FILED

11/07/2018

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 18-0026

DA 18-0026

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 267N

EDNA BERGSTROM,

Plaintiff and Appellee,

v.

MICHAEL MARQUART,

Defendant and Appellant.

APPEAL FROM: District Court of the Eighth Judicial District,
In and For the County of Cascade, Cause No. ADV 17-0478
Honorable John W. Parker, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Michael Marquart, self-represented, Great Falls, Montana

For Appellee:

Roberta A. Berkhof, Church, Harris, Johnson & Williams, P.C., Great Falls, Montana

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Submitted on Briefs: October 17, 2018

Decided: November 7, 2018

Filed:

Clerk

Justice Jim Rice delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of non-citable cases published in the Pacific Reporter and Montana Reports.

¶2 Appellant Michael Marquart (Marquart) appeals from the order of the District Court requiring him to vacate the premises owned by Plaintiff and Appellee Edna Bergstrom, and awarding attorney fees to Bergstrom.[1]

¶3 Bergstrom owns residential property in Great Falls (premises or property). During the time of his commitment to the Montana State Hospital at Warm Springs, Marquart received a letter from Bergstrom, stating: "Michael, I want you to know that when you are released, you have a home at [street address], Great Falls, and it will be your home as long as you want to be there. I miss you so much." Marquart moved into the premises on or about April 26, 2017, with Bergstrom's permission. On or about May 5, 2017, Bergstrom and her husband verbally instructed Marquart to vacate the premises. Later in May, Bergstrom sent Marquart a formal written notice to vacate, which Marquart received. However, Marquart refused to vacate, and sent Bergstrom multiple complaints over the next several months about what he perceived to be deficiencies in the property.

[1] Bergstrom is Marquart's mother.

¶4 Bergstrom filed a complaint against Marquart, seeking his eviction from the premises, in July 2017. Marquart filed counterclaims alleging discrimination and retaliation by Bergstrom, premised upon his status as a tenant of the property. The District Court found that, between May 2017 and November 2017, Marquart performed "minimal" lawn care at the premises, but paid no rent to Bergstrom. The District Court determined that "a rental agreement-written or oral, as defined by Mont. Code Ann. § 70-24-103(13), [did] not exist between the parties," concluding Marquart was a "social invitee" rather than a "tenant," as defined in § 70-24-103(16), MCA, he "possess[ed] no property interest in the Premises," and that Bergstrom was entitled to immediate possession of the premises. Further, the District Court awarded Bergstrom $11,128.06 in reasonable attorneys' fees as the prevailing party, pursuant to § 70-24-442, MCA.

¶5 We review a trial court's factual findings to determine if any were clearly erroneous. *City of Missoula v. Mt. Water Co.*, 2016 MT 183, ¶ 20, 384 Mont. 193, 378 P.3d 1113. "Both the existence of a contract and its interpretation are questions of law which we review for correctness." *Junkermier, Clark, Campanella, Stevens, P.C. v. Alborn, Uithoven, Riekenberg, P.C.*, 2016 MT 218, ¶ 26, 384 Mont. 464, 380 P.3d 747.

¶6 On appeal, Marquart argues he had an oral and written agreement with Bergstrom that entitled him to remain on the premises despite Bergstrom's repeated demands for him to vacate. Marquart asserts the District Court erred by preventing him from presenting evidence that Bergstrom discriminated and retaliated against him. However, the District

Court reasoned that Marquart failed to provide evidence of an enforceable agreement between the parties.

¶7 For a contract to be legally enforceable, there must be evidence of a "bargained-for exchange in legal positions between parties." *Junkermier*, ¶ 27 (citation omitted). Adequate consideration "requires that the contracting parties, each as to the other, confer some legal benefit and/or incur some detriment as an inducement to performance." *Junkermier*, ¶ 27 (citation omitted).

¶8 Over the course of two separate hearings, the District Court patiently and repeatedly exhorted Marquart to provide evidence of an oral or written agreement. Marquart referenced Bergstrom's letter, in which she offered him a place to stay upon his release from the State Hospital, as the parties' agreement. After reading the letter in the light most favorable to Marquart, the District Court concluded it constituted only "a unilateral social invitation, which has now been revoked," further describing it as "a loving offer" between a mother and her son, not a "mutual contract or agreement" between parties. The District Court commented, "I have no evidence that you have a property right here. I have evidence that she revoked a social invitation . . .".

¶9 The record indicates that Bergstrom offered the premises for Marquart to live in—property Bergstrom owned and could otherwise use or live in herself—and that permitting Marquart to live there was a detriment or loss to Bergstrom. For his part, Marquart paid no rent and contributed "minimal" lawn care on the property. Marquart argued this yard maintenance was evidence of an oral contract, but the District Court found this to be

insufficient, stating there was "no evidence of any consideration," nor "evidence to suggest that . . . mowing the lawn would in and of itself establish a mutual contract for which there was consideration." The record is void of any indication this minor lawn service, apart from Marquart's independent claims to the contrary, was provided in exchange, and as his consideration for, a tenancy on the premises. Bergstrom suffered the detriment of Marquart's residency in the property but received essentially nothing of value in return. We therefore agree with the District Court that no enforceable agreement existed under which Marquart could claim a property interest or assert any rights, and that Marquart's counterclaims of discrimination and retaliation based upon his asserted tenancy also failed.

¶10 Finally, Marquart has established no error by the District Court's award of attorney fees to Bergstrom pursuant to § 70-24-442, MCA.

¶11 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review. The District Court's ruling was not an abuse of discretion.

¶12 Affirmed.[2]

/S/ JIM RICE

We concur:

/S/ LAURIE McKINNON
/S/ BETH BAKER
/S/ INGRID GUSTAFSON
/S/ DIRK M. SANDEFUR

[2] Marquart argues the District Court and Bergstrom's counsel violated rules of ethical conduct, but these assertions are unsupported by the record.