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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

CHERYLL BARRON,
Plaintiff and Appellant,

v.

ROGER L. MEREDITH,
Defendant and Respondent.

A145849

(San Francisco County
Super. Ct. No. CGC 13-535537)

Cheryll Barron appeals from a judgment entered against her after a court trial, in which she asserted that respondent Roger J. Meredith had orally promised to provide for her financially for the rest of her life. Barron contends the court erred as to the facts and the law. We will affirm the judgment.

I. FACTS AND PROCEDURAL HISTORY

Barron filed a lawsuit against Meredith in November 2013, essentially alleging that they had maintained a monogamous romantic relationship for years, she had provided Meredith with companionship and other assistance, and he had promised to continue to provide her with financial support but subsequently refused to enter into a written contract to that effect. The complaint asserted three causes of action: breach of

an alleged oral contract; specific performance of the alleged oral contract; and a request for declaratory judgment as to the parties' rights and duties.

A. Trial

The matter proceeded to a court trial, at which Barron and Meredith were the only witnesses. The evidence included the following.

1. The Parties' Relationship

At the time of trial, Meredith was a 72-year-old family law attorney. Barron was a 61-year-old freelance writer.

The parties first met in the late 1990's, when Barron retained Meredith to represent her in the dissolution of her second marriage. At some point after that, Barron and Meredith began dating and spending time together. Both parties had been married and divorced twice, and neither intended to marry again.

In 1998, Barron moved from a home she owned in Modoc County into the home Meredith was renting in San Francisco. Meredith denied that he asked Barron to move in; in fact, he was surprised when she showed up one day with "belongings in a greater quantity than I would have expected for the weekend."

Barron and Meredith continued to live together and, even at the time of trial, were still living in the same residence and sharing a bed.

2. The Parties' Financial Arrangements

In 1999, Meredith and Barron signed reciprocal wills. In 1999 or 2000, Meredith added Barron to his law firm's health insurance plan as a "dependent cohabitant." In 2002, they executed reciprocal powers of attorney.

Throughout the parties' cohabitation, Meredith paid all of the household expenses and they lived in rental housing for which Meredith paid the rent. According to Barron, Meredith promised to purchase a house; according to Meredith, he said he would do so if he could afford it. Meredith's credit history, including a bankruptcy, was an impediment to obtaining financing.

In 2002 or 2009, the parties discussed purchasing the Mill Valley residence in which they were living. After an inspection revealed structural issues, however, the

residence was not purchased. Meredith testified that, if they had been able to buy a home, he likely would have agreed to owning it jointly with Barron; however, no actual discussion as to the manner of taking title or the issue of equity ever occurred because the property transaction was not consummated.

According to Meredith, in approximately 2003 Barron was concerned about not having enough social security “quarters” to receive adequate benefits, since she had been mostly self-employed as a freelance writer. Meredith therefore placed Barron on his law firm’s payroll, even though she did not do any work. (The parties dispute whether Barron asked him to do this or he did it on his own.) Meredith further testified that he agreed to Barron’s request that her payment be adjusted for inflation and include year-end bonuses akin to what office staff received. In addition, Meredith put Barron on his office IRA plan as an employee and made contributions until 2013.

The parties never pooled their money, acquired assets as co-owners, or held themselves out as husband and wife. They maintained separate financial accounts, except for a joint bank account (and attached Visa credit card) for household purposes, which was funded solely by Meredith. Meredith also provided Barron with an American Express credit card for Barron’s use as an authorized user for household purchases.

In addition, Meredith established a Certificate of Deposit account in 2008, at Barron’s request, for Barron to use if something happened to Meredith and Barron was forced to take on financial obligations. Meredith later liquidated and emptied the CD account in 2013 without telling Barron, purportedly due to cash flow issues. He refused to fund the account again, despite her request.

On a rental application dated June 7, 2012, Meredith identified Barron as a cohabitant, described her as his “life partner,” and listed her as the person to call in an emergency.

According to Barron, Meredith assured her that she need not worry about earning money from her writing because she was going to be “looked after.” Meredith acknowledged that he supported Barron financially throughout the cohabitation because

he was able to, cared about her, and felt a moral obligation to do so. He denied, however, that he had any intent to form a contract in this regard.

Barron testified that, in moving from her home in Modoc County and cohabitating with Meredith, she gave up a successful writing career and endured other hardships, and contributed to the relationship by providing companionship, cooking healthy meals, and facilitating healthy living habits. In return, Barron insisted, Meredith promised to take care of her.

The parties disputed whether they ever discussed the preparation of a financial agreement that would provide for Barron financially for the rest of her life. Barron testified that Meredith made a promise in the early 2000's to write up such an agreement, and that Barron raised the matter again several times but no agreement was ever drafted. She contended that these discussions culminated in a meeting with a mediator in 2013 to draw up the agreement, but Meredith refused to cooperate.

Meredith, on the other hand, testified that the parties never discussed any financial agreement, and he first learned of Barron's request when the mediator told him about it. Meredith insists that he had agreed to mediation only because Barron and Meredith were having communication difficulties.¹

B. Court's Statement of Decision and Judgment

The court ruled that Barron failed to prove the alleged contract by which Meredith would provide for Barron financially (or an agreement to enter into a written agreement to that effect), finding there was insufficient evidence of the requisite mutual assent, ascertainable terms, and consideration. The court further found that Barron sustained no damages from the cohabitation. Therefore, the court concluded, Barron could not prevail

¹ Barron contends the trial court's depiction of the facts was based on the court's notes and departed from the evidence. The court's statement of decision, however, cited to the reporter's transcript of the trial. In any event, we have considered the reputed differences between the facts as stated by the court and the evidence Barron cites, and we find nothing material to the outcome of the case.

on her causes of action for breach of contract, specific performance, or declaratory relief. Judgment was entered accordingly, and this appeal followed.

II. DISCUSSION

A. Law

In *Marvin v. Marvin* (1976) 18 Cal.3d 660 (*Marvin*), plaintiff and defendant had cohabited for seven years, never married, but held themselves out as husband and wife. Although all property acquired during the cohabitation was taken in defendant's name, plaintiff alleged that they had entered into an oral agreement by which they would combine their efforts and earnings and share in all property acquired. Defendant provided financial support to plaintiff and allegedly agreed to provide her financial support for the rest of her life, and plaintiff agreed to give up her lucrative career to be a homemaker. When the defendant terminated the relationship, the plaintiff sued to enforce an alleged contract by which she was entitled to half the property and to support payments. The trial court granted judgment for defendant, finding no enforceable contract. (*Id.* at pp. 665–666.)

Our Supreme Court held that unmarried cohabitants may contract with respect to earnings and property as any other persons. (*Marvin, supra*, 18 Cal.3d at p. 674.) Specifically, courts should enforce an express contract between nonmarital partners except to the extent that it is explicitly based on payment for sexual services, and in the absence of an express contract, courts should inquire into the parties' conduct to determine whether it demonstrates an implied contract, agreement of partnership or joint venture, or some other tacit understanding between the parties. (*Id.* at p. 665.)

To establish a contract, the plaintiff must show (1) the parties expressed their mutual assent to the terms of the contract; (2) the contract terms are sufficiently certain to enable the parties to understand what they are supposed to do; and (3) the parties agreed to give each other something of value (consideration). (Civ. Code, § 1550 [listing elements including consent, lawful object and consideration]; § 1565 [mutual consent]; § 1596 [object of the contract must be ascertainable]; § 1605 [consideration].)

B. Substantial Evidence Supporting the Judgment

As mentioned, the trial court decided that Barron had failed to prove the alleged oral contract because she did not establish the requisite elements of mutual assent, certainty, and consideration. Substantial evidence supported the court's conclusions.

1. Mutual Assent

The court found that, although Barron desired a secure and guaranteed financial future to be underwritten by a financial contract with Meredith, Meredith did not intend or orally consent to enter into such a contract.

Substantial evidence supported the court's finding. Meredith testified that he did not even discuss, much less agree, to such an arrangement. Although Meredith allegedly told Barron that she was going to be "looked after," it was not unreasonable for the court to conclude that those statements were too ambiguous to constitute an expression of intent to provide financial support for the rest of her life. Nor was it unreasonable for the court to conclude that the parties' mutual wills and powers of attorney evinced an intent only to care for one another in response to medical emergencies or death, and that the description of Barron on the rental application as a "life partner" merely reflected the intent that they cohabit for the rest of their lives (not that Meredith undertake a legal obligation to support her). While Meredith provided money to Barron, there was no indication of any promise to enter into any type of agreement that would legally obligate him to continue to do so. And while Barron and Meredith had different recollections at trial as to whether certain discussions and promises occurred, it was for the trial court to weigh the witnesses' testimony, assess their credibility, and decide between their competing accounts. (*Lenk v. Total-Western, Inc.* (2001) 89 Cal.App.4th 959, 968.)

2. Certainty

The court found that the parties never agreed on specific terms by which the purported object of the contract—supporting Barron for life—was going to be accomplished.

Substantial evidence supported the finding. As the court noted, there is no evidence of specific terms and conditions of support, such as the amount of support,

whether the obligation was contingent on Barron continuing to reside with Meredith, or what effect changes in income might have. Indeed, Barron's testimony that the parties were using a mediator to facilitate an agreement suggests they had *not* assented to essential contractual terms with requisite specificity. Because a reasonable inference from the evidence is that the parties did not agree upon terms that would provide a reasonable understanding of what they were supposed to do to perform the contract, Barron failed to establish an enforceable contract. (*Bustamante v. Intuit, Inc.* (2006) 141 Cal.App.4th 199, 209.)

3. Consideration

Barron contends there was consideration for the contract because she moved from Modoc County to the Bay Area, relinquished control of her time and financial decision-making, endured hardship and chaos in her search for rental housing for the parties, and gave up a successful writing career, in order to take care of Meredith and provide housekeeping, cooking and companion services. However, the court found that the move from Modoc to San Francisco did not require Barron to give up her career as a writer, noting that she did not have a contract when she moved and it was mere speculation that she would have enjoyed a successful writing career if she had stayed in Modoc. Furthermore, Barron received benefits from the relationship, including payment of living expenses and other goods and services. Substantial evidence supported the court's findings.

C. Barron's Arguments

Barron's arguments are unpersuasive.

1. Impartial Judge

Barron contends the court overlooked the true facts about the parties' relationship. She urges that the court did not act impartially but instead supported Meredith's attempts to suppress or deflect the evidence because he was a judicial officer. She further claims that evidence was excluded because the court made no accommodation for her loss of legal representation after the trial was extended without notice. And she contends the proposed and final statements of decision were based on one-sided versions of the facts.

Barron fails to demonstrate that the court’s rulings were due to any partiality towards Meredith, or that she was prejudiced by the continuance of the trial beyond the initial one-day setting. A court’s factual findings may seem one-sided, in that they decide disputed factual propositions in favor of one party or the other. But since the trial judge is in the best position to examine the demeanor and credibility of the witnesses, our assigned role is not to reweigh the evidence before the trial court but to determine if there was any substantial evidence from which the court reasonably *could* make the findings it did. (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 631.) As stated ante, substantial evidence supported the court’s findings.

2. Distinctions Between This Case and *Marvin*

Barron contends her relationship with Meredith is different than the relationship of the parties in *Marvin*, in terms of the duration of the cohabitation, ages of the partners, marital status at the start of the cohabitation, careers and occupational status, documentary evidence of a marriage-like monogamous relationship, and the fact that Barron and Meredith were still living together at the time of trial.

The question, however, is not whether the facts in this case are identical to those in *Marvin*, but whether the evidence met the legal requirements for establishing a contract. For the reasons stated ante, the court did not err in concluding the evidence did not satisfy those requirements.

3. Misapplication of Law

Barron contends the trial court erred in ruling that a contract requires certainty of terms, insisting that there is no such requirement and that a contract can be found by considering surrounding circumstances. But there *is* a requirement—as to all contracts—that the agreed terms be expressed with sufficient certainty. (E.g., *Ladas v. California State Auto. Assn.* (1993) 19 Cal.App.4th 761, 770 [“To be enforceable, a promise must be definite enough that a court can determine the scope of the duty[,] and the limits of performance must be sufficiently defined to provide a rational basis for the assessment of damages.”]; *Bustamante, supra*, 141 Cal.App.4th at p. 209 [to be enforced, a contract must be sufficiently definite for the court to ascertain the parties’ obligations and to

determine whether there has been performance or breach].) Surrounding circumstances may indeed be considered in the analysis, but ultimately there must be a showing that the terms were adequately certain.

Barron further argues that the court erred by finding no evidence of a contract between Barron and Meredith to combine efforts and earnings or to share assets acquired during the period of cohabitation, because *Marvin* held that the parties may *either* pool their earnings *or* keep them separate and agree to compensate one party for services that benefit the other. The point, however, is that substantial evidence supported the conclusion that *neither* situation was established by Barron at trial—there was no enforceable agreement to share assets or to compensate the other party for services.

Barron also challenges the court’s observation that the lack of certainty in the terms of the purported contract was indicative of the parties’ lack of mutual intent. Barron urges that *Marvin* requires a more searching inquiry into the relationship to ascertain the parties’ intentions. Here, however, the court considered not just the lack of certainty in the alleged contractual terms, but also other evidence of the parties’ relationship in concluding that Barron had not established the requisite mutual intent.

In light of these arguments (and all of the allegations and arguments in Barron’s appellate briefs, which we have fully considered), Barron fails to establish error.

III. DISPOSITION

The judgment is affirmed.

NEEDHAM, J.

We concur.

JONES, P.J.

BRUINIERS, J.