STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0376

Andrew Brewer,
Respondent,

vs.

Gary Kidrowski, et al.,
Appellants.

Filed September 10, 2018
Affirmed
Halbrooks, Judge

Kandiyohi County District Court
File No. 34-CV-16-566

David T. Johnson, Amundson & Johnson, P.A., Paynesville, Minnesota (for respondent)

Gerald W. Von Korff, Rinke Noonan, St. Cloud, Minnesota (for appellants)

Considered and decided by Halbrooks, Presiding Judge; Bjorkman, Judge; and Hooten, Judge.

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

HALBROOKS, Judge

After a court trial, appellants challenge a judgment awarding respondent $352,631.46 in equitable relief for unjust enrichment stemming from an unsuccessful joint farming operation, arguing that the district court erred by finding that the parties did not form a valid contract. We affirm.

FACTS

Appellants Gary and Lorie Kidrowski are farmers. They own at least 2,400 acres of farmland in western Minnesota. They hired respondent Andrew Brewer to help them with the 2006 fall harvest. Brewer continued helping the Kidrowskis intermittently, working during the 2009 and 2015 fall harvests.

In fall 2016, the Kidrowskis became interested in helping Brewer and his wife start their own farming operation. Gary Kidrowski and Brewer discussed a farming arrangement under which Brewer would rent 950 acres of the Kidrowskis' land and retain the corresponding revenue. The parties never reduced the arrangement to writing.

Brewer and his wife met with a loan agent at a local bank and eventually obtained a $400,215 loan, with a 4.25% interest rate, for 950 acres of farmland. All crops were security for the debt. The Kidrowskis were not parties to the loan agreement.

Brewer then pursued crop and hail insurance. Because Brewer did not have a crop history, he applied for and obtained a crop and hail insurance policy using the Kidrowskis' crop history. Although he obtained an individual policy, Brewer put the Kidrowskis down on his application as "Other Person(s) Sharing in Crop."

Around the same time that Brewer obtained crop and hail insurance, the parties discussed different terms for their arrangement. Instead of farming 950 acres, Brewer would farm 60% of a portion of the Kidrowskis' land. Brewer then obtained an additional loan for $50,050. He also entered into forward contracts with companies to sell corn, soy beans, and silage in fall 2016.

During the 2016 fall harvest, the relationship between the parties started to deteriorate because of increased farming expenses and disagreement over which equipment should be used to harvest certain crops. The relationship was further strained after the Kidrowskis sold navy beans to a company in the Kidrowskis' name and did not share the proceeds with Brewer. Because of the deteriorating relationship, Brewer and his family left the farm in September 2016. The Kidrowskis, who finished harvesting the crops on their own, retained the crops and proceeds from the 2016 fall harvest.

In January 2017, Brewer filed a complaint against the Kidrowskis, claiming breach of contract, civil theft, conversion, unconscionability, and unjust enrichment. The Kidrowskis denied all allegations and filed a counterclaim, alleging fraud, breach of fiduciary duty, and misappropriation of joint-venture funds.

The case proceeded to a court trial. Brewer, his wife, Gary Kidrowski, Lorie Kidrowski, the loan agent, and an agronomist testified. The parties introduced more than 50 exhibits, including insurance and financial records, crop contracts, crop-yield records, a Farm Service Agency (FSA) document, and farm equipment photographs.

The district court dismissed Brewer's breach-of-contract claim, reasoning that the parties never formed a contract due to a lack of mutual assent on essential terms, including the rent-per-acre term, whether the use of machinery was free, and the right of control over crops and proceeds. But the district court concluded that Brewer proved his civil theft and conversion claims because Gary Kidrowski admitted that he sold Brewer's beans. The district court further concluded that the Kidrowskis were unjustly enriched and awarded Brewer $352,631.46 in equitable relief.

The district court dismissed the Kidrowskis' counterclaims for fraud, breach of fiduciary duty, and misappropriation of joint-venture funds, reasoning that the Kidrowskis did not prove that the parties formed a joint venture because the parties did not form a contract due to lack of mutual assent. This appeal follows.

D E C I S I O N

I.

The Kidrowskis argue that the district court clearly erred in finding that the parties did not form an implied contract due to lack of mutual assent. Determining whether an implied contract exists is a question of fact. *Bergstedt, Wahlberg, Berquist Assocs., Inc. v. Rothchild*, 225 N.W.2d 261, 263 (Minn. 1975). The terms and construction of an implied contract are also questions of fact. *Id.* Where, as here, the relevant facts are disputed, we review factual findings as to the existence of an implied contract under a clearly erroneous standard. Minn. R. Civ. P. 52.01. Factual findings are clearly erroneous "if the reviewing court is left with the definite and firm conviction that a mistake has been made." *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (quotation omitted). Under a clearly erroneous standard, we view the evidence in the light most favorable to the district court's findings and defer to the district court's opportunity to assess witness credibility. *In re Stisser Grantor Trust*, 818 N.W.2d 495, 507 (Minn. 2012).

In the absence of an express agreement, "the law may imply a contract from the circumstances or acts of the parties." *Bergstedt*, 225 N.W.2d at 263. Mutual assent between the parties is required to form an implied agreement. *Roberge v. Cambridge Coop. Creamery*, 79 N.W.2d 142, 145-46 (Minn. 1956). Mutual assent requires a "meeting of

the minds concerning [a contract's] essential elements." *SCI Minn. Funeral Servs., Inc. v. Washburn-McReavy Funeral Corp.*, 795 N.W.2d 855, 864 (Minn. 2011) (quotation omitted). Whether mutual assent on essential terms of a contract exists is "tested under an objective standard." *Id.*

Here, the district court determined that no contract was formed because "it [was] clear from the testimony of [Brewer] and [the Kidrowskis] that there are essential terms of the agreement in dispute." The district court determined that the parties did not agree on (1) the rent-per-acre amount, (2) whether using machinery without cost was a term of the agreement, (3) who had authority to sell crops, and (4) how payments and reimbursements were to be made under the arrangement. These disputed terms, the district court reasoned, "were fundamental to the contract and without mutual assent on these terms, no contract could have been created by the parties." The district court concluded that it had been presented with "two, entirely different understandings of what the parties attempted to agree on" and, therefore, could not rely on either to determine if a contract existed.

The district court's factual findings on the construction of an implied agreement and the dispute over its essential terms are supported by the record. *See Bergstedt*, 225 N.W.2d at 263 (stating that the construction of an implied contract and the determination of its essential terms are questions of fact). For the rent-per-acre term, the district found that Brewer understood the rent to be $250, but that Gary Kidrowski understood it to be $270. At trial, Gary Kidrowski testified that the rent per acre was $270. Brewer and the loan agent testified that it was $250. And when Gary Kidrowski was asked at trial if he ever told the loan agent that Brewer's rent would be $250 per acre, he testified, "No."

Regarding the machinery and equipment term, the district court found that Brewer believed that he was not obligated to pay for the use of Kidrowskis' equipment, while the Kidrowskis believed that Brewer was. Brewer testified that if he were required to pay, "[he] wouldn't have come up [to Minnesota]" because there would not have been "enough money there." The loan agent testified that he would not have approved Brewer's loan if Brewer had been required to pay a machinery expense. Gary Kidrowski, on the other hand, testified that Brewer's labor would be credited toward machinery rent. When Gary Kidrowski was asked if the arrangement was that Brewer could use the equipment for free, he replied, "No." When Gary Kidrowski was asked if he would have entered into an agreement under which Brewer could use the equipment for free, he replied, "No."

Concerning the authority-to-sell-crops term, the district court determined that the parties did not agree on who had that authority, reasoning that Brewer understood that he could market 60% of the crops, while the Kidrowskis understood that the parties had joint control over all the crops. Brewer testified that he and the Kidrowskis had their own crops, and that he individually sold his crops through forward contracts and was paid individually for them. But Gary Kidrowski testified that there was an equal right of control over the crops and that there were no crops labeled "Brewer" and "Kidrowski."

With respect to the payment and reimbursement term, the district court determined that the parties did not agree on "how any payments and reimbursements between the two were to be made." Brewer, Gary Kidrowski, and the loan agent all testified that the parties intended to divide the total number of acres 60-40. The FSA document in the record, titled, "Report of Commodities Farm Summary," supports the testimony. But what is not so clear

is what expenses the parties intended to include as part of the 60-40 split and when they were payable. Gary Kidrowski testified that the parties intended to split revenues, inputs, and costs, 60-40. But Brewer testified that he did not believe that machinery and equipment costs were included in the 60-40 split. Because the district court's factual findings on a lack of mutual assent to essential terms are supported by the record, those findings are not clearly erroneous. *Bergstedt*, 225 N.W.2d at 263.

The Kidrowskis nevertheless argue that we should not give deference to the above findings for four reasons. First, the Kidrowskis argue that the district court ignored the parties' course of performance, pointing to the crop and hail insurance paperwork and signed FSA document reflecting that the parties would split the crops 60-40. To be sure, the record includes a jointly signed FSA document reflecting that the parties shared certain crops 60-40. But Brewer testified that he marketed and sold his own crops through forward contracts and that the Kidrowskis did the same. And Gary Kidrowski testified that although the parties intended to split the crops 60-40, the Kidrowskis retained all the crop proceeds for the 2016 fall harvest and did not pay Brewer for his share.

Second, the Kidrowskis argue that the parties' trial testimony that they had formed an agreement proves their mutual assent to specific, essential contract terms. But although the parties testified at trial that there was an agreement, as the district court determined, they also testified to completely different understandings of that agreement and its essential terms. *See id.* (stating that in order to form an implied agreement, the parties must manifest a mutual assent on essential terms).

Third, the Kidrowskis argue that the district court's "approach and its memorandum commits legal error by suggesting that failure to reduce a joint venture agreement to writing is presumptively grounds for declaring that no contract existed." The Kidrowskis maintain that the district court erroneously decided this case based on offer and acceptance principles. We disagree with the Kidrowskis' characterization of the district court's order. The district court did not base its conclusion—that the parties did not form a contract—on the lack of a written agreement or on offer and acceptance principles. Rather, the district court reasoned that the parties did not form a contract because they did not manifest mutual assent to the implied agreement's essential terms.

Fourth, the Kidrowskis argue that the district court erroneously relied on after-the-fact disagreements. The Kidrowskis acknowledge that the parties did not agree on the terms of rent per acre, use of machinery and equipment, and whether certain costs were attributable to a joint venture, but they maintain that those disagreements represent "garden-variety disputes that occur when there is a rupture in a business relationship, whether it is a small closely held corporation, a partnership or joint farming agreement, and the law and equity courts exist to resolve those disputes." We are not persuaded. Brewer testified that he would not have entered into an agreement if he were required to pay machinery and equipment expenses, and Gary Kidrowski testified that he would not have entered into an agreement if he were required to let Brewer use the equipment and machinery for free. The loan agent also testified that he would not have approved Brewer's loan if Brewer had to pay machinery expenses.

The Kidrowskis argue that this case is similar to *Bergstedt*. In *Bergstedt*, a partnership consulted with an architectural firm about adding additional stories to a parking ramp. *Id.* at 262. The parties' conduct in *Bergstedt* continuously manifested intent for the architectural firm to create plans for the parking garage, and the firm was never given a reason to doubt the partnership's understanding of the arrangement. *Id.* The supreme court affirmed the district court's determination that the parties had manifested a mutual assent because the district court's findings were supported by the record. *Id.* at 264.

Here, as discussed above, the record is replete with disagreements on the essential terms of the farming agreement. Unlike in *Bergstedt*, these disagreements provided reasons for the district court, the fact-finder, to doubt the parties' understanding of the arrangement.

Although the parties may have intended to form an arrangement based on a 60-40 acreage split, the district court's finding that the parties never had a meeting of the minds as to what expenses and costs would be included in that 60-40 split, including essential terms such as the rent per acre and equipment use, is well supported by the record. The parties operated under two different understandings of the agreement. Because the district court's findings on the alleged implied contract's essential terms and whether the parties manifested a meeting of the minds on those terms are not clearly erroneous, we conclude that the district court properly determined that there was no mutual assent and, therefore, the parties did not form an implied contract.

II.

The Kidrowskis also argue that the district court erroneously granted Brewer equitable relief without accounting for jointly accumulated expenses, reasoning that "[t]he concept that one member of a joint venture has a right to walk away from the venture with the revenues from jointly produced property leaving the expenses behind is foreign to the equitable concepts applicable to partnership and joint ventures." We review a district court's equitable determination for an abuse of discretion. *Wilson v. Skogerboe*, 379 N.W.2d 696, 698-99 (Minn. App. 1986).

Equitable relief for unjust enrichment requires that "(1) a benefit be conferred by the plaintiff on the defendant; (2) the defendant accept the benefit; [and] (3) the defendant retain the benefit although retaining it without payment is inequitable." *Zinter v. Univ. of Minn.*, 799 N.W.2d 243, 247 (Minn. App. 2011), *review denied* (Minn. Aug. 16, 2011).

Here, the district court first determined that Brewer "made substantial efforts to farm [Kidrowskis'] land, improve the farm and fields, and personally incurred substantial expenses in order to create these benefits and raise a crop." Second, the district court determined that the Kidrowskis accepted those benefits because they "claimed most of the crop proceeds" for the 2016 harvest but did not compensate Brewer. Third, the district court concluded that it would be "morally wrong" for the Kidrowskis to "retain the benefits of [Brewer's] money and labor for little or no compensation to [Brewer]." The district court ultimately awarded Brewer $352,631.46 for expenses incurred and for loan interest.

The Kidrowskis argue that the district court erroneously granted equitable relief because "Brewer stuck Kidrowski with the harvest in difficult times." It is true that Brewer

quit working on the farm in the middle of the 2016 fall harvest, but the district court factored his mid-harvest quit into the equitable-relief equation. Brewer had originally claimed $50,000 worth of labor costs, but the district court reduced it to $25,000, stating that it was "concerned over the labor claim of [Brewer] due to his unilaterally quitting shortly after harvest commenced" because it left the Kidrowskis "harvesting most of the crop without [Brewer's] assistance."

The Kidrowskis also argue that the district court erroneously granted equitable relief because Brewer never disclosed evidence of his recordkeeping before or during trial. We disagree. The district court's remedy is fashioned to put the parties in the same position they were in before they first discussed a farming agreement. District courts are afforded broad deference when fashioning an equitable remedy. *Prince v. Sonnesyn*, 25 N.W.2d 468, 473 (Minn. 1946) ("[I]n equity the kinds and forms of specific remedies are as unlimited as the powers of such courts to shape relief awarded in accordance with the circumstances of the particular case."). Given the broad deference we afford district courts in creating an equitable remedy, we conclude that the district court did not abuse its discretion.

Affirmed.