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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

BRIARCREEK KENNEL,)
Plaintiff-Appellant,)
vs.) Filed February 5, 1980
DAN COOKES,)
Defendant-Appellee,)
CANDACE COOKES,) 355
Intervenor-Appellee.) 2-63004

Appeal from Johnson District Court - William R. Eads, Judge.

Plaintiff kennel appeals judgment denying its petition for specific performance of contractual provisions. - Reversed and remanded.

C. Joseph Holland, of Hayek, Hayek & Hayek, Iowa City, for plaintiff-appellant.

James D. McCarragher, of Meardon, Sueppel, Downer & Hayes, Iowa City, for defendant-appellee and intervenor-appellee.

Elliott R. McDonald, Jr., of McDonald, Stonebraker & Cepican, Davenport, for amicus curiae.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Plaintiff, Briarcreek Kennel, appeals judgment denying its petition for specific performance of contractual provisions. We reverse and remand.

In May 1977, Briarcreek, defendant, Dan Cookes, and intervenor, Candace Cookes, contracted for the sale and purchase of a Newfoundland dog. One provision of the written contract stated the Cookes "agree to spay [the dog] at approximately 7 mos." The Cookes refused to have the dog spayed and after negotiations failed, Briarcreek instituted suit for specific performance. The trial court denied Briarcreek's petition and this appeal followed.

Because this specific performance action is in equity, our review is de novo. Iowa R. App. P. 4. The dispute between the parties concerns the interpretation and construction of the provision "agree to spay at approximately 7 mos." The trial court, after receiving parol evidence, held spaying was not required but enjoined the Cookes from breeding the dog until such time it became recognized as an American Kennel Club champion. Briarcreek asserts the trial court improperly admitted parol evidence, erred in interpreting the contract and in construing the obligations it imposed, and erroneously denied its petition for specific performance.

In reviewing the admissibility of parol evidence, we look to whether the extrinsic evidence was admissible as an aid in determining what the parties intended by the term "agree to spay at approximately 7 mos." or inadmissible as an attempt to modify that term. See Tamm v. Pildis, 249 N.W.2d 823, 831 (Iowa 1976). Admission of parol evidence for purposes of interpretation is predicated on existence of ambiguity in the instrument itself. See Matter of Estate of Tollefsrud, 275 N.W.2d 412, 419 (Iowa 1979). Ambiguity exists when contract language is capable of being understood in either of two possible senses. Wilson v. State Farm Mutual Automobile Insurance Company, 256 Iowa 844, 847, 128 N.W.2d 218, 220 (1964). Here, admission of parol evidence was unnecessary since no ambiguity existed in the term "agree to spay at approximately 7 mos." Moreover, the proffered evidence was inadmissible because it attempted to modify or vary the terms of the agreement. Tamm, 249 N.W.2d at 831. We find the trial court erred by admitting parol evidence since the contract language clearly indicated an unconditional agreement to neuter the dog when it was about seven months old.

In light of the clear meaning of the words employed in the contract, we cannot concur with the trial court's construction of the contract obligations. In construction of written contracts, intent of the parties controls except in cases of ambiguity. Iowa R. App. P. 14(f)(14). We have concluded the contract was unambiguous and, therefore, construction of its obligations must be based on the terms employed. We conclude the provision "agree to spay at approximately 7 mos." obligated the Cookes to have the dog sexually neutered when it was about seven months old.

In reaching our conclusion we are aware the parol evidence rule does not preclude evidence of events subsequent to the making of the agreement. Part of the Cookes' claim is predicated on the implications of such subsequent events. But, the most that can be attributed to Briarcreek's conduct after the making of the agreement is that it considered postponing the spaying until after it (Briarcreek) had shown the dog. When the Cookes insisted on showing the dog themselves, Briarcreek changed its mind on any relinquishment of its contract rights. It was clearly within Briarcreek's power at this time to do so since no intervening events worked a modification of the original agreement.

Since the dog was well beyond seven months old at the time of trial, we conclude the Cookes' time for performance had passed and Briarcreek could seek judicial redress. Although Briarcreek could not claim an absolute right to a decree of specific performance, O.K. Tire & Rubber Company v. Oswald, 166 N.W.2d 749, 752 (Iowa 1969), the property involved here possessed the unique or special value necessary for entry of such a decree. See Severson v. Elberon Elevator, Inc., 250 N.W.2d 417, 423 (Iowa 1977). We find the trial court erred by not granting Briarcreek specific performance. Further, we find specific performance is the only remedy that avails Briarcreek of the rights it sought to protect by requiring the dog to be spayed. Briarcreek has no adequate remedy for damages nor does the alternative injunctive relief ordered by the trial court afford Briarcreek the full, complete, and verifiable protection to which the contract entitles it.

Based on our de novo review, we hold Briarcreek is entitled to a decree of specific performance mandating the Cookes to have their dog sexually neutered pursuant to the parties' agreement. We have considered the equitable estoppel argument of the Cookes

but find the evidence insufficient to establish the requisite elements of that doctrine. See Moser v. Thorp Sales Corp., 256 N.W.2d 900, 908 (Iowa 1977).

We reverse the order of the trial court, vacate its injunction, and remand for entry of a decree of specific performance.

REVERSED AND REMANDED.