

STATE OF MICHIGAN
COURT OF APPEALS

In re GUARDIANSHIP AND
CONSERVATORSHIP OF ROBERT GLEN
METCALF, SR.

ROY G. METCALF,

Petitioner-Appellant,

v

RICKY G. METCALF, Guardian and Conservator of
ROBERT GLEN METCALF, SR.,

Respondent-Appellee.

In re GUARDIANSHIP AND
CONSERVATORSHIP OF LINDA J. METCALF.

ROY G. METCALF,

Petitioner-Appellant,

v

RICKY G. METCALF, Guardian and Conservator of
LINDA J. METCALF,

Respondent-Appellee.

UNPUBLISHED
May 20, 2021

No. 354196
Mackinac Probate Court
LC Nos. 2017-008074-GA; 2017-
008075-CA

No. 354197
Mackinac Probate Court
LC Nos. 2017-008072-GA; 2017-
008073-CA

Before: MURRAY, C.J., and FORT HOOD and GLEICHER, JJ.

PER CURIAM.

In these consolidated appeals, appellant, Roy G. Metcalf, appeals by right the probate court's judgment in favor of Ricky G. Metcalf, as the guardian and conservator of Robert "Glen" Metcalf and Linda Metcalf, which ruled in pertinent part that no cattle-farming partnership existed between Roy, Glen, and Linda.¹ We affirm.

I. FACTUAL BACKGROUND

This dispute involves a cattle-farming business.² In 2017, Ricky was appointed the guardian and conservator for Glen and Linda, who were in failing health. In 2018, a dispute arose after Roy sold \$92,465 in cattle. The dispute was resolved by a settlement agreement, under which Glen and Linda received 50 cows, and Roy received the remaining cattle and farm equipment and agreed to pay real-estate taxes on property listed in the conservatorship inventory. The settlement agreement "settle[d] all disputes about the cattle herd, the money from previous sale of cattle and farm equipment ownership."

After Ricky petitioned to sell real property in order to support Glen and Linda, Roy sought a declaration regarding the extent of two partnerships, Metcalf Farms and R & R Logging, which Roy claimed that he operated with Glen on a 50/50 basis. Roy asked the trial court to determine that the partnerships existed and to either partition them or credit Roy for 50% of the assets.

Multiple witnesses testified at a bench trial that Glen's sons were all initially involved in the logging and farming businesses, but dropped out over the years until only Roy and Glen remained active. Roger Metcalf testified that he was the last sibling to leave the partnership, and at that point, Glen told him that if he left, Roy would receive everything. Multiple witnesses testified that Glen stated on many occasions that Roy would receive "everything," which the witnesses thought included the farmland. Roy testified that he did not receive cash for working on the farm, Glen received all of the income, and Linda was not involved in the farm business. Roy's daughter, Kassie Owens, also testified that she did not receive cash for working on the farm, but as compensation, she was given a house in which she was a joint tenant with Linda with full rights of survivorship.

Following trial, the court issued a written opinion and order, finding that there was no partnership agreement between Roy and Glen regarding Metcalf Farms. It found that, as a practical matter, Roy had worked the farm for many years and continued to operate the business after Glen and Linda were no longer able to do so. However, the court rejected Roy's claim to the real property on three bases. First, there was no written partnership agreement. While the lack of partnership agreement was "not, in and of itself, fatal to the finding of the existence of a partnership," it was highly relevant considering that partnership tax returns did exist for a logging partnership. Second, the parties' settlement agreement resolved "all disputes" about the cattle herd, sale of cattle, and equipment. The court opined that the settlement agreement resolved any

¹ Robert Metcalf, Sr., will be referred to as "Glen" throughout this opinion, while references to Robert are to Robert Metcalf, Jr.

² The trial court also ruled that Roy had a 50% ownership interest with Linda in a logging partnership, and neither party has appealed that ruling.

informal partnership agreement that existed. Third, the trial court found that there was insufficient evidence that the parties intended to form a cattle-farming partnership that included the real property. It noted that the land was not titled in the form of a partnership, even though other property was jointly owned, and the real estate had been listed without objection as part of Glen and Linda's conservatorship since 2017. The court found that Roy and Glen did not intend to form a cattle-farming partnership that included the real estate.

II. STANDARDS OF REVIEW

This Court reviews de novo questions of law, *Byker v Mannes*, 465 Mich 637, 643; 641 NW2d 210 (2002), as well as the interpretation of contracts, which include a settlement agreement. *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 452; 733 NW2d 766 (2006); *DeFrain v State Farm Mut Auto Ins Co*, 491 Mich 359, 366-367; 817 NW2d 504 (2012). This Court reviews for clear error the trial court's findings of fact following a bench trial. MCR 2.613(C). A finding is clearly erroneous if, after reviewing the entire record, this Court is definitely and firmly convinced that the trial court made a mistake. *Augustine v Allstate Ins Co*, 292 Mich App 408, 424; 807 NW2d 77 (2011).³

III. ANALYSIS

Roy raises several arguments on appeal, none of which require reversal. First, Roy argues that the trial court erred by concluding that no partnership existed with respect to the cattle/farm land based solely on the lack of a writing. Roy's argument misconstrues the trial court's decision, which was not solely based on a lack of written agreement.

"It is settled that error requiring reversal may only be predicated on the trial court's actions" *Lewis v LeGrow*, 258 Mich App 175, 210; 670 NW2d 675 (2003). When reviewing a trial court's decision, this Court considers the substance of the decision in context. *Pontiac Food Ctr v Dep't of Community Health*, 282 Mich App 331, 333-334; 766 NW2d 42 (2008). Here, we have reviewed the record and conclude that the trial court's findings of fact were not clearly erroneous, and supported the trial court's decision. We further reject Roy's arguments to the contrary.

First, although the trial court found that no written partnership agreement existed, it explicitly noted that the lack of writing was "not, in and of itself, fatal to the finding of the existence of a partnership" The court therefore went on to consider several other factors, and hence did not base its decision solely on a lack of written partnership agreement.

Second, Roy argues that the trial court erred by applying the statute of frauds to the cattle-farming operation, despite his partial performance of his and Glen's agreement. Again, Roy's

³ We reject Roy's attempt to question the probate court's jurisdiction to resolve this dispute. Subject to an exception for proceedings under the circuit court's family division, the probate court has "exclusive legal and equitable jurisdiction of . . . a proceeding that concerns a guardianship, conservatorship, or protective proceeding." MCL 700.1302(c). Because Glen and Linda have guardianships and conservatorships, the probate court had subject-matter jurisdiction.

argument fails to address the basis of the trial court's decision. The court considered the statute of frauds and agreed with Roy that partial performance would negate Ricky's statute-of-frauds argument. Its ruling was not based on the statute of frauds.

Third, we reject Roy's argument that the trial court erred by finding that the settlement agreement was an integrated agreement. An integration clause exists when the contract "declares in express terms that it contains the entire agreement of the parties" *UAW-GM Human Resource Ctr v KSL Recreation Corp*, 228 Mich App 486, 494; 579 NW2d 411 (1998), quoting 3 Corbin, Contracts, § 578, pp 402-411 (quotation marks omitted). An integration clause includes "[a]n agreement that [the parties] do now discharge and nullify all previous agreements and warranties" *UAW-GM Human Resource Ctr*, 228 Mich App at 494, quoting 3 Corbin, Contracts, § 578, pp 402-411 (quotation marks omitted). The parties' settlement agreement does not contain an express integration clause, and the trial court did not base its decision on the existence of an integration clause. Instead, it simply interpreted the plain language of the parties' settlement agreement.

An agreement to settle a pending dispute is a contract, and this Court interprets settlement agreements in the same manner as contracts. *Kloian*, 273 Mich App at 452. The goal of contractual interpretation is to honor the parties' intent and to enforce the contract's plain terms. *Davis v LaFontaine Motors, Inc*, 271 Mich App 68, 73; 719 NW2d 890 (2006). This Court discerns the parties' intent from the contract's language, and enforces unambiguous contracts according to their plain terms. *Id.*

Following the 2018 cattle-sale dispute, the parties' settlement agreement provided that the parties "agree[d] to settle all disputes about the cattle herd, the money from previous sale of cattle and farm equipment ownership." The settlement agreement divided the cattle between Roy, Glen, and Linda, and provided Roy with all farm equipment used to care for the cattle. It also provided that Roy would pay summer taxes on the real estate listed in Glen and Linda's conservatorship inventory. The trial court ruled that, to the extent that there had been a partnership in the cattle-farming operation, the settlement agreement "suggest[ed] that any informal partnership arrangement that may have been in place was resolved and abandoned at the time of the settlement agreement."

By its plain language, the settlement agreement "settle[d] *all disputes* about the cattle herd" (Emphasis added.) A dispute about a cattle-farming partnership necessarily involves the cattle herd. Additionally, the settlement agreement was not limited to the cattle sale; it mentioned that sale as well as other things. We conclude that the trial court did not err when it interpreted the settlement agreement as resolving the parties' disputes regarding the cattle-farming operation.

As part of this challenge, Roy argues that the trial court should have considered his testimony that the settlement agreement was not complete. "[P]arol evidence of contract negotiations, or of prior or contemporaneous agreements that contradict or vary the written contract, is not admissible to vary the terms of a contract which is clear and unambiguous." *UAW-GM Human Resource Ctr*, 228 Mich App at 492 (quotation marks and citation omitted). Parol evidence is only admissible (1) to prove that the clause was fraudulent, (2) to invalidate the entire contract, or (3) if the contract is obviously incomplete on its face and gaps need to be filled in. *Id.*

at 494-495. Roy testified that in his view the settlement agreement resolved only the dispute about the cows he sold, not the entire cattle-farming dispute. However, Roy's parol evidence did not support that the settlement agreement was fraudulent or should be invalidated. Further, the settlement agreement stated that it resolved "all disputes," and did not leave gaps for the trial court to fill. The trial court did not err by failing to address or consider Roy's parol evidence, as it was immaterial to the issue.

Fourth, Roy argues that the trial court clearly erred when it found that the parties did not intend to form a business partnership in the cattle-farming operation. We note that the trial court *did* find that a cattle-farming partnership likely had existed between Roy, Glen, and Linda. However, as previously discussed, it *also* found that the partnership was resolved by the settlement. We consider now the trial court's finding that the parties did not intend the cattle-farming operation to include the farmland, and we are not definitely and firmly convinced that the trial court made a mistake.

A partnership is an association of two or more persons "to carry on as co-owners a business for profit." MCL 449.6(1). Parties who associate to carry on a business for profit "will be deemed to have formed a partnership relationship regardless of their subjective intent to form such a legal relationship." *Byker*, 465 Mich at 646. The focus of the inquiry is on "the parties' actual conduct in their business arrangements" *Id.* at 649. Courts should conduct "an examination of all the parties' acts and conduct in determining the existence of a partnership." *Id.* at 647.

Multiple witnesses testified at trial that Glen promised that, if Roy continued to work on the farm, Roy would receive the cattle and land when Glen could no longer farm. Roy testified that the farming business included the land, equipment, and cattle. Roger testified that the land was an integral part of the cattle-farming operation because it was used to feed the cattle, both by producing hay and providing pasturage. Roy's long-term partner testified that, when Glen said that Roy would get everything, she thought he meant all of the property, farm equipment, and the business. Several witnesses testified that Roy took care of the farm while Glen's abilities to do so declined.

However, evidence showed that the land was not titled in the name of a partnership, and in fact it was titled to Glen and Linda. Additionally, there was no written partnership agreement, which the trial court found particularly relevant because partnership tax returns existed for the separate logging partnership between Roy and Linda. This issue ultimately came down to the weight of the evidence, and we are not definitely and firmly convinced that the trial court made a mistake when, after considering the evidence of the parties' conduct and business arrangements, it determined that the parties did not intend to include the farmland in a partnership.

Comparing his case to *Leighton v Leighton*, 10 Mich App 424; 159 NW2d 750 (1968), Roy argues that he will receive nothing for his labor if he does not receive the farmland. In *Leighton*, *id.* at 427-428, a written contract existed between two parents and their son providing that the parents owned real estate as tenants by the entireties, and the son would undertake operation of the farm premises. However, without the son's knowledge, the father entered into an agreement to sell a portion of the land. *Id.* at 430. This Court affirmed an order requiring the parents to perform the contract, reasoning that the written agreement did not specify that the father had the right to terminate the contract. *Id.* at 433.

This case is not like *Leighton*, as there is no written contract under which the probate court could order specific performance. Additionally, while the parents in *Leighton* specifically made an agreement as tenants by the entireties, *id.* at 427, there is no indication that Linda was involved in the cattle partnership. In fact, Roy testified that she was not involved in the partnership.

Fifth, Roy asserts that the trial court erred by holding that Glen could not convey the property as a partner in the partnership. As previously discussed, the basis of the trial court's decisions were the parties' settlement agreement and lack of intent to form a partnership concerning the real estate. We reject this argument because it does not address the basis of the court's decision.

Finally, Roy argues that the trial court made insufficient conclusions of law when it mentioned the property that Kassie and Linda jointly owned without making a legal ruling concerning it. We conclude that remand is not warranted. A trial judge sitting without a jury must make sufficient findings of fact and separate conclusions of law. MCR 2.517(A)(1). However, this Court need not remand unless further explanation will facilitate appellate review. *Triple E Produce Corp v Mastrondardi Produce, Ltd*, 209 Mich App 165, 176; 530 NW2d 772 (1995). Here, Roy sought a declaration that a partnership existed and rulings regarding the substance of the partnership. The trial court's ruling is sufficiently clear to establish that the property belonging to Kassie and Linda as joint tenants with full rights of survivorship was not part of the alleged partnership, and remand is not necessary.

Affirmed.

/s/ Christopher M. Murray
/s/ Karen M. Fort Hood
/s/ Elizabeth L. Gleicher