IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

JAMES R. FULTZ, SR.,	)	
	)	
Defendant-Below/Appellant,	)	
	)	
v.	)	C.A. No. CPU4-15-003605
	)	
GLORIA A. FULTZ,	)	
	)	
Plaintiff-Below/Appellee.	)	
	)	

Submitted: January 11, 2017
Decided: March 3, 2017

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DECISION AFTER TRIAL

SMALLS, C.J.

This is an appeal from the Justice of the Peace Court pursuant to *10 Del. C. § 9571.* The facts of this case involve an alleged oral contract between two parents concerning the funeral expenses of their deceased son. Plaintiff-Below/Appellee Gloria A. Fultz ("Plaintiff") brings a breach of contract claim against Defendant-Below/Appellant James R. Fultz, Sr. ("Defendant") seeking $5,000.00 based upon a verbal agreement regarding the use of insurance proceeds to pay for their son's funeral.

On January 11, 2017, the Court held a trial on the matter. The evidence consists of testimony from Plaintiff, Defendant, Ernest Dubois, Joseph Bethard, Sharon Houston, and Catherine Fultz. Plaintiff also submitted documentary evidence for the Court to consider. At the conclusion of trial, the Court reserved decision. This is the Court's decision after trial.

FACTS AND PROCEDURAL HISTORY

During the trial, the Court sat as the sole trier of fact. Therefore, it is the Court's responsibility to assess the credibility of the testifying witnesses and, where there is a conflict in the testimony, to reconcile these conflicts, "if reasonably possible[,] so as to make one harmonious story."[1] In doing so, the Court takes into consideration the demeanor of the witnesses, their apparent fairness in giving their testimony, their opportunities in hearing and knowing the facts about which they testified, and any bias or interest they may have concerning the nature of the case.[2] Accordingly, the Court finds the following facts by a preponderance of the evidence.

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[1] *Nat'l Grange Mut. Ins. Co. v. Nelson F. Davis, Jr., et. al.*, 2000 WL 33275030, at *4 (Del. Com. Pl. Feb. 9, 2000).
[2] *See State v. Westfall*, 2008 WL 2855030, at *3 (Del. Com. Pl. Apr. 22, 2008).

Plaintiff and Defendant are former spouses who divorced in 2005. During the course of their marriage, the parties had three children. On August 18, 2014, one of their children, James Jr., died in an automobile accident. The funeral expenses for James Jr. amounted to approximately $15,000.00.[3] On August 20, 2014, Plaintiff transferred $15,000.00 from her retirement account and placed it into a separate bank account to pay the funeral expenses.[4] Plaintiff intended to recoup this money from two insurance policies the parties had on James Jr. The first policy was a $10,000.00 Met Life Insurance Policy, the proceeds of which Plaintiff received on September 13, 2014.[5] The second policy, and the one that is the center of this dispute, is a $5,000.00 Auto-Insurance Policy with Liberty Mutual Insurance ("Auto-Policy").

James Jr.'s automobile was insured by Liberty Mutual under an auto-insurance policy purchased by Defendant. The auto-insurance policy includes a provision for "No-Fault Benefits," which pays a maximum of $5,000.00 for an insured's funeral expenses if the death occurs during the operation of the vehicle. In the days leading up to their son's funeral, Plaintiff and Defendant had several discussions regarding the Auto-Policy. The parties came to an agreement where Plaintiff would file a claim for "No-Fault Benefits" on Defendant's behalf, and such funds received from the policy would go towards payment for James Jr.'s funeral expenses.

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[3] *See* Pl. Ex. 3. Plaintiff submitted to the Court receipts evidencing the funeral expenses. The expenses are as follows: (1) Funeral Home $8,076.00; (2) Cemetery Charges $4,900; (3) Limousine service $423.00; (4) Florist $408.10; (5) Food $283.1; (6) VFW Party Hall $225.00; and (7) Clothing $17.00.

[4] *See* Pl. Ex. 2.

[5] *Id.*

On September 4, 2014, Plaintiff completed the "No-Fault Benefits" application and submitted it to Liberty Mutual.[6] Liberty Mutual approved the parties' request for "No-Fault Benefits," and issued a check for $5,000.00 payable to both Plaintiff and Defendant. Plaintiff demanded the entire check pursuant to their verbal agreement. Defendant refused to tender the entire check. Eventually, the check expired and was returned to Liberty Mutual due to the parties' inaction. Liberty Mutual then reissued the check payable solely to Defendant.

On May 27, 2015, Plaintiff brought an action in the Justice of the Peace Court seeking $5,000.00, representing the Auto-Policy proceeds Defendant promised to pay for funeral expenses. Defendant filed a counterclaim seeking the recoupment of cash payments allegedly made to Plaintiff that exceeded his "fair share" of the funeral expenses. On October 9, 2015, the Justice of the Peace Court issued a decision finding in favor of Plaintiff in the amount of $5,000.00, and denied Defendant's counterclaim. On October 21, 2015, Defendant filed a timely appeal to this Court, and initiated the instant action.

PARTIES' CONTENTIONS

Plaintiff contends that in the days following James Jr.'s death, the parties had several discussions concerning the proceeds of the Auto-Policy. Plaintiff testified the parties entered into a verbal agreement where Plaintiff was to complete the Liberty Mutual application for "No-Fault Benefits," and Defendant was to give the proceeds to her to pay for James Jr.'s funeral expenses. Plaintiff testified that after Defendant received the proceeds from the Auto-Policy, he refused to pay pursuant to their verbal agreement.

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[6] *See* Pl. Ex. 1.

Plaintiff testified that since James Jr.'s death, she has not received any money from Defendant for the funeral, and demands that the Court enter judgment in her favor for $5,000.00 pursuant to their verbal agreement.

Defendant does not dispute the fact that he promised to pay Plaintiff money for James Jr.'s funeral. However, Defendant testified that he only promised to pay his "fair share" of the funeral expenses, and did not promise to give Plaintiff the $5,000.00 Auto-Policy proceeds. Furthermore, Defendant testified that he has, in fact, paid Plaintiff his "fair share" of the funeral expenses, by giving Plaintiff $7,500.00 in cash.

Defendant testified that Plaintiff requested the $7,500.00, in cash, to cover Defendant's share of the funeral expenses. To pay this share, Defendant testified that he borrowed $3,000.00 from Sharon Houston, his then-girlfriend, and sold a vehicle for $4,600.00. Defendant testified the first payment was made at Defendant's home, where he handed her an envelope with the cash, which she placed in her back pocket. Defendant also testified he made a second payment while the parties were driving in a limousine to James Jr.'s funeral. Defendant testified these two payments total $7,500.00, and encompasses his "fair share" of the funeral expenses. Accordingly, Defendant argues Plaintiff's claim for the Auto-Policy proceeds should be denied. Moreover, Defendant maintains that even if the Court were to find that there was an agreement for the Auto-Policy proceeds, Plaintiff's claim must be setoff by $2,000.00 for unpaid child support Plaintiff owes to Defendant.

LEGAL STANDARD

Appeals from the Justice of the Peace Court are reviewed *de novo*, such that the claims are tried anew.[7] In civil cases, the claimant bears the burden to prove each and every element of its claim by a preponderance of the evidence.[8] The party on which the greater weight of the evidence is found is the side on which the preponderance of the evidence exists.[9]

DISCUSSSION

In order for a plaintiff to prevail on a claim for breach of contract, she must establish by a preponderance of the evidence that: (1) a contract existed between the parties; (2) the defendant breached an obligation imposed by the contract, and (3) the plaintiff suffered damages as a result of the breach.[10] Matters concerning the formation of a contract are questions of fact.[11] A valid contract exists if: "(1) the parties intended that the contract would bind them, (2) the terms of the contract are sufficiently definite, and (3) the parties exchange legal consideration."[12]

Turning to the matter before the Court, I find that the testimony of Plaintiff and the documents submitted establish by a preponderance of the evidence that a valid contract came into existence between the parties. There is no dispute that the funeral expenses amount to $15,000.00 and the parties agreed to pay this cost with insurance proceeds.

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[7] 10 *Del. C.* § 9571(a).
[8] *See Reynolds v. Reynolds*, 237 A.2d 708, 711 (Del. 1967).
[9] *See id.*
[10] *See Gregory v. Frazer*, 2010 WL 4262030, *1 (Del. Com. Pl. Oct. 8, 2010); *VLIW Technology, LLC v. Hewlett-Packard, Co.*, 840 A.2d 606, 612 (Del. 2003).
[11] *See Sheets v. Quality Assured, Inc.*, 2014 WL 4941983, at *2 (Del. Super. Sep. 30, 2014).
[12] *Osborn v. Kemp*, 991 A.2d 1153, 1158 (Del. 2010).

Furthermore, I find Plaintiff's testimony that Defendant promised to pay her $5,000.00 from the Auto-Policy proceeds to pay for the funeral credible.

At trial, several witnesses testified that the parties had multiple conversations regarding the Auto-Policy proceeds. Although these witnesses could not testify to the substance of the conversations, the documentary evidence submitted is sufficient for the Court to conclude the parties entered into a verbal agreement for the use of the Auto-Policy proceeds to pay for the funeral. The evidence submitted shows Plaintiff completed the application for "No-Fault Benefits" on an auto-policy issued to Defendant. Furthermore, the evidence establishes that Plaintiff transferred $15,000.00 from her retirement account and placed it into a separate account to pay for the funeral. The evidence also shows that the parties had two insurance policies on James Jr., a $10,000.00 Met Life Insurance Policy and a $5,000.00 Liberty Mutual Auto Insurance Policy. The proceeds from these two insurance policies are equal to the funeral expenses for James Jr. Therefore, the testimony, which indicates the parties would use the proceeds of both policies to pay the necessary funeral expenses, is reasonable and logical.

Moreover, I do not find Defendant's testimony credible that he paid Plaintiff $7,500.00 in cash. Plaintiff maintains that she never received any money from Defendant for the funeral, while Defendant is adamant that he paid Plaintiff on two separate occasions. At trial, Plaintiff was able to provide the Court with a meticulous account summary of every expense related to the funeral. This was corroborated by a detailed bank statement from the separate account Plaintiff created for the funeral. Plaintiff was also able to provide the Court with receipts for the various funeral expenses. The expenses on the various receipts are also

evidenced on the bank statement. Furthermore, the bank statement includes the deposit from Met Life Insurance. The cumulation of the evidence on the record demonstrates that Plaintiff kept a detailed and organized record of all of James Jr.'s funeral expenses, despite the fact that this was a very traumatic time in her life.

It is difficult to conclude that a person as organized as Plaintiff would receive an envelope full of cash, place it in her back pocket, and not deposit the same money in the bank account she created specifically for the funeral. I am also not convinced by Defendant's testimony that Plaintiff requested to be paid in cash, especially when the bank statement shows that Plaintiff already possessed the funds to cover the funeral expenses, and the $5,000.00 was to reimburse her expenses. Furthermore, Defendant has failed to provide the Court with any evidence to corroborate that Sharon Houston loaned him $3,000.00, or any evidence to corroborate his testimony that he received $4,600.00 from the sale of the car. Defendant did not present any deposit or sales record to support his claims. For these reasons, I find that Plaintiff is credible and believable, and as such has met her burden by a preponderance of the evidence. Therefore, judgment is entered in Plaintiff's favor.

However, *10 Del. C. § 8120* allows for a defendant to raise the defense of setoff. A party may raise this defense when a "defendant acknowledges the justice of the plaintiff's demand, but sets up a defense of his own against the plaintiff, to counterbalance it either in whole or in part."[13] Courts have held that "the setoff of one judgment against another is not a matter of right but is, rather, addressed to the sound discretion of the court to which

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[13] *Finger Lakes Capital Partners, LLC v. Honeoye Lake Acquisition, LLC*, 2016 WL 6678445, at *2 (Del. Nov. 14, 2016).

application for setoff is made."[14] The Court may allow the defense of setoff when "in view all of the circumstances, equity and good conscience require it to be made, substantial justice will be promoted thereby, and the rights and interests of third persons will not be infringed."[15] In the instant case, Defendant argues any judgment the Court enters in favor of Plaintiff must be setoff by $2,000.00, representing unpaid child support Plaintiff owes Defendant. While this claim was raised, there was no document presented or detail accounting for the claim, and as such I do not find sufficient evidence in the record to substantiate such a position.

Conclusion

Accordingly, judgment is entered in favor of Plaintiff and against Defendant in the amount of $5,000.00, costs, and post-judgment interest at the legal rate until paid.

IT IS SO ORDERED.

Alex J. Smalls,
Chief Judge

[14] *Pettinaro Const. Co., Inc. v. Lindh*, 428 A.2d 1161, 1164 (Del. 1981).
[15] *Id.*