

STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

BAINBRIDGE LABRADOODLES, LLC,

Plaintiff,

vs.

SUSAN VIELE; and DAVID VIELE,

Defendants.

Case No. 19-05520-CBB

HON. CHRISTOPHER P. YATES

OPINION AND ORDER DENYING DEFENDANT
SUSAN VIELE'S MOTION FOR RECONSIDERATION

It's often said that when you're trying to overturn a trial-court ruling through reconsideration or appeal, it's better to bring a rifle than a shotgun. In this case, Defendant Susan Viele has brought the entire 82nd Airborne Division to her quest for reconsideration of the Court's denial of summary disposition under MCR 2.116(C)(10) on a single claim for breach of contract. In a motion that spans 45 pages, Susan Viele performs a thoroughgoing vivisection of the Court's opinion, notwithstanding the Court's award of summary disposition in her favor on four of the five claims against her. What, you might ask, has caused such an extraordinary response to an opinion that is generally favorable? In a nutshell, Susan Viele believes that the Court is creating issues that neither side has raised. So the best place to begin is at the beginning, when the parties brought this dispute to the Court seeking a ruling on which side is entitled to possession of an adorable labradoodle called Marley and on what terms that possession should occur. In reducing the case to a simple breach-of-contract dispute, the Court reasoned that the terms of possession depend upon whether Marley can bear litters of puppies. The Court stands by that assessment, so the motion for reconsideration must be denied.

According to MCR 2.119(F)(3), relief on reconsideration is appropriate if the moving party demonstrates “a palpable error by which the court and the parties have been misled and show[s] that a different disposition of the motion must result from correction of the error.” To be sure, courts are entitled to “revisit issues they previously decided, even if presented with a motion for reconsideration that offers nothing new to the court.” Hill v City of Warren, 276 Mich App 299, 307 (2007). But MCR 2.119(F)(3) strongly suggests that something in the motion for reconsideration must impel the Court to conclude that its chosen outcome is so erroneous that it must be rectified. Here, the Court issued an 11-page opinion on July 7, 2020, that discussed in great detail each of the five claims made by Plaintiff Bainbridge Labradoodles, LLC (“Bainbridge”) against Defendant Susan Viele and her husband, Defendant David Viele. In that opinion, the Court awarded summary disposition in favor of the Vieles on Bainbridge’s claims for statutory conversion, common-law conversion, and trespass to personalty. The Court also threw out Bainbridge’s claim for replevin, but authorized Bainbridge to replace that theory with a count seeking claim and delivery. Nevertheless, the Court’s denial of summary disposition under MCR 2.116(C)(10) on Bainbridge’s claim for breach of contract raised the ire of Susan Viele.

The Court’s analysis of the breach-of-contract claim unremarkably identified the three well-known elements of that theory, then explained that both sides concur they entered into an enforceable agreement called a “Guardian Home Contract,” and then relieved Defendant David Viele of liability because he did not sign that agreement. So far, so good, at least in Defendant Susan Viele’s opinion. But then the Court spelled out the pertinent provisions of the contract and commented that the terms of the contract prescribed two entirely different outcomes depending upon whether Marley can give birth to litters of puppies. After identifying Marley’s continuing ability to have puppies as the central

fact question underlying the breach-of-contract claim, the Court denied summary disposition to both sides on that claim and suggested that the outcome of the inevitable trial would depend entirely upon the evidence about Marley's ability to produce litters of puppies.

Defendant Susan Viele faults the Court for raising the issue of Marley's ability to have litters of puppies because, in Susan Viele's view, Plaintiff Bainbridge neglected to identify that issue. As an initial matter, the Court is not strictly confined to the arguments formally made by the parties in addressing a motion for summary disposition under MCR 2.116(C)(10). But more importantly, the ability of Marley to produce puppies has been front and center in this litigation since its inception. Indeed, Bainbridge's counsel has conceded that Marley is essentially worthless to Bainbridge if she cannot produce puppies, whereas Marley is extraordinarily valuable to Bainbridge if Marley can be bred. The "Guardian Home Contract" signed by the parties reflects that dichotomy, allowing Susan Viele to buy Marley for \$2,500 if Marley cannot have puppies, see Complaint, Exhibit 2 (Guardian Home Contract at page 4), but permitting Bainbridge to reclaim Marley if Susan Viele fails to meet the requirements of the contract. See id. (Guardian Home Contract at page 6). Moreover, damages for any breach of contract by Susan Viele necessarily depend upon whether Marley can have puppies. If Marley is now sterile, Bainbridge's damages are virtually nothing even if Susan Viele refuses to return Marley to Bainbridge. In contrast, if Marley still has the ability to produce puppies, damages suffered by Bainbridge if Susan Viele refuses to surrender Marley include the value of each litter of puppies that should be obtained from Marley before Susan Viele is entitled to keep the dog. Thus, Marley's ability to have puppies bears upon every aspect of the breach-of-contract claim.

The Court has not prejudged the factual dispute about whether Marley can produce puppies. Nor has the Court compelled either party to develop additional evidence about Marley's remaining

ability to be bred. The Court has strongly suggested that a court-appointed expert could help get to the bottom of the main issue in this case by examining Marley and providing an expert opinion about Marley's ability to produce puppies. See Opinion and Order Granting In Part, and Denying in Part, Defendants' Motion for Summary Disposition at 6 n4. But the Court has not yet appointed such an expert.¹ No matter how either side chooses to frame this dispute, the Court is determined to focus upon what necessarily dictates the outcome of the breach of contract claim – the language set forth in the parties' contract and the single remaining factual issue, *i.e.*, whether Marley can have puppies. Despite the Sturm und Drang evident throughout this litigation, the Court sees this case as a simple dispute about which of two relatively straightforward contractual provisions dictates the outcome. Nothing will move the Court off that position, and the trial will proceed in that manner. The motion for reconsideration addressing the denial of summary disposition pursuant to MCR 2.116(C)(10) on Plaintiff Bainbridge's breach-of-contract claim against Defendant Susan Viele is hereby denied.²

IT IS SO ORDERED.

Dated: August 13, 2020



HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge

¹ If one side refuses to make Marley available for an examination by a court-appointed expert or a veterinarian hired by the opposing side, the Court may have to draw an adverse inference from the refusal that prevents the development of evidence on the central issue in this case. See M Civ JI 6.01 (model jury instruction on "Failure to Produce Evidence or a Witness").

² In denying Defendant Susan Viele's motion to reconsideration under MCR 2.119(F)(3), the Court declines her invitation to strike affirmative defenses, reopen discovery, and provide all sorts of additional relief. The purpose of a motion for reconsideration is to revisit the issues raised in the Court's opinion and order, not to throw a *mélange* of new issues into the mix.