[Cite as *VanDyne v. Faldoski*, 2023-Ohio-2370.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
BELMONT COUNTY

JAY VANDYNE, et al.,

Plaintiffs-Appellants,

v.

MARY ANN FALDOSKI, ADMINISTRATRIX OF THE ESTATE OF FRANK J. WIDMOR, JR., aka HANK WIDMOR,

Defendant-Appellee.

OPINION AND JUDGMENT ENTRY
Case No. 22 BE 0016

Civil Appeal from the
Court of Common Pleas of Belmont County, Ohio
Case No. 21 CV 113

BEFORE:
Cheryl L. Waite, Carol Ann Robb, Mark A. Hanni, Judges.

JUDGMENT:
Affirmed.

Atty. Kyle W. Bickford and *Atty. Erik A. Schramm Jr.*, Hanlon, McCormick, Schramm, Bickford & Schramm Co., LPA, 46457 National Road West, St. Clairsville, Ohio 43950, for Plaintiffs-Appellants

Atty. Gregory W. Hinzey, Hinzey Law Offices, 276 East Main Street, St. Clairsville, Ohio 43950, for Defendant-Appellee

Dated: June 30, 2023

WAITE, J.

{¶1} Appellants Jay VanDyne and his daughters Victoria Yoho and Corinna Ritz contend they were owed money from the estate of Frank J. Widmor, aka Hank Widmor, who died in 2019. Appellants are the son and grandchildren of Mr. Widmor's long-time companion Mary Ann VanDyne, who died in 2009. Mr. Widmor was survived by his mother and four siblings. Appellants have no familial relationship to the decedent. Appellants' claims consisted of reimbursement for restaurant bills, cleaning services, transportation, groceries, and other alleged expenses for the last ten years of the decedent's life, along with a claim seeking ownership of two automobiles. Despite the fact that Appellants had no receipts or invoices for their claimed expenses, Appellants nevertheless testified at a bench trial that they were owed compensation by Mr. Widmor's estate. They claimed that the deceased had been like a father or grandfather to them and led them to believe that they would be taken care of in some way upon his death. The trial court denied their claims and ruled in favor of Appellee.

{¶2} Appellants argue on appeal that the trial judge failed to specifically rule on the claims contained in the complaint, and instead issued only a general judgment. Since Appellants did not request findings of fact and conclusions of law pursuant to Civ.R. 52, they cannot challenge the general judgment on this basis. Further, the record only supports a conclusion that Appellants rendered their services to the decedent out of love and affection. Based on this record, the judgment of the trial court is affirmed.

Case History and Facts

{¶3} Mary Ann VanDyne lived with Frank Widmor, the decedent, for approximately thirty years but they never married. (3/3/22 Tr. p. 21.) She had been married prior to this relationship and had several children, including Appellant Jay VanDyne. Her husband died when Jay was approximately seventeen years old, in 1977 or 1978. Jay has two children, Appellants Victoria Yoho and Corinna Ritz.

{¶4} Mary Ann VanDyne suffered a stroke in 2005 and entered into a nursing home. She died in 2009. (3/3/22 Tr. p. 76.) She owned few or no assets at her death and no probate estate was opened for her.

{¶5} Mr. Widmor died intestate on October 31, 2019. The assets in his probate estate amounted to $374,497.62.

{¶6} Appellant Jay VanDyne testified he had a close relationship with Mr. Widmor. Jay owns a restaurant in Dilles Bottom, Ohio. He claimed that Mr. Widmor ate two meals a day there for ten years, and that he was owed $71,500 for those meals. He had no records, receipts, or bills to substantiate this claim. Jay testified that he had no expectation he would be paid for meals. (3/3/22 Tr. p. 74-75.) Jay also said he was owed $18,000 for bookkeeping services, but again had no record of those services. He admitted the services he claimed to have provided to the decedent were done out of love and affection for him. (3/3/22 Tr. p. 86.) He also admitted the decedent made no promise to provide any specific bequest to Jay in a will.

{¶7} Likewise, the claims of Yoho and Ritz were undocumented. Yoho alleged she was owed $52,965.21 for house cleaning, bookkeeping, grocery shopping, and transportation services. Ritz similarly claimed she was owed $52,889.81 for

housekeeping, bookkeeping, diesel fuel, payment of Mr. Widmor's bills, transportation, and mileage. Trial testimony revealed that the alleged chores and services performed by Yoho and Ritz were not necessary to the decedent, as he could go shopping, obtain his prescriptions, and generally provide for himself. (3/3/22 Tr. pp. 188-191.)

{¶8} There is no evidence of any agreement or promise made by the decedent that he would provide specific compensation for the goods and services allegedly provided by the Appellants. Instead, Yoho testified the decedent said that she and her sister "would be taken care of in the form of a legacy." (3/3/22 Tr. p. 120.) This general type of commitment to "take care of" Appellants was repeated by them throughout the trial. (3/3/22 Tr. pp. 46, 121, 154.)

{¶9} A former attorney for the decedent testified that he drafted a will for the decedent in 2005. The decedent did not sign the draft and had no further contact with the attorney.

{¶10} Appellants filed their claims against the estate of Frank Widmor, and those claims were denied. They subsequently filed a complaint in the general division of the Belmont County Court of Common Pleas alleging they were owed money by Mr. Widmor's estate based on claims of quantum meruit, promissory estoppel, and fraud. The case went to bench trial on March 3, 2022. The court ruled in favor of Appellee. The judgment entry of March 14, 2022 stated that Appellants did not prove their claims by a preponderance of the evidence, and they were ordered to pay the costs of the action. The estate's request for attorney fees and punitive damages was overruled.

{¶11} This timely appeal followed. Appellants raise two assignments of error on appeal.

ASSIGNMENT OF ERROR NO. 1

THE TRIAL COURT ERRED IN GRANTING JUDGMENT IN FAVOR OF DEFENDANT.

{¶12} This assignment of error contains two subparts, the primary issue being Appellants' belief that the trial court failed to address the causes of action listed in the complaint regarding their claims of quantum meruit, promissory estoppel, and fraud. Their secondary issue relates to the trial court's statement at the end of trial that the decedent did not sign a will. Appellants contend that these alleged errors require judgment be entered in their favor, or at least that the matter be remanded for a new trial.

{¶13} Appellants' initial argument fails from the start, however. The court rendered a general verdict in a bench trial, and this verdict was not tested by a request for findings of fact and conclusions of law pursuant to Civ.R. 52, which states in part: "When questions of fact are tried by the court without a jury, judgment may be general for the prevailing party unless one of the parties in writing requests otherwise * * * in which case, the court shall state in writing the findings of fact found separately from the conclusions of law." Failure to request findings of fact and conclusions of law constitutes a waiver of any possible error in the trial court's failure to make such findings. *McCarthy v. Lippitt*, 7th Dist. Monroe No. 04-MO-1, 2004-Ohio-5367, ¶ 54. Thus, Appellants have waived any error regarding the failure of the trial court to explain in more detail why each claim in their complaint was rejected.

{¶14} At most, Appellants' argument may be construed as generally attacking the court's judgment on manifest weight of the evidence grounds. It is axiomatic that

judgments supported by some competent, credible evidence going to all of the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence. *In re Termination of Guardianship of Hendrickson*, 7th Dist. Belmont No. 02-BE-48, 152 Ohio App.3d 116, 2003-Ohio-1220, 786 N.E.2d 937, ¶ 19, citing *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 280, 8 O.O.3d 261, 376 N.E.2d 578 (1978). In this case, though, the defendant prevailed. Hence, this Court must presume that the trial court properly weighed the credibility of the witnesses which was the only evidence offered, and found that the plaintiffs did not meet their burden of proof. *Gevedon v. Ivey*, 2nd Dist. Montgomery No. 21609, 172 Ohio App.3d 567, 2007-Ohio-2970, 876 N.E.2d 604, ¶ 54. "A reviewing court should not reverse a decision simply because it holds a different opinion concerning the credibility of the witnesses and evidence submitted before the trial court. A finding of an error in law is a legitimate ground for reversal, but a difference of opinion on credibility of witnesses and evidence is not." *Seasons Coal Co. v. City of Cleveland*, 10 Ohio St.3d 77, 81, 461 N.E.2d 1273 (1984).

{¶15} Appellants relied on three theories in seeking damages for services allegedly rendered and expenses made on behalf of the decedent: quantum meruit, promissory estoppel, and fraud.

{¶16} Quantum meruit, also called quasi-contract or contract implied in law, is "a legal fiction created to prevent an unjust enrichment when a benefit is conferred by a plaintiff onto a defendant with knowledge by the defendant of that benefit and the retention of that benefit under circumstances when it would be unjust to do so without payment." *In re Guardianship of Freeman*, 4th Dist. Adams No. 02CA737, 2002-Ohio-6386, ¶ 29. "To prevail on a claim of quantum meruit, a plaintiff must show (1) he conferred a benefit

upon the defendant; (2) the defendant had knowledge of the benefit; and (3) the defendant retained the benefit under circumstances where it would be unjust to do so without payment." *A N Bros. Corp. v. Total Quality Logistics, L.L.C.*, 12th Dist. Clermont No. CA2015-02-021, 2016-Ohio-549, 59 N.E.3d 758, ¶ 42.

{¶17} It is clear that Appellants failed on the third element of the quantum meruit claim because throughout their testimony at trial they insisted both that they performed the services out of love for Mr. Widmor, and that they were relying on Mr. Widmor to make some type of legacy to them in his will. In either case, there is no injustice involved in the lack of payment. "The fact that the plaintiff relied upon a legacy, that fact in and of itself, negatives the existence of any contract, express or implied, between the parties during the times the services were being performed." *Anderson v. Houpt*, 43 Ohio App. 538, 542, 184 N.E. 29, 30, 13 Ohio Law Abs. 16 (5th Dist.1932). There can be no recovery under quantum meruit or implied contract when the plaintiff relies solely on the good will of the decedent: "It is a well[-]established rule that if services are rendered merely in the expectation of a gift or legacy * * * no recovery can be had if the person rendering them is disappointed." *Plummer v. Miller*, 12th Dist. Fayette No. 81-CA-8, 1982 WL 3211, *2.

{¶18} "No promise will be implied to pay for services rendered by one person for another when at the time of their rendition there was no intent to charge or expectation of payment, as where services are rendered from motives of friendliness, neighborliness, kindness, or charity." *Page v. Provident Sav. Bank & Tr. Co.*, 98 Ohio App. 410, 414, 130 N.E.2d 97 (1st Dist.1954).

{¶19} Appellants cite *Beckler v. Bacon*, 1st Dist. Hamilton No. C-060228, 170 Ohio App.3d 612, 2007-Ohio-1319, 868 N.E.2d 716, for the proposition that a plaintiff,

who is not a relative of the decedent, may recover in quantum meruit for the value of services rendered in the decedent's lifetime. Although this is part of the holding of *Beckler*, that case also clearly holds that this theory of recovery requires proof that "the services are rendered under circumstances implying that they are not gratuitous" and that "the question of whether the services were provided gratuitously is a question of fact." *Id.* at 618. In the instant case, we must presume that the trial court found that the services provided by Appellants were performed gratuitously, and the record bears this out.

{¶20} In *Beckler*, the plaintiff, Joseph Beckler, was a neighbor to the decedent, George Knuckles. Mr. Knuckles had returned home after being hospitalized and Mr. Beckler started taking care of almost all of Mr. Knuckles' personal and household needs, including bathing, changing bedpans, preparing meals, administering medicine, banking, grocery shopping, home repair, and yard work. When Beckler told Knuckles that he could no longer care for him because it was taking too much time away from his own family and work, Knuckles offered to give the plaintiff "everything he owned" if he would keep caring for him. *Id.* at 615. Knuckles showed him a bank account with $120,000 in it, and Beckler agreed to continue caring for him until his death.

{¶21} The facts in *Beckler* are quite different from the facts in the instant case. Appellants were not mere neighbors performing services for hire as if pursuant to an arms-length transaction. Throughout the bench trial in this case the Appellants referred to Mr. Widmor as a father figure, as a grandfather, as family, as their best friend, and indicated that they loved each other. All the services provided by Appellants were, by their own admission, done out of love and affection. (3/3/22 Tr. p. 86.) They admitted that they never asked for remuneration during Mr. Widmor's life and relied solely on their

hope that something would be provided in Widmor's last will and testament upon his death. Their disappointment that Mr. Widmor did not have a will when he died, and therefore, did not leave them a legacy, cannot form the basis of recovery under quantum meruit.

{¶22} Appellants argue in their reply brief that the trial court erred in ruling against them once the court expressly stated that it found them to be credible: "This Court does see that the plaintiffs told the truth and this Court does believe the plaintiffs." (3/3/22 Tr. p. 237.) The court went on to state, though: "This Court just doesn't see there's enough evidence in order to conclude with a judgment for the plaintiffs." (3/3/22 Tr. p. 237.) The mere fact that the court found Appellants were credible, at least in part, does not entitle them to judgment in their favor because they still needed to prove all of the elements of each of their causes of action. Additionally, they gave conflicting testimony throughout the trial. While Appellants insist they performed their services because of their love for Mr. Widmor and due to their close relationship with him, at the same time, they also contended that they performed the alleged services with the expectation of payment based on some oral agreement with the decedent. These are contradictory theories of recovery. Thus, as Appellee points out, the trial court clearly found Appellants were credible as to their testimony regarding their love and affection for Mr. Widmor, but this testimony provides no evidence to support any basis for recovery from the estate. "The finder of fact is free to believe some, all or none of the testimony presented by each witness and can decide between credible and incredible parts of witness testimony." *Vaughn v. Oliver*, 7th Dist. Mahoning No. 20 MA 0080, 2021-Ohio-3595, ¶ 38.

{¶23} One final point regarding the credibility of the Appellants at trial is that all three of them purportedly gave tens of thousands of dollars' worth of bookkeeping services to Mr. Widmor, yet not one of them kept any receipts or records of any of the goods and services they allegedly provided. In other words, three people who claimed to be providing bookkeeping services did no bookkeeping regarding those services for the entire ten-year period for which they are seeking compensation.

{¶24} Appellants' second cause of action was promissory estoppel. "The elements of promissory estoppel are: (1) a clear and unambiguous promise (2) upon which it would be reasonable and foreseeable to rely, and (3) actual reliance on the promise (4) to the detriment of the one who relied." *Gus Hoffman Family Ltd. Partnership v. David*, 12th Dist. Clermont No. CA2006-09-076, 2007-Ohio-3968, ¶ 5. Appellants acknowledge that this is also a quasi-contractual theory of recovery, and therefore the same principles discussed above with respect to quantum meruit also apply to defeat Appellants' promissory estoppel argument.

{¶25} The record shows that Mr. Widmor did not make any clear and unambiguous promise to pay for the goods and services allegedly provided by Appellants. Appellant Yoho stated in her deposition that:

> Q. * * * I mean, what words did [Mr. Widmor] use to lead you to believe that you would be compensated with a legacy?
>
> A. I don't remember the exact language, and I don't want to speculate as to the exact verbiage that was used.

Q. So did he ever say, "I promise I'm going to leave you a legacy"? Did he ever use the words "I promise"?

A. As I said, I don't remember the exact verbiage. It was rude to discuss such manners [sic], and I don't want to speculate as to the verbiage he used.

(Victoria Yoho Depo., pp. 10-11.)

{¶26} The best recollection of Appellant Jay VanDyne is that Mr. Widmor stated he would "take care of his girls." (3/3/22 Tr., p. 45.) This can in no way be construed as a clear and unambiguous promise, and the trial court, as the trier-of-fact, obviously recognized this testimony provided no evidence of a promise, nor did the court conclude that Appellants could reasonably rely on Widmor's phrasing as a clear and unambiguous promise. The record reflects that Appellants failed to prove more than one element of promissory estoppel. The manifest weight of the evidence in the record does not support any of Appellants' claims in this regard.

{¶27} Yoho did use the word "promise" a number of times in her testimony, but she qualified it each time by stating that the decedent merely said he would take care of them. (3/3/22 Tr., pp. 136, 139, 141.) When asked directly whether the lawsuit was about fulfilling a promise, she failed to directly answer, instead saying: "This lawsuit is about us getting compensated for the tasks we did, that we did with the understanding that we were going to be compensated in the form of a legacy." (3/3/22 Tr. p. 141.) Hence, if there was some "promise," it concerned only the expectation of a legacy which negates the existence of any enforceable contract, express or implied, between the parties. *Anderson*, *supra*, 43 Ohio App. at 542.

{¶28} The nature of the "promise" that Appellants alleged throughout trial and in this appeal is that Mr. Widmor said he intended to sign a will and to make a devise or bequest to Appellants in that will. R.C. 2107.04 states: "No agreement to make a will or to make a devise or bequest by will shall be enforceable unless it is in writing. The agreement shall be signed by the maker or by some other person at the maker's express direction. If signed by a person other than the maker, the instrument shall be subscribed by two or more competent witnesses who heard the maker acknowledge that it was signed at the maker's direction." There is no assertion in the record that Mr. Widmor or any other person signed any written agreement to make a will or to make a bequest. Claims of quantum meruit or promissory estoppel do not negate the requirement of a written agreement when the alleged underlying promise was to make a will or regard a promise to make a devise or bequest under a will. *Erwin v. Wanda E. Wise Revocable Tr.*, 4th Dist. Scioto No. 12CA3501, 2013-Ohio-952, ¶ 18 ("an agreement to make a will or to make a devise or bequest by will is not enforceable under any circumstances unless it is in writing" even when alleging quantum meruit or promissory estoppel). Likewise, fraud or other equitable arguments fail if there is no written agreement to make a will or bequest as required by R.C. 2107.04. *Johannsen v. Ward*, 6th Dist. Huron No. H-09-028, 2010-Ohio-4203, ¶ 38.

{¶29} Based on R.C. 2107.04 alone, it was unreasonable for Appellants to rely on oral commitments by Mr. Widmor that he would make a will or provide some undefined legacy to them in that will. *Erwin*, *supra*, at ¶ 20.

{¶30} Appellants' third theory of recovery was fraud. This claim involves the disposition of two automobiles allegedly promised to Yoho and Ritz. Common law fraud

requires proof of: (a) a representation or, where there is a duty to disclose, concealment of a fact; (b) which is material to the transaction at hand; (c) made falsely, with knowledge of its falsity, or with such utter disregard and recklessness as to whether it is true or false that knowledge may be inferred; (d) with the intent of misleading another into relying upon it; (e) justifiable reliance upon the representation or concealment; and (f) a resulting injury proximately caused by the reliance. *State ex rel. The Illum. Co. v. Cuyahoga Cty. Court of Common Pleas*, 97 Ohio St.3d 69, 2002-Ohio-5312, 776 N.E.2d 92, ¶ 24.

{¶31} Appellants' basis for seeking title to the two 1967 Plymouth GTX cars was based on recollections by Yoho and Ritz in which Mr. Widmor "talked about them going to my sister and I" and vague statements that they "would be taken care of" upon Mr. Widmor's death. (3/3/22 Tr., pp. 124, 136, 166.) Even assuming the trial court accepted this testimony as true, it does not satisfy any of the elements of fraud. The testimony of Yoho does not describe any clear representation being made by Mr. Widmor, does not set forth any type of transaction, and certainly does not give rise to a basis for justifiable reliance. As noted earlier, oral agreements to provide a devise or bequest in a will are unenforceable even when fraud is claimed as the underlying cause of action. R.C. 2107.04.

{¶32} Appellants also claim the trial court erred when it stated, just before rendering judgment, that Mr. Widmor did not sign a will. Appellants contend that whether or not he signed a will was not at issue in the trial, and they admitted in the complaint that he did not have a will. Appellants complain that Mr. Widmor's failure to sign the 2005 draft of a will was irrelevant to their claims arising out of decedent's death in 2019.

Appellee fully agrees with Appellants that the draft will from 2005 is irrelevant in this case and has no probative value.

{¶33} The judge's comment about the will, though, is relevant to the court's determination regarding the decedent's intent. If the decedent had intended to bestow a legacy to Appellants, he could have executed a will. Further, whatever reason Mr. Widmor had for failing to sign a draft of a will prepared in 2005 could have been remedied sometime during the 14 years until his death in 2019, if he had so desired. Thus, this record reflects Mr. Widmor apparently did not intend to distribute his property by means of a last will and testament. The record, then, supports the trial court's judgment that Appellants did not prove the elements of their claims by a preponderance of the evidence.

{¶34} The manifest weight of the evidence fully supports the judgment of the trial court, and Appellants' first assignment of error is overruled.

ASSIGNMENT OF ERROR NO. 2

THE TRIAL COURT ERRED IN SUSTAINING AN OBJECTION AS TO MARY ANN VANDYNE'S PLAN AND INTENT AS TO HER ASSETS.

{¶35} Appellants argue that, during the testimony of Attorney Daniel Frizzi, the trial court abused its discretion in preventing Attorney Frizzi from answering a question about Mary Ann VanDyne's intent as to her estate. Appellee's attorney objected to the introduction of such evidence as irrelevant, and the trial court sustained the objection. (3/3/22 Tr., pp. 99-100.)

{¶36} Evid.R. 402 precludes the admission of irrelevant evidence. The decision to include or exclude evidence, particularly on grounds of relevance, is within the sound

discretion of the trial court. "The trial court has broad discretion in the admission and exclusion of evidence and unless it has clearly abused its discretion and the defendant has been materially prejudiced thereby, this court should be slow to interfere." *Dardinger v. Anthem Blue Cross & Blue Shield*, 98 Ohio St.3d 77, 2002-Ohio-7113, 781 N.E.2d 121, ¶ 193; *Orwick v. Orwick*, 7th Dist. Jefferson No. 04 JE 14, 2005-Ohio-5055, ¶ 53.

{¶37} "An appellate court will not disturb evidentiary rulings absent an abuse of discretion that produced a material prejudice to the aggrieved party." *Mounts v. Malek*, 9th Dist. Summit No. 23638, 2007-Ohio-5112, ¶ 8. "An abuse of discretion is more than an error of judgment; it means that the trial court was unreasonable, arbitrary, or unconscionable in its ruling." *Id.* "An abuse of discretion 'implies not merely error of judgment, but perversity of will, passion, prejudice, partiality, or moral delinquency.' " *State, ex rel. Commercial Lovelace Motor Freight, Inc. v. Lancaster*, 22 Ohio St.3d 191, 193, 489 N.E.2d 288 (1986), quoting *State ex rel. Shafer v. Ohio Turnpike Commission*, 159 Ohio St. 581, 590-591, 113 N.E.2d 14 (1953).

{¶38} As earlier stated, Mary Ann VanDyne was not married to the decedent, and she died ten years prior to his demise. She had few or no assets when she died, and no probate estate was opened on her behalf upon her death. None of the claims made by Appellants involve intentions regarding Mary Ann VanDyne's assets she may have controlled at her death, and in fact, it appears from the record she had no assets at the time of her death. All of the claims in the complaint involved only Mr. Widmor's intentions. The trial court was correct in sustaining an objection to a question seeking to elicit irrelevant testimony. Appellants argue that evidence about Mary Ann VanDyne's intent would not have violated hearsay rules, but the objection was sustained on grounds of

relevance, not hearsay. Appellants' argument is not persuasive, and their second assignment of error is overruled.

Conclusion

{¶39} Appellants have appealed the denial of their complaint seeking recompense for goods and services allegedly provided to decedent Frank Widmor for the last ten years of his life. Appellants were good friends of Mr. Widmor and considered themselves to be practically family, but were not related to him. Mr. Widmor died intestate, and his estate went to his mother and siblings. Appellants argue on appeal that the trial court, in a bench trial, failed to directly address their claims of quantum meruit, promissory estoppel, and fraud. The court rendered a general judgment in favor of Appellee. Appellants failed to file a Civ.R. 52 motion for findings of fact and conclusions of law, and so have waived any challenge to lack of specificity in the court's final judgment. Moreover, the record fully supports the court's judgment. Appellants' argument at trial was that they provided the goods and services out of love and affection for Mr. Widmor, but that they had some expectation of being taken care of in his last will and testament when he died. Since he died intestate, their expectation was disappointed. Such an expectation does not form the basis of recovery from the estate of a decedent in Ohio law. Appellants did not sufficiently prove by a preponderance of the evidence their claims of quantum meruit, promissory estoppel, and fraud, and the judgment of the trial court is affirmed.

Robb, J., concurs.

Hanni, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Belmont County, Ohio, is affirmed. Costs taxed against Appellants.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.