STATE OF MICHIGAN

COURT OF APPEALS

BILLY L. WHITSON,

Plaintiff/Counter Defendant-Appellee,

v

CAROL L. KALTZ,

Defendant/Counter Plaintiff-Appellant.

UNPUBLISHED
September 20, 2002

No. 229289
St. Clair Circuit Court
LC No. 99-001907-CK

Before: Cooper, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Defendant Carol L. Kaltz appeals by right from a judgment following a bench trial. We affirm.

Kaltz first contends that the circuit court erred in awarding damages to Whitson based on quantum meruit. We review questions of law and equitable issues de novo, while we review findings of fact for clear error. *Cipri v Bellingham Frozen Foods, Inc*, 235 Mich App 1, 8-9; 596 NW2d 620 (1999). "Those engaged in meretricious relationships do not enjoy property rights afforded a legally married couple." *Featherston v Steinhoff*, 226 Mich App 584, 588; 575 NW2d 6 (1997). "This Court will, however, enforce an agreement made during the relationship upon proof of additional independent consideration." *Id*. The agreement must be express or implied in fact. *Id.* We will not allow recovery "based on contracts implied in law or quantum meruit because to do so would essentially resurrect common-law marriage." *Id*. A party to a meretricious relationship does not acquire rights in the property accumulations of the other by reason of cohabitation alone during the period of the relationship. *Tyranski v Piggins*, 44 Mich App 570, 573; 205 NW2d 595 (1973). However, if "there is an express agreement to accumulate or transfer property following a relationship of some permanence and an additional consideration in the form of either money or of services," this Court will find independent consideration. *Id*. at 573-574.

There was an express agreement to accumulate the property (the modular home) in this case. Whitson testified that he and Kaltz agreed to buy the house together, and Kaltz agreed that the decision was mutual. Both signed the retail installment contract, making both liable on the unpaid balance. There was a relationship of some permanence: the two were together for just

over five years. There was consideration on both sides: Whitson contributed the down-payment and the other costs of construction, and Kaltz and her daughter contributed the land. These facts support a finding of independent consideration as required under *Featherston, supra* at 588, and *Tyranski, supra* at 573-574. The circuit court recognized these facts and noted that the home "that's been placed on [Kaltz'] property [has] increased the value of the property considerably."

The court, however, found that to allow Kaltz to keep the home and improvements without compensating Whitson for his contributions would unjustly enrich her, specifically referring to "unjust enrichment" and "quasi-contract" in its analysis. Quasi-contract as the basis for recovery is specifically forbidden by *Featherston, supra* at 588.

However, we will not reverse a trial court's order where it reaches the right result for the wrong reason. *Ford Credit Canada Leasing, Ltd, v DePaul,* 247 Mich App 723, 730; 637 NW2d 831 (2001). While it is true that a contract will be implied only if there is no express contract covering the same subject matter, *Barber v SMH (US), Inc,* 202 Mich App 366, 375; 509 NW2d 791 (1993), and that there were no express terms of the contract governing the disposition of the parties' contributions if their relationship ended, "[i]n the absence of extrinsic supplemental evidence, [the Court] may infer that the parties intended a 'reasonable' or 'good faith' term as part of the contract." *Opdyke Investment Co v Norris Grain Co,* 413 Mich 354, 367; 320 NW2d 836 (1982). It would be reasonable to infer that the parties intended that each receive the value of his or her contribution if their relationship ended. Because this conclusion would yield essentially the same result as that reached by the circuit court, we affirm the award of damages to Whitson. *Ford Credit Canada Leasing, supra*.

Kaltz also argues that it was error for the circuit court to characterize the relationship between the parties as a "joint venture." To the extent that the parties had no profit motive, as required by, inter alia, *Price v Nellist,* 316 Mich 418, 421-422; 25 NW2d 512 (1947), Kaltz is correct that there was no "joint venture." However, as the previous analysis indicates, the facts of this case compel a finding that an agreement existed and that the agreement was supported by independent consideration as required by *Featherston, supra* at 588, and *Tyranski, supra* at 573-574. We will not reverse a trial court where it reaches the right result for the wrong reason. *Ford Credit Canada Leasing, supra*.

Kaltz next contends that the circuit court erred when it denied her counter-claim for promissory estoppel. The required elements for an invocation of the promissory estoppel doctrine are as follows: "(1) a promise, (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of promisee, (3) which in fact produced reliance or forbearance of that nature, and (4) in circumstances such that the promise must be enforced if injustice is to be avoided." *Ardt v Titan Ins Co,* 233 Mich App 685, 692; 593 NW2d 215 (1999), quoting *Mt Carmel Mercy Hosp v Allstate Ins Co,* 194 Mich App 580, 589; 487 NW2d 849 (1992). This Court objectively reviews the words and actions surrounding the transaction in question as well as the nature of the relationship between the parties and the circumstances surrounding their actions to determine whether the doctrine should be invoked. *First Security Savings Bank v Aitken,* 226 Mich App 291, 313; 573 NW2d 307 (1997), overruled on other grounds sub nom *Smith v Globe Life Ins Co,* 460 Mich 446, 455-456 n 2 (1999). The promise relied on must be "actual, clear, and definite." *Id.* at 312. This Court must exercise caution in evaluating an estoppel claim and should apply the doctrine only where the facts are unquestionable and the wrong to be prevented undoubted. *Novak v Nationwide Mutual Ins Co,*

235 Mich App 675, 687; 599 NW2d 546 (1999). Promissory estoppel can be used as a cause of action for damages, *Hoye v Westfield Ins Co*, 194 Mich App 696, 705; 487 NW2d 838 (1992), so a plaintiff must prove that she was actually damaged as a result of her reliance on the alleged promise of defendant, SJI2d 130.01; *Joerger v Gordon Food Service, Inc*, 224 Mich App 167, 173-174; 568 NW2d 365 (1997).

Kaltz was able to prove the existence of the clear and definite promise required. She testified that Whitson promised to take care of her if she quit her job. Although Whitson testified that neither made any promises to the other, other witnesses testified that Whitson often stated that he wanted Kaltz to quit her job, and that he would take care of her. It was undisputed that she did quit her job for ten months, and only worked part-time when she did return to work. However, Kaltz failed to prove that she was damaged by her reliance on Whitson's promise. She admitted that he did take care of her as promised during the time she was not working, that he was "extremely generous," and that he paid for almost everything while they lived together. The circuit court recognized that Whitson fulfilled the promises he made to Kaltz and, for that reason, found that there was no merit to her claim for lost wages. We agree. SJI2d 130.01; *Joerger, supra*.

Kaltz next contends that the court refused to consider her motion for directed verdict and that this refusal constituted error requiring reversal. We review a trial court's decision regarding a directed verdict under the de novo standard. *Meagher v Wayne State Univ*, 222 Mich App 700, 708; 565 NW2d 401 (1997). Further, this Court views the evidence in a light favorable to the non-moving party and resolves conflicts in the evidence in favor of that party. *Thomas v McGinnis*, 239 Mich App 636, 643-644; 609 NW2d 222 (2000). If reasonable finders of fact could have reached different conclusions, then this Court should not substitute its own judgment. *Wickens v Oakwood Healthcare System*, 242 Mich App 385, 389; 619 NW2d 7 (2000), rev'd in part on other grounds 465 Mich 53 (2001).

In spite of Kaltz' characterization of the circuit court's action in this case as a refusal to consider her motion for a directed verdict, the circuit court considered the evidence and denied the motion. The circuit court specifically stated that (1) there were factual issues, and (2) evidence was presented on which a factfinder could make a decision. Moreover, the court's denial of the motion was proper. Evidence presented up to the time of Kaltz' motion established that the parties had made a mutual decision to purchase the modular home and have it installed on the land owned by Kaltz and her daughter. The evidence also established that Whitson had made substantial expenditures in relation to that decision and that the house was still on Kaltz' land. This was sufficient to create an issue of fact regarding whether Kaltz should have been required to compensate Whitson for his expenditures.

Finally, Kaltz contends that this Court should reverse the circuit court's finding that the GMC van was not a gift to Kaltz. For a gift to be valid, three elements must be satisfied: (1) intent to transfer title gratuitously to the donee, (2) actual or constructive delivery of the subject matter to the donee, and (3) the donee must accept the gift. *Davidson v Bugbee*, 227 Mich App 264, 268; 575 NW2d 574 (1997). Intent – the only element at issue – is determined by examining the facts and circumstances in evidence. *Osius v Dingell*, 375 Mich 605, 611-612; 134 NW2d 657 (1965).

"Cases involving equity jurisdiction are reviewed in this Court de novo, but ordinarily the Court will not reverse the lower court where there is evidence and testimony to support the finding of the lower court unless justice demands, or the evidence clearly preponderates the other way." *Osius, supra* at 611. In this case, there is evidence on both sides of the intent issue: Whitson and his daughter testified that he did not intend to give the van as a gift, while Kaltz and her witnesses suggested that he did. The evidence does not clearly preponderate either way. "[B]ecause the trial court is in [a] better position to determine the credibility of witnesses by observing their conduct and demeanor in court," *id*. at 611-612, we will not reverse on a close factual question.

We affirm.

/s/ Jessica R. Cooper
/s/ Jane E. Markey

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HOEKSTRA, J., *(concurring in part, dissenting in part).*

I respectfully dissent from the part of the majority opinion that affirms the award of compensation to plaintiff for improvements to defendant's property that plaintiff paid for during their meretricious relationship. The majority correctly acknowledges that the trial court erred in relying on a theory of "unjust enrichment" or "quasi-contract" in making this award. However, the majority proceeds to affirm the award on the alternate ground that the evidence supports a finding that the parties entered into "an express agreement to accumulate the property (the modular home) in this case." I do not dispute that the evidence supports a finding that the parties agreed to make the improvements at issue here. However, the evidence does not support a finding that defendant's agreement with plaintiff to improve her property during the parties' relationship expressly included an obligation on her part to compensate plaintiff for his contribution to the improvement at some future time.

Compensation for these improvements to the property can be awarded, in my opinion, only if plaintiff can show a contract implied in fact. For a contract to be implied in fact here, there must be evidence that *at the time* the improvement was made, plaintiff expected compensation from defendant and defendant expected to pay plaintiff for the improvement. *In re Estate of Morris*, 193 Mich App 579, 582; 484 NW2d 755 (1992); *In re Lewis Estate*, 168 Mich App 70; 423 NW2d 600 (1988). Here, there is no such evidence. At most, the evidence shows that while involved in this relationship with defendant, plaintiff spent money to improve defendant's property without any thought concerning how or whether he would be paid if the relationship ended. At the time, apparently neither party anticipated an end to the relationship. Consequently, neither party considered what compensation, if any, defendant would be required to pay plaintiff in that event. Under these circumstances, no factual basis exists on which to find

a contract implied in fact. I would reverse the award made to plaintiff for improvements to defendant's property.

In all other respects, I join with the majority opinion.

/s/ Joel P. Hoekstra