STATE OF MICHIGAN

COURT OF APPEALS

CHRISTOPHER BROADBENT,

Plaintiff-Appellee,

v

KORRINE WOJCIK,

Defendant-Appellant.

UNPUBLISHED
September 17, 2020

No. 350177
Kalamazoo Circuit Court
LC No. 2017-000528-CK

Before: REDFORD, P.J., and BECKERING and M. J. KELLY, JJ.

PER CURIAM.

Defendant, Korrine Wojcik, appeals as of right from the trial court's judgment awarding plaintiff, Christopher Broadbent, $8,500. The court awarded the majority ($8,000) as profits from a rental property. On appeal, defendant argues that the trial court erred by calculating plaintiff's award because the parties' rental property produced only a small surplus. For the reasons set forth below, we affirm the trial court's order.

I. RELEVANT FACTS AND PROCEDURAL HISTORY

This case arises out of the purchase of a house. Plaintiff and defendant were an engaged couple looking to purchase a home together. The parties completed a homebuyers education class and viewed four or five properties before settling on a $125,000, two-story house on Douglas Road in Kalamazoo, Michigan. The parties' initial intention was to purchase the house together; however, because of plaintiff's poor credit, the lender recommended that only defendant be listed on the mortgage. Plaintiff contributed approximately $4,000 for the down payment,[1] and defendant closed on the house in January 2015; the monthly mortgage was approximately $1,232. The house was divided into two apartments, both of which were rented through July 2015 to tenants who paid a total monthly rent of $1,500. In August 2015, plaintiff and defendant rented

[1] The money appears to have come from plaintiff's father.

Apartment 1 to different tenants and moved into Apartment 2 themselves. The lease for Apartment 1 listed both plaintiff and defendant as property managers and landlords.

Plaintiff, defendant, and their family members renovated and improved the property. Plaintiff testified, for example, that he helped his uncle renovate the bathroom in Apartment 1, and he helped defendant's father remove the old header and garage doors on the three-car garage, did some electrical work, and helped install the new header. He also helped repair the backyard fence and paint, clean, and replace or repair tile in the kitchen for Apartment 1. In addition, he performed repairs for tenants and mowed the lawn.

In January 2016, defendant ended the relationship and asked plaintiff to leave the home. Plaintiff moved out in February 2016. Defendant continued to live in the home and act as a landlord to the tenants in Apartment 1. Defendant sold the home in June 2017 for $162,400, netting approximately $27,000 in profit. Afterwards, she returned $4,000 to plaintiff for his contribution to the home's down payment.

In November 2017, plaintiff filed a four-count complaint against defendant alleging breach of contract, promissory estoppel, unjust enrichment, and quantum meruit. Plaintiff asserted that he and defendant were co-landlords and property managers from August 2015 until July 2016,[2] and that they resided together on the property from July 2015 until February 2016. Plaintiff also asserted that he had contributed money and labor to the improvement of the property with the expectation arising from the parties' agreement that he "was to be compensated and/or receive a return on his investment in the property." He further asserted that he had requested reimbursement and payment from defendant, but she had refused his request. Plaintiff asked the court for a judgment in excess of $25,000, plus costs, interest, and attorney fees.

After hearing testimony at a bench trial on October 16, 2018, the trial court concluded that plaintiff did not have an ownership interest in the house. The court found that, although the parties had intended to purchase the house as a couple and had an understanding that plaintiff would be added to the title after the couple married, there was no express agreement to that end. The court further found that there was no implied-in-fact agreement that defendant would reimburse or compensate plaintiff for the money and labor contributions he made to revitalize the property. Nevertheless, the trial court concluded that the parties had entered into a joint business venture concerning the rental property. As a result, the trial court believed that plaintiff was entitled to an accounting to determine "what if any interest [plaintiff] might have with regard to the proceeds of the joint venture" and as a basis for determining whether plaintiff had a further claim. Accordingly,

[2] Both parties were listed as landlords and property managers on the lease that began August 2015. However, when defendant closed on the house in January of that year, she assumed the lease in effect at that time, and testimony established that the parties acted as co-landlords and property managers with regard to that lease. As this case proceeded, plaintiff sought damages for the period January 2015 through July 2016. When defendant provided an accounting for the rental period, it covered the period January 1, 2015 to July 31, 2016.

the court ordered defendant to provide an accounting, indicating that the parties could bring the matter back to the court if the accounting did not resolve their dispute.[3]

On December 17, 2018, plaintiff filed a motion for an accounting, alleging that defendant failed to provide the accounting ordered by the trial court at the end of the bench trial. Defendant had referred plaintiff to Schedule E (Supplemental Income and Loss) of defendant's tax returns for 2015 and 2016 and to the list of expenses from which the raw data for defendant's tax returns was purportedly extracted. Plaintiff argued that those documents did not appropriately distinguish the expenses attributable to the rental portion of the property from the expenses attributable to defendant's personal use of the property. In addition to attaching these same documents to its motion for an accounting, plaintiff also attached an e-mail exchange between the parties showing that, on the basis of those documents, defendant had stated that plaintiff may owe her $1,592.10. Contrariwise, plaintiff asserted in his motion that defendant owed him $10,906.39.

After hearing the parties' arguments at a March 4, 2019 hearing, the trial court ordered the parties to distinguish the costs incurred relative to the rental unit from those incurred for the parties' residence. The trial court believed that the income and expenses related to the rental unit should be identifiable and isolated, after which the trial court could decide whether certain numbers and categories were appropriate to consider for reimbursement to plaintiff.

On March 25, 2019, defendant provided to plaintiff a document labeled "Accounting for Korinne Wojcik, 1/1/2015 – 7/31/2016," along with an affidavit stating that the accounting ordered by the trial court had been provided to plaintiff. On May 8, 2019, defendant filed a motion asking the trial court to enter an order consistent with that accounting. According to defendant's accounting, plaintiff now owed her $4,381.29, and defendant asked the trial court to order plaintiff to pay her that amount. In response, plaintiff asserted that he was still waiting for the accounting ordered by the trial court that separated the rental unit expenses from the residence expenses. After calculating the revenue and expenses for the rental unit from January 2015 until July 2016, plaintiff asked the court to award him half of the rental payments ($13,050) minus half of the $487.22 in expenses incurred for the rental unit ($243.61), the $500 initial sanction, and additional sanctions requested on various grounds.[4]

After listening to the parties' arguments at a June 3, 2019 hearing, the court determined that the parties had reached an impasse and stated it would have to "take back" what it had entrusted the parties to do and "make a decision with regard [to] what I believe is appropriate and issue an order based upon my reading of the accounting as related to operation of this duplex . . . ." The court explained that it would consider the matter "in light of the exhibits, in light of the arguments of the property, and with the recognition . . .the defendant was in fact living in a portion of the property and deriving benefits even though she was paying a mortgage on the property without plaintiff having the opportunity to also inhabit that portion of the property." The court

[3] The court also imposed a $500 sanction against defendant for missing a required settlement conference.

[4] The court later determined that this amount would equal $13,756.39.

stated that in light of "those general guidelines" it would "take this matter back under advisement and will issue a ruling with regard to damages as I find them based on the accounting."

Subsequently, the trial court explained in a written order that it did not believe that either parties' calculation constituted the actual damages sustained by plaintiff, but that the amounts in dispute did not justify employing an accountant to determine the precise amount of damages owed. Stating that it had analyzed the income and expenses in the documents provided by the parties in light of the parties' position and the court's ruling in favor of plaintiff, the court awarded plaintiff $8,500, an amount that included the $500 sanction. The trial court declined to order additional sanctions.

II. ANALYSIS

Defendant's sole argument on appeal is that the trial court clearly erred in calculating plaintiff's damages. Specifically, defendant contends that the evidence does not support the trial court's award of $8,500 because the rental property produced a small surplus of $1,736.91 and defendant already repaid plaintiff $4,000. We find no clear error.

This Court reviews a trial court's award of damages following a bench trial for clear error. *Marshall Lasser, PC v George*, 252 Mich App 104, 110; 651 NW2d 158 (2002). "Clear error exists where, after a review of the record, the reviewing court is left with a firm and definite conviction that a mistake has been made." *Id*. A damage award is not clearly erroneous where the award was within the range of the evidence presented, and "the trial court 'was aware of the issues in the case and correctly applied the law.' " *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 516; 667 NW2d 379, 385 (2003), quoting *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176, 530 NW2d 772 (1995).

Our review of the record establishes that the trial court was aware of the issues in this case. At the end of the bench trial, the trial court made findings regarding the parties' intentions at the time they purchased the house and the absence of an express agreement indicating that plaintiff had an ownership interest in the house and of an express or implied-in-fact agreement that he would receive compensation for the money and labor he contributed to revitalization of the house. Neither party has challenged these findings. Likewise, neither party has challenged the court's finding that the parties entered into a joint business venture with regard to the rental property and that plaintiff was entitled to an accounting to determine the amount of profit, if any, to which he was entitled. The parties' dispute revolves around how to compute the expenses for the rental property during the relevant period. In its order awarding plaintiff $8,000, the trial court did not detail how it arrived at this particular figure. However, this Court has found remand for further clarification unnecessary where an award for damages after a bench trial was within the range of the evidence presented. See *Alan Custom Homes*, 256 Mich App at 516; *Triple E Produce Corp*, 209 Mich App at 176. In the present case, the trial court appears to have arrived at its award by relying on the parties' testimony about certain expenses and using the expense figures provided by

plaintiff and the method of calculation advocated by plaintiff.[5] The resulting $8,000 was within the range of the evidence presented, and defendant has not expressly challenged the court's award of $500 as a sanction.

Because the "the trial court was aware of the issues in the case and correctly applied the law," and the damages award fell within the range of evidence presented, we find no clear error. See *id*.

Affirmed.

/s/ James Robert Redford
/s/ Jane M. Beckering
/s/ Michael J. Kelly

[5] From our review of record, it is possible that the court computed expenses as the the non-mortgage expenses provided in defendant's March 25, 2019 accounting document, excluding the cost for the garage door, which both parties testified was a gift, and a $269.87 Charter bill, which defendant admitted at the hearing on her motion to enter the accounting that she should not have included as a rental expense. With regard to revenue, the court appears to have used half the revenue generated by the rental unit during the relevant period. The difference between revenue and expenses so calculated falls between approximately $7,524 and $8,275 (depending on whether the court included the $1,500 deposit retained from the original 2015 lessees as revenue). Both of these numbers fall between the parties' calculations. See *Alan Custom Homes*, 256 Mich App at 516 (deeming an award of $17,000 to fall between the plaintiff's calculation of $28,095 and the defendant's calculation of zero).