STATE OF MICHIGAN

COURT OF APPEALS

KAREN BREININGER,

Plaintiff/Counter-Defendant/Appellant,

v

MICHAEL S. HUNTLEY,

Defendant/Counter-Plaintiff/Appellee.

UNPUBLISHED
November 20, 2014

No. 317899
Clinton Circuit Court
LC No. 12-011061-CZ

Before: OWENS, P.J., and MARKEY and SERVITTO, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's grant of summary disposition in favor of defendant on her claims seeking partition of or one-half of the value of the home she asserts they built together. We affirm.

Plaintiff and defendant were involved in a thirteen-year relationship that produced one child. The parties never married, though they became engaged to marry at some point during the relationship. During the vast majority of the relationship, the parties resided together in a mobile home owned by plaintiff. However, in 2006, defendant purchased a vacant lot, in his name only, with funds borrowed from his mother, with the intent that a home be built on the lot. Defendant also obtained a construction loan for the home, in his name only. Construction on the home began shortly after the purchase of the lot, with the parties and their friends and family doing much of the physical work on the home themselves. The parties moved into the home in July 2007. In May 2009, defendant ejected plaintiff from the home, claiming sole ownership of the same.

Plaintiff initiated an action seeking a one-half interest in the home based upon various theories of recovery including express contract, implied contract/promissory estoppel, quantum meruit, unjust enrichment, and joint enterprise/joint venture. The trial court granted defendant's motion for summary disposition premised upon MCR 2.116(C)(7), (8), and (10), finding that because the parties had a meretricious relationship, any contributions plaintiff made toward building the home were voluntarily and graciously made in contemplation of marriage and Michigan did not recognize an action for breach of a contract to marry. The trial court further

found that the statute of frauds barred any claim for an interest in the land because there was no writing demonstrating a present intent to make a future conveyance.

Whether the statute of frauds bars enforcement of a purported contract presents a question of law that this Court reviews de novo. *Zander v Ogihara Corp*, 213 Mich App 438, 441; 540 NW2d 702 (1995). A trial court's ruling on equitable matters is reviewed de novo. *Blackhawk Dev Corp v Village of Dexter*, 473 Mich 33, 40; 700 NW2d 364 (2005). This Court also reviews de novo a trial court's decision to grant or deny a motion for summary disposition. *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197, 202; 731 NW2d 41 (2007).

MCR 2.116(C)(7) authorizes summary disposition on the basis that the claim is barred because of release, payment, or the statute of frauds, among other things. In considering a motion under MCR 2.116(C)(7), we consider all documentary evidence submitted by the parties, viewing the same in a light most favorable to the nonmoving party, and accepting as true the contents of the complaint unless affidavits or other appropriate documents specifically contradict them. *Fane v Detroit Library Comm*, 465 Mich 68, 74; 631 NW2d 678 (2001); *Moraccini v Sterling Heights*, 296 Mich App 387, 391; 822 NW2d 799 (2012).

A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint solely on the basis of the pleadings. *Corley v Detroit Bd of Ed*, 470 Mich 274, 277; 681 NW2d 342 (2004). We again accept all well-pleaded allegations as true and view them in the light most favorable to the nonmoving party. *Zaher v Miotke*, 300 Mich App 132, 139; 832 NW2d 266 (2013). A motion premised upon MCR 2.116(C)(8) should be granted only when no factual development could possibly justify recovery. *Dalley v Dykema Gossett, PLLC*, 287 Mich App 296, 305; 788 NW2d 679 (2010).

Summary disposition is permitted under MCR 2.116(C)(10) where, "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." A motion under MCR 2.116(C)(10) tests the factual support for a claim and must be supported by documentary evidence. *Coblentz v City of Novi*, 475 Mich 558, 567; 719 NW2d 73 (2006).

Plaintiff contends on appeal that she is not precluded from enforcing the unwritten agreement between her and defendant simply because they were involved in a meretricious relationship, and the trial court's conclusion that plaintiff's causes of actions would amount to a resurrection of Michigan's "common law" marriage ignored plaintiff's factual assertions. The trial court did focus almost entirely on the nature of the parties' relationship in rendering its decision. It indicated that "[T]he facts of this case are an everyday event throughout Michigan and the United States of adult people freely choosing to live together without the benefit of marriage, and that's fine . . . . But, if you want the benefits of a divorce, you have to live with the burdens of a marriage, and that didn't happen. I don't know why. It doesn't matter." The trial court related that Michigan abolished common law marriage and that there was no action for breach of a contract to marry. The trial court stated, "Now, I'm told this isn't that simple a case. The truth is, it is that simple a case." The trial court concluded that "What there is, is the understandable and accurate reliance by the plaintiff on the impending marriage that never happened." The court additionally opined that that statute of frauds also barred any claim by plaintiff for an interest in land. Thus, while plaintiff is correct that the trial court's decision

appears to have hinged primarily upon the nature of the parties' relationship, plaintiff is incorrect in her assertion that the trial court's dismissal of her claims was inappropriate.

We shall first address the trial court's conclusion that plaintiff's claim to an interest in the land was barred by the statute of frauds.

MCL 566.108, also known as the statute of frauds, provides:

> 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: Provided, that whenever any lands or interest in lands shall be sold at public auction and the auctioneer or the clerk of the auction at the time of the sale enters in a sale book a memorandum specifying the description and price of the land sold and the name of the purchaser, such memorandum, together with the auction bills, catalog or written or printed notice of sale containing the name of the person on whose account the sale is made and the terms of sale, shall be deemed a memorandum of the contract of sale within the meaning of this section.

The statute of frauds exists for the purpose of preventing fraud or an opportunity for fraud; it is not an instrumentality to be used in aid of fraud or as a stumbling block in the path of justice. *Kent v Bell*, 374 Mich 646, 654; 132 NW2d 601 (quotation omitted).

There is no dispute that the parties did not enter into a written agreement for the conveyance of any portion of the property or home to plaintiff. However, a party's part performance on an otherwise void, oral contract can be sufficient to remove the agreement from the statute of frauds. Under the doctrine of part performance, "[i]f one party to an oral contract, in reliance upon the contract, has performed his obligation thereunder so that it would be a fraud upon him to allow the other party to repudiate the contract, by interposing the statute, equity will regard the contract as removed from the operation of the statute." *Dumas v Auto Club Ins Ass'n*, 437 Mich 521, 540; 473 NW2d 652 (1991) (quotation omitted). The contract to be enforced must be established by clear and convincing evidence. *Guzorek v Williams*, 300 Mich 633, 638-639; 2 NW2d 796 (1942). The partial performance must also be prejudicial to the performing party. *White v Walper*, 299 Mich 109, 115; 299 NW 827 (1941).

Assuming, without deciding, for a moment that plaintiff established the existence of an oral contract between her and defendant by clear and convincing evidence, i.e., that she would contribute her labor and some money toward the home and would receive a one-half interest in exchange, plaintiff has not established that her partial performance was prejudicial to her. Plaintiff testified that after completion of the home, she lived in it for approximately two years. During that time, she received $150 per month in payments from the sale of her mobile home, which she testified she deposited into the parties' joint account. Plaintiff testified that she worked only a short time after they moved into the home and that her income from work for 2007 was approximately $2000. She also received $539 per month in child support. The mortgage on the home was nearly $1000 per month, however, and plaintiff testified that

defendant paid most of the bills for the building of the home and during the time they resided there together and that his name was the only name on the mortgage.

Plaintiff received the benefit of the labor she put into building the home, as the labor allowed her to reside in the home. Thus, the labor was beneficial to her, rather than prejudicial. There is no evidence presented by plaintiff to indicate that her occupation of the home with her two children from a previous relationship, for nearly two years, at minimal cost, was not more than enough to compensate her for the money and labor spent on the home. Simply put, there was no question of material fact that there was no partial performance of an oral contract sufficient to remove the same from the statute of frauds. Summary disposition based upon the statute of frauds was proper.

We further conclude that summary disposition would have been appropriate on plaintiff's claims in any event. Services rendered during a meretricious relationship are presumably gratuitous. *Featherston v Steinhoff*, 226 Mich App 584, 589; 575 NW2d 6 (1997). And, contracts made in consideration of meretricious relationships are not enforceable. *Carnes v Sheldon*, 109 Mich App 204, 211; 311 NW2d 747 (1981). However, the existence of a meretricious relationship does not render all agreements between the parties to be illegal. *Id*. "[A]greements between parties to such a relationship with respect to money or property will be enforced if the agreement is independent of the illicit relationship." *Tyranski v Piggins*, 44 Mich App 570, 573; 205 NW2d 595 (1973). But, recovery may not be based upon contracts implied in law or on quantum meruit. *Featherston*, 226 Mich App at 588. The agreement must be either express or implied in fact, and there must be proof of additional independent consideration. *Id*.

Where the parties do not explicitly manifest their intent to contract by words, their intent may be gathered by implication from their conduct, language, and other circumstances attending the transaction. *Temborius v Slatkin*, 157 Mich App 587, 596; 403 NW2d 821 (1986). A contract implied in fact arises "when services are performed by one who at the time expects compensation from another who expects at the time to pay therefor." *Matter of Estate of Lewis*, 168 Mich App 70, 75; 423 NW2d 600 (1988), quoting *In re Spenger Estate*, 341 Mich 491, 493; 67 NW2d 730 (1954). A contract implied in fact requires proof of expectations of the parties. *Carnes*, 109 Mich App at 213. Lacking proof of these expectations, the presumption of gratuity will prevail. *Id*. The parties' expectations is generally a factual question "to be resolved by consideration of all of the circumstances, including the type of services rendered, duration of services, closeness of relation of the parties, and the expressed expectations of the parties." *Id*. at 213, quoting *Roznowski v Bozyk*, 73 Mich App 405, 409; 251 NW2d 606 (1977).

Pursuant to *Featherston*, plaintiff's claim based upon quantum meruit, being a claim based upon contract implied in law, fails and summary disposition on this claim was appropriate. Similarly, a claim of unjust enrichment is an equitable doctrine wherein courts enforce a fictional contract implied in law to ensure justice is obtained. See *Kammer Asphalt Paving Co, Inc v East China Twp Schools*, 443 Mich 176, 185–186; 504 NW2d 635 (1993). Thus, plaintiff's claim premised upon unjust enrichment also fails and was properly dismissed.

Based upon *Featherston*, plaintiff must base her claim for recovery on an express agreement or an agreement implied in fact and she must necessarily show additional consideration to support the agreement, independent of the parties' relationship. "Valid

consideration for a contract cannot be presumed merely because two parties receive benefit from each other. Rather, a bargained-for exchange is required. The essence of consideration, therefore, is legal detriment that has been bargained for and exchanged for the promise. *Higgins v Monroe Evening News*, 404 Mich 1, 20; 272 NW2d 537 (1978) (Moody, J. joined by Williams and Coleman, JJ.). In short, the determining question is, is plaintiff able to establish a contract or agreement between her and defendant to share in the ownership of the home, without reference to their meretricious relationship?

In her deposition, plaintiff testified that defendant purchased the vacant lot for the home with funds borrowed from his mother, which he paid back without assistance from her, and obtained a construction loan for the home in his own name. Plaintiff testified that she sold her mobile home for $3,000 in cash and put the money from the sale, received in payments of $150 per month, in her and defendant's joint account and that these funds were used toward joint home bills and purchases.

Plaintiff testified that she performed a significant amount of physical work toward the building of the home, but she did not expect any compensation from defendant for this work because defendant said the house was for them. She admitted that her name was never put on the home, at her own request, because she was unsure of the stability of their relationship. In fact, during part of the home construction period, the parties had personal protection orders against each other.

When asked if she had an agreement with defendant as far as being compensated for helping him clear the land to build the home, plaintiff responded, "That would be like you asking your wife if she was going to pay you. He was my significant other. He told me that it was meant for us, so why would I expect him to pay me at that time because it was meant for us?" Plaintiff testified that it was part of the relationship. Plaintiff testified that there was no agreement concerning compensation for any of the other work she performed on the home because she understood that the home was to be for the both of them. Plaintiff testified that she was expecting to get married and have a beautiful home to live in.

Based upon plaintiff's own testimony, there was no express agreement between her and defendant that if she contributed to the building of the home, she would be entitled to an ownership interest in it. There was no bargained-for exchange. *Higgins*, 404 Mich at 20. There also appears to have been no mutual agreement between the parties at any specific point in time that plaintiff was to have an ownership interest in the home. Plaintiff attached the affidavit of Cindy Becker, wherein Ms. Becker swore that before the parties moved into the home defendant told her he was going to put plaintiff's name on the title to the home. At most, this indicates a one-sided intention, with no specific date attached to it, rather than a promise defendant made to plaintiff or an agreement between the two. Plaintiff also testified that at one point defendant was going to put her name on the deed to the home but she refused, because she was unsure if the relationship would last. Thus, when defendant expressed an intent to convey an interest to her, she lacked the intent to accept the conveyance. Plaintiff has identified no other statement by defendant or an expression of agreement between the two that would indicate an agreement that both parties intended that they share ownership of the home. A valid contract requires an offer, acceptance, and mutual agreement, otherwise known as a meeting of the minds to all of the contract's essential terms. *Houghton Lake Area Tourism & Convention Bureau v Wood*, 255

Mich App 127, 149; 662 NW2d 758 (2003). Where there is no mutual agreement, there is no valid express contract, and there is no identified evidence of a mutual agreement in this matter.

There was also no evidence of an implied in fact agreement, because plaintiff clearly testified that she did not expect to be paid for her services and defendant did not expect to pay her for the same. *Matter of Estate of Lewis*, 168 Mich App at 75. More importantly, plaintiff has failed to identify any consideration, independent of the relationship, to support any agreement between her and defendant concerning ownership of the home, whether express or implied in fact.

This is not a case like *Hierholzer v Sardy*, 128 Mich App 259; 340 NW2d 91 (1983), where an oral agreement between a co-habiting couple regarding disposal of a jointly purchased home upon termination of the relationship was honored. In that case, the couple had never married and had contributed equal amounts of money toward the down payment of a house. The plaintiff testified that she had also worked in a hardware store owned by the defendant for a period of seven years, without monetary compensation, and that the defendant had promised that she could have the home they purchased together in exchange for her years of work at the hardware store. *Id*. at 260-261. A panel of this Court found that the agreement between the parties that plaintiff would receive the home was supported by the valuable consideration of the plaintiff's years of service at the defendant's business and that their cohabitation was thus irrelevant to whether the agreement should be enforced. *Id*. at 263-264. In *Hierholzer*, then, the plaintiff identified a specific agreement between the parties wherein her separate services as a business employee were to be compensated through the transference of title to a home.

Here, in contrast, plaintiff has provided no support for any consideration separate and distinct from the parties' relationship. There is no doubt that plaintiff contributed to the building of the home, though the parties dispute the extent of her contributions. However, plaintiff testified that she performed all services on the home and contributed any monies toward the same because she expected to continue her relationship with defendant and live in the home as his wife. Plaintiff's testimony is clear that she worked on the home without expectation of compensation because defendant was her significant other and because she expected to reside in the home, with defendant, once the home was completed. The affidavit of one of plaintiff's children similarly indicates that defendant told them that they would live in the home as "a family." Again, the home's intended use was for plaintiff, defendant, and the children as a family unit, i.e., with plaintiff and defendant in a meretricious relationship. There is no allegation that plaintiff and defendant bargained for plaintiff's services with the understanding that the benefit of plaintiff's service would serve to impose the legal obligation upon defendant of conveying an interest in the home to her. There is no claim that defendant told her, for example, that if she helped with the home, she would be entitled to an ownership interest in it, no matter what the status of their relationship. And, it is undisputed that defendant, alone, undertook the legal obligation of the debt associated with the building of the home in the form of a construction loan and, alone, remains liable for that debt. And, it must be pointed out, plaintiff merely testified that she expected to live in the home; not that she expected to receive title to or an interest in the home as compensation for her services. She did, in fact, reside in the home for nearly two years, and plaintiff testified that during the nearly two years that she lived in the home with defendant, she did not make much money and defendant paid for most of the expenses.

This case also differs from *Tyranski v Piggins*, 44 Mich App 570. In that a case, an unmarried couple (unmarried to each other, but married to other persons) built a home together, with the plaintiff female contributing $10,000 in cash towards its construction. *Id*. at 572. When the defendant male passed away, the plaintiff commenced an action seeking title to the home asserting that an oral agreement existed between the two wherein defendant had agreed to convey the house to plaintiff. The trial court agreed and a panel of this court affirmed, finding that the existence of a meretricious relationship did not defeat the existence of the oral agreement. And, this Court found that an express agreement to convey the home was established by testimony at trial, without reference to the parties' relationship. *Id*. at 574.

In this case, on the other hand, there has been no allegation or testimony that defendant expressly promised to convey an interest in the home to plaintiff, either with or without reference to their relationship. In addition, plaintiff has not alleged that defendant acted in a manner giving rise to the implication that her services would entitle her to an ownership interest in the home, regardless of the parties' relationship. Defendant's actions, rather, give rise to an implication that plaintiff's services were gratuitous based upon the status of their relationship and that she had no interest in the property. Plaintiff testified, for example, that defendant expected her to pay $500 per month to live in the home. While plaintiff was equivocal as to whether this was construed as "rent," she testified that defendant filled out a form indicating that he requested rent from her and sent it to the state, while the parties were still engaged in a relationship. This fact indicates that defendant, according to plaintiff's testimony, did not view plaintiff as one who was entitled to reside in the home as an owner but as one who had to pay for the privilege of living in the home. Had plaintiff and defendant both thought that plaintiff had an ownership interest in the home, she would not have been expected to pay rent to defendant. Plaintiff's claim of express contract and her general reliance on a contract implied in fact were properly dismissed.

Plaintiff also set forth a claim based upon promissory estoppel. Promissory estoppel consists of four elements: "(1) a promise (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of the promisee and (3) that, in fact, produced reliance or forbearance of that nature (4) in circumstances requiring enforcement of the promise if injustice is to be avoided." *Zaremba Equip, Inc v Harco Nat'l Ins Co*, 280 Mich App 16, 41; 761 NW2d 151 (2008). We must exercise caution in evaluating an estoppel claim and should apply the doctrine only where the facts are unquestionable and the wrong to be prevented undoubted. *Novak v Nationwide Mutual Ins Co*, 235 Mich App 675, 687; 599 NW2d 546 (1999). A plaintiff must prove that she was actually damaged as a result of her reliance on the alleged promise of defendant, *Joerger v Gordon Food Service, Inc*, 224 Mich App 167, 173-174; 568 NW2d 365 (1997).

In her promissory estoppel claim, plaintiff asserted that defendant made a promise to her that they would accumulate their assets together and contribute their labor to the construction of the home and that the home would be theirs together. She asserted that the promise was made to induce her to contribute her assets and labor into the home and that it did so induce her and that it would be unjust to allow defendant to benefit from plaintiff's contributions. As previously indicated, plaintiff testified that her contributions were made based upon her expectation that she would be living in the home as defendant's significant other. She has identified no promise made on the part of defendant that the parties would, in fact remain together indefinitely and that the home would thus be theirs together, forever, or that if they parted ways, plaintiff would be

entitled to a share in the home. Plaintiff admitted that defendant obtained the vacant land on which to build the home and obtained a construction loan in his name only. Plaintiff asserted that she and her mother contributed approximately $6,000 toward the home. Plaintiff also admitted that in the nearly two years in which she lived in the home, her income was minimal and that defendant paid the bulk of the expenses for her and her two children from a previous relationship. Thus, it could be argued that defendant did fulfill any asserted promise that the home was theirs together. When the parties were no longer together, however, the home was no longer theirs together. Plaintiff has not alleged or established any way in which she was actually damaged as a result of her reliance on the alleged promise of defendant. *Joerger*, 224 Mich App at 173-174. Her claim of promissory estoppel was properly dismissed.

Finally, plaintiff claimed that she was entitled to a one-half interest in the home based upon joint enterprise/joint venture. We disagree.

A joint venture is, at its core definition, an association to carry out a single business enterprise for a profit. *Kay Investment Co, LLC v Brody Realty No 1, LLC*, 273 Mich App 432, 437; 731 NW2d 777 (2006). There has been no allegation or evidence presented that the building of the home was for a profit. Thus, the parties could not be said to have been engaged in a joint venture. A "joint enterprise" is an undertaking by associates to carry out acts or objectives, under such circumstances that all have an equal voice in directing the conduct of the enterprise. *First Public Corp v Parfet*, 468 Mich 101, 105; 658 NW2d 477 (2003)(citation omitted). This concept is most often used in the context of assessing liability in negligence cases. See, *Berger v Mead*, 127 Mich App 209, 216 n 5; 338 NW2d 919 (1983). Plaintiff has not alleged or established that this concept is applicable to this type of case, nor has she brought forth facts that would suggest she and defendant had an equal voice in directing the building of the home. The trial court thus properly dismissed this claim.

Affirmed.

/s/ Donald S. Owens
/s/ Jane E. Markey
/s/ Deborah A. Servitto