RENDERED: July 2, 1999; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-003283-MR

FRED MCGUFFEY — APPELLANT

v.

APPEAL FROM ALLEN CIRCUIT COURT
HONORABLE WILLIAM R. HARRIS, JUDGE
ACTION NO. 96-CI-000035

BRIAN MCGUFFEY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: GUDGEL, CHIEF JUDGE; KNOX, AND McANULTY, JUDGES.

McANULTY, JUDGE. Fred McGuffey (Fred) brings this appeal from a judgment of the Allen Circuit Court awarding his father, Brian McGuffey (Brian), $7,492.35 based on the theory of quantum meruit. After reviewing the record, the arguments of counsel and the applicable law, we affirm.

In the 1970's, Fred was managing his paternal grandfather's farm with some assistance from his father. During this period, Brian borrowed several thousand dollars from Farmer's National Bank, with Fred acting as a co-signee on a few of the promissory notes. In 1979, Fred's parents were divorced

and Brian moved away. In the 1980's Fred executed several new "renewal" notes covering the debts on the original notes and also made some payments on the debts. In 1985, Brian and his sister inherited the farm property, and Fred purchased his aunt's portion of the property. In 1987, both Brian and Fred co-signed a renewal note with TransFinancial Bank. The proceeds from this note were used to pay off the prior notes, to finance Fred's house, and to reimburse Fred's aunt for transfer of her interest in the farm realty to Fred. Brian made several installment payments on this note.

In approximately 1991, Brian returned to live on the property inherited from his father that was adjacent to Fred's farm. At that time, Brian began assisting Fred in farming and cattle operations on his farm. For several years, Brian contributed by paying some of the expenses related to the cattle operation and paying for repairs to a John Deere farm tractor Fred had purchased in 1984 for $4,900. In June 1994, the proceeds from a loan from TransFinancial Bank evidenced by a joint note co-signed by the parties in the amount of $1,700.00 was used to pay for some of the repairs to the John Deere tractor.

At some point, the relationship between the parties deteriorated to the point that Brian filed a lawsuit in February 1996. In the complaint, Brian alleged that the parties had entered into a joint venture with respect to the farming and cattle operations on Fred's farm. Brian sought liquidation of the cattle with an equal division of the proceeds, plus

reimbursement for farm expenses he had paid in the amount of $2,168.39. Fred filed an Answer denying the existence of a joint venture and affirmatively raising, inter alia, a statute of limitations defense.[1]

The trial judge conducted a three-day evidentiary trial without a jury in November 1996. Witnesses at the trial included both parties, the parties' wives, Fred's two brothers, the parties' former attorney, and Fred's aunt (Brian's sister). Brian testified that the parties had a meeting and Fred had agreed to conduct a joint venture farming operation. Brian also testified that he had paid approximately $16,000.00 for farming expenses, $4,200.00 on the TransFinancial notes, and $3,300.00 to repair the John Deere tractor with Fred's consent. Fred testified that the farm and cattle had always belonged to him, that he never agreed to a joint venture, that he had paid Brian's debts from the 1970's, and that he had paid approximately $7,700 in farm related expenses.

In October 1997, the court entered a judgment that included several findings of fact and conclusions of law. First, the court held that the claims were subject to a five-year statute of limitations pursuant to KRS 413.120(1) and (6).[2] Thus, any rights or liabilities arising prior to February 22,

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[1]Fred also filed a counterclaim seeking damages for an alleged assault of his son by Brian. The trial court subsequently dismissed the counterclaim with prejudice, and Fred has not appealed the dismissal of the counterclaim.

[2]Prior to the 1998 revision, KRS 413.120(1) applied to actions on express of implied contracts not in writing, and KRS 413.120(6) applied to actions for injury to the rights of the plaintiff, not arising on contract.

1991 (the date the original complaint was filed) were barred by limitations. Second, the court found that there was no donative intent by either party to make a gift related to their dealings. Third, the court held that there was no meeting of the minds sufficient to give rise to an agreement to enter into a joint venture with respect to the farming operations. Fourth, the court held that Fred was the rightful owner of all the cattle and the John Deere tractor. Fifth, the court found that Brian acted in good faith and was not barred from equitable relief based on the "unclean hands" doctrine. Sixth, the court held that under the equitable doctrine of unjust enrichment or quantum meruit, Brian was entitled to recover an amount equal to the benefit conferred on Fred by his actions or payments.

Based on his assessment of the evidence involving Brian's payment of farm expenses and debts after February 22, 1991, the trial judge held that Brian should recover $4,192.35 for payments he made on the promissory notes covering farm debt, and $3,300.00 for payment he made for repairs on the John Deere tractor. The court held that because Brian's expenditures of $6,954.64 for other farm expenses during the relevant period were exceeded by the amount he received from the sale of cattle ($7,809.97), Fred received no benefit from these expenditures. The court also held that Fred was solely responsible for the two outstanding notes executed jointly by the parties in November 1992 to TransFinancial Bank because the proceeds were used for the farm assets already found to belong to Fred. In conclusion, the court awarded Brian a judgment for $7,492.35 against Fred.

On October 13, 1997, Fred filed a motion to alter, amend or vacate the judgment pursuant to CR 59.05. In November 1997, the trial court summarily denied the CR 59.05 motion, and this appeal followed.

We begin with the standard of review. Under CR 52.01, in an action tried without a jury, a trial court's findings of fact shall not be set aside unless they are clearly erroneous. Lawson v. Lord, Ky., 896 S.W.2d 1, 3 (1995); State Board for Elementary and Secondary Education v. Ball, Ky., 847 S.W.2d 743 (1993). A factual finding is not clearly erroneous if it is supported by substantial evidence. Owens-Corning Fiberglass Corporation v. Golightly, Ky., 976 S.W.2d 409, 414 (1998); Schott v. Citizens Fidelity Bank & Trust Co.,Ky. App., 692 S.W.2d 810, 814 (1985). "In this jurisdiction, 'substantial evidence' means evidence of substance and relevant consequence having the fitness to induce conviction in the minds of reasonable men." Golightly, 976 S.W.2d at 414.

> A reviewing court must give great deference to the conclusions of the fact-finder on factual questions if supported by substantial evidence and the opposite is not compelled. When considering questions of law, or mixed questions of law and fact, the reviewing court has greater latitude to determine whether the findings below were sustained by evidence of probative value.

Uninsured Employer's Fund v. Garland, Ky., 805 S.W.2d 116, 117 (1991)(citations omitted). Under the principle of quantum meruit, a court may exercise its equitable power to recognize a contract implied by law in order to allow recovery to a party for goods or services provided to another party. See Perkins v.

Daughtery, Ky. App., 722 S.W.2d 907 (1987). Recovery in quantum meruit or quasi-contract is available where the following three elements exit: 1) a benefit is conferred upon another party at the expense of the person seeking recovery; 2) the benefit results in an appreciation by the recipient; and, 3) it would be inequitable or unjust to allow the recipient to retain the benefit without compensating the other party. See Guarantee Elec. Co. v. Big Rivers Elec. Corp., 669 F. Supp. 1371, 1380-81 (W.D. Ky. 1987).

In the case sub judice, Fred contends that the trial court's judgment results in a double recovery by Brian. He argues that Brian should not be allowed to recover the $4,192.35 for payments he made on several joint notes because they were renewal notes for Brian's original debt generated in the early 1970's. However, the relevant time period for determining the parties rights and liabilities was limited to a five-year period prior to the filing date of the complaint. Fred's argument improperly attempts to incorporate liabilities attributable to Brian prior to the applicable time period that are barred by the statute of limitations. Fred does not dispute the fact that Brian made several payments on the notes. Fred assumed liability for these notes and derived a benefit from Brian's payments on the notes. We cannot say the trial court erred in allowing Brian to recover the amount he paid on these notes since February 1991.

Fred also challenges the trial court's decision to allow Brian to recover $3,300.00 in payments Brian made for repairs to the John Deere tractor. Again, Fred does not dispute

the fact that Brian made payments in this amount for the repairs. Fred argues, however, that he did not benefit from Brian's action because the payments were financed from the sale of two cows the trial court held belonged to Fred, and from the proceeds of a promissory note (tractor note) that the trial court had held Fred solely responsible for paying the remaining balance.

The evidence shows that Brian made $1,050.00 in payments on the tractor note, and the trial court's order merely obligated Fred to pay the remaining balance as of November 1996 of $1,768.10. The trial court did not require Fred to reimburse Brian for his payments on the note, in addition to paying Brian the $3,300.00 for reimbursement for the repairs. Additionally, the trial court had already included the amounts Brian received in selling the two cows in determining that Brian would not be reimbursed for his payment of the various farm expenses. Therefore, allowing Brian to receive reimbursement for the $3,300.00 in payments for the farm tractor repairs that resulted in an increase in the value of the tractor would not constitute double recovery. The evidence amply supports the trial court's finding on this issue.

Finally, Fred argues that Brian is limited in any recovery to $2,168.39, which is the amount stated in the prayer for relief in the complaint. This issue was not properly preserved for appellate review. Fred's general denial in his Answer was not sufficient to preserve this issue. Fred never raised this issue specifically before the trial court. An appellate court will not review issues not raised in or decided

by the trial court. Regional Jail Authority v. Tackett, Ky., 770 S.W.2d 225 (1989); Hibbitts v. Cumberland Valley Nat'l Bank, Ky. App., 977 S.W.2d 252 (1998); Massie v. Person, Ky. App., 729 S.W.2d 448 (1987), overruled on other grounds, Conner v. George W. Whitesides Co., Ky., 834 S.W.2d 652 (1992). The legal issue of unjust enrichment was raised in the pleadings and formed the basis of the trial court's preliminary oral rulings from the bench at the conclusion of the trial. Fred did not present the argument that any recovery was limited by the prayer in the complaint in his pretrial compliance, at the trial, in his post-trial brief, or in his motion to alter, amend or vacate. Therefore, he cannot raise it for the first time on appeal.

For the foregoing reasons, we affirm the judgment of the Allen Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:	BRIEF FOR APPELLEE:
David Goin Scottsville, Kentucky	William P. Hagenbuch, Jr. Scottsville, Kentucky