

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of ROSE AIELLO, Deceased.

SANDRA BELL,

Petitioner-Appellant,

v

JOHN AIELLO, Personal Representative of the
Estate of ROSE AIELLO, Deceased,

Respondent-Appellee.

UNPUBLISHED
December 2, 2004

No. 249691
Livingston Probate Court
LC No. 02-005733-CZ

Before: Meter, P.J., and Wilder and Schuette, JJ.

PER CURIUM.

Petitioner appeals as of right from the trial court's order granting respondent's motion for involuntary dismissal during a bench trial. See MCR 2.504(B)(2). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Petitioner, a registered nurse, submitted a claim for services that she rendered caring for the decedent from 1995 until the decedent's death in December 2001. Petitioner met the decedent in 1995, while dating the decedent's son, Nicholas Aiello. The decedent was living in Aiello's home after having been released from the hospital, and Aiello asked her to assist him in caring for the decedent. Petitioner agreed to do so and claimed that she subsequently spent approximately twenty-five to forty hours a week assisting in the decedent's care from 1995 until the decedent's death in December 2001.

The trial court granted respondent's motion for involuntary dismissal, concluding that petitioner failed to prove an implied contract. Such a dismissal is appropriate in a bench trial when the court is satisfied after the petitioner presents her case that "on the facts and the law the plaintiff has shown no right to relief." MCR 2.504(B)(2); see also *Samuel B Begola Services, Inc v Wild Bros*, 210 Mich App 636, 639; 534 NW2d 217 (1995). The trial court's ultimate decision and conclusions of law are reviewed de novo. *Sands Appliance Services v Wilson*, 231 Mich App 405, 409; 587 NW2d 814 (1988), rev'd on other grounds 463 Mich 231 (2000). However, any findings of fact made by the court are reviewed for clear error. *Begola Services, supra* at 639; *Sands Appliance Services, Inc v Wilson*, 463 Mich 231, 235-236 n 2, 238; 615 NW2d 241 (2000).

Petitioner argues that the trial court erroneously found that she was required to prove the elements of a traditional contract. Although the trial court noted the elements of an express contract in its findings, it did not find that there was an express contract in this case. Nor did the court require petitioner to prove the elements of an express contract in order to recover.

Petitioner further argues that the trial court erred in concluding that she failed to prove an implied contract because her services were gratuitously offered. Although petitioner correctly observes that a presumption of gratuitous services arises only if the recipient is a relative or a live-in paramour, *In re Lewis Estate*, 168 Mich App 70, 74-75; 423 NW2d 600 (1988), the trial court here did not apply any presumption in its decision. Rather, it found, independent of any presumption, that petitioner failed to establish factually that the decedent received a benefit under circumstances in which retention of that benefit would be inequitable, absent reasonable compensation. *Id.* at 74. The trial court found that petitioner's services to the decedent were intended as a gift, as a result of petitioner's close relationship with her boyfriend, Nicholas Aiello. When the evidence does not show that it would be inequitable for the recipient to retain any benefits received, a contract implied in law will not be imposed. *Moll v Wayne Co*, 332 Mich 274, 278-280; 50 NW2d 881 (1952), overruled on other grounds in *Brown v Dep't of Military Affairs*, 386 Mich 194, 200-201; 191 NW2d 347 (1971). The trial court also did not err in finding that a contract implied in fact did not exist because petitioner did not expect compensation for her services, but rather offered her services as a gift. *In re Lewis Estate*, *supra* at 75.

Petitioner, citing *King v First Michigan Bank & Trust Co of Zeeland, Michigan*, 11 Mich App 144, 146; 160 NW2d 721 (1968), contends that because she was not related to the decedent, there is an inference that she must be compensated for services rendered. Although such an inference may arise, it is not absolute. As previously noted, a contract implied in law will not be found unless it is inequitable for the recipient to retain the benefit of any services rendered. *Moll, supra* at 278-280. In this case, the trial court did not clearly err in finding that petitioner's assistance in caring for the decedent did not compel recovery in order to avoid an inequitable result.

Affirmed.

/s/ Patrick M. Meter
/s/ Kurtis T. Wilder
/s/ Bill Schuette