EFiled: Jun 29 2005 4:29PM EDT
Filing ID 6116741

COURT OF CHANCERY
OF THE
STATE OF DELAWARE

JOHN W. NOBLE
VICE CHANCELLOR

417 SOUTH STATE STREET
DOVER, DELAWARE 19901
TELEPHONE: (302) 739-4397
FACSIMILE: (302) 739-6179

June 29, 2005

Rick S. Miller, Esquire
Ferry, Joseph & Pearce, P.A.
824 N. Market Street
P.O. Box 1351
Wilmington, DE 19899-1351

Charles Gruver, III, Esquire
Charles Gruver III, P.A.
724 Yorklyn Road, Suite 315
Hockessin, DE 19707

Re: I/M of the Purported Last Will and Testament
of Dorothy M. Troyan, Deceased
C.A. No. 212-N
Harrison v. Hayes
C.A. No. 735-N – Consolidated
Dated Submitted: March 24, 2005

Dear Counsel:

Plaintiffs Leonard and Eve Harrison present their claims, under a theory of quantum meruit, for services provided to their friend, Dorothy M. Troyan, during the last two years of her life. Through a combination of jointly titled certificates of deposit, the bequest of twelve percent of her residuary estate, and a gift of tangible personal property, Troyan's passing entitled the Harrisons to approximately

$80,000. The Harrisons assert that Troyan's estate (the "Estate"), represented here by her Executrix, Defendant Monica Hayes, owes them an additional amount, in excess of $135,000, for the benefits which they provided to Troyan.

The Plaintiffs also brought another action against the Estate. In that action, they challenged Troyan's will[1] because, shortly before her death, she changed her will[2] and removed them as devisees of one-third of an interest she held in real estate in the State of Washington. In the course of that proceeding, the Estate counterclaimed against the Harrisons for $9,723.93 based on loans made to them by Troyan.[3] The Harrisons thereafter abandoned their challenge to Troyan's will, and they now do not dispute that they owe the Estate $8,223.93.

In this post-trial letter opinion, I conclude that Troyan "took care" of the Harrisons, as she promised, by leaving them significant assets on her death. Because the Harrisons were duly rewarded for their efforts in assisting Troyan during her last years, they are not entitled to a separate recovery through prosecution of a quantum meruit claim. In addition, judgment will be entered in

[1] PX A. Troyan's will is dated November 28, 2003.
[2] PX D. Her prior will was dated October 28, 2002.
[3] The Estate's counterclaim was presented in C.A. No. 212-N. The quantum meruit claim was brought in C.A. No. 735-N. The two cases were consolidated on October 18, 2004.

the amount of $8,223.93 in favor of the Estate on its debt counterclaim against the Harrisons.

* * *

Troyan and Mrs. Harrison shared a passion for poker. They first met, at a poker game hosted by Mrs. Harrison's aunt, sometime around 1990 and quickly became friends. Soon thereafter, Troyan was diagnosed with bladder cancer; removal of her bladder resulted. Troyan and Mrs. Harrison had little contact—perhaps an occasional phone call—for most of the decade. In 1999, they connected again; poker was the source of the renewed friendship. The relationship would grow into one of close friendship—someone described Mrs. Harrison as the daughter Troyan never had.

As a consequence of her battle with bladder cancer, Troyan was dependent upon an ostomy bag. At some point, probably late 2001, Troyan asked Mr. Harrison, a registered nurse, by then working primarily in home health care for the elderly, if he could help her with the appliance which leaked on a frustratingly regular basis. Mr. Harrison recommended a difference ostomy bag, obtained approval from Troyan's physician to try it, and attached it. The new bag worked well.

From that time until Troyan's death, at age 82, on December 11, 2003, Mr. Harrison, once, and sometimes twice, a week replaced the ostomy bag. Mr. Harrison and his wife, however, did more. Troyan suffered from a number of maladies, including hypertension. Thus, she took multiple medications. Mr. Harrison managed her medications. Mr. Harrison, who generally worked from 2:00 p.m. until 10:00 p.m., checked on Troyan daily, bringing her coffee and a newspaper. Mrs. Harrison also assisted Troyan—she helped bathe her, cooked some meals, and eventually did some light housework. The Harrisons also provided transportation: to physicians' appointments and poker games.

Yet, Troyan, a retired nurse, was not an invalid; nor was she homebound. She drove her car until the late summer or early fall of 2003. She went shopping with friends and she was capable of preparing at least simple meals.

In February 2002, Troyan was hospitalized with pneumonia. With assistance provided by Mr. Harrison, she was able to return home somewhat sooner and was able to avoid what might have been a brief stay in a nursing home.

One evening in late November 2003, Troyan fell and broke her hip. Mr. Harrison found her on the floor the next morning. He arranged for transportation to the hospital. The only evidence of any diminishment of Troyan's mental

faculties can be found during this hospital stay. She needed a blood transfusion and resisted it for reasons that no one understood. Eventually, with help from Mr. Harrison and perhaps with help from her family, she relented. She left the hospital for a rehabilitation stay at a nursing home. It was anticipated that she would be able to return home following the rehabilitation, but she died a few days later.

The Harrisons have a history of financial difficulty. Troyan, beginning in the fall of 2001, made several loans to them and the Harrisons acknowledge owing a principal balance of $8,223.93 on the loans.[4]

In early December 2001, Troyan added Mrs. Harrison as a joint owner with right of survivorship to a $25,000 certificate of deposit.[5] On November 4, 2002, Troyan designated David Gorski, Mrs. Harrison's son, as a joint owner with right of survivorship of a $10,000 certificate of deposit. On March 17, 2003, Troyan gave Mr. Harrison survivorship rights to a $25,000 certificate of deposit.

---

[4] Troyan loaned the Harrisons $9,723.93. DX 1. The debate between the Harrisons and the Estate is over whether the Harrisons made a payment of $1,500. The Harrisons, through PX H, have presented a record evidencing that they repaid $1,500 to Troyan. The record is the best evidence before the Court as to whether the payment was made. Accordingly, the Court concludes that the Harrisons, in fact, made that payment. Because it is undisputed that the Harrisons owe at least $8,223.93, judgment will be entered in favor of the Estate for that sum.

[5] PX J & K. Mrs. Harrison's rights in the $25,000 certificate of deposit were conferred shortly before she and her husband commenced providing the services for which they now seek compensation.

In October 2002, Troyan executed a will that left 16% of her estate to the Harrison family. Of that, 12% was bequeathed to Mr. and Mrs. Harrison, jointly, and 4% to Gorski. Also, the Harrisons were to receive an interest in the Washington real estate. Troyan revised her will on November 28, 2003, to devise all of the Washington real estate to Hayes and not to the Harrisons. The Harrisons, however, continued to be the beneficiaries of 12% of her residuary estate; Gorski's share also remained at 4%.

The Harrisons seek compensation for the services that they provided to Troyan. No express agreement—written or verbal—established the Harrisons' right to payment. Troyan, however, acknowledged that she intended that the Harrisons would be compensated for their efforts. She committed to "take care" of them. The rate of compensation was never discussed. The timing of payment was never discussed, but the most reasonable inference is that Troyan intended (and the Harrisons recognized) that compensation would be paid as the result of her death.

The evidence does not allow for an accurate calculation of the Harrisons' share of Troyan's residuary estate. It is, however, possible to reach a rough

approximation. From the inventory,[6] the residuary estate has a gross valuation of approximately $242,000.[7] Of that, $142,000 may be attributed to Troyan's dwelling which was sold during the administration of the Estate. Neither the net proceeds of that sale, nor the expenses of administration, nor Troyan's debts can be ascertained with precision from the record. A reasonable estimate of the necessary reduction would be in the range of 10%, thus leaving approximately $218,000 to be divided. The exact amount that the Harrisons will receive from the Estate is not critical here. Of particular importance is how much Troyan would have reasonably expected them to receive on her death.[8] Thus, it is likely that the Harrisons will, and Troyan likely anticipated that the Harrisons would, receive a bequest of approximately $26,000 from the Estate. Finally, by a separate writing authorized by 12 *Del. C.* § 212, Troyan gave Mrs. Harrison a barrel rocker, a bookcase, a desk and chair, a small dresser, and her car.[9] The inventory contains only a separate

[6] PX C.
[7] This number excludes the tangible personal property of the Estate, much of which was given to Mrs. Harrison and others through a separate writing authorized by Troyan's will.
[8] These numbers were, of course, generated after her death. For present purposes, it is reasonable to assume that Troyan had a sense as to the value of the gifts that she would be making through her will.
[9] PX A.

valuation of the car, $2,400. Accordingly, the Harrisons are likely to receive approximately $78,400 as the result of Troyan's death.[10]

To support their quantum meruit claim, the Harrisons rely upon the expert testimony of Patricia Maisano, R.N., who is experienced in arranging and coordinating care for the elderly. Maisano's view of Troyan was formed by input from the Harrisons and by review of medical records.[11] Based on these sources, Maisano opined that the Harrisons are fairly entitled to payment of $138,449.60 as the value of the care which they provided to Troyan. Following her retention as their expert witness, Maisano directed the Harrisons to prepare a calendar[12]—on an after-the-fact basis—of their services to Troyan. The Harrisons had not kept contemporaneous records. At trial, they could only produce snippets of their regularly maintained calendars[13]—and those were prospective in nature—that is, they showed future appointments that they intended to keep. In essence, the calendars used by Maisano reflected Mr. Harrison's efforts—in the context of

[10] This is the sum of the certificates of deposit, the bequest under the will, and the tangible personal property. In addition, Gorski's gifts will total approximately $19,000: the sum of the 4% of the residuary estate and the $10,000 certificate of deposit. Thus, the total passing to the Harrisons and Gorski will be roughly $97,000. The evidence provides no plausible reason for Troyan's gifts to Gorski other than that he is Mrs. Harrison's son.

[11] At trial, several of Troyan's medical records were admitted. PX M; DX 13-19; 29. It appears that Maisano did not review all of them.

[12] PX G.

[13] PX F.

pursuing a litigation claim—to recreate what he and his wife did for Troyan. The Harrisons do not claim that they have any specific recollection of what was done or how much time they devoted to Troyan's service. Instead, the calendar, at most, sets forth what they now consider to have been a "typical" week.

Maisano's calculations significantly overstate the fair value of the services provided by the Harrisons. First, she relied extensively upon the Harrisons' creation, on an after-the-fact-for-litigation basis, of a calendar purportedly demonstrating the work which they performed. The Harrisons' effort is suspect not only because it was accomplished after the litigation was filed but also because it is inconsistent with the specific evidence available. It is true that Mr. Harrison provided skilled nursing services, perhaps as frequently as twice per week to change the ostomy bag, but, otherwise, the services routinely consisted of bringing coffee and a paper, providing some transportation, occasionally cooking meals, light housekeeping, and infrequently bathing Troyan.[14]

[14] Mr. Harrison's nursing skills were helpful in two other aspects of Troyan's regular activities. First, he managed her medications by arranging them in a manner that made it easy for her to stay on schedule. It is not clear how important this assistance was because the evidence does not demonstrate that Troyan was unable to handle this task herself. Second, to some indeterminate extent, his accompanying Troyan to physicians' appointments assisted in providing accurate information and increased the likelihood that the physicians' recommendations would be followed. Mr. Harrison contends that his daily visits (bringing coffee and a paper) allowed him

Second, Maisano appears to have been persuaded by the Harrisons that Troyan over the two-year period was in worse medical condition than suggested by the record. Ms. Maisano views Troyan as someone who, but for the Harrisons, likely would have been in a nursing home during most of the period. The Court rejects this view of Troyan.[15] Troyan, despite numerous medical problems, was feisty and active.[16] For most of the time, she was still driving. She had other friends with whom she associated. She was capable of fixing simple meals. Thus, while the Harrisons provided valuable and, to an extent, necessary services to Troyan, they (and Maisano) cannot support their claim of entitlement to more than $135,000.

For reasons that will become evident, it is not necessary to calculate the fair value of the Harrisons' services. A rough approximation, based on a view of the evidence favorable to the Harrisons, may, however, be helpful. Mr. Harrison, assuming two weekly changes of the ostomy bag and arranging her medications once each week, would have provided no more than five hours of professional

---

to assess Troyan's condition. Troyan, however, did not require medical assessment on a daily basis and basic human contact would have served substantially the same purpose.

[15] Maisano, in part, justifies her implicit monthly charge of more than $5,500, by reference to the alternative costs of residing in a nursing home.

[16] But for one limited incident, her mental faculties were unimpaired. While she had numerous medical concerns, her medications appear to have kept them under control.

services each week. Assuming Maisano's hourly rate of $87.50 for professional nursing services,[17] that leads to $45,500 (for 520 hours over two years). Accompanying her to physicians' visits and visiting her in the hospital, where he provided limited assistance, may have involved as many as 75 hours or $6,563. The Harrisons provided personal support services—transportation, light housekeeping, and the like—for perhaps 15 hours per week. According to Maisano, these services would be worth $21 an hour; thus over two years, they would amount to $32,760. These all sum to slightly more than $80,000. Perhaps the proper number is more or less, but this suffices for a rough approximation.[18]

* * *

Quantum meruit is "a quasi-contract claim that allows a party to recover the reasonable value of his or her services if: (i) the party performed the services with the expectation that the recipient would pay for them; and (ii) the recipient should

[17] Maisano's hourly rates are used for illustration purposes only. The Court draws no conclusion as to their reasonableness or applicability in the context of the pending quantum meruit claim.

[18] Although the Harrisons now seek $138,449.60, their proof of claim, timely submitted to the Register of Wills under 12 *Del. C.* ch. 21, only demanded $83,125. (DX 7). That supports the conclusion that the current target of $138,449.60 is excessive. More importantly, it limits the recovery which can be obtained through this action. Under *Calvin v. Calvin*, 1985 WL 22037 (Del. Ch. Aug. 19, 1985), claims filed under 12 *Del. C.* ch. 21, "cannot be amended after the statutory period so as to materially alter the timely-filed claim." *Id.* at *3. Thus, regardless of the success of their proof at trial, the Harrisons' recovery may not exceed $83,125.

have known that the party expected to be paid."[19] The Harrisons conferred a benefit upon Troyan through their efforts and both Troyan and the Harrisons understood that some payment would eventually be made. Thus, as a general matter, the Harrisons have established a right to recover under a theory of quantum meruit. That conclusion, however, leaves open the question of whether those assets passing to the Harrisons as a result of Troyan's death satisfied Troyan's commitment to "take care" of them.[20]

* * *

The Harrisons, either as the beneficiaries of Troyan's will and its separate writing transferring tangible personal property or as survivors under the jointly held certificates of deposit, stand to receive approximately $80,000 as a result of her death.[21] In the two years before her death, they provided services, with an expectation of payment, perhaps, worth approximately $80,000. The questions, accordingly, are: (1) are they entitled to both or (2) did Troyan satisfy her

[19] *Chabbott Petrosky, Commercial Realtors Ltd. v. Peterson*, 859 A.2d 77, 79 (Del. 2004); *see also Gaither v. Simpson*, 2001 WL 670962, at *2 (Del. Ch. May 25, 2001)

[20] The Estate argues that the Harrisons (and particularly Mrs. Harrison) were close friends of Troyan. The existence of friendship as a motivation for the assistance (*i.e.*, gratuitously as opposed to expecting payment) generally undercuts a quantum meruit claim. *Ryan v. Ryan*, 298 A.2d 343 (Del. Super. 1972). In this instance, however, Troyan indicated at least a general intention to provide some level of compensation to the Harrisons.

[21] This does not include approximately $19,000 passing to Mrs. Harrison's son.

commitment to "take care" of them through her gifts? The burden is on the Estate to demonstrate that the Harrisons are not entitled to both.

* * *

The Harrisons properly argue that a legacy to a creditor cannot be in satisfaction of a debt unless the testator intended that result.[22] Here, Troyan's will provided no indication that she intended the gifts to be in satisfaction of her commitment to the Harrisons.[23] Furthermore, Troyan made several gifts (either through survivorship rights to jointly held certificates of deposit or her will) to individuals who were not members of her family and to whom she had no comparable obligations. On the other hand, "where services are rendered under an express agreement to pay for them generally by a legacy, without any agreement as to the amount or character of the legacy, except that it is to pay for the services, an agreement is implied that the legacy shall be sufficient to compensate for the reasonable value of the services."[24]

There was, however, no express agreement between Troyan and the Harrisons that their compensation would be by legacy. Troyan, however,

---

[22] *See, e.g., Estate of Snell*, 336 N.Y.S.2d 967, 968 (N.Y. App. Div. 1972).
[23] *See Estate of Vertin*, 352 N.W.2d 200, 202 (N.D. 1984).
[24] *Schmetzer v. Broegler*, 105 A. 450, 452 (N.J. 1918); *see also Steffler v. Schroeder*, 79 A.2d 485, 487-88 (N.J. Super. Ct. App. Div. 1951).

committed that she would "take care" of them. Shortly before her death she gave thought to what they should receive when she decided to rescind the devise of an interest in the Washington real estate. Through her commitment to "take care" of them, Troyan, of course, retained the choice of how to go about that task. Unlike in *Snell*, there was no express indebtedness amount. Because there was no agreement as to how their compensation would be determined, the Harrisons, in a sense, were dependent upon Troyan. The more reasonable inference from the evidence is that Troyan understood her obligation to the Harrisons and "took care" of them through the gifts vesting in them on her death.[25] To conclude otherwise would require the Court to find that Troyan reneged on her commitment to "take care" of them. From what the Court has learned about Troyan, that would have been out of character.

The Harrisons, of course, were not subject to Troyan's unfettered and arbitrary discretion. If the assets passing to them on Troyan's death were insufficient to compensate them fairly for the services which they provided, they would have had the opportunity to pursue the quantum meruit claim instead of

[25] Because the Harrisons went forward under Troyan's commitment to "take care" of them, they accepted, at least implicitly, that the means by which they would be "taken care" of was up to Troyan. The gifts vesting at her death did, in fact, fairly "take care" of them. There is no evidence that they sought payment prior to her death.

accepting the payments passing as the result of her death. Since the property passing to them on Troyan's death approximates what they could hope to recover on their quantum meruit claim, the Harrisons were not, in fact, confronted with that quandary. Thus, because Troyan fairly "took care" of the Harrisons through her will and through the gifts of tangible personal property and the certificates of deposit, the Harrisons have no separate and viable quantum meruit claim, and the Estate is entitled to judgment in its favor.[26]

* * *

An order implementing this letter opinion will be entered.

Very truly yours,

***/s/ John W. Noble***

JWN/cap
cc: Register in Chancery-NC

[26] The Harrisons point out that a $25,000 certificate of deposit was jointly titled with Mrs. Harrison before the two-year period ending with Troyan's death. They argue that, because that was done before Troyan had an obligation to pay them, it should not be considered as part of her commitment to "take care" of them. The simple, although perhaps somewhat technical, answer to that argument is that the gift did not vest until Troyan's death and was within Troyan's knowledge when she made her commitment to "take care" of the Harrisons.