



**In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana**

No. 06-17-00103-CV

ERIC DOUGLASS AND RUTH ANN DOUGLASS, Appellants

V.

LOIS YVONNE HUNTRESS, Appellee

On Appeal from the 40th District Court
Ellis County, Texas
Trial Court No. 93419

Before Morriss, C.J., Moseley and Burgess, JJ.
Memorandum Opinion by Chief Justice Morriss

MEMORANDUM OPINION

Lois Yvonne Huntress, an ailing octogenarian, sold her home in Massachusetts and agreed to provide her only son, Eric Douglass, and his third wife, Ruth Ann Douglass, with a considerable amount of her life savings so they could purchase and improve a home located at 1240 Union Hill Road in Ellis, Texas (the Property), based on their promises that she could live with them at the Property for the remainder of her life.¹ Huntress supplied the down payment for the Property and moved to Texas to live with Eric and Ruth. Less than two years later, familial discord caused the Douglasses to demand that Huntress vacate the Property and find a new place to live so they could sell it.

Claiming a loss on the sale of the Property, the Douglasses refused Huntress' demand for reimbursement of funds she had expended to purchase and improve the Property in reliance on the Douglasses' promise that she would have a place to live for life. In response, Huntress sued the Douglasses for breach of contract and prayed for recovery of her attorney fees.² The Douglasses denied any obligation to repay Huntress, characterizing the money spent by her as gifts and advances on Eric's inheritance. The trial court disagreed with the Douglasses after a bench trial and labeled their testimony "not credible" and contrary to documentary evidence in its written findings of fact and conclusions of law. It entered judgment for Huntress and, among other things, awarded her \$225,890.00 in actual damages and \$16,500.00 for attorney fees.

¹Originally appealed to the Tenth Court of Appeals in Waco, this case was transferred to this Court by the Texas Supreme Court pursuant to its docket equalization efforts. *See* TEX. GOV'T CODE ANN. § 73.001 (West 2013). We follow the precedent of the Tenth Court of Appeals in deciding this case. *See* TEX. R. APP. P. 41.3.

²Huntress also brought causes of action for fraud and breach of fiduciary duty, but abandoned them at trial.

On appeal, the Douglasses argue that the evidence was factually insufficient to support Huntress' claim for breach of contract and that, as a result, Huntress is not entitled to an award of attorney fees.³ We affirm the trial court's judgment because we find the evidence factually sufficient to support the award of attorney fees.

"Findings of fact in a bench trial have the same force and dignity as a jury's verdict upon jury questions." *Nipp v. Broumley*, 285 S.W.3d 552, 555 (Tex. App.—Waco 2009, no pet.). "When challenged on appeal, the findings are not conclusive on the appellate court if there is a complete reporter's record, as there is here." *Id.* "Generally, we will not disturb a trial court's findings if there is evidence of probative force to support them." *Id.* However,

[a]lthough we show deference to a trial court's findings, those findings are reviewable for legal and factual sufficiency of the evidence by the same standards that are applied in reviewing evidence supporting a jury's answers. We review the trial court's conclusions of law de novo. Under de novo review, the reviewing court exercises its own judgment and redetermines each legal issue.

Id. at 555–56 (quoting *Wells Fargo Bank, N.A. v. Citizens Bank of Tex., N.A.*, 181 S.W.3d 790, 796 (Tex. App.—Waco 2005, pet. denied) (citations omitted)).

In conducting a factual-sufficiency review

regarding an issue on which the appellant did not have the burden of proof, we must consider and weigh all of the evidence, not just the evidence that supports the verdict. We may not pass upon the witnesses' credibility or substitute our judgment for that of the [factfinder], even if the evidence would clearly support a different result. We will set aside the verdict only if it is so contrary to the overwhelming weight of the evidence that the verdict is clearly wrong and unjust.

³The Douglasses do not challenge the legal sufficiency of the evidence.

McCalla v. Ski River Dev., Inc., 239 S.W.3d 374, 381 (Tex. App.—Waco 2007, pet. denied) (quoting *Checker Bag Co. v. Washington*, 27 S.W.3d 625, 633 (Tex. App.—Waco 2000, pet. denied) (citations omitted)).

“We must also remember that it is within the province of the factfinder, in this case the trial court, to determine the credibility of the witnesses and the weight to be given their testimony.” *Martinez v. Martinez*, No. 10-15-00410-CV, 2017 WL 3686850, at *4 (Tex. App.—Waco Aug. 23, 2017, pet. denied) (mem. op.) (citing *O’Connor v. Miller*, 127 S.W.3d 249, 254 (Tex. App.—Waco 2003, pet. denied)). “The trier of fact may believe one witness and disbelieve another, [and] may resolve inconsistencies in the testimony of a witness” *Id.* (citing *McGalliard v. Kuhlmann*, 722 S.W.2d 694, 697 (Tex. 1986)). “We may not pass upon a witness’s credibility or substitute our judgment for that of the factfinder, even if the evidence might clearly support a different result.” *Id.* (citing *Mar. Overseas Corp. v. Ellis*, 971 S.W.2d 402, 407 (Tex. 1998); *Pool v. Ford Motor Co.*, 715 S.W.2d 629, 634 (Tex. 1986)).

With these principles in mind, we discuss the evidence presented to the trial court during the bench trial.

Huntress, a retired nurse, was living alone in Massachusetts when, in 2013, a serious medical condition required her hospitalization. Eric, who had not visited Huntress in seven years, flew to Massachusetts to see her. Huntress testified that Eric and Ruth called her every day after Eric returned to Texas and that they both raised the idea of her moving in with them. The Douglasses already owned a 2,300-square-foot home, which Huntress felt would be too small to accommodate the new living arrangements. Accordingly, the Douglasses agreed to look for a

larger property so that they could live comfortably with Huntress, while placing their current home up for sale.

Huntress testified that Eric emailed her links to home listings on the internet until she chose the Property as the most suitable place for them to live. Huntress told Eric and Ruth that she “would contribute the money to put toward [the] house so that [she] could live there.” According to Huntress, the Douglasses told her that she could live with them for the remainder of her life in exchange for her financial contribution. However, the Property did not have a workshop, and Eric told Huntress that he wished for one. Huntress testified, “I, being his mother, saying he’s my only son, I probably should be able to give him a workshop if he wants it.” Huntress told Eric that she would pay to build a workshop on the Property as an advance on his inheritance that all could enjoy. Huntress and the Douglasses both agreed to purchase the Property for \$364,000.00.

Prior to the purchase, Huntress testified that she paid \$6,500.00 towards Eric’s personal credit card debt so that he could qualify for financing since title to the home would include his name. After her house sold, Huntress also made the \$150,000.00 down payment on the home on August 27, 2013, and paid \$3,000.00 to \$4,000.00 in closing costs. Huntress and the Douglasses moved to the Property in September 2013. Huntress testified that she made the first seven mortgage payments on the Property, which totaled \$13,300.00, until the Douglasses were able to finally sell their other home. Once they moved in, Huntress also paid for many improvements to the home, including \$56,090.00 for the construction of Eric’s workshop.⁴ She also paid for several

⁴With respect to the workshop, Huntress testified that she paid \$4,400.00 for ground preparation, a \$17,000.00 deposit, and \$34,690.00 for completion of the structure.

additional improvements on the Property after moving in, as did the Douglasses, as well as groceries and a portion of the bills.

In total, in reliance on the Douglasses' promise that she would have a place to live out the remainder of her life, Huntress testified that she sold her house in Massachusetts and gave them \$247,000.00 towards the purchase and improvement of the Property, which constituted most of her life savings, "figuring [she] was going to live there." At first, the new living arrangement was amicable, but Huntress and Ruth eventually stopped getting along. Eric described Huntress as condescending and derogatory towards Ruth, causing Eric to yell at Huntress. Tensions arose when Ruth's sister moved into the room above Huntress and, according to Huntress, began entertaining various men at night.⁵ Thereafter, familial discord took root and escalated to a concerning degree, eventually prompting Huntress to isolate herself in her room for lengthy periods of time, which caused a sharp decline in her physical health.⁶ By this point, the Douglasses communicated with Huntress only by passing written notes back and forth.

Huntress testified that, less than eighteen months after moving in, the Douglasses took out a home equity line of credit, without informing her, and paid off personal debts, including the debt on Eric's truck. The Douglasses then decided that they could no longer live with Huntress and informed her of their decision to sell the Property. In a September 17, 2015, note, Ruth wrote, "We are waiting to here [sic] back from the Realtor. . . . We told her we needed to clear enough money so we could pay your money back and hopefully enough for us to relocate. Selling this

⁵Ruth's sister denied this accusation.

⁶Huntress testified that she "lived in [her] room," "only ran to the kitchen to get food," and "lost 34 pounds in seven months because of the stress and the situation." Her condition caused a friend to call Adult Protective Services.

house is only [sic] way we know how to do that.” According to Huntress, Eric assured her that she would get her money back. Huntress provided Eric with an itemized list of her expenditures. Thereafter, Eric sent another note informing Huntress that an offer was received on the Property and that she had three weeks to find another place to live. Huntress wrote back, “Will you have gone to bank in 3 wks for closing so I will get my money?” She heard no response from the Douglasses.

Huntress testified that the Douglasses did not reveal the terms of the offer they had received on the Property. In a written note, Eric informed Huntress that no money would be exchanged until the Property was vacated. Eric also wrote, “[D]o [sic] to the incurred loss on this property you will not be receiving your itemized request. So get your lawyer.” Huntress followed Eric’s advice and hired counsel. At trial, it was conclusively established that the sales price on the Property was \$420,000.00 and that \$115,098.16 in cash had been paid to the Douglasses.

Huntress was forced to move without any reimbursement of the expenditure of the majority of her life savings which was spent on the Property. She testified that a good friend had flown to Texas to help her move and was providing her with some financial assistance to live, but that she only had \$5,000.00 in savings and that Social Security was her only source of income. Huntress testified that the Douglasses had not lived up to the promises which had induced her purchase and improvements on the Property. Huntress added, “I figured I would live there and die there, and I even scattered all my ashes from all my corgis that had been passed away . . . all around the property because I figured I’d be there forever.”

In response to Huntress' claims, the Douglasses testified to their belief that the funds Huntress used to purchase and improve the Property were a gift, without any conditions. In support, they introduced a form document signed by Huntress a little over one month before Huntress made any payment on the Property. The fill-in-the-blank form "Gift Letter" contained a loan number and stated that Huntress had gifted \$150,000.00 to Eric and Ruth, which would be applied to the purchase of the property. Paragraph 3 of the Gift Letter recited, "No repayment of the gift is expected or implied in the form of cash or by future services to the recipient." Ruth testified that they would never have purchased the Property since they already owned a home if there was an expectation that they had to repay Huntress the \$150,000.00 down payment, but later acknowledged that there was no obligation to repay Huntress if she lived with them for the remainder of her life since Eric was her sole heir.

Huntress testified that the Gift Letter was not explained to her and that she signed it in the "passing of the papers for the house." The deed of trust executed by the Douglasses in connection with the purchase of the Property stated, "Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower . . . secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument." The Douglasses asserted that Huntress signed the document in Massachusetts; it was demonstrated that it was signed on the same day that Ruth arrived in Massachusetts to assist Huntress with the move to Texas.⁷

⁷Eric said it was the mortgage company's whim to exclude Huntress from having title to the property.

The Douglasses further testified Huntress represented that she considered sums expended by her as an advance on Eric's inheritance so that everyone could enjoy the Property. While the Douglasses understood that they would all live as a family on the property, they testified that they made no representation that she could live there for the rest of her life. They further stated that, although Eric thought it would be a good idea for Huntress to live close to family, it was Huntress' idea to move to Texas.

Although Eric initially testified that Huntress had made unconditional gifts, he testified during cross-examination that it was not his mother's intention to give him the down payment with no strings attached, that he understood that they were all going to live on the Property, and that he further understood that she would have to live there because she had sold her home in Massachusetts.⁸ The Douglasses continued to maintain that the workshop was a gift. Huntress

⁸Huntress' counsel elicited the following testimony from Eric during cross-examination:

Q. She had a clearly understood expectation that she would live in this home for the rest of her life?

A. No one could guarantee that.

Q. Well, but y'all understood that going in. That this wasn't just oh, I want to be generous and give my son \$150,000 at the expense of my own welfare and at the expense of my own security, to risk homelessness?

A. No.

Q. That was not your mother's intent, was it?

A. It wasn't going in. It was -- we were trying to be a family.

Q. I get that, sir. I get that. But your mother was never going to sell her home just so you could have \$150,000 for whatever purpose you saw fit; isn't that true?

A. No. I guess. You know, it was a gift letter to purchase a home. . . . We purchased a home with it, yes.

Q. And you understood that that was -- she was counting on living in that home. She needed to live in that home?

A. We were all going to live in that home.

....

Q. You understood that your mother needed to live in that home, right?

A. We were going to live in any -- in a home, yes.

Q. Sir, you seem to have difficulty answering just a simple question. You understood that your mother, having sold her home in Massachusetts, having put almost a quarter million dollars

testified that she never expected the payment of the majority of her life savings to be an unconditional gift and pointed to the note written by the Douglasses stating they hoped to obtain enough money in the sale of the Property to repay Huntress as an example of their understanding of such an obligation.

With respect to the \$6,500.00 payment Huntress made on Eric's credit card so he could obtain financing for the home, Eric testified that the payment was a reimbursement of expenses the Douglasses incurred to move Huntress from Massachusetts to Texas. However, cross-examination revealed that the payment on the credit card was made before moving expenses were incurred. With respect to the home equity loan, Eric testified that he used some of it to consolidate bills. When asked about the truck note, Eric claimed that he instructed the bank to apply sums from the \$68,000.00 home equity loan to pay off a prior note consolidating his bills, but that they paid off his \$23,000.00 truck note instead. Eric admitted that Huntress' money contributed to the opportunity to obtain a home equity loan and that her money significantly improved the Douglasses' financial situation.

Evidence at trial showed that, after Huntress moved from the Property, the Douglasses continued to live there for another three months. Eric testified that he wrote the note informing Huntress that she had three weeks to move out because repairs were required to be made before the closing on the Property. However, the March 9, 2016, contract for sale on the Property

into this house on Union Hill Road, that she needed to live there because she had no other place; isn't that correct?

A. That was the home, yes.

Q. Okay. And you knew that. That was all understood by everybody going into this that your mother was going to need to stay in that home because she had put everything into it, right?

A. Uh-huh.

demonstrated that the Property was purchased “as is” and that the only conditions imposed by the buyer were that the home be left in a clean condition and that the yard be maintained until closing. When presented with this information, Eric altered his testimony by stating that the repairs were requested by their realtor.

Eric admitted that he told Huntress in writing that they needed to clear enough money to pay her back, “within reason,” and added, “We didn’t know what the market would give us on that home.” Ruth claimed that the phrase “enough money” in the note meant “[t]he money she spent paying a moving company to move her here.” The Douglasses acknowledged that they did not incur a financial loss on the sale of the Property as they had misrepresented to Huntress, that they received \$115,000.00 more than what they paid for the Property, in cash, but only wanted to give her half of that amount.

The trial court ruled from the bench following Ruth’s testimony, concluded that the Douglasses had breached their oral contract with Huntress, and awarded Huntress \$225,890.00 in actual damages. Based on Huntress’ counsel’s testimony regarding his attorney fees, the trial court awarded the sum of \$16,500.00 to Huntress for attorney’s fees. Additionally, the trial court entered the following pertinent findings of fact:

- The Douglasses “encouraged Huntress to sell her property in Massachusetts and use the proceeds from the sale of her property to help [them] acquire a new home in Texas.”
- The Douglasses “represented to and promised Huntress that if she would provide the funds to help [them] acquire and improve a property, she would have a home in which to live out the remainder of her life.”
- The Douglasses and Huntress settled on the Property, which would be purchased with Huntresses’ funds.

- Huntress provided the funds to acquire and improve the Home in reliance on the Douglasses' promise that she could live out the remainder of her life at the Property.
- Specifically, "Huntress provided \$6,500.00 to Eric . . . so that he could pay off credit card debts to enable him to qualify for the mortgage loan \$150,000.00 for the down payment and closing costs for the purchase of the Property," \$13,300.00 for the first seven mortgage payments on the home, and "\$56,090.00 towards the construction of an outbuilding on the Property."
- In 2015, the Douglasses obtained a \$67,000.00 home equity loan and "cashed out a substantial portion of the equity . . . to pay off personal debts."
- In 2015, the Douglasses advised Huntress that they were listing the Property for sale, advised her that she had to move out prior to the sale, but assured her that she would receive the money once the Property was sold.
- In early 2016, the Douglasses contracted with David and Holley Millett, who agreed to purchase the Property for \$420,000.00, and informed Douglass in March that she had three weeks to vacate the Property.
- Eric claimed that they had incurred a loss on the sale of the Property and informed Huntress that she would not receive payment of the contributions she had made toward the purchase and improvement of the Property.
- Huntress' testimony was credible, whereas the Douglasses testimony was not credible and was contradicted by documentary evidence

With respect to the Gift Letter, the court stated on the record, "The Trial Court believes that it's crystal clear that that so-called gift letter was clearly a real estate document prepared in favor of the financial institution, the mortgage company. Prepared as a regular course of business to make sure that the financial institution had a first lien." Its written findings of facts and conclusions of law further stated:

The letter was dated several weeks before Huntress actually made the \$150,000.00 contribution toward the down payment and closing costs for the Property. The Court accepts as credible Huntress' testimony that she never understood that her financial contributions toward the acquisition and improvement of the Property were to be considered a gift. Rather, the Court finds that the letter was solely intended to assure Defendants' lender that it would have a first lien on the Property. When the letter was presented to Huntress, she simply signed it because it was represented as a requirement for closing on the house. The parties never intended that it would supplant their agreement and understanding that Huntress would have

a home to live out the remainder of her days. Because she was selling her home to help Defendants acquire the Property, Huntress expected and Defendants assured her that she would have a place to live out the remainder of her life in consideration for her financial contributions toward the acquisition and improvement of the Property. In fact, the Court finds that Defendants understood and initially expressed in writing that, upon the sale of the Property, they would pay Huntress' money back.

On appeal, the Douglasses argue that the evidence is factually insufficient to establish that they promised Huntress a place to live for the remainder of her life or that there was any oral contract in light of the Gift Letter and Huntress' statements that she was giving the Douglasses her money as an advance on Eric's inheritance.⁹ Consequently, they also argue that the trial court erred in awarding Huntress attorney fees.

"To prevail on a breach of contract claim, a party must establish the following elements: (1) a valid contract existed between the plaintiff and the defendant; (2) the plaintiff tendered performance or was excused from doing so; (3) the defendant breached the terms of the contract; and (4) the plaintiff sustained damages as a result of the defendant's breach." *West v. Triple B Servs., LLP*, 264 S.W.3d 440, 446 (Tex. App.—Houston [14th Dist.] 2008, no pet.). "The elements of a valid contract are: (1) an offer, (2) an acceptance, (3) a meeting of the minds, (4) each party's consent to the terms, and (5) execution and delivery of the contract with the intent that it be mutual and binding." *Gonzales v. Dunnam & Dunnam, L.L.P.*, No. 10-06-00381-CV, 2008 WL 2209957,

⁹The Douglasses also advance arguments that testimony establishing that Huntress' funds were not a gift constituted "an improper use of parol evidence" given the existence of the Gift Letter. "As a prerequisite to presenting a complaint for appellate review, the record must show that: (1) the complaint was made to the trial court by a timely request, objection, or motion. . . ." TEX. R. APP. P. 33.1(a)(1). Because this issue was never before the trial court, it is unpreserved. *Id.*; see *In re Collins*, 172 S.W.3d 287, 297 n.32 (Tex. App.—Fort Worth 2005, no pet.). Moreover, as further discussed in this opinion, the evidence was factually sufficient to support the rejection of the Douglasses' contention that Huntress' money was a gift.

at *2 (Tex. App.—Waco May 28, 2008, no pet.) (mem. op.) (citing *Prime Prods., Inc. v. S.S.I. Plastics, Inc.*, 97 S.W.3d 631, 636 (Tex. App.—Houston [1st Dist.] 2002, pet. denied)).

Here, after Eric told Huntress that it would be a good idea for her to be near family, Huntress testified that she offered to make a financial contribution to the Douglasses to purchase the Property so that she “could live there the rest of [her] life with them.” Huntress testified that the Douglasses agreed to her offer. Given that the trial court did not find the Douglasses to be credible, Huntress’ testimony alone was both legally and factually sufficient to demonstrate the terms of the offer. The Douglasses’ acceptance of Huntress’ offer was also shown by Huntress’ testimony and the fact that the Douglasses received Huntress’ financial contribution and assisted her in the move to the Property with the knowledge that she had sold her home in Massachusetts, was in poor health, and would need a place to live.

Yet, the Douglasses rely on the following testimony elicited from Huntress to show that the evidence is factually insufficient to demonstrate a meeting of the minds:

Q. . . . What assurance did they provide you about having a place to live for the remainder of your life?

A. I don’t think they really gave me any assurance. The only assurance I had was Eric told me one day that it was the law that a child had to take care of a parent legally.

Q. . . . What words did they speak about you having a place to live out the remainder of your days?

A. I don’t think they had any words.

It is unclear whether Huntress understood the term “assurance” or whether the Douglasses specifically uttered the words that she would have a place to stay for the remainder of her life. In

any case, the excerpted testimony above does not require a finding that the evidence is factually insufficient to establish a meeting of the minds because it was demonstrated that Huntress made the offer in which *she* uttered the requirement that they would have to provide her with a place to live for the remainder of her life. Following the excerpted testimony, Huntress clarified several times that the Douglasses had promised that she could live with them for the rest of her life in exchange for her financial contribution. Specifically, Huntress told the Douglasses that she “would put down the money that [she] put down on it so that [she] could live there the rest of [her] life with them,” and testified that the Douglasses “agreed definitely.” When asked, “Did your son and daughter-in-law assure you that if you made a financial contribution that they would, in fact, provide you a place to live out the remainder of your days,” Huntress testified, “Yes, they did.”

The Douglasses argue that, even if the evidence is sufficient to demonstrate an offer and acceptance, the evidence is factually insufficient to establish a meeting of the minds because “Huntress understood one thing, but Eric understood another.” The term “meeting of the minds” refers to the “parties’ mutual understanding and assent to the expression of their agreement.” *Weynand v. Weynand*, 990 S.W.2d 843, 846 (Tex. App.—Dallas 1999, pet. denied). “The parties must agree to the same thing, in the same sense, at the same time.” *Celmer v. McGarry*, 412 S.W.3d 691, 700 (Tex. App.—Dallas 2013, pet. denied). The Douglasses argument fails to take into account that the trial court found their testimony incredible. Thus, the trial court was free to conclude that the Douglasses agreed to Huntress’ term that they provide her with a place to live for the remainder of her life.

“The existence of an oral contract may be proved by circumstantial evidence as well as by direct evidence.” *Martinez*, No. 10-15-00410-CV, 2017 WL 3686850, at *6 (quoting *Clower v. Brookman*, 325 S.W.2d 440, 443 (Tex. Civ. App.—San Antonio 1959, no writ)). In reliance on the Douglasses’ acceptance of her offer, which was contingent on the Douglasses providing her with a place to live for life, Huntress sold her home in Massachusetts, paid off Eric’s credit card debt, and made the down payment on the Property, in addition to several mortgage payments. The Douglasses’ actions and testimony also established a meeting of the minds and consent to the terms. They sold their home, agreed to purchase the Property, and helped to move Huntress into the Property with them. The Douglasses further testified that they understood they would all live on the Property as a family and that the purchase and improvement of the Property was facilitated by Huntress “so that all could enjoy it” together, including her.

Huntress’ testimony that the Douglasses consented to the terms of her offer was further supported by evidence that they acknowledged an obligation to repay Huntress after breaching their agreement to allow her to live on the Property for life. Ruth wrote a note stating they had asked the realtor to clear enough money to pay Huntress back and, according to Huntress, Eric assured her that she would get her money back. At trial, the Douglasses conceded that Huntress was entitled to some repayment of the funds expended by her. “While a party’s intent is determined at the time he acts, his intent may be inferred from his subsequent acts.” *Martinez*, 2017 WL 3686850, at *6 (citing *Spoljaric v. Percival Tours, Inc.*, 708 S.W.2d 432, 434 (Tex. 1986)).

Additionally, the evidence was factually sufficient to support the trial court's rejection of the Douglasses' contention that Huntress' money was a gift. "A gift is a voluntary transfer of property to another made gratuitously and without consideration," and "[d]onative intent must exist at the time of the transfer." *Lopez v. Lopez*, 271 S.W.3d 780, 788 (Tex. App.—Waco 2008, no pet.). "[R]equisite donative intent is established by, among other things, evidence that the donor intended an immediate and unconditional divestiture of his or her ownership interests and an immediate and unconditional vesting of such interests in the donee." *Nipp*, 285 S.W.3d at 559. Eric acknowledged that it was not his mother's intention to give him the down payment unconditionally, that he understood that they were all going to live on the Property, and that he further understood that she would have to live there because she had sold her home in Massachusetts.

Further, the Gift Letter was signed over a month before Huntress provided the down payment on the Property, indicating a future—not immediate—interest. "A gift may generally not be made to take effect in the future since a mere promise to give is unenforceable without consideration." *York v. Boatman*, 487 S.W.3d 635, 641 (Tex. App.—Texarkana 2016, no pet.) (quoting *Woodworth v. Cortez*, 660 S.W.2d 561 (Tex. App.—San Antonio 1983, writ ref'd n.r.e.)). Also, the Gift Letter merely stated that no repayment was "expected or implied in the form of cash or by future services to the recipient." The evidence established that, at the time Huntress made the down payment on the Property, it was made in exchange for the Douglasses' promises to allow her to live there. Thus, even though she did not expect repayment or future services from the Douglasses as long as they complied with the agreement, the trial court could conclude that the

down payment was not an unconditional gift, even in light of the Gift Letter. *See Rosensky v. Rosensky*, No. 01-09-01029-CV, 2011 WL 743164, at *6 (Tex. App.—Houston [1st Dist.] Mar. 3, 2011, no pet.) (mem. op.) (affirming the trial court’s finding that a down payment on a home was not a gift, even in light of a Gift Letter).

Sufficient evidence demonstrated Huntress’ offer and the Douglasses’ acceptance of the offer. After reviewing the evidence, we cannot say that the trial court’s finding that the Douglasses “promised Huntress that if she would provide the funds to help [them] acquire and improve a property, she would have a home in which to live out the remainder of her life,” was so contrary to the overwhelming weight of the credible evidence that the verdict is clearly wrong and unjust. Accordingly, we find the evidence factually sufficient to establish the existence of a meeting of the minds and a consent to the terms of Huntress’ offer. Thus, the evidence was factually sufficient to establish an oral contract.

We further find the evidence factually sufficient to support the trial court’s findings that (1) Huntress tendered the performance by paying off Eric’s credit card debt and supplying the down payment for the property, (2) the Douglasses breached the terms of the agreement by, essentially, evicting Huntress, (3) Huntress expended sums to pay the first seven mortgage payments and improve the Property so that she and the Douglasses could enjoy it, and (4) Huntress sustained the damages assessed by the trial court in reliance on the agreement because the Douglasses neither (a) provided her with a place to live nor (b) returned the funds Huntress had spent, choosing instead to attempt to excuse repayment by falsely claiming a loss on the sale of the Property. Accordingly, we overrule the Douglasses’ first point of error.

Having found the evidence factually sufficient to support the trial court's finding that Huntress established her breach of contract claim, we conclude that she was entitled to the award of attorney fees assessed by the trial court. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 38.001(8) (West 2015). Therefore, we also overrule the Douglasses' last point of error regarding attorney fees.¹⁰

We affirm the trial court's judgment.

Josh R. Morriss, III
Chief Justice

Date Submitted: August 15, 2018
Date Decided: September 5, 2018

¹⁰The Douglasses do not challenge the amount of attorney fees awarded.