich 316, 318-319; 181 NW2d 907 (1970).

We review a trial court's factual findings for clear error. *Christiansen v Gerrish Twp*, 239 Mich App 380, 387; 608 NW2d 83 (2000). "'A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake has been committed.'" *Id*., quoting *Vivian v Roscommon Co Bd of Comm'rs*, 164 Mich App 234, 238-239; 416 NW2d 394 (1987). After reviewing the entire record, we are not left with a firm conviction that the trial court made a mistake when it found that plaintiff knew of and agreed with defendant's intent but later made unwarranted assumptions with respect to the duration of severance pay.

Plaintiff testified that when he first read the agreement, he was surprised at the severance paragraph and thought that it was a mistake. It was only after rereading it that he apparently decided that defendant had intentionally made severance payments wholly contingent on plaintiff's reemployment. Plaintiff testified that, in coming to this unilateral conclusion, he considered that English knew him well enough to know that plaintiff could not be unemployed for long, because of his strong work ethic. Plaintiff testified that he assumed that defendant must have been willing to take the risk that plaintiff would never gain reemployment, in exchange for the probability that plaintiff would be reemployed very quickly. However, there were no facts on the record to support such an assumption. The only conversations English had with plaintiff with respect to severance payments were made in terms of how many months severance payments would be made, and there was evidence that the parties had agreed to a 17-month duration.

To the extent that the trial court held that the facts gave rise to a mutual mistake, we disagree. If something is "mutual," it is something that is "held in common; shared." *Random House Webster's Collegiate Dictionary* (2000). Because the parties did not both share a mistaken understanding of a material fact or the legal effect of the document, there was no mutual mistake. *Shell Oil*, *supra* at 421-422; *Schmalzreidt*, *supra* at 120. However, we find that

the facts as found by the trial court support that defendant's clear intent was mistakenly omitted from the instrument and that plaintiff knew about this mistake but chose to keep silent and to attempt to take advantage of defendant's mistake. As a result, reformation of the contract to reflect the intention for the severance pay to end on December 31, 2004, was an appropriate remedy. See *Woolner, supra* at 318-319. Therefore, we affirm the trial court's decision on the basis of our alternative reasoning. *Liggett, supra* at 136-137.

We note that our foregoing analysis renders it unnecessary to consider defendant's alternate grounds for affirming the trial court's decision. *Bint v Doe*, 274 Mich App 232, 236; 732 NW2d 156 (2007).

Affirmed.

/s/ Jane E. Markey
/s/ Patrick M. Meter