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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000735-MR

CAROLYN IVERSON — APPELLANT

v.

APPEAL FROM WOODFORD CIRCUIT COURT
HONORABLE ROBERT G. JOHNSON, JUDGE
ACTION NO. 13-CI-00074

STONE WALL ACQUISITION, LLC — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: DIXON, JONES AND NICKELL, JUDGES.

JONES, JUDGE: Appellant, Carolyn Iverson, appeals from the April 2, 2014, order of the Woodford Circuit Court granting Stone Wall Acquisition, LLC's, motion for summary judgment on the basis that no employment contract existed between the parties. For the reasons set forth below, we AFFIRM.

I. BACKGROUND

In 2010, Stone Wall Acquisition, LLC, ("Stone Wall Acquisition") purchased Stone Wall Farm, a horse farm located in Woodford County, Kentucky, from the Haisfields. Carolyn Iverson worked for the Haisfields managing the farm and lived on tenant housing on the property. On or about August 25, 2010, Iverson was hired by Stone Wall Acquisition to continue managing the farm on its behalf. Iverson remained employed by Stone Wall Acquisition for the next two years. She was terminated on July 6, 2012.

Following her termination, Iverson filed a complaint against Stone Wall Acquisition in Woodford Circuit Court seeking damages for Stone Wall Acquisition's alleged breach of its employment agreement with her. Specifically, Iverson alleged that the employment agreement created between herself and Stone Wall Acquisition provided that she would earn $16.00 an hour and would be provided housing plus utilities, a truck for farm use, a telephone, and an office with internet services. Iverson maintained that based on the employment agreement she had with Stone Wall Acquisition, and their alleged breach of contract, she was entitled to recover damages exceeding thirty thousand dollars.[1]

Following discovery, Stone Wall Acquisition moved for summary judgment on the basis that Iverson did not have an employee contract with Stone Wall

[1] Iverson itemized her damages as follows: 1) 2010 truck usage-$6,337.26; 2) 2010 truck usage $8,170.16; 3) 2012 truck usage $1,925.85; 4) truck taxes $ 658.06; 5) housing/utilities $518.48; 6) telephone and internet $3,769.71; 7) unreimbursed expenses/tenant housing maintenance and refurbishment $6,534.83; and 8) federal Pell Grant ineligibility $5,350.00.

Acquisition. The trial court ultimately granted summary judgment to Stone Wall Acquisition. Specifically, the trial court found Iverson and Stone Wall Acquisition reached an agreement only with respect to Iverson's hourly rate of pay and her ability to live in the tenant housing on the property. The trial court found that there was no evidence in the record to support Iverson's claim that Stone Wall Acquisition agreed to the reimbursement of mileage, truck taxes, internet, telephone, utilities for housing besides her own,[2] or repair of the tenant housing. Alternatively, the trial court found that due to Iverson's poor record keeping she could not prove her damages with any degree of certainty. The trial court also denied Iverson's motion to amend her complaint to include a claim of unjust enrichment against Stone Wall Acquisition on the basis that the claim was futile.

This appeal by Iverson followed.

II. STANDARD OF REVIEW

The standard of review on appeal of a summary judgment is "whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law." *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996) (citing Kentucky Rules of Civil Procedure (CR) 56.03). "The record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor." *Steelvest, Inc. v. Scansteel Serv. Ctr, Inc*., 807 S.W.2d 476, 480 (Ky. 1991).

[2] Iverson allowed her mother and daughter to live in two tenant dwellings on the property.

"Because summary judgment involves only legal questions and the existence of any disputed material issues of fact, an appellate court need not defer to the trial court's decision and will review the issue *de novo*." *Lewis v. B&R Corp.*, 56 S.W.3d 432, 436 (Ky. App. 2001).

III. ANALYSIS

The dispositive question for our consideration is whether the Woodford Circuit Court properly determined that there was not an enforceable employment contract between Iverson and Stone Wall Acquisition with respect to the items of damages claimed by Iverson.

"Not every agreement or understanding rises to the level of a legally enforceable contract." *Kovacs v. Freeman*, 957 S.W.2d 251, 254 (Ky. 1997). Importantly, "a mere agreement to reach an agreement" at some point in the future is insufficient to create a binding contract. *Dohrman v. Sullivan*, 220 S.W.2d 973, 975 (Ky. 1949). "To be legally enforceable, an agreement must 'contain definite and certain terms setting forth promises of performance to be rendered by each party.'" *Quadrille Bus. Sys. v. Kentucky Cattlemen's Ass'n, Inc.*, 242 S.W.3d 359, 364 (Ky. App. 2007) (quoting *Kovacs* , 957 S.W.2d at 254 (Ky. 1997)).

Iverson testified in her deposition that aside from being paid $16.00 per hour and having access to one of the residences and the farm trucks, she did not reach an agreement with anyone at Stone Wall Acquisition as to the details of her employment. She explained:

> I mean, we did not have a contract. If that is what you're asking me? Because I think it's--you know, we didn't have a written contract. He contracted for my services as a manager. We had spoken when he took over the main house and was having the locks changed with Cypress Management, and I came up and introduced myself, it was around noon, a little after, and explained to him what I had done on the farm before, and he expressed an interest in hiring me and told me when Stonewall no longer needed me or laid me off that he would be willing to give me a job at the present salary working for the farm.
>
> . . . .
>
> Well, at the time that Joe took over the main house and 40 acres he did not have access to the office, the shop, the vehicles, and that type of thing, so I assumed that we would work that out as we went. We discussed the truck early on, and I think he took over the rest of the farm it was either late September or early October, and in the meantime we went to Central Equipment and he bought me a Weed Eater so I can continue at least work a little bit, trim grass. And when he got access to the vehicles I attempted to register them but could register them because they were not in Stonewall Acquisition's name,
>
> and so that was supposed to be changed over so that I would have a truck to drive.

(R. 115-16.).

After this testimony, the following colloquy took place between Iverson and defense counsel:

> Q: So we talked about $16 an hour, and we talked about that there was something that was going to be worked out with the pickup, which I guess you're agreeing with me it was never worked out; correct?
>
> A: Correct.

Q: And I guess you were going to be permitted to live in one of the houses; correct?

A: Correct.

Q: Any other terms besides I guess being permitted to live in the house and being paid $16 an hour?

A: Can you clarify that? I'm sorry I'm not sure what you're asking.

Q: Any other terms of employment besides being permitted to live in the house and being paid $16 an hour?

A: Not as far as I'm aware, although we did discuss insurance. I mean are those the things you're asking me about?

Q: I'm asking you about any kind of terms of employment.

A: Okay. We had discussed insurance repeatedly.

Q: What kind of insurance?

A: Health insurance.

Q: But that was never worked out either, was it?

A: No. We also discussed access to Internet, which I provided on my phone.

Q: That was never worked out either, was it?

A: No. As well as my phone, which was provided to guests and vendors freely by the farm, the corporation.

Q: What do you mean?

A: Well, I let that go on because I had assumed that it would become a company phone or a company phone

> would be provided. Stonewall Acquisition was using my phone, giving out my phone number, and using my Internet for company business.

(R. at 116-17.)

Iverson's description of the alleged contract's terms demonstrates its lack of specificity and definiteness. She admitted that there was no agreement beyond her hourly salary, use of the tenant residence, and use of the trucks located on the farm.[3] Certainly, it appears that Iverson desired to reach an agreement with Stone Wall Acquisition regarding a farm vehicle and company phone, but her testimony is clear that no such agreement was actually reached. Notably absent are terms as to when and how Iverson was to seek reimbursement from Stone Wall Acquisition and at what rate it would be provided. Additionally, the evidence is clear that Iverson never actually sought reimbursement from Stone Wall Acquisition during her tenure as their employee.[4]

Having reviewed the evidence, we agree with the trial court that Iverson cannot establish she had an enforceable agreement with Stone Wall Acquisition with respect to the items of damages she alleged in her complaint. The only definite terms Iverson and Stone Wall Acquisition agreed to were Iverson's hourly compensation, ability to live in the residence, and use of the trucks on the farm property.

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[3] Iverson was permitted use of the trucks on the farm, but she alleges that she was unable to drive the trucks on the road because they were not properly titled.

[4] In fact, in an August 3, 2011, e-mail Iverson stated that she provides her "own computer, internet, phone, vehicle and auto insurance and donate free use of these to the company."

Lastly, we turn to Iverson's argument that the trial court erred in denying her motion to amend to include a claim of unjust enrichment. There are three elements that a party must meet in order to prevail on a claim of unjust enrichment: (1) benefit conferred upon defendant at plaintiff's expense;
(2) a resulting appreciation of benefit by defendant; and (3) inequitable retention of benefit without payment for its value. *Jones v. Sparks*, 297 S.W.3d 73, 78 (Ky. App. 2009).

We agree with the trial court's dismissal of Iverson's unjust enrichment claim. Iverson did have a contract with Stone Wall Acquisition. The contract, however, as explained above, did not include reimbursement for the items of damages sought by Iverson in this action (personal mileage, personal phone use, residence renovations). Where there is an express contract, as there was here, the terms of the contract control and recovery is not available based upon implied contract theories such as *quantum meruit* and unjust enrichment. *See Codell Const. Co. v. Commonwealth*, 566 S.W.2d 161, 165 (Ky.App.1977); *Fruit Growers Express Co. v. Citizens Ice & Fuel Co.*, 112 S.W.2d 54, 56 (Ky.1937) ("There can be no implied contract or presumed agreement where there is an express one between the parties in reference to the same subject matter.").

There was a contract in place between Iverson and Stone Wall Acquisition related to the terms of her employment. Iverson was compensated according to those terms. She cannot use unjust enrichment to expand her rights under the parties' agreement after the fact.

IV. CONCLUSION

For the reasons set forth above, the Woodford Circuit Court summary judgment order in favor of Stone Wall Acquisition, LLC is AFFIRMED.

ALL CONCUR.

BRIEF FOR APPELLANT:	BRIEF FOR APPELLEE:
Thomas J. Schulz Louisville, Kentucky	Robert E. Maclin, III Lexington, Kentucky