MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Charlene A. Wimsett, Individually, and Charlene A. Wimsett and Martin D. Wimsett, as Co-Trustees of the Martin D. Wimsett Family Trust,

Appellant-Plaintiffs

v.

Zeik's Run, LLC,

Appellee-Defendant.

July 26, 2023

Court of Appeals Case No. 22A-MI-1565

Appeal from the Vermillion Circuit Court

The Honorable Robert M. Hall, Senior Judge

Trial Court Cause No. 83C01-2103-MI-12

Memorandum Decision by Judge Pyle

Judges Riley and Kenworthy concur.

Pyle, Judge.

Statement of the Case

[1] Charlene A. Wimsett, individually, and Charlene A. Wimsett and Martin D. Wimsett, as co-trustees of the Martin D. Wimsett Family Trust (collectively, "Wimsett") appeal, following a bench trial, the trial court's order granting judgment in favor of Zeik's Run LLC ("Zeik's Run"). Wimsett argues that the trial court erred when it entered judgment in favor of Zeik's Run. Concluding that the trial court did not err when it entered judgment in favor of Zeik's Run, we affirm the trial court's judgment.

[2] We affirm.

Issue

> Whether the trial court erred when it entered judgment in favor of Zeik's Run.

Facts

[3] Zeik's Run listed Donna J. Meadlo ("Meadlo") as president and Kenneth D. Jackson ("Jackson") as manager. Meadlo's mother is Charlene Wimsett. In November 2019, Wimsett and Zeik's Run entered into the Farm Management Agreement ("the FMA"). Under the FMA, Wimsett allowed Zeik's Run to manage land on Wimsett's behalf. The land included the 59.82-acre Bono Field ("the Bono Field") and the 20-acre Lower Field ("the Lower Field"). The FMA required that Zeik's Run pay Wimsett, no less than once a year, two-

thirds of the farming proceeds from the Lower Field. The FMA also included the following terms:

> 4. This agreement shall become effective as of the date of its execution and shall automatically renew at the end of each calendar year, unless [Wimsett and Zeik's Run] . . . [are] renegotiating this agreement, or the parties have agreed to terminate this agreement at any time prior to the expiration of the current term.
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> 5. Any amendments, modifications, or alterations to this agreement, or the termination of this agreement, shall be in writing and shall be signed by both [Wimsett and Zeik's Run].

(App. Vol. 2 at 16). The FMA required both parties to "[r]eview the terms of this agreement on an as-needed basis; and if renegotiating, do so in good faith." (App. Vol. 2 at 19-20). The FMA also contained a provision that stated that any financial disagreement between Wimsett and Zeik's Run "shall be referred to a board of three disinterested persons, one of whom shall be appointed by [Wimsett], one by [Zeik's Run], and the third by the two thus appointed." (App. Vol. 2 at 21). The FMA specifies that this provision applies unless the sum of the dispute exceeds $10,000.00. The FMA also states that the decision of the board is binding on Wimsett and Zeik's Run and that the cost of any such mediation shall be shared by Wimsett and Zeik's Run.

[4] In September 2020, Wimsett sent Zeik's Run a letter. In the letter, Wimsett stated that the letter served as "formal written notice" of the termination of the FMA "effective immediately." (App. Vol. 2 at 27). Two weeks later, Zeik's

Run sent a letter to Wimsett. In its letter, Zeik's Run stated that Wimsett could not "unilaterally terminate the [FMA]." (App. Vol. 2 at 28). Zeik's Run noted paragraphs 4 and 5 from the FMA and stated that "any renegotiation or termination of the [FMA] require[d] all parties . . . to the agreement to consent to its termination." (App. Vol. 2 at 28).

[5] In March 2021, Wimsett filed a complaint which was later amended in June 2021. In their complaint, Wimsett alleged that Zeik's Run had breached the FMA by failing to acknowledge their termination of the FMA. Further, Wimsett argued for declaratory relief and asked the trial court to declare that the FMA had been terminated. In the amended complaint, Wimsett also asked for damages against Zeik's Run for its alleged breach of the FMA. Wimsett did not provide a specific amount of damages. Also in their amended complaint, Wimsett alleged that the FMA was a "valid and enforceable contract." (App. Vol. 2 at 14).

[6] In May 2022, the trial court held a bench trial. At the bench trial, the trial court heard the facts as set forth above. Additionally, Wimsett argued that the FMA was "a contract of indefinite duration that can be terminated at will by either party on reasonable notice." (Tr. at 9). Wimsett asked the trial court to declare that the FMA had been terminated when Wimsett had sent Zeik's Run the September 2020 letter. Zeik's Run argued that paragraph 4 and 5 of the FMA was controlling and that the FMA had not been terminated because these terms had to be followed.

[7] In June 2022, the trial court entered a judgment in favor of Zeik's Run. In its order, the trial court took judicial notice of the pleadings. Additionally, the trial court found that termination of the FMA "[wa]s to be by agreement[.]" (App. Vol. 2 at 33).

[8] Wimsett now appeals.

Decision

[9] Wimsett argues that the trial court erred when it entered judgment in favor of Zeik's Run because it had not properly interpreted the terms of the FMA. The interpretation of a contract presents a question of law, and it is reviewed de novo by this court. *Jenkins v. S. Bend Community Sch. Corp.*, 982 N.E.2d 343, 347 (Ind. Ct. App. 2013), *trans. denied*. We review the contract as a whole, attempting to ascertain the parties' intent and making every attempt to construe the contract's language "so as not to render any words, phrases, or terms ineffective or meaningless." *Four Seasons Mfg., Inc. v. 1001 Coliseum, LLC*, 870 N.E.2d 494, 501 (Ind. Ct. App. 2007). "And, in reading the terms of a contract together, we keep in mind that the more specific terms control over any inconsistent general statements." *DLZ Ind., LLC v. Greene Cty.*, 902 N.E.2d 323, 328 (Ind. Ct. App. 2009), *reh'g denied*. We recognize the parties' freedom to enter into contracts, and, we presume, when construing a contract, that its terms represent the parties' freely bargained agreement. *Haegert v. Univ. of Evansville*, 977 N.E.2d 924, 937 (Ind. 2012).

[10] Wimsett contends that the FMA does not require both parties' consent to terminate the FMA. We disagree.

[11] Our review of the record reveals that the FMA clearly states that it "shall automatically renew at the end of each calendar year, unless [Wimsett and Zeik's Run] [are] renegotiating this agreement, or the parties have agreed to terminate this agreement at any time prior to the expiration of the current term." (App. Vol. 2 at 16). The FMA further provides that "[a]ny amendments, modifications, or alterations to this agreement, or the termination of this agreement, shall be in writing and shall be signed by both [Wimsett and Zeik's Run]." (App. Vol. 2 at 16). The clear language of the FMA requires both Wimsett and Zeik's Run to agree to terminate or renegotiate the FMA. Here, Wimsett argues that their September letter to Zeik's Run is sufficient to terminate the agreement. However, the September letter to Zeik's Run did not include Zeik's Run's signature and consent as required by the FMA. Thus, we hold that the trial court did not err when it interpreted the FMA to require the consent of both Wimsett and Zeik's Run.

[12] Wimsett contends that the FMA is "a classic contract of indefinite duration and, thus, terminable at will by either party." (Wimsett's Br. 8). In support of their argument, Wimsett cites to the vacated case of *City of E. Chicago v. E.*

Chicago Second Century, Inc., 878 N.E.2d 358, 371 (Ind. Ct. App. 2007)[1] and to *House of Crane Inc. v. H. Fendrich, Inc.*, 256 N.E.2d 578, 579 (Ind. Ct. App. 1970) for the proposition that "a contract that provides for continuing performance or has no ending date, or that provides [that] it will last indefinitely, is terminable at will by either party." (Wimsett's Br. 7). However, these cases are clearly distinguishable from our case.

[13] In *Second Century*, the contract in question was an agreement embedded into a river boat gambling license. The agreement in *Second Century*, however, is different from the FMA. The agreement in *Second Century* was silent on its duration and was tied to the duration of the river boat gambling license. *Second Century*, 908 N.E.2d at 623. Our supreme court held that "the agreements embedded in the license do not appear terminable at will," but were "subject to periodic alteration (through the administrative processes of the gaming commission)." *Second Century*, 908 N.E.2d at 624. Here, the FMA is not silent on its duration. Instead, the FMA states that it automatically renews at the end of the year unless the parties are renegotiating or agree to terminate the agreement before the expiration of the current term.

[14] In *House of Crane*, the contract in dispute dealt with the wholesale distribution of cigars. However, in *House of Crane*, the contract was never "reduced to writing

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[1] We note that the Indiana Supreme Court vacated our Court's opinion in *Second Century* when it granted transfer on this case. *See City of E. Chicago v. E. Chicago Second Century, Inc.*, 908 N.E.2d 611 (Ind. 2009), *reh'g denied*. *See also* Ind. Appellate Rule 58.

at any time during the . . . business relationship[.]" *House of Crane*, 256 N.E.2d at 579. Instead, "the relationship between the parties grew gradually, . . . , and that the privilege and responsibilities of the respective parties existed only insofar as the custom and the course of business conduct over the years permitted." *House of Crane*, 256 N.E.2d at 579. Again, *House of Crane* is distinguishable. The parties in *House of Crane* did not have a written contract with clear provisions for termination. Here, the parties entered into a written contract, the FMA, in which the parties included specific provisions regarding the termination of the contract.

[15] We note that in *Marksill Specialties, Inc. v. Barger*, 428 N.E.2d 65, 77 (Ind. Ct. App. 1981), we held that an agreement "containing a provision for termination, is terminable in accordance with its terms and not at the will of either party." Here, the FMA contains specific terms for its termination. Specifically, the FMA provided that "[a]ny amendments, modifications, or alterations to this agreement, or the termination of this agreement, shall be in writing and shall be signed by both [Wimsett and Zeik's Run]." (App. Vol. 2 at 16). Further, the FMA provided that it would automatically renew unless the parties were negotiating or agreed to terminate before the expiration of the current term. Because the FMA had specific provisions for its termination, the FMA is not terminable at will by either party. *See Marksill*, 428 N.E.2d at 77.

[16] Further, we note that evergreen contracts typically allow for either party to terminate the agreement under specific conditions. *See* Contract Definition, *Black's Law Dictionary* (11th ed. 2019), available at Westlaw (defining "evergreen

contract" as "a contract that renews itself from one term to the next in the absence of contrary notice by one of the parties."); *See also Masonry Institute v. Estate of McNeela*, 67 F.3d 301 (7th Cir. 1995) (holding that a contract containing an evergreen clause binds a party to subsequent renewals until the contract is properly terminated). Here, however, the FMA renews annually unless the parties are renegotiating, or both parties agree to its termination. Wimsett and Zeik's Run, who are family members, freely bargained for these terms when they signed the FMA. We presume that the terms in the FMA represent the parties' freely bargained agreement. *See Haegert*, 977 N.E.2d at 937. Accordingly, we affirm the trial court's judgment.

[17] Affirmed.[2]

Riley, J., and Kenworthy, J., concur.

[2] Wimsett also argues that the trial court erred when it determined that the FMA had a specific provision that had to be followed if Wimsett and Zeik's Run had any financial disagreements. Wimsett argues that this provision does not apply because Wimsett's damages are due to a breach of contract. However, because we have determined that Zeik's Run had not breached the FMA, we do not need to address this argument.