

RENDERED: February 18, 2005; 10:00 a.m.  
NOT TO BE PUBLISHED

**Commonwealth Of Kentucky**  
**Court of Appeals**

NO. 2003-CA-001666-MR  
AND  
NO. 2003-CA-001691-MR

THOROUGHBRED LEARNING CENTER,  
INC.; KATHY BRADLEY; AND  
PAUL BRADLEY

APPELLANTS/CROSS-APPELLEES

APPEAL AND CROSS-APPEAL FROM CLARK CIRCUIT COURT  
v. HONORABLE WILLIAM T. JENNINGS, JUDGE  
ACTION NO. 01-CI-00660

STEPPING STONES FOR CHILDREN,  
INC.

APPELLEE/CROSS-APPELLANT

OPINION  
AFFIRMING

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BEFORE: DYCHE, GUIDUGLI, AND McANULTY, JUDGES.

DYCHE, JUDGE: Appellant Thoroughbred Learning Center, Inc.,  
owned and operated a child care center in Clark County,  
Kentucky. Due to violations of certain regulations, its license  
was subject to adverse action by the Cabinet for Health  
Services. The administrative action against Thoroughbred's  
license was appealed to the Clark Circuit Court.

During this time, Kathy Bradley, Thoroughbred's  
owner/operator/principal had become acquainted with Susan Parks,

president of Stepping Stones for Children, Inc., and the two discussed the problems Thoroughbred was having. These conversations eventually ripened into discussions about Stepping Stones buying Thoroughbred's business and assets, and a written agreement between the two was signed. Included in the agreement were provisions for the lease of Thoroughbred's premises, and the installment purchase of a vehicle.

Stepping Stones took possession of the business and began to operate it on April 1, 2001, working under Thoroughbred's license. Stepping Stones' efforts to obtain transfer of the license were stymied by Thoroughbred's refusal, even following the transfer of the business, to give up its appeal of the sanctions against it. The only other avenue open to Stepping Stones was to close the business for a period of time, and then reapply for a new license, which, from a business standpoint, was impractical, to say the least. Unable to obtain the necessary license, Stepping Stones gave notice that on August 27, 2001, it would no longer operate the business, withdrawing from the agreement. This litigation followed.

Thoroughbred filed this suit to collect the sums it deemed itself due by virtue of the agreement, the balance of the purchase price of the vehicle, and lease payments on the premises. Stepping Stones counterclaimed, seeking recovery from Thoroughbred of government reimbursement paid to Thoroughbred

for operating costs while Stepping Stones was running the center. The trial court conducted a non-jury trial, and found that the parties contemplated that the sale of the business was contingent upon the receipt of a license allowing Stepping Stones to operate in its own name; that Thoroughbred had validly exercised its option not to withdraw its appeal of the administrative action, but that that exercise had made consummation of the sales agreement impossible, and therefore Stepping Stones was excused from performance; that Stepping Stones had made partial payment for the vehicle, which had been transferred to Parks, not Stepping Stones; and that Thoroughbred had breached the agreement by failing to tender the government reimbursements to Stepping Stones.

The judgment of the court was that Thoroughbred pay to Stepping Stones the sum of \$8,038.23 for the government reimbursements; that Stepping Stones pay to Thoroughbred the balance due on the vehicle of \$3,400.00, and that Stepping Stones recover that sum from Parks. This appeal and cross-appeal followed.

Thoroughbred makes a lengthy argument couched in terms of Stepping Stones' "failure to obtain a daycare license" not excusing its performance under the contract. We recast that argument in terms, as found by the trial court, of whether Stepping Stones did all it could to ensure the success of the

transaction. The trial court found that it did, and we agree that the evidence supports this finding.

The evidence was that there were basically two options open to the parties to provide for a transition of ownership: Thoroughbred could withdraw its appeal of the administrative action against its license, and the license could be transferred to Stepping Stones; or the facility could close for a period of time and then reopen under a new license in Stepping Stones' name. This second proposition would have been a great disservice to the center's clients, and would have probably cost it all, or most of, its business. Parents needing such services have to be able to depend upon stable and continuous availability of a center; any temporary interruption, no matter what the cost, is a great imposition on parents and children alike. This option was not viable. Thoroughbred's decision not to withdraw the appeal was the sole cause of the failure of the parties' agreement. That finding of the trial court is supported by the evidence, and none of the other arguments propounded by Thoroughbred has any merit.

Thoroughbred also argues that it is not liable to Stepping Stones for any government subsidy payments it received and then returned to the payor. Again, we disagree. During the period that Stepping Stones was operating the center under Thoroughbred's license, these payments could only come to

Thoroughbred. The parties agreed that Thoroughbred would pass these along to Stepping Stones. For whatever reason, Thoroughbred decided not to honor this agreement, but to return certain payments. Stepping Stones had accrued the costs for which the payments were by reimbursement. It was a violation of the agreement for Thoroughbred not to pass along the payments. The finding of the trial court is supported by substantial evidence.

On cross-appeal, Stepping Stones argues that Thoroughbred is not entitled to payment for the vehicle, as it transferred the van to Parks, not Stepping Stones. We find no merit to this argument. The evidence supports a finding that Parks was the principal of Stepping Stones, and that the transfer was not unreasonable. Stepping Stones may pursue recovery from Parks.

The judgment of the Clark Circuit Court is affirmed.

ALL CONCUR.

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