IN THE COURT OF APPEALS OF IOWA

No. 9-315 / 07-2089
Filed June 17, 2009

MARY ANN ANTOMORI,
Plaintiff-Appellee,

vs.

DARLO A. ESPEY
a/k/a DARLO A. ANTOMORI JR.
and TRAVIS ESPEY,
Defendants-Appellants.

Appeal from the Iowa District Court for Polk County, Glenn E. Pille, Judge.

Defendants appeal from judgment entered in favor of plaintiff in this mechanic's lien action. **AFFIRMED AND REMANDED.**

Valerie Cramer of Cramer Law, P.L.C., Des Moines, for appellants.

Thomas P. Lenihan, West Des Moines, for appellee.

Heard by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

POTTERFIELD, J.

Mary Ann Antomori, the defendants' grandmother, filed this action seeking reimbursement for materials and services provided for the repair of residential rental property known as 3040 N.E. Broadway, which was bequeathed to the defendants by their great-grandmother, Ada Antomori. Defendants, Darlo A. Antomori Jr. (also known as Darlo Espey) and Travis Espey,[1] filed numerous counterclaims including embezzlement, breach of trust, fraud, interference with inheritance, conversion, and slander of title. The district court found in favor of Mary Ann and dismissed the defendants' counterclaims. We affirm.

I. Background Facts and Proceedings.

Ada Antomori died in 1996 and her will was admitted to probate in September 1996. Mary Ann, the surviving spouse of Ada's son, Darlo Gene Antomori, was named executor of Ada's estate. Ada bequeathed the property at issue to her great-grandchildren, Darlo Jr. (2/3), Travis (1/6), and Nicole (1/6), as joint tenants with full rights of survivorship, and not as tenants in common. The liquid assets of the estate were insufficient to satisfy the cost and expenses of administration. Mary Ann, as surviving joint tenant and named beneficiary, was the recipient of liquid funds, which she loaned to the estate to permit closing. The final report, which was filed September 21, 1998, and approved by the probate court, noted that Nicole and Darlo Jr. were minor children "whose custodian is Darlo Antomori; [and] that no conservator or trustee has been appointed for any distributee of this estate."[2] The report also provided:

[1] Defendants' sister, Nicole Espey, entered into a settlement with Mary Ann prior to trial.
[2] Darlo A. Antomori Sr. is the father of Darlo and step-father of Travis and Nicole.

> 14. That all interested persons have waived Notice of Time and Place of Hearing on the Final Report, have consented to its approval and to the closing of this estate at any time, without further notice, which said waivers are attached hereto, and by this reference incorporated herein and made a part hereof.
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> 15. That the assets of this estate do not warrant distribution; that there is due and owing to Mary Ann Antomori the sum of $6,937.68, representing personal funds expended on behalf of the estate; that Mary Ann Antomori has deferred payment of said funds in exchange for a promissory note and assignment of rents until such time as she has received payment in full.
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> . . . .
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> 23. That upon closing of the estate, the Executor should be ordered to prepare and deliver Court Officer's Deed to Darlo E. Antomori, Jr., Nicole Espey and Travis Espey, according to terms as provided in Decedent's Last Will and Testament.

As ordered by the court, Mary Ann filed the Court Officer's Deed.

A promissory note was executed by Darlo Sr., as custodian of Darlo Jr. and Nicole, and Travis in the amount of $6937.68 payable to Mary Ann. As security for the promissory note, Darlo Sr., as custodian of Darlo Jr. and Nicole, and Travis executed an assignment of rents for all rents due or to become due on the real estate. Finally, because Darlo Sr., Darlo Jr., Nicole, and Travis all resided in Indiana at that time, Mary Ann agreed to serve as an agent to manage the rental property. Power of attorney documents were executed by Travis and Darlo Sr., as custodian of Nicole and Darlo Jr., authorizing Mary Ann plenary powers including, but not limited to:

> 1. To buy, acquire, obtain, take or hold possession of any property or property, and to retain such property, whether income producing or non-income producing;
> 2. To sell, convey, lease, manage, care for, preserve, protect, insure, improve, control, store, transport, maintain, repair, remodel, rebuild and in every way deal in and with any of my property or property rights now or hereafter owned by me, and to establish and maintain reserves for repairs, improvements, upkeep and obsolescence; to eject or remove tenants or other persons and to recover such property. This includes the right to convey or

> encumber my homestead legally described as follow: [inherited real estate described].
> 3. To borrow money, mortgage and grant security interest in property . . .
> . . . .
> 11. To employ profession or business assistants . . . .

Mary Ann established a partnership for the management of the rental property, placed the premises available for rent, collected rents, performed repair and maintenance, evicted tenants as necessary, had prepared annual partnership income tax returns, and paid real estate taxes. The annual partnership returns and accompanying documents were mailed annually to Darlo Sr. Mary Ann received for her services an agreed fifteen percent management fee. Mary Ann was assisted in managing the rental property by Dave Heller.

The promissory note was satisfied by rents received in 1999 through 2001. Darlo Jr. turned eighteen in April 2001. Mary Ann continued to rent the property, collect rents, pay expenses, and provide annual accountings as noted above for the years 2002 through 2005.

In March 2005, Mary Ann experienced problems with collection of rents and tenants' damage to the rental property. The rents were insufficient to pay expenses and for repairs. Mary Ann secured a line of credit with a mortgage on her own homestead real estate to obtain funds to begin to pay for repairs and expenses on the rental property. The last tenants to occupy the rental property were evicted by legal proceedings in May 2006. Mary Ann and Heller attempted to institute scheduled maintenance, repairs, and improvements to the real estate. Finding the continued obligations of the real estate to be too troublesome, Mary Ann entered into negotiations for the sale of the real estate with Harold and Linda

Hart. The Harts had tendered an offer for the purchase of the property "as is" in the amount of $110,000.

Mary Ann and the defendants engaged in little communication. Nicole and Travis came to live in Des Moines at some point before 2006. Darlo Jr. moved to Des Moines in May 2006. Nicole helped with some of the work on the rental property, Travis did not. Neither Darlo Jr. nor Travis sought to revoke the powers of attorney granted Mary Ann.

In July 2006, Darlo Jr. changed the locks to the rental property and Mary Ann and Heller were not permitted to complete the repairs and improvements. Darlo Jr. thereafter negotiated with the Harts for the purchase of the real estate and a sale resulted with the purchase price of $100,000.

Mary Ann brought this mechanic's lien action to recoup $21,700[3] for labor and materials provided. She also asked for $2100 in litigation expenses and $11,302.67 in attorney's fees and expenses. Upon conclusion of trial, Mary Ann moved to amend her pleadings to conform to the evidence to include additional theories of recovery, including, but not limited to, quantum meruit. The trial court granted Mary Ann the relief requested and rejected the defendants' counterclaims.

Defendants now appeal. They contend the trial court erred in finding that Darlo Sr. had the authority to sign a power of attorney for Darlo Jr. and in finding

[3] Initially, Mary Ann requested in excess of $31,000, but reduced the amount at trial upon re-examination of supporting documentation. Defendants claim that these expenses included court and sheriff costs, which are not recoverable in a mechanic's lien action. Defendants' posttrial motion, however, did not raise this issue and we will not address it on appeal. *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) ("It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal.").

the power of attorney signed by Travis constituted a contract for mechanic's lien purposes. They further argue that if the power of attorney was a valid contract, then Mary Ann violated agency principles by engaging in self-dealing. They contend the trial court erred in allowing recovery on quantum meruit. They also argue the trial court erred in its credibility findings and in rejecting their counterclaims. They assert they should recover their attorney fees because the mechanic's lien action was filed in bad faith. Finally, they contend the trial court improperly considered an exhibit.[4]

II. Scope and Standard of Review.

We review actions to enforce mechanic's liens de novo. *Baumhoefener Nursery, Inc. v. A & D P'ship, II*, 618 N.W.2d 363, 366 (Iowa 2000).

We give great weight to the trial court's findings that Heller was "significantly credible" and that Mary Ann was "very credible." The district court had the advantage of listening to and viewing the witnesses. *See Schaffer v. Frank Moyer Const., Inc.*, 628 N.W.2d 11, 20 (Iowa 2001).

We have thoroughly reviewed the briefs and the record in this case. The trial court's ruling, as modified by its ruling on defendants' motion to enlarge or amend its findings, is well-reasoned and fully supported by the record. We concur with the trial court's conclusions that the evidence did not support any finding that Mary Ann misappropriated, embezzled, or converted property for her personal benefit. On our de novo review, we adopt its reasoning as our own and for all the reasons stated therein, we affirm. *See* Iowa Ct. R. 21.29(1)(*a*), (*e*).

[4] Defendants concede error was not preserved. We will not address matters not properly preserved for our review. *See Meier*, 641 N.W.2d at 537.

We conclude further discussion is warranted only as to the validity of the power of attorney, the contract upon which Mary Ann relies, as to Darlo Jr.[5]

III. Discussion.

Iowa's mechanic's lien statute is broadly written and authorizes a mechanic's lien for "every person who shall furnish any material or labor" for the "improvement, alteration, or repair" of buildings or land "by virtue of *any contract* with the owner." Iowa Code § 572.2 (2005) (emphasis added).

> A mechanic's lien is purely statutory in nature. All persons who furnish any material or labor for improvements to building or land will generally be entitled to a lien to secure payment for the labor and materials furnished. Mechanic's liens stem from principles of equity which require paying for work done or materials delivered. The doctrines of restitution and prevention of unjust enrichment drive the mechanic's lien entitlement. The mechanic's lien statute is liberally construed to promote these objects and assist parties in obtaining justice.

Carson v. Roediger, 513 N.W.2d 713, 715 (Iowa 1994) (citations omitted).

The basic premise for defendants' objections to Mary Ann's recovery of the mechanic's lien is that there was no valid contract between them and Mary Ann.[6] Darlo Jr. was a minor at the time the power of attorney was executed by

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[5] With respect to defendants' claim of interference with inheritance, defendants apparently dispute that Ada's estate was insolvent and that Mary Ann was owed money by Ada's estate. They offer no authority for this collateral attack on the probate matter and we refuse to address it. *See City of Chariton v. J.C. Blunk Constr. Co.*, 253 Iowa 805, 816, 112 N.W.2d 829, 835 (1962) ("A collateral attack upon a judgment is not ordinarily permitted."); *See also Gigilos v. Stavropoulous*, 204 N.W.2d 619, 621 (Iowa 1973) (noting the general rule that a judgment or decree admitting a will to probate, when made by a court having jurisdiction thereof, may be attacked only in such direct proceedings as are authorized by a statute, and is not open to attack or impeachment in a collateral proceeding).

[6] Travis acknowledged signing the promissory note, the power of attorney, and an assignment of rents. We reject his contentions that (1) he did not know what he was signing and (2) he was coerced into or fraudulently induced to sign any of these documents. We find his denial of those contracts at this juncture unavailing.

his father "as custodian." Relying upon *Irwin v. Keokuk Savings Bank & Trust Co*., 218 Iowa 477, 480, 255 N.W. 671, 673 (1934), defendants assert that this contract is void because no guardian ad litem was appointed for Darlo Jr. in the probate matter.

Defendants read too much into the *Irwin* case. There, a minor was specifically bequeathed $5000 and the executor of the estate sought permission to pay the bequest not in cash, but by transferring to the minor's father a note and trust deed to land. *See Irwin*, 218 Iowa at 478-79, 255 N.W. at 672. When the minor attained his majority, he demanded "payment of his legacy." *Id.*

The *Irwin* court stated the general rule:

> Minors who are unable to act for themselves may not be legally deprived of legacies or the property of an estate to which they are heirs without representation in judicial proceedings by a legally appointed guardian or a guardian ad litem.

Id. at 480, 255 N.W. at 673. However, the remedy is not an automatically void transaction, but a voidable transaction.

> The rule respecting the contract of an infant is as follows: "That when the court can pronounce the contract to be to the infant's prejudice, it is void, and when to his benefit, as for necessaries, it is good; and when the contract is of an uncertain nature, as to benefit or prejudice, it is voidable only at the election of the infant." . . . . The conveyance in this case, in our opinion, was not void, but voidable at the election of the plaintiff within a reasonable time after obtaining majority.

Green v. Wilding, 59 Iowa 679, 680, 13 N.W. 761, 761-62 (Iowa 1882) (citation omitted).

"The right of a minor to disaffirm or repudiate a wholly unauthorized transaction, such as the one involved in this action, is well settled." *Irwin*, 218 Iowa at 480, 255 N.W. at 673. As stated in *Stout v. Ruschke*, 199 Iowa 402, 404,

202 N.W. 88, 89 (1925), "a minor is bound by his contracts, unless he disaffirms before or within a reasonable time after reaching his majority (section 10493, Code 1924) . . . ." This rule continues to be codified at Iowa Code section 599.2 ("A minor is bound not only by contracts for necessaries, but also by the minor's other contracts, unless the minor disaffirms them within a reasonable time after attaining majority . . . ."). "What is a reasonable time within the meaning of the statute depends upon the circumstances of each case." *Green*, 59 Iowa at 681, 13 N.W. at 762. In the case relied upon by defendants, the court noted that the "notice of disaffirmance by [the beneficiary] of the arrangement had between the executor and [his] father was served on the earliest possible date after attaining his majority." *Irwin*, 218 Iowa at 479, 255 N.W. at 672. Thus, the court concluded that the beneficiary was entitled to disaffirm and repudiate the transaction. *Id*. at 481, 255 N.W. at 673-74. But, in *Green*, 59 Iowa at 681, 13 N.W. at 762, the court found that disaffirmance made some four years after attaining majority was not within reasonable time.

Here, Darlo Jr. reached his majority in April 2001, yet took no action to disaffirm his grandmother's authority to manage the rental property until 2006. Any claim that he lacked knowledge of his interest in the property or Mary Ann's power of attorney is belied by his testimony:

> Q. Had you ever called the plaintiff and asked her to sell the property because you wanted money out of it and you wanted it sold? A. I think I asked her about a few, like three years ago, but she said no, I'm not selling it and I left it at that.

It is apparent the defendants were aware of their interest in the rental property, but—as the trial court found—"were content to allow the Plaintiff to continue her

management of the subject property, at least until Darlo [Jr.] took action when he moved to Des Moines from the state of Indiana in May 2006." They cannot so belatedly attempt to avoid the consequences of their contracts.

Because we conclude that Mary Ann was entitled to recover under her mechanic's lien action, we need not address whether recovery could also be had under the theory of quantum meruit. *See DeVoss v. State*, 648 N.W.2d 56, 61-62 (Iowa 2002) (stating that appellate courts may affirm the district court on any ground appearing in the record, provided the ground was raised before the district court).

IV. Motion for Appellate Attorney's Fees.

Mary Ann seeks an award of appellate attorney fees.

> Iowa Code section 572.32 authorizes the district court to award reasonable attorney fees to the successful plaintiff in an action to enforce a mechanic's lien. The award is mandatory, *see* § 572.32, but the amount is vested in the district court's broad, but not unlimited, discretion.

Baumhoefener Nursery, 618 N.W.2d at 368. In *Schaffer*, 628 N.W.2d at 23, our supreme court specifically found that "[s]ection 572.32 in no way limits attorney fees to those incurred in the district court."

Having prevailed on appeal, Mary Ann Antomori is entitled to an award of appellate attorney fees. *Schaeffer*, 628 N.W.2d at 23. We therefore remand to the district court for entry of an additional judgment to compensate plaintiff for the reasonable expense of these appellate proceedings. We do not retain jurisdiction.

Costs on appeal are assessed to appellants.

AFFIRMED AND REMANDED.