STATE OF MICHIGAN

COURT OF APPEALS

MICHAEL GIBBONS,

Plaintiff-Appellee,

V

RITA MILLER,

Defendant-Appellant.

UNPUBLISHED
March 13, 2003

No. 236988
Wayne Circuit Court
LC No. 99-930615-NO

Before: Meter, P.J., and Jansen and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment in favor of plaintiff for $38,064 in this wrongful eviction case. We affirm.

Defendant first argues that the trial court abused its discretion in denying her motion to adjourn trial on the basis of the unavailability of a defense witness. We disagree. This Court reviews a trial court's ruling on a motion to adjourn for an abuse of discretion. MCR 2.503(D)(1); *In re NEGP*, 245 Mich App 126, 134; 626 NW2d 921 (2001). An abuse of discretion exists if an unprejudiced person, considering the facts upon which the trial court acted, would say there is no justification or excuse for the ruling, *Cleary v Turning Point*, 203 Mich App 208, 210; 512 NW2d 9 (1993), or the result is so violative of fact and logic that it evidences a perversity of will or the exercise of passion or bias, *Dep't of Transportation v Randolph*, 461 Mich 757, 768; 610 NW2d 893 (2000); *Schoensee v Bennett*, 228 Mich App 305, 314-315; 577 NW2d 915 (1998).

MCR 2.503(C) provides, in pertinent part:

> **(C) Absence of Witness or Evidence.**
>
> (1) A motion to adjourn a proceeding because of the unavailability of a witness or evidence must be made as soon as possible after ascertaining the facts.
>
> (2) An adjournment may be granted on the ground of unavailability of a witness or evidence only if the court finds that the evidence is material and that diligent efforts have been made to produce the witness or evidence.

> (3) If the testimony or the evidence would be admissible in the proceeding, and the adverse party stipulates in writing or on the record that it is to be considered as actually given in the proceeding, there may be no adjournment unless the court deems an adjournment necessary.

First, defendant's motion to adjourn was not made as soon as possible after ascertaining that the witness was unavailable for trial. Trial was scheduled to begin on Tuesday, August 22, 2000. Defendant moved to adjourn trial on Wednesday, August 16, 2000, and the motion was heard the next day. At the hearing, defense counsel indicated that he contacted the witness the previous week and learned that the witness was in the hospital. Given the impending trial date, and that the motion could have been made earlier in the week or perhaps the previous week, defendant's motion was not made as soon as possible after ascertaining that the witness was unavailable to testify.

Second, the record does not demonstrate that the witness' testimony would have been material. Defense counsel made no proffer regarding the substance of the witness' testimony. On appeal, defendant asserts that the witness "would have been able to provide invaluable 'inside' information that [d]efendant was relying upon to prevail in this matter." However, this Court's review is limited to the record of the trial court, *Amorello v Monsanto Corp*, 186 Mich App 324, 330; 463 NW2d 487 (1990), and it will allow no enlargement of the record on appeal, *Kent County Aeronautics Bd v Dep't of State Police*, 239 Mich App 563, 580; 609 NW2d 593 (2000), aff'd 463 Mich 652; 624 NW2d 906 (2001). Because the burden of proof is on the party asserting an abuse of discretion, *In re Jackson*, 199 Mich App 22, 28; 501 NW2d 182 (1993), and there is no record of this witness' purported testimony in the lower court record, defendant has failed to demonstrate that the witness' testimony would have been material. Therefore, the trial court did not abuse its discretion in denying defendant's motion for an adjournment.

Defendant next argues that the trial court improperly denied her motion for directed verdict on plaintiff's claim based on promissory estoppel. Defendant maintains that no question of fact existed regarding whether each alleged promise was sufficiently definite and clear to establish a claim based on promissory estoppel. We disagree.

A trial court's decision on a motion for a directed verdict is reviewed de novo. *Derbabian v S & C Snowplowing, Inc*, 249 Mich App 695, 701; 644 NW2d 779 (2002). We review all the evidence presented up to the time of the motion to determine whether a question of fact existed. *Kubczak v Chemical Bank & Trust Co*, 456 Mich 653, 663; 575 NW2d 745 (1998). In doing so, the appellate court views the evidence in the light most favorable to the nonmoving party and grants him every reasonable inference and resolves any conflict in the evidence in his favor. *Id.* If reasonable jurors could honestly have reached different conclusions, this Court may not substitute its judgment for that of the jury. *Hunt v Freeman*, 217 Mich App 92, 99; 550 NW2d 817 (1996). To establish a claim based on promissory estoppel, there must be:

> (1) a promise; (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of the 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. [*Booker v Detroit*, 251 Mich App 167, 174; 650 NW2d 680 (2002).]

"[A] promise is a manifestation of intention to act or refrain from acting in a specified manner, made in a way which would justify a promisee in understanding that a commitment had been made." *Booker, supra* at 174, citing *Marrero v McDonnell Capital Corp*, 200 Mich App 438; 442; 505 NW2d 275 (1993). "The sine qua non of promissory estoppel is a promise that is definite and clear." *Id*., citing *Marrero, supra* at 442. Promissory estoppel requires an "actual, clear, and definite promise." *State Bank of Standish v Curry*, 442 Mich 76, 84-85; 500 NW2d 104 (1993). Promissory estoppel must be cautiously applied only when the facts are unquestionable and the wrong to be prevented undoubted. *Booker, supra* at 174, citing *Novak v Nationwide Mutual Ins Co*, 235 Mich App 675, 687; 599 NW2d 546 (1999).

At issue are two alleged promises in this case. The first issue is whether defendant promised plaintiff twenty percent of the net profits upon the sale of the house to compensate him for his labor in making renovations. The second issue is whether defendant promised to reimburse plaintiff for his expenditures. The jury found defendant liable only on the second promise. Because defendant is not an aggrieved party in regard to the first promise, this Court will not consider that promise on appeal. *Ford Motor Co v Jackson (On Rehearing)*, 399 Mich 213, 225; 249 NW2d 29 (1976).

Viewing the evidence in the light most favorable to plaintiff and granting him every reasonable inference, the trial court properly determined that a question of fact existed regarding whether defendant promised to reimburse plaintiff for his expenditures. *Kubczak, supra* at 663. The record contains evidence that defendant told plaintiff that she would reimburse him for work done on the Fisher home when the house was sold. Given that defendant knew that the Fisher house needed repair when plaintiff moved in, defendant should have expected that her promise to plaintiff to reimburse him for renovations would induce him to make those renovations. Plaintiff and defendant were involved in a romantic relationship when the promise was made. Although "a prior relationship between parties cannot alone support a claim of promissory estoppel," the parties' relationship may have contributed to a reasonable expectation that plaintiff would have acted on her promise. *Marrero, supra* at 443. Plaintiff testified that the roof was in disrepair, there were carpenter ants in the house, the kitchen was an electrical hazard, and the driveway needed repair. Therefore, the trial court properly denied defendant's motion for directed verdict because there was evidence that defendant promised to reimburse plaintiff for renovations made to her house.

Lastly, defendant argues that the trial court improperly denied her motion for directed verdict on plaintiff's conversion claim because evidence of plaintiff's damages was vague and speculative. We disagree.

The proper measure of damages in an action for conversion is the fair market value of the item converted at the time of the conversion. *Larson v Van Horn*, 110 Mich App 369, 385; 313 NW2d 288 (1981). However, in the case of family pictures or heirlooms of special value to the plaintiff that cannot be replaced and do not have a market value, the measure of damages may include the value to the owner. *Id*. Where articles do not have a standard or market value, their value to the owner, so far as they are susceptible of pecuniary measurement which is not fanciful or merely speculative, furnishes the true test. *Bernhardt v Ingham Regional Medical Center*, 249 Mich App 274, 280; 641 NW2d 868 (2002). Mathematical precision in the assessment of damages is not required where, from the very nature of the circumstances, precision is unattainable, particularly where the defendant's own act causes the imprecision. *Willis v Ed*

Hudson Towing, Inc, 109 Mich App 344, 350; 311 NW2d 776 (1981). Where liability is proven, difficulty in determining damages will not bar recovery. *Id*.

Plaintiff testified that he was missing personal property after defendant evicted him from her house. Plaintiff provided a list of some of the items and their fair market values. Additionally, plaintiff listed other missing items for which he did not offer a fair market value. Plaintiff believed it would cost $11,000 to replace all of his personal property.

"In nearly all jurisdictions, including Michigan, the owner of a chattel is competent to testify as to its value." *Kailimai v Firestone Tire & Rubber Co (On Remand)*, 87 Mich App 144, 152; 273 NW2d 906 (1978). Viewing the evidence in the light most favorable to plaintiff, a question of fact existed regarding the extent of plaintiff's damages for his conversion claim. Therefore, the trial court properly denied defendant's motion for directed verdict.

Affirmed.

/s/ Patrick M. Meter
/s/ Kathleen Jansen
/s/ Michael J. Talbot