STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1949

Circle Reflection "J" Ranch, LLC, et al.,
Appellants,

vs.

Hightail Rescue, Inc., et al.,
Respondents.

Filed August 13, 2018
Affirmed
Peterson, Judge

Clay County District Court
File No. 14-CV-15-880

Robert G. Manly, Jordan B. Weir, Vogel Law Firm, Fargo, North Dakota (for appellants)

Stacey L. Sever, Anthony S. Morris, Stich, Angell, Kreidler & Unke, P.A., Minneapolis, Minnesota (for respondents)

Considered and decided by Kirk, Presiding Judge; Peterson, Judge; and Stauber, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

PETERSON, Judge

In this appeal from a judgment following a trial to the court, appellant argues that (1) the district court erred by (a) applying equity in a case governed by contract law, and (b) assigning her the burden of proof; and (2) respondent failed to carry the burden of proving her breach-of-contract claim. We affirm.

FACTS

Appellant Jeanne Schindler owns two horses, one named Dusty and the other named Gypsy. Both horses are mares. Respondent Charlotte Tuhy owns and operates Hightail Horse Ranch (Hightail), which boards horses for a fee and also provides horse-breeding services. Schindler and Tuhy entered into a written contract on May 7, 2014, to board Dusty and Gypsy at Hightail.

The contract was for pasture boarding, which included "hay, water, use of a box stall, use of the round pen, wash room, tack room, and barn." The contract specified a monthly boarding fee of $175 per horse due on the first of the month and a $25 late fee for payments received after the fifth of the month. The contract also provided that Schindler would purchase "[a]ny extra supplements and/or feed requested" and "keep up with regular farrier care, vet care, and worming."

Under the contract, Hightail agreed as follows:

> We will take reasonable and prudent care to see that every horse is properly cared for[.] However, owners are responsible for injuries and communicable diseases acquired by their horse. This includes all vet fees and care. We expect you to

> do all the care for the horse. If you cannot get here we will try to help out, and if we do, there may be a charge for time.
>
> . . . .
>
> Management reserves the right to call the vet for any horse, any time we feel it is necessary, at the owner's expense. A reasonable attempt will be made to contact the owner. Owner may leave a list of preferred veterinarians, and we will attempt to find an available vet from the list, in preferred order.

The contract also provided that Hightail "has the right of lien, as set forth in ND and MN law for the amount due for board and additional agreed upon services and shall have the right without process of law to retain above horses until indebtedness is satisfactorily paid in full." The last line in the contract provided that the mares were at Hightail to be exposed to an unnamed breeding stallion.

After leaving the horses at Hightail on May 7, 2014, Schindler returned to her home in Alaska. The horses were exposed to a stallion from May 7 through August 1. Although Tuhy knew that the horses were at Hightail only for breeding purposes, she did not contact Schindler to pick up the horses. Schindler did not try to contact Tuhy at all from May 2014 until November 2014, and she did not make the monthly payments required under the boarding contract.[1]

In August 2014, Gypsy became ill. Tuhy attempted to contact Schindler by telephone, but she was unsuccessful because Schindler had limited cellphone service in

[1] Schindler had previously boarded horses at Hightail without signing a contract, and she did not pay boarding fees until she went to pick up the horses.

Alaska. Tuhy made her own diagnosis of Gypsy's condition, used her own home remedy for a respiratory condition, and kept Gypsy in a private pen.

Tuhy contacted Schindler in November 2014 requesting payment for the overdue boarding fees and for additional services provided due to Gypsy's respiratory condition and a corneal ulcer that required veterinary services in October 2014. Tuhy submitted an invoice to Schindler for $3,531.54, which included $2,450 for boarding fees for seven months, late fees, and additional amounts for farrier service and the additional services that Gypsy received. Schindler paid $2,275, which was for boarding fees for six and a half months, and disputed the remaining amount.

Tuhy refused to release the horses unless Schindler paid the full invoice, and Schindler refused to pay. In February 2015, appellant Circle Reflection "J" Ranch, LLC, a limited liability company in which Schindler is the sole member, began this lawsuit, seeking a declaration of the parties' rights under the horse-boarding contract, dissolution of any lien claimed against the horses, delivery of the horses, and attorney fees, costs, and disbursements.[2] The horses remained at Hightail, and at the end of May 2015, Dusty gave birth to a foal.

In January 2016, the district court granted Circle Reflection's motion for temporary injunction and ordered that, upon posting $3,000 with the court as security, Circle

[2] As this case progressed, the parties have included other legal entities associated with Schindler or Tuhy, and the pleadings have been amended to dismiss some of those entities. The dismissals do not affect our analysis of the underlying merits of the case, and we will not address them. We will refer to appellants as Schindler and to respondents as Tuhy or Hightail.

Reflection was entitled to immediate possession of the three horses. The horses left Hightail in January 2016. When they left, they were malnourished and in poor physical condition.

The district court's temporary injunction order also ordered Circle Reflection to serve and file an amended complaint adding Schindler as a co-plaintiff. Circle Reflection served and filed an amended complaint that added Schindler as a party and sought the same relief as the original complaint. In her answer to the amended complaint, Tuhy asserted a right to an agister's lien and a counterclaim against Schindler for failing to pay all fees required under the horse-boarding contract. In her answer to the counterclaim, Schindler claimed that Hightail was required to release the horses at Schindler's request in 2014 and denied that Hightail was owed any further boarding fees or other miscellaneous fees because Hightail could have mitigated its damages by simply releasing the horses. In July 2016, the parties entered into a stipulation to permit Schindler to amend her complaint to assert, in addition to her original declaratory-judgment claim, claims for negligence and breach of contract.

Schindler's negligence and breach-of-contract claims were settled in mediation and dismissed, and the parties' remaining claims were tried to the court. The district court found that the primary cause of the parties' dispute was that each party failed "to undertake reasonable efforts to communicate with the other during the period of May to November, 2014 concerning the care and treatment of the horses."

The district court concluded that the parties entered into an unambiguous contract on May 7, 2014, and mutually repudiated and terminated the contract on November 14,

2014. The district court further concluded that Schindler breached the contract during the period May through November 2014 and ordered Schindler to pay for the costs of veterinary services and other special services that the horses received during that period. The district court applied equity principles to determine an amount that it ordered Schindler to pay for services that the horses received during the period from November 2014 until the horses left Hightail in January 2016. This appeal follows.

D E C I S I O N

"On appeal from judgment following a court trial, this court reviews whether the district court's findings were clearly erroneous and whether the district court erred as a matter of law. A finding is clearly erroneous if we are left with the definite and firm conviction that a mistake has been made. We review issues of law de novo." *In re Distrib. of Attorney's Fees between Stowman Law Firm, P.A. & Lori Peterson Law Firm*, 855 N.W.2d 760, 761 (Minn. App. 2014) (citations and quotations omitted), *aff'd*, 870 N.W.2d 755 (Minn. 2015).

Schindler argues that the district court erred by applying equity principles in a case governed by contract law where the parties asserted only contract claims and the evidence presented during three days of trial related only to whether the terms of the contract were met. We agree.

The district court concluded that the parties "mutually repudiated and terminated the contract on November 14, 2014."

> A repudiation by one party to a contract if acquiesced in by the other party is tantamount to a rescission. Whether a contract has been rescinded by mutual consent is a question for the trier

> of fact, but mutual abandonment, cancellation or rescission must be clearly expressed, and acts and conduct of the parties to be sufficient must be positive, unequivocal, and inconsistent with the existence of the contract.

Desnick v. Mast, 311 Minn. 356, 365, 249 N.W.2d 878, 884 (1976).

In its findings of fact, the district court referred to "the approximately 14 months after the parties jointly repudiated the contract." But the district court's findings do not identify any positive, unequivocal acts or conduct of the parties that are inconsistent with the existence of the contract or any clear expression that the parties repudiated the contract. Furthermore, at trial, Schindler sought a declaration of the parties' rights under the contract and Tuhy asserted a claim for breach of contract, which indicates that the parties had not repudiated the contract. We, therefore, conclude that the district court clearly erred in finding that the parties mutually repudiated and terminated the contract and erroneously applied equity principles when determining damages.

But, in spite of this error, we will not reverse the judgment because we have concluded that the amount of damages that the district court awarded for the period from November 2014 through January 2016 is virtually identical to the amount of damages due under the contract.[3] For that period, the district court awarded $8,433.53 for damages. Of

[3] The district court determined that Tuhy effectively abandoned her lien claim by failing to perfect the lien within the statutory period under Minn. Stat. § 514.966, subd. 6 (2016). The supreme court, however, has explained that a lien provides a remedy for enforcing the debt that it secures, but it is not an essential element of the debt. "Notwithstanding the fact that an action to enforce the lien may be barred, still the debt or obligation which it secured may be enforced without the aid of the lien." *In re Estate of Eggert*, 245 Minn. 401, 403, 72 N.W.2d 360, 361-62 (1955). The boarding contract gave Tuhy the right to retain the horses until the debt under the contract was paid in full.

this amount, $6,750 was for general boarding services and $1,683.53 was for the reasonable value of all of the special care, special feed, and veterinary fees provided or incurred by Hightail during the period.

During the time that they remained at Hightail, the horses required additional care beyond basic boarding care. Hightail incurred expenses providing this care. Under the contract, Schindler was expected to care for the horses, but, if she could not do so, Hightail could help out and charge for the time. Hightail also reserved the right to call a veterinarian anytime that it believed it was necessary, at Schindler's expense. These provisions of the contract provide a basis for the district court to award $1,683.53 in damages for special services.

Dusty and Gypsy remained at Hightail for approximately 14 months between November 2014 and January 2016, and the foal remained at Hightail for approximately seven months between May 2015 and January 2016. The district court determined the reasonable market value for boarding services in the area where Hightail was located and awarded Tuhy $6,750, which was one half of the reasonable market value. Under the boarding contract, Schindler was required to pay $175 per month for each horse, which would amount to $2,450 each for Dusty and Gypsy ($175 x 14 months = $2,450) and to $1,225 for the foal ($175 x 7 months = $1,225), or a total of $6,125. In addition, Schindler was required to pay a $25 late fee each month, which would amount to $350 ($25 x 14 months = $350). Together, these amounts total $6,475, and we will not reverse and remand to have the district court deal with the de minimis $275 difference between this amount and the amount that the district court awarded.

Schindler next argues that the district court erred by assigning her the burden of proof. Schindler contends that her claim at trial "was for a declaratory action only, relating only to the charges that arose prior to November, 2014," and Tuhy's counterclaim alleged a breach of contract that extended from November 2014 through January 2016. Schindler argues that it was Tuhy's burden to prove that Tuhy performed under the contract throughout this period, and the district court erred by applying the burden of proof to Schindler.

In its conclusions of law, the district court stated:

> Schindler has failed to meet her burden of proving that Tuhy's failure to provide adequate food and nourishment of the two mares and foal in the period of November 14, 2014 to January, 2016, caused the need for the three horses to receive any specific or additional special services or veterinary care that was provided during that period of time. All of the special services/veterinary care provided to the two horses and foal during that period of time was reasonably necessary, and medically essential, for their health and maintenance. Therefore, Tuhy is entitled to Judgment against Schindler for 100% for those expenses incurred by Hightail/Tuhy during that period of time, in the total sum of $1,683.53.

It is apparent that the district court was addressing damages in this paragraph of its conclusions of law; it was not addressing whether Tuhy performed under the contract. In her counterclaim, Tuhy alleged that Schindler breached the boarding contract by failing to pay all fees required under the contract. Schindler argued that Tuhy's failure to provide adequate care for the horses from November 2014 through January 2016 caused the need for additional services. The supreme court has stated with respect to damages:

> While it is well established in Minnesota that in the case of a breach of contract the injured party must use reasonable

> diligence to minimize his damages, it is also well established that in the case of a breach of contract the burden of proof is upon the defendant to show that damages were or could have been mitigated by reasonable diligence.

Lanesboro Produce & Hatchery Co. v. Forthun, 218 Minn. 377, 381, 16 N.W.2d 326, 328 (1944) (citations omitted).

As the injured party in her action for breach of contract, Tuhy was required to use reasonable diligence to minimize her damages. As the defendant in the action, Schindler had the burden of proving that Tuhy could have mitigated her damages by providing adequate care for the horses. The district court did not err by assigning Schindler the burden of proof.

Finally, Schindler argues that, because the district court found that Tuhy failed to provide reasonable care for the horses, Tuhy failed to carry the burden of proving her breach-of-contract claim. "In order to state a claim for breach of contract, the plaintiff must show (1) formation of a contract, (2) performance by plaintiff of any conditions precedent to his right to demand performance by the defendant, and (3) breach of the contract by defendant." *Park Nicollet Clinic v. Hamann*, 808 N.W.2d 828, 833 (Minn. 2011). Schindler contends that the district court's finding that the horses were in poor physical condition when they left Hightail cannot support a conclusion that Tuhy met her burden of proving performance. We disagree.

The district court found that the horses' poor physical condition when they left Hightail was "a direct result of both parties' inability to communicate consistently with each other concerning special care and services needed for the horses, and, Hightail/Tuhy's

failure to provide reasonable feed and boarding care for the horses during the period of November, 2014 to January, 2016." Under the plain language of the boarding contract, however, Hightail was not required to provide feed and boarding care for the horses. The contract stated that Hightail would provide hay and water, but "[a]ny extra supplements and/or feed requested must be purchased by the boarder." The contract also stated that a horse's owner was expected "to do all the care for the horse." Hightail provided hay and water; the failure to provide additional feed and care was not a failure of performance required of Hightail under the contract. Hightail was not required to provide additional care when Schindler did not do all the care for the horses.

Affirmed.