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WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

NUJID R. MURIBY, a married man dealing in his separate property,

Appellant,

v.

MIKE ANDERSON and CARLYE ANDERSON, husband and wife, and the marital community comprised thereof,

Respondents.

No. 30113-3-III

UNPUBLISHED OPINION

Brown, J. • Dr. Nujid R. Muriby appeals the trial court's bench trial decision rejecting his pro se contract claims against his former tenant farmers, Mike and Carlye Anderson, and deciding an accord and satisfaction had been reached. Dr. Muriby mainly contends substantial evidence fails to support the trial court's findings regarding common farm practices, damages, waiver, and various alleged agreements that followed the expiration of the parties' written lease. Because the court's findings are within the range of substantial evidence, and we defer to the trial court's credibility and evidence-weight determinations, we affirm.

FACTS

In November 1995, Dr. Muriby leased his newly purchased farm in Garfield County to Mr. Anderson for a five-year term with yearly cash rent of $19,000, plus 30 percent of any gross income over $60,000 per year, including deficiency payments from the USDA Farm Service Agency (FSA). The lease set 15 percent interest on all sums more than 30 days past due, and reasonable attorney fees to the prevailing party in an enforcement action. The lease expired about seven months after Mr. Anderson married Carlye Anderson. The Andersons continued in possession. The parties used the expired lease, apparently as a non-binding guide with certain alleged, and now disputed, oral modifications.

First, after the 2002 harvest, the parties disputed rent calculation after the Andersons' decision to allow the land to remain fallow in 2001.

Second, in July 2003, the parties orally agreed to place a portion of the farm in the USDA Conservation Reserve Program (CRP), requiring "buffer strips" in critical locations. Theoretically, Dr. Muriby was to receive 85 percent of CRP payments and 25 percent of gross income, including deficiency payments, but the anticipated CRP payments turned out to be less than expected after a government survey showed less buffer strip acreage. Mr. Anderson no longer desired to pay cash rent (the $19,000) and

his share of CRP payments was to be used for buffer strip maintenance. No specific agreement is in evidence concerning how the gross or net income was to be calculated. After failing to reduce their oral understandings to writing, the Andersons nevertheless signed a CRP contract for a 10-year term ending September 2013. Apparently, Dr. Muriby was not a party to the CRP contract.

In April 2006, Mr. Anderson believed he had settled all disputes when the parties agreed to a replacement tenant found by Mr. Anderson. According to Mr. Anderson, he gave up customary reimbursement claims against Dr. Muriby of about $13,800, and he assigned his future CRP payments of $21,118.05 to Dr. Muriby in exchange for $12,369.40 in remaining rents owed to Dr. Muriby, and his freedom from having anything more to do with Dr. Muriby and his farm.

However, in 2007, Dr. Muriby sued the Andersons, seeking unpaid rent, accounting, fencing costs, interest, and attorney fees. The Andersons prevailed at a bench trial where Dr. Muriby appeared pro se. Mr. Anderson and local tenant farmer, Jim Baker, discussed common farm rotation practices, rental arrangements, and customary reimbursements. Mr. Anderson related his understanding of the April 2006 termination agreement and Dr. Muriby's habit of accepting late payments.

In the end, the court orally reasoned:

> [T]he defendant's [sic] did sustain their burden of proof as to their accounting method and that's why I buy into their 12,369.40. They also did prove . . . by a preponderance of the evidence greater weight of the

> evidence that they had a credit coming for the present cash value of the right to receive these nine payments total of $21,118.05, plus the $13,800 on the other business.

Report of Proceedings (RP) at 182.

Dr. Muriby unsuccessfully sought reconsideration. He then appealed, challenging the following written findings for lack of substantial evidence:

> 3.4 It is a common practice where crops are planted every-other-year to average the two year total as in determining the yield and resulting rent owed.
>
> 3.5 Defendants made all rental payments to the plaintiff under the written lease, and plaintiff accepted those payments as payment in full, except for $12,369.40 referred to hereafter in Paragraph 3.14.
>
> 3.6 The defendants had a history of paying the amounts due under the lease late, but the plaintiff accepted the payments, waiving any right to ask for late fees.
>
> . . . .
>
> 3.13 At the time of turning over the land to the replacement tenant, the defendants signed over any future interest in buffer-strip CRP payments, which further payments were worth roughly $21,100 to defendants. The signing over of such payments was to pay off Mr. Muriby any sums he claimed were owed so that the defendants could be released as lessees.
>
> 3.14 Plaintiff, Mr. Muriby, accepted the said future interest in such CRP payments and the receipt of such payments satisfied all lease obligations of the defendants including the $12,369.40 referred to in paragraph 3.5 above.

Clerk's Papers (CP) at 10-11.

ANALYSIS

The dispositive issue is whether substantial evidence supports the superior court's disputed findings.

Following a bench trial, we review the trial court's findings of fact for substantial evidence. *Pardee v. Jolly*, 163 Wn.2d 558, 566, 182 P.3d 967 (2008). If findings of fact are incomplete, we "may look to the trial court's oral decision to interpret the judgment." *City of Lakewood v. Pierce County*, 144 Wn.2d 118, 127, 30 P.3d 446 (2001). Substantial evidence is "a sufficient quantum of evidence in the record to persuade a reasonable person that a finding of fact is true." *Pardee*, 163 Wn.2d at 566. When substantial evidence exists, a reviewing court must not "substitute its judgment for that of the trial court." *Id.* We defer to the trier of fact "[i]n evaluating the persuasiveness of the evidence and the credibility of witnesses." *In re Marriage of Akon*, 160 Wn. App. 48, 57, 248 P.3d 94 (2011). We review questions of law de novo. *Pardee*, 163 Wn.2d at 566. "The parties' intentions are questions of fact, while the legal consequences of such intentions are questions of law." *Id.* Dr. Muriby argues the standard of review is de novo under the "sliding scale" reasoning of *Dolan v. King County*, 172 Wn.2d 299, 258 P.3d 20 (2011). His argument fails because the court had to evaluate witness credibility to determine what the parties intended to agree upon, and had to weigh the evidence to determine what figures to use.

First, Dr. Muriby contends the trial court erred in failing to average between harvest years and fallow years. The lease expired in 2000 and the parties offered opposing testimony regarding their later oral arrangements. The Andersons left the land

fallow in 2001, then planted and harvested in 2002. Ms. Anderson related calculating income separately for 2001 and 2002 would give Dr. Muriby 45 percent of profits for both years, a result inconsistent with the parties' intent to approximate a traditional farm lease. Mr. Baker testified that under a traditional farm lease, the landlord receives one-third of profits. Dr. Muriby calculated income separately for 2001 and 2002. In the end, after considering credibility and evidence weight, the trial court accepted the Andersons' viewpoints. Ultimately, the court appeared to base finding of fact 3.4 on Mrs. Anderson's testimony, reasoning in its oral ruling it was "satisfied the [Andersons] never ever intended to enter into a 45 percent lease agreement with [Dr. Muriby] ever." RP at 179-80.

Second, Dr. Muriby contends the trial court erred in failing to calculate rent based on gross income when reaching the $12,369.40 calculation. Dr. Muriby used gross figures and the Andersons used net figures, apparently as their understandings of the post-lease arrangement. The July 2003 agreements were written and their nature and effect were disputed at trial. The parties described their rental understandings differently. The trial court decided the parties did not have a meeting of the minds regarding rents, looked at the conflicting claims, and in equity declared a wash. The court's view is unsurprising considering, for example, Dr. Muriby's confusion regarding his self-authored exhibits that appeared to contain misinformation and the Andersons' number summary evidencing

Dr. Muriby's receipt of $4,672.37 as an FSA payment. In the end, the trial court appears to have accepted Mr. Anderson's view of settlement by accord and satisfaction, more fully explained below.

Third, Dr. Muriby contends insufficient evidence supports the court's finding that he waived the right to claim interest on past due rent. Considering our analysis this far determining no right to past due rent, we do not reach this contention. We note in passing, "'A waiver is the intentional and voluntary relinquishment of a known right, or such conduct as warrants an inference of the relinquishment of such right.'" *Bainbridge Island Police Guild v. City of Puyallup*, 172 Wn.2d 398, 409, 259 P.3d 190 (2011) (quoting *Bowman v. Webster*, 44 Wn.2d 667, 669, 269 P.2d 960 (1954)). "'It may result from an express agreement or be inferred from circumstances indicating an intent to waive.'" *Id.* This may include "delaying in asserting or failing to assert an otherwise available adequate remedy." *Albice v. Premier Mortg. Servs. of Wash., Inc.*, 174 Wn.2d 560, 569, 276 P.3d 1277 (2012). While the expired written lease required interest on all sums more than 30 days past due, the record shows Dr. Muriby cashed late checks in 2002 and 2003 without further objection.

Fourth, Dr. Muriby contends substantial evidence does not support the trial court's findings that the Andersons retained a future interest in CRP payments in 2006 and, thus, could not use them to satisfy his rental obligations. Dr. Muriby's arguments overlook

Mr. Anderson's forbearance of his $13,800 reimbursement claim, an additional consideration. Implicitly, the trial court found the Andersons were entitled to reimbursement for certain expenses based on customary tenant farmer agreements established by Mr. Anderson and Mr. Baker. Mr. Anderson testified he gave up his claim in addition to the CRP payments by assignment to satisfy his obligations to Dr. Muriby.

In any event, regarding the CRP payments, a tenant generally has title to "the whole product" generated on the farm during the tenant's occupancy. *In re Machlied's Estate*, 60 Wn.2d 354, 360, 374 P.2d 164 (1962). A similar rule presumably applies to payments derived from government CRP contracts the tenant executed on the farm during the tenant's occupancy. *See Weimerskirch v. Leander*, 52 Wn. App. 807, 764 P.2d 663 (1988). Dr. Muriby argues the evidence shows the parties privately agreed the Andersons would receive 15 percent of CRP payments in exchange for maintaining the buffer strips in compliance with CRP requirements. But because Dr. Muriby was not a party to the government CRP contract, the Andersons alone were entitled to receive CRP payments. While the evidence conflicts on whether the parties made a contrary private agreement, the trial court decided it was unnecessary to resolve this problem because it was settled by an accord and satisfaction.

An accord and satisfaction is a new contract, complete in itself, to settle a previously existing claim, but whose enforceability does not depend on the validity of the

antecedent agreement. *Paopao v. Dep't of Soc. & Health Servs.*, 145 Wn. App. 40, 46, 185 P.3d 640 (2008). It requires "a bona fide dispute, an agreement to settle that dispute, and performance of that agreement." *Perez v. Pappas*, 98 Wn.2d 835, 843, 659 P.2d 475 (1983). An accord may be either express or implied. *Gleason v. Metro. Mortg. Co.*, 15 Wn. App. 481, 498, 551 P.2d 147 (1976). "When an accord is fully performed, the previously existing claim is discharged and all defenses and arguments based on the underlying contract are extinguished." *Paopao*, 145 Wn. App. at 46.

In his April 2006 e-mail, Mr. Anderson announced his intent regarding future CRP payments:

> I have all along and still plan to continue maintenance of the CRP strips and fence until my lease is up . . . . After that I intend to release myself off of the CRP payments as well and forgo my lease with you. That is why I suggested to you, to possibly maintain the same agreement of the CRP payments with [the replacement tenant].

Ex. 20. Mrs. Anderson testified that this intent soon materialized as an accord, stating, "We agreed in–in 2006 to write ourselves off of that . . . and not receive the payment any longer and we even [sic] . . . and that was to leave us alone." RP at 136-37. Thus, in April 2006, the Andersons assigned to Dr. Muriby their future interest in nine CRP payments of $2,346.45, totaling $21,118.05.

The Andersons each testified how they understood that upon assigning their future interest in CRP payments to Dr. Muriby in April 2006, all their obligations were fulfilled

and they were released as tenants. Mr. Anderson further testified how after the parties agreed to part ways and before Dr. Muriby sued in July 2007, Dr. Muriby never indicated he believed the Andersons still owed him any money. From this evidence, a reasonable person could conclude the parties reached an accord, either express or implied in fact, and such accord was satisfied upon the assignment and the overlooked reimbursement claim. Dr. Muriby argues the trial court's finding of an accord contradicts its oral ruling, which states, "there was never any meeting of the minds per say [sic] that if [the Andersons] signed off on this -- the rest of the nine years with CRP . . . [Dr. Muriby] would agree that it's over." RP at 181-82. We are charged with reviewing the written findings under the evidence, not the oral ruling. This contradiction has little impact under a substantial evidence review. We defer to the trial court's credibility and evidence-weight determinations.

In sum, the trial court did not err in deciding an accord and satisfaction occurred. Having so concluded, the trial court did not err in denying Dr. Muriby's motion for reconsideration. "Motions for reconsideration are within the sound discretion of the trial court and we will not reverse that decision absent a showing of a manifest abuse of discretion." *Bank of N.Y. v. Hooper*, 164 Wn. App. 295, 305, 263 P.3d 1263 (2011), *review denied*, 173 Wn.2d 1021 (2012). Finally, given our analysis, we do not reach Dr. Muriby's interest and attorney fees contentions because he has not prevailed.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

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Brown, J.

WE CONCUR:

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Korsmo, C.J.

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Kulik, J.