[Cite as *Turner v. Langenbrunner*, 2004-Ohio-2814.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

WARREN COUNTY

PATRICK TURNER,	:	
Plaintiff-Appellant,	:	CASE NO. CA2003-10-099
	:	O P I N I O N
- vs -	:	6/1/2004
MARY LANGENBRUNNER, et al.,	:	
Defendants-Appellees.	:	

CIVIL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 02CV60257

William G. Fowler, 12 West South Street, Lebanon, Ohio 45036-1708, for plaintiff-appellant

Constance A. Hill, 4010 Executive Park Drive, Suite 225, Cincinnati, Ohio 45241, for defendant-appellee, Mary Langenbrunner

Rachel A. Hutzel, Warren County Prosecuting Attorney, Christopher A. Watkins, 500 Justice Drive, Lebanon, Ohio 45036, for defendants, Nick Nelson and Jim Lefevers

VALEN, J.

{¶1} Plaintiff-appellant, Patrick Turner, appeals the decision of the Warren County Court of Common Pleas granting summary judgment to defendants-appellees, Ralph and Mary Langenbrunner, in a breach of

contract action. We affirm the decision of the trial court.[1]

{¶2} During 1997, appellant and the Langenbrunners experienced water runoff from two subdivisions upstream of their property. Appellant and the Langenbrunners reside on adjacent lots at 9575 Winding Lane and 9571 Winding Lane.

{¶3} In early 1998, appellant and Mary Langenbrunner discussed solutions to alleviate the water runoff problem. Appellant has 30 years of experience in construction work and he outlined a possible solution. Appellant entered into an oral contract with Mary Langenbrunner to construct a catch basin and concrete retaining wall to minimize the water runoff. According to Mary Langenbrunner, appellant agreed to donate his labor if she agreed to pay for all of the materials costs. Appellant maintains he only agreed to donate one weekend of labor.

{¶4} However, appellant reduced the arrangement to writing shortly after the oral agreement.[2] Appellant wrote a letter stating that it is in "reference to the issue of the over abundance of storm drainage water, trespassing on your property as well as mine." The letter informs the Langenbrunners that the approximate costs to cure the erosion issue will be $2,199.12. However, the letter advises the Langenbrunners that "all costs are per actual

1. Pursuant to Loc.R. 6(A), we sua sponte remove this case from the accelerated calendar and place it on the regular calendar for purposes of issuing this opinion.

2. We have attached the letter as an appendix at the end of the opinion.

invoices or receipts." Lastly, the letter states that "Neighbor Labor" is "Donated." The letter is signed by appellant, "Patrick E. Turner (neighbor)."

{¶5} Appellant completed the work on June 12, 1998. Appellant then submitted an invoice to the Langenbrunners for his labor. Mary Langenbrunner declined to pay the invoice because her understanding of the agreement was that appellant's labor was donated. On August 4, 1998, appellant filed a mechanics lien against the Langenbrunners' real property in the amount of $17,020.

{¶6} On November 27, 2002, appellant filed a complaint in foreclosure against the Langenbrunners' real property. Mary Langenbrunner filed an answer to the complaint on December 16, 2002. On July 21, 2003, the Langenbrunners moved for summary judgment. On September 3, 2002, the trial court granted the Langenbrunners' motion for summary judgment.

{¶7} Appellant appeals the decision raising three assignments of error:

{¶8} Assignment of Error No. 1:

{¶9} "THE TRIAL COURT ERRED AS A MATTER OF LAW IN FINDING THAT PLAINTIFF'S LETTER TO DEFENDANT IS AN EXPRESS CONTRACT."

{¶10} Appellant argues that when "a letter produced by one party to an oral contract lacks the elements of a written contract, it cannot be considered an express contract, thereby excluding parol evidence."

{¶11} Pursuant to Civ.R. 56(C), summary judgment is appropriate

when no genuine issue of material fact remains to be litigated; the moving party is entitled to judgment as a matter of law; and reasonable minds can come to but one conclusion.

{¶12} The construction or interpretation of a contract is a matter of law to be resolved by the court. Lovewell v. Physicians Ins. Co. of Ohio, 79 Ohio St.3d 143, 144, 1997-Ohio-175. Questions of law are reviewed by appellate courts de novo. Id. The cardinal purpose for judicial examination of any written instrument "is to ascertain and give effect to the intent of the parties." Foster Wheeler Enviresponse, Inc. v. Franklin Cty. Convention Facilities Auth., 78 Ohio St.3d 353, 361, 1997-Ohio-202. The intent of the parties to a contract "is presumed to reside in the language they chose to employ in the agreement." Id.

{¶13} To prove the existence of a contract, "a party must establish the essential elements of a contract: an offer, an acceptance, a meeting of the minds, an exchange of consideration, and certainty as to the essential terms of the contract." Juhasz v. Costanzo (2001), 144 Ohio App.3d 756, 762. A valid contract must be specific as to its essential terms, such as the identity of the parties to be bound, the subject matter of the contract, the consideration to be exchanged, and the price to be paid. Alligood v. Proctor & Gamble Co. (1991), 72 Ohio App.3d 309, 311. Additionally, an enforceable agreement must be mutual and must bind all parties to the contract. Fanning v. Insurance Co. (1881), 37 Ohio St. 339, 343-344.

{¶14} Upon review, we agree with the trial court's determination

that the letter written by appellant meets the requirements of a binding, enforceable written contract. After examining the letter, we find that it contains a discernable offer for acceptance and an indication of what performance would constitute acceptance. Furthermore, it is specific as to the identity of the parties to be bound, the subject matter of the contract, and the consideration to be exchanged.

{¶15} Appellant's letter is addressed to the Langenbrunners. The letter states it is in "reference to the issue of the over abundance of storm drainage water, trespassing on your property as well as mine." Appellant then states that he has "prepared a summary of the approximate costs associated with helping to cure or help lessen the erosion issue at large." The letter itemizes the costs for materials at an approximate total of $2199.12.

{¶16} However, the letter also advises the Langenbrunners that, "there is absolutely no guarantee that this is a perfect solution to the problem." Furthermore, the letter advises them that "all costs are per actual invoices or receipts." Lastly, the letter states that "Neighbor Labor" is "Donated." The letter is signed by appellant as "Patrick E. Turner (neighbor)." Both parties consented to the terms of the contract. Appellant completed the work described in the letter and Mary Langenbrunner paid for all the necessary building materials.

{¶17} Having carefully reviewed the letter in question, and having thoroughly considered each of the arguments presented by the parties, we find that reasonable minds can come to but one conclu-

sion; that the letter is an express contract as a matter of law. Consequently, the first assignment of error is overruled.

{¶18} Assignment of Error No. 2:

{¶19} "THE TRIAL COURT ERRED AS A MATTER OF LAW IN NOT CONSIDERING PAROL EVIDENCE BECAUSE PLAINTIFF'S LETTER TO DEFENDANT IS NOT A FULL INTEGRATION OF THE AGREEMENT."

{¶20} Appellant argues that when "a writing is not a full and complete integration of the terms of an agreement, parol evidence is admissible to determine the full agreement."

{¶21} The parol evidence rule is a rule of substantive law that prohibits parties to a contract from later contradicting the express terms of the contract with evidence of other alleged or actual agreements. See Brantley Venture Partners II, L.P. v. Dauphin Deposit Bank & Trust Co. (N.D.Ohio 1998), 7 F.Supp.2d 936. Absent claims of fraud, mistake, or some other invalidating cause, the parties' written agreement may therefore not be varied, contradicted, or supplemented by evidence of prior or contemporaneous oral agreements, or by written agreements that the terms of the principal contract do not expressly authorize. Galmish v. Cicchini, 90 Ohio St.3d 22, 27, 2000-Ohio-7. However, the parol evidence rule applies only to integrated writings. Id. at 28.

{¶22} The question of whether a contract is integrated is one of law. Globe Metallurgical, Inc. v. Hewlett-Packard Co. (S.D.Ohio 1996), 953 F.Supp. 876, 884. The crucial issue is "whether the parties intended the written instrument to serve as the exclusive

embodiment of their agreement." Id., citing Banco Do Brasil, S.A. v. Latian, Inc. (Cal.Ct.App.1991), 234 Cal.App.3d 973, 1001. To resolve this issue, the Court should first look to the written contract itself. Id. The Court should also consider the circumstances surrounding the contract, including prior negotiations between the parties. Id.

{¶23} Upon examining the letter, we find that it is intended by the parties to be the complete expression of their agreement. The letter was the only written agreement between the parties. The letter outlines the need for the agreement, "the overabundance of storm drainage water trespassing" on both parties' property. It itemizes the Langenbrunners' cost at $2199.12 for materials to "help to cure or lessen the erosion issue."

{¶24} The letter also contains clauses that seek to limit appellant's liability. The letter states that "there is absolutely no guarantee that this is a perfect solution to the problem." Appellant's letter also seeks to limit his liability for miscalculations in material costs by stating that "all costs are per actual invoices or receipts."

{¶25} However, appellant argues that the letter cannot be an integrated contract because it does not include essential elements, particularly the expenses for the concrete retaining wall. Yet, the letter itemizes the costs for the concrete retaining wall as "concrete costs, backhoe costs, and form materials costs. Concrete costs are approximately $55.00 per cubic yard." Consequently, the contract is fully integrated even though it lacks itemized expenses

for the concrete retaining wall because the contract informs the Langenbrunners that "all costs are per actual invoice."

{¶26} Furthermore, in a contract that is not for goods, the essential terms are, generally, the parties and the subject matter. Nilavar v. Osborn (Mar. 27, 1998), Clark App. No. 97-CA-95, at 6. Furthermore, a written contract which does not specify the price or amount of compensation for services is not void for uncertainty. In re estate of Butler (1940), 137 Ohio St. 96, 112.

{¶27} We find that the letter was intended by the parties to be the complete expression of their agreement and is a fully integrated contract. Therefore, the parol evidence rule applies. Galmish, 90 Ohio St.3d at 28. As such, an oral agreement cannot be enforced in preference to the signed writing that pertains to exactly the same subject matter, yet has different terms. Id. at 29. Consequently, the second assignment of error is overruled.

{¶28} Assignment of Error No. 3:

{¶29} "THE TRIAL COURT ERRED AS A MATTER OF LAW IN GRANTING SUMMARY JUDGMENT TO THE DEFENDANT BECAUSE A GENUINE ISSUE OF MATERIAL FACT EXISTS."

{¶30} Appellant argues that when "there is a material issue of fact as to the existence of an express contract, summary judgment is not proper where there is a material issue of fact to the moving party's unjust enrichment."

{¶31} Pursuant to Civ.R. 56(C), summary judgment is proper if:

{¶32} "(1) No genuine issue as to any material fact remains to be litigated;

{¶33} "(2) the moving party is entitled to judgment as a matter of law; and

{¶34} "(3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party." Temple v. Wean United, Inc. (1977), 50 Ohio St.2d 317, 327.

{¶35} Appellate review of a lower court's entry of summary judgment is de novo, applying the same standard used by the trial court. McKay v. Cutlip (1992), 80 Ohio App.3d 487, 491. The party seeking summary judgment initially bears the burden of informing the trial court of the basis for the motion and identifying portions of the record that demonstrate an absence of genuine issues of material fact as to the essential elements of the nonmoving party's claims. Dresher v. Burt, 75 Ohio St.3d 280, 293, 1996-Ohio-107.

{¶36} The movant must point to some evidence in the record of the type listed in Civ.R. 56(C) in support of the motion. Id. Once this burden is satisfied, the nonmoving party has the burden, as set forth in Civ.R. 56(E), to offer specific facts showing a genuine issue for trial. Id. The nonmoving party may not rest upon the mere allegations and denials in the pleadings, but instead must point to or submit some evidentiary material showing that a genuine dispute over material facts exists. Henkle v. Henkle (1991), 75 Ohio App.3d

732, 735.

{¶37} Appellant claims he only agreed to donate one weekend of labor. Therefore, appellant argues that he conferred a benefit upon Langenbrunner when the storm drainage job required more than one weekend to complete. He argues that Langenbrunner had knowledge of that benefit and to allow her to retain the benefit would be unjust. As a result, appellant argues there is a material issue of fact concerning unjust enrichment and summary judgment is therefore not proper.

{¶38} Unjust enrichment is an equitable doctrine to justify a quasi-contractual remedy that operates in the absence of an express contract or a contract implied in fact to prevent a party from retaining money or benefits that in justice and equity belong to another. University Hospitals of Cleveland, Inc. v. Lynch, 96 Ohio St.3d 118, 2002-Ohio-3748, at ¶60. As stated above, we find appellant's letter is an express contract. Because there is a valid, enforceable contract in this case, the doctrine of unjust enrichment is not applicable. Id.

{¶39} Appellant drafted the contract himself and it states that his labor is "Donated." The terms of the contract cannot be varied, contradicted, or supplemented by evidence of prior or contemporaneous oral agreement pursuant to the parol evidence rule. Galmish, 90 Ohio St.3d at 29. The scope of any contractual provision "must not be extended beyond the plain import of the words used when such give reasonable effect." Herder v. Herder (1972), 32 Ohio App.2d 75, 76.

{¶40} Furthermore, "a court cannot make contracts for others, read into them terms or language not there, nor change the conditions of contracts lawfully made." Id. As the Supreme Court has observed, "[i]t will not do for a man to enter into a contract, and, when called upon to respond to its obligations, to say that he did not read it when he signed it, or did not know what it contained. If this were permitted, contracts would not be worth the paper on which they are written." Upton v. Tribilcock (1875), 91 U.S. 45, 50, 23 L.Ed. 203.

{¶41} Therefore, according to the terms of the contract, summary judgment is appropriate because no genuine issue as to any material fact remains to be litigated; the moving party is entitled to judgment as a matter of law; and reasonable minds can come to but one conclusion, and that conclusion is adverse to appellant. Under the terms of the contract drafted by appellant, no issues of unjust enrichment or any entitlement to recovery for his labor exist because his labor was donated. The third assignment of error is overruled.

{¶42} Judgment affirmed.

POWELL, P.J., and WALSH, J., concur.

APPENDIX 1

Mr. and Mrs. Ralph Langenbrunner Ph. #xxx-xxx-xxxx
9571 Winding Lane
Loveland, Ohio 45140

Reference: Storm Drainage at rear of property

Dear Mr. and Mrs. Langenbrunner,

In reference to the issue of the over abundance of storm drainage water, trespassing on your property as well as mine. I have prepared a summary of the approximate costs associated with helping to cure or help lessen the erosion issues at large. Please examine this and above all remember, that there is absolutely no guarantee that this is a perfect solution to the problem. But per the Professional Engineers recommendations this should cure or help the problem.

Summary of Itemization:

A. Catch basin with grate	$538.12
B. 105 L/F of 24 inch Plastic N-12 Drainage Pipe mfg by ADS	$1,001.00
C. Approximately 18 Tons of Fill Sand	$180.00
D. Approximately 8 Hrs Backhoe Time x $60.00 per hour	$480.00

E. Concrete retaining wall will be concrete costs, backhoe costs, and form materials costs. Concrete costs are approximately $55.00 per cubic yard.

Total Summary for drainage only, not including concrete retaining wall.

$2,199.12 Approximate costs for materials, Neighbor Labor (Donates) Please remember all costs are per actual invoices or receipts

Sincerely,

Patrick E. Turner (neighbor) 9575 Winding Lane, Loveland, Ohio 45140
Home Ph. #xxx-xxx-xxx

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