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NO. COA05-827

NORTH CAROLINA COURT OF APPEALS

Filed: 18 April 2006

ANN JOHNSON,
Plaintiff,

v.

Harnett County
No. 03 CVD 2360

HOME BUILDING CENTER,
Defendant.

Appeal by plaintiff from judgment entered 29 March 2005 by Judge Albert A. Corbett in Harnett County District Court. Heard in the Court of Appeals 7 February 2006.

Stewart Law Firm, by Christopher D. Munz, for plaintiff appellant.

Hayes, Williams, Turner & Daughtry, P.A., by Gerald W. Hayes, Jr., for defendant appellee.

McCULLOUGH, Judge.

Plaintiff Ann Johnson appeals from a district court order finding in favor of defendant Home Building Center on Johnson's claim for payment of money owed. We affirm the challenged order.

Facts

Defendant Home Building Center is in the business of selling building supplies. On 18 October 2003, Home Building Center held a customer appreciation breakfast, which the company advertised in a local paper. The advertisement listed a breakfast consisting of

biscuits, doughnuts, and coffee, a drawing for a \$250 gift certificate, and a "[d]rawing for FREE Glidden Paint" as reasons for customers to come. This advertisement did not mention the quantity or type of Glidden paint that the winner would receive.

The plaintiff Ann Johnson attended the customer appreciation breakfast. While at the event, she enjoyed free ham biscuits and coffee, and she registered for the Glidden paint drawing. The registration form which Johnson completed and entered neither specified the particular type of paint at stake, nor indicated that the selected registrant would be permitted to choose the type of paint she received. However, at the time Johnson entered the drawing, Glidden interior ceiling paint was on display in the store. Further, just before drawing the winning ticket, the store owner announced that the lucky winner would be receiving four gallons of Glidden interior ceiling paint. Johnson was not present for this announcement which came at the end of the customer appreciation breakfast.

Johnson won the drawing, but, in her view, not the prize. When she arrived at the Home Building Center to claim her paint, Johnson was told that she was entitled to four gallons of Glidden interior ceiling paint. She protested that she wanted exterior paint rather than ceiling paint. The proprietor of the Home Building Center told Johnson that she was only entitled to ceiling paint, but he offered to sell Johnson four gallons of exterior paint for the difference in cost between the exterior paint and the less expensive ceiling paint. The difference in cost between

exterior paint and interior ceiling paint at Home Building Center is approximately \$8.00, and four gallons of exterior paint cost approximately \$84.00.

Johnson filed a claim against Home Building Center in the Small Claims Division of Harnett County District Court, seeking damages equal to the cost of her preferred paint. A magistrate ruled in favor of Johnson. Home Building Center then appealed to the Harnett County District Court.

Without making any factual findings, the district court judge ruled in favor of Home Building Center. On an appeal by Johnson, this Court filed an unpublished opinion remanding the case to the district court for entry of an appropriate order which contained findings of fact. *Johnson v. Home Building Center*, No. COA04-596, slip op. at 3 (N.C. Ct. App. Mar. 1, 2005).

On remand, the district court made written findings and conclusions, and entered a judgment in favor of Home Building Center on the grounds that (1) there was no consideration given by Johnson in exchange for her participation in the drawing and, therefore, no contract between the parties; (2) there was no meeting of the minds between the parties concerning the subject matter of the drawing; and (3) Home Building Center was not contractually bound to supply Johnson with a prize of her choice, and Johnson could not legally demand the type or quality of the paint that she was to receive. Johnson again has appealed to this Court.

Standard of Review

This Court reviews a judgment entered after a bench trial for whether the trial court's factual determinations are supported by the record and whether the court's legal conclusions are supported by adequate findings of fact and are grounded in the law. *Cartin v. Harrison*, 151 N.C. App. 697, 699, 567 S.E.2d 174, 176, *disc. review denied*, 356 N.C. 434, 572 S.E.2d 428 (2002). Further, because the district court has denominated several of its findings of fact as legal conclusions, we note that an appellate court will apply the appropriate standard of review to a trial court's determinations regardless of how such determinations are denominated. *Long v. Morganton Dyeing & Finishing Co.*, 321 N.C. 82, 86, 361 S.E.2d 575, 577 (1987).

Legal Discussion

I.

In her first argument on appeal, Johnson contends that the district court erred by concluding that she gave no consideration for participating in the prize drawing such that there was no agreement between the parties as a matter of law. We agree that the district court erred in this regard.

This Court has held that "advertising a promotional contest to the public is in the nature of an offer. An enforceable contract is formed when a party accepts that offer and consideration is provided by entering the contest and complying with all of the terms of the offer." *Jones v. Capitol Broadcasting Co.*, 128 N.C. App. 271, 274, 495 S.E.2d 172, 174 (1998). In such situations, the registrant gives consideration "by submitting an entry form in

exchange for an opportunity to have it drawn as the winning ticket." *Id.*

In the case *sub judice*, it is undisputed that Johnson submitted an entry form in exchange for an opportunity to win the free Glidden paint being offered by Home Building Center. Accordingly, Johnson gave valid consideration, and the district court erred by concluding otherwise.

II.

In her second argument on appeal, Johnson contends that the district court erred by finding that there was no valid contract between the parties because there was no meeting of the minds with respect to the subject matter of the drawing. Again, we agree that the district court made erroneous findings and conclusions in this regard.

"[I]n order that there may be a valid and enforceable contract between parties, there must be a meeting of the minds of the contracting parties upon all essential terms and conditions of the contract." *O'Grady v. Bank*, 296 N.C. 212, 221, 250 S.E.2d 587, 594 (1978). Whether there has been a meeting of the minds and thus a contract is a question fact. See *Goeckel v. Stokely*, 236 N.C. 604, 607, 73 S.E.2d 618, 620 (1952) (holding that issues of fact concerning terms of a contract are for the jury to consider). Once there has been a meeting of the minds with respect to a particular term, the proper interpretation of that term presents a question of law, which is reviewed *de novo* by this Court. *Sears Roebuck & Co. v. Avery*, 163 N.C. App. 207, 211, 593 S.E.2d 424, 428 (2004).

In the instant case, the undisputed evidence tended to show that, by advertising a drawing in a local paper, Home Building Center offered to give a selected registrant free Glidden paint, that the registration form specified that four gallons of such paint would be given away, and that Glidden ceiling paint was on display in the store. Further, Johnson's testimony established only that she entered the drawing with aspirations of winning and that she wanted exterior paint; her testimony did not establish a belief that exterior paint was the only type of paint that she was eligible to win.

On these facts, the district court was compelled to find that there was a meeting of minds as to the essential terms of the contract. Specifically, the parties reached an agreement that Home Building Center had to give paint to the winner of its customer appreciation drawing; this paint had to be free, and it had to be Glidden paint. The proper legal construction of this agreement is that Home Building Center was permitted to select the type and quality of Glidden paint that it gave away, so long as the paint was not of lesser quality than interior ceiling paint. Likewise, although Home Building Center had the option of giving away higher quality paint at the request of the prizewinner, it was under no legal duty to do so.

The trial court's determination that there was no meeting of the parties' minds as to the essential terms of the drawing agreement is in conflict with the foregoing discussion. Accordingly, this determination is erroneous.

III.

Significantly, however, although the district court erroneously determined that there had been no meeting of the minds between the parties, the district court ruled, as an alternative basis for its judgment, that Home Building Center was not contractually bound to supply Johnson with a prize of her choice and that Johnson could not legally demand the type or quality of her prize. Though this ruling is clearly proper in light of our analysis in section II of this opinion, Johnson has not challenged it by asserting a related assignment of error and articulating a corresponding argument in her brief. Accordingly, even assuming *arguendo* that this alternative basis for judgment is erroneous, it is nevertheless binding because it has not been appealed. See N.C. R. App. P. 10(a) (2006) (providing that the scope of this Court's review is limited to considering assignments of error enumerated in the record on appeal); N.C. R. App. P. 28(b)(6) (2006) (providing that an assignment or error which is not argued in an appellant's brief or in support of which the appellant provides no argument or authority is abandoned). Therefore, the proper disposition is for this Court to affirm the trial court's order.

The district court's order is affirmed. Johnson's assignments of error are overruled.

Affirmed.

Judges ELMORE and LEVINSON concur.

Report per Rule 30(e).