

STATE OF MICHIGAN
COURT OF APPEALS

CYNTHIA M. WIGGINS,

Plaintiff-Appellant,

v

MICHAEL T. ORHANEN and ORHANEN &
WIGGINGS, PLLC,

Defendants-Appellees.

UNPUBLISHED

October 24, 2006

No. 264497

Marquette Circuit Court

LC No. 04-041367-CB

Before: Whitbeck, C.J., and Murphy and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals as of right a judgment, entered after a bench trial, of no cause of action with respect to her breach of contract claim that was based on an alleged failure to transfer dental patients to plaintiff. The trial court found that there was no signed agreement regarding transfer of 40 percent of defendant Orhanen's¹ patients to plaintiff. Further, the trial court found that there was substantial confusion concerning the mechanics of transferring patients such that there was no meeting of the minds on the issue, which explained why the document addressing patient transfers was never executed. Additionally, the trial court ruled that recovery on any alleged oral agreement regarding patient transfers was barred by the parol evidence rule and the parties' merger clause. Finally, the trial court found that, regardless of contract formation issues concerning patient transfers, plaintiff was not entitled to damages because she actually received about 40 percent of defendant's patients. We affirm.

We review a trial court's factual findings in a bench trial for clear error, and its conclusions of law are reviewed de novo. MCR 2.613(C); *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 512; 667 NW2d 379 (2003). "A finding is clearly erroneous where, after reviewing the entire record, this Court is left with a definite and firm conviction that a mistake has been made." *Id.* Issues of contract interpretation are reviewed de novo. *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 47; 664 NW2d 776 (2003). We give due regard to the trial court's superior ability to judge the credibility of witnesses who appeared before it. MCR 2.613(C); *In re Clark Estate*, 237 Mich App 387, 395-396; 603 NW2d 290 (1999).

¹ We refer to Michael Orhanen as "defendant" and to both defendants jointly as "defendants."

We hold that even assuming the trial court erred on all the points addressed by plaintiff in her appellate brief, plaintiff's appeal fails. In addition to the rulings that plaintiff argues were made in error, the trial court also ruled that plaintiff was not entitled to damages because she actually received about 40 percent of defendant's patients. And plaintiff does not argue that the trial court erred in this regard.² Regardless of whether plaintiff correctly argues that the trial court erred in finding that there was substantial confusion and no meeting of the minds regarding patient transfers and that the court erred relative to matters concerning the merger clause and parol evidence rule, there is no basis for us to reverse because the errors would be harmless, MCR 2.613(A), considering the unchallenged ruling on the lack of any damages.

Moreover, reversal is unwarranted. Plaintiff argues that the trial court erred in finding that the merger clause and the parol evidence rule precluded recovery on an oral agreement with respect to the 40-percent transfer. Parol evidence of contract negotiations, or of prior or contemporaneous agreements that contradict or vary a written contract, is not admissible to vary the terms of a contract that is clear and unambiguous. *UAW-GM Human Resource Ctr v KSL Recreation Corp*, 228 Mich App 486, 492; 579 NW2d 411 (1998), quoting *Schmude Oil Co v Omar Operating Co*, 184 Mich App 574, 580; 458 NW2d 659 (1990). Generally, an explicit integration or merger clause conclusively bars parol evidence. *UAW-GM*, *supra* at 494-495.

Here, the trial court actually allowed the presentation of parol evidence during the trial, but then ruled that the merger clause and the parol evidence rule precluded recovery on any alleged oral contract. The trial court, however, also ruled that there was substantial confusion regarding the patient transfer issue and no meeting of the minds on the matter, thereby indicating that the court took into consideration parol evidence in its ruling, but found it insufficient to sustain an oral contract. Thus, the trial court, in essence, found that plaintiff was barred from recovery on an oral contract because of the parol evidence rule and the merger clause and, regardless, the evidence did not support the formation of an oral contract. The evidence suggested that, while the parties agreed in broad terms to the transfer of 40 percent of defendant's patients to plaintiff, there was never any common understanding on how the transfers were to be accomplished and what criteria would be utilized in determining what constituted a completed transfer. There is simply an insufficient contractual basis to conclude that defendant breached any obligation relative to the transfer of patients under the evidence presented. There was no signed writing, and we find no error in either the trial court's determination that the parol evidence rule and the merger clause barred recovery or that there was no meeting of the minds regarding patient transfers.

When interpreting a contract, this Court's primary goal is to ascertain and give effect to the intent of the parties. *Old Kent Bank v Sobczak*, 243 Mich App 57, 63; 620 NW2d 663 (2000). "To do so, this Court reads the agreement as a whole and attempts to apply the plain language of the contract itself." *Id.* The merger clause is clear and unambiguous, and it

² See *Roberts & Son Contracting, Inc v North Oakland Dev Corp*, 163 Mich App 109, 113; 413 NW2d 744 (1987) (holding that when an appellant fails "to address an issue which necessarily must be reached, the relief he seeks, . . . may not be granted").

supercedes all prior or contemporaneous agreements.³ Plaintiff's reliance on *Quality Products & Concepts Co v Nagel Precision, Inc*, 469 Mich 362; 666 NW2d 251 (2003), is misplaced because there is no evidence of a mutual agreement regarding patient transfers and method of transfer after execution of the document that contained the merger clause.

Aside from the merger clause, and as noted above, there is no evidence establishing the meeting of minds with regard to the mechanics of transferring patients. Plaintiff conceded that there was no writing, signed or otherwise, that set forth her version of how a patient transfer was supposed to take place. Further, defendant testified that he had assigned more than 40 percent of his patients to plaintiff because she always had a full chair and had enough patients to earn more than him during the last four years of the PLLC. Notably, plaintiff believed that defendant was obligated to speak with enough patients to transfer 40 percent to her and then to make those changes in the computer system⁴ and that assigning patients to her chair was insufficient, while defendant believed he needed to merely assign at least 40 percent of his patients to plaintiff for dental work. This reasonably supports a conclusion that even assuming the parties agreed that defendant had to transfer 40 percent of his patients to plaintiff, there was no meeting of the minds regarding the essential terms of patient transfer as the parties had vastly different understandings on how to accomplish it. Moreover, the unsigned policy statement says nothing about how the patients were supposed to be transferred and does not even use the term "transfer," but speaks of patient assignments. Plaintiff's argument that "assigned" meant that defendant had to talk 40 percent of his patients into making plaintiff their long-term dental care provider and make such changes in the computer is based on her own subjective expectations rather than any contract terms or verbal agreements. See *Kamalnath v Mercy Mem Hosp Corp*, 194 Mich App 543, 548; 487 NW2d 499 (1992) (holding that whether a meeting of the minds occurred is judged objectively by looking at the express words of the parties); see also *Burkhardt v Bailey*, 260 Mich App 636, 656; 680 NW2d 453 (2004) (ruling that the actual mental processes of the contracting parties are not relevant to the construction of contractual terms). Reversal is unwarranted.

Affirmed.

/s/ William C. Whitbeck

/s/ William B. Murphy

/s/ Michael R. Smolenski

³ To the extent that the patient assignment language found in the policies document constituted an actual "agreement" despite the lack of signatures, the merger clause nullified the agreement. Regardless, the language in the assignment provision does not address the mechanics of making a transfer; therefore, under the evidence presented, it cannot be said that defendant breached any obligation regarding patient transfers.

⁴ It should also be noted that plaintiff does not dispute defendant's claim that he was essentially unable to operate a computer, and defendant testified that he never interfered with staff transferring patients to plaintiff.