

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In re Estate of VERGELENE H. WILLEY,  
Deceased.

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GEORGE WILLEY and KATHERINE WILLEY,  
  
Petitioners-Appellants,

UNPUBLISHED  
September 24, 2002

v

RON GEIGER, Personal Representative of the  
Estate of VERGELENE H. WILLEY, Deceased,

No. 232491  
Jackson Probate Court  
LC No. 98-088404-IE

Respondent-Appellee.

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Before: Whitbeck, C.J., and Sawyer and Kelly, JJ.

PER CURIAM.

Petitioners appeal as of right the probate court's judgment granting respondent's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Petitioners filed suit against decedent's estate, claiming that for several months they cared for decedent and her husband, petitioner George Willey's parents, on a continuous basis, and did so until both died. Petitioners claimed that decedent requested the care and indicated that she would pay for the care. Petitioners sought compensation in the amount of \$86,148.64 as the fair value of their services, plus interest, costs, and fees.

Respondent moved for summary disposition pursuant to MCR 2.116(C)(10). Respondent noted that in Michigan a presumption exists that services rendered to a person by a family member are performed gratuitously, and contended the evidence did not raise a question of fact as to whether petitioners gave care to decedent in anticipation of payment or as to whether decedent expected to pay petitioners for the care. The probate court granted the motion, concluding that the evidence did not create an issue of fact as to whether the presumption that the services were rendered gratuitously was rebutted.

We review a trial court's decision on a motion for summary disposition *de novo*. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

A contract implied in law is an equitable obligation imposed to avoid an unjust result. A contract implied in law cannot be applied when a special relationship existed between the parties that gave rise to the presumption that the services in question were rendered gratuitously. However, regardless of the existence of the presumption, a court may recognize a contract implied in fact when services were performed by a person who at that time expected compensation from another person who at that time expected to pay for the services. *In re Estate of Morris*, 193 Mich App 579, 582; 484 NW2d 755 (1992). The issue is a question of fact to be resolved in consideration of all the circumstances, including the type of services rendered, the duration of the services, the closeness of the relationship between the parties, and the express expectations of the parties. *In re McKim Estate*, 238 Mich App 453, 458; 606 NW2d 30 (1999), quoting *In re Lewis Estate*, 168 Mich App 70, 75; 423 NW2d 600 (1988). Whether a contract should be implied in fact between parties who had a special relationship is a question of fact that we review for clear error. *Morris, supra*.

Petitioners argue the probate court erred by granting respondent's motion for summary disposition. Petitioners assert that at a minimum, reasonable minds could differ as to whether they rendered services to decedent in anticipation of payment and whether decedent accepted the services with the intent to pay for them. We disagree and affirm. The undisputed evidence showed that petitioners rendered services to both decedent's husband and to decedent for several months until their deaths. The existence of a family relationship triggered the presumption that these services were rendered gratuitously. *Id.* Petitioners asserted that regardless of the presumption, a contract should be implied in fact because they rendered the services in anticipation of receiving payment, and decedent accepted the services in anticipation of paying for them.

However, petitioners could point to no evidence that showed that they and decedent agreed on an amount to be paid, what form payment would take, or when payment would be made. Petitioners' deposition testimony established that on those few occasions when decedent mentioned the subject, they objected and insisted that the topic be reserved for a time when decedent's health had improved. Petitioners rendered the services under these conditions until decedent died. Petitioners' assertion that their claim is bolstered by the fact that decedent paid another child, Karen Phillips, for care is inaccurate. The deposition testimony of Karen Phillips' husband established that an insurance company, and not decedent, paid for that care.

The trial court did not clearly err in finding that under all the circumstances a contract should not be implied in fact because reasonable minds could not differ as to whether petitioners rendered the services in anticipation of payment and decedent received the services in anticipation of making payment for them. *Id.* Summary disposition was proper.

Affirmed.

/s/ William C. Whitbeck  
/s/ David H. Sawyer  
/s/ Kirsten Frank Kelly