**IN THE COURT OF APPEALS OF IOWA**

No. 3-232 / 12-1577
Filed June 26, 2013

**STEVE BIEDENFELD,**
Plaintiff-Appellant,

**vs.**

**THE ESTATE OF DORIS B. FRENCH and JOHN H. COOK, JR., Executor,**
Defendants-Appellees.

---

Appeal from the Iowa District Court for Clay County, David A. Lester, Judge.

Steve Biedenfeld challenges the district court's order denying his claims against the estate of Doris French. **AFFIRMED.**

Stephen F. Avery, Jill M. Davis, and Andrea M. Smook of Cornwall, Avery, Bjornstad & Scott, Spencer, for appellant.

Richard A. Cook of Herrick, Ary, Cook, Cook, Cook & Cook, Cherokee, for appellees.

Heard by Vogel, P.J., and Vaitheswaran, Doyle, and Tabor, JJ.

**TABOR, J.**

A farm tenant alleges he entered an oral contract with his elderly, disabled landlady, agreeing to care for her in her home until the time of her death in exchange for receiving eighty acres of land in her will. The tenant, Steve Biedenfeld, sued the estate of Doris French when he did not receive the bequest he expected.

At trial, Steve testified he assumed Doris would decide the care arrangement she contracted for in 2004 was not working, "at the time she's 97 years old, you know, how long do people live?" As it turns out, Doris lived to be almost 104. Because she lived the last two years of her life at a nursing home, the district court held Steve breached the contract and was not entitled to recover from the estate.

Steve raises three arguments in opposition to the district court's ruling. First, he contends Doris breached their contract first by changing her will to remove the eighty-acre devise. Second, he claims Doris's medical condition rendered the performance of his contractual duty impossible. Third, he urges if the oral contract is not enforceable, he still has a valid claim for recovery under an implied contract for services.

We hold Steve did not offer clear and convincing evidence he and Doris entered an oral contract. But even if the district court correctly found an oral contract existed, Steve cannot show repudiation or impossibility excused his non-performance. Accordingly, we affirm the district court's determination he breached his contract with Doris by returning her to the nursing home in

September 2008. We also reject his alternative claim for reimbursement under an implied contract for services.

## *I. Background Facts and Proceedings*

Doris French died on November 6, 2010, three weeks shy of her 104th birthday. Much to her dismay, she spent her last two years of life in a nursing home. Described as strong-willed, Doris sought to avoid liquidating her Clay County farmland assets to pay for her long-term care needs. Doris suffered a debilitating stroke in 2002. To continue living at home, she enlisted help from her long-time tenant, Steve Biedenfeld.

Steve first became acquainted with Doris in 1976 when he was just sixteen years old. Doris hired Steve to grind grain for her cow-calf herd. Soon after that Doris's husband, Harry French, agreed to a farm lease with Steve on a "50/50 crop share" basis. The oral lease continued until Doris's death.

But Steve was more than a tenant to Doris. Doris moved off the farm and into a residence in Peterson, Iowa around 1980. Doris and Harry also owned the house next door, which they used as a museum to showcase her many antiques. After Harry's death in 1984, Doris came to depend on Steve to assist with projects at her home and the museum, and she called him in emergencies. For instance, in 1991 when she needed surgery, he rushed her to the hospital in his truck. Doris reciprocated with financial aid for Steve. In 1997, Doris pledged certificates of deposit and property she owned as collateral to back Steve's bank

loans. Doris told Steve she was willing to back him financially because she thought of him as a son.[1]

In late summer 2002, Doris suffered a stroke that paralyzed her left side. She was first admitted to the Cherokee Hospital, and then underwent rehabilitation at a care center in Sioux Rapids. She used a wheelchair and had no bladder or bowel control. During that time, Doris appointed Steve as her attorney in fact.

When care center administrators told Doris in November 2002 that she would transition from Medicare coverage to private pay, she called Steve to take her home. Her lawyer convinced her to stay at the care center for another month. But on January 1, 2003, she called Steve again, threatening: "If you want to keep farming that farm, you come down here and get me out of here." The next day, Steve took her home from the center against medical advice. About one month later, she was readmitted to the hospital after a fall from her wheelchair. That stay lasted only a few weeks, until February 23, 2003, when she again cajoled Steve into checking her out against medical advice.

During that spring, Steve commenced his practice of stopping by Doris's house each morning to check on her. He kept disposable rubber gloves in his pickup truck:

> She was always usually soaked every morning and BM. And she had a pad on her bed so that it wouldn't soak into the mattress. And what I would do is I would get her stripped down and put a new Depend diaper on her and new sweat pants on her, and the dirty stuff went into the washing machine.

---

[1] Harry and Doris had one son, Ronald, who died in a car accident in 1964.

Steve would sometimes stop by a second time during the day. On occasions when Steve found Doris in a particularly bad mess, he struggled to lift her in and out of her small shower: "Dead weight. Don't help you at all. I'm trying to figure out how to get a wet, naked hundred-year-old lady, and how do you handle her?"

For Doris's nutritional needs, Steve would provide her with a stock of frozen meals she could microwave. He also left her with a bowl of Froot Loops for her to snack on during the day. On occasion, Steve would take Doris out to lunch.

This daily routine persisted from February 2003 until September 2009, with respites in 2003 and 2007 when Doris needed rehabilitation at care centers. The first of those incidents occurred in October 2003 when Doris fell forward out of her wheelchair, cracking several ribs. During those six years, an ambulance crew responded to calls at Doris's house more than thirty times.

Steve recalled having a crucial conversation with Doris after one such ambulance call to her residence in early 2004. Doris had fallen and the medics tended to her until Steve arrived. He cleaned her up and then they sat down for a cup of tea. She told him about "befriending an old maid" in Storm Lake and expecting to receive 400 acres of property when the friend died. Doris was disappointed she only received a "measly $5,000" in the friend's will.

Steve viewed that conversation as an opening and turned the topic to his relationship with Doris, asking "what am I getting out of this?" Doris responded: "what do you think you ought to have?" Steve said he would "settle for 80 acres."

Doris said she would think about it, and the next morning she agreed, asking Steve to give her a ride to her lawyer's office to change her will.

Steve summarized the agreement as follows:

> Well, I says, if you're giving me 80 acres, and I understand that you don't want to give the nursing home any ground, and she says well, I would rather give you 80 acres than a nursing home. And I says, well, I guess I can stomach this for 80 acres.

Doris went to her attorney's office on March 9, 2004, to amend her will. Her previous will, executed in 1990, placed all of her estate into a trust to maintain her museum. In the March 2004 will, she bequeathed an automobile to Beau Biedenfeld, Steve's son; $20,000 to her neighbor, Bill Eaton; $1000 to her church; and an eighty-acre plot to Steve. Doris gave Steve a copy of the 2004 will, which he provided to his bankers as proof he expected to be devised that land.

Doris would change her will twice more before her death. Events during the spring of 2006 prompted Doris to rethink her plan to bequeath the land to Steve. During that planting season, Steve experienced mechanical problems with one of his tractors. He remembers Doris asking him how much the mechanic would charge to fix the tractor and then agreeing to cover the $18,000 repair cost. He then filled out a check which she signed. Several months later, Doris cancelled the check and called her attorney. She accused Steve of forging her signature. Steve maintained that Doris simply forgot she had signed the check, but executed a promissory note to repay Doris to settle the conflict. Doris also directed her attorney to prepare a new power of attorney, replacing Steve with her neighbor Bill Eaton as her new attorney in fact.

On October 17, 2006, Doris amended her will to devise the eighty acres to Beau Biedenfeld instead of Steve. She told her attorney she was afraid Steve would end up losing the land to the bank, thereby breaking up the French farm. Just a few weeks later, on November 8, 2006, Doris changed her mind again and executed a new will, leaving the entire farm in the trust, but devising $40,000 to her "friend and loyal tenant, Steve Biedenfeld." The clause also stated: "It is my preference that Steve have first opportunity to rent my entire farm for so long as he is farming." Doris told her lawyer she grew concerned that Beau would pledge the eighty acres as collateral for his father's farm debt, still resulting in the division of her property.

In fall 2006, Steve received a call from another Peterson resident named Burdette Stier who said he gave Doris a ride to her attorney's office and "I think she wrote you out of the will." Steve confronted Doris about the call, saying: "You just pack your stuff, you're going to the nursing home because I'm not doing this no more if you wrote me out." Doris told him nothing had changed, so he "took it nothing changed."

On November 26, 2006, Steve and Tracey Biendenfeld planned a 100th birthday celebration for Doris at her church. In preparation for the party, Steve paid the nursing home six dollars to give Doris a whirlpool bath so that she "didn't smell like poop." No one at the party mentioned Doris's changes to her will.

Doris's physical condition continued to deteriorate. In June 2007, she fell in her home and broke her leg. After a hospital stay and convalescence at a nursing home, Doris checked herself out against medical advice and returned

home in November 2007. Home health nurse Rochelle Wagner visited Doris's house on November 19, 2007. She found burnt utensils on the stove and a refrigerator full of spoiled food. Doris had soiled herself and dirty Depends littered the bedroom. The nurse recalled: "There were feces on the floor and in the bed with her." The nurse called Tracey and Steve Biedenfeld to ask "who was responsible for this negligent situation?" Wagner's report noted Doris was not safe in her home. The nurse "discussed in great length [Doris's] need for a higher care level. She threatens renter of her land to 'clean her up' or he'll lose rent ability. She doesn't want to spend $ for [nursing home.]" Nurse Wagner, who was a mandatory reporter, notified the Department of Human Services (DHS) of "self abuse" because Doris was unwilling to pay for adequate care.

In the fall of 2007, Doris called an electrician to come see why her stove was not working. It was not working because Steve had removed the fuses so that she would not have an accident. Not comprehending the safety concern, the electrician replaced the fuses. In March 2008, Doris was heating water on the stove to make chicken and dumplings and spilled the boiling pot onto her lap. She suffered deep burns to her thighs which took six months to heal. Doris spent that time at the Cherokee Villa rehabilitation center.

On September 10, 2008, Steve again took Doris home. By that time her burns needed only a protective covering. Steve testified he believed home health care nurses would come to Doris's residence to bath her and bandage the scars to avoid infection. But he was informed they could not provide the twenty-four-hour care she needed. A DHS worker told Steve that Doris should not be

home any more. After two weeks, Doris told Steve she wanted to go back to the nursing home to get cleaned up, like she did before her birthday party. Steve returned Doris to Cherokee Villa on September 28, 2008, in essentially the same condition as when she left. She stayed at the nursing home until her death in November 2010.

Only after Doris's death did Steve learn he was not to receive the promised eighty acres. On February 25, 2011, Steve filed a petition at law and claim in probate, objecting to the November 8, 2006 will because it did not provide for the devise of farmland to him as promised by Doris "and upon which promise he detrimentally relied." He asked the court to enforce his contract with Doris and reinstate the will provision devising eighty acres to him, or in the alternative to compensate him for the services he provided to Doris.

The probate court held a bench trial on November 16 and 17, 2011. On May 18, 2012, the court decided Doris and Steve did enter an oral contract. The court rejected the estate's claim the contract was void because Steve's level of care constituted dependent adult abuse. But the court ruled Steve failed to show he performed all the terms and conditions of the oral contract. Specifically, the court found Steve breached the deal by discontinuing his home care regime and returning Doris to the Cherokee Villa. The court also determined Steve's alternative theory of recovery lacked merit.

Steve filed a motion under Iowa Rule of Civil Procedure 1.904(2), alleging the court should have determined it was impossible for him to continue to perform the contract because Doris needed skilled nursing care for her burns.

The motion also asserted the court failed to consider that Doris breached the contract by amending her will. Finally, the motion sought an enlargement of the decision to address his alternative request for compensation for the value of his services. The estate resisted, contending Doris's amended will was not a breach of the contract, if a contract existed; Steve's breach could not be attributed to impossibility; and his claim for compensation for services failed for lack of proof.

The probate court held a hearing on the post-trial motions on June 19, 2012. The court issued an order on August 27, 2012, denying Steve relief. The court found his grounds for nonperformance of his oral contract with Doris "did not exist at the time he elected to discontinue caring for her." The court also noted that Steve failed to plead impossibility of performance and the trial record did not support that claim. On his claim for compensation, the court found "it would violate the principles of equity, as well as the doctrine of election of remedies to now allow Plaintiff to, in effect, disaffirm that contract and obtain a recovery of monetary damages on the alternative theory pled in Count II."

Steve now appeals.

## *II. Scope and Standards of Review*

The parties agree our standard of review is de novo because the case was tried in equity. *See* Iowa R. App. P. 6.907; *In re Estate of Whalen*, 827 N.W.2d 184, 187 (Iowa 2013). "We give weight to the probate court's factual findings, particularly on the credibility of witnesses, but are not bound by them." *Whalen*, 827 N.W.2d at 187. To the extent that we are reviewing the probate court's statutory interpretation, we do so for correction of legal error. *Id.*

## *III. Analysis*

### A. Recovery under Oral Contract

Steve claims he is entitled to specific performance of an oral contract he entered with Doris in March 2004. According to Steve's recollection, Doris promised to devise him eighty acres of her farm land if he cared for her at home so she could avoid selling the land to pay for services at a nursing facility.

Steve's contract claim spawns four descending questions: (1) Did he establish the existence of the oral contract? (2) If he established its existence, was the contract void as a matter of public policy, given the substandard care he provided to Doris? (3) If the contract was not void as a matter of public policy, did Steve breach its terms by returning Doris to the nursing home in September 2008? and (4) If Steve breached a term of the contract, was the breach excused either because Doris committed an anticipatory breach by changing her 2004 will or because it was medically impossible for Steve to care for Doris in her home after she suffered burns in 2008? Our analysis will touch on all four inquires, but we focus on the third and fourth questions because they represent the principal points of disagreement on appeal.

#### *1. Did the District Court Properly Find that Steve and Doris Entered An Oral Contract?*

The probate court decided Steve adequately proved he and Doris entered an oral contract—exchanging his services for her land. The court believed the contract's existence was "most clearly demonstrated" by Doris's decision, immediately following their March 2004 conversation, to meet with her attorney to

draft a new will that incorporated the terms of the oral agreement. In its appellate brief, the estate argues the record included insufficient proof of the existence of the contract.[2]

"[W]hen a plaintiff seeks specific performance of an oral contract on land, the contract must be established by a preponderance of the clear, satisfactory and convincing evidence." *Petersen v. Petersen*, 355 N.W.2d 26, 28–29 (Iowa 1984). A will made in conformity with an alleged contract is strong confirmation the parties entered such an agreement. *Davis v. Davis*, 156 N.W.2d 870, 875 (Iowa 1968). But subsequent execution of another will, not in conformity with the alleged contract, is strong evidence of the absence of an agreement. *Id.*

To prove the existence of an oral contract, the proponent must show the terms are "sufficiently definite for a court to determine with certainty the duties of each party, the conditions relative to performance, and a reasonably certain basis for a remedy." *Gallagher, Langlas & Gallagher v. Burco*, 587 N.W.2d 615, 617 (Iowa Ct. App. 1998). The estate alleges Steve did not prove the terms of the oral contract with certainty, given his differing descriptions of how he could satisfy his obligation to provide care. The estate points out that at trial, Steve testified the agreement was Doris would give him eighty acres in her will and he would "keep on doing what we're doing and keep you out of the nursing home as long as, you know, things don't get real bad." But Steve portrayed the agreement differently in his June 2011 response to an interrogatory:

---

[2] At trial, the estate's attorney objected to Steve's offer of evidence concerning the alleged oral contract, citing the statute of frauds at Iowa Code section 622.32(3) (2011). The estate did not advance a statute-of-frauds argument on appeal.

> Doris French agreed to give Steve Biedenfeld 80 acres of farmland for Steve taking care of Doris so that she would not have to go into a care facility. (See Will of 2004). She did not want to lose her farm or "just give it to the care facility." She had protected the farm during the depression and was not going to give it away. Steve agreed to continue to care for Doris up until the time of her death.

The probate court found Steve's testimony that he agreed to provide Doris care in her home "only as long as he could" was not credible. The court found the interrogatory response was more consistent with Doris's "undisputed, overriding desire to remain in her home so that her farmland would not have to be sold to pay for nursing home care." The probate court eventually determined Steve breached this term of the oral contract by discontinuing his care for Doris after she suffered severe burns in 2008.

On appeal, Steve appears to concede that Doris contracted for care until the time of her death—as he articulated in the interrogatory response. Once his obligation is fixed in that manner, we are still faced with the question whether Steve established the existence of the oral contract by clear, satisfactory and convincing evidence.

We are not convinced his proof met that test. It is true Doris's decision to change her will in March 2004 to give eighty acres to Steve corroborates the existence of an agreement. *See Davis*, 156 N.W.2d at 875. But her subsequent decision to amend her will in 2006 to eliminate the devise of land to Steve just as strongly suggests that no agreement ever existed. *See id*.

Other than her decision in March 2004 to change her will, little else in the record buoys Steve's assertion that he and Doris entered an oral contract. He

provided her care without any agreement for more than one year after she suffered her stroke. She had provided him with financial backing as far back as 1997. Their dealings did not take any different course after the date of the alleged oral contract. Moreover, we find it significant neither Doris's attorney nor Steve's wife received any information about the agreement. Attorney John Cook testified he served as Doris's sole legal advisor since 1979 and she involved him in every important land and museum decision that involved a contract: "I don't find it possible that Doris would withhold that information from me." Tracey Biedenfield testified her husband never expressly told her that he had an agreement to provide care for Doris in return for the eighty acres. It was only Steve that testified to the oral contract, and the probate court did not find Steve's testimony fully credible. Accordingly, we do not find clear, satisfactory, and convincing evidence that a contract existed.

But even if we did agree with the district court's determination an oral contract existed, that would not entitle Steve to specific enforcement. He also would have to show the contract was enforceable, and if it was enforceable, that his breach may be excused.

*2. Was the Contract Void as Contrary to Public Policy?*

The estate argues that if an oral contract existed, we should find public policy prohibits its enforcement. Specifically, the estate argues enforcing the alleged agreement between Steve and Doris would be contrary to the public good because the contract perpetuated dependant adult abuse, which is a violation of Iowa law. The estate contends "it is difficult to conceive of a worse

bargain for Doris, as under its terms Doris would both lose 80 acres of land and live out her life alone and in sickening and dangerous living conditions on the minimal care provided by Biedenfeld."

"A contract which contravenes public policy will not be enforced by our courts." *Walker v. American Family Mut. Ins. Co*., 340 N.W.2d 599, 601 (Iowa 1983). Our courts have wrestled with the definition of "public policy"—but ultimately have decided not to enforce a contract "which tends to be injurious to the public or contrary to the public good." *Rogers v. Webb*, 558 N.W.2d 155, 157 (Iowa 1997). Courts must exercise caution when deciding whether to invalidate a contract on public policy grounds, weighing the parties' freedom to contract against the injury to the public good. *Id*.

The probate court found Steve's care of Doris "bordered on neglect," but the court did not believe Doris qualified as a dependent adult under the definition in chapter 235B, and therefore determined the contract was not void on public policy grounds. The probate court's assessment of Steve's conduct was generous. He had no training in nursing or elder care and admitted he wasn't giving Doris "proper care" by changing her adult diaper just once a day. Health professionals opined Doris was not safe in her home. If she fell during the day her only option was to call Lifeline, an emergency response system. Steve's wife, Tracey, who was a nurse, testified Steve's efforts weren't "ideal care" and Doris should have been in a nursing home. But both Steve and Tracey testified Doris was "satisfied" with the care she was receiving. We do not find their

rationalization to be a proper measure of whether the alleged contract violated public policy by endorsing a neglectful situation.

But we do not need to decide if the contract was unenforceable as a matter of public policy because we find Steve breached his contractual obligation to Doris without any legal justification.

*3. Did Steve Breach a Contract Term?*

Assuming without deciding the alleged contract was not void as a matter of public policy, we turn to the question whether Steve performed his bargained-for obligations. The probate court decided Steve materially breached his oral contract with Doris "when he elected to discontinue caring for her in her home as he promised to do until the time of her death, choosing instead to return her to the Cherokee Villa on September 28, 2008."

Steve attacks the court's conclusion that he breached the agreement by offering two excuses: (1) Doris breached the contract first, and (2) his performance was impossible or impracticable after Doris suffered severe burns. We will address these two defenses in the next division.

*4. Was Steve's Breach Excused by the Doctrines of Repudiation or Impossibility of Performance?*

Steve first invokes the concept of repudiation of contract, offering the following quote:

> Where one party to a contract repudiates the contract before the time for performance has arrived, the other party is relieved from its performance. Additionally, once a party repudiates a contractual duty before performance is due, the other party may enforce the obligation by filing a claim for damages without fulfilling any conditions precedent.

*Conrad Brothers v. John Deere Ins. Co*., 640 N.W.2d 231, 241 (Iowa 2001) (internal citations omitted).

Steve argues Doris's actions in executing a new will in 2006 excused his failure of performance. He points out Doris not only removed his bequest of the eighty acres, but lied to him about the change in her will. He claims her secret repudiation forgives his non-performance.

Steve's argument overlooks an important element of repudiation: "[R]epudiation consists of a statement that the repudiating party cannot or will not perform. The statement must be sufficiently positive to be reasonably understood . . . that the breach will actually occur." *Id.* (internal citations omitted); *see Waterman v. Bryson*, 158 N.W. 466, 467 (Iowa 1916) (requiring "positive notice of an intended breach"). When Doris removed the devise of the eighty acres to Steve in her 2006 will she made no statement at all, much less one that could be reasonably understood as notice of an intended breach of their oral contract.

As the estate argues, "[a] will is ambulatory in the sense that it speaks from and takes effect on the date of testator's death." *Matter of Estate of Micheel*, 577 N.W.2d 407, 410 (Iowa 1998). Doris could not be heard to repudiate the oral contract through her will until the time of her death, which occurred two years after Steve breached their oral contract.

As his next defense Steve contends extraordinary circumstances, in the form of Doris's burns, excused him from performing his end of the bargain. The concept of impossibility of performance is addressed in the introduction to the

Restatement (Second) of Contracts as "impracticability of performance and frustration of purpose." *See* Restatement (Second) of Contracts ch. 11, at 309 (1981) (hereinafter "Restatement").

According to the Restatement,

> [c]ontract liability is strict liability . . . . The obligor is therefore liable in damages for breach of contract even if he is without fault and even if circumstances have made the contract more burdensome or less desirable than he had anticipated . . . . The obligor who does not wish to undertake so extensive an obligation may contract for a lesser one by using one of a variety of common clauses: . . . he may reserve a right to cancel the contract . . . . The extent of his obligation then depends on the application of the rules of interpretation . . . .

*Id.*

The Restatement goes on to discuss the limited opportunity for a court to grant relief when an obligor has not restricted his obligation by agreement: "An extraordinary circumstance may make performance so vitally different from what was reasonably to be expected as to alter the essential nature of that performance." *Id.* In these circumstances, "the court must determine whether justice requires a departure from the general rule that the obligor bear the risk that the contract may become more burdensome or less desirable." *Id*. "[O]rdinarily a contingency which reasonably may have been anticipated must be provided for by the terms of the contract, or else the impossibility of performance resulting therefrom does not operate as an excuse." *Nora Springs Co-op. Co. v. Brandau*, 247 N.W.2d 744, 747 (Iowa 1976).

Steve insists Doris's burns were not anticipated at the time of their contract and he could not have expected that the Cherokee home health care

providers would decline to assist Doris in her home. He contends these events rendered his continued care impracticable. We disagree with Steve's contentions. Steve undertook a demanding obligation when he agreed to provide home care for Doris—who was ninety-seven years old and disabled. The contingency of her suffering an injury in her home could have reasonably been anticipated when Steve contracted to care for her. He was well aware of her declining physical condition and that she had already required hospitalization following a fall from her wheelchair while at home in February 2003—a year before they entered the alleged oral contract. Moreover, her healed burns did not change any basic assumption in their alleged agreement. The task of caring for Doris had been difficult since she suffered her stroke in 2002. Steve cannot benefit from the impossibility-of-performance doctrine.

If an oral contract existed, we agree with the probate court's conclusion that Steve breached the agreement when he returned Doris to the Cherokee Villa in September 2008. His failure to satisfy his obligation to care for her at home was not excused by her anticipatory breach or the impossibility of his performance.

**B. Should Steve Recover from the Estate under an Implied Contract for the Reasonable Value of His Services?**

As a fallback argument, Steve contends "if the oral contract is found to be unenforceable, the implied contract for services is still a valid claim for recovery." Steve criticizes the probate court's mention of the election-of-remedies doctrine in its ruling on his rule 1.904(2) motion. Steve highlights the fact he separately

pleaded both an express and implied contract. *See Maasdam v. Massdam's Estate*, 24 N.W.2d 316, 320 (Iowa 1946) ("One may, of course, plead these causes of action in separate counts."). The probate court opined that because it found the existence of an oral contract, it would violate the election-of-remedies doctrine to allow Steve to "in effect, disaffirm that contract and obtain a recovery of monetary damages on the alternative theory."

If the probate court correctly determined an oral contract existed between Steve and Doris, the court was also correct in rejecting Steve's implied-contract theory. "An express contract and an implied contract cannot coexist with respect to the same subject matter, and the former supersedes the latter." *Chariton Feed & Grain, Inc. v. Harder*, 369 N.W.2d 777, 791 (Iowa 1985). But to the extent we conclude on appeal that Steve fell short of showing the existence of an oral contract, we turn to the question whether he is entitled to recover the reasonable value of his services under an implied-in-fact contract.

To recover under a contract implied-in-fact, Steve must show Doris had reason to understand his services were (1) performed for her; (2) not rendered gratuitously, but with the expectation of compensation; and (3) the services were beneficial to her. *See Scott v. Grinnell Mut. Reinsurance Co.*, 653 N.W.2d 556, 562 (Iowa 2002). We have doubts Doris understood Steve delivered his services with the expectation of compensation. The record reveals Doris thought of Steve as a son. It is uncontested that Steve rendered gratuitous care for her for more than one year after her stroke in August 2003.

But even if Doris came to the understanding in March 2004 that Steve expected to be compensated for the home health care, we cannot find Steve's services were truly beneficial to her. *See Roger's Backhoe Service, Inc. v. Nichols*, 681 N.W.2d 647, 652 (Iowa 2004) (measuring benefit objectively, and not solely on view of the recipient of the services). As mentioned above, the probate court described Steve's care as "border[ing] on neglect." Doris clung to an unrealistic belief that she was better off in her home, with Steve's minimal attention, than spending her assets on a nursing home. Steve's morning visits to her home enabled Doris to survive outside of a care facility, but in dismal and dangerous conditions. A home health nurse classified Doris's situation as "self abuse." Objectively, his shoddy care was not beneficial. Accordingly, we conclude Steve cannot recover under an implied-in-fact contract.

But even if Steve could recover under an implied-in-fact contract, we agree with the estate that Steve has "adduced no evidence of the reasonable value' of his services, as required to recover under quantum meruit." Quantum meruit has been described as a "quasi-contractual theory of recovery" addressing the situation where a person renders services, which are accepted by another person, and the law implies a promise on the part of the recipient to pay for them. *See State Public Defender v. Iowa Dist. Court for Woodbury County*, 731 N.W.2d 680, 684 (Iowa 2007). The phrase, quantum meruit, means "as much as he deserved." *Drake v. Block*, 74 N.W.2d 577, 580 (Iowa 1956).

Steve asserts the promised eighty acres was the value of his services. He also alludes to the part-time income he lost as a truck driver during the time he

devoted to caring for Doris. We find neither of these measures establishes a reasonable value for his services to Doris. *See Scott*, 653 N.W.2d at 562 (noting distinction between damages under an express contract for expectation or reliance interests and a quantum meruit recovery for reasonable value of services).

The probate court noted a lack of "competent proof" in the record to show the value of Steve's services to Doris. The court further asserted the $40,000 left to Steve in Doris's will "appears to be adequate compensation for the services Plaintiff provided." We agree with the probate court that it would not be equitable to award Steve for his services on these facts.

**AFFIRMED.**