

Terri McGuire (“McGuire”) filed a complaint in Vigo Superior Court against Tami Sontag (“Sontag”) for boarding fees owed for Sontag’s horses. Sontag filed a counterclaim seeking one-half of the proceeds from the sale of a horse owned by the parties and repayment of a loan she made to McGuire. The trial court issued an order finding for both parties on their respective claims, and which, after offsetting the judgments, ordered McGuire to pay \$9761.66 to Sontag. McGuire appeals and raises three issues, which we restate as:

- I. Whether the trial court erred when it determined that McGuire was the owner of the horse Te;
- II. Whether the trial court erred when it concluded that McGuire owes Sontag \$1250, which represents half of the purchase price for the horse Suzi; and,
- III. Whether the trial court’s findings concerning Sontag’s \$15,100 investment in T & T Vet Services are supported by the evidence.

We affirm in part, reverse in part, and remand for proceedings consistent with this opinion.

Facts and Procedural History

McGuire owns a business known as TM Performance Horses. In connection with that business, she boards horses, provides horseback riding lessons, and shows horses. Sontag and McGuire became acquainted after Sontag began boarding her horses at McGuire’s barn. Those horses were named Te (who was purchased from McGuire’s husband) and Gizmo.

In November 2000, while attending an auction with McGuire, Sontag purchased Suzi. The parties agreed that they would co-own the horse and McGuire would pay her

share through the boarding of the horse. McGuire also used Suzi to generate income by using her for lessons. The parties purchased a second horse, Spike, under the same terms.

In 2003, Suzi was sold to Katie Monroe for \$9000 and Monroe made a \$2500 down payment. McGuire never remitted half of the \$2500 payment to Sontag. Within a few months, Monroe's economic circumstances changed and she determined that she could no longer afford Suzi. McGuire agreed to refund her down payment. However, because Monroe owed McGuire fees associated with boarding another horse and lessons for her daughter, Monroe told McGuire to keep the \$2500.

In 2004, McGuire decided to start a veterinary business. Barn space was available in a barn adjacent to the barn used for TM Performance Horses. Those barns are connected by a breezeway. McGuire's husband, Thomas McGuire, is the sole owner of the two barns. Ex. Vol., Plaintiff's Ex. 20; Tr. pp. 165-73.

Several improvements to the barn were necessary before it could be used as a space for a veterinary business. After learning of McGuire's plans, Sontag expressed interest in becoming a partner in the business venture. In February 2004, Sontag gave McGuire \$15,100. Of this amount, \$10,000 was used to complete construction on the barn and \$5100 was placed in a checking account for the veterinary business to be used for operating expenses. The business, T & T Vet Service, failed to open after the veterinarian refused to sign an employment contract shortly before the business's grand opening. McGuire attempted to, but could not find another veterinarian willing to sign an employment contract with T & T Vet.

After the failed business venture, the relationship between the parties deteriorated. On October 23, 2006, McGuire filed a complaint against Sontag alleging that she was owed \$23,747.50 for boarding fees and other fees associated with Suzi, Spike, Te, and Gizmo. Sontag counterclaimed and argued that she was entitled to one-half of the proceeds from the uncompleted sale of Suzi and reimbursement for the \$15,100 she loaned to McGuire minus the outstanding boarding fees owed for Te and Gizmo.

A bench trial was held on January 25, 2008, and the court issued the following order on April 11, 2008:

1. The parties entered into several agreements with respect to horses. Essentially, the agreements were that [Sontag] would pay the purchase price for the horses, the bill of sale would be issued solely to her (for “show” purposes), the horses would be stalled at [McGuire’s] facility, McGuire would provide lessons on the horses with no obligation to account for such funds and [Sontag] would have no obligation to pay for boarding. Both parties considered themselves co-owners of the horses.
2. For several years this arrangement worked without problems.
3. However, due to another business venture, at least in part, numerous issues arose culminating in this litigation.
4. The Court declares McGuire the owner of Te with a value of Five Hundred Dollars (\$500.00) and Suzi with a value of Seven Thousand Five Hundred Dollars (\$7,500.00).
5. [McGuire] owes [Sontag] the sum of One Thousand Two Hundred and Fifty Dollars (\$1250.00), which sum represents one-half of monies paid by Katie Monroe to [McGuire] for contract sale of Suzi, which contract sale was not completed.
6. Sontag owes McGuire the sum of Nine Thousand Eight Hundred and Twenty-three Dollars (\$9,823.00) for the boarding of Te and Gizmo, shots, vet bills and showing fee from January 2005 through August 2006, as detailed on Defendant’s Exhibit H.

7. On McGuire's claim against Sontag there is due and owing the sum of Four Thousand Five Hundred Seventy-Three Dollars (\$4573.00) by Sontag to McGuire.

8. Regarding Sontag's Counterclaim against McGuire for the sum of Fifteen Thousand One Hundred Dollars (\$15,100.00), which was paid by Sontag to McGuire, the Court finds that said monies were paid as follows: Five Thousand One Hundred Dollars (\$5,100.00) was to be used as capital for start-up business expenses. Actions were undertaken with such funds that show the parties intended to start up a business. According to McGuire, however, only One Thousand One Hundred Thirty Dollars and 68/100 (\$1,130.68) were expenses incurred on behalf of the business. (See Defendant's Exhibit A , prepared by McGuire.)

9. The other Ten Thousand Dollars (\$10,000.00) paid by Sontag was to be a loan for purposes of finishing construction on building on property. The funds were utilized, the construction was finished and the same continue to be utilized by McGuire.

10. The vet business failed before it began.

11. Sontag is entitled to judgment for Ten Thousand Dollars (\$10,000.00) loaned to McGuire.

12. Sontag is entitled to judgment against McGuire in the sum of Fourteen Thousand Three Hundred Thirty-Four Dollars and 66/100 (\$14,334.66) on her Counterclaim.

13. Setting off McGuire's recovery on her claim against Sontag's recovery on her Counterclaim, the Court enters judgment for [Sontag] and against [McGuire] in the sum of Nine Thousand Seven Hundred Sixty-One Dollars and 66/100 (\$9,761.66).

Appellant's App. pp. 5-6. McGuire now appeals. Additional facts will be provided as necessary.

Standard of Review

Where, as here, the trial court sua sponte enters findings of fact and conclusions of law, our standard of review is well settled:

[W]e review [the trial court's] findings and conclusions to determine whether the evidence supports the findings, and whether the findings support the judgment. We will set aside the trial court's findings and conclusions only if they are clearly erroneous. A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake was made. We neither reweigh the evidence nor assess the witnesses' credibility, and consider only the evidence most favorable to the judgment. Further, "findings made sua sponte control only . . . the issues they cover and a general judgment will control as to the issues upon which there are no findings. A general judgment entered with findings will be affirmed if it can be sustained on any legal theory supported by the evidence."

Helm v. Helm, 873 N.E.2d 83, 87 (Ind. Ct. App. 2007).

Moreover, we observe that Sontag failed to file an appellee's brief. We will not undertake the burden of developing arguments for the appellee. Painter v. Painter, 773 N.E.2d 281, 282 (Ind. Ct. App. 2002). Applying a less stringent standard of review, we may reverse the trial court if the appellant establishes prima facie error. Id. Prima facie error is defined as at first sight, on first appearance, or on the face of it. Id.

I. Ownership of Te

The trial court found that McGuire was "the owner of Te with a value of Five Hundred Dollars (\$500)[.]" Appellant's App. p. 5. McGuire, argues, and we agree, that the trial court mistakenly found her to be the owner of Te. The evidence presented established that Sontag is the sole owner of Te and Gizmo, but that the parties shared ownership with Spike and Suzi. McGuire asked the court to award Spike and Suzi to her and testified that Spike's value was approximately \$500. Tr. p. 50. From this evidence, we conclude that the trial court intended to award Spike to McGuire. Accordingly, we remand this case to the trial court for appropriate correction of its April 11, 2008 order.

II. The Sale of Suzi

Next, McGuire argues that the trial court erred when it determined that McGuire owes \$1250 to Sontag for the sale of Suzi, which sale was ultimately rescinded. Katie Monroe agreed to purchase Suzi from McGuire and Sontag for \$9000. She made a \$2500 down payment, but McGuire never gave Sontag her half of the down payment, or \$1250. A purchase agreement was entered into evidence at trial. Ex. Vol., Plaintiff's Ex. 10. McGuire admitted to signing both her name and Sontag's. Sontag testified that she had never seen the purchase agreement. Tr. p. 207. However, Sontag was aware of the sale and did not object to it.

A few months after the sale, Monroe's circumstances changed and she could not pay the balance owed for Suzi. After Monroe informed McGuire of her changed circumstances, McGuire returned the \$2500 down payment to her. Sontag testified that McGuire told her that she returned Monroe's down payment and that Sontag "was okay with giving [Monroe] the money back." Tr. p. 208; see also tr. p. 231.

McGuire effectively rescinded the contract with Monroe for the purchase of Suzi, and Sontag ratified the rescission by agreeing that the \$2500 down payment should be returned to Monroe. The money returned to Monroe was then hers to do with as she chose. That Monroe and McGuire agreed that the \$2500 be used to pay a debt Monroe owed to McGuire for boarding fees and her daughter's riding lessons has no bearing on the rescinded purchase agreement for Suzi. For all of these reasons, the trial court erred when it concluded that McGuire owes \$1250 to Sontag for the sale of Suzi. We therefore

remand this case with instructions to the trial court to correct its judgment, and adjust its award accordingly.

III. T & T Vet Service

Finally, McGuire argues that the trial court erred when it entered a \$14,334.66 judgment in favor of Sontag. The precise question with regard to this issue is whether Sontag loaned \$15,100 to McGuire to start T & T Vet Service or whether those funds were an investment into a joint business venture in which the parties were fifty-fifty partners. The trial court found that \$10,000 was a loan to complete construction of improvements to the barn where the veterinary business was to be housed. Those funds were used by McGuire for improvements to the barn, which is solely owned by her husband. The additional \$5,100 was to be used as capital for start-up business expenses. The court also concluded that McGuire proved that only \$1,130.68 of the start-up funds were used for expenses incurred on behalf of the business.

A. Was the \$10,000 a loan?

McGuire informed Sontag of her desire to start a veterinary business and had found a veterinarian who was interested in employment with the business. From Sontag's statements at trial it is reasonable to infer that she had agreed to enter into a fifty-fifty partnership with McGuire. For example, Sontag testified, "it would've been a nice occupation for someone like me that's been an executive all [my] life, but really wants to be with animals." Tr. p. 210. Sontag and McGuire each enrolled in an online program to receive associates degrees in veterinary medicine so "when the vet office was

open we would be ready to staff the medical office.” Id. Sontag also created business cards and brochures for the business.

After McGuire expressed concern that she did not have enough money to finish the construction needed on the barn for the veterinary business,¹ Sontag stated that she could get the money. Tr. p. 211. Sontag told McGuire, “You can use the ten and . . . we’ll put the five into the [account] to use it as operating expenses instead of me having to go and cash out a stock again.” Id. Despite Sontag’s testimony that the \$15,100 was “basically an urgent quick cash loan to make something be finished in the barn so that we could hopefully proceed and have our opening,” she did not present any evidence of repayment terms or any interest to be paid.² Tr. pp. 221, 225.

With regard to trial court’s finding that the \$10,000 was a loan, we conclude that this finding is not supported by a preponderance of the evidence. Sontag told McGuire and her husband that they could use the \$10,000 to finish the barn as needed for the veterinary business, which McGuire did. Although Sontag testified that the money was a loan, no evidence was presented to establish whether she and McGuire discussed if the funds were a loan or an investment in the business. Importantly, Sontag did not present any evidence of any discussion regarding repayment terms or any interest to be paid on the alleged loan. Sontag’s own belief that the funds were a loan is not sufficient evidence to support the court’s finding in the absence of any other evidence that would support that

¹ McGuire testified that she and her husband spent \$40,000 on improvements to the barn. Tr. p. 97; Ex. Vol., Plaintiff’s Exs. 18 & 19.

² Approximately nine months after the business failed, Sontag stopped paying boarding fees for Gizmo and Te. At trial, Sontag stated, “the only option for me as far as getting any of this amount of money back was going to be to at least take it out on the board that I had been paying.” Tr. p. 215.

conclusion.³ This is especially true under the circumstances of this case because aside from Sontag's expressed belief, the remainder of the evidence presented supports the inference that the \$10,000 was an investment in the veterinary business.⁴ McGuire has established prima facie error on this issue.

B. Sontag's \$5100 Investment

Finally, we address McGuire's claims with regard to Sontag's \$5100 investment in the veterinary business. McGuire contends that the trial court erred when it concluded that \$5100 "was to be used as capital for start up business expenses" but only \$1,130.68 "were expenses incurred on behalf of the business." Appellant's App. p. 6. The trial court specifically relied on Exhibit A to support this finding. That document is an exhibit that McGuire prepared prior to a meeting she had with Sontag, for the purpose of attempting to settle their financial disputes. The exhibit lists the "vet business expenses" as \$830.68 plus attorney fees.

Sontag submitted the records for the T & T Vet Service bank account. Ex. Vol., Defendant's Ex. F. On February 17, 2004, the balance of the account was \$5100. At some point in March 2004, the business had its grand opening despite the fact that the veterinarian refused to sign an employment contract. On March 31, 2004, the account balance was \$2036.66. By May 31, 2004, the account balance was \$19.70. There is no

³ Moreover, there is no evidence to establish that McGuire and Sontag had a "meeting of the minds" with regard to the alleged loan. A meeting of the minds of the contracting parties, having the same intent, is essential to the formation of a contract. Fox Dev., Inc. v. England, 837 N.E.2d 161, 165 (Ind. Ct. App. 2005).

⁴ Sontag's \$10,000 investment was used for improvements to a barn owned by Tom McGuire. Tom McGuire is not a party to this case, and we express no opinion as to whether Sontag may have a claim of unjust enrichment against Tom McGuire for her contribution to the improvements made.

evidence in the record that would explain why McGuire continued to withdraw funds from the T & T Vet Service bank account after the failed grand opening. Also, Sontag testified that McGuire was able to use some of the items purchased for the vet business in her boarding stable. Tr. p. 206. From the record, it is reasonable to infer that Sontag's funds were not used solely for T & T Vet Service, and further, that McGuire was able to use items purchased for that failed business in her boarding stable. For these reasons, we conclude that the trial court's finding with regard to Sontag's \$5100 investment is supported by the evidence.

Conclusion

McGuire established prima facie error with regard to her arguments concerning the rescinded sale of Suzi to Katie Monroe and Sontag's \$10,000 investment in T & T Vet Service. Regarding Sontag's \$5100 deposit into the business's bank account, we affirm the trial court's finding that of that \$5100, only \$1130.68 was used for T & T Vet Service expenses.

We remand this case to the trial court with the following instructions: 1) to correct its order to reflect that McGuire is the owner of Spike; 2) to correct its judgment to reflect that Sontag owes \$5823 to McGuire; and 3) to recalculate its net judgment in light of our conclusion that the evidence does not support the finding that Sontag loaned \$10,000 to McGuire.

Affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion.

BAILEY, J., and BARNES, J., concur.